THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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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-10-5198
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 III

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14. On information and belief, while WEM was hospitalized at HealthSouth, Hilton arranged to have WEM sign a letter retaining attorneys to represent him in connection with Trust matters and to sign a retention check for those attorneys. WEM later told both Pamela and Elizabeth that he had no memory whatsoever of having hired attorneys or having signed a retainer letter or check. WEM did not even recall having been in the hospital.

15. On information and belief, the attorneys that Hilton arranged to represent WEM while WEM was in the hospital were the same attorneys who represented Hilton and who continue to represent him in this proceeding.

16. In August, 2006, Hilton took WEM to another doctor for an examination of his mental competency. Elizabeth was in the neurologist's office and heard the neurologist state that the examination results indicated that WEM was partially incompetent, that he was highly subject to suggestion and that he had problems with reasoning, amounts, dates and logic.

17. In August, 2006, Pamela and Elizabeth arranged to have their father see an elder attorney who would represent and protect his interests. Hilton vigorously opposed any such retention of independent attorneys for WEM. He claimed it was unnecessary inasmuch as WEM had supposedly previously retained attorneys. Hilton then disclosed to Pamela, Elizabeth and to WEM, himself, that WEM had allegedly retained attorneys two months earlier at the time he was hospitalized.

18. From the Spring through the Fall of 2006, U.S. Trust was engaged in, among other things, an investigation of possible misconduct, breach of fiduciary duty and self-dealing by trustees of the Trust which has resulted in the allegations recounted in U.S. Trust's Petition. Hilton, believing that Pamela and Elizabeth had knowledge of his misconduct and were therefore a threat to him, conceived of a plan to thwart U.S. Trust's investigation and forestall his

own removal as trustee. His plan was to prevail upon WEM, as Chairman of the Trust, to discharge his two daughters as trustees. This would result in three remaining trustees – WEM, Hilton and U.S. Trust, with Hilton controlling two of the three votes.

19. WEM had, for some 20 years, expressed his intent to Pamela and Elizabeth to eventually appoint them as trustees of the Trust. On October 24, 2000, WEM appointed Elizabeth as trustee. That appointment was made by WEM, in person, after having had direct, face-to-face conversations with Elizabeth about becoming a trustee.

20. On information and belief, on or around September 28, 2006, Hilton, knowing that attorneys for U.S. Trust had interviewed Pamela and Elizabeth, among others, put his plan into action. He obtained WEM's signature on a document in which Elizabeth was purportedly discharged as trustee of the Trust. A copy of that document is annexed hereto as Exhibit B.

21. At the time WEM signed this document he was suffering from cataracts and macular degeneration, conditions that severely impaired his eyesight, as well as Parkinson's syndrome and dementia. It was not possible for him to have read the fine print of that document, much less have fully understood the import of a document that abruptly removed his daughter as trustee. The scrawl that is WEM's signature is, itself, compelling evidence of his physical deterioration. Several weeks after signing this document WEM underwent cataract eye surgery.

22. On information and belief, the "removal" of Elizabeth as trustee was conceived of, promoted and carried out by Hilton, not by WEM. On information and belief, the document that purportedly effected that removal was prepared by Hilton's lawyers and presented to WEM for signature. These are the same lawyers who purport to represent both Hilton and WEM in regard to this proceeding.

23. On or about October 4, 2006, Elizabeth received Exhibit B, the document that purported to remove her as trustee of the Trust. At no time before this document was sent to Elizabeth had WEM spoken to Elizabeth about the proposed removal of her as trustee. At no time before or after it was sent did WEM ever tell Elizabeth that he was dissatisfied with the manner in which she carried out her duties as trustee.

24. Subsequent to September 28, 2006, and prior to October 4, 2006, Elizabeth visited and/or had dinner with her father daily while he was in New York. At no time did WEM tell her he had purportedly discharged her as a trustee of the Trust or that he had been dissatisfied with her conduct as a trustee. On the contrary, he asked her to visit him in Charleston for a week in October.

25. Pamela was appointed by WEM to be a trustee of the Trust on June 16, 1999. On information and belief, a document dated sometime in October, 2006, which purported to remove Pamela as a trustee has been circulated but has never been delivered to Pamela. At no time, either before or after this purported removal occurred, did WEM ever tell Pamela that he intended to remove her as trustee, that he had in fact done so or that he was at all dissatisfied with her performance as a trustee.

26. The purported removal of Pamela and Elizabeth as trustees was engineered by Hilton for the purpose of solidifying his control over WEM and the Trust. It was designed to eliminate anyone whom he conceived to be a threat to that control. The purported removal of Pamela and Elizabeth, if valid, would have left Hilton in complete control of the Trust – and free to continue to dispense Trust assets in ways that served his own interests.

27. The purported removal of Elizabeth as trustee was ineffective as a matter of law for the reason that (a) WEM lacked the mental and physical capacity to read and

understand the removal document; (b) the purported removal did not comply with the requirement of the Agreement of Trust that a replacement trustee be appointed if any individual trustee were terminated; and (c) proper delivery of the document was not made to all trustees as required by the Agreement of Trust.

28. The purported removal of Pamela as trustee was ineffective as a matter of law for the reason that (a) WEM lacked the mental and physical capacity to read and understand the removal document; (b) the purported removal did not comply with the requirement of the Agreement of Trust that a replacement trustee be appointed if any individual trustee were terminated; and (c) proper delivery of the document to Pamela was not made as required by the Agreement of Trust.

29. Hilton has breached his fiduciary duty to the Trust through his misconduct, self-dealing and exercise of undue influence over WEM, whom Hilton has acknowledged lacks requisite mental capacity to serve as a trustee.

30. Hilton's manipulative and self-serving conduct, and his breach of fiduciary duty to the Trust, is further evidenced by the fact that even after U.S. Trust's Petition was filed exposing his misconduct to the Court, lawyers hired by Hilton continue to represent both Hilton and WEM – notwithstanding the conflict of interest that renders such dual representation improper.

Necessary Parties

31. The names and post-office addresses of all persons interested in this proceeding who are required to be cited, or concerning whom the Court is required to have information, are set forth in subdivision (a) or (b):

(a) All persons and parties so interested herein who are of full age and sound mind, or which are corporations or associations, are as follows:

Name	Address	Description of Interest
United States Trust Company, National Association	114 West 47th Street New York, NY 11036	Trustee
Hilton Charles Smith, Jr.	5301 Old York Course Hollywood, SC 29449	Trustee
Pamela Holmes Murray	1561 Brianna Lane Charleston, SC 29412	Trustee
Elizabeth E. Murray	737 Park Avenue, Apt. #3B New York, NY 10021	Trustee
Hon. Eliot Spitzer, Attorney General of the State of New York	120 Broadway New York, NY 10271	Representative of Ultimate Charitable Beneficiaries

(b) All persons and parties so interested herein who are infants or incompetents or persons believed to be mentally incapable adequately to protect their rights, or whose existence, identity or whereabouts are unknown (including persons who are virtually represented under SCPA 315) are as follows:

Name	Address	Description of Interest
William E. Murray	One Vendue Place Charleston, SC 29401	Trustee

32. Upon information and belief, there are no persons interested in this proceeding other than those mentioned above.

33. Upon information and belief, none of the above-named persons is in the military service, as defined by the Act of Congress known as the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, and by the New York State Soldiers' Civil Relief Act of 1951, as amended.

34. This Court has jurisdiction over this Cross-Petition proceeding pursuant to SCPA 207 based on the fact that Petitioner U.S. Trust is a trustee of the Trust and has a principal place of business in New York State.

35. Venue in this county is proper based on the fact that U.S. Trust has a principal place of business in New York County.

36. No prior application has been made to this or any other Court for the relief requested in this Cross-Petition.

WHEREFORE, Cross-Petitioners Pamela and Elizabeth respectfully pray that this Court issue an order as follows:

(a) removing Hilton as a trustee of the Trust for self-dealing, as alleged in the Petition and Cross-Petition, and manipulation and abuse of WEM, whom Hilton knows lacks mental capacity;

(b) removing WEM as a trustee of the Trust on the ground that he is physically and mentally incapable of performing his duties as a trustee;

(c) directing that a guardian *ad litem* be appointed for WEM;

(d) determining that the documents that WEM purportedly signed to remove Pamela and Elizabeth as trustees are ineffective and void on the ground that WEM lacked mental capacity to exercise such a function as Chairman of the Trust and were the product of improper and undue influence exercised by Hilton over WEM and, in any event, that the procedures set forth in the Agreement of Trust for the removal of individual trustees were not followed;

(e) confirming that Pamela and Elizabeth continue to be trustees of the Trust;

(f) restraining Hilton from taking any action, making any representations or making any decisions on behalf of the Trust that do not include, or are inconsistent with, the roles of Pamela and Elizabeth as trustees; and

(g) granting such other and further relief as this Court may deem just and proper.

Dated: November 17, 2006

PAMELA HOLMES MURRAY

ELIZABETH E. MURRAY

SIDLEY AUSTIN LLP

By: Eileen Caulfield Schwab
Eileen Caulfield Schwab
Roger J. Hawke

787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300

Attorneys for Respondents and
Cross-Petitioners Pamela Holmes Murray
and Elizabeth E. Murray

(f) restraining Hilton from taking any action, making any representations or making any decisions on behalf of the Trust that do not include, or are inconsistent with, the roles of Pamela and Elizabeth as trustees; and

(g) granting such other and further relief as this Court may deem just and proper.

Dated: November 17, 2006

PAMELA HOLMES MURRAY

ELIZABETH E. MURRAY

SIDLEY AUSTIN LLP

By: _____
Eileen Caulfield Schwab
Roger J. Hawke

787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300

Attorneys for Respondents and
Cross-Petitioners Pamela Holmes Murray
and Elizabeth E. Murray

MURRAY000931
001006

VERIFICATION

STATE OF ~~NEW YORK~~ Massachusetts)
Kentucky SS.:
COUNTY OF ~~NEW YORK~~)

Pamela Holmes Murray, being duly sworn, deposes and says: I am a Respondent and Cross Petitioner herein; I have read the foregoing Answer and Cross-Petition subscribed by me and know the contents thereof; the same is true of my own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe it to be true.

Pamela Holmes Murray

Sworn to before me this
9th day of November, 2006.

Notary Public

LORIS L. COOPER, Notary Public
My Commission Expires March 7, 2008

VERIFICATION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ELIZABETH E. MURRAY, being duly sworn, deposes and says: I am a Respondent and Cross-Petitioner herein; I have read the foregoing Answer and Cross-Petition subscribed by me and know the contents thereof; the same is true of my own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe it to be true.

ELIZABETH E. MURRAY

Sworn to before me this
17th day of November, 2006.

Notary Public

GEORGE L. CONOVER, JR.
Notary Public, State of New York
No. 01CO4883710
Qualified in New York County
Commission Expires February 23, 2007

AGREEMENT

This AGREEMENT of the Trustees of the Samuel Freeman Charitable Trust (hereinafter referred to as SFCT), dated this 12 day of May 2004, by and between WILLIAM E. MURRAY (hereinafter referred to as WEM), residing at 50 East 77th Street, The Carlisle, 7A, New York, NY 10021, HILTON C. SMITH, JR. (hereinafter referred to as HCS), residing at 5031 Old York Course, Hollywood, SC 29449, PAMELA HOLMES STACK (hereinafter referred to as PHS), residing at 395 Oak Glen, Marietta, Georgia 30067, and ELIZABETH EDWARDS MURRAY (hereinafter referred to as EEM), residing at 737 Park Ave, 3B, NY, NY 10021, hereinafter referred to as the Individual Trustees and US Trust Company of New York, the Corporate Trustee.

WHEREAS the Trustees agree that WEM is the Chairman of the SFCT, and

WHEREAS the Trustees hereby appoint HCS as the Vice Chairman. They further agree that subsequent to WEM's resignation or demise that HCS shall be appointed the Chairman of the SFCT, and

WHEREAS each Individual Trustee, other than the Chairman or Vice Chairman, may recommend one or more qualifying organization seeking to receive grants from the SFCT, provided that the total amount of the grants awarded by each Individual Trustee in any calendar year shall not exceed $50,000.00, and

WHEREAS the Corporate Trustee shall retain the right to recommend grants, and

WHEREAS the Chairman or Vice Chairman may sponsor qualifying organizations seeking to receive grants from the SFCT up to the remaining balance of the net income of the SFCT available for distribution, and

WHEREAS the Trustees confirm that until WEM's resignation or demise that WEM shall continue to receive the commissions allowed a sole Individual Trustee under the Laws of the State of New York, in effect at the time of payment. Thereafter, the Individual Trustees shall share in the amount allowed to a sole Trustee under the Laws of the State of New York in effect at the time of payment. HCS will receive $12,000 per year, and the remainder of the commissions shall be divided equally between the remaining Individual Trustees, and

WHEREAS HCS, as Chairman, has the authority at any time and from time to time to appoint, remove, or replace any Individual Trustee, by an instrument in writing, duly acknowledged and delivered to the Individual Trustees.

IN WITNESS WHEREOF and hereto have affixed their hands and seals the day and year first above written

WITNESS: Debi Hawes

WITNESS: Debi Hawes

BY: William E. Murray 5/12/04
William E. Murray, Chairman Date

BY: [signature] 5/8/04
Hilton C. Smith, Jr., Vice Chairman Date

WITNESS:

BY: _____
Pamela Holmes Stack, Trustee Date

WITNESS:

BY: _____
Elizabeth Edwards Murray, Trustee Date

WITNESS: Carolyn L. Lesher

US Trust Company of New York

BY: [signature] 5/24/04
Linda Franciscovich, Managing Director Date

The Samuel Freeman Charitable Trust

Removal of Trustee

WHEREAS:

1. William E. Murray is a trustee under that certain Agreement of Trust (the "Agreement") dated April 29,1981 between Samuel Freeman, as Grantor, and William E. Murray, Samuel Freeman and the United States Trust Company of New York, as Trustees, establishing The Samuel Freeman Charitable Trust.

2. Paragraph 9 of the Agreement granted to Samuel Freeman and William E. Murray, jointly, or to the survivor, the authority to appoint up to five (5) additional trustees.

3. Elizabeth Murray was appointed as an additional trustee pursuant to the above power.

4. Paragraph 9 of the Agreement authorizes William E. Murray, as the survivor of Samuel Freeman and William E. Murray, to remove any trustee appointed pursuant to the provisions of Paragraph 9 of the Agreement.

5. William E. Murray intends to remove Elizabeth Murray as a trustee.

NOW, THEREFORE, William E. Murray, pursuant to the authority granted to him in Paragraph 9 of the Agreement, does hereby remove Elizabeth Murray as a trustee under the Agreement effective the date hereof.

IN WITNESS WHEREOF, each of the undersigned has hereunto set his hand and seal to this instrument as of the 28th day of September, 2006.

WILLIAM E. MURRAY

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.

On the 28th day of September in the year 2006 before me, the undersigned, personally appeared WILLIAM E. MURRAY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument in New York, New York.

Notary Public

HELEN KELLY
Notary Public, State of New York
No. 5005278
Qualified in Suffolk County
Commission Expires Dec. 7, 2010

668026_1

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) s.s.:
COUNTY OF NEW YORK)

I, Joan E. Senatore, being over the age of eighteen (18) years, and not a party to this action, and being first duly sworn, state on oath that on November 17, 2006 I caused the foregoing Answer and Cross-Petition to be served by first-class mail in the State of New York upon:

Mr. William E. Murray
One Vendue Place
Charleston, SC 29401

Joan E. Senatore

Subscribed and sworn to me this
17th day of November, 2006

William U. Geng
Notary Public

WILLIAM U. GENG
Notary Public, State Of New York
No. 01GE4874791
Qualified In New York County
Commission Expires 05/31/2010

NY1 5986002v.1

Subject: Re: Elizabeth Murray/SFTrust/USTrust
Date: Monday, October 16, 2006 1:02 PM
From: mizliz1011@aol.com
To: <ESchwab@Sidley.com>
Conversation: Elizabeth Murray/SFTrust/USTrust

i do believe it was his signature but i usually have to guide his hand and i always note it is guided and who guided it and initial it. he was in a room alone on a conference call for approx three hours with hilton being badgered and pursueded, with "their" attorneys over the phone and arriving at his house. it was signed in the late afternoon when the parkinsons drugs build up and he experiences sundowners syndrome, where he is either completely out of it or totally pliable to other person's wills.

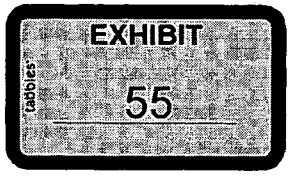
brianna overheard daddy being told, on speaker phone as my father is unable to hold up a phone, that liz was trying to ruin his life and take over control of the trust in collusion with us trust or some such nonsence. his aide was VERY concerned and tried to intervene because he knows that hilton is crooked and overwhelming my father. the notary arrived with the attorney.

was it ever sent to hilton, formally, or to USTrust? i left a message asking that for linda F and also over the phone but have not heard back. i also heard that he was trying to pressure daddy to dismiss ustrust as corporate trustee. he thinks that pam can be cowed and that he has eliminated me... he told dady that it was good that i was not calling him these days (used to call 1-2x day and visit monthly to help out) because i was on collusion with the enemy and trying to destroy him and put him into jail (my father). we are trying to get my father to visit again the elder attorney i had him visit on my last trip to charleston. i was there and hilton spent hours trying to get him not to go.

hilton refers to the trust as his or ours, thinks he will have total control now that i am gone, and my father, and pam, are merely pawns that he totally controls. He is very vengeful when she doesn't sign stuff, like disinviting her to his son's wedding, not deeding over her home that my father gave her, making trouble for her in access to my father. I think that my father's aide, joe pidgen, would be helpful if testimony is needed as to his dominance over my father's will.

his negligence of my father's health is also a BIG issue. Twice he has gone to the hospital in distress and hilton was unreachable or tried to stop it.

thanks elizabeth



-----Original Message-----
From: ESchwab@Sidley.com

To: mizliz1011@aol.com
Cc: rhawke@sidley.com
Sent: Mon, 16 Oct 2006 12:34 PM
Subject: RE: Elizabeth Murray/SFTrust/USTrust

The acknowledgment was correct. The agreement requires that it be sent to the Trustees; if it wasn't, then it is faulty. It also may be faulty because there was no appointment of a successor but I am not sure how a court would interpret the language. Your father's signature, however, raises questions.

From: mizliz1011@aol.com [mailto:mizliz1011@aol.com]
Sent: Friday, October 13, 2006 8:32 PM
To: Schwab, Eileen Caulfield
Subject: Re: Elizabeth Murray/SFTrust/USTrust

question: is it faulty due to lack of acknowledgement, no notification to linda, no substitute trustee and notification thereof to linda and pam, or all of the above. also, would like to get all of these all renovating jobs questions taken care of. this is getting to me at the end of the long haul. literally, some of the people who worked on these jobs are already dead. i brought it to their attention, not the other way around. I feel as though I am on the cross about this and I am just bone weary. thanks so much. good luck on tuesday. let me know what your inital thoughts are re the removal. thanks elizabeth

-----Original Message-----
From: ESchwab@Sidley.com
To: mizliz1011@aol.com
Sent: Fri, 13 Oct 2006 5:39 PM
Subject: RE: Elizabeth Murray/SFTrust/USTrust

got it. thanks. have a nice weekend.

From: mizliz1011@aol.com [mailto:mizliz1011@aol.com]
Sent: Thursday, October 12, 2006 1:00 PM
To: Schwab, Eileen Caulfield
Subject: Re: Elizabeth Murray/SFTrust/USTrust

found it, am sending immediately. i am a good hider...

-----Original Message-----
From: ESchwab@Sidley.com
To: mizliz1011@aol.com
Sent: Thu, 12 Oct 2006 11:57 AM
Subject: RE: Elizabeth Murray/SFTrust/USTrust

Would you fax me the document "removing" you as trustee. 212-839-5599 - you need to put my name on it.

From: mizliz1011@aol.com [mailto:mizliz1011@aol.com]
Sent: Friday, October 06, 2006 12:05 AM
To: Schwab, Eileen Caulfield
Subject: Fwd: Elizabeth Murray/SFTrust/USTrust

Subject: Elizabeth Murray/SFTrust/USTrust

Recommended by Josh Rubenstein and Jonathan Sack
Samuel Freeman Charitable Trust/Linda Franciscovich
Approx $40million
only specified charities are St. Pauls school and railroad related charities

Chairman- William Ewards Murray
"Vice" Chairman- Hilton Charles Smith (no provision for this in inital trust documents, bank does not recognize powers of and appointment to this position
He is married to Catherine Peronneau Murray Smith, oru sister, a reincarnation of Leona Helmsley.
Trustees: Pamela Holmes Murray (also prior marriages with surname of Smith and Stack)
Elizabeth Edwards Murray (Kelly- in process of divorce)

Issues: 1.)Self Dealing and kickbacks and anything you can imagine by Hilton Smith and deception to bank of use of grantee funds

2.)Same to a much lessor extent by father, William E. Murray, with conflict issue of major stroke in "99 and significant onset of Parkinsons in 2002- elder abuse and withholding of physical therapy and prescribed therapies, major funding to doctor involved by HCSmith for research. WEM has been diagnosed once as incompetent and once as partially (significantly diminished) capacity in last three months with high suseptability to suggestion and superior will (typical of parkinsons). HCSmith in collusion with WEM companion, Helen Flynn, who is out for the bucks, as well as with sister Catherine.

3.) USTrust will pay our attorney's fees as we "turned" states evidence at enormous personal risk

4.) Father WEM removed me as a trustee last

week due to Hilton's suspicion that i was informing bank

5.) Issue is whether we vote with bank making for 3/5 of trustees (vs. 66% quorum required in trust agreement) on removal and proscution of both parties OR
Jonathan Sack persues this with US Trust alone without our specifed endorsement

6,) Father's estate is approx. $60Million, hilton in control of virtually all assets and cash flow and various companies he owns, some in limited partnership, and he is very vindictive and would probably
convince WEM to change his will- has huge power over my father in recent years with high susectability on WEM's part. Undue influence, superiority of will, withholding of control, etc.

7.) if WEM dies, HIlton is executor and has power of attorney, he negotiated most points of recent changes in WEM's will. We used to see will yearly, since Hilton in control we don't and it is a big secret.

8.) Hilton fits every definition (see attached file) of a sociopathic con-man.

9.) Pam and I have virtually no funds or assets. I am owed a significant amount of money from one of my father's companies which Hilton refuses to pay (six figures)

10.) Hilton has deamonized/villified us to our father slowly over years making WEM distrustful of us giving hilton more control

If you have any questions, call me at 212-628-8859 or 917-971-1245. will leave at about 9 or so tomorrow for a trip, will be available on cell or at 508-228-0572 in Nantucket until next Tuesday.

Thanks so much. just a nutshell but better than

nothing.

Check out the new AOL <http://pr.atwola.com/promoclk/1615326657x4311227241x4298082137/aol?redir=http%3A%2F%2Fwww%2Eaol%2Ecom%2Fnewaol> . Most comprehensive set of free safety and security tools, free access to millions of high-quality videos from across the web, free AOL Mail and more.

Sidley Austin LLP mail server made the following annotations on 10/12/06, 10:55:58:

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with the promotion or marketing by others of the transaction(s) or matter(s) addressed in this

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****
****

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Sidley Austin LLP mail server made the following annotations on 10/13/06, 16:38:03:

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used, by any taxpayer for the purpose of avoiding any penalties that may be imposed on such

taxpayer by the Internal Revenue Service. In addition, if any such tax advice is used or referred

to by other parties in promoting, marketing or recommending any partnership or other entity,

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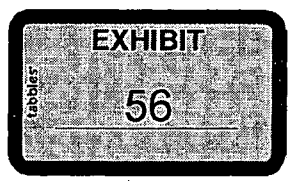
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SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Petition of UNITED STATES TRUST COMPANY, NATIONAL ASSOCIATION, as a co-Trustee of THE SAMUEL FREEMAN CHARITABLE TRUST, for an Order Removing and Surcharging WILLIAM E. MURRAY and HILTON CHARLES SMITH, JR. as co-Trustees thereof and Determining Whether the Purported Removal of ELIZABETH E. MURRAY and PAMELA HOLMES MURRAY as co-Trustees Was Effective.	File No. 3944/2006



MEMORANDUM OF LAW IN OPPOSITION TO THE MOTION OF RESPONDENT AND CROSS-PETITIONER WILLIAM E. MURRAY FOR AN ORDER REQUIRING PETITIONER U.S. TRUST TO REIMBURSE THE TRUST

Respondents and Cross-Petitioners Pamela Holmes Murray ("Pamela") and Elizabeth E. Murray ("Elizabeth") submit this Memorandum of Law in Opposition to the Motion of Respondent and Cross-Petitioner William E. Murray ("WEM" or "Movant") for an order requiring U.S. Trust to immediately reimburse the Samuel Freeman Charitable Trust (the "Trust") for allegedly "improper counsel fee expenditures." Movant argues in his memorandum of law that the conduct of U.S. Trust in expending Trust funds to conduct the investigation that led to U.S. Trust's Petition was "unilateral, deceptive and grossly overreaching." Movant also seeks immediate repayment to the Trust of attorneys' fees in the amount of $50,000 that were advanced to counsel on behalf of Trustees Pamela and Elizabeth who were named as Respondents by Trustee U.S. Trust. Pamela and Elizabeth contend in their Cross-Petition and Answer to the Cross-Petitions of WEM and Hilton Charles Smith, Jr. ("Hilton") that their

purported removal as trustees of the Trust was ineffective, that the advancement of attorneys' fees to represent them in this proceeding was a proper administrative expense of the Trust and that this Court should authorize the Trust to continue to make such payments pending the resolution of the Petition and Cross-Petitions.

PRELIMINARY STATEMENT

U.S. Trust conducted an investigation of the individual trustees that extended over many months. At the end of that investigation it concluded there were at least eight instances of improper self-dealing with respect to Trust funds by WEM and Hilton. These transactions are set forth in detail in U.S. Trust's verified Petition. The notion that it was "grossly overreaching," and a waste of Trust assets, for U.S. Trust to hire a nationally prominent law firm to investigate possible misconduct by individual trustees on the ground that the subjects of the investigation did not first give their consent is unfounded. Equally ill-conceived is the notion that U.S. Trust's investigation was part of a plot by Pamela and Elizabeth, who have for years been unpaid trustees, to "wrest control" of the Trust from their father.

A. Disbursements To The Morvillo Firm

Movant argues that U.S. Trust should be surcharged for the expense incurred in investigating Hilton and WEM for the reason that:

> "neither trustee has ever given his consent for the investigation [of himself] or for any expenditures related thereto."

(Cross-Petition ¶ 21.) No case cited in Movant's memorandum of law supports the astonishing proposition that a trustee is barred from investigating possible malfeasance by other trustees unless those trustees first agree that such an investigation is well-founded and justified. On the contrary, a trustee is entitled to incur expenses on behalf of the trust when it is acting on behalf of the trust. See In re Hawwa, 9 A.D.3d 362, 364-65, 779 N.Y.S.2d 578, 581 (2d Dep't 2004)

(describing a trustee's right to use trust funds to pay administration expenses including legal fees). A trustee may expend trust funds for administrative purposes "even without the consent of co-fiduciaries." Matter of Stanley, 240 A.D.2d 268, 269, 660 N.Y.S.2d 107, 108 (1st Dep't 1997).

B. The $50,000 Advance To The Attorneys Representing Pamela And Elizabeth

Pamela and Elizabeth were named as Respondent Trustees in U.S. Trust's Petition on the ground that their purported removals by WEM as individual trustees were subject to question. There are a number of reasons why such purported removals were ineffective as a matter of law:

1. The purported removals of Pamela and Elizabeth were invalid on the ground that they were done for the improper purpose of benefiting Cross-Petitioners, not the Trust itself. It is well-settled that a trustee owes a duty of "undivided loyalty to the trust" and that he may not serve interests other than the interest of the trust estate. Sankel v. Spector, 33 A.D.3d 167, 171, 819 N.Y.S.2d 520, 523 (1st Dep't 2006) (internal citation omitted); "[A] trustee is under the duty of acting exclusively and solely in the interest of the trust estate.", 106 N.Y. Jur. 2d Trusts § 364; In re Fulton's Will, 253 A.D. 494, 2 N.Y.S.2d 917 (3d Dep't 1938) ("[a] trustee's first duty is to his trust" and the trustee's duty is to "administer the trust solely in the interest of the beneficiary") (internal quotation and citation omitted).

It is also well-settled that even when a trust instrument provides a trustee with discretion, any exercise of such discretion is circumscribed by the requirement that it not be abused. See In re Goodman, 7 Misc. 3d 893, 901, 790 N.Y.S.2d 837, 846 (Surr. Ct. Kings Co. 2005) (stating that even where the trust agreement purports to give the trustee unfettered discretion, "the court has the responsibility to ensure that the trustees do not abuse their

discretion"); Matter of Gilbert, 156 Misc. 2d 379, 383, 592 N.Y.S.2d 224, 226-27 (Surr. Ct. N.Y. Co. 1992) ("Although our courts cannot ordinarily interfere with the exercise of a trustee's discretion, they can ensure that such discretion is exercised fairly and honestly.") The exercise of a discretionary power for an improper purpose is an abuse of discretion. See In re Goodman, 7 Misc. 3d at 901, 790 N.Y.S.2d at 846 (permitting court interference in the exercise of a trustee's discretionary power where the trustee "acts out of an improper motive"). Discretionary action taken for the purpose of benefiting an individual trustee, rather than the trust, is improper and abusive.

In the case at bar, the purported terminations of Pamela and Elizabeth were for the sole purpose of maintaining Cross-Petitioners' individual control over the Trust – not to confer some benefit upon the Trust. Pamela was appointed as trustee on June 16, 1999 and Elizabeth was appointed on October 24, 2000. They served seven years and six years, respectively, as trustees of the Trust without incident. Indeed, Hilton and WEM allege in their Cross-Petitions that those years were a period of "generally effective cooperation" among trustees. (Cross-Petition ¶ 14.)

The Cross-Petitions of WEM and Hilton also make clear that Pamela and Elizabeth were not "removed" because of any perceived misconduct on their part or failure to carry out their responsibilities as trustees. Rather, they were "removed" solely because they were thought to be cooperating with the U.S. Trust investigation into alleged self-dealing. It is only then, according to Respondents' own Cross-Petitions, that this "period of generally effective cooperation" came to an end and the alleged plot by Pamela and Elizabeth to "wrest control of the Trust from their father, William Murray" was "discovered." (Hilton and WEM Answer and Cross-Petitions ¶ 15.) U.S. Trust's role, according to Respondents, was not to investigate

possible misconduct. Rather, it was to find "ammunition" to further the scheme of Elizabeth and Pamela to oust their father and seize control of the Trust. (Cross-Petition ¶ 19.) Movant does not explain how Pamela and Elizabeth could possibly have persuaded a major financial institution to join in a scheme to oust two blameless trustees so that the two remaining individual trustees could seize control of the Trust.

The removal of individual trustees for the purpose of preserving another trustee's individual control over a trust, unrelated to the best interests of the trust, would be an improper and invalid exercise of discretionary power. This Court has the power to, and we submit should, set such actions aside.

It strains credulity, moreover, to think that Pamela and Elizabeth, after having faithfully served the Trust for six and seven years as unpaid trustees during a period of "generally effective cooperation," would have suddenly come up with a plot to "wrest control" of the Trust from their father. The verified Cross-Petitions of Pamela and Elizabeth demonstrate that the truth is precisely to the contrary. It is the object of Pamela and Elizabeth in their Cross-Petition to prevent Hilton from continuing to exercise undue influence and control over WEM and continuing to manipulate grants of Trust funds to suit his own self-interests. Their Cross-Petition makes clear that what concerns WEM's daughters is the *de facto* control Hilton has exercised over an 81-year old man who suffers from serious physical and mental impairments.

2. Secondly, serious questions have been raised in the Cross-Petitions of Pamela and Elizabeth concerning WEM's mental competency to act as Chairman of the Trust and the overbearing influence that Hilton had upon WEM. Their verified Cross-Petitions chronicle a number of incidents that put WEM's competency in issue, including the following:

-- whereas Hilton arranged to have WEM retain legal counsel while WEM was hospitalized at HealthSouth, WEM later informed his daughters that he had no memory of having hired attorneys and no memory of having been in the hospital (Cross-Petition ¶ 14);

-- in March, 2006, Hilton informed Elizabeth that he would not proceed with a grant to Hackensack Medical Center that WEM had proposed making. He stated: "You and I both know that your father is incapable of understanding or making any grant decisions" (Cross-Petition ¶ 11);

-- in August, 2006, a neurologist who examined WEM was heard to state that the examination indicated WEM was partially incompetent and highly subject to suggestion (Cross-Petition ¶ 16);

-- although, on September 28, 2006, WEM signed a document that purported to remove Elizabeth as a trustee, he thereafter amicably met with Elizabeth, had dinner with her and invited her to visit him in South Carolina. He never once mentioned the fact that he had abruptly, and without explanation, discharged her as a trustee after some six years of service in that capacity (Cross-Petition ¶ 24); and

-- WEM's eyesight was so impaired by cataracts and macular degeneration that it would have been impossible for him to read the fine print of the document that he purportedly signed (Cross-Petition ¶ 21).

WEM has submitted affidavits that attest to his mental competence – one by Dr. Bergman of the Medical University of South Carolina, a recipient of large grants from the Trust,

and attorney Edward G.R. Bennett. Whereas these affidavits may raise issues on the question of competency, they are not dispositive. U.S. Trust has served a notice on WEM, pursuant to CPLR § 3121, requiring WEM to submit to a mental competency examination by an independent neurologist. We understand that Respondents now oppose any such mental examination.

3. The alleged removals were procedurally defective. The Agreement of Trust provides in Paragraph 9 that any purported document of removal has to be "delivered to the Trustees." On information and belief, the document that purportedly removed Elizabeth was not delivered to U.S. Trust. The document that purported to remove Pamela was not delivered to Pamela or Elizabeth. The supposed *nunc pro tunc* removal documents that supposedly remedied these defects were not "delivered to the Trustees" as required by the Trust instrument. They were simply attached as exhibits to motion papers.

4. And, finally, Paragraph 9 of the Agreement of Trust provides that an individual trustee may be "removed and replaced." That language clearly contemplates the exercise of one power – the power to remove and replace. In this case, the purported removal of two individual trustees was not accompanied by the replacement of those trustees. Accordingly, the actions taken did not comply with the terms of the Trust.

C. **Irreparable Injury**

Movant contends that the Trust will be irreparably injured unless U.S. Trust immediately reimburses the Trust for the $50,000 retainer fee that was advanced to Sidley Austin LLP for representing Pamela and Elizabeth in this proceeding. The claim is that Pamela and Elizabeth have insufficient funds to hire counsel and that they will therefore be unable to repay the Trust should it be determined that their father properly removed them. Movant's own Cross-Petition, however, defeats this argument. Movant seeks to recover these funds from U.S. Trust,

not from Pamela and Elizabeth. Accordingly, whether or not Pamela and Elizabeth have the financial wherewithal to immediately refund the money if the expenditure is found to be improper is irrelevant. There is no claim that U.S. Trust will be financially unable to repay the Trust should the Court determine, after trial, that disbursements for attorneys' fees were improper.

Cross-Petitioner argues that a preliminary injunction is necessary because U.S. Trust might be "unwilling" to make repayment. (Brief p. 17.) It is obvious, of course, that if U.S. Trust is ordered to make repayment, it will do so – willingly or not. The "probable inability" of Pamela and Elizabeth to reimburse U.S. Trust, if reimbursement were ordered, has no effect upon, much less cause irreparable harm to, the Trust.

Movant's own argument, moreover, demonstrates that the real object of this motion is not to protect the assets of the Trust but, rather, to see to it that Pamela and Elizabeth are without counsel in this proceeding. This effort to deprive these trustees of legal representation is part of a larger effort to thwart the U.S. Trust investigation and to avert the removals and surcharges that U.S. Trust seeks in its Petition. Pamela and Elizabeth were named as Respondents in the Petition in their capacity as Trustees. They have a right to be represented in this proceeding in which they join, on behalf of the Trust, in an effort to remedy misuses of Trust assets. In re Matsis, 280 A.D.2d 480, 481, 720 N.Y.S.2d 179, 180 (2d Dep't 2001) ("Counsel fees are properly awarded where the service provided is for the benefit of the entire trust . . . "); In re Estate of Eliahou Rubin, 147 Misc. 2d 981, 984, 559 N.Y.S.2d 99, 101 (Surr. Ct. Nassau Co. 1990) (trust payment of legal fees justified where the services rendered by counsel are "of benefit to the estate as a whole").

Pamela and Elizabeth are entitled to have their legal fees continue to be advanced by the Trust unless and until this Court were to determine, after trial, that they were properly removed for good and valid reasons, in the interests of the Trust, and in accordance with the Trust instrument.

Finally, the professed concern of Respondents to protect the Trust from an "irreparable" loss of $50,000 in attorneys' fees would be more convincing were it not for the detailed allegations in U.S. Trust's Petition that chronicle large sums of Trust money that were used for the individual benefit of other trustees, rather than for the benefit of the Trust. Given those allegations, the motion to compel U.S. Trust to immediately repay legal fees advanced to Pamela and Elizabeth, and to strip them of counsel in this proceeding, should be viewed as an effort to gain tactical advantage in this litigation rather than as a serious effort to preserve and protect Trust assets.

CONCLUSION

This Court should deny the motion for a preliminary injunction and, further, authorize U.S. Trust to continue to advance reasonable attorneys' fees on behalf of Pamela and Elizabeth pending the resolution of the Petition and Cross-Petitions filed in this proceeding.

Dated: January 17, 2007

Respectfully submitted,

SIDLEY AUSTIN LLP

By: _____
Eileen Caulfield Schwab
Roger J. Hawke

787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300

Attorneys for Respondents
and Cross-Petitioners
Pamela Holmes Murray and
Elizabeth E. Murray

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHARLESTON

IN RE: IN THE ESTATE OF CASE NO.

WILLIAM EDWARDS MURRAY, 2007-ES-10-1116

Deceased.

VIDEOTAPED
DEPOSITION OF: ELIZABETH E. MURRAY

DATE: March 25, 2015

TIME: 10:13 AM

LOCATION: Hood Law Firm
172 Meeting Street
Charleston, SC

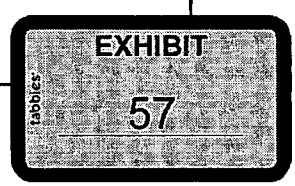
TAKEN BY: Counsel for the Estate

REPORTED BY: MARIE H. BRUEGGER, Registered Professional Reporter, CRR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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name. And he bought Pam the house in James Island. Is that where it was? He did contribute money towards some tree work and roof work at my house after I bought it.

Q. How much was that?

A. It was under $20,000.

Q. $20,000?

A. It was under $20,000. I have -- that was 1986. I'm doing my best here, but --

Q. All right. With regard to the claim that you have filed for the Elizabeth Style Setters, why didn't you file suit on that before your father died?

A. Because filing suit on my father would have evoked a Draconian reaction. He had already signed a note. I had the receipts, at least until they were removed from my access. And I thought it was better as long as he was willing to acknowledge it before his death, which he did. We went over the books.

I mean, this was a moving target. Every time I came up with the books, it was like let's cut a deal, I mean, that was with Hilton, and I didn't consider being reimbursed appropriate let's cut a deal material.

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHARLESTON

IN RE: IN THE ESTATE OF

CASE NO.

WILLIAM EDWARDS MURRAY,

2007-ES-10-1116

Deceased.

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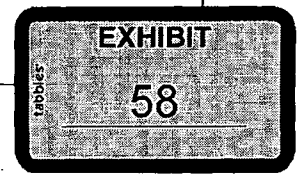
TAKEN BY: Counsel for the Estate

REPORTED BY: MARIE H. BRUEGGER, Registered Professional Reporter, CRR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Q. So was your plan always to wait until Mr. Murray died, and then you were going to file a claim?

A. No. I met with my father before his death, at his request.

Q. But why did you wait until after he died to file a lawsuit, as opposed to when he was alive, if you believed you were entitled to this money?

A. If you had a father with advanced Parkinson's who had periods of dementia who you were told that there was no money left for his medical care, I thought it was cleaner, in the same way that other people in this room that worked with my father that were owed money, that it was a more polite way to handle it, particularly since he had affirmed the debt before his death.

Q. All right. And you stopped working at The Inn at Quogue in 2002, correct?

A. That is correct.

Q. So it's your contention that these reimbursements were due to you by 2002, correct?

A. They were due to me at a time of -- at a rate of $2,000 a month. I never anticipated it

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	C/A No. 2007-ES-10-1116
	)	
IN THE MATTER OF: WILLIAM E. MURRAY	)	**REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

The Estate of William E. Murray respectfully submits this Reply Memorandum in Support of its Motion for Summary Judgment. The Estate's Motion and Memorandum for Summary Judgment were filed on October 31, 2016. Petitioner Elizabeth Murray's Memorandum in Opposition was served on July 18, 2017.

ARGUMENT

I. Claim 1: Elizabeth Murray as Executrix of the Estate of Minnie Holmes Murray claiming $6,260,845.70 based on a debt from an April 22, 1980 Settlement Agreement

Mr. Murray and his three daughters with Minnie Holmes Murray, Pamela, Catherine, and Elizabeth, entered into a Settlement Agreement in 1980 wherein Mr. Murray agreed to repay a debt to the Estate of Minnie Holmes Murray ("MHM Estate"). Minnie Holmes Murray died in 1967 and Elizabeth Murray succeeded Leon D. Murray as Executrix of the Minnie Holmes Murray Will on August 22, 1975. The debt in 1980 owed to the Estate of Minnie Holmes Murray per the Agreement totaled $240,000 plus interest accruing as set forth on the schedule of the 1980 Agreement. Exhibit 1. (Attached as Exhibit 15 to the Estate's Mem. Supp. Summ. J.) The Estate does not dispute a debt originally existed and a contract was signed by Mr. Murray on April 22, 1980. Nor does the Estate dispute Mr. Murray made payments under the original note with the last one being made on February 24, 1986. Exhibit 2. During the discovery phase of this case, no further payments on the note by Mr. Murray have been shown to exist which would renew the debt. Therefore, the time for Ms. Murray to bring her claim based on a breach of an Agreement signed in 1980 has long since passed.

As Petitioner points out in her Memorandum in Opposition, Mr. Murray "stopped making payments as required by the note" which caused the beneficiaries of the MHM Estate to begin efforts to have the debt paid and constructively close the Estate of Minnie Holmes Murray in 1992. (Pet'r. Mem. Opp'n Summ. J, 1). In 1992, Hilton Smith and Elizabeth Murray's former husband Dan Kelly were enlisted by Pamela Murray, Elizabeth Murray and his wife Catherine Murray Smith to aid the sisters' efforts in collecting the debt owed to the MHM Estate pursuant to 1980 Agreement. In addition, the sisters also hired an attorney, Thomas Berner, to assist with the creation of a hold harmless agreement as well as a CPA, Gail Margolies Reid, to aid in the dissolution of the MHM Estate. Mr. Smith and Mr. Kelly's efforts in securing the debt from Mr. Murray and liquidating the Estate of MHM concluded in 1992, approximately fifteen years before Mr. Murray's death in 2007. Exhibit 3.

The correspondence between Mr. Smith, Mr. Kelly, attorney Thomas Berner, CPA Gail Margolies Reid, and the three sisters evidence a clear intent to dissolve the MHM Estate. Mr. Smith's correspondence of December 2, 1992 to Pamela, Catherine, and Elizabeth, stated "we are meeting on the 12th of December with Gail to wind up the affairs of the estate." Exhibit 4. Gail Margolies Reid, a CPA who assisted with the liquidation of the MHM Estate enclosed a completed and executed Release and Discharge of Administratrix form to be filed with the Surrogate's Court on behalf of the beneficiaries of the Estate of Minnie Holmes Murray. Ms. Reid further stated in correspondence to attorney Thomas Berner, "[a]s you know it is the beneficiaries' desire to liquidate the Estate into three separate and distinct trusts." Exhibit 5. Finally, the 1992 Release, Refunding, Receipt and Indemnity Agreement ("1992 Agreement") referenced in Petitioner's Memorandum in Opposition sets forth a Memorandum to Mr. Murray that the total obligation owing from Mr. Murray to the Estate as well as interest and penalty interest on his loans from the New England Life Insurance Policy "shall become community property between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith on a joint, not several basis." Exhibit 6 (also attached as Exhibit 37 Estate's Mem. Supp. Summ. J.) These documents not only

indicate the clear intent of the three sisters, with Mr. Smith and Mr. Kelly's help, to dissolve the Estate in 1992, but the 1992 Agreement plainly states debt owed to the MHM Estate from Mr. Murray was transferred out of the Estate to become community property between the three sisters, thus, no longer as asset of the MHM Estate.

Ms. Murray's "Dear Daddy" letters, which Petitioner allegedly sent to Mr. Murray as a result of the negotiations with Mr. Smith did not renew the debt of Mr. Murray to the Estate of MHM and further Mr. Murray did not sign any renewal of the debt that would amount to a new promise to pay pursuant to South Carolina law. Elizabeth Murray's attorney and accountant advised her to periodically demand the monies due in writing and to serve the notices personally on Mr. Murray. Exhibit 7. (Elizabeth Murray Aff., April 3, 2013, ¶ 34). Taking the facts of this case in the light most favorable to Ms. Murray, if Mr. Murray did sign[1] the February 6, 2010 "Dear Daddy" letter promising to pay at that time over $5 million dollars to the Minnie Holmes Murray Estate, which Ms. Murray was a 1/3 beneficiary, then she is judicially estopped from claiming the debt here. Ms. Murray is estopped from claiming the debt in this case because she represented to the Court of New York in sworn statements dated September 1, 2006 and May 21, 2007, which are after the Dear Daddy letter was allegedly signed by Mr. Murray on February 10, 2006, renewing the debt that she did not have any contingent interests such as stock options, interests subject to life estates, or **prospective inheritances**. If as Ms. Murray claims, the document Mr. Murray signed on February 10, 2006 was a renewal of the debt, either due currently or coming forth at the time of Mr. Murray's death, Ms. Murray did not list it under oath as a prospective inheritance in her statements of net worth. The Petitioner's argument that she would not have listed an asset of the Estate in her personal statement of net worth is nonsensical. If Ms. Murray had an expectation to receive money from the MHM Estate, then she was legally obligated to

[1] The Estate of William E. Murray denies that Mr. Murray signed the February 10, 2006 Dear Daddy letter because the Estate consulted a handwriting expert who analyzed and compared writing samples of Mr. Murray's signature and rendered the opinion that the February 10, 2006 letter did not contain a genuine signature of Mr. Murray.

disclose this information on her statements of net worth. Ms. Murray's failure to disclose this debt proves that she did not have an expectation of receiving this money at a later time. If the debt Ms. Murray is now claiming is a valid debt, she should have listed it on her statements of net worth.

a. Ms. Murray does not have standing to claim a debt to her mother's Estate when the Estate of Minnie Holmes Murray was effectively closed in 1992 and the obligations of Mr. Murray became the property of the three sisters

The Petitioner references the Release, Refunding, Receipt and Indemnity Agreement ("1992 Agreement") between Pamela Murray, Catherine Murray Smith, and Elizabeth Murray signed on December 12, 1992 in her Memorandum to who the 1992 Agreement eliminated the need for a trust. Interestingly, the language cited by the Petitioner in her Memorandum and contained as part of the 1992 Agreement proves that the debt was transferred out of the Estate and given to the three sisters jointly: "the total obligation owing from William E. Murray to the Estate .... which may become due, shall become community property between" the three sisters. Exhibit 6. (also attached as Exhibit 37 Estate's Mem. Supp. Summ. J.) In addition, in Ms. Murray's sworn affidavit dated April 3, 2013, Ms. Murray confirms she signed the 1992 Agreement and that all obligations due under the note dated April 22, 1980 are community property between us, on a joint, not a several basis." Exhibit 7. (Elizabeth Murray Aff., April 3, 2013, ¶ 30). Therefore, based on the 1992 Agreement as well as the affidavit of Elizabeth Murray, the obligation due under the note is the property of the three sisters. Ms. Murray as Executrix of the Estate of Minnie Holmes Murray is not the property party to file this creditor's claim since the MHM Estate was liquidated in 1992 and the debt was transferred out of the MHM Estate at that time.

The 1992 Agreement indicates the sisters' intent, along with their signatures, that Mr. Murray's obligation to the Estate of Minnie Holmes Murray be an asset held jointly by the sisters. Thus, the 1992 Agreement liquidated the Estate of Minnie Holmes Murray and made any debt obligation from Mr. Murray community property between the three sisters on a joint and not a several basis. In addition, correspondence from CPA Gail Margolies Reid indicates the intention of the three sisters to liquidate the Estate and create three separate trusts. Exhibit 5. Because the

assets of the Estate were liquidated in 1992, the three sisters agreed the obligation they had been unable to collect from Mr. Murray would be owing to them and not the Estate of MHM. Further, the sisters drafted a Release of Ms. Murray as Executor of the MHM Estate to fully release and discharge her of any obligations related to the MHM Estate. Exhibit 8. Moreover, the MHM Estate has not filed tax returns since 1992. Exhibit 9.

As a matter of law, when viewing these documents in the light most favorable to Elizabeth Murray, she does not have standing to claim a debt owed to the Estate of Minnie Holmes Murray when she made an Agreement in 1992 with her sisters that the debt owing would be community property and would be divided on a pro-rata basis by the three sisters. Because the Estate of MHM does not hold the note, the Estate of MHM is not the property party to bring the creditor's claim. Therefore, the Court should grant summary judgment to the Estate of William E. Murray.

b. Ms. Murray did not renew the debt by sending letters to Mr. Murray

Petitioner states in her Memorandum "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. Murry on a bi-annual basis, including details of the debt owed with interest." (Pet'r. Mem. Opp'n Summ. J. 2) Ms. Murray declares that she delivered notices to her father every other year at their Christmas luncheon. (Pet'r. Mem. Opp'n Summ. J. 2). In support of this Petitioner cites her affidavit as well as her sister Pam Murray's affidavit. However, there is no documentation or evidence these unsigned letters were ever received by Mr. Murray, other than the testimony of Elizabeth Murray. There is no proof the alleged letters of default were personally delivered or sent by certified mail. By producing unsigned letters which could have been drafted and printed at any time, with no proof of delivery, Ms. Murray has failed to show any kind of renewal of the debt as a matter of law.

Pursuant to South Carolina law § 15-3-530 actions to recover debts must generally be brought within three years of the default on the debt. S.C. Code Ann. § 15-3-530. In re Vaughn, 536 B.R. 670, 677 (2015). The limitations period effects the remedy available to the party

collecting the debt rather than the underlying right. Id. Therefore, because the debt is not extinguished, debts could be revived by partial payment of the debt or "some writing signed by the party to be charged thereby". Id.; S.C. Code Ann § 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). In the Vaughn case, the Court held inclusion of the debt in bankruptcy schedules did not reset the statute of limitations. "[A] mere acknowledgment of a debt as a debt that will be paid in accordance with other debts does not revive the debt." Listing a debt on a bankruptcy schedule did not create a right to payment and did not signify a promise to pay." Id.

Mr. Murray has made no payments on the debt owed pursuant to the 1980 Agreement since 1986. Pursuant to South Carolina law, Ms. Murray's letters of default which were allegedly hand delivered to Mr. Murray have no effect in reviving the debt to the Estate of Minnie Holmes Murray. The Petitioner notes the first demand letter sent to Mr. Murray was from Hilton Smith. Exhibit 10. However, there is no indication this letter was actually sent to Mr. Murray as it is not signed by any of the sisters, and furthermore, Hilton Smith's letter dated December 12, 1992 does not renew the debt as discussed above[2].

The Petitioner further argues Mr. Smith assured Ms. Murray that the debt was protected because Mr. Murray acknowledged it in his financial declaration to Signet Bank. However, In re Vaughn provides that debt on a bankruptcy schedule did not signify a promise to pay and that a mere acknowledgement of the debt in according with other debts also does not revive the debt. Id. Similarly here, the debt noted on a schedule to Signet Bank would not revive the debt. Ms. Murray

[2] Even assuming the 1992 letter did renew, it still is outside the statute of limitations.

has presented no evidence that her father made payments to the Estate after 1986. In addition, neither Mr. Smith's notice of default which Ms. Murray cannot prove was sent to Mr. Murray, nor Ms. Murray's "Dear Daddy" letters every other year beginning are enough to revive the debt barred by the statute of limitations.

Furthermore, even if Mr. Murray signed[3] the February 10, 2006 "Dear Daddy" letter which was uncovered in 2009 by his former paramour, Dana Flavin[4], Ms. Murray is judicially estopped from seeking this debt as she did not disclose it in sworn statements to the Court of New York in 2006 and 2007 (referenced in the previous argument).

c. Laches is appropriate if the claim is outside of the Statute of Limitations

Taking the facts in the light most favorable to Ms. Murray, Mr. Murray last made a payment on the note in 1986. Therefore, as this claim is outside the statute of limitations, and should be denied as such, 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). Petitioner states that any "delay in asserting the Claim was entirely understandable given the familial relationship between the heirs of Minnie Murray and their father." (Pet'r. Mem. Opp'n Summ. J. 10). The Estate makes no determination on whether the delay was understandable, however, failing to pursue any action to recover the debt other than merely sending letters until Mr. Murray's death is unreasonable delay. The Petitioner also makes a reference to Mr. Smith understanding that based on the relationship between the parties, a suit needed to be avoided. (Pet'r. Mem. Opp'n Summ. J. 11). There is no evidence supporting the Petitioners allegation that suit should be avoided, and on the contrary, Ms. Murray did not have any qualms in filing an Answer and Cross-Petition against her father in the Samuel Freeman Trust Litigation wherein she prayed her father be declared incompetent after he removed Elizabeth Murray as a trustee. Exhibit 11. (also attached as Exhibit

[3] The Estate of William E. Murray denies William E. Murray's signature is valid on this document.
[4] Ms. Flavin is not a medical doctor who treats patients as stated in Petitioner's Memorandum in Opposition to Summary Judgment.

54 to the Estate's Mem. in Supp. Summ. J.) Because the delay in acting on these claims spans decades, summary judgment should be granted as a matter of law.

d. Ms. Murray is judicially estopped from claiming her father signed a document purporting to pay her over $5 million dollars because she did not disclose this asset in her sworn affidavit of net worth during her divorce proceeding in New York

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 elements of judicial estoppel apply here because Ms. Murray is taking inconsistent positions before the Court of New York and the Court in South Carolina.

In the Supreme Court of New York, in the County of New York, Ms. Murray prepared two sworn affidavits of her net worth. One on September 1, 2006 and the other on May 21, 2007. Exhibit 12. (also attached as Exhibits 30 and 31 to the Estate's Mem. Supp. Summ. J.) The affidavits call for the affiant to swear the document is "an accurate statement... of my net worth (assets of whatsoever kind and nature and wherever situated minus liabilities), statement of income from all sources and statements of assets transferred of whatsoever kind and nature and wherever situated." Exhibit 12. Clearly, this document is expansive in its probing for assets. The Estate of William E. Murray has previously shown the MHM Estate was dissolved in 1992 and the obligation due from Mr. Murray was property of the three sisters. Ms. Murray should have disclosed 1/3 of the amount owed from Mr. Murray if she believed it was a valid debt. Further, taking the Petitioner's argument in the light most favorable to her, if Ms. Murray did not list this asset because it was an asset of the Estate, Ms. Murray was a beneficiary of the Estate and therefore, would have taken 1/3 of the amount owing from Mr. Murray.

Ms. Murray is claiming that less than eight months prior to her affidavit of net worth (9/1/06), she coerced her father to sign a document promising over $5 million dollars to the Minnie Holmes Murray Estate per her calculations "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." Exhibit 13. (also attached as Exhibit 19 to the Estate's Mem. Supp. Summ. J.) According to the letter Ms. Murray claims renews the debt, Mr. Murray agreed to pay $5 million dollars to the Minnie Holmes Murray Estate, to which Ms. Murray is a beneficiary in an amount of approximately $1.6 million dollars. Ms. Murray, however, did not disclose she was owed $ 1.6 million dollars on her affidavit of net worth. By taking this position in her divorce proceeding, she benefitted in the amount that her ex-husband was ordered to pay her.

If the Dear Daddy letter is a renewal of the debt of the MHM Estate, then Ms. Murray intentionally misled the court because she did not disclose 1/3 of over $5 million dollars due to the MHM Estate pursuant to the February 10, 2006 document Ms. Flavin allegedly uncovered while cleaning out her office. Finally, Ms. Murray's position in her New York affidavits stating she had no prospective inheritances, or any other assets, such as what she claims is owed to her in this case, is inconsistent. It is true the divorce proceeding did not involve litigation of the debt evidenced by the note. However, if this was a valid debt then Ms. Murray would have received a portion of the repayment, but Ms. Murray made absolutely no mention of it in her sworn affidavits of net worth. The affidavits specifically lists a section for "prospective inheritances".

The Petitioner states 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." (Pet'r. Mem. Opp'n Summ. J. 11, 12). The Estate is unsure what "position" she is referencing. The affidavit of net worth in a divorce proceeding is to equitably split marital assets and Elizabeth Murray benefitted by failing to disclose her father had allegedly renewed a debt to the Estate of MHM to which she was a 1/3 beneficiary. Taking the facts in the light most favorable to Ms. Murray per the summary judgment standard, because of Ms. Murray's inconsistent positions regarding this debt, she should be estopped from claiming the debt in this case.

II. Claim 2: Elizabeth Murray claiming $538,034.00 as president of Elizabeth's Stylesetters

a. Elizabeth Murray is estopped from claiming this debt is based on a July 21, 2007 letter Mr. Murray signed, or even an April 10, 2007 letter, because Ms. Murray alleged in a verified pleading Mr. Murray did not have mental capacity on November 17, 2006

In her Memorandum in Opposition, the Petitioner states 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). Contrary to Ms. Murray's statement in her Memorandum, she alleged in a verified pleading in the State of New York on November 17, 2006 that her father "lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document." Exhibit 11. (also attached as Exhibit 54 in the Estate's Mem. Supp. Summ. J.) In her prayer for relief, Ms. Murray asked the Court to direct a guardian *ad litem* be appointed for her father.

In her Memorandum in Opposition, the Petitioner states the Estate produced documents signed by Mr. Murray as late as August 2006. However, August of 2006 was a year before Mr. Murray passed away, not a mere fourteen days prior to his death. Further, Dr. Kenneth Bergmann, Mr. Murray's treating neurologist, testified to a reasonable degree of medical certainty Mr. Murray did not have capacity as of May 23, 2007. Exhibit 14. Additionally, Dr. David Bachman, Professor of Neurosciences at the Medical University of South Carolina,wrote a letter dated July 2, 2007 saying he examined Mr. Murray on June 13, 2007 as well as reviewed Mr. Murray's medical records and found that Mr. Murray's neurological condition renders him incapable of managing his affairs. Exhibit 15. There has been no other medical expert in this case who have provided a different opinion as to Mr. Murray's mental capacity. The only person Petitioner references who has stated Mr. Murray was competent at this time, other than Ms. Murray in this litigation, is Nyesha Cherry. Ms. Cherry is a personal friend of Ms. Murray and is not a medical doctor. As such, she is woefully unqualified to make mental capacity determinations.

Just as important, Elizabeth Murray, in a verified Answer and Cross-Petition in the Samuel Freeman Charitable Trust Litigation, alleges in Paragraphs 96, 97, 98, 100, and 101, that "WEM lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Elizabeth as a Trustee." Exhibit 11. In Paragraph No. 2 of her Cross-Petition, Ms. Murray 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." Exhibit 11, ¶ 2 of Cross-Petition. Ms. Murray further alleges in late August 2003, she "received a rambling and disjointed telephone call from WEM and found that he had deteriorated even further. He had lost approximately 60 pounds and was in a state of confusion about dates, times, events and places. After Elizabeth returned to New York she often received telephone calls from WEM inviting her to stop by his house for lunch even though she was hundreds of miles away." Exhibit 11, ¶ 7 of Cross-Petition.

While it is true there was never any judicial determination that Mr. Murray was incompetent in the Samuel Freeman Litigation, Ms. Murray's sworn pleading states she has read the foregoing Answer and Cross-Petition and knows the matters to be true. The verification is signed by Elizabeth Murray and notarized on November 17, 2006. The basis for Ms. Murray's claim as President of Elizabeth's Stylesetters is the July 21, 2007 letter witnessed by Larry Bump and Jeff Young, and also signed in the presence of Pam Murray. Ms. Murray cannot represent to the Court in November of 2006 that her father lacked mental capacity and should have a guardian appointed, and then in this Court use a July 21, 2007 letter she purports to be a valid contract signed by her father promising to pay Elizabeth's Stylesetters half a million dollars.

Petitioner also references another letter witnessed by Brian Canaday in her Memorandum in Opposition. This letter was signed before a notary and is dated April 2007, not April 2006 as stated in Petitioner's Memorandum in Opposition. Therefore, that letter is also subsequent to the date Ms. Murray swore in a verified pleading that her father lacked mental capacity.

The Petitioner misconstrues the elements of judicial estoppel. First, two inconsistent positions must be taken by the same party. Ms. Murray took a different position in the Samuel Freeman Trust litigation than she is taking here. In the Samuel Freeman Trust Litigation, under oath, Ms. Murray alleged multiple times her father lacked the requisite mental capacity to intelligently and knowingly execute a document. In this litigation, she is alleging her father had the mental capacity to sign a three page single space letter purporting to pay her large sums of money fourteen days prior to his death. Exhibit 16. (also attached as Exhibit 46 to the Estate's Mem. Supp. Summ. J.)

In her Memorandum in Opposition, Ms. Murray further states her father remained lucid and competent and exercised free will just a few days before his death. Those are wholly inconsistent positions before two different courts of law in two different states. The "truth-seeking function of the judicial process is undermined if parties are allowed to change positions as to the facts of the case" Hayne at 252. As to the second element, the positions must be taken in the same or related proceedings involving the same party. The proceedings in this case, and in the Samuel Freeman Trust Litigation involved Elizabeth Murray, Mr. Murray and Hilton Smith. In Hayne, the Court judicially estopped a person from taking on position in a divorce proceeding and another in a foreclosure action. Though the proceedings themselves were unrelated, one being a divorce and another a foreclosure, the property at issue was denied as an asset during the divorce proceeding and claimed as owned in the foreclosure action. As such, in the foreclosure action, the person was estopped from claiming ownership of the property.

Next, the party must have been successful in maintaining that position and received some benefit. By engaging in the Samuel Freeman Trust Litigation, Elizabeth Murray, who was removed as a trustee by her father, kept her position as a trustee. Fourth, the inconsistency must be part of an intentional effort to mislead the court and fifth the positions must be totally inconsistent. Here, Ms. Murray is alleging Mr. Murray was lucid and had the mental capacity to sign a contract, while in 2006 Ms. Murray was requesting a guardian for her father and she alleged

he could not execute a document purporting to remove herself as a trustee. Those positions are totally irreconcilable and she is intentionally misleading the Court for her benefit.

Ms. Murray was free to raise her concerns of undue influence, and sue her father, but she cannot take an inconsistent position in this litigation with regard to her father's capacity than she has in other litigation. Ms. Murray is misleading the court here in stating her father had capacity to execute a contract fourteen days prior to his death when she claims he was having mental difficulties in November of 2006. Therefore, as a matter of law and for the integrity of the Courts, Ms. Murray is judicially stopped from claiming Mr. Murray was incapacitated in 2006 and now, when it suits her, stating Mr. Murray had capacity in July of 2007.

Ms. Murray is also judicially estopped with regard to her Elizabeth's Stylesetters claim because she also did not disclose these alleged debts owed to her on her affidavits of net worth in her divorce proceeding. On the affidavits of net worth filled out during her divorce proceeding, there is a section devoted to "loans to others and accounts receivable" and Ms. Murray does not list anything. She further lists as a value of zero, "jewelry, art, antiques, precious objects, gold and precious metals." As she did not list the amounts due to her from her father on behalf of Elizabeth's Stylesetters, nor any of her possessions left at the Inn at Quogue, such as artwork, on her statement of net worth in September of 2006 and May of 2007, she should not be able to claim them in this Court.

CONCLUSION

Elizabeth Murray has no basis as a matter of law to recover for either of her creditor's claims. For the aforementioned reasons, the Estate of William E. Murray respectfully requests that the Court dismiss with prejudice Elizabeth Murray's Petitions for Allowance of her Claims.

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

Attorneys for The Estate of William E. Murray

7/24, 2017
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of ***THE ESTATE OF WILLIAM E. MURRAY'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT*** was served on each party or counsel of record by ☐ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 24 day of July, 2017.

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 (refered 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

EXHIBIT 1

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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

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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

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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

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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

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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.

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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.

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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 L. Clet (SEAL)
Witness

Pamela Holmes Murray Smith (SEAL)
Pamela Holmes Murray Smith

Joseph L. Clet (SEAL)
Witness

Elizabeth Edwards Murray (SEAL)
Elizabeth Edwards Murray
(and as Administratrix DBN of the Estate of Minnie Holmes Murray)

Joseph L. Clet (SEAL)
Witness

Catherine Peronneau Murray-Smith (SEAL)
Catherine Peronneau Murray-Smith

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01-10407-4-1-1E

WILLIAM E. MURRAY
50 EAST 77TH STREET, APT. 5C
NEW YORK, NY 10022

0555

1-131
210

Date Feb 24 1986

Pay to the Order of Estate of William E. Murray $ 19,200.00

Nineteen Thousand Two Hundred & 00/100 Dollars

U.S.Trust UNITED STATES TRUST CO. OF NEW YORK
45 Wall Street
New York, N.Y. 10005

Memo 1984 interest

William E. Murray

⑈021001318⑈ 66 5028 ⑆ 0555 ⑈000192000⑈

UNITED STATES TRUST COMPANY OF NEW YORK

tabbies EXHIBIT 2

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7/8	Glendale Tile	Bathroom Tile	Amex	196.88	Statement 7/29						196.88
7/8	True Value	Grout, Etc	Cash	37.30	XX 8/18-H						37.30
7/9	Redford Galleries	Bottles Print for Front Desk	Cash	102.84	XX						102.84
7/9	Springmaid	Sheets and Towels	Amex	639.91	Statement 7/29						639.91
7/9	Kmart	Misc. Supplies	Amex	141.75	Statement 7/29						141.75
7/12	Kellogg's & Lawrence	Paint	Discover	83.24	XX 8/18-H						83.24
7/12	Milo's East	Dinner with Tour Operator	Amex	47.00	Statement 7/29						47.00
7/13	Chase	No Payroll CHeck	Overdraft Fee	50.00	XX						
7/13	We'll Floor U	Tiles for Large Cottage - Kitchen and Bathroom	Amex	333.30	Statement 7/29						333.30
7/13	Post Stop Café	Interview Breakfast	Amex	22.00	Statement 7/29						22.00
7/16	Hampton Bays Diner	Dinner with Workers	Amex	41.10	Statement 7/29						41.10
7/16	Kmart	General	Amex	403.49	Statement						403.49



2098.81

Hilton C. Smith, Jr.
50 Summit Avenue
Hagerstown, Maryland 21740
301 739-4366

November 16, 1992

Mr. Thomas Berner
Berner & Berner
515 Madison Avenue
20th Floor
New York, NY 10153

RE: ESTATE OF MINNIE HOLMES MURRAY

Dear Mr. Berner:

Elizabeth Murray has informed me that you and she spoke on 11/9/92 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 from you to proceed with this liquidation.

Very truly yours,

Hilton C. Smith, Jr.

Holmes-M\Berner.ltr

c: Elizabeth Murray
c: Pam Stack
c: Catherine Smith
c: Dan Kelly

SOCIÉTÉ GÉNÉRALE

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022

DANIEL P. KELLY
VICE PRESIDENT

November 20, 1992

Mr. Hilton C. Smith, Jr.
Development Offices
50 Summit Avenue 7th fl.
Hagerstown, MD 21740

Dear Hilton,

As we discussed, here are the issues which each of the three sisters should be prepared to resolve at the meeting of 12/12/92 regarding the dissolution of the Estate.

1) Handling of the Life Insurance policy on W.E. Murray. As we learned through our discussion with Gail Reed, the policy has face value of $385M. Loans against the CSV of the policy are approximately $200M (and bear interest at 5%). There is an approximate $30M remaining in the CSV, which can be used (a) to pay future premiums of approximately $12M per annum or (b) to be distributed to the three sisters of (c) allowed to remain with the Insurance Company.

The options are should they continue to keep the Life Insurance policy in place. This is a yes or no decision. If the answer is yes, the next issue is how to pay for the policy. The answer to this is again an a) or b) solution. Solution (a) is to use the remaining CSV of approximately $30M, which will cover approximately two years of payments or, (b) pay the premiums out of pocket.

Since the choice is the sisters, and I won't offer my opinion, I think we need to address what happens, if they choose to pay money out of pocket (either now or in the near future). Let's be realistic, if one of the three doesn't choose to come out of pocket, the remaining two (or one if two don't pay) must pay the premiums - no big deal - but who gets the money if Bill dies?

Another thought - who is the beneficiary of this policy - probably the Estate. The Insurance company must be contacted in writing to formally change the beneficiary. This letter should be prepared by one of the them prior to the meeting so all three can see they will have their respective share of the benefits should the policy remain in place. If they cancel the policy - that ends all the issues on handling of the life insurance policy.

2) With respect to the investment in Huger St., I believe Jim Holmes must be contacted prior to the meeting to indicate that the Estates' undivided interest will now be divided and when he will be informed how it will split up. He may need to get bank approval for this. I honestly don't know what documentation will be required on both sides of the fence (Huger St. and the Estate) and your thoughts would be welcomed. Done by Bill in Atlanta

3) Accounting - The held harmless letter must cover contingent liabilities relating to the estate (bills, taxes, etc.) and must require each of the three sisters to pay their shares in the event there are future expenses down the road. They must address (a) where the accounting records will be maintained and (b) who will account for other jointly held assets and (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.

4) Any issue with respect to loan balances of the three sisters, prior accounting for the Estate etc., should be first discussed in a conference call before the weekend meeting. Gripes, complaints, disputes etc., should be aired over the phone so all parties will know where the others stand. Hopefully, most issues can be resolved prior to the meeting.

Thank you for your assistance. I will phone you in the middle of next week to discuss strategy.

Very truly yours,



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.

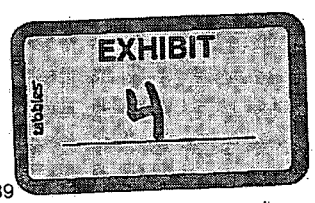
2) A letter needs to be prepared to Uncle Jimmy advising him that each of you at this point will continue to receive 1/3 of the estate's interest and the Huger Street Limited Partnership assets.

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-M\estate.lt

GAIL MARGOLIES REID CPA PC

August 20, 1990

406 Milledge Avenue
Atlanta, Georgia
30312
404 584-2138
404 584-2139 FAX

Mr. Thomas R. Berner
767 Fifth Avenue
Room 2700
New York, New York 10153

Dear Mr. Berner:

I am enclosing a completed and executed Release and Discharge of Administratrix form to be filed with the Surrogate's Court of Westchester County on behalf of the beneficiaries of the Estate of Minnie Holmes Murray. This original is being forwarded to you for review and filing at the request of Elizabeth E. Murray, The Estate's Administratrix. Also enclosed is a check payable to the Westchester County Surrogate's Court to cover the cost of preserving the document on microfiche.

As you know 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(s).

American Institute of Certified Public Accountants

Georgia Society of Certified Public Accountants

AICPA Division of CPA Firms Private Companies Practice Section

If you have any questions regarding the enclosed document, please do not hesitate to call me.

Very truly yours,

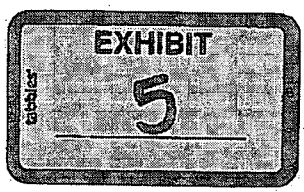
GAIL MARGOLIES REID, C.P.A., P.C.

By Gail Margolies Reid
Gail Margolies Reid

GMR/yrh

Enclosures

cc: Ms. Elizabeth E. Murray ✓
Ms. Pamela M. Stack
Ms. Catherine M. Smith



EEM004396

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

In the Matter of the Settlement of the Final Account of Proceedings of ELIZABETH EDWARDS MURRAY, as Executrix and Administratrix of the Estate of

MINNIE HOLMES MURRAY,
Deceased

RELEASE, REFUNDING, RECEIPT AND INDEMNITY AGREEMENT

WHEREAS, Minnie Holmes Murray, formerly of Bronxville, New York died on June 17, 1967;

WHEREAS, Minnie Holmes Murray left a will dated October 7, 1959, which will was duly admitted to Probate in the Surrogate's Court of Westchester County;

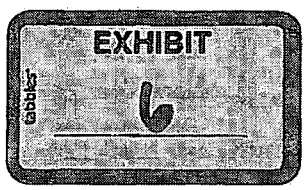
WHEREAS, Leon D. Murray, Jr. was granted Letters of Testamentary pursuant to such Will;

WHEREAS, Elizabeth Edwards Murray succeeded Leon D. Murray as Executor of the Will of Minnie Holmes Murray on August 22, 1975 and has acted as Administratrix and Executrix from that date to the present;

WHEREAS, Elizabeth Edwards Murray has duly rendered an account relating to the Estate of Minnie Holmes Murray from August 22, 1975 to date (the "Account of Proceedings") which account is hereto annexed as Exhibit A which account, together with all supporting documents, has been examined by the undersigned and their representatives and is found to be in all respects correct and true;

WHEREAS, the undersigned are under no disabilities;

WHEREAS, the undersigned do hereby represent that the foregoing recitals are correct and true.



EEM000978

WHEREAS, Catherine Murray Smith and Pamela Murray Stack (the "Agents") have at various times acted as agents for Elizabeth Edwards Murray in performing certain acts with respect to the Estate of Minnie Holmes Murray.

NOW, THEREFORE, in consideration of the premises recited above and, in consideration of the Elizabeth Edwards Murray (the "Executrix") consenting to have her account settled out of Court, without first requiring a judgement, decree or order of a Court of competent jurisdiction directing the same to be made, the undersigned on behalf of themselves, their issue, heirs, executors, administrators, beneficiaries and assigns, do hereby covenant and agree with the Executrix and the Agents as aforesaid and in their individual capacity as follows:

1. That to the date of the execution hereof, none of the undersigned has assigned, transferred or in any way alienated or encumbered in whole or in part the right, title or interest which they or their descendants or their estates have or had in and to the funds in the Estate of Minnie Holmes Murray (the "Estate") as aforesaid;

2. The Undersigned do hereby acknowledge receipts from the Executrix of the assets distributed to or for their account as shown in Schedule B herato;

3. The undersigned do hereby acknowledge that the forsgoing constitutes the property which they were entitled to receive from

EEM000979

the Executrix;

4. They do hereby ratify , confirm and approve the Account of Proceedings rendered by the Executrix and all the acts and transactions set forth in said account and the records of the Estate and do hereby accept said account as an account stated, final and conclusive;

5. They have been accorded full opportunity to examine in person and through such representatives as they might select, all records of the Estate pertaining to, and to obtain from the Executrix all information regarding the administration of the Estate during the accounting period; and they hereby waive any right to further do so;

6. They have the power and authority to execute this document.

7. They do hereby waive any right to require or enforce settlement of said account or any account of the Executrix in any court whatsoever and agree that this instrument shall be in all respects binding and conclusive as though said account had been allowed and settled by final judgement or decree of a court of competent jurisdiction;

8. That the the Executrix may at any time either (a) record or file this document and/or the Account of Proceedings in

EEM000980

accordance with the provision of any statute, law or rule of the courts of the State of New York or any other State as an instrument settling the said account if, in the discretion of the Executrix she shall deem it advisable to do so, without any notice to the undersigned or (b) institute proceedings for the judicial settlement of the Account of Proceedings, in which event the undersigned waive service of citation or other process in such proceeding and consent that a decree be made or entered therein without notice;

9. Consent that out of the principal balance remaining on hand the following amounts be paid as set forth in Exhibit C hereto.

10. The Undersigned do hereby agree that if the Executrix of the Estate or the Agents shall sustain or incur any expenses or liability (including any taxes and any interest and penalty thereon) which would have been properly chargeable against or payable or recoupable from the property heretofore distributed, or from the property to be distributed to them, upon request of the Executrix, the Agents or their successors, forthwith to pay to the Executrix, or the Agents or their successors each such expense or liability;

11. They do remise, release and forever discharge the Executrix in her fiduciary capacities and individually, and the Agents and their heirs, administrators, executors, successors, beneficiaries and assigns of and from any and all claims and

EEM000981

demands and of and from any and all liability responsibility or accountability for or by reason of their actions with respect to the Estate; the acts and transactions in the administration of the Estate; the acts and transactions of the Executrix in the preparation of the Account of Proceedings; the acceptance of this instrument; and for any matter or thing growing out of or in any way connected thereto or to the Trust.

12. That the Undersigned will jointly and severally indemnify and save and hold harmless the Executrix, in her fiduciary capacities, as Executrix or Administratrix and individually, and the Agents and their heirs, administrators, executors, successors, beneficiaries and assigns from and against any and all claims, demands, liabilities, losses, damages, taxes or expenses of whatsoever kind of nature (including reasonable attorneys' fees) which the Executrix, the Agents or their heirs, administrators, executors, successors, beneficiaries and assigns in their fiduciary capacities or individually may at any time sustain or incur or become liable for by reason or in consequence of the acceptance of this instrument the distributions of assets from the Estate, or any claim or demand made by or on behalf of any person claiming any interest in the Estate or in respect of any matter or thing connected with the Estate or its administration including but not limited to, any amounts which may be lawfully assessed by the government of the United States, the State of New York or any other State or political subdivision thereof against the Trust on account of income or estate tax liability.

EEM000982

IN WITNESS WHEREAS, the undersigned have hereunto set their hands and seals as of the day of

Catherine Murray Smith

Pamela Murray Stack

Elizabeth Edwards Murray

EEM000983

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

EEM000984

STATE OF Georgia ss.: 065-40-8312

COUNTY OF Fulton

On this 12th day of December, 1991, 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. 15, 1994

EEM000985

STATE OF Georgia ss.: 065-40-8313

COUNTY OF Fulton

On this 14th 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. 15, 1994

Notary Public

EEM000986

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 June 30, 1994

Notary Public

EEM000987

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.

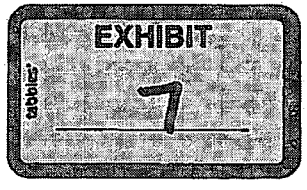
4. I have two sisters born of these parents: Pamela Holmes Murray, born October 21, 1951 and Catherine Perroneau Murray Smith born December 28, 1954.

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 ~~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.

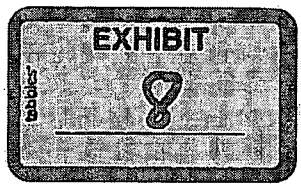
Elizabeth Edwards Murray

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

_____(SEAL)
Notary Public for the State of _____
My Commission Expires:_____



Form 516—1M 1-77 — Rel. and Disc. Adm.

File No. 19

Release and Discharge of Elizabeth Edwards Murray Administratrix of Estate of Minnie Holmes Murray deceased.

Whereas, Minnie Holmes Murray late of Bronxville, New York died on or about the day of June 17 19 67, and thereafter on the day of 19, Letters of Administration upon the goods, chattels and credits which were of said deceased, were duly granted unto Leon D. Murray and then to Elizabeth Edwards Murray, who duly qualified as such Administrators and entered upon the discharge of their duties.

And Whereas, the time to present claims against the estate of the said deceased has expired;

And Whereas, all the creditors who have presented claims against the said deceased have been paid;

And Whereas, the undersigned Elizabeth Edwards Murray
Catherine Murray Smith
Pamela Murray Stack

are all the persons entitled to a distributive share of the estate;

And Whereas, the said administrat h prepared and made h account and exhibited the same to the undersigned persons entitled to a distributive share wherein the said administrat charged,

With amount received from all sources . . . . . $

And credited

With funeral and administration expenses . . . $

With payment of debts of decedent . . . . . $

Leaving a balance in the hands of said Administrat of $

applicable to the payment of the commissions of the administrat and for distribution among the distributees.

EEM004397

And Whereas, the undersigned have settled with said administrat rix ..... all matters and things whatsoever relating to said estate and to all claims and interest therein; and have received the amount of their distributive shares so far as there were sufficient assets to pay the same the receipts whereof we hereby severally acknowledge and in consideration of a mutual agreement to waive a judicial accounting, we, the persons entitled to distributive shares, do, and each of us acting individually and without regard to the execution of these presents by the others does, hereby remise, release and forever discharge the said administrat rix ..... and .....

the sureties upon the official bond of such administrat rix ..... of and from any and every claim, demand, action and cause of action, account, reckoning and liability of every name and nature for and on account of any and every matter and thing whatsoever arising from or in any manner relating to or connected with the estate of said deceased or with the administration thereof; and we and the said administrat rix ..... who also subscribe ..... these presents, severally request the Surrogate of said County to record this instrument as required by law.

In Witness Whereof we have hereunto set our hands and seals the ..... day of ....., 19

In presence of

1.) Charles Edwards Murray
2.) Catherine Murray-Smith
3.) Donald Murray Stark

EEM004398

State of New York,
County of New York } ss.:

On this 3rd day of July, 19 90 before me personally came Elizabeth Edwards Murray

to me known and known to me to be ____ the person described in and who executed the foregoing instrument and who acknowledged that She executed the same.

RHODA S. GOLDFARB
Notary Public, State of New York
NO. 4756850
Qualified in Kings County
Certificate filed in New York County
Commission Expires Sept. 30, 1992

Rhoda S. Goldfarb

State of ~~New York~~, MARYLAND
County of WASHINGTON } ss.:

On this 18th day of July, 19 90 before me personally came Catherine Murray Smith

to me known and known to me to be ____ the person described in and who executed the foregoing instrument and who acknowledged that She executed the same.

Marlene V. Hersh

MARLENE V. HERSH
My Commission Expires 2-1-93

State of ~~New York~~, Georgia
County of Cobb } ss.:

On this 26th day of July, 19 90 before me personally came Pamela Murray Stock

to me known and known to me to be ____ the person described in and who executed the foregoing instrument and who acknowledged that She executed the same.

Notary Public

Notary Public, Cobb County, Georgia
My Commission Expires Nov. 6, 1993

EEM004399

SURROGATE'S COURT
COUNTY OF WESTCHESTER

Release and Discharge of

Elizabeth Edwards Murray

Administratrix _____ *of*

Estate of Minnie Holmes Murray *Deceased*

Recorded in Westchester County

Surrogate's Office on the _____ *day*

of _____, 19____

on Microfilm Roll _____ *No.*____

_____

Clerk of the Surrogate's Court

Attorney _____

P. O. Address _____

_____

Telephone

EEM004400

MURRAY001013
001088

The Citizens and Southern National Bank
Atlanta, Georgia

255

ESTATE OF MINNIE HOLMES MURRAY
ELIZABETH MURRAY, EXECUTRIX
395 OAK GLEN MARIETTA, GA 30067

64-5
810

8/1 1990

Pay to the Order of Westchester County - Surrogate's Court $ 24.00

Twenty-four & xx/xx Dollars

For Microfiche Costs Minnie M Murray

⑆061000052⑆ 621 30 3231⑈ 0255

EEM004401

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	C/A No. 2007-ES-10-1116
	)	
IN THE MATTER OF WILLIAM E. MURRAY	)	**PETITIONER'S RESPONSES TO FOURTEENTH SET OF REQUESTS FOR PRODUCTION**

1. Any and all correspondence, including emails and social media websites, between Elizabeth Murray and the following: Dana Flavin, Pam Murray, William E. Murray, Hilton Smith, James Ma, Gil Mestler, Larry Bump, Theresa Fontana, Larry Young, Nyesha Cherry, Joe Pridgen and any other witnesses identified in this case from 2005 to present.

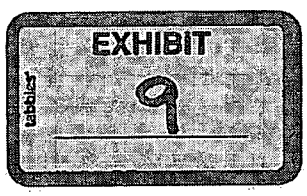
RESPONSE: Objection, this request is overly broad and unduly burdensome and requests information protected by attorney client and work product privilege. Notwithstanding the objection, Elizabeth Murray supplemented her production of emails between her and Dana Flavin and Gil Mestler on March 2nd, 2015.. All correspondence with Hilton Smith and James Ma has been previously produced by Plaintiff. Furthermore, the Estate is in possession of all correspondence with Hilton Smith and James Ma. Petitioner has a facebook account and a linkedin account. The user name for both accounts is Elizabeth Murray. Petitioner is in the process of reviewing her social media networks for any communication requested and will supplement her production.

2. Any and all audio and video recordings, whether recorded by tape recorder, digital media or other format, in your possession of conversations with William E. Murray, Hilton Smith, Pam Murray, Helen Flynn, or any other person or witness related to the claims in this case.

RESPONSE: Petitioner already produced the only recording in her possession of a conversation with William E. Murray. There are no other recordings.

3. Any and all documents pertaining to the Minnie Holmes Realty. If the Minnie Holmes Realty is a corporation or limited liability company please provide all corporate documents referencing formation and bylaws.

RESPOSE: Objection. Any documents responsive to this request are irrelevant to the claims in the matter at bar. Notwithstanding the objection, Petitioner is producing the incorporation receipt filed with the State of NY.



4. Any and all documentation of the trust held by Minnie Holmes Realty and the assets of the Minnie Holmes Realty holds.

RESPONSE: Objection. Any documents responsive to this request are irrelevant to the claims in the matter at bar. Notwithstanding the objection, Minnie Holmes Realty does not hold any trust and does not own any assets at this time.

5. Any and all documents transferring funds from the Minnie Holmes Murray Estate to a trust.

RESPONSE: None.

6. Any and all documents containing any and all trustees of the trust held by the Minnie Holmes Realty.

RESPONSE: None.

7. Any and all Schedule K-1 or other tax returns of the Estate of Minnie Holmes Murray or tax returns of the Minnie Holmes Murray Realty from 1992 to present.

RESPONSE: The Estate of Minnie Holmes Murray has not filed tax returns after 1992. Minnie Holmes Realty has not filed tax returns.

8. Any and all documentation of any loans made to or from Gil Mestler, Dana Flavin and any other witness related to this case.

RESPONSE: Petitioner does not have any documentation of loans to and from Gil Mestler or Dana Flavin beyond the document where Petitioner identified one repayment of a loan by Gil Mestler on the financial transaction list previously produced.

9. Elizabeth Murray's calendar for the years 2006 and 2007.

RESPONSE: Petitioner does not have copies of her calendars for the years 2006, 2007.

10. Any and all documents in your or others possession where William E. Murray signed his name "as agreed".

RESPONSE: Petitioner has not yet located any documents responsive to this request, in addition to the documents previously produced.

11. Provide the names of all accountants Elizabeth Murray has used in the past ten (10) years.

RESPONSE: Objection. This is not a request for documents. Notwithstanding the objection, petitioner provided copies of her tax returns and Elizabeth Stylesetter's tax returns containing the contact information for the accountant she used.

12. Any and all tax returns for Elizabeth Murray and Elizabeth Stylesetter's from 2009 to present.

RESPONSE: Objection. This request is overly broad and unduly burdensome and will not lead to discovery of admissible evidence.

13. Any and all credit card statements containing transactions where Elizabeth Murray or Elizabeth Stylesetter's paid for goods or services at the Inn at Quague from 2000 to present.

RESPONSE: All documents responsive to this request have been previously produced and identified.

14. Any and all copies of checks from Gill Mestler.

RESPONSE: Petitioner produced a list of her banking transactions showing one deposit from Gil Mestler. Additionally, Petitioner is producing a copy of check 113 dated January 30, 2014 in the amount of $27.55

15. Any and all documentation of funds transferred or checks made to Dana Flavin, Collmed, or Dana Flavin's organizations or foundations.

RESPONSE: Objection. This request does not identify the maker of checks. Notwithstanding the objection, Petitioner produced copies of checks that were made to Collmed by persons other than petitioner, that were at some point in Petitioner's possession. See Doc Flavin Email000071.

16. Any and all documents showing the estate of Minnie Holmes Murray remains open and Elizabeth Murray is the administratix.

RESPONSE: All of these documents have been previously produced and identified.

17. Any and all correspondence to or from Nyesha Cherry from 2006 to present, including social media communications.

RESPONSE: Petitioner only corresponded with Ms. Cherry via her facebook account and will be producing the correspondence.

18. Produce Pam Murray's personal daily datebook with notations regarding William E. Murray's Health.

RESPONSE: All of these documents have been previously produced and identified.

19. Any and all documents relating to a 2013 claim involving a burglary as discussed during the deposition of Elizabeth Murray on December 9, 2014.

RESPONSE: Objection, this request is overly broad and unduly burdensome and is not reasonably calculated to lead to admissible evidence. Petitioner did not maintain any documentation regarding that claim after the claim was paid.

20. Any and all affidavits or verified pleadings signed by Elizabeth Murray regarding the Samuel Freeman Trust and lawsuit filed by US Trust.

RESPONSE: Objection. Hilton Smith and the Estate of William E. Murray were parties to the US Trust litigation and have access to those documents.

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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Elizabeth Murray's Responses to Thirteenth Set of Requests for Production, were served upon all counsel of record by electronic mail at the addresses indicated below on this 20th day of March, 2015:

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Oana D. Johnson

DEVELOPMENT OFFICES
50 SUMMIT AVENUE, 7TH FLOOR
HAGERSTOWN, MARYLAND 21740
(301) 733-4365

FAX COVER SHEET

DATE: 12.11.98

TO: Ed Murray

FAX: [illegible] PHONE:

FROM: Bob Sorrell

FAX: (301) 733-5[illegible]

PROJECT:

MESSAGE:

[illegible]

[illegible] PAGES INCLUDING THIS ONE.

IF YOU HAVE ANY PROBLEMS RECEIVING THIS MATERIAL,
PLEASE CALL (301) 733-4365

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, distribution, 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 U.S. Mail.

Thank you!

EXHIBIT
10

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 that 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. Be you are aware of the consequences of your default pursuant to the above Agreement in that the interest rate on your unpaid installments has been automatically increased to 18% for the period in which it is unpaid 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-MVA-Default

Hilton Smith
Freeman Trust
rec'd by Glue 12/7/06

RECORD FOLDER

104816. MAF D

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Petition of UNITED STATES TRUST COMPANY, NATIONAL ASSOCIATION, as a co-Trustee of

THE SAMUEL FREEMAN CHARITABLE TRUST,

for an Order Removing and Surcharging WILLIAM E. MURRAY and HILTON CHARLES SMITH, JR. as co-Trustees thereof and Determining Whether the Purported Removal of ELIZABETH E. MURRAY and PAMELA HOLMES MURRAY as co-Trustees Was Effective.

ANSWER AND CROSS-PETITION

File No. 3944/2006

Pamela Holmes Murray ("Pamela") and Elizabeth E. Murray ("Elizabeth"), as and for their Answer and Cross-Petition in the above-captioned proceeding, respectfully state:

1. Admit the allegations contained in Paragraph 1 of the Petition.
2. Admit the allegations contained in Paragraph 2 of the Petition.
3. Admit the allegations contained in Paragraph 3 of the Petition.
4. Admit the allegations contained in Paragraph 4 of the Petition.
5. Admit the allegations contained in Paragraph 5 of the Petition.
6. Admit the allegations contained in Paragraph 6 of the Petition.
7. Admit the allegations contained in Paragraph 7 of the Petition.
8. Admit the allegations contained in Paragraph 8 of the Petition.
9. Admit the allegations contained in Paragraph 9 of the Petition.
10. Admit the allegations contained in Paragraph 10 of the Petition.
11. Admit the allegations contained in Paragraph 11 of the Petition.

EXHIBIT 11

12. Admit the allegations contained in Paragraph 12 of the Petition.

13. Admit the allegations contained in Paragraph 13 of the Petition.

14. Admit the allegations contained in Paragraph 14 of the Petition.

15. Admit the allegations contained in Paragraph 15 of the Petition except aver that the purported effective date was September 28, 2006.

16. Admit the allegations contained in Paragraph 16 of the Petition.

17. Admit the allegations contained in Paragraph 17 of the Petition.

18. Admit the allegations contained in Paragraph 18 of the Petition.

19. Admit the allegations contained in Paragraph 19 of the Petition.

20. Admit the allegations contained in Paragraph 20 of the Petition.

21. Admit the allegations contained in Paragraph 21 of the Petition.

22. Admit the allegations contained in Paragraph 22 of the Petition.

23. Admit the allegations contained in Paragraph 23 of the Petition.

24. Admit the allegations contained in Paragraph 24 of the Petition.

25. Admit the allegations contained in Paragraph 25 of the Petition.

26. Admit the allegations contained in Paragraph 26 of the Petition.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27 of the Petition except admit the allegations contained in Paragraph 27 of the Petition insofar as they relate to Hilton Charles Smith, Jr. ("Hilton").

28. Admit the allegations contained in Paragraph 28 of the Petition.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of the Petition.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 of the Petition.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 of the Petition.

32. Admit the allegations contained in Paragraph 32 of the Petition.

33. Admit the allegations contained in Paragraph 33 of the Petition and aver that Hilton C. Smith III was also enrolled as a student at St. James during this time period.

34. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 of the Petition except Pamela avers that her daughters, Jeanette and Alison, applied for financial aid scholarships by submitting an application to the FAFSA, a program for Federal scholarship aid that is administered by the U.S. Department of Education, that their scholarship aid was granted and that they received a scholarship from St. James but had no knowledge that any grant from the Samuel Freeman Charitable Trust (the "Trust") had been the source of funds for said scholarships.

35. Repeat and reallege the answer to Paragraph 34.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 of the Petition.

37. Admit the allegations contained in Paragraph 37 of the Petition.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 38 of the Petition except aver that Pamela's daughters were invited by Hilton to participate in a TFAS trip and that it was Pamela's understanding that WEM, personally, was the source of funds for this trip.

39. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 39 of the Petition.

40. Admit the allegations contained in Paragraph 40 of the Petition.

41. Admit the allegations contained in Paragraph 41 of the Petition.

42. Admit the allegations contained in Paragraph 42 of the Petition.

43. Admit the allegations contained in Paragraph 43 of the Petition.

44. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 44 of the Petition except aver that Theresa had informed Elizabeth that she had won a scholarship to Marymount.

45. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45 of the Petition.

46. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 46 of the Petition.

47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47 of the Petition.

48. Admit the allegations contained in Paragraph 48 of the Petition.

49. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 of the Petition.

50. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50 of the Petition.

51. Admit the allegations contained in Paragraph 51 of the Petition.

52. Admit the allegations contained in Paragraph 52 of the Petition.

53. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 of the Petition.

54. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 of the Petition.

55. Admit the allegations contained in Paragraph 55 of the Petition.

56. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 of the Petition.

57. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 57 of the Petition.

58. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 of the Petition.

59. Admit the allegations contained in Paragraph 59 of the Petition.

60. Admit the allegations contained in Paragraph 60 of the Petition.

61. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 of the Petition.

62. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 62 of the Petition.

63. Admit the allegations contained in Paragraph 63 of the Petition.

64. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 64 of the Petition.

65. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 65 of the Petition.

66. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 66 of the Petition.

67. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 67 of the Petition.

68. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 68 of the Petition.

69. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 69 of the Petition.

70. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 70 of the Petition.

71. Admit the allegations contained in Paragraph 71 of the Petition.

72. Admit the allegations contained in Paragraph 72 of the Petition.

73. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 73 of the Petition.

74. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 74 of the Petition.

75. Admit the allegations contained in Paragraph 75 of the Petition.

76. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 76 of the Petition.

77. Admit the allegations contained in Paragraph 77 of the Petition.

78. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 78 of the Petition.

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79. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 79 of the Petition.

80. Admit the allegations contained in Paragraph 80 of the Petition.

81. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 81 of the Petition.

82. Admit the allegations contained in Paragraph 82 of the Petition.

83. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 83 of the Petition.

84. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 84 of the Petition.

85. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 85 of the Petition.

86. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 86 of the Petition insofar as they pertain to WEM and admit that Hilton has breached his fiduciary duties to the Trust.

87. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 87 of the Petition except aver that the funds that Elizabeth received from the Trust for repairs, renovations and purchases of furniture and furnishings to St. Marguerite Bourgeoys Church or The Chapin School were remitted to vendors and that Elizabeth received no benefit for herself. Elizabeth further avers that she brought these facts to the attention of United States Trust Company, National Association ("U.S. Trust").

88. Admit the allegations contained in Paragraph 88 of the Petition.

89. Admit the allegations contained in Paragraph 89 of the Petition.

90. Admit the allegations contained in Paragraph 90 of the Petition.

91. Admit the allegations contained in Paragraph 91 of the Petition.

92. Admit the allegations contained in Paragraph 92 of the Petition.

93. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 93 of the Petition except admit that while WEM was in the hospital Hilton purported to have retained an attorney to represent both William E. Murray ("WEM") and Hilton and further aver that WEM later stated to Pamela and Elizabeth that he had no knowledge or memory of these attorneys being retained on his behalf.

94. Admit the allegations contained in Paragraph 94 of the Petition.

95. Admit the allegations contained in Paragraph 95 of the Petition except aver that the purported effective date was September 28, 2006.

96. Admit the allegations contained in Paragraph 96 of the Petition and aver that any purported removal of Elizabeth as a trustee was ineffective as a matter of law on the ground, among others, that WEM lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Elizabeth as a trustee.

97. Admit the allegations contained in Paragraph 97 of the Petition and aver that any purported removal of Elizabeth as a trustee was ineffective as a matter of law on the ground, among others, that WEM lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Elizabeth as a trustee.

98. Admit the allegations contained in Paragraph 98 of the Petition and aver that any purported removal of Elizabeth as a trustee was ineffective as a matter of law on the ground, among others, that WEM lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Elizabeth as a trustee.

99. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 99 of the Petition and aver that a purported letter of removal was never delivered to Pamela as required by the Agreement of Trust.

100. Admit the allegations contained in Paragraph 100 of the Petition and aver that any purported removal of Pamela as a trustee was ineffective as a matter of law on the ground, among others, that WEM lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Pamela as a trustee and that no replacement trustee was ever named as required by the Agreement of Trust.

101. Admit the allegations contained in Paragraph 101 of the Petition and aver that any purported removal of Pamela as a trustee was ineffective as a matter of law on the ground, among others, that WEM lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Pamela as a trustee.

102. Admit the allegations contained in Paragraph 102 of the Petition.

103. Admit the allegations contained in Paragraph 103 of the Petition and aver that Pamela and Elizabeth have been totally open, candid and forthright in responding to U.S. Trust's inquiries.

104. Admit the allegations contained in Paragraph 104 of the Petition.

105. Admit the allegations contained in Paragraph 105 of the Petition.

106. Admit the allegations contained in Paragraph 106 of the Petition.

107. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 107 of the Petition.

108. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 108 of the Petition.

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109. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 109 of the Petition.

110. Admit the allegations contained in Paragraph 110 of the Petition.

111. Admit the allegations contained in Paragraph 111 of the Petition.

112. Admit the allegations contained in Paragraph 112 of the Petition.

113. Admit the allegations contained in Paragraph 113 of the Petition.

114. Admit the allegations contained in Paragraph 114 of the Petition.

115. Admit the allegations contained in Paragraph 115 of the Petition.

116. Admit the allegations contained in Paragraph 116 of the Petition.

WHEREFORE, Respondents respectfully submit that the Petition of U.S. Trust be granted to the extent of (a) surcharging Hilton for acts of self-dealing as a trustee of the Trust; (b) removing Hilton as a trustee of the Trust pursuant to SCPA 711; and (c) granting such other and further relief as this Court may deem just and proper.

As And For The Cross-Petition Of Pamela Holmes Murray And Elizabeth E. Murray Against William E. Murray, Hilton Charles Smith, Jr. And United States Trust Company, National Association

Pamela and Elizabeth, as and for their Cross-Petition against Respondents Hilton, WEM and U.S. Trust, respectfully state:

1. Pamela and Elizabeth are the daughters of Respondent WEM and as such have the greatest respect, love and affection for him and have the deepest concern for his welfare and well-being.

2. 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. Accordingly, he is regrettably no longer able to fulfill the duties of Chairman of the Trust.

3. This deterioration began in July, 1992, when WEM suffered a significant stroke and, in October, 1992, when he suffered a major automobile accident. These incidents were followed by a series of periodic mini-strokes or TIAs that left his health and his mental capacities increasingly impaired.

4. In August, 1999, WEM suffered another stroke and was hospitalized. As a result, his ability to reason, to use simple vocabulary and to recall names of people, places and things, much less give sustained attention to Trust matters, became even further impaired. WEM also became highly vulnerable to pressure and influence from Hilton, who is WEM's son-in-law, a business associate and a co-trustee of the Trust. Hilton lives close to WEM in Charleston, South Carolina, and has daily access to him.

5. Over the past several years, Hilton has exercised undue influence and control over WEM and used that control to manipulate grants of Trust funds to suit his own purposes. In recent months Hilton has controlled any direct and telephone access to WEM by third parties. Hilton seeks to prevent anyone from seeing or speaking to WEM without Hilton's permission. To the extent that anyone is permitted to see or speak to WEM, their visits or telephone calls are monitored by Hilton and others at his direction. Hilton has exercised control of access to WEM to the point of limiting the ability of Pamela and Elizabeth to see or speak to their father.

6. Since 2003, WEM has suffered from the effects of Parkinson's syndrome which has been manifested in his inability to carry out simple physical tasks such as bathing, dressing, eating, brushing his teeth, etc. At a commencement speech at the Spoleto Building dedication in Charleston, South Carolina, in June, 2003, WEM was unable to speak or stand on

his own. He collapsed on the ground and thereafter began to use a wheelchair whenever he traveled. He also became increasingly unable to verbalize his thoughts and intentions.

7. In late August, 2003, Elizabeth, who lives in New York, received a rambling and disjointed telephone call from WEM who was in Charleston. She promptly went to Charleston to visit WEM and found that he had deteriorated even further. He had lost approximately 60 pounds and was in a state of confusion about dates, times, events and places. After Elizabeth returned to New York she often received telephone calls from WEM inviting her to stop by his house for lunch even though she was hundreds of miles away.

8. In June, 2004, Pamela, alarmed at the deterioration of her father's condition, started to visit him in Charleston for periods of five days every four or five weeks. In February, 2005, at WEM's request, she moved to Charleston in order to help care for him.

9. The Agreement of Trust provides that WEM is Chairman of the trustees. (¶ 10.) WEM has the right under the Agreement of Trust to appoint, remove without cause and replace individual trustees by a duly acknowledged writing that is delivered to all the trustees. (¶ 9.) In May, 2004, Hilton launched a maneuver to eventually gain full control of the Trust. He demanded that Pamela and Elizabeth immediately execute an "Agreement," attached hereto as Exhibit A, that would confer upon Hilton the title of Vice Chairman of the Trust – despite the fact that the Agreement of Trust does not provide for the position of Vice Chairman. Hilton further proposed that upon WEM's resignation or demise, Hilton would become Chairman of the Trust with full authority "at any time and from time to time to appoint, remove or replace any individual trustee" – despite the fact that the Agreement of Trust made no provision for <u>any</u> trustee, other than Samuel Freeman and WEM, to have such authority.

10. Hilton's brazen effort to get control of the Trust, including the power to discharge at will any individual trustee who might oppose him, was opposed by Pamela and Elizabeth who refused to sign the document. Thereafter, Hilton became increasingly hostile to Pamela and Elizabeth and regarded them as a threat to his control of the Trust.

11. Hilton has acknowledged that he is aware of WEM's diminished mental capacities. In March, 2006, Hilton called Elizabeth about a grant that WEM had wanted to make to Hackensack Medical Center. Hilton refused to proceed with any such grant. He told Elizabeth: "you and I both know that your father is incapable of understanding or making any grant decisions." Hilton further stated that any future grant proposals had to originate from or through him, alone, and that he would not approve or process any proposal that was initiated by WEM or anyone else.

12. Hilton has also exercised control over WEM's personal financial affairs. In or about April, 2006, at Hilton's urging, WEM executed a guarantee of a Wachovia bank loan for a business venture in which Hilton and WEM were involved. WEM's understanding of this guarantee was so limited that he told Elizabeth that the guarantee was for $500,000, when in fact it was for $5 million.

13. Because of WEM's declining mental and physical condition, WEM spent several weeks in June and July, 2006, in a HealthSouth rehabilitation facility in which he received therapy of various kinds. At the conclusion of WEM's stay there, his caseworker at that facility stated that WEM had been found to be mentally incompetent. The caseworker suggested that independent legal counsel should be hired to protect WEM's interests. Hilton was heard to caution Helen Flynn, WEM's companion, that "no one can know about this."

14. On information and belief, while WEM was hospitalized at HealthSouth, Hilton arranged to have WEM sign a letter retaining attorneys to represent him in connection with Trust matters and to sign a retention check for those attorneys. WEM later told both Pamela and Elizabeth that he had no memory whatsoever of having hired attorneys or having signed a retainer letter or check. WEM did not even recall having been in the hospital.

15. On information and belief, the attorneys that Hilton arranged to represent WEM while WEM was in the hospital were the same attorneys who represented Hilton and who continue to represent him in this proceeding.

16. In August, 2006, Hilton took WEM to another doctor for an examination of his mental competency. Elizabeth was in the neurologist's office and heard the neurologist state that the examination results indicated that WEM was partially incompetent, that he was highly subject to suggestion and that he had problems with reasoning, amounts, dates and logic.

17. In August, 2006, Pamela and Elizabeth arranged to have their father see an elder attorney who would represent and protect his interests. Hilton vigorously opposed any such retention of independent attorneys for WEM. He claimed it was unnecessary inasmuch as WEM had supposedly previously retained attorneys. Hilton then disclosed to Pamela, Elizabeth and to WEM, himself, that WEM had allegedly retained attorneys two months earlier at the time he was hospitalized.

18. From the Spring through the Fall of 2006, U.S. Trust was engaged in, among other things, an investigation of possible misconduct, breach of fiduciary duty and self-dealing by trustees of the Trust which has resulted in the allegations recounted in U.S. Trust's Petition. Hilton, believing that Pamela and Elizabeth had knowledge of his misconduct and were therefore a threat to him, conceived of a plan to thwart U.S. Trust's investigation and forestall his

own removal as trustee. His plan was to prevail upon WEM, as Chairman of the Trust, to discharge his two daughters as trustees. This would result in three remaining trustees – WEM, Hilton and U.S. Trust, with Hilton controlling two of the three votes.

19. WEM had, for some 20 years, expressed his intent to Pamela and Elizabeth to eventually appoint them as trustees of the Trust. On October 24, 2000, WEM appointed Elizabeth as trustee. That appointment was made by WEM, in person, after having had direct, face-to-face conversations with Elizabeth about becoming a trustee.

20. On information and belief, on or around September 28, 2006, Hilton, knowing that attorneys for U.S. Trust had interviewed Pamela and Elizabeth, among others, put his plan into action. He obtained WEM's signature on a document in which Elizabeth was purportedly discharged as trustee of the Trust. A copy of that document is annexed hereto as Exhibit B.

21. At the time WEM signed this document he was suffering from cataracts and macular degeneration, conditions that severely impaired his eyesight, as well as Parkinson's syndrome and dementia. It was not possible for him to have read the fine print of that document, much less have fully understood the import of a document that abruptly removed his daughter as trustee. The scrawl that is WEM's signature is, itself, compelling evidence of his physical deterioration. Several weeks after signing this document WEM underwent cataract eye surgery.

22. On information and belief, the "removal" of Elizabeth as trustee was conceived of, promoted and carried out by Hilton, not by WEM. On information and belief, the document that purportedly effected that removal was prepared by Hilton's lawyers and presented to WEM for signature. These are the same lawyers who purport to represent both Hilton and WEM in regard to this proceeding.

23. On or about October 4, 2006, Elizabeth received Exhibit B, the document that purported to remove her as trustee of the Trust. At no time before this document was sent to Elizabeth had WEM spoken to Elizabeth about the proposed removal of her as trustee. At no time before or after it was sent did WEM ever tell Elizabeth that he was dissatisfied with the manner in which she carried out her duties as trustee.

24. Subsequent to September 28, 2006, and prior to October 4, 2006, Elizabeth visited and/or had dinner with her father daily while he was in New York. At no time did WEM tell her he had purportedly discharged her as a trustee of the Trust or that he had been dissatisfied with her conduct as a trustee. On the contrary, he asked her to visit him in Charleston for a week in October.

25. Pamela was appointed by WEM to be a trustee of the Trust on June 16, 1999. On information and belief, a document dated sometime in October, 2006, which purported to remove Pamela as a trustee has been circulated but has never been delivered to Pamela. At no time, either before or after this purported removal occurred, did WEM ever tell Pamela that he intended to remove her as trustee, that he had in fact done so or that he was at all dissatisfied with her performance as a trustee.

26. The purported removal of Pamela and Elizabeth as trustees was engineered by Hilton for the purpose of solidifying his control over WEM and the Trust. It was designed to eliminate anyone whom he conceived to be a threat to that control. The purported removal of Pamela and Elizabeth, if valid, would have left Hilton in complete control of the Trust – and free to continue to dispense Trust assets in ways that served his own interests.

27. The purported removal of Elizabeth as trustee was ineffective as a matter of law for the reason that (a) WEM lacked the mental and physical capacity to read and

understand the removal document; (b) the purported removal did not comply with the requirement of the Agreement of Trust that a replacement trustee be appointed if any individual trustee were terminated; and (c) proper delivery of the document was not made to all trustees as required by the Agreement of Trust.

28. The purported removal of Pamela as trustee was ineffective as a matter of law for the reason that (a) WEM lacked the mental and physical capacity to read and understand the removal document; (b) the purported removal did not comply with the requirement of the Agreement of Trust that a replacement trustee be appointed if any individual trustee were terminated; and (c) proper delivery of the document to Pamela was not made as required by the Agreement of Trust.

29. Hilton has breached his fiduciary duty to the Trust through his misconduct, self-dealing and exercise of undue influence over WEM, whom Hilton has acknowledged lacks requisite mental capacity to serve as a trustee.

30. Hilton's manipulative and self-serving conduct, and his breach of fiduciary duty to the Trust, is further evidenced by the fact that even after U.S. Trust's Petition was filed exposing his misconduct to the Court, lawyers hired by Hilton continue to represent both Hilton and WEM – notwithstanding the conflict of interest that renders such dual representation improper.

Necessary Parties

31. The names and post-office addresses of all persons interested in this proceeding who are required to be cited, or concerning whom the Court is required to have information, are set forth in subdivision (a) or (b):

(a) All persons and parties so interested herein who are of full age and sound mind, or which are corporations or associations, are as follows:

Name	Address	Description of Interest
United States Trust Company, National Association	114 West 47th Street New York, NY 11036	Trustee
Hilton Charles Smith, Jr.	5301 Old York Course Hollywood, SC 29449	Trustee
Pamela Holmes Murray	1561 Brianna Lane Charleston, SC 29412	Trustee
Elizabeth E. Murray	737 Park Avenue, Apt. #3B New York, NY 10021	Trustee
Hon. Eliot Spitzer, Attorney General of the State of New York	120 Broadway New York, NY 10271	Representative of Ultimate Charitable Beneficiaries

(b) All persons and parties so interested herein who are infants or incompetents or persons believed to be mentally incapable adequately to protect their rights, or whose existence, identity or whereabouts are unknown (including persons who are virtually represented under SCPA 315) are as follows:

Name	Address	Description of Interest
William E. Murray	One Vendue Place Charleston, SC 29401	Trustee

32. Upon information and belief, there are no persons interested in this proceeding other than those mentioned above.

33. Upon information and belief, none of the above-named persons is in the military service, as defined by the Act of Congress known as the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, and by the New York State Soldiers' Civil Relief Act of 1951, as amended.

34. This Court has jurisdiction over this Cross-Petition proceeding pursuant to SCPA 207 based on the fact that Petitioner U.S. Trust is a trustee of the Trust and has a principal place of business in New York State.

35. Venue in this county is proper based on the fact that U.S. Trust has a principal place of business in New York County.

36. No prior application has been made to this or any other Court for the relief requested in this Cross-Petition.

WHEREFORE, Cross-Petitioners Pamela and Elizabeth respectfully pray that this Court issue an order as follows:

(a) removing Hilton as a trustee of the Trust for self-dealing, as alleged in the Petition and Cross-Petition, and manipulation and abuse of WEM, whom Hilton knows lacks mental capacity;

(b) removing WEM as a trustee of the Trust on the ground that he is physically and mentally incapable of performing his duties as a trustee;

(c) directing that a guardian *ad litem* be appointed for WEM;

(d) determining that the documents that WEM purportedly signed to remove Pamela and Elizabeth as trustees are ineffective and void on the ground that WEM lacked mental capacity to exercise such a function as Chairman of the Trust and were the product of improper and undue influence exercised by Hilton over WEM and, in any event, that the procedures set forth in the Agreement of Trust for the removal of individual trustees were not followed;

(e) confirming that Pamela and Elizabeth continue to be trustees of the Trust;

(f) restraining Hilton from taking any action, making any representations or making any decisions on behalf of the Trust that do not include, or are inconsistent with, the roles of Pamela and Elizabeth as trustees; and

(g) granting such other and further relief as this Court may deem just and proper.

Dated: November 17, 2006

PAMELA HOLMES MURRAY

ELIZABETH B. MURRAY

SIDLEY AUSTIN LLP

By: _____
Eileen Caulfield Schwab
Roger J. Hawke

787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300

Attorneys for Respondents and
Cross-Petitioners Pamela Holmes Murray
and Elizabeth B. Murray

(f) restraining Hilton from taking any action, making any representations or making any decisions on behalf of the Trust that do not include, or are inconsistent with, the roles of Pamela and Elizabeth as trustees; and

(g) granting such other and further relief as this Court may deem just and proper.

Dated: November 17, 2006

PAMELA HOLMES MURRAY

ELIZABETH E. MURRAY

SIDLEY AUSTIN LLP

By: _____
Eileen Caulfield Schwab
Roger J. Hawke

787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300

Attorneys for Respondents and
Cross-Petitioners Pamela Holmes Murray
and Elizabeth E. Murray

VERIFICATION

STATE OF ~~NEW YORK~~ Massachusetts)
COUNTY OF ~~NEW YORK~~ Nantucket) SS.:

Pamela Holmes Murray, being duly sworn, deposes and says: I am a Respondent and Cross Petitioner herein; I have read the foregoing Answer and Cross-Petition subscribed by me and know the contents thereof; the same is true of my own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe it to be true.

Pamela Holmes Murray

Sworn to before me this
9th day of November, 2006.

Notary Public

LORIS L. COOPER, Notary Public
My Commission Expires March 7, 2008

VERIFICATION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ELIZABETH E. MURRAY, being duly sworn, deposes and says: I am a Respondent and Cross-Petitioner herein; I have read the foregoing Answer and Cross-Petition subscribed by me and know the contents thereof; the same is true of my own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe it to be true.

ELIZABETH E. MURRAY

Sworn to before me this
17th day of November, 2006.

Notary Public

GEORGE L. CONOVER, JR.
Notary Public, State of New York
No. 01CO4883710
Qualified in New York County
Commission Expires February 23, 2007

AGREEMENT

This AGREEMENT of the Trustees of the Samuel Freeman Charitable Trust (hereinafter referred to as SFCT), dated this 12 day of May 2004, by and between WILLIAM E. MURRAY (hereinafter referred to as WEM), residing at 50 East 77th Street, The Carlisle, 7A, New York, NY 10021, HILTON C. SMITH, JR. (hereinafter referred to as HCS), residing at 5031 Old York Course, Hollywood, SC 29449, PAMELA HOLMES STACK (hereinafter referred to as PHS), residing at 395 Oak Glen, Marietta, Georgia 30067, and ELIZABETH EDWARDS MURRAY (hereinafter referred to as EEM), residing at 737 Park Ave, 3B, NY, NY 10021, hereinafter referred to as the Individual Trustees and US Trust Company of New York, the Corporate Trustee.

WHEREAS the Trustees agree that WEM is the Chairman of the SFCT, and

WHEREAS the Trustees hereby appoint HCS as the Vice Chairman. They further agree that subsequent to WEM's resignation or demise that HCS shall be appointed the Chairman of the SFCT, and

WHEREAS each Individual Trustee, other than the Chairman or Vice Chairman, may recommend one or more qualifying organization seeking to receive grants from the SFCT, provided that the total amount of the grants awarded by each Individual Trustee in any calendar year shall not exceed $50,000.00, and

WHEREAS the Corporate Trustee shall retain the right to recommend grants, and

WHEREAS the Chairman or Vice Chairman may sponsor qualifying organizations seeking to receive grants from the SFCT up to the remaining balance of the net income of the SFCT available for distribution, and

WHEREAS the Trustees confirm that until WEM's resignation or demise that WEM shall continue to receive the commissions allowed a sole Individual Trustee under the Laws of the State of New York, in effect at the time of payment. Thereafter, the Individual Trustees shall share in the amount allowed to a sole Trustee under the Laws of the State of New York in effect at the time of payment. HCS will receive $12,000 per year, and the remainder of the commissions shall be divided equally between the remaining Individual Trustees, and

WHEREAS HCS, as Chairman, has the authority at any time and from time to time to appoint, remove, or replace any Individual Trustee, by an instrument in writing, duly acknowledged and delivered to the Individual Trustees.

IN WITNESS WHEREOF and hereto have affixed their hands and seals the day and year first above written

WITNESS: Debi Hollis

BY: William E. Murray 5/12/04
William E. Murray, Chairman Date

WITNESS: Debi Hollis

BY: [signature] 5/8/04
Hilton C. Smith, Jr., Vice Chairman Date

WITNESS:

BY: _____
Pamela Holmes Stack, Trustee Date

WITNESS:

BY: _____
Elizabeth Edwards Murray, Trustee Date

WITNESS: Carolyn L. Lesser

US Trust Company of New York
BY: [signature] 5/24/04
Linda Franciscovich, Managing Director Date

The Samuel Freeman Charitable Trust

Removal of Trustee

WHEREAS:

1. William E. Murray is a trustee under that certain Agreement of Trust (the "Agreement") dated April 29,1981 between Samuel Freeman, as Grantor, and William E. Murray, Samuel Freeman and the United States Trust Company of New York, as Trustees, establishing The Samuel Freeman Charitable Trust.

2. Paragraph 9 of the Agreement granted to Samuel Freeman and William E. Murray, jointly, or to the survivor, the authority to appoint up to five (5) additional trustees.

3. Elizabeth Murray was appointed as an additional trustee pursuant to the above power.

4. Paragraph 9 of the Agreement authorizes William E. Murray, as the survivor of Samuel Freeman and William E. Murray, to remove any trustee appointed pursuant to the provisions of Paragraph 9 of the Agreement.

5. William E. Murray intends to remove Elizabeth Murray as a trustee.

NOW, THEREFORE, William E. Murray, pursuant to the authority granted to him in Paragraph 9 of the Agreement, does hereby remove Elizabeth Murray as a trustee under the Agreement effective the date hereof.

IN WITNESS WHEREOF, each of the undersigned has hereunto set his hand and seal to this instrument as of the 28th day of September, 2006.

WILLIAM E. MURRAY

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.

On the 28th day of September in the year 2006 before me, the undersigned, personally appeared WILLIAM E. MURRAY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument in New York, New York.

Notary Public

HELEN KELLY
Notary Public, State of New York
No. 5005278
Qualified in Suffolk County
Commission Expires Dec. 7, 2010

668026_1

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) S.S.:
COUNTY OF NEW YORK)

I, Joan E. Senatore, being over the age of eighteen (18) years, and not a party to this action, and being first duly sworn, state on oath that on November 17, 2006 I caused the foregoing Answer and Cross-Petition to be served by first-class mail in the State of New York upon:

Mr. William E. Murray
One Vendue Place
Charleston, SC 29401

Joan E. Senatore

Subscribed and sworn to me this
17th day of November, 2006

Notary Public

WILLIAM U. GENG
Notary Public, State Of New York
No. 01GE4874791
Qualified In New York County
Commission Expires 05/31/2010

NY1 5986002v.1

159 - Affidavit of net worth, income and assets transferred; matrimonial: 22NYCRR 202.16, 3-98

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Supreme COURT State of New York
COUNTY OF New York

Index No. 0350789

Daniel P. Kelly

Plaintiff

against

Elizabeth E. Murray

Defendant

Statement of Net Worth (DRL § 236)

Date of Commencement of Action

(Complete all items, marking "NONE", "INAPPLICABLE", and "UNKNOWN," if appropriate)

STATE OF New York COUNTY OF New York SS.:

Elizabeth E. Murray, the [ ] Petitioner [ ] Respondent [ ] Plaintiff [X] Defendant herein, being duly sworn, deposes and says that the following is an accurate statement as of 9-1-06 of my net worth (assets of whatsoever kind and nature and wherever situated minus liabilities), statement of income from all sources and statement of assets transferred of whatsoever kind and nature and wherever situated:

I. FAMILY DATA:

(a) Husband's age 53
(b) Wife's age 52
(c) Date married 04/13/1985
(d) Date [ ] separated [ ] divorced
(e) Number of dependent children under 21 1
(f) Names and ages of children
Elspeth H. Kelly – 17 3/4
DOB 11/28/88

) Custody of children [ ] Husband [ ] Wife [X] Joint [ ] N/A
Minor children of prior marriage: [ ] Husband [ ] Wife
Husband [ ] Paying [ ] Receiving $ 0 as alimony (maintenance) and/or
$ 0 child support in connection with prior marriage
Wife [ ] Paying [ ] Receiving $ 0 as alimony (maintenance) and/or
$ 0 child support in connection with prior marriage
Custody of children of prior marriage

(k) Is marital residence occupied by [ ] Husband [ ] Wife [X] Both [ ] N/A
(l) Husband's present address
737 Park Ave Apt. 3B
New York, New York 10021
Wife's present address
737 Park Ave Apt. 3B
New York, New York 10021
(m) Occupation of husband Banking
Occupation of wife Self-Employed
(n) Husband's employer
Societe General – Director
(o) Wife's employer
Self-Employed
Graduated 8/05

EXHIBIT tabbies 12

DIV0001

(p) Husband's education, training and skills
BS - Accounting Villanova 1974
MA - Accounting Bentley 1976
MBA – Fordam Finance 1985

(q) Wife's education, training and skills
BS - Wharton 1974
1/2 MBA Finance
AA - Interior Design, NY School of Design August, 2005
Certificate NCIDQ (National Council on Interior Design Qualifications) 2/3 complete, December 2005 (will finish 1/3 October 2006)

(r) Husband's health
good

(s) Wife's health
good

(t) Children's health
Receiving occasional therapy for anorexia; good

II. **EXPENSES** *(You may elect to list all expenses on a weekly basis or all expenses on a monthly basis, however, you must be consistent. If any items are paid on a monthly basis, divide by 4.3 to obtain weekly payments; If any items are paid on a weekly basis, multiply by 4.3 to obtain monthly payment. Attach additional sheet, if needed. Items included under "Other" should be listed separately with separate dollar amounts.)*

Expenses listed [ ] weekly [X] monthly		
(a) Housing		
1. Christmas tips - Doorman	100.00	
2. Condominium charges	0.00	
3. Cooperative apartment maintenance	0.00	
4. Mortgage and amortization	0.00	
5. Real estate taxes	0.00	
6. Rent	2,000.00	
TOTAL: Housing		2,100.00
(b) Utilities		
1. Aol, Cable	100.00	
2. Cell Phones - Elizabeth and Elspeth	200.00	
3. Electricity & Gas	275.00	
4. Fuel oil	0.00	
5. Gas	0.00	
6. Telephone - Fax (3 lines)	200.00	
7. Water	0.00	
TOTAL: Utilities		775.00

(c) Food		
1. Deli	100.00	
2. Dining out	100.00	
3. Groceries	500.00	
4. Home entertainment	0.00	
5. Liquor/alcohol	50.00	
6. Lunches at work	0.00	
7. School lunches	0.00	
TOTAL: Food		750.00
(d) Clothing		
1. Children	100.00	
2. Husband	0.00	
3. Other	0.00	
4. Wife	150.00	
TOTAL: Clothing		250.00
(e) Laundry		
1. Dry cleaning	25.00	
2. Laundry at home	75.00	
3. Shoe repair and clothing repair/alt.	50.00	
TOTAL: Laundry		150.00
(f) Insurance		
1. Automotive	200.00	
2. Dental plan	0.00	
3. Disability	0.00	
4. Fire, theft and liability	0.00	
5. Homeowner's/tenant's	130.00	
6. Life	0.00	
7. Medical plan Cancer/AFLAC	0.00	
8. Optical plan	0.00	
9. Other	0.00	
10. Umbrella policy	0.00	
11. Worker's compensation	0.00	
TOTAL: Insurance		330.00
(g) Unreimbursed medical		
1. Dental -- ded., copays & unreimbursed	170.00	
2. Medical	200.00	
3. Optical	0.00	
4. Other	0.00	
5. Pharmaceutical (co-pays)	100.00	
6. Surgical, nursing, hospital	0.00	
TOTAL: Unreimbursed medical		470.00

(h) Household maintenance		
1. Appliances, including maintenance	100.00	
2. Cleaning supplies	50.00	
3. Computer Maintenance	50.00	
4. Extermination	0.00	
5. Furniture, furnishings, housewares	75.00	
6. Other	0.00	
7. Painting	50.00	
8. Repairs	100.00	
9. Rug Cleaning	75.00	
10. Windows/Floor Cleaning	50.00	
TOTAL: Household maintenance		550.00
(i) Household help		
1. Baby sitter	0.00	
2. Domestic (housekeeper, maid, etc.)	300.00	
3. Other	0.00	
TOTAL: Household help		300.00
(j) Automotive		
1. Car wash	25.00	
2. Gas and oil	75.00	
3. Other	0.00	
4. Parking and tolls	30.00	
5. Payments	0.00	
6. Registration and license	20.00	
7. Repairs	50.00	
TOTAL: Automotive		200.00
(k) Educational		
1. Chapin	1,000.00	
2. College	0.00	
3. College Visits	0.00	
4. Nursery and pre-school	0.00	
5. Other	0.00	
6. Post-graduate	0.00	
7. Religious instruction	0.00	
8. School events/activities	0.00	
9. School supplies/books	0.00	
10. School transportation	0.00	
11. Tutoring	0.00	
TOTAL: Educational		1,000.00

(l) Recreational		
1. Birthday parties	0.00	
2. Cable television	0.00	
3. Country club/pool	0.00	
4. Health club	0.00	
5. Hobbies	0.00	
6. Miscellaneous expenses	400.00	
7. Movies	0.00	
8. Music/dance lessons	0.00	
9. Sporting goods	0.00	
10. Sports lessons	0.00	
11. Summer camp	0.00	
12. Tapes, cd's, etc.	0.00	
13. Team sports	0.00	
14. Theatre, ballet, etc.	0.00	
15. Travel on Holidays, Funerals, Weddings	100.00	
16. Vacations	100.00	
17. Video rentals	0.00	
TOTAL: Recreational		600.00
(m) Income taxes		
1. City	0.00	
2. Federal	0.00	
3. Social security and medicare	0.00	
4. State	0.00	
TOTAL: Income taxes		0.00
(n) Miscellaneous		
1. Accounting & tax return	50.00	
2. Alimony and maintenance payments(prior m	0.00	
3. Beauty aids/cosmetics, drug items	100.00	
4. Beauty parlor/barber/manicures, etc.	300.00	
5. Books, magazines, newspapers	50.00	
6. Cabs	100.00	
7. Charitable contributions	0.00	
8. Child support payment(prior marriage)	0.00	
9. Children's allowances & transportation	50.00	
10. Cigarettes/tobacco	0.00	
11. Commutation & transportation cabs & bus	50.00	
12. Gifts Daughter - Xmas, B'day, etc.	150.00	
13. Miscellaneous unexpected expenses	120.00	
14. Postage/mailing	50.00	
15. Union and organization dues	0.00	

16. Veterinarian/pet expenses	0.00	
17. miscellaneous (daughter)	30.00	
TOTAL: Miscellaneous		1,050.00
(o) Other		
1. gas and electric	0.00	
TOTAL: Other		0.00
TOTAL EXPENSES	$ 8,525.00	

III. GROSS INCOME: *(State source of income and annual amount. Attach additional sheet, if needed).*

(a) Salary or wages: *(State whether income has changed during the year preceding date of this affidavit* No *If so, set forth name and address of all employers during preceding year and average weekly wage paid by each. Indicate overtime earnings separately. Attach previous year's W-2 or income tax return.)*

$3,000/month from William E. Murray 0.00
$10,000/year for Elspeth Kelly's Tuition from W.E.M.

(b) Weekly deductions:

1. Federal tax	0.00
2. NewYork State tax	0.00
3. Local tax	0.00
4. Social Security	0.00
5. Medicare	0.00
6. Other payroll deductions *(specify)*	0.00

(c) Social Security number
(d) Number and names of dependants claimed:
Elspeth H. Kelly – 17 3/4
DOB 11/26/88

(e)	Bonus, commissions, fringe benefits *(use of auto, memberships, etc.)*	0.00
(f)	Partnership, royalties, sale of assets *(income and installment payment)*	0.00
(g)	Taxable Dividends and Interest	0.00
	Non-Taxable Dividends and Interest	0.00
(h)	Real estate *(income only)*	0.00
(i)	Trust, profit sharing and annuities *(principal distribution and income)*	0.00
(j)	Pension *(income only)*	0.00
(k)	Awards, prizes, grants *(state whether taxable)*	0.00
(l)	Bequests, legacies and gifts	0.00
(m)	Income from all other sources *(including alimony, maintenance or child support from prior marriage)*	0.00
(n)	Tax preference items:	
	1. Long term capital gain deduction	0.00
	2. Depreciation, amortization or depletion	0.00
	3. Stock options - *excess of fair market value over amount paid*	0.00
(o)	If any child or other member of your household is employed, set forth name and that person's annual income	0.00
(p)	Social Security	0.00
(q)	Disability benefits	0.00
(r)	Public assistance	0.00
(s)	Other	0.00

TOTAL INCOME $ 0.00

DIV0017

IV. ASSETS: *(If any asset is held jointly with spouse or another, so state, and set forth your respective shares. Attach additional sheets, if needed.)*

A. Cash Accounts

Cash

1.1 a. Location — Union Savings Bank Connecticut; value unknown
b. Source of funds — marital (title holder Daniel P. Kelly & Elspeth)
c. Amount — $0.00

Total: Cash $0.00

Checking Accounts

2.1 a. Financial institution — Citibank Money Market
b. Account number
c. Title holder — Daniel Kelly (amount unknown)
d. Date opened
e. Source of funds
f. Balance — $.00

2.2 a. Financial institution — Bank of New York
b. Account number
c. Title holder — Elizabeth Murray
d. Date opened
e. Source of funds
f. Balance — $20.00

2.3 a. Financial institution — Chase JP Morgan
b. Account number — 116-063-548
c. Title holder — Elizabeth Style Setters
d. Date opened
e. Source of funds
f. Balance — $.00

2.4 a. Financial institution — Citibank Checking
b. Account number
c. Title holder — Daniel Kelly (amount unknown)
d. Date opened
e. Source of funds
f. Balance — $.00

Total: Checking $20.00

Savings Accounts

3.1 a. Financial institution
b. Account number
c. Title holder — Daniel Kelly with Elspeth Kelly (amount unknown)
d. Date opened
e. Type of account
f. Source of funds — gifts
g. Balance — $0.00

3.2 a. Financial institution — Citibank Savings
b. Account number
c. Title holder — Daniel Kelly (amount unknown)
d. Date opened
e. Type of account
f. Source of funds
g. Balance — $0.00

Total: Savings $0.00

Other

5.1 a. Location
b. Title owner
c. Type of deposit
d. Source of funds
e. Date of deposit
f. Amount

$0.00

Total: Other $0.00

TOTAL: CASH ACCOUNTS $ 20.00

B. Securities

Bonds, notes, mortgages

1.1 a. Description of security
Societe Generale Restricted Stock

b. Title holder Daniel Kelly
c. Location
d. Date of acquisition
e. Original price or value 0.00
f. Source of funds to acquire amount unknown
g. Current value

$0.00

Total: Bonds $0.00

Stocks, options and commodity contracts

2.1 a. Description of security
None

b. Title holder
c. Location
d. Date of acquisition
e. Original price or value .00
f. Source of funds to acquire
g. Current value

$0.00

Total: Stocks, options, etc. $0.00

Broker margin accounts

3.1 a. Name and address of broker
None

b. Title holder
c. Date account opened
d. Original price or value 0.00
e. Source of funds
f. Current value

$0.00

Total: Margin accounts $0.00

TOTAL: VALUE OF SECURITIES: $ 0.00

C. Loans to others and accounts receivable

1.1 a. Debtor's name and address

b. Original amount of loan 0.00
c. Source of funds from which loan made or origin of debt

d. Date payment(s) due
e. Current amount due $0.00

Total: Loans and accounts receivable $0.00

D. Value of interest in any business

1.1 a. Business name and address
Elizabeth Stylesetters

b. Type of business *(corporate, partnership, sole proprietorship or other)*

c. Your capital contribution 7,900.00
d. Your percentage of interest 0
e. Date of acquistion
f. Original price or value 0.00
g. Source of funds to acquire
h. Method of valuation
i. Other relevant information
(inactive business)

j. Current net worth of business $0.00

Total: Value of business interest $0.00

E. Cash surrender value of life insurance

1.1 a. Insurer's name and address
None

b. Name of insured
c. Policy number
d. Face amount of policy 0.00
e. Policy owner
f. Date of acquisition
g. Source of funds to acquire
h. Current cash surrender value $0.00

Total: Value of life insurance $0.00

F. Vehicles *(automobile, boat, plane, truck, camper, etc.)*

1.1 a. Description
Scion 2005

b. Title owner	Elizabeth Murray
c. Date of acquisition	2005
d. Original price	0.00
e. Source of funds to acquire	Insurance proceeds from totalled car, WEM ($7k)
f. Amount of current lien unpaid	0.00
g. Current fair market value	$15,000.00

1.2 a. Description
1999 Ford Taurus
(fair market value unknown)

b. Title owner	Daniel Kelly
c. Date of acquisition	2006
d. Original price	0.00
e. Source of funds to acquire	
f. Amount of current lien unpaid	0.00
g. Current fair market value	$0.00

Total: Value of vehicles $15,000.00

G. Real estate *(including real property, lease holds, life estates, etc. at market value - do not deduct any mortgage)*

1.1 a. Description
House, Katonah, 113 Lake Shore Drive, Katonah, NY 10536

b. Title owner	Both
c. Date of acquisition	11/86
d. Original price	240000
e. Source of funds to acquire	Separate and Marital
f. Amount of mortgage or lien unpaid	0.00
g. Estimated current market value	$645,000.00

Total: Value of real estate $645,000.00

H. Vested interests in trusts *(pension, profit sharing, legacies, deferred compensation and others)*

1.1 a. Description of trust
Security Pacific Trusteed Retirement Income Plan

b. Location of assets	
c. Title owner	Daniel Kelly (present value unknown)
d. Date of acquisition	1984
e. Original investment	0.00
f. Source of funds	marital
g. Amount of unpaid liens	0.00
h. Current value	$0.00

1.2 a. Description of trust
Societe Generale Defined Benefit as of 12/31/04

b. Location of assets	Societe Generale
c. Title owner	Daniel Kelly (present value unknown)
d. Date of acquisition	1990
e. Original investment	0.00
f. Source of funds	marital
g. Amount of unpaid liens	0.00
h. Current value	$0.00

1.3 a. Description of trust
Societe Generale Deferred Compensation 12/31/04

b. Location of assets	
c. Title owner	Daniel Kelly (present value unknown)
d. Date of acquisition	
e. Original investment	0.00
f. Source of funds	marital
g. Amount of unpaid liens	0.00
h. Current value	$0.00

1.4 a. Description of trust
Societe Generale Non Qualified Plan as of 12/31/04

b. Location of assets	
c. Title owner	Daniel Kelly (present value unknown)
d. Date of acquisition	
e. Original investment	0.00
f. Source of funds	
g. Amount of unpaid liens	0.00
h. Current value	$0.00

1.5 a. Description of trust

b. Location of assets	
c. Title owner	
d. Date of acquisition	
e. Original investment	0.00
f. Source of funds	
g. Amount of unpaid liens	0.00
h. Current value	$0.00

Total: Vested Interest in trusts $0.00

I. Contingent interests *(stock options, interests subject to life estates, prospective inheritances, etc.)*

1.1 a. Description
Societe Generale as of 12/31/04

b. Location	
c. Date of vesting	
d. Title owner	Daniel Kelly (present value unknown)
e. Date of acquisition	
f. Original price or value	0.00
g. Source of funds to acquire	
h. Method of valuation	
i. Current value	$0.00

DIV0022

Total: Contingent Interest $0.00

J. Household furnishings

1.1 a. Description
see list attached

b. Location
c. Title owner
d. Original price 0.00
e. Source of funds to acquire
f. Amount of lien unpaid 0.00
g. Current value $0.00

Total: Household furnishings $0.00

K. Jewelry, art, antiques, precious objects, gold and precious metals (only if valued at more than $500)

1.1 a. Description
Jewelry - various of minimal value - any of value were inherited or gifted, most costume

b. Location
c. Title owner
d. Original price 0.00
e. Source of funds to acquire
f. Amount of lien unpaid 0.00
g. Current value $0.00

1.2 a. Description
Art - acquired prior to marriage (except for small prints of small value)

b. Location 737 Park Avenue
c. Title owner
d. Original price 0.00
e. Source of funds to acquire
f. Amount of lien unpaid 0.00
g. Current value $0.00

1.3 a. Description
George Jensen Silver, acquired prior to marriage

b. Location
c. Title owner
d. Original price 0.00
e. Source of funds to acquire pre-marital
f. Amount of lien unpaid 0.00
g. Current value $0.00

Total: Jewelry, art, etc. $0.00

L. Other *(e.g., tax shelter investments, collections, judgments, causes of action, patents, trademarks, copyrights, and any other asset not previously itemized)*

1.1 a. Description
Two tax shelters, since change in tax laws same are only applicable to active investments: 215 East Bay Realty Associates -- upon death of Wife's father, there will be $20,000 liability for each tax shelter.

b. Location
c. Title owner
d. Original price 0.00
e. Source of funds to acquire gift from wife's father
f. Amount of lien unpaid 0.00
g. Current value $0.00

1.2 a. Description
Vanderhorst Realty Associates -- upon death of Wife's father there will be a $20,000 liability on this shelter.

b. Location		
c. Title owner		
d. Original price	0.00	
e. Source of funds to acquire	gift from wife's father	
f. Amount of lien unpaid	0.00	
g. Current value		$0.00

Total: Other $0.00

TOTAL ASSETS $660,020.00

V. LIABILITIES

A. Accounts payable

1.1 a. Name and address of creditor
Citibank Master Charge

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 246.00
g. Amount of current debt $10,945.21

1.2 a. Name and address of creditor
Capital One Visa

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 216.00
g. Amount of current debt $6,918.27

1.3 a. Name and address of creditor
Fleet Visa/Bank of America

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 80.00
g. Amount of current debt $3,498.78

1.4 a. Name and address of creditor
Optima

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 100.00
g. Amount of current debt $2,738.86

1.5 a. Name and address of creditor
American Express

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 1,195.00
g. Amount of current debt $2,570.66

1.6 a. Name and address of creditor
Diner's Club

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 975.00
g. Amount of current debt $2,519.29

1.7 a. Name and address of creditor
Discover

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 180.00
g. Amount of current debt $8,679.17

1.8 a. Name and address of creditor
HFC Group
64461000173219

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 0.00
g. Amount of current debt $2,112.49

1.9 a. Name and address of creditor
Dr. Asner (medical bills)

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 0.00
g. Amount of current debt $400.00

1.10 a. Name and address of creditor
Mechanical Response

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose To bring A/C up to code
f. Monthly or other periodic payment 0.00
g. Amount of current debt $1,500.00

Total: Accounts payable $41,882.71

B. Notes Payable

DIV0026

1.1 a. Name and address of note holder

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 0.00
g. Amount of current debt $0.00

Total: Notes payable $0.00

C. Installment accounts payable *(security agreements, chattel mortgages)*

1.1 a. Name and address of note creditor

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 0.00
g. Amount of current debt $0.00

Total: Installment accounts payable $0.00

D. Brokers' margin accounts

1.1 a. Name and address of note broker

b. Amount of original debt 0.00
c. Date of incurring debt
d. Purpose
e. Monthly or other periodic payment 0.00
f. Amount of current debt $0.00

Total: Brokers' margin accounts $0.00

E. Mortgages payable on real estate

1.1 a. Name and address of mortgagee

b. Address of property mortgaged

c. Mortgagor(s)

d. Original debt 0
e. Date of incurring debt
f. Monthly or other periodic payment 0.00
g. Maturity date
h. Amount of current debt $0.00

Total: Mortgages payable $0.00

F. Taxes payable

1.1 a. Description of tax

b. Date due
c. Amount of tax $0.00

Total: Taxes payable $0.00

G. Loans on life insurance policies

1.1 a. Name and address of insuror

b. Amount of loan 0.00
c. Date incurred
d. Purpose
e. Name of borrower
f. Monthly or periodic payment 0.00
g. Amount of current debt $0.00

Total: Loans on life insurance $0.00

H. Other Liabilities

1.1 a. Description
Divorce Fee Loan

b. Name and address of creditor
Father

c. Debtor
d. Original amount of debt 0.00
e. Date incurred
f. Purpose
g. Monthly or periodic payment 0.00
h. Amount of current debt $20,000.00

Total: Other liabilities $20,000.00

DIV0028

TOTAL LIABILITIES $61,882.71

NET WORTH

TOTAL ASSETS:	$660,020.00
TOTAL LIABILITIES:	($61,882.71)
NET WORTH	$598,137.29

VI. ASSETS TRANSFERRED: *(List assets transferred in any manner during the preceding three years, or length of the marriage, whichever is shorter [transfers in the routine course of business which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed where such assets are otherwise identified in the statement of net worth.])*

Description of Property	To Whom Transferred and Relationship to Transferee	Date of Transfer	Value
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00

VII. SUPPORT REQUIREMENTS:

(a) Deponent is at present [ ] *paying* [ ] *receiving* $ 0.00 per [ ] *week* [ ] *month*, and
prior to separation [ ] *paid* [ ] *received* $ 0.00 per [ ] *week* [ ] *month* to cover
expenses for

These payments are being made [ ] *voluntarily* [ ] *pursuant to court order or judgment* [ ] *pursuant to separation agreement*, and there are arrears outstanding, (in the some of $ 0.00 to date).

(b) Deponent requests for support of each child $ 500.00 per [ ] *week* [X] *month*.
Total for children $ 0.00

(c) Deponent requests for support of self $ 2,500.00 per [ ] *week* [X] *month*.

(d) The day of the [ ] *week* [X] *month* on which payment should be made is Oct. 2006 or when H. moves

VIII. COUNSEL FEE REQUIREMENTS:

(a) Deponent requests for counsel fee and disbursements the sum of $ 0.00

(b) Deponent has paid counsel the sum of $ 0.00 and has agreed with counsel concerning fees as follows: see retainer attached

(c) There is a retainer agreement or written agreement relating to payment of legal fees.
(A copy of any such agreement must be annexed.)

IX. ACCOUNTANT AND APPRAISAL FEE REQUIREMENTS:

(a) Deponent requests for accountants' fees and disbursements the sum of $0.00
(Include basis for fee, e.g., hourly rate, flat rate)

(b) Deponent requests for appraisal fees and disbursements the sum of $ 0.00
(Include basis for fee, e.g., hourly rate, flat rate)

(c) Deponent requires the services of an accountant for the following reasons:

(d) Deponent requires the services of an appraiser for the following reasons:

X. **Other data concerning the financial circumstance of the parties that should be brought to the attention of the court are:** House in Katonah funded with monies borrowed from the Estate of Minnie Holmes Murray (wife's mother) prinicpal must be refunded to Estate - the interest payments on the loan were made from Wife's separate property income and are to be refunded to Wife. Wife prepaid $10,000, the balance of daugther's 2006-2007 tuition. House expenses are not included in the calculations - house to be rented out. House expenses including insurance and repairs run approx $2000 per month.

The forgoing statements *and a rider consisting of page(s) annexed hereto and made part hereof* have been carefully read by the undersigned who states that they are true and correct.

Sworn to before me on 9-19-06

Valerie S. Wolfman

VALERIE S. WOLFMAN
Notary Public, State of New York
No. 4956657
Qualified in New York County
Signature Expires 30-11-09

[ ] Petitioner [ ] Plaintiff [ ] Respondent [X] Defendant

Elizabeth E. Murray

Valerie S. Wolfman

159 - Affidavit of net worth, income and assets transferred; matrimonial: 22NYCRR 202.16. 3-98

Blumberg Excelsior, Publisher, NYC 10013
www.blumberg.com

Supreme COURT State of New York
COUNTY OF New York

Index No. 0350789

Daniel P. Kelly

Plaintiff

against

Elizabeth E. Murray

Defendant

Statement of Net Worth (DRL § 236)

Date of Commencement of Action

(Complete all items, marking "NONE", "INAPPLICABLE", and "UNKNOWN," if appropriate)

STATE OF New York COUNTY OF New York SS.:

Elizabeth E. Murray, the [ ] Petitioner [ ] Respondent [ ] Plaintiff [X] Defendant herein, being duly sworn, deposes and says that the following is an accurate statement as of ~~9-4-08~~ 5/21/07 of my net worth (assets of whatsoever kind and nature and wherever situated minus liabilities), statement of income from all sources and statement of assets transferred of whatsoever kind and nature and wherever situated:

I. FAMILY DATA:

(a) Husband's age 53
(b) Wife's age 53
(c) Date married 04/13/1985
(d) Date [ ] separated [ ] divorced
(e) Number of dependent children under 21 1
(f) Names and ages of children
Elspeth H. Kelly -- 18 1/2
DOB 11/26/88

(g) Custody of children [ ] Husband [ ] Wife [X] Joint [ ] N/A
(h) Minor children of prior marriage: [ ] Husband [ ] Wife
(i) Husband [ ] Paying [ ] Receiving $ 0 as alimony (maintenance) and/or $ 0 child support in connection with prior marriage
Wife [ ] Paying [ ] Receiving $ 0 as alimony (maintenance) and/or $ 0 child support in connection with prior marriage
(j) Custody of children of prior marriage

(k) Is marital residence occupied by [ ] Husband [ ] Wife [X] Both [ ] N/A
(l) Husband's present address
737 Park Ave Apt. 3B
New York, New York 10021
Wife's present address
737 Park Ave Apt. 3B
New York, New York 10021
(m) Occupation of husband Banking
Occupation of wife Self-Employed
(n) Husband's employer
Societe General -- Director

(o) Wife's employer
Self-Employed
Graduated 8/05
NCIDQ Certification Program (2/3 completed on 12/31/05]

DIV2780

(p) Husband's education, training and skills
BS - Accounting Villanova 1974
MA - Accounting Bentley 1976
MBA --Fordam Finance 1985

(q) Wife's education, training and skills
BS - Wharton 1974
1/2 MBA Finance (Non-Transferrable Credits)
AA - Interior Design, NY School of Design August, 2005
Certificate NCIDQ (National Council on Interior Design Qualifications) 2/3 complete, December 2005 (will finish 1/3 October 2006)

(r) Husband's health
good

(s) Wife's health
good

(t) Children's health
Former anorexic, now in good health.

II. EXPENSES *(You may elect to list all expenses on a weekly basis or all expenses on a monthly basis, however, you must be consistent. If any items are paid on a monthly basis, divide by 4.3 to obtain weekly payments; If any items are paid on a weekly basis, multiply by 4.3 to obtain monthly payment. Attach additional sheet, if needed. Items included under "Other" should be listed separately with separate dollar amounts.)*

Expenses listed [ ] weekly [X] monthly

(a) Housing		
1. Christmas tips - Doorman	100.00	
2. Condominium charges	0.00	
3. Cooperative apartment maintenance	0.00	
4. Mortgage and amortization	0.00	
5. Real estate taxes	0.00	
6. Rent	2,000.00	
TOTAL: Housing		2,100.00
(b) Utilities		
1. Aol, Cable	100.00	
2. Cell Phones - Elizabeth and Elspeth	200.00	
3. Electricity & Gas	275.00	
4. Fuel oil	0.00	
5. Gas	0.00	
6. Telephone - Fax (3 lines)	200.00	
7. Water	0.00	
TOTAL: Utilities		775.00

(c) Food			
1. Deli		100.00	
2. Dining out		100.00	
3. Groceries		500.00	
4. Home entertainment		0.00	
5. Liquor/alcohol		50.00	
6. Lunches at work		0.00	
7. School lunches		0.00	
	TOTAL: Food		750.00
(d) Clothing			
1. Children		100.00	
2. Husband		0.00	
3. Other		0.00	
4. Wife		150.00	
	TOTAL: Clothing		250.00
(e) Laundry			
1. Dry cleaning		25.00	
2. Laundry at home		75.00	
3. Shoe repair and clothing repair/alt.		50.00	
	TOTAL: Laundry		150.00
(f) Insurance			
1. Automotive		200.00	
2. Dental plan		0.00	
3. Disability		0.00	
4. Fire, theft and liability		0.00	
5. Homeowner's/tenant's		130.00	
6. Life		0.00	
7. Medical plan Cancer/AFLAC		0.00	
8. Optical plan		0.00	
9. Other		0.00	
10. Umbrella policy		0.00	
11. Worker's compensation		0.00	
	TOTAL: Insurance		330.00
(g) Unreimbursed medical			
1. Dental -- ded., copays & unreimbursed		170.00	
2. Medical		200.00	
3. Optical		0.00	
4. Other		0.00	
5. Pharmaceutical (co-pays)		200.00	
6. Surgical, nursing, hospital		0.00	
	TOTAL: Unreimbursed medical		570.00

(h) Household maintenance		
1. Appliances, including maintenance	100.00	
2. Cleaning supplies	50.00	
3. Computer Maintenance	50.00	
4. Extermination	0.00	
5. Furniture, furnishings, housewares	75.00	
6. Other	0.00	
7. Painting	50.00	
8. Repairs	100.00	
9. Rug Cleaning	75.00	
10. Windows/Floor Cleaning	50.00	
TOTAL: Household maintenance		550.00
(i) Household help		
1. Baby sitter	0.00	
2. Domestic (housekeeper, maid, etc.)	300.00	
3. Other	0.00	
TOTAL: Household help		300.00
(j) Automotive		
1. Car wash	25.00	
2. Gas and oil	120.00	
3. Other	0.00	
4. Parking and tolls	30.00	
5. Payments	0.00	
6. Registration and license	20.00	
7. Repairs	50.00	
TOTAL: Automotive		245.00
(k) Educational		
1. Chapin	0.00	
2. College	0.00	
3. College Visits	0.00	
4. Nursery and pre-school	0.00	
5. Other	0.00	
6. Post-graduate	0.00	
7. Religious instruction	0.00	
8. School events/activities	0.00	
9. School supplies/books	0.00	
10. School transportation	0.00	
11. Tutoring	0.00	
TOTAL: Educational		0.00

(l) Recreational		
1. Birthday parties	0.00	
2. Cable television	0.00	
3. Country club/pool	0.00	
4. Health club	0.00	
5. Hobbies	0.00	
6. Miscellaneous expenses	400.00	
7. Movies	0.00	
8. Music/dance lessons	0.00	
9. Sporting goods	0.00	
10. Sports lessons	0.00	
11. Summer camp	0.00	
12. Tapes, cd's, etc.	0.00	
13. Team sports	0.00	
14. Theatre, ballet, etc.	0.00	
15. Travel on Holidays, Funerals, Weddings	250.00	
16. Vacations	100.00	
17. Video rentals	0.00	
	TOTAL: Recreational	750.00
(m) Income taxes		
1. City	0.00	
2. Federal	0.00	
3. Social security and medicare	0.00	
4. State	0.00	
	TOTAL: Income taxes	0.00
(n) Miscellaneous		
1. Accounting & tax return	50.00	
2. Alimony and maintenance payments(prior m	0.00	
3. Beauty aids/cosmetics, drug items	100.00	
4. Beauty parlor/barber/manicures, etc.	300.00	
5. Books, magazines, newspapers	50.00	
6. Cabs	100.00	
7. Charitable contributions	0.00	
8. Child support payment(prior marriage)	0.00	
9. Children's allowances & transportation	50.00	
10. Cigarettes/tobacco	0.00	
11. Commutation & transportation cabs & bus	50.00	
12. Gifts Daughter - Xmas, B'day, etc.	150.00	
13. Miscellaneous unexpected expenses	120.00	
14. Postage/mailing	50.00	
15. Union and organization dues	0.00	

16. Veterinarian/pet expenses	100.00	
17. miscellaneous (daughter)	30.00	
TOTAL: Miscellaneous		1,150.00
(o) Other		
1. gas and electric	0.00	
TOTAL: Other		0.00
TOTAL EXPENSES	$ 7,920.00	

III. GROSS INCOME: *(State source of income and annual amount. Attach additional sheet, if needed).*

(a) Salary or wages: *(State whether income has changed during the year preceding date of this affidavit* No
If so, set forth name and address of all employers during preceding year and average weekly wage paid by each. Indicate overtime earnings separately. Attach previous year's W-2 or income tax return.)
$3,000/month from William E. Murray
($2,000 reimbursement for liabilities incurred for inn at Quogue; $1,000 gift subject to availability) 0.00

(b) Weekly deductions:

1. Federal tax	0.00
2. NewYork State tax	0.00
3. Local tax	0.00
4. Social Security	0.00
5. Medicare	0.00
6. Other payroll deductions *(specify)*	0.00

(c) Social Security number

(d) Number and names of dependants claimed:
Elspeth H. Kelly – 18 1/2
DOB 11/26/88

(e)	Bonus, commissions, fringe benefits *(use of auto, memberships, etc.)*	0.00
(f)	Partnership, royalties, sale of assets *(income and installment payment)*	0.00
(g)	Taxable Dividends and interest	0.00
	Non-Taxable Dividends and interest	0.00
(h)	Real estate *(income only)*	0.00
(i)	Trust, profit sharing and annuities *(principal distribution and income)*	0.00
(j)	Pension *(income only)*	0.00
(k)	Awards, prizes, grants *(state whether taxable)*	0.00
(l)	Bequests, legacies and gifts	0.00
(m)	Income from all other sources *(including alimony, maintenance or child support from prior marriage)*	0.00
(n)	Tax preference items:	
	1. Long term capital gain deduction	0.00
	2. Depreciation, amortization or depletion	0.00
	3. Stock options - *excess of fair market value over amount paid*	0.00
(o)	If any child or other member of your household is employed, set forth name and that person's annual income	0.00
(p)	Social Security	0.00
(q)	Disability benefits	0.00
(r)	Public assistance	0.00
(s)	Other	0.00

TOTAL INCOME $ 0.00

DIV2785

IV. ASSETS: *(If any asset is held jointly with spouse or another, so state, and set forth your respective shares. Attach additional sheets, if needed.)*

A. Cash Accounts

Cash

1.1	a. Location	Union Savings Bank Connecticut, value unknown		
	b. Source of funds	marital (title holder Daniel P. Kelly & Elspeth)		
	c. Amount		$0.00	
				Total: Cash $0.00

Checking Accounts

2.1	a. Financial institution	Citibank Money Market		
	b. Account number			
	c. Title holder	Daniel Kelly (amount unknown)		
	d. Date opened			
	e. Source of funds			
	f. Balance		$.00	
2.2	a. Financial institution	Bank of New York		
	b. Account number			
	c. Title holder	Elizabeth Murray		
	d. Date opened			
	e. Source of funds			
	f. Balance		$20.00	
2.3	a. Financial institution	Chase JP Morgan		
	b. Account number	116-063-548		
	c. Title holder	Elizabeth Style Setters		
	d. Date opened			
	e. Source of funds			
	f. Balance		$.00	
2.4	a. Financial institution	Citibank Checking		
	b. Account number			
	c. Title holder	Daniel Kelly (amount unknown)		
	d. Date opened			
	e. Source of funds			
	f. Balance		$.00	
2.5	a. Financial institution	Citibank Checking		
	b. Account number			
	c. Title holder	Daniel Kelly (amount unknown)		
	d. Date opened			
	e. Source of funds			
	f. Balance		$.00	
2.6	a. Financial institution	Chase JP Morgan		
	b. Account number	116-06-548		
	c. Title holder	Elizabeth Style Setters		
	d. Date opened	2005		
	e. Source of funds	Income		
	f. Balance		$1,085.00	
				Total: Checking $1,105.00

Savings Accounts

3.1	a. Financial institution			
	b. Account number			
	c. Title holder	Daniel Kelly with Elspeth Kelly (amount unknown)		
	d. Date opened			
	e. Type of account			
	f. Source of funds	gifts		
	g. Balance		$0.00	

DIV2786

3.2 a. Financial institution Citibank Savings
b. Account number
c. Title holder Daniel Kelly (amount unknown)
d. Date opened
e. Type of account
f. Source of funds
g. Balance $0.00

Total: Savings $0.00

Security deposits, earnest money, etc.

4.1 a. Location
b. Title owner
c. Type of deposit
d. Source of funds
e. Date of deposit
f. Amount $0.00

Total: Security deposits, etc. $0.00

Other

5.1 a. Location
b. Title owner
c. Type of deposit
d. Source of funds
e. Date of deposit
f. Amount $0.00

Total: Other $0.00

TOTAL: CASH ACCOUNTS $ 1,105.00

B. Securities

Bonds, notes, mortgages

1.1 a. Description of security
Societe Generale Restricted Stock

b. Title holder Daniel Kelly
c. Location
d. Date of acquisition
e. Original price or value 0.00
f. Source of funds to acquire amount unknown
g. Current value $0.00

Total: Bonds $0.00

Stocks, options and commodity contracts

2.1 a. Description of security
None

b. Title holder
c. Location
d. Date of acquisition
e. Original price or value .00
f. Source of funds to acquire
g. Current value $0.00

Total: Stocks, options, etc. $0.00

DIV2787

Broker margin accounts

3.1 a. Name and address of broker
None

b. Title holder
c. Date account opened
d. Original price or value 0.00
e. Source of funds
f. Current value $0.00

Total: Margin accounts $0.00

TOTAL: VALUE OF SECURITIES: $ 0.00

C. Loans to others and accounts receivable

1.1 a. Debtor's name and address

b. Original amount of loan 0.00
c. Source of funds from which loan made or origin of debt

d. Date payment(s) due
e. Current amount due $0.00

Total: Loans and accounts receivable $0.00

D. Value of interest in any business

1.1 a. Business name and address
Elizabeth Stylesetters

b. Type of business *(corporate, partnership, sole proprietorship or other)*
Sole Proprietor
c. Your capital contribution 7,900.00
d. Your percentage of interest 0
e. Date of acquistion c. 1984
f. Original price or value 0.00
g. Source of funds to acquire Savings
h. Method of valuation Income Received
i. Other relevant information
Soliciting new clients.

j. Current net worth of business $1,085.00

Total: Value of business interest $1,085.00

E. Cash surrender value of life insurance

1.1 a. Insurer's name and address
None

b. Name of insured
c. Policy number
d. Face amount of policy 0.00
e. Policy owner
f. Date of acquisition
g. Source of funds to acquire
h. Current cash surrender value $0.00

Total: Value of life insurance $0.00

F. Vehicles *(automobile, boat, plane, truck, camper, etc.)*

1.1 a. Description
Scion 2005

b. Title owner	Elizabeth Murray
c. Date of acquisition	2005
d. Original price	0.00
e. Source of funds to acquire	insurance proceeds from totalled car, WEM ($7k)
f. Amount of current lien unpaid	0.00
g. Current fair market value	$12,000.00

1.2 a. Description
1999 Ford Taurus
(fair market value unknown)

b. Title owner	Daniel Kelly
c. Date of acquisition	2006
d. Original price	0.00
e. Source of funds to acquire	
f. Amount of current lien unpaid	0.00
g. Current fair market value	$0.00

Total: Value of vehicles $12,000.00

G. Real estate *(including real property, lease holds, life estates, etc. at market value - do not deduct any mortgage)*

1.1 a. Description
House, Katonah, 113 Lake Shore Drive, Katonah, NY 10536

b. Title owner	Both
c. Date of acquisition	11/86
d. Original price	240000
e. Source of funds to acquire	Separate and Marital
f. Amount of mortgage or lien unpaid	0.00
g. Estimated current market value	$645,000.00

Total: Value of real estate $645,000.00

H. Vested interests in trusts *(pension, profit sharing, legacies, deferred compensation and others)*

1.1 a. Description of trust
Security Pacific Trusteed Retirement Income Plan

b. Location of assets	
c. Title owner	Daniel Kelly (present value unknown)
d. Date of acquisition	1984
e. Original investment	0.00
f. Source of funds	marital
g. Amount of unpaid liens	0.00
h. Current value	$0.00

1.2 a. Description of trust
Societe Generale Defined Benefit as of 12/31/04

b. Location of assets	Societe Generale	
c. Title owner	Daniel Kelly (present value unknown)	
d. Date of acquisition	1990	
e. Original investment	0.00	
f. Source of funds	marital	
g. Amount of unpaid liens	0.00	
h. Current value		$0.00

1.3 a. Description of trust
Societe Generale Deferred Compensation 12/31/04

b. Location of assets		
c. Title owner	Daniel Kelly (present value unknown)	
d. Date of acquisition		
e. Original investment	0.00	
f. Source of funds	marital	
g. Amount of unpaid liens	0.00	
h. Current value		$0.00

1.4 a. Description of trust
Societe Generale Non Qualified Plan as of 12/31/04

b. Location of assets		
c. Title owner	Daniel Kelly (present value unknown)	
d. Date of acquisition		
e. Original investment	0.00	
f. Source of funds		
g. Amount of unpaid liens	0.00	
h. Current value		$0.00

1.5 a. Description of trust

b. Location of assets		
c. Title owner		
d. Date of acquisition		
e. Original investment	0.00	
f. Source of funds		
g. Amount of unpaid liens	0.00	
h. Current value		$0.00

Total: Vested interest In trusts $0.00

I. Contingent interests *(stock options, interests subject to life estates, prospective inheritances, etc.)*

1.1 a. Description
Societe Generale as of 12/31/04

b. Location		
c. Date of vesting		
d. Title owner	Daniel Kelly (present value unknown)	
e. Date of acquisition		
f. Original price or value	0.00	
g. Source of funds to acquire		
h. Method of valuation		
i. Current value		$0.00

DIV2790

Total: Contingent Interest $0.00

J. Household furnishings

1.1 a. Description
see list attached

b. Location
c. Title owner
d. Original price 0.00
e. Source of funds to acquire
f. Amount of lien unpaid 0.00
g. Current value $0.00

Total: Household furnishings $0.00

K. Jewelry, art, antiques, precious objects, gold and precious metals (only if valued at more than $500)

1.1 a. Description
Jewelry - various of minimal value - any of value were inherited or gifted, most costume

b. Location
c. Title owner
d. Original price 0.00
e. Source of funds to acquire
f. Amount of lien unpaid 0.00
g. Current value $0.00

1.2 a. Description
Art - acquired prior to marriage (except for small prints of small value)

b. Location 737 Park Avenue
c. Title owner
d. Original price 0.00
e. Source of funds to acquire
f. Amount of lien unpaid 0.00
g. Current value $0.00

1.3 a. Description
Jewelry -- inherited or gifts, costume jewelry, minimal value.
Art -- acquired prior to marriage or with non-marital inherited money (except for small prints of small value)

b. Location New York City Apt. & Katonah House
c. Title owner
d. Original price 20,000.00
e. Source of funds to acquire pre-marital
f. Amount of lien unpaid 0.00
g. Current value $20,000.00

Total: Jewelry, art, etc. $20,000.00

L. Other *(e.g., tax shelter investments, collections, judgments, causes of action, patents, trademarks, copyrights, and any other asset not previously itemized)*

1.1 a. Description
Two tax shelters. since change in tax laws same are only applicable to active investments: 215 East Bay Realty Associates -- upon death of Wife's father, there will be $20,000 liability for each tax shelter.

b. Location
c. Title owner
d. Original price 0.00
e. Source of funds to acquire gift from wife's father
f. Amount of lien unpaid 0.00
g. Current value $0.00

1,2 a. Description

b. Location
c. Title owner
d. Original price 0.00
e. Source of funds to acquire
f. Amount of lien unpaid 0.00
g. Current value $0.00

Total: Other $0.00

TOTAL ASSETS $679,190.00

DIV2792

V. LIABILITIES

A. Accounts payable

1.1 a. Name and address of creditor
Citibank Master Charge

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 245.00
g. Amount of current debt $11,609.00

1.2 a. Name and address of creditor
Capital One Visa

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 215.00
g. Amount of current debt $7,358.00

1.3 a. Name and address of creditor
Fleet Visa/Bank of America

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 80.00
g. Amount of current debt $3,904.00

1.4 a. Name and address of creditor
Optima

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 100.00
g. Amount of current debt $14,547.00

1.5 a. Name and address of creditor
American Express

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 1,195.00
g. Amount of current debt $11,972.00

DIV2793

1.6 a. Name and address of creditor
Diner's Club

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 975.00
g. Amount of current debt $8,828.00

1.7 a. Name and address of creditor
Discover

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 180.00
g. Amount of current debt $8,839.00

1.8 a. Name and address of creditor
HFC Group
64461000173219

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 0.00
g. Amount of current debt $1,700.00

1.9 a. Name and address of creditor
Miscellaneous Physicians (medical bills)

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 0.00
g. Amount of current debt $280.00

1.10 a. Name and address of creditor

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 0.00
g. Amount of current debt $0.00

Total: Accounts payable $69,037.00

B. Notes Payable

1.1 a. Name and address of note holder

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 0.00
g. Amount of current debt $0.00

Total: Notes payable $0.00

C. Installment accounts payable *(security agreements, chattel mortgages)*

1.1 a. Name and address of note creditor

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 0.00
g. Amount of current debt $0.00

Total: Installment accounts payable $0.00

D. Brokers' margin accounts

1.1 a. Name and address of note broker

b. Amount of original debt 0.00
c. Date of incurring debt
d. Purpose
e. Monthly or other periodic payment 0.00
f. Amount of current debt $0.00

Total: Brokers' margin accounts $0.00

E. Mortgages payable on real estate

1.1 a. Name and address of mortgagee

b. Address of property mortgaged

c. Mortgagor(s)

d. Original debt 0
e. Date of incurring debt
f. Monthly or other periodic payment 0.00
g. Maturity date
h. Amount of current debt $0.00

Total: Mortgages payable $0.00

F. Taxes payable

1.1 a. Description of tax

b. Date due
c. Amount of tax $0.00

Total: Taxes payable $0.00

G. Loans on life insurance policies

1.1 a. Name and address of insurer

b. Amount of loan 0.00
c. Date incurred
d. Purpose
e. Name of borrower
f. Monthly or periodic payment 0.00
g. Amount of current debt $0.00

Total: Loans on life insurance $0.00

H. Other Liabilities

1.1 a. Description
Divorce Fee Loan

b. Name and address of creditor
Father

c. Debtor
d. Original amount of debt 0.00
e. Date incurred
f. Purpose
g. Monthly or periodic payment 0.00
h. Amount of current debt $20,000.00

1.2 a. Description
Mortgage Loan (Katonah)

b. Name and address of creditor
Estate of Minnie Holmes Murray, Deceased

c. Debtor	Wife
d. Original amount of debt	158,000.00
e. Date incurred	1986-1992
f. Purpose	Purchase/Renovation Katonah House
g. Monthly or periodic payment	0.00
h. Amount of current debt	$442,400.00

Total: Other liabilities $462,400.00

TOTAL LIABILITIES $531,437.00

NET WORTH

TOTAL ASSETS:	$679,190.00
TOTAL LIABILITIES:	($531,437 00)
NET WORTH	$147,753.00

VI. **ASSETS TRANSFERRED:** *(List all assets transferred in any manner during the preceding three years, or length of the marriage, whichever is shorter [transfers in the routine course of business which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed where such assets are otherwise identified in the statement of net worth.])*

Description of Property	To Whom Transferred and Relationship to Transferee	Date of Transfer	Value
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00

VII. **SUPPORT REQUIREMENTS:**

(a) Deponent is at present [ ] *paying* [ ] *receiving* $ 0.00 per [ ] *week* [ ] *month*, and
prior to separation [ ] *paid* [ ] *received* $ 0.00 per [ ] *week* [ ] *month* to cover
expenses for

These payments are being made [ ] *voluntarily* [ ] *pursuant to court order or judgment* [ ] *pursuant to separation agreement*, and there are arrears outstanding, (in the some of $ 0.00 to date).

(b) Deponent requests for support of each child $ 0.00 per [ ] *week* [X] *month*.
Total for children $ 0.00

(c) Deponent requests for support of self $ 2,500.00 per [ ] *week* [X] *month*.

(d) The day of the [ ] *week* [X] *month* on which payment should be made is Oct. 2006 or when H. moves

VIII. COUNSEL FEE REQUIREMENTS:

(a) Deponent requests for counsel fee and disbursements the sum of $ 0.00

(b) Deponent has paid counsel the sum of $ 0.00 and has agreed with counsel concerning fees as follows: See retainer attached

(c) There is a retainer agreement or written agreement relating to payment of legal fees. *(A copy of any such agreement must be annexed.)*

IX. ACCOUNTANT AND APPRAISAL FEE REQUIREMENTS:

(a) Deponent requests for accountants' fees and disbursements the sum of $0.00
(Include basis for fee, e.g., hourly rate, flat rate)

(b) Deponent requests for appraisal fees and disbursements the sum of $ 0.00
(Include basis for fee, e.g., hourly rate, flat rate)

(c) Deponent requires the services of an accountant for the following reasons:

(d) Deponent requires the services of an appraiser for the following reasons:

X. **Other data concerning the financial circumstance of the parties that should be brought to the attention of the court are:** House in Katonah funded with monies borrowed from the Estate of Minnie Holmes Murray (wife's mother) prinicpal must be refunded to Estate - the interest payments on the loan were made from Wife's separate property income and are to be refunded to Wife. Wife prepaid $10,000, the balance of daugther's 2006-2007 tuition, ending 6/07. House expenses are not included in the calculations - house to be rented out. House expenses including insurance and repairs run approx $2000 per month.

The foregoing statements and a rider consisting of page(s) annexed hereto and made part hereof, have been carefully perused by the undersigned who states that they are true and correct.

Sworn to before me on 5/21/07

Notary Public, State of New York
No. 01NO6137981
Qualified in Kings County
Commission Expires 12/05/2009

[ ] Petitioner [ ] Plaintiff [ ] Respondent [X] Defendant
Elizabeth E. Murray

Signature (Rule 130-1.1-a)
Valerie S. Wolfman

DIV2799

Affidavit of Service

State of New York
ss.:
County of New York

Chuck Noell, being duly sworn, deposes and says:

I am over 18 years of age.
I reside in Brooklyn, NY 11201.
I am not a party to this action.
On **May 21, 2007** I served true copies of he within

Amended Statement of Net Worth

within the State of New York, by sending same by fax and first class mail, pre-paid, from a U.S.P.S. depository in New York, NY 10022, to the following Plaintiff's Attorneys at their last known address:

Judith Coulston
41 E. 57th St.
New York, NY 10022
Copy by Fax # 212 75[illegible]

.....
Chuck Noell

Sworn to before me
this **21st** day of **May**,
2007.

.....
Valerie S. Wolfman
Notary Public, State of New York
License # 02 WO 4956657
Qualified in New York County
Expires: 12/9/11

DIV2800



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,

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)

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

his death. 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?

A. 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.

Q. So is your medical opinion as Mr. Murray's treating neurologist that as of May 2007, Mr. Murray did not have the mental capacity to enter into the contract that is marked as Defendant's Exhibit 5, or any contract for that matter?

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,

105215



MUSC
MEDICAL UNIVERSITY OF SOUTH CAROLINA

Department of Neurosciences
Division of
Adult Neurology
96 Jonathan Lucas Street
Suite 309
PO Box 250606
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Ph (843) 792-3221
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Hilton C. Smith, Jr.
East Bay Co., LTD
215 East Bay Street, Suite 504
P.O. Box 1298
Charleston, SC 29402

July 2, 2007

RE: Mr. William E. Murray

Dear Mr. Smith and Mr. Ma:

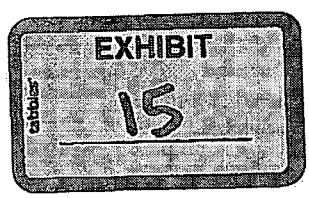
At the request of Hilton C. Smith, Jr. and Helen Flynn, I am writing this letter. I last examined Mr. Murray on June 13, 2007 during a recent hospitalization. At that time, I also had the opportunity to review his medical records.

It is my opinion, within a degree of medical certainty, that Mr. Murray's neurological condition renders him incapable of managing his affairs.

I hope this letter provides you with the information you need.

Sincerely,

David L. Bachman, MD
Professor of Neurosciences
Medical University of South Carolina





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MUSC
MEDICAL UNIVERSITY OF SOUTH CAROLINA

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June 29, 2007

Re: William E. Murray
DOB 09/01/1925
MUH #1025215

Mr. Hilton C. Smith, Jr.
Mr. Honjiang Ma
215 East Bay Street
Suite 504
Charleston, South Carolina 29401

Dear Mr. Smith and Mr. Ma,

At the request of Mr. Hilton and Ms Helen Flynn, I have recently examined Mr. William E. Murray and reviewed his medical records.

In light of his present condition, it is my opinion that Mr. Murray is not physically capable of managing his affairs.

Sincerely yours,

Kenneth J. Bergmann, MD, FAAN
Associate Professor, Neurosciences

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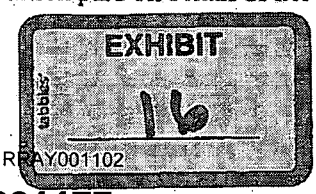
WILLIAM E. MURRAY
ONE VENDUE RANGE
CHARLESTON, SC 29401

June 21, 2007

Dear Elizabeth

In summary of our lengthy discussions of June 19th and 20th, 2007, I have asked you to notate the following understandings we have reached to resolve financial issues that remain. It is my hope that we may go forward without rancor and hurt:

1.) My daughter, Elizabeth, may remove articles from a locked closet in Room 52 at The Inn at Quogue, and/or items that were stored there previously if they have been moved, and various other personal and miscellaneous artwork, including two pictures of significant value (Holmes and Kaufman), accessories, and furniture throughout the Inn property that she used to enhance the appearance of the Inn when she worked there 1999-2002. She will provide an accounting to me of these items after they are removed and will note any missing items that she had left there that are missing. I have asked Theresa Fontana, via a phone call in Elizabeth's presence, to cooperate along with any other staff to assist her in any way possible.
2.) Elizabeth is to receive the principal sum of $117K plus accrued credit card and cash line of credit interest from proceeds upon the sale of the Inn at Quogue and related entities. This principle amount represents design items purchased on behalf of the Inn which were charged on her charge cards and cash advance accounts, and use of her cash, less various repayments made, as indicated in her accounting. This has been evidenced by receipts rendered and examined by me, which has been done, and James Ma, who had reviewed the same in February of 2003 and is summarized in the Excel Accounting prepared by Pamela Murray, which is attached to this document. Such payments shall be for items purchased by her for or by used by the Inn, cash advances used to support payroll and emergency expenses related to her work there, her past due payroll for design work from the summer of 1999 at a rate of $5,000 per month, as well as one $5,000 repayment which was erroneously credited twice to her account on behalf of the restaurant which was also due in that amount for her commission for finding of a tenant for the Restaurant at the Inn who would pay for design work there at his own expense. I have made various payments from my personal account at a rate of $2,000 per month, which payments began in January, 2006 after her completion of design school and certification exams. I also noted these payments and liability in a recent notarized statement in June of this year. These monies shall be paid out of the monies due to me at the closing of The Inn at Quogue and its related companies' sale which should be closed in the near future. I will accept the accounting as rendered by Pamela Murray, subject to any gross misrepresentations, and subject to reasonable questions, and will then receive all receipts, as outlined in the books originally tendered to me in March, 2003 for payment, including interest due, for the same.
3.) Elizabeth, thereby, by virtue of payment of amounts due and interest paid thereon, and in recognition of those monies paid by me on behalf of her support and tuition and supplies for NYSID and for the tuition paid on behalf of her daughter,



EEM003007

MURRAY001102

Elspeth, waives any and all claims to the proceeds of The Inn at Quogue on account of her 10% ownership interest thereon upon full payment of #2 and receipt of items or their value in #1 above.

4.) I also recognize that I had committed to spend between $12,500 and $15,000 on furnishing the two bedroom house at 1565 Brianna Lane in Charleston, so that it could be used for a guest house when she was not in residence, and that Elizabeth thereby expended personal monies and brought personal items to that residence in reliance upon my offer to gift that property and the furnishings therein, subject to her agreement for permitted use of that residence as a guest house for East Bay Company when not being used by her, subject to East Bay covering all expenses, and carrying costs and maintenance costs thereon including water, taxes, utilities and customary community fees. I hereby agree to either gift to her this house, free and clear as I originally stated, or reimburse her for the value of same, her expenses and fees for her work over and above what was repaid from an operating account held by Pamela for this purpose, which I approved. I also agree to reimburse her for a $500 payment that was cashed by my daughter Brianna for work on the home which she failed to perform. I have now given houses to all my children in Charleston so that they visit me and with one another with greater ease. If Elizabeth sells this house after my death, which is permitted by me in this transfer of property, I direct her to use the proceeds to support her apartment in New York City as her divorce settlement leaves her at great exposure. I would suggest that she attempt to rent it out so that she has an income stream to assist in her support. I have expressed this wish to her.

5.) Elizabeth has also expended various monies on behalf of work, purchases, and repairs done at my residence at 50 East 77th Street, New York. Although the bulk of these purchases were paid for, I hereby direct her to finish up that work, with special attention made to those issues that will make both me and my companion, Helen Flynn, more comfortable and safe in our advancing ages as well as those additional items I have requested and various repairs and purchases made after those last payments were received. Upon the rendering of an accounting to be reviewed by me and James Ma and Helen Flynn. I direct that those monies be paid to her within 15 days of her submission of same.

6.) I understand that various papers were subpoenaed for Elizabeth's divorce and those needed for an appropriate settlement were withheld from her in my residence in New York City, to my great regret. I have directed Mercedes the maid by phone to release those papers to her but significant injury was caused by their withholding, which resulted in inaccurate numbers used for the basis of ongoing maintenance, past maintenance, and legal fees, as well as expenses and tax refunds due her that were awarded to her husband in lieu of evidence to the contrary in her divorce settlement. These inaccuracies resulted in costs to her in the following amounts which are damages to her financially and represent both monies inherited from her mother and my wedding gift to her, the proceeds of which were invested into her Katonah house, and monies due to her from the Inn, see #2. which were not properly represented as repayments vs. income or gifts. I apologize to Elizabeth on behalf of her sister Brianna and others who work for me who were misled as to my intentions and I wish to make Elizabeth whole regarding these injustices. Therefore, I agree to pay Elizabeth:

Past maintenance of $3,000/month, withheld due to misrepresentation of repayments on the Quogue Debt	$ 24,000
Doorman Christmas Tips	1,000

Legal Fees awarded by Judge Beeler from marital funds	20,000
Allocation of $70K in tax refunds,	70,000
$12K in educational fees for Elspeth	12,000
Wolfman Legal fees for order, subpoena and bench warrant for Brianna	3,000
Total Due to Elizabeth due to misrepresentations of family members	$125.000

This sum above shall be due to Elizabeth by the end of fiscal 2007 or upon my death with interest at 10% from 12/31/2007 onwards.

I hereby commit to reimburse her these expenses because I was unknowingly made part of this theft of property and misrepresentations by virtue of other's use of my apartment, records, and misrepresentations made on my behalf using my stationary and my signature powers. Elizabeth may select an option to have the lump sum paid as outlined above or repaid at a rate of $5K per month or payment of the same may be substituted by the transfer of mutually acceptable property so that she will be made whole in her divorce proceedings, which would have been possible had these regrettable actions not been taken by Brianna and Hilton.

Elizabeth has confirmed to me that the final settlement of her divorce includes her possession of both tax shelters that I gave her for a wedding present and I direct her to retain these properties so that she may profit from their increase in value.

The above constitutes a full and total accounting of all financial representations and accountings and acceptable satisfaction thereof. I have also assured her that she and her sister Pamela have been restored, or will be shortly, to their full status under my will as equal recipients with their sisters in all ways and have directed my attorney, Edward Bennett, to send them a letter noting the same, which I have written and directed for distribution by him to them stating that "I wish all of my daughters to be treated equally under my will in all ways". I am satisfied as to Elizabeth's intent and interest in protecting me and have affirmed to my best understanding her love and devotion and loyalty to me.

Love,

Dad

Agreed to in full pages 1-3 as initialed _____
Elizabeth E. Murray

William Edwards Murray _____
Date of Signature: July 21, 2007

Witnessed by _____ 1561 Brianna Ln Charleston, SC 29412
Name and Address printed and date

_____ 1569 Brianna 7/21/07
Name and Address printed and date

EEM003009

Larry C. Bump
1561 Brianna Lane
Charleston, SC 29412

Mr. Murray came for dinner to the house I share with Pam Murray in late July, 2007. It was a Saturday afternoon. He came in the late in the day with his nurse Nyeesha and we took him for a walk. He came with the intention of signing a document regarding Pam's sister Liz. He wanted to do this because he said that they wouldn't let him do what he wanted unless it was what they wanted.

After we took him out, he came back and wanted to finish this document. Pam told me he had tried to sign it with Svetlana as a witness in the park when Pam took him for a walk several weeks earlier but that he couldn't write because his hand was so weak.

Mr. Murray had Pam read him the letter to Liz although he seemed to be impatient with hearing it. He said "I know what it says. I wrote it".

My neighbor came by to witness his signature because the bank was closed and the only notary that I knew was away at Edisto Island at the time.

Mr. Murray signed the document in my presence and in Jeff and Pam's presence. I know it involved the house next door and some stuff about Liz's divorce, which had just finished up. It also had something to do with Brianna not doing work next door which she was supposed to do. I knew about the latter because I was originally supposed to do the work.

Mr. Murray signed the letter at about 6:00, Jeff left, and we had dinner here. Mr. Murray was fairly quiet but was not under any pressure to do this that I could see. He seemed happy after that and mentioned that now his children all had houses near him. That seemed to make him very happy.

Larry C. Bump

MY COMMISSION EXPIRES JULY 1ST, 2008

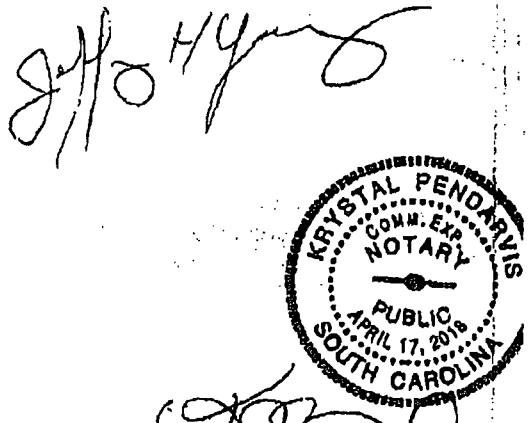
EEM003011

On Saturday, July 21, 2007, my neighbors, Pamela Murray and Larry Bump, were taking their father for a walk in his wheelchair past my house and I went out to say hello to them and her father (I was working in my garage at that time so I saw them passing). They asked me to come over later to witness a signature on a document that Mr. Murray wanted to sign. Mr. Murray told me to come have dinner with them but I was already having dinner with my mother. It was late Saturday afternoon and the bank was closed.

It was a two or three page document and from what I heard Pam reading it seemed to have something to do with repayment of some money and some stuff in an inn with an odd name, something about his own home in New York, some money relating to her divorce expenses, and confirmation of his gift of the house next door, which Mr. Murray told me "he was giving her". There was a figure mentioned that was over $100,000 but the house was not valued, just given. I knew that he had given his other daughters houses in this area so it seemed in line and reasonable and Mr. Murray was anxious to have it completed. I was aware that she had been furnishing it as furniture had arrived in the past showing her as the purchaser. Sometimes I had put deliveries into my garage when it was raining.

Pam read the document to him before he signed it. He seemed to know what it contained and to understand it and what he was signing and said he already knew what it said and seemed impatient at her reading it, although Pam insisted upon doing so. He seemed anxious to do this and said her wanted "all of his children to have houses near one another". When he first tried to sign it he could not connect the pen with the paper so I went and got a heavy duty marker for his to use because it had a larger circumference for him to grip. Although his writing was still quite shaky, this seemed to help. He completed signing it in their living room and then said he wanted to eat. He seemed clear so far as his understanding of what he was signing although he was not very conversational.

His attendant Sherry (?) was there to assist him that day, a tall very slim African American woman who was quite pretty and fashionable. No one else was there but me, Sherry, Pam, and Larry. I saw Mr. Murray's van leave later in the evening and that was the last time I ever saw him.



06/3/08

EEM003010

THE STATE OF SOUTH CAROLINA

In the Court of Common Pleas
for the Ninth Judicial Circuit

FILED
2018 JUN 19 AM 10:56
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,

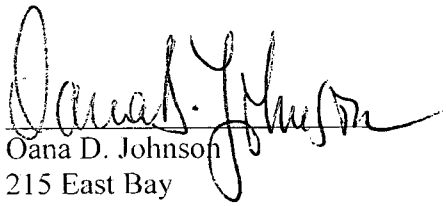
vs.

The Estate of William H. Murray

Respondents.

APPELLANTS' CERTIFICATE OF COMPLIANCE

I, Oana D Johnson, Counsel for Appellants, certify that the Record on Appeal and Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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THE STATE OF SOUTH CAROLINA

In the Court of Common Pleas
for the Ninth Judicial Circuit

FILED
2018 JUN 19 AM 10:56
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

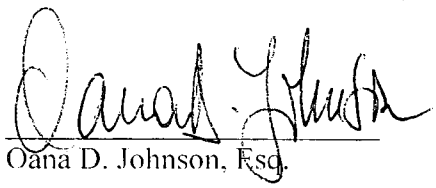
Respondents.

PROOF OF SERVICE

I certify that I have served copies of the forgoing Supplemental Record on Appeal on Respondent's counsel of record by depositing true and correct copies in the hand delivery, postage prepaid, on June 19, 2018 addressed to the following:

Molly H. Craig, Esquire
Jean Marie Jennings, Esquire
HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402

ATTORNEYS FOR RESPONDENT



Oana D. Johnson, Esq.

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

APPEAL FROM CHARLESTON COUNTY PROBATE COURT
The Hon. Tamara C. Curry, Probate Court
Circuit Appeal No. 2017-CP-10-5198
Probate No. 2007-ES-10-1116

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

Appellants,

vs.

The Estate of William E. Murray

Respondent.

Designation of Matter to be Included in the Record on Appeal to the Circuit Court on behalf of Respondent

---

Pursuant to S.C. Code Ann. § 62-1-308(d), the Respondent Estate of William E. Murray designates the following items for inclusion in the Record on Appeal to the Circuit Court;

1. Probate Court Order granting Motion for Summary Judgment, dated 9/28/17;
2. Probate Court Order amending Order granting Motion for Summary Judgment, dated 11/13/17;
3. Estate's Motion for Summary Judgment, dated 10/31/16, with all related memoranda submitted to the Court in support and in opposition to the motion along with all affidavits/exhibits attached or otherwise submitted therewith;
4. 7/25/17 Hearing Transcript; and
5. Any other matters that may be cited in the Respondent's brief.

FILED
2018 JAN 19 PM 2:19
JULIE J. ARMSTRONG
CLERK OF COURT

The undersigned certifies that this Designation contains no material which is irrelevant to the appeal.

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Deborah H. Sheffield, *Of Counsel* (SC #2757)
Jean Marie Jennings (SC #100651)
172 Meeting Street ~ P.O. Box 1508
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Phone: (843) 577-4435/Facsimile: (843) 722-1630

Attorneys for the Respondent
Estate of William E. Murray

January 19, 2018

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

APPEAL FROM CHARLESTON COUNTY PROBATE COURT
The Hon. Tamara C. Curry, Probate Court
Circuit Appeal No. 2017-CP-10-5198
Probate No. 2007-ES-10-1116

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

Appellants,

vs.

The Estate of William E. Murray

Respondent.

Certificate of Service

Pursuant to S.C. Code Ann. § 62-1-308(d), the Designation of Matter to be Included in the Record on Appeal to the Circuit Court on behalf of Respondent was served on Counsel for all the parties by depositing a copy in the U.S. Mail, with sufficient first class postage, addressed to the following counsel at the addresses listed below:

FILED
2018 JAN 19 PM 2:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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Estate of William E. Murray

January 19, 2018

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

Appeal from Charleston County Probate Court
The Hon. Tamara C. Curry, Probate Judge
Case No. 201-CP-10-05198
2017

FILED
2018 MAR 20 PM 3:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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

Appellants,

v.

The Estate of William E. Murray,

Respondent.

INITIAL BRIEF OF RESPONDENT THE ESTATE OF WILLIAM E. MURRAY

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COUNSEL FOR RESPONDENT

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ARGUMENT 6

Claim by the Estate of Minnie Holmes Murray

I. The Probate Court properly granted summary judgment on the claim made by Elizabeth Murray on behalf of the Estate of Minnie Holmes Murray arising from a 1980 Settlement Agreement reached during the probate of her will. 6

The 1980 Settlement Agreement of Father's Debt to Mother's Estate 6

The 1992 Liquidation of Mother's Estate and Transfer of Debt to the Daughters 7

A. The Estate of Minnie Holmes Murray lacks standing to pursue any claim on the obligations because the beneficiaries of her Estate reached an agreement in 1992 that transferred the debt to themselves as joint community property. 9

B. Any claim for any balance still owed on the 1980 debt is barred by the statute of limitations based on a default in 1986. 10

C. Any claim still owed also is barred under the doctrine of laches because Appellant waited more than 22 years to pursue any legal action on the debt. 14

Claim by Elizabeth Murray as Elizabeth's Stylesetters

II. The Probate Court properly granted summary judgment on the claim made by Elizabeth Murray as owner of Elizabeth's Stylesetters for interior design services she performed for an Inn formerly owned by her father. 15

A. Appellant is judicially estopped from pursuing her claim based on the July 21, 2007 letter because she had asserted that her Father lacked mental capacity in several legal proceedings over the last years of his life. 17

B. The claim of Elizabeth's Stylesetters can be affirmed on the additional sustaining ground that any claim for monies owed since 2002 are barred by the three-year statute of limitations which expired before the Father/Mr. Murray died in 2007. 19

CONCLUSION 20

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STATEMENT OF THE ISSUES PRESENTED ON APPEAL

This probate appeal involves two claims by two parties for two separate debts allegedly owed by William E. Murray at the time of his death. In an effort to provide clarity, the Respondent would restate the issues on appeal separately as to each.

Claim by the Estate of Minnie Holmes Murray

I. As to the claim made by Elizabeth Murray as Executrix of the Estate of Minnie Holmes Murray for $6,260,845.70 arising 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:

A. Did the Probate Court correctly conclude that the Estate of Minnie Holmes Murray lacks standing to pursue any claim on the obligations because the beneficiaries of the Estate of Minnie Murray -- her three daughters -- reached an agreement in 1992 that transferred the debt to themselves?

B. Did the Probate Court correctly conclude that any claim for any balance still owed on the 1980 debt is barred by the statute of limitations because the February 9, 2006 letter, even if authentic, did not constitute an unqualified and unequivocal acknowledgement or a clear and explicit promise to repay the debt sufficient to revive the debt?

C. Did the Probate Court correctly conclude that any claim is also barred by the doctrine of laches because Appellant/Elizabeth Murray waited more than 22 years to pursue any legal action on the debt?

Claim by Elizabeth Murray as Elizabeth Stylesetters

II. As to the claim made by Elizabeth Murray as owner of Elizabeth's Stylesetters, for $538,034 for interior design services she performed for an Inn formerly owned by her Father:

A. Did the Probate Court correctly conclude that Appellant is judicially estopped from pursuing her claim based on the July 21, 2007 letter because she had asserted that her Father lacked mental capacity in several legal proceedings over the last years of his life?

B. Can the grant of summary judgment on the claim of Elizabeth's Stylesetters be affirmed on the additional sustaining ground that any claim for monies owed since 2002 are barred by the three-year statute of limitations which expired even before the Father/Mr. Murray died in 2007?

STATEMENT OF THE CASE

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, 1967, and Father/Mr. Murray died more than 40 years later on August 7, 2007, as a resident of this State. Hilton C. Smith, Jr.[1], was appointed as Personal Representative of Mr. Murray's estate along with James Ma.[2]

Appellant/Elizabeth Murray filed two creditor's claims against her Father's estate on June 3, 2008: (1) a claim in the amount $6,260,845.70 as Executrix of her Mother's Estate[3]; and (2) a claim in the amount of $538,034.00 on behalf of her interior design company, Elizabeth's Stylesetters. [ROA ___, ___; Claims.]

Notices of Disallowance were filed on August 21, 2008, asserting that the Stylesetters claim was not a valid debt of the Decedent, and the claim asserted on behalf of the Mother's Estate was barred by the statute of limitations. [ROA ___, ___; Notice(s).] Elizabeth Murray filed Petition(s) for Allowance of the claims on September 22, 2008. [ROA ___, ___; Notice(s).]

After years of extensive litigation and discovery on a number of issues, the Estate filed a Motion for Summary Judgment on these claims on October 31, 2016. [ROA ___; Motion.] The

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[1] Husband of daughter, Catherine.

[2] Appellant challenged the appointment of the co-Personal Representatives Mr. Murray designated in his Last Will & Testament; however, she withdrew her petition when confronted with the "Beneficial Lapse on Contest" provision of the Will.

[3] Elizabeth Murray was appointed as a successor Executrix of her Mother's Estate in 1975. [ROA ___; Claimant's MIO to Summary Judgment Ex. C.]

Probate Court granted the motion by Order, dated September 28, 2017.[4]. [ROA ___; Order.] As to the 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.

STATEMENT OF FACTS

Family Background

Mr. Murray was a proud native of Charleston, South Carolina. He earned his law degree at the University of South Carolina, and an LLM in Taxation from Harvard. Over his career, he practiced in New York, Georgia, and South Carolina for over fifty years. In addition to being a successful attorney, Mr. Murray was also an entrepreneur and philanthropist. He was the founder and Chairman of the Board of East Bay Company which was instrumental in the revitalization of many historic areas of Charleston. Mr. Murray was involved in numerous philanthropic endeavors, including support of the Medical University of South Carolina, East West Institute,

[4]The order was amended on November 21, 2017, to correct a scrivener's error. [ROA ___; Order.] The Appellant did not amend her Notice of Appeal, filed October 11, 2017, or file a notice of appeal from the amended order.

Spoleto Festival USA, Allen University of South Carolina, the Cancer Research Institute and Sloan Kettering Cancer Hospital.

Mr. Murray was first married to Minnie Holmes Murray and they had three daughters - Elizabeth Murray (1953), Pamela Holmes Murray (1951, deceased), and Catherine Murray-Smith (1954). Minnie Holmes Murray, died in 1967.[5]

During the decade preceding his death, Mr. Murray was diagnosed with Parkinson's disease and suffered a gradual decline in physical and mental abilities. During that time, he 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. Also, regrettably, he had to endure through a substantial amount of family discord involving the Appellant.

During the two years preceding Mr. Murray's death, there was substantial family discord regarding the Samuel Freeman Charitable Trust (SFCT) when Mr. Murray, who was Chairman of the SFCT, removed his daughters Pamela and Elizabeth Murray as trustees. Highly contentious litigation ensued related to the administration of the SFCT. 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.

Despite Mr. Murray's generosity towards his daughter Elizabeth Murray, she began posturing during his lifetime to challenge his estate planning. For example, in July of 2004, Mr. Murray indicated to his physician that he had been having difficulty with his daughters (Pamela and Elizabeth) and that he was concerned that they would make a "grab for inheritance." [ROA

[5] Mr. Murray also had a fourth daughter, Brianna Murray, who was born in 1981.

___, ___; Estate Summary Judgment Ex. 5 ¶ 8; Ex. 6.] During 2004, Appellant Elizabeth Murray repeatedly tried to convince her father not to trust Hilton Smith, who was Mr. Murray's trusted friend, business partner and son-in-law. [ROA ___; Estate Summary Judgment Ex. 7 ¶¶ 8-12.] She consulted with lawyers about how to "remove" people who were close to her Father and ways to change her Father's estate plan. [Id. at ¶14, ¶¶22-29.]

Appellant's meddling and scheming included recording her Father and his companion, Helen Flynn, and enlisting reports from her Father's health care attendants. [ROA ___, ___; Estate Summary Judgment Ex. 8 & 9.] She even went so far as to break a lock on Mr. Murray's desk drawer to copy his Last Will and Testament. [ROA ___, ___; Estate Summary Judgment Ex. 10 ¶ 10; see also Ex. 7 at ¶20.]

During the last months of his life, Appellant's machinations escalated. Ms. Murray made allegations that Ms. Helen Flynn and son-in-law Hilton Smith (agents under this Health Care Power of Attorney) were giving Mr. Murray morphine with the intent of causing an overdose. She even was involved in calling the police to have her Father transported to the emergency room; however, the ER physicians found Mr. Murray's condition to be consistent with advanced Parkinson's disease and found Mr. Murray well cared for with no signs of abuse. [ROA ___; Estate Summary Judgment Ex. 11, 12.] Appellant enlisted the aid of a former paramour of Mr. Murray to make allegations that Mr. Murray was "poisoned." [ROA ___; Estate Summary Judgment Ex. 13.]

Appellant's maneuvering did not stop when her Father died. She and her sister, Pamela Murray, called the police to inspect his apartment and treat it as a crime scene. [ROA ___; Estate Summary Judgment Ex. 12 pp. 3-6.] They demanded an out-of-state autopsy and toxicology study, even after the local coroner had released the body finding no evidence of foul play and without

requesting an autopsy. The "independent" autopsy they demanded "revealed no evidence of injury or neglect, and toxicologic studies were not contributory." The manner of death was deemed natural. [ROA ___; Estate Summary Judgment Ex. 14.]

ARGUMENT

Claim by the Estate of Minnie Holmes Murray

I. THE PROBATE COURT PROPERLY GRANTED SUMMARY JUDGMENT ON THE CLAIM MADE BY ELIZABETH MURRAY AS EXECUTRIX OF THE ESTATE OF MINNIE HOLMES MURRAY ARISING FROM A 1980 SETTLEMENT AGREEMENT REACHED DURING THE PROBATE OF HER WILL.

The Probate Court granted summary judgment to the Estate of William E. Murray on three legal grounds, each and all of which support affirmance of the order on appeal. First, the Estate of Minnie Holmes Murray lacks standing to pursue any claim on the 1980 Settlement Agreement because the beneficiaries of the Estate of Minnie Murray reached a further agreement in 1992 that transferred the debt to themselves as joint community property. The other two grounds are grounded in the decades-long delay in pursuing this debt since the default in 1986. As a matter of law, the claim is barred by the statute of limitations, and in addition, the claim is barred as a matter of equity under the doctrine of laches because Appellant/Elizabeth Murray waited so long to pursue any legal action on the debt to the extreme prejudice of the Estate.

The 1980 Settlement Agreement of Father's Debt to Mother's Estate

The following facts 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)[6] pursuant to which he agreed to (1) pay

[6] See ROA ___; Estate Summary Judgment Ex. 35 - Mrs. Murray's Will. According to the terms of her Will, a trust was to be established for the life of the three daughters.

$240,000 with an 8% interest rate and a default interest of 12%, and (2) transfer a life insurance policy to Mrs. Murray's Estate in the amount of $385,000. [ROA ___; Estate Summary Judgment Ex. 15.]

The 1980 Settlement Agreement recites that:

> COME NOW Pamela Holmes Murray Smith, Elizabeth Edwards Murray and Catherine Peronneau Murray-Smith, each both individually and as heir to her mother, Minnie Holmes Murray, (all hereinafter collectively referred to as "Daughter") and Elizabeth Edwards Murray as Administratrix 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.
>
> ****
>
> WHEREAS, Daughters, The Estate, and Father wish to conclude the administration of the Estate of the late Minnie Holmes Murray ... and thereby to establish the trust under the Will of Mother...." [ROA ___; *Id.* p.1.]

No trust was ever established. [ROA ___; Estate Summary Judgment Ex. 36.]

Mr. Murray made six yearly payments pursuant to the 1980 Settlement Agreement – the last being on February 24, 1986. At some point, Mr. Murray also stopped paying the premiums on the life insurance policy. Although the Settlement Agreement contained an arbitration clause[7], no effort was ever made to invoke it.

The 1992 Liquidation of Mother's Estate and Transfer of Debt to the Daughters

In 1992, 25 years after Mrs. Murray died, the three Daughters reached an agreement for a final accounting and liquidation of the Mother's Estate. [ROA ___; Estate Summary Judgment Ex. 37 – In the Matter of the Settlement of the Final Account of Proceeding of Elizabeth Edwards Murray, as Executrix and Administratrix of the Estate of Minnie Holmes Murray, "Release, Refunding, Receipt and Indemnity Agreement."] This agreement expressly released and forever

[7] Ex. 15 §6 p. 5

discharged the Executrix, Elizabeth Murray, in her fiduciary capacities and individually, "for any matter or thing growing out of or in any way connected thereto or to the Trust."

Appellant testified this was a partial liquidation of the estate because there were only "parts of the estate that were liquid." [ROA ___; Estate Summary Judgment Ex. 38.] Appellant further testified that following the "partial" liquidation, according to Ms. Murray, the Estate still contained an asset worth approximately $125,000 which was an interest-bearing note unrelated to the claim in issue. [ROA ___; Estate Summary Judgment Ex. 39.]

However, as to the instant claim, the three Daughters executed an agreement on December 12, 1992, to transfer the debt owed by Mr. Murray to the three beneficiaries, jointly:

> 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 Hohnes 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.

[ROA ___; Ex. 37.] In a sworn affidavit submitted in this probate litigation[8], Appellant affirmatively stated that the debt under the 19080 Settlement Agreement was the property of the three Daughters: "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." [ROA ___; Claimant's MIO –

[8] Opposing the appointment of Hilton Smith as co-Personal Representative.

Affidavit of Elizabeth Murray, 4/3/13 ¶30.] Pamela Murray also submitted a sworn affidavit testifying to the same. [ROA ___; Claimant's MIO – Affidavit of Pamela Murray, 4/3/13 ¶29.]

A. 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). Similarly, "'Generally, a party must be a real party in interest to the litigation to have standing.' Sloan v. 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).

Most recently, the Supreme Court has stated:

> The question of who may bring a civil action arises under Rule 17(a) of the South Carolina Rules of Civil Procedure, which provides, "Every action shall be prosecuted in the name of the real party in interest." As the court of appeals has recognized, the real party in interest is "'the party who, by the substantive law, has the right sought to be enforced.' It is ownership of the right sought to be enforced which qualifies one as a real party in interest." Bank of Am., N.A. v. Draper, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Ct. App. 2013).

Fisher on behalf of Estate of Shaw-Baker v. Huckabee, ___ S.C. ___, ___S.E.2d ___, Op. No. 2016-000320, 2018 WL 1076808, at *2 (S.C. Feb. 28, 2018).

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 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."[9] Other supportive evidence is the fact during the same time frame, the Daughters 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.

B. Any claim for any balance still owed on the 1980 debt is barred by the statute of limitations based on a default in 1986.

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). The current statute of limitations for breach of contract is three years. S.C. Code Ann. § 15-3-530(1). However, prior to 1988 -- at the time that Mr. Murray defaulted on the note in 1986 – the applicable period was six years. In any event, 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 she regularly sent default letters to her Father and that

[9] 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." [ROA ___, ___, ___; Estate Summary Judgment Ex. 19.]

the debt was revived when Mr. Murray acknowledged and reaffirmed the debt by signing a letter written and presented to him by Elizabeth Murray in February 2006.

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.

The Appellant's theory of revival of the debt defaulted for 22 years before presentment as a claim in her Father's probate proceedings is founded upon a letter dated February 9, 2006 – generally referred to as the "Dear Daddy" letter. [ROA ___; Estate Summary Judgment Ex. 19.]

The letter, prepared by Appellant, 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.

[ROA ___, ____; Id.]

Despite Appellant's repeatedly stated concerns in the Dear Daddy letter about needing her Father to acknowledge the debt to protect her from liability to her sisters for neglect of her fiduciary duties as Executrix of Mother's Estate, it is incredulous that Appellant did not obtain possession of the letter for safekeeping in her fiduciary capacity; nor did she present the document with her claim. 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. [ROA ___, ___; Estate's Summary Judgment Ex. 20, 21.]

The Estate has presented evidence from several sources that the signature is not Mr. Murray's. Mr. Murray's long-time assistant (Sanjin Sujak), who worked for Mr. Murray during his last years testifies that the signature on the Dear Daddy letter did not match the signature known to be Mr. Murray's during his weakened condition in that time frame. [ROA ___, ___; Estate

Summary Judgment Ex. 22, 27.] Mr. Sujak further testifies that he spoke with Mr. Murray the next day about the letter and he declared he had not signed it.[10] [ROA ___; Estate Summary Judgment Ex. 24.] Additionally, Ms. Mahri Givers, who served as Mr. Murray's legal secretary and executive assistant from 1987-2000, testified in a sworn affidavit that the signature on the 2006 "Dear Daddy" letter is not Mr. Murray's signature. [ROA ___; Estate Summary Judgment Ex. 11.] The Estate also presented expert opinion evidence from a Certified Forensic Document Examiner, who opined that Mr. Murray's signature on the February 10, 2006 "Dear Daddy" letter was not a genuine signature by Mr. Murray. [ROA ___; Estate Summary Judgment Ex. 29.]

The Estate has challenged the authenticity of the letter based on all this evidence in its Motion for Summary Judgment, but the Probate Court did not grant summary judgment on this point. Nonetheless, the Estate affirmatively does not abandon or waive those points and maintains that the evidence supports sustaining the grant of summary judgment on this additional ground. However, assuming only for the purposes of argument in this appeal that the Dear Daddy was executed by Mr. Murray, taking the letter itself in 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." [ROA ___; Order, p. 10.]

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

[10] In addition, there is evidence that Mr. Murray had stated on a number of occasions over the years that he did not intend to ever re-acknowledge this debt. [ROA ___, ___; Estate Summary Judgment Ex. 22, 23, 24, 25.]

is not revived.'" (Citing Horlbeck v. Hunt, 26 S.C.L. 197, 201 (S.C.Ct.App.1841)). Similarly, in this case, if Mr. Murray's signature on the rambling Dear Daddy letter could be considered an acknowledgement that he owed the Mother's Estate (or his three Daughters) any balance on the 1980 Settlement Agreement, it was not sufficient to revive the barred claim based on the equivocal language in the Dear Daddy letter. For example, the letter anticipates 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." And similarly, the letter contains ann equivocation that the debt was due "both legally and as our father."

C. Any claim still owed also is barred under the doctrine of laches because Appellant/Elizabeth Murray waited more than 22 years to pursue any legal action on the debt.

In addition to correctly finding that the Appellant's claim is barred as untimely under the applicable statute of limitations, the Probate Court also correctly found that her delay in bringing legal action to collect on the default of the 1980 Settlement Agreement justifies barring her claim under the equitable doctrine of 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). To establish the affirmative defense of laches, a party must establish (1) delay, (2) unreasonable delay, and (3) prejudice. Hallums, 371 S.E.2d at 527.

This is certainly a case of unreasonable delay. Appellant waited twenty-two years to pursue a claim for Mr. Murray's alleged default of the 1980 Settlement Agreement. As a result of her unreasonable delay, 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. Essentially, Appellant sat on her rights and "laid in wait" until Mr. Murray passed away, well knowing the interest calculations were growing exponentially. In view of the 22-year delay and the serious prejudice, the Probate Court properly ruled that she is now barred from asserting her claim by the equitable doctrine of laches as well as the statute of limitations.

Claim by Elizabeth Murray as Elizabeth's Stylesetters

II. THE PROBATE COURT PROPERLY GRANTED SUMMARY JUDGMENT ON THE CLAIM MADE BY ELIZABETH MURRAY AS OWNER OF ELIZABETH'S STYLESETTERS FOR INTERIOR DESIGN SERVICES SHE PERFORMED FOR AN INN FORMERLY OWNED BY HER FATHER.

Many years ago, Mr. Murray paid the tuition for the Appellant to attend the New York School of Interior Design, which later allowed her to establish her own 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. [ROA ___; Estate Summary Judgment Ex. 44.] 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) that she had submitted to the Inn or her Father on behalf of her company for her work at the Inn. Rather, consistent with her "Dear Daddy" letter as discussed above, she relies upon a letter she drafted, dated July 21, 2007—just two weeks before her Father 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). [ROA ___; Estate Summary Judgment Ex. 46]

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. [ROA ___; Estate Summary Judgment Ex. 42.]

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. Because the letter was signed only fourteen days prior to his death, there is simply no way Mr. Murray could have appreciated the terms of the contract or possessed the requisite capacity to enter into that contract. Evidence from Mr. Murray's personal physician recounts 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. [ROA ___, ___; Estate Summary Judgment Ex. 5, 49, 50.]

The Probate Court 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 grant summary judgment on the alternative ground that the Appellant was 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. Appellant claims that the

Probate Court improperly considered her claim as relying on the July 21, 2007 letter, and asserts that the underlying receipts/documentation are the foundation of her claims. However, if that is so, then the grant of summary judgment can be sustained on the additional ground that her claim is barred by the three-year statute of limitations.

A. Appellant is judicially estopped from pursuing her claim based on the July 21, 2007 letter because she had asserted that her Father lacked mental capacity in several legal proceedings over the last years of his life.

In Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 25-52, 489 S.E.2d 472 (1997), the South Carolina Supreme Court adopted the doctrine of judicial estoppel as it relates to matters of fact 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 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 considered each of these elements, and correctly concluded that Appellant's prior factual representations in earlier proceedings justifies applying this equitable doctrine to judicially estop her from claiming that her Father had the capacity to execute the July 21, 2007 letter.

As referenced above, the Murrays were embroiled in litigation in 2006 involving the Samuel Freeman Charitable Trust, and during that litigation, Appellant made numerous

representations that her father was mentally incompetent well before his last weeks.[11] She filed an Answer and Cross-Petitions in regards to the Trust litigation, on November 17, 2006, and in that sworn and verified pleading, she alleged that Mr. Murray was incapacitated and asserted that he "lacked the requisite mental capacity to intelligently and knowingly execute a document." [ROA ___; Estate Summary Judgment Ex. 54 ¶¶96-101.] More specifically, she alleged – as a matter of fact – that "Over the past several years [Father's] physical condition and mental competency have been severely impaired. As of this date [11/17/2006] he is unable to fully focus upon, understand and deal with basic and fundamental business and financial matters." [ROA ___; Id. Cross-Petition p. 10 ¶2.] Appellant also submitted a motion in the Trust litigation, dated January 17, 2007, alleging that her father "suffers from serious physical and mental impairments" and that "serious questions have been raised concerning [his] mental competency." [ROA ___; Estate Summary Judgment Ex. 56.] The New York court did not make a specific finding on Mr. Murray's mental capacity in the Trust litigation; however, Appellant was reinstated as a Trustee.

Apart from the Trust litigation, the Appellant commenced a guardianship proceeding in the Probate Court during July 2007 – immediately prior to Mr. Murray's death. She affirmatively alleged that he lacked mental capacity during the same time period that she contrived to have him execute the July 21, 2007 letter agreeing to pay her over $500,000. A temporary guardian was appointed by the Probate Court. [ROA ___; Guardianship petition.]

Based on these filings and proceedings each element has been met. ONE/FIVE: it is clear that Appellant has taken totally inconsistent positions on the factual matter of her Father's mental capacity. TWO: The Trust litigation and the guardianship proceedings both involved the

[11] 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, he clearly did not have the requisite capacity to enter into the subject contractual documents only two weeks prior to his death.

Appellant and Mr. Murray, and they are related as comparable to the divorce proceeding and the foreclosure proceeding in the Hayne Federal Credit Union opinion. THREE: Appellant was successful in being reinstated as Trustee and in having a temporary guardian appointed for her Father. FOUR: The selective positions taken by the Appellant for the strategic advantage of her own financial benefit evidences an intentional effort to mislead the courts as to Mr. Murray's true mental status. Accordingly, the Probate Court's ruling should be affirmed on this ground.

B. The claim of Elizabeth's Stylesetters can be affirmed on the additional sustaining ground that any claim for monies owed since 2002 are barred by the three-year statute of limitations which expired before the Father/Mr. Murray died in 2007.

Without the July 21, 2007 letter, Appellant is barred from pursuing her claim for the expenses related to her employment at the Inn at Quogue as they are untimely. Ms. Murray stopped working at the Inn at Quogue in 2002, approximately six years prior to her initiation of this creditor's claim and five years prior to the death of her father. However, she never filed suit against her father to collect the money she claims she is owed. Ms. Murray testified filing suit on her Father would have "evoked a Draconian reaction." [ROA ___; Estate Summary Judgment Ex. 57.] Appellant testified she waited until after her Father's death to file a lawsuit because she thought "it was cleaner...that it was a more polite way to handle it." [ROA ___; Estate Summary Judgment Ex. 58.] Whatever her emotional/personal motivations may have been for waiting, they do not constitute any legal justification for avoiding the statute of limitations bar.

As discussed above, S.C. Code Ann. §62-3-802 provides "no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid." Appellants claims for monies and/or personal property supposedly owed to her from her last employment at the Inn in 2002 is subject to a three-year period. S.C. Code §15-3-530(1) & (4). Applying the three-year statute of limitations in this case would bar any claims or lawsuits after the year 2005.

CONCLUSION

As to the claim made by Elizabeth Murray on behalf of the Estate of Minnie Holmes Murray for $6,260,845.70 arising from a 1980 Settlement Agreement regarding a debt owed by Mr. Murray to Mrs. Holmes at the time of her death in 1967, the Probate Court properly granted summary judgment to the Estate on three grounds, each and all of which support affirmance. The Probate Court correctly concluded that the Estate of Minnie Holmes Murray lacks standing to pursue any claim on the obligations because the beneficiaries in the Estate of Minnie Murray -- her three daughters -- reached an agreement that transferred the debt to themselves. In addition, the Probate Court correctly concluded that any claim for any balance still owed on the 1980 debt is barred by the statute of limitations because the February 9, 2006 letter did not constitute an unqualified and unequivocal acknowledgement or a clear and explicit promise to repay the debt sufficient to revive the debt. Finally, in the alternative, the Probate Court correctly concluded that any claim is also barred by the doctrine of laches because Appellant/Elizabeth Murray waited more than 22 years to pursue any legal action on the debt.

As to the claim made by Elizabeth Murray as owner of Elizabeth's Stylesetters, for $538,034 for interior design services she performed for an Inn formerly owned by her Father, the Probate Court properly granted summary judgment on the ground that the Appellant is judicially estopped from pursuing her claim based on the July 21, 2007 letter. In addition, the summary judgment can be sustained on the additional ground that any claim for monies owed since 2002 are barred by the three-year statute of limitations.

WHEREFORE, based on the foregoing, the Probate Court's grant of summary judgment should be affirmed as to both claims.

Respectfully submitted,

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March 10, 2018
Charleston, South Carolina

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

APPEAL FROM CHARLESTON COUNTY PROBATE COURT
The Hon. Tamara C. Curry, Probate Court
Circuit Appeal No. 2017-CP-10-5198
Probate No. 2007-ES-10-1116

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

Appellants,

vs.

The Estate of William E. Murray

Respondent.

Certificate of Service

Pursuant to S.C. Code Ann. § 62-1-308(d), the Brief of Respondent was served on Counsel for all the parties by depositing a copy in the U.S. Mail, with sufficient first class postage, addressed to the following counsel at the addresses listed below:

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FILED
2018 MAR 20 PM 3:12
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APPELLANTS' BRIEF

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STATEMENT OF ISSUES ON APPEAL

1. **Did the Probate Court err when it determined that an agreement between the beneficiaries of the Estate of Minnie Murray regarding the division of any sums "which may become due" the Estate on account of a specific debt, was not simply an agreement how to divide the proceeds, but was an assignment of the note which divested the Estate of the right to bring an action to enforce the debt?**

2. **Did the Probate Court err in concluding that the claim of the Minnie H. Murray Estate was barred by the statute of limitations and the doctrine of laches, when the claim was brought within 3 years of the time the original debt was renewed?**

3. **Did the probate court err in granting summary judgment on Elizabeth Stylesetters' claim based entirely on a July 21, 2007 letter acknowledging an obligation, (thus invoking issues of competence and judicial estoppel) when proof of the debt did not depend on the July 21, 2007 letter, rather there was competent evidence that the debt was actually created, acknowledged and even partially paid at a time when there was no challenge as to competence?**

4. **Did the Probate Court err in concluding that Elizabeth Stylesetters was estopped from enforce a debt by William E. Murray, because Elizabeth Murray had once claimed that Mr. Murray lacked mental capacity, when there was competent evidence that the debt was actually created, acknowledged and partially paid years before any claim of incapacity?**

STATEMENT OF THE CASE

This appeal arises out of the denial of two creditor claims timely filed against the Estate of William E. Murray. Mr. 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 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 Estate file its Motion for Summary Judgment on October 31, 2016. The Probate Court heard arguments on July 25, 2017 and on September 28, 2017 issued its Order granting the Estate's Motion for Summary Judgment. Petitioners received the Order on October 4, 2017. On November 13, 2017, the Probate Court determined that that the September 28 Order contained a clerical error and issued a revised Order Granting Motion for Summary Judgment. Appellants timely filed their Notice of Appeal on October 11, 2017.

ARGUMENT

Standard of Review

Appellants are before the Court challenging the trial court's grant of summary Judgment made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. S.C.R.C.P. 56(c); *Platt v. CSX Transportation Inc.*, 665 S.E.2d 631 (Ct. App. 2008). Summary judgment is only appropriate when "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." In evaluating whether a genuine dispute as to a material factual issue exists, the lower court should have viewed all evidence, including all reasonable inferences flowing from that evidence, in the light most favorable to the non-moving party, in this case,

Appellant Church. *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 determining whether the trial court erred in granting summary judgment, an appellate court views the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *Englert, Inc. v. LeafGuard USA, Inc.*, 377 S.C. 129, 134, 659 S.E.2d 496, 498 (2008). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. *Bayle v. South Carolina Dep't of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001); *see also Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002) ("On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below."). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Hall v. Fedor*, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002). Moreover, summary judgment is a drastic remedy which should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. *Lanham v. Blue Cross & Blue Shield*, 349 S.C. 356, 563 S.E.2d 331 (2002); *Trivelas v. South Carolina Dep't of Transp.*, 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001). *Redwend L.P. v. Edwards*, 354 S.C. 459, 468 (Ct. App. 2003).

I. Did the Probate Court err when it determined that an agreement between the beneficiaries of the Estate of Minnie Murray regarding the division of any sums "which may become due" to the Estate on account of a specific debt, was not simply an agreement how to divide the proceeds, but was an assignment of the note which divested the Estate of the right to bring an action to enforce the debt?

The Probate Court erroneously concluded that Petitioner Elizabeth Murray, as PR for the Minnie H. Murray Estate, was not the real party in interest, and, therefore, lacked standing to prosecute her mother's estate's claim against her father's estate based on an agreement executed the beneficiaries of her mother's estate that any monies due from their father to their **Mother's Estate** would become joint property of the sister beneficiaries. (Amended Order at pp. 7 – 9 referencing what the Court refers to as a "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.) The Probate Court fundamentally misconstrues the import of the 1992 Agreement among the beneficiaries of the Estate of Minnie H. Murray to effectively extinguish a valid debt.

The Claim of the Estate of Minnie H. Murray consists of a debt originally acknowledged by William E. Murray on April 22, 1980, acknowledged repeatedly in his financial statements, and ultimately 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;s 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).

With no payments being made, the three sisters, who were the beneficiaries of the Minnie Murray Estate, wished to be relieved of the obligation to establish a trust as directed by their Mother's will, because doing so would be expensive and pointless at that juncture. Therefore, in 1992, as a result of Hilton Smith's negotiations and based on his advice, 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...", **(emphasis added)**

thus eliminating the need to create a trust as required by Minnie Murray's last will and testament and avoiding the necessity of incurring the expense of maintaining a trust that was unfunded. (Exhibit 10 to Elizabeth Murray and Pamela Murray Affidavits).

The 1992 Agreement in which Ms. Murray and her sisters, collectively the beneficiaries of their mother's estate, agreed among themselves as to how they would hold the proceeds of the Claim once it was liquidated did ***nothing*** to covey ownership of the claim out of their mother's estate or change the real party in interest holding the claim against William Murray. Instead, their private agreement (which was not signed by Ms. Murray in her representative capacity as the PR for his mother's estate but only as herself as one of the beneficiaries[1]) did nothing more than relieve them of the obligation to establish a trust when the funds were ultimately recovered from their father and had ***no*** legal effect what entity owned the claim against William Murray.

The debt evidenced by the 1980 Note originally belonged to Minnie Murray. Her Estate in West Chester County, New York was reopened in July of 2010 to allow Ms. Murray, as the PR for Minnie Murray's Estate, to bring the Claim against her father's Estate (Certificate reopening Minnie Murray's Estate). (This action was confirmed by an Order signed by Judge Condon on August 15, 2015, and filed in West Chester County, New York on December 31, 2014 which confirmed the Estate of Minnie Murray still had a claim to pursue).

There is no other party to prosecute the Claim other than the duly appointed personal representative of the sisters' mother's 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

[1] Ms. Murray, the duly appointed PR of her mother's estate, is prosecuting the claim against her father's estate in her representative capacity as PR for her mother's estate. 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."

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).

The agreement here cannot divest the Minnie Murray's Estate of its right to collect on the debt. If that were the case, beneficiaries in this state would be allowed to enter into separate agreements on how the assets of an estate should be distributed just to avoid testator's debts. Such a holding by this Court will only encourage fraudulent agreements designed to avoid creditors' claim against estates.

II. Did the Probate Court err in concluding that the claim of the Minnie H. Murray Estate was barred by the statute of limitations and the doctrine of laches, when the claim was brought within 3 years of the time the original debt was renewed?

A. The Claim of the Minnie H. Murray was not barred by the Statute of Limitations

The Probate Court erroneously concluded that the PRs are entitled to summary judgment as to the debt owing to the Estate of Minnie H. Murray based on the statute of limitations and the doctrine of laches overlooking and ignoring the substantial material question of fact as to whether Mr. Murray renewed the debt by acknowledging it during his lifetime. However, whether Mr. Murray acknowledged and reaffirmed the debt flowing from the 1980 Settlement Agreement is a question of fact which the Probate Court should ***not*** have resolved as a matter of law at the summary judgment state of the proceedings.

The PRs' primary argument on summary judgment was their belief Mr. Murray did not reaffirm his debt to his wife's estate in 2006. They argued 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 did acknowledge that debt could have been revived and still be valid as of Mr. Murray's death ***if*** he had

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.).

The history of the 2006 renewal, taking the facts in light most favorable to the non-moving party as required by the Rules and case law of this state, is as follows:

By February of 2006, Elizabeth Murray, as PR of her mother's estate, 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, on February 10, 2006. She requested that her father review the Note and the accounting of the

amount owed under the note, and then acknowledge the debt. On February 10, 2006. Mr. Murray met Elizabeth Murray and a witness, 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 again, this time 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).

In the February 9, 2006 Letter signed by Mr. Murray ***twice*** 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 did not dispute the legal effect of this letter; instead, they made factual assertions that the signature on the Letter is not that of Mr. Murray. Clearly, the factual assertion should not have been used to prevail on summary judgment as it creates a genuine issue of material fact.

Petitioner offered significant evidence that Mr. Murray did in fact 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 attempted 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 Probate Court side-stepped this essential factual dispute as to whether Mr. Murray actually signed the 2006 document reaffirming the debt, *sua sponte*, to jump to the conclusion that even if he had signed it, as matter of law, Mr. Murray could not have intended for his signature to have indicated his intent to repay the debt. (PC's summary judgment order at pg. 11). In so doing, the PC ignored the well-settled law of South Carolina that intent is nearly always a question of fact rather than a question of law. "The determination of the parties' intent is a question of fact." *S. Bank Tr. Nat. Ass'n v. Bell*, 385 S.C. 364, 374, 684 S.E.2d 199, 205 (Ct. App. 2009) (*citing S. Atl. Fin. Servs., Inc. v. Middleton*, 349 S.C. 77, 81, 562 S.E.2d 482, 485 (Ct. App. 2002). "To give effect to the parties' intentions, the court will endeavor to determine the situation of the parties and their purposes at the time the contract was entered." *Id. C.f., State v. Meggett*, 398 S.C. 516, 527, 728 S.E.2d 492, 498 (Ct. App. 2012) ("The question of the intent with which an act is done is one of fact and is ordinarily for jury determination except in extreme cases where there is no evidence thereon. The intent with which an act is done denotes a state of

mind, and can be proved only by expressions or conduct, considered in the light of the given circumstances. Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred.")

At the summary judgment stage of the proceedings, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination at trial 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 Probate Court's attempts to skirt the substantial and material questions of fact, 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, and producing the document itself which could factually be considered evidence of Mr. Murray's intent to reaffirm the debt. This contradictory evidence creates exactly the sort of factual dispute that cannot and should not be resolved on summary judgment and must be decided only after a full trial on the merits. The PRs' summary judgment motion should have been denied, and this Court should reverse and remand this matter back to the Probate Court for a full trial on the merits.

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 the debt owing to Minnie Murray's Estate, especially in light of his correspondence to Elizabeth, Pam and Catherine, where Mr. Smith advised 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 on-going validity of the debt. (Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 10 to Elizabeth Murray and Pamela Murray Affidavits). 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).

The Probate Court should not have granted summary judgment based on laches or unclean hands and this Court should remand the matter for a full trial on the merits.

III and IV. Did the probate court err in granting summary judgment on Elizabeth Stylesetters' claim based entirely on a July 21, 2007 letter acknowledging an obligation, (thus invoking issues of competence and judicial estoppel) when proof of the debt did not depend on the July 21, 2007 letter, rather there was competent evidence that the debt was actually created, acknowledged, and even partially paid at a time when there was no challenge as to competence?

As to the Elizabeth Stylesetter's claims, the Probate Court also erroneously granted summary judgment to the PRs on a theory of judicial estoppel. The Probate Court's ruling assumes that the only possible theory under which the Elizabeth Stylesetter's claim remains viable is if Mr. Murray was competent to sign the July 21, 2007 letter reaffirming his obligation to pay for work performed by Elizabeth Murray doing business as Elizabeth Stylesetters.

Elizabeth Stylesetters is an interior design company owned by Elizabeth Murray, and it provided various interior design services for multiple properties owned by Mr. Murray and used by him as residences. Elizabeth Stylesetters expended large sums of money in order to remodel and redecorate Mr. Murray's residences and it expended large sums of money at times to help with the expenses at certain commercial properties owned by Mr. Murray. All these expenses were documented and Mr. Murray agreed to repay Elizabeth Stylesetters for the expenses it incurred (See Affidavit of Elizabeth Murray). Mr. Murray acknowledged the debt in April of 2007 and did so in front of a notary and Brian Canaday. (See Exhibit B - Canaday letter accompanying Mr. Murray's letter).

Mr. Murray continued to make monthly payments towards his debt until July 2007, when Mr. Murray was admitted to Hospice Care in May of 2007 and Mr. Smith took over the handling of Mr. Murray's finances and stopped making the payments. There was no issue of payment to Elizabeth's Stylesetters until then. Up until that point, Mr. Murray was paying the debt as previously agreed. See also Letter to Elizabeth Murray during 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 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. However, even without Mr. Murray's signature in 2007, the ongoing validity of the debt claimed remains. Mr. Murray incurred the debt and reaffirmed it in 2006 long before his estate alleges he lost the capacity to sign a reaffirmation of the debt.

However, even if the Elizabeth Stylesetter's claim did depend on the efficacy of the July 2007 letter, (which it does not), the Probate Court still should not have granted summary judgment on a judicial estoppel theory. 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). 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)). The Probate Court incorrectly asserts that because Ms. Murray questioned her father's capacity at various periods during his declining years, she could not assert his competence weeks before his death.

In the Freeman Trust litigation beginning at the end of 2006, 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). Ms. Elizabeth 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 demonstrated none of the elements of judicial estoppel and their motion for summary judgment should have been denied.

CONCLUSION

For the reasons stated above, the Probate Court's decision to grant the Estate's Motion for Summary Judgment should be reversed and the case should be remanded for further proceedings.

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ATTORNEYS FOR APPELLANTS

This 19th day of January, 2018

Charleston, South Carolina

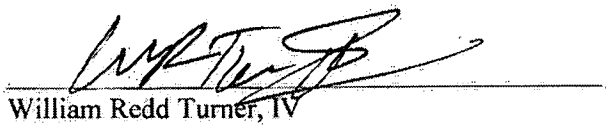
FILED
2018 JAN 19 PM 4:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY

CERTIFICATE OF SERVICE

I certify that on this 19th day of January, 2018 I served a copy of **Appellant's Brief** upon the counsel of record in this matter by email and first class mail, proper postage affixed, by US mail:

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William Redd Turner, IV
Legal Assistant to Oana D. Johnson

THE STATE OF SOUTH CAROLINA

In the Court of Common Pleas

for the Ninth Judicial Circuit

APPEAL FROM CHARLESTON COUNTY PROBATE COURT

The Hon. Tamara C. Curry, Probate Court

Case No. 2017-CP-10-5198

FILED
2018 JAN 19 PM 4:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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

Appellants,

vs.

The Estate of William H. Murray

Respondents.

DESIGNATION OF MATTERS TO BE INCLUDED IN THE RECORD ON APPEAL

DESIGNATION OF MATTERS

The Appellant hereby proposes that the following be included in the Record on Appeal:

1. Order Granting Motion for Summary Judgment
2. Revised Order Granting Motion for Summary Judgment
3. Notice of Appeal
4. Transcript of Hearing on Motion for Summary Judgment
5. Memorandum in Opposition to Motion for Summary Judgement with Exhibits
6. Deposition of Hilton Smith
7. Deposition of Lary Bump
8. Deposition of Gil Mestler
9. Deposition of Dana Flavin
10. Deposition of Jeff Young
11. Deposition of Elizabeth Murray
12. Affidavit of Pamela Murray with Exhibits
13. Affidavit of Elizabeth Murray with Exhibits
14. Certificate Reopening Minnie Murray's Estate
15. Order signed by Judge Condon on August 15, 2015, and filed in West Chester County, New York on December 31, 2014

I certify that this designation contains no matter which is irrelevant to this appeal.

Respectfully Submitted,

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January 19th, 2018

Charleston, South Carolina

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	NINTH JUDICIAL DISTRICT
Elizabeth Murray as Personal Representative of the Estate of Minnie H. Murray and Elizabeth Stylesetters,	**Case No. 2017-CP-10-5198**
Plaintiffs,	**CERTIFICATE OF SERVICE**
Vs.	
The Estate of William H. Murray	
Defendants.	

The undersigned certifies that the **Appellants' Designation of Matters to be Included on Appeal and Appellants' Brief** was served upon the parties to this action on this 19th day of January, 2018 by electronic mail and U.S. mail to the following:

Attorneys for Defendant:

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FILED
2018 JAN 19 PM 5:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Oana D. Johnson, Esquire

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY CHARLESTON)

IN THE COURT OF COMMON PLEAS

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,
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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)

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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)

Submitting Party Signature: _____ **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-10-5198

IN THE MATTER OF WILLIAM E. MURRAY

NOTICE OF INTENT TO APPEAL TO THE CIRCUIT COURT

FILED
2017 OCT 11 AM 9:20
JULIE J. ARNDT, ROUND
CLERK OF COURT
BY

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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ATTORNEYS FOR PLAINTIFF

This 10 day of September, 2017
Charleston, South Carolina

2017-CP10-5198

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

Will Turner

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	C/A No. 2007-ES-10-1116
	)	
IN THE MATTER OF: WILLIAM E. MURRAY	)	**REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

The Estate of William E. Murray respectfully submits this Reply Memorandum in Support of its Motion for Summary Judgment. The Estate's Motion and Memorandum for Summary Judgment were filed on October 31, 2016. Petitioner Elizabeth Murray's Memorandum in Opposition was served on July 18, 2017.

ARGUMENT

I. Claim 1: Elizabeth Murray as Executrix of the Estate of Minnie Holmes Murray claiming $6,260,845.70 based on a debt from an April 22, 1980 Settlement Agreement

Mr. Murray and his three daughters with Minnie Holmes Murray, Pamela, Catherine, and Elizabeth, entered into a Settlement Agreement in 1980 wherein Mr. Murray agreed to repay a debt to the Estate of Minnie Holmes Murray ("MHM Estate"). Minnie Holmes Murray died in 1967 and Elizabeth Murray succeeded Leon D. Murray as Executrix of the Minnie Holmes Murray Will on August 22, 1975. The debt in 1980 owed to the Estate of Minnie Holmes Murray per the Agreement totaled $240,000 plus interest accruing as set forth on the schedule of the 1980 Agreement. Exhibit 1. (Attached as Exhibit 15 to the Estate's Mem. Supp. Summ. J.) The Estate does not dispute a debt originally existed and a contract was signed by Mr. Murray on April 22, 1980. Nor does the Estate dispute Mr. Murray made payments under the original note with the last one being made on February 24, 1986. Exhibit 2. During the discovery phase of this case, no further payments on the note by Mr. Murray have been shown to exist which would renew the debt. Therefore, the time for Ms. Murray to bring her claim based on a breach of an Agreement signed in 1980 has long since passed.

As Petitioner points out in her Memorandum in Opposition, Mr. Murray "stopped making payments as required by the note" which caused the beneficiaries of the MHM Estate to begin efforts to have the debt paid and constructively close the Estate of Minnie Holmes Murray in 1992. (Pet'r. Mem. Opp'n Summ. J, 1). In 1992, Hilton Smith and Elizabeth Murray's former husband Dan Kelly were enlisted by Pamela Murray, Elizabeth Murray and his wife Catherine Murray Smith to aid the sisters' efforts in collecting the debt owed to the MHM Estate pursuant to 1980 Agreement. In addition, the sisters also hired an attorney, Thomas Berner, to assist with the creation of a hold harmless agreement as well as a CPA, Gail Margolies Reid, to aid in the dissolution of the MHM Estate. Mr. Smith and Mr. Kelly's efforts in securing the debt from Mr. Murray and liquidating the Estate of MHM concluded in 1992, approximately fifteen years before Mr. Murray's death in 2007. Exhibit 3.

The correspondence between Mr. Smith, Mr. Kelly, attorney Thomas Berner, CPA Gail Margolies Reid, and the three sisters evidence a clear intent to dissolve the MHM Estate. Mr. Smith's correspondence of December 2, 1992 to Pamela, Catherine, and Elizabeth, stated "we are meeting on the 12th of December with Gail to wind up the affairs of the estate." Exhibit 4. Gail Margolies Reid, a CPA who assisted with the liquidation of the MHM Estate enclosed a completed and executed Release and Discharge of Administratrix form to be filed with the Surrogate's Court on behalf of the beneficiaries of the Estate of Minnie Holmes Murray. Ms. Reid further stated in correspondence to attorney Thomas Berner, "[a]s you know it is the beneficiaries' desire to liquidate the Estate into three separate and distinct trusts." Exhibit 5. Finally, the 1992 Release, Refunding, Receipt and Indemnity Agreement ("1992 Agreement") referenced in Petitioner's Memorandum in Opposition sets forth a Memorandum to Mr. Murray that the total obligation owing from Mr. Murray to the Estate as well as interest and penalty interest on his loans from the New England Life Insurance Policy "shall become community property between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith on a joint, not several basis." Exhibit 6 (also attached as Exhibit 37 Estate's Mem. Supp. Summ. J.) These documents not only

indicate the clear intent of the three sisters, with Mr. Smith and Mr. Kelly's help, to dissolve the Estate in 1992, but the 1992 Agreement plainly states debt owed to the MHM Estate from Mr. Murray was transferred out of the Estate to become community property between the three sisters, thus, no longer as asset of the MHM Estate.

Ms. Murray's "Dear Daddy" letters, which Petitioner allegedly sent to Mr. Murray as a result of the negotiations with Mr. Smith did not renew the debt of Mr. Murray to the Estate of MHM and further Mr. Murray did not sign any renewal of the debt that would amount to a new promise to pay pursuant to South Carolina law. Elizabeth Murray's attorney and accountant advised her to periodically demand the monies due in writing and to serve the notices personally on Mr. Murray. Exhibit 7. (Elizabeth Murray Aff., April 3, 2013, ¶ 34). Taking the facts of this case in the light most favorable to Ms. Murray, if Mr. Murray did sign[1] the February 6, 2010 "Dear Daddy" letter promising to pay at that time over $5 million dollars to the Minnie Holmes Murray Estate, which Ms. Murray was a 1/3 beneficiary, then she is judicially estopped from claiming the debt here. Ms. Murray is estopped from claiming the debt in this case because she represented to the Court of New York in sworn statements dated September 1, 2006 and May 21, 2007, which are after the Dear Daddy letter was allegedly signed by Mr. Murray on February 10, 2006, renewing the debt that she did not have any contingent interests such as stock options, interests subject to life estates, or **prospective inheritances**. If as Ms. Murray claims, the document Mr. Murray signed on February 10, 2006 was a renewal of the debt, either due currently or coming forth at the time of Mr. Murray's death, Ms. Murray did not list it under oath as a prospective inheritance in her statements of net worth. The Petitioner's argument that she would not have listed an asset of the Estate in her personal statement of net worth is nonsensical. If Ms. Murray had an expectation to receive money from the MHM Estate, then she was legally obligated to

[1] The Estate of William E. Murray denies that Mr. Murray signed the February 10, 2006 Dear Daddy letter because the Estate consulted a handwriting expert who analyzed and compared writing samples of Mr. Murray's signature and rendered the opinion that the February 10, 2006 letter did not contain a genuine signature of Mr. Murray.

disclose this information on her statements of net worth. Ms. Murray's failure to disclose this debt proves that she did not have an expectation of receiving this money at a later time. If the debt Ms. Murray is now claiming is a valid debt, she should have listed it on her statements of net worth.

a. Ms. Murray does not have standing to claim a debt to her mother's Estate when the Estate of Minnie Holmes Murray was effectively closed in 1992 and the obligations of Mr. Murray became the property of the three sisters

The Petitioner references the Release, Refunding, Receipt and Indemnity Agreement ("1992 Agreement") between Pamela Murray, Catherine Murray Smith, and Elizabeth Murray signed on December 12, 1992 in her Memorandum to who the 1992 Agreement eliminated the need for a trust. Interestingly, the language cited by the Petitioner in her Memorandum and contained as part of the 1992 Agreement proves that the debt was transferred out of the Estate and given to the three sisters jointly: "the total obligation owing from William E. Murray to the Estate .... which may become due, shall become community property between" the three sisters. Exhibit 6. (also attached as Exhibit 37 Estate's Mem. Supp. Summ. J.) In addition, in Ms. Murray's sworn affidavit dated April 3, 2013, Ms. Murray confirms she signed the 1992 Agreement and that all obligations due under the note dated April 22, 1980 are community property between us, on a joint, not a several basis." Exhibit 7. (Elizabeth Murray Aff., April 3, 2013, ¶ 30). Therefore, based on the 1992 Agreement as well as the affidavit of Elizabeth Murray, the obligation due under the note is the property of the three sisters. Ms. Murray as Executrix of the Estate of Minnie Holmes Murray is not the property party to file this creditor's claim since the MHM Estate was liquidated in 1992 and the debt was transferred out of the MHM Estate at that time.

The 1992 Agreement indicates the sisters' intent, along with their signatures, that Mr. Murray's obligation to the Estate of Minnie Holmes Murray be an asset held jointly by the sisters. Thus, the 1992 Agreement liquidated the Estate of Minnie Holmes Murray and made any debt obligation from Mr. Murray community property between the three sisters on a joint and not a several basis. In addition, correspondence from CPA Gail Margolies Reid indicates the intention of the three sisters to liquidate the Estate and create three separate trusts. Exhibit 5. Because the

assets of the Estate were liquidated in 1992, the three sisters agreed the obligation they had been unable to collect from Mr. Murray would be owing to them and not the Estate of MHM. Further, the sisters drafted a Release of Ms. Murray as Executor of the MHM Estate to fully release and discharge her of any obligations related to the MHM Estate. Exhibit 8. Moreover, the MHM Estate has not filed tax returns since 1992. Exhibit 9.

As a matter of law, when viewing these documents in the light most favorable to Elizabeth Murray, she does not have standing to claim a debt owed to the Estate of Minnie Holmes Murray when she made an Agreement in 1992 with her sisters that the debt owing would be community property and would be divided on a pro-rata basis by the three sisters. Because the Estate of MHM does not hold the note, the Estate of MHM is not the property party to bring the creditor's claim. Therefore, the Court should grant summary judgment to the Estate of William E. Murray.

b. Ms. Murray did not renew the debt by sending letters to Mr. Murray

Petitioner states in her Memorandum "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. Murry on a bi-annual basis, including details of the debt owed with interest." (Pet'r. Mem. Opp'n Summ. J. 2) Ms. Murray declares that she delivered notices to her father every other year at their Christmas luncheon. (Pet'r. Mem. Opp'n Summ. J. 2). In support of this Petitioner cites her affidavit as well as her sister Pam Murray's affidavit. However, there is no documentation or evidence these unsigned letters were ever received by Mr. Murray, other than the testimony of Elizabeth Murray. There is no proof the alleged letters of default were personally delivered or sent by certified mail. By producing unsigned letters which could have been drafted and printed at any time, with no proof of delivery, Ms. Murray has failed to show any kind of renewal of the debt as a matter of law.

Pursuant to South Carolina law § 15-3-530 actions to recover debts must generally be brought within three years of the default on the debt. S.C. Code Ann. § 15-3-530. In re Vaughn, 536 B.R. 670, 677 (2015). The limitations period effects the remedy available to the party

collecting the debt rather than the underlying right. Id. Therefore, because the debt is not extinguished, debts could be revived by partial payment of the debt or "some writing signed by the party to be charged thereby". Id.; S.C. Code Ann § 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). In the Vaughn case, the Court held inclusion of the debt in bankruptcy schedules did not reset the statute of limitations. "[A] mere acknowledgment of a debt as a debt that will be paid in accordance with other debts does not revive the debt." Listing a debt on a bankruptcy schedule did not create a right to payment and did not signify a promise to pay." Id.

Mr. Murray has made no payments on the debt owed pursuant to the 1980 Agreement since 1986. Pursuant to South Carolina law, Ms. Murray's letters of default which were allegedly hand delivered to Mr. Murray have no effect in reviving the debt to the Estate of Minnie Holmes Murray. The Petitioner notes the first demand letter sent to Mr. Murray was from Hilton Smith. Exhibit 10. However, there is no indication this letter was actually sent to Mr. Murray as it is not signed by any of the sisters, and furthermore, Hilton Smith's letter dated December 12, 1992 does not renew the debt as discussed above[2].

The Petitioner further argues Mr. Smith assured Ms. Murray that the debt was protected because Mr. Murray acknowledged it in his financial declaration to Signet Bank. However, In re Vaughn provides that debt on a bankruptcy schedule did not signify a promise to pay and that a mere acknowledgement of the debt in according with other debts also does not revive the debt. Id. Similarly here, the debt noted on a schedule to Signet Bank would not revive the debt. Ms. Murray

[2] Even assuming the 1992 letter did renew, it still is outside the statute of limitations.

has presented no evidence that her father made payments to the Estate after 1986. In addition, neither Mr. Smith's notice of default which Ms. Murray cannot prove was sent to Mr. Murray, nor Ms. Murray's "Dear Daddy" letters every other year beginning are enough to revive the debt barred by the statute of limitations.

Furthermore, even if Mr. Murray signed[3] the February 10, 2006 "Dear Daddy" letter which was uncovered in 2009 by his former paramour, Dana Flavin[4], Ms. Murray is judicially estopped from seeking this debt as she did not disclose it in sworn statements to the Court of New York in 2006 and 2007 (referenced in the previous argument).

c. Laches is appropriate if the claim is outside of the Statute of Limitations

Taking the facts in the light most favorable to Ms. Murray, Mr. Murray last made a payment on the note in 1986. Therefore, as this claim is outside the statute of limitations, and should be denied as such, 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). Petitioner states that any "delay in asserting the Claim was entirely understandable given the familial relationship between the heirs of Minnie Murray and their father." (Pet'r. Mem. Opp'n Summ. J. 10). The Estate makes no determination on whether the delay was understandable, however, failing to pursue any action to recover the debt other than merely sending letters until Mr. Murray's death is unreasonable delay. The Petitioner also makes a reference to Mr. Smith understanding that based on the relationship between the parties, a suit needed to be avoided. (Pet'r. Mem. Opp'n Summ. J. 11). There is no evidence supporting the Petitioners allegation that suit should be avoided, and on the contrary, Ms. Murray did not have any qualms in filing an Answer and Cross-Petition against her father in the Samuel Freeman Trust Litigation wherein she prayed her father be declared incompetent after he removed Elizabeth Murray as a trustee. Exhibit 11. (also attached as Exhibit

[3] The Estate of William E. Murray denies William E. Murray's signature is valid on this document.
[4] Ms. Flavin is not a medical doctor who treats patients as stated in Petitioner's Memorandum in Opposition to Summary Judgment.

54 to the Estate's Mem. in Supp. Summ. J.) Because the delay in acting on these claims spans decades, summary judgment should be granted as a matter of law.

d. Ms. Murray is judicially estopped from claiming her father signed a document purporting to pay her over $5 million dollars because she did not disclose this asset in her sworn affidavit of net worth during her divorce proceeding in New York

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 elements of judicial estoppel apply here because Ms. Murray is taking inconsistent positions before the Court of New York and the Court in South Carolina.

In the Supreme Court of New York, in the County of New York, Ms. Murray prepared two sworn affidavits of her net worth. One on September 1, 2006 and the other on May 21, 2007. Exhibit 12. (also attached as Exhibits 30 and 31 to the Estate's Mem. Supp. Summ. J.) The affidavits call for the affiant to swear the document is "an accurate statement... of my net worth (assets of whatsoever kind and nature and wherever situated minus liabilities), statement of income from all sources and statements of assets transferred of whatsoever kind and nature and wherever situated." Exhibit 12. Clearly, this document is expansive in its probing for assets. The Estate of William E. Murray has previously shown the MHM Estate was dissolved in 1992 and the obligation due from Mr. Murray was property of the three sisters. Ms. Murray should have disclosed 1/3 of the amount owed from Mr. Murray if she believed it was a valid debt. Further, taking the Petitioner's argument in the light most favorable to her, if Ms. Murray did not list this asset because it was an asset of the Estate, Ms. Murray was a beneficiary of the Estate and therefore, would have taken 1/3 of the amount owing from Mr. Murray.

Ms. Murray is claiming that less than eight months prior to her affidavit of net worth (9/1/06), she coerced her father to sign a document promising over $5 million dollars to the Minnie Holmes Murray Estate per her calculations "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." Exhibit 13. (also attached as Exhibit 19 to the Estate's Mem. Supp. Summ. J.) According to the letter Ms. Murray claims renews the debt, Mr. Murray agreed to pay $5 million dollars to the Minnie Holmes Murray Estate, to which Ms. Murray is a beneficiary in an amount of approximately $1.6 million dollars. Ms. Murray, however, did not disclose she was owed $ 1.6 million dollars on her affidavit of net worth. By taking this position in her divorce proceeding, she benefitted in the amount that her ex-husband was ordered to pay her.

If the Dear Daddy letter is a renewal of the debt of the MHM Estate, then Ms. Murray intentionally misled the court because she did not disclose 1/3 of over $5 million dollars due to the MHM Estate pursuant to the February 10, 2006 document Ms. Flavin allegedly uncovered while cleaning out her office. Finally, Ms. Murray's position in her New York affidavits stating she had no prospective inheritances, or any other assets, such as what she claims is owed to her in this case, is inconsistent. It is true the divorce proceeding did not involve litigation of the debt evidenced by the note. However, if this was a valid debt then Ms. Murray would have received a portion of the repayment, but Ms. Murray made absolutely no mention of it in her sworn affidavits of net worth. The affidavits specifically lists a section for "prospective inheritances".

The Petitioner states 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." (Pet'r. Mem. Opp'n Summ. J. 11, 12). The Estate is unsure what "position" she is referencing. The affidavit of net worth in a divorce proceeding is to equitably split marital assets and Elizabeth Murray benefitted by failing to disclose her father had allegedly renewed a debt to the Estate of MHM to which she was a 1/3 beneficiary. Taking the facts in the light most favorable to Ms. Murray per the summary judgment standard, because of Ms. Murray's inconsistent positions regarding this debt, she should be estopped from claiming the debt in this case.

II. Claim 2: Elizabeth Murray claiming $538,034.00 as president of Elizabeth's Stylesetters

a. Elizabeth Murray is estopped from claiming this debt is based on a July 21, 2007 letter Mr. Murray signed, or even an April 10, 2007 letter, because Ms. Murray alleged in a verified pleading Mr. Murray did not have mental capacity on November 17, 2006

In her Memorandum in Opposition, the Petitioner states 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). Contrary to Ms. Murray's statement in her Memorandum, she alleged in a verified pleading in the State of New York on November 17, 2006 that her father "lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document." Exhibit 11. (also attached as Exhibit 54 in the Estate's Mem. Supp. Summ. J.) In her prayer for relief, Ms. Murray asked the Court to direct a guardian *ad litem* be appointed for her father.

In her Memorandum in Opposition, the Petitioner states the Estate produced documents signed by Mr. Murray as late as August 2006. However, August of 2006 was a year before Mr. Murray passed away, not a mere fourteen days prior to his death. Further, Dr. Kenneth Bergmann, Mr. Murray's treating neurologist, testified to a reasonable degree of medical certainty Mr. Murray did not have capacity as of May 23, 2007. Exhibit 14. Additionally, Dr. David Bachman, Professor of Neurosciences at the Medical University of South Carolina,wrote a letter dated July 2, 2007 saying he examined Mr. Murray on June 13, 2007 as well as reviewed Mr. Murray's medical records and found that Mr. Murray's neurological condition renders him incapable of managing his affairs. Exhibit 15. There has been no other medical expert in this case who have provided a different opinion as to Mr. Murray's mental capacity. The only person Petitioner references who has stated Mr. Murray was competent at this time, other than Ms. Murray in this litigation, is Nyesha Cherry. Ms. Cherry is a personal friend of Ms. Murray and is not a medical doctor. As such, she is woefully unqualified to make mental capacity determinations.

Just as important, Elizabeth Murray, in a verified Answer and Cross-Petition in the Samuel Freeman Charitable Trust Litigation, alleges in Paragraphs 96, 97, 98, 100, and 101, that "WEM lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Elizabeth as a Trustee." Exhibit 11. In Paragraph No. 2 of her Cross-Petition, Ms. Murray 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." Exhibit 11, ¶ 2 of Cross-Petition. Ms. Murray further alleges in late August 2003, she "received a rambling and disjointed telephone call from WEM and found that he had deteriorated even further. He had lost approximately 60 pounds and was in a state of confusion about dates, times, events and places. After Elizabeth returned to New York she often received telephone calls from WEM inviting her to stop by his house for lunch even though she was hundreds of miles away." Exhibit 11, ¶ 7 of Cross-Petition.

While it is true there was never any judicial determination that Mr. Murray was incompetent in the Samuel Freeman Litigation, Ms. Murray's sworn pleading states she has read the foregoing Answer and Cross-Petition and knows the matters to be true. The verification is signed by Elizabeth Murray and notarized on November 17, 2006. The basis for Ms. Murray's claim as President of Elizabeth's Stylesetters is the July 21, 2007 letter witnessed by Larry Bump and Jeff Young, and also signed in the presence of Pam Murray. Ms. Murray cannot represent to the Court in November of 2006 that her father lacked mental capacity and should have a guardian appointed, and then in this Court use a July 21, 2007 letter she purports to be a valid contract signed by her father promising to pay Elizabeth's Stylesetters half a million dollars.

Petitioner also references another letter witnessed by Brian Canaday in her Memorandum in Opposition. This letter was signed before a notary and is dated April 2007, not April 2006 as stated in Petitioner's Memorandum in Opposition. Therefore, that letter is also subsequent to the date Ms. Murray swore in a verified pleading that her father lacked mental capacity.

The Petitioner misconstrues the elements of judicial estoppel. First, two inconsistent positions must be taken by the same party. Ms. Murray took a different position in the Samuel Freeman Trust litigation than she is taking here. In the Samuel Freeman Trust Litigation, under oath, Ms. Murray alleged multiple times her father lacked the requisite mental capacity to intelligently and knowingly execute a document. In this litigation, she is alleging her father had the mental capacity to sign a three page single space letter purporting to pay her large sums of money fourteen days prior to his death. Exhibit 16. (also attached as Exhibit 46 to the Estate's Mem. Supp. Summ. J.)

In her Memorandum in Opposition, Ms. Murray further states her father remained lucid and competent and exercised free will just a few days before his death. Those are wholly inconsistent positions before two different courts of law in two different states. The "truth-seeking function of the judicial process is undermined if parties are allowed to change positions as to the facts of the case" Hayne at 252. As to the second element, the positions must be taken in the same or related proceedings involving the same party. The proceedings in this case, and in the Samuel Freeman Trust Litigation involved Elizabeth Murray, Mr. Murray and Hilton Smith. In Hayne, the Court judicially estopped a person from taking on position in a divorce proceeding and another in a foreclosure action. Though the proceedings themselves were unrelated, one being a divorce and another a foreclosure, the property at issue was denied as an asset during the divorce proceeding and claimed as owned in the foreclosure action. As such, in the foreclosure action, the person was estopped from claiming ownership of the property.

Next, the party must have been successful in maintaining that position and received some benefit. By engaging in the Samuel Freeman Trust Litigation, Elizabeth Murray, who was removed as a trustee by her father, kept her position as a trustee. Fourth, the inconsistency must be part of an intentional effort to mislead the court and fifth the positions must be totally inconsistent. Here, Ms. Murray is alleging Mr. Murray was lucid and had the mental capacity to sign a contract, while in 2006 Ms. Murray was requesting a guardian for her father and she alleged

he could not execute a document purporting to remove herself as a trustee. Those positions are totally irreconcilable and she is intentionally misleading the Court for her benefit.

Ms. Murray was free to raise her concerns of undue influence, and sue her father, but she cannot take an inconsistent position in this litigation with regard to her father's capacity than she has in other litigation. Ms. Murray is misleading the court here in stating her father had capacity to execute a contract fourteen days prior to his death when she claims he was having mental difficulties in November of 2006. Therefore, as a matter of law and for the integrity of the Courts, Ms. Murray is judicially stopped from claiming Mr. Murray was incapacitated in 2006 and now, when it suits her, stating Mr. Murray had capacity in July of 2007.

Ms. Murray is also judicially estopped with regard to her Elizabeth's Stylesetters claim because she also did not disclose these alleged debts owed to her on her affidavits of net worth in her divorce proceeding. On the affidavits of net worth filled out during her divorce proceeding, there is a section devoted to "loans to others and accounts receivable" and Ms. Murray does not list anything. She further lists as a value of zero, "jewelry, art, antiques, precious objects, gold and precious metals." As she did not list the amounts due to her from her father on behalf of Elizabeth's Stylesetters, nor any of her possessions left at the Inn at Quogue, such as artwork, on her statement of net worth in September of 2006 and May of 2007, she should not be able to claim them in this Court.

CONCLUSION

Elizabeth Murray has no basis as a matter of law to recover for either of her creditor's claims. For the aforementioned reasons, the Estate of William E. Murray respectfully requests that the Court dismiss with prejudice Elizabeth Murray's Petitions for Allowance of her Claims.

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7/24, 2017
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of ***THE ESTATE OF WILLIAM E. MURRAY'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT*** was served on each party or counsel of record by ☐ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 24 day of July, 2017.

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 (refered 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

EXHIBIT 1

EEM000927

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

EEM000020

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

EEM006970

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

EEM006930

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

EEM006931

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.

EEM006932

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.

EEM006933

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 L. Clot (SEAL)
Witness

Pamela Holmes Murray Smith (SEAL)
Pamela Holmes Murray Smith

Joseph L. Clot (SEAL)
Witness

Elizabeth Edwards Murray (SEAL)
Elizabeth Edwards Murray
(and as Administratrix DBN of the Estate of Minnie Holmes Murray)

Joseph L. Clot (SEAL)
Witness

Catherine Peronneau Murray Smith (SEAL)
Catherine Peronneau Murray-Smith

EEM006034

01-10407-4-1-1E

0555

WILLIAM E. MURRAY
50 EAST 77TH STREET, APT. 5C
NEW YORK, NY 10022

1-131
210

Date Feb 24 1986

Pay to the Order of Estate of William E. Murray $ 19,200.00

Nineteen Thousand Two Hundred & 00/100 Dollars

U.S.Trust UNITED STATES TRUST CO. OF NEW YORK
45 Wall Street
New York, N.Y. 10005

UNITED STATES TRUST COMPANY OF NEW YORK

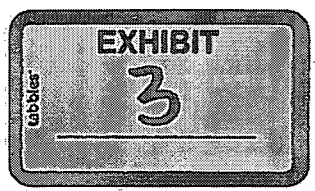
Memo 1985 interest William E Murray

⑈021001318⑈ 61 5028 4⑈ 0555 ⑆000019200000⑆

tabbies EXHIBIT 2

EEM004021

7/8	Glendale Tile	Bathroom Tile	Amex	196.88	Statement 7/29						196.88
7/8	True Value	Grout, Etc	Cash	37.30	XX 8/18-H						37.30
7/9	Redford Galleries	Bottles Print for Front Desk	Cash	102.84	XX						102.84
7/9	Springmaid	Sheets and Towels	Amex	639.91	Statement 7/29						639.91
7/9	Kmart	Misc. Supplies	Amex	141.75	Statement 7/29						141.75
7/12	Kellogg's & Lawrence	Paint	Discover	83.24	XX 8/18-H						83.24
7/12	Milo's East	Dinner with Tour Operator	Amex	47.00	Statement 7/29						47.00
7/13	Chase	No Payroll CHeck	Overdraft Fee	50.00	XX						
7/13	We'll Floor U	Tiles for Large Cottage - Kitchen and Bathroom	Amex	333.30	Statement 7/29						333.30
7/13	Post Stop Café	Interview Breakfast	Amex	22.00	Statement 7/29						22.00
7/16	Hampton Bays Diner	Dinner with Workers	Amex	41.10	Statement 7/29						41.10
7/16	Kmart	General	Amex	403.49	Statement						403.49



2098.81

Hilton C. Smith, Jr.
50 Summit Avenue
Hagerstown, Maryland 21740
301 733-4366

November 16, 1992

Mr. Thomas Berner
Berner & Berner
515 Madison Avenue
20th Floor
New York, NY 10153

RE: ESTATE OF MINNIE HOLMES MURRAY

Dear Mr. Berner:

Elizabeth Murray has informed me that you and she spoke on 11/9/92 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 from you to proceed with this liquidation.

Very truly yours,

Hilton C. Smith, Jr.

Holmes-M\Berner.ltr

c: Elizabeth Murray
c: Pam Stack
c: Catherine Smith
c: Dan Kelly

EEM004365

SOCIÉTÉ GÉNÉRALE

ANCH
:R PLAZA
'. 10020
022

DANIEL P. KELLY
VICE PRESIDENT

November 20, 1992

Mr. Hilton C. Smith, Jr.
Development Offices
50 Summit Avenue 7th fl.
Hagerstown, MD 21740

Dear Hilton,

As we discussed, here are the issues which each of the three sisters should be prepared to resolve at the meeting of 12/12/92 regarding the dissolution of the Estate.

1) Handling of the Life Insurance policy on W.E. Murray. As we learned through our discussion with Gail Reed, the policy has face value of $385M. Loans against the CSV of the policy are approximately $200M (and bear interest at 5%). There is an approximate $30M remaining in the CSV, which can be used (a) to pay future premiums of approximately $12M per annum or (b) to be distributed to the three sisters of (c) allowed to remain with the Insurance Company.

The options are should they continue to keep the Life Insurance policy in place. This is a yes or no decision. If the answer is yes, the next issue is how to pay for the policy. The answer to this is again an a) or b) solution. Solution (a) is to use the remaining CSV of approximately $30M, which will cover approximately two years of payments or, (b) pay the premiums out of pocket.

Since the choice is the sisters, and I won't offer my opinion, I think we need to address what happens, if they choose to pay money out of pocket (either now or in the near future). Let's be realistic, if one of the three doesn't choose to come out of pocket, the remaining two (or one if two don't pay) must pay the premiums - no big deal - but who gets the money if Bill dies?

Another thought - who is the beneficiary of this policy - probably the Estate. The Insurance company must be contacted in writing to formally change the beneficiary. This letter should be prepared by one of the them prior to the meeting so all three can see they will have their respective share of the benefits should the policy remain in place. If they cancel the policy - that ends all the issues on handling of the life insurance policy.

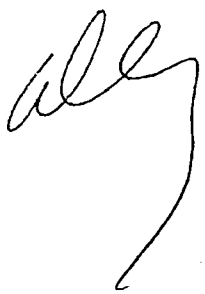
2) With respect to the investment in Huger St., I believe Jim Holmes must be contacted prior to the meeting to indicate that the Estates' undivided interest will now be divided and when he will be informed how it will split up. He may need to get bank approval for this. I honestly don't know what documentation will be required on both sides of the fence (Huger St. and the Estate) and your thoughts would be welcomed. Done by Hilton in Atlanta

3) Accounting - The held harmless letter must cover contingent liabilities relating to the estate (bills, taxes, etc.) and must require each of the three sisters to pay their shares in the event there are future expenses down the road. They must address (a) where the accounting records will be maintained and (b) who will account for other jointly held assets and (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.

4) Any issue with respect to loan balances of the three sisters, prior accounting for the Estate etc., should be first discussed in a conference call before the weekend meeting. Gripes, complaints, disputes etc., should be aired over the phone so all parties will know where the others stand. Hopefully, most issues can be resolved prior to the meeting.

Thank you for your assistance. I will phone you in the middle of next week to discuss strategy.

Very truly yours,



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.

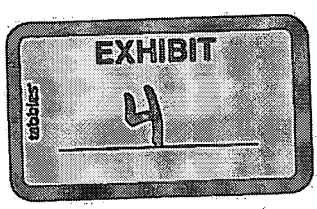
2) A letter needs to be prepared to Uncle Jimmy advising him that each of you at this point will continue to receive 1/3 of the estate's interest and the Huger Street Limited Partnership assets.

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

GAIL MARGOLIES REID CPA PC

August 20, 1990

406 Milledge Avenue
Atlanta, Georgia
30312
404 584-2138
404 584-2139 FAX

Mr. Thomas R. Berner
767 Fifth Avenue
Room 2700
New York, New York 10153

Dear Mr. Berner:

I am enclosing a completed and executed Release and Discharge of Administratrix form to be filed with the Surrogate's Court of Westchester County on behalf of the beneficiaries of the Estate of Minnie Holmes Murray. This original is being forwarded to you for review and filing at the request of Elizabeth E. Murray, The Estate's Administratrix. Also enclosed is a check payable to the Westchester County Surrogate's Court to cover the cost of preserving the document on microfiche.

As you know 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(s).

American Institute of Certified Public Accountants

Georgia Society of Certified Public Accountants

AICPA Division of CPA Firms Private Companies Practice Section

If you have any questions regarding the enclosed document, please do not hesitate to call me.

Very truly yours,

GAIL MARGOLIES REID, C.P.A., P.C.

By Gail Margolies Reid
Gail Margolies Reid

GMR/yrh

Enclosures

cc: Ms. Elizabeth E. Murray ✓
Ms. Pamela M. Stack
Ms. Catherine M. Smith



EEM004396

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

In the Matter of the Settlement of the Final Account of Proceedings of ELIZABETH EDWARDS MURRAY, as Executrix and Administratrix of the Estate of

MINNIE HOLMES MURRAY,
Deceased

RELEASE, REFUNDING, RECEIPT AND INDEMNITY AGREEMENT

WHEREAS, Minnie Holmes Murray, formerly of Bronxville, New York died on June 17, 1967;

WHEREAS, Minnie Holmes Murray left a will dated October 7, 1959, which will was duly admitted to Probate in the Surrogate's Court of Westchester County;

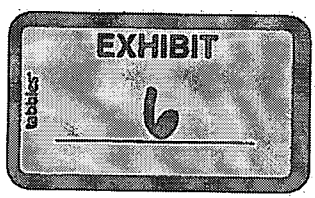
WHEREAS, Leon D. Murray, Jr. was granted Letters of Testamentary pursuant to such Will;

WHEREAS, Elizabeth Edwards Murray succeeded Leon D. Murray as Executor of the Will of Minnie Holmes Murray on August 22, 1975 and has acted as Administratrix and Executrix from that date to the present;

WHEREAS, Elizabeth Edwards Murray has duly rendered an account relating to the Estate of Minnie Holmes Murray from August 22, 1975 to date (the "Account of Proceedings") which account is hereto annexed as Exhibit A which account, together with all supporting documents, has been examined by the undersigned and their representatives and is found to be in all respects correct and true;

WHEREAS, the undersigned are under no disabilities;

WHEREAS, the undersigned do hereby represent that the foregoing recitals are correct and true.



EEM000978

WHEREAS, Catherine Murray Smith and Pamela Murray Stack (the "Agents") have at various times acted as agents for Elizabeth Edwards Murray in performing certain acts with respect to the Estate of Minnie Holmes Murray.

NOW, THEREFORE, in consideration of the premises recited above and, in consideration of the Elizabeth Edwards Murray (the "Executrix") consenting to have her account settled out of Court, without first requiring a judgement, decree or order of a Court of competent jurisdiction directing the same to be made, the undersigned on behalf of themselves, their issue, heirs, executors, administrators, beneficiaries and assigns, do hereby covenant and agree with the Executrix and the Agents as aforesaid and in their individual capacity as follows:

1. That to the date of the execution hereof, none of the undersigned has assigned, transferred or in any way alienated or encumbered in whole or in part the right, title or interest which they or their descendants or their estates have or had in and to the funds in the Estate of Minnie Holmes Murray (the "Estate") as aforesaid;

2. The Undersigned do hereby acknowledge receipts from the Executrix of the assets distributed to or for their account as shown in Schedule B herato;

3. The undersigned do hereby acknowledge that the foregoing constitutes the property which they were entitled to receive from

EEM000979

the Executrix;

4. They do hereby ratify , confirm and approve the Account of Proceedings rendered by the Executrix and all the acts and transactions set forth in said account and the records of the Estate and do hereby accept said account as an account stated, final and conclusive;

5. They have been accorded full opportunity to examine in person and through such representatives as they might select, all records of the Estate pertaining to, and to obtain from the Executrix all information regarding the administration of the Estate during the accounting period; and they hereby waive any right to further do so;

6. They have the power and authority to execute this document.

7. They do hereby waive any right to require or enforce settlement of said account or any account of the Executrix in any court whatsoever and agree that this instrument shall be in all respects binding and conclusive as though said account had been allowed and settled by final judgement or decree of a court of competent jurisdiction;

8. That the the Executrix may at any time either (a) record or file this document and/or the Account of Proceedings in

EEM000980

accordance with the provision of any statute, law or rule of the courts of the State of New York or any other State as an instrument settling the said account if, in the discretion of the Executrix she shall deem it advisable to do so, without any notice to the undersigned or (b) institute proceedings for the judicial settlement of the Account of Proceedings, in which event the undersigned waive service of citation or other process in such proceeding and consent that a decree be made or entered therein without notice;

9. Consent that out of the principal balance remaining on hand the following amounts be paid as set forth in Exhibit C hereto.

10. The Undersigned do hereby agree that if the Executrix of the Estate or the Agents shall sustain or incur any expenses or liability (including any taxes and any interest and penalty thereon) which would have been properly chargeable against or payable or recoupable from the property heretofore distributed, or from the property to be distributed to them, upon request of the Executrix, the Agents or their successors, forthwith to pay to the Executrix, or the Agents or their successors each such expense or liability;

11. They do remise, release and forever discharge the Executrix in her fiduciary capacities and individually, and the Agents and their heirs, administrators, executors, successors, beneficiaries and assigns of and from any and all claims and

EEM000981

demands and of and from any and all liability responsibility or accountability for or by reason of their actions with respect to the Estate; the acts and transactions in the administration of the Estate; the acts and transactions of the Executrix in the preparation of the Account of Proceedings; the acceptance of this instrument; and for any matter or thing growing out of or in any way connected thereto or to the Trust.

12. That the Undersigned will jointly and severally indemnify and save and hold harmless the Executrix, in her fiduciary capacities, as Executrix or Administratrix and individually, and the Agents and their heirs, administrators, executors, successors, beneficiaries and assigns from and against any and all claims, demands, liabilities, losses, damages, taxes or expenses of whatsoever kind of nature (including reasonable attorneys' fees) which the Executrix, the Agents or their heirs, administrators, executors, successors, beneficiaries and assigns in their fiduciary capacities or individually may at any time sustain or incur or become liable for by reason or in consequence of the acceptance of this instrument the distributions of assets from the Estate, or any claim or demand made by or on behalf of any person claiming any interest in the Estate or in respect of any matter or thing connected with the Estate or its administration including but not limited to, any amounts which may be lawfully assessed by the government of the United States, the State of New York or any other State or political subdivision thereof against the Trust on account of income or estate tax liability.

EEM000982

IN WITNESS WHEREAS, the undersigned have hereunto set their hands and seals as of the day of

Catherine Murray Smith

Pamela Murray Stack

Elizabeth Edwards Murray

EEM000983

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

EEM000984

STATE OF Georgia ss.: 065-40-8312

COUNTY OF Fulton

On this 12th day of December, 1991, 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, Colorado
My Commission Expires Jan. 15, 1994

EEM000985

STATE OF Georgia ss.: D65-40-8313

COUNTY OF Fulton

On this 14th 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. 15, 1994

Notary Public

EEM000986

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 June 22, 1994

Notary Public

EEM000987

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 ~~and~~ of 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.

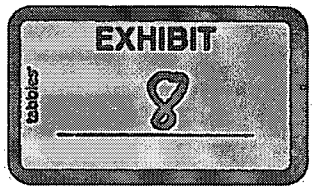
Elizabeth Edwards Murray

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

_____(SEAL)
Notary Public for the State of _____
My Commission Expires:_____



Form 516—1M 1-77 — Rel. and Disc. Adm.

File No. 19

Release and Discharge of Elizabeth Edwards Murray
Administratrix of Estate of Minnie Holmes Murray deceased.

Whereas, Minnie Holmes Murray

late of Bronxville, New York *died on or about the*
day of June 17 19 67, *and thereafter on the*
day of 19, *Letters of Administration upon the goods, chattels and credits which were of said deceased, were duly granted unto* Leon D. Murray and then to Elizabeth Edwards Murray, *who duly qualified as such Administrat ors and entered upon the discharge of* their *duties.*

And Whereas, *the time to present claims against the estate of the said deceased has expired;*

And Whereas, *all the creditors who have presented claims against the said deceased have been paid;*

And Whereas, *the undersigned* Elizabeth Edwards Murray
Catherine Murray Smith
Pamela Murray Stack

are all the persons entitled to a distributive share of the estate;

And Whereas, *the said administrat h prepared and made h account and exhibited the same to the undersigned persons entitled to a distributive share wherein the said administrat charged,*

With amount received from all sources . . . . . $

And credited

With funeral and administration expenses . . . $

With payment of debts of decedent . . . . $

Leaving a balance in the hands of said Administrat of $

applicable to the payment of the commissions of the administrat and for distribution among the distributees.

EEM004397

And Whereas, the undersigned have settled with said administrat rix all matters and things whatsoever relating to said estate and to all claims and interest therein; and have received the amount of their distributive shares so far as there were sufficient assets to pay the same the receipts whereof we hereby severally acknowledge and in consideration of a mutual agreement to waive a judicial accounting, we, the persons entitled to distributive shares, do, and each of us acting individually and without regard to the execution of these presents by the others does, hereby remise, release and forever discharge the said administrat rix and

the sureties upon the official bond of such administrat rix of and from any and every claim, demand, action and cause of action, account, reckoning and liability of every name and nature for and on account of any and every matter and thing whatsoever arising from or in any manner relating to or connected with the estate of said deceased or with the administration thereof; and we and the said administrat rix who also subscribe these presents, severally request the Surrogate of said County to record this instrument as required by law.

In Witness Whereof we have hereunto set our hands and seals the

day of , 19

In presence of

1) Edward Murray
2) Catherine Murray-Smith
3) Gerard Murray Stark

EEM004398

State of New York,
County of New York } ss.:

On this 3rd day of July, 19 90 before me personally came Elizabeth Edwards Murray

to me known and known to me to be the person described in and who executed the foregoing instrument and who acknowledged that she executed the same.

RHODA S. GOLDFARB
Notary Public, State of New York
NO. 4756850
Qualified in Kings County
Certificate filed in New York County
Commission Expires Sept. 30, 19 92

Rhoda S. Goldfarb

State of ~~New York~~, MARYLAND
County of WASHINGTON } ss.:

On this 18th day of July, 19 90 before me personally came Catherine Murray Smith

to me known and known to me to be the person described in and who executed the foregoing instrument and who acknowledged that she executed the same.

Marlene V. Hersh
MARLENE V. HERSH
My Commission Expires 2-1-93

State of ~~New York~~, Georgia
County of Cobb } ss.:

On this 26th day of July, 19 90 before me personally came Donald Murray Stack

to me known and known to me to be the person described in and who executed the foregoing instrument and who acknowledged that he executed the same.

Sarah M. Gish
Notary Public

Notary Public, Cobb County, Georgia
My Commission Expires Nov. 6, 1993

EEM004399

SURROGATE'S COURT
COUNTY OF WESTCHESTER

Release and Discharge of

Elizabeth Edwards Murray

Administratrix _____ *of*

Estate of Minnie Holmes Murray *Deceased*

Recorded in Westchester County Surrogate's Office on the _____ *day of* _____, 19____ *on Microfilm Roll* _____ *No.*____

_____

Clerk of the Surrogate's Court

Attorney _____

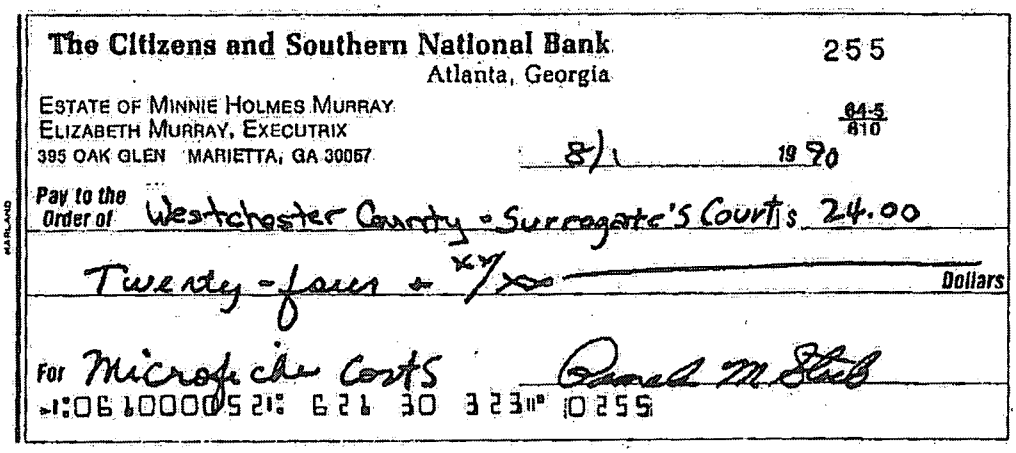
P. O. Address _____

_____

Telephone

EEM004400

001297



The Citizens and Southern National Bank
Atlanta, Georgia

255

ESTATE OF MINNIE HOLMES MURRAY
ELIZABETH MURRAY, EXECUTRIX
395 OAK GLEN MARIETTA, GA 30067

84-5
810

8/1 1990

Pay to the Order of Westchester County - Surrogate's Court $ 24.00

Twenty-four & xx/xx Dollars

For Microfiche Costs

Donald M Stark

⑆061000052⑆ 621 30 323⑈ 0255

EEM004401

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	C/A No. 2007-ES-10-1116
	)	
IN THE MATTER OF WILLIAM E. MURRAY	)	**PETITIONER'S RESPONSES TO FOURTEENTH SET OF REQUESTS FOR PRODUCTION**

1. Any and all correspondence, including emails and social media websites, between Elizabeth Murray and the following: Dana Flavin, Pam Murray, William E. Murray, Hilton Smith, James Ma, Gil Mestler, Larry Bump, Theresa Fontana, Larry Young, Nyesha Cherry, Joe Pridgen and any other witnesses identified in this case from 2005 to present.

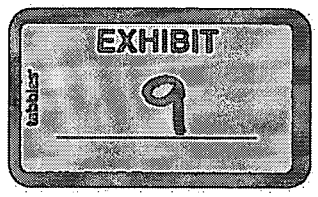
RESPONSE: Objection, this request is overly broad and unduly burdensome and requests information protected by attorney client and work product privilege. Notwithstanding the objection, Elizabeth Murray supplemented her production of emails between her and Dana Flavin and Gil Mestler on March 2nd, 2015.. All correspondence with Hilton Smith and James Ma has been previously produced by Plaintiff. Furthermore, the Estate is in possession of all correspondence with Hilton Smith and James Ma. Petitioner has a facebook account and a linkedin account. The user name for both accounts is Elizabeth Murray. Petitioner is in the process of reviewing her social media networks for any communication requested and will supplement her production.

2. Any and all audio and video recordings, whether recorded by tape recorder, digital media or other format, in your possession of conversations with William E. Murray, Hilton Smith, Pam Murray, Helen Flynn, or any other person or witness related to the claims in this case.

RESPONSE: Petitioner already produced the only recording in her possession of a conversation with William E. Murray. There are no other recordings.

3. Any and all documents pertaining to the Minnie Holmes Realty. If the Minnie Holmes Realty is a corporation or limited liability company please provide all corporate documents referencing formation and bylaws.

RESPOSE: Objection. Any documents responsive to this request are irrelevant to the claims in the matter at bar. Notwithstanding the objection, Petitioner is producing the incorporation receipt filed with the State of NY.



4. Any and all documentation of the trust held by Minnie Holmes Realty and the assets of the Minnie Holmes Realty holds.

RESPONSE: Objection. Any documents responsive to this request are irrelevant to the claims in the matter at bar. Notwithstanding the objection, Minnie Holmes Realty does not hold any trust and does not own any assets at this time.

5. Any and all documents transferring funds from the Minnie Holmes Murray Estate to a trust.

RESPONSE: None.

6. Any and all documents containing any and all trustees of the trust held by the Minnie Holmes Realty.

RESPONSE: None.

7. Any and all Schedule K-1 or other tax returns of the Estate of Minnie Holmes Murray or tax returns of the Minnie Holmes Murray Realty from 1992 to present.

RESPONSE: The Estate of Minnie Holmes Murray has not filed tax returns after 1992. Minnie Holmes Realty has not filed tax returns.

8. Any and all documentation of any loans made to or from Gil Mestler, Dana Flavin and any other witness related to this case.

RESPONSE: Petitioner does not have any documentation of loans to and from Gil Mestler or Dana Flavin beyond the document where Petitioner identified one repayment of a loan by Gil Mestler on the financial transaction list previously produced.

9. Elizabeth Murray's calendar for the years 2006 and 2007.

RESPONSE: Petitioner does not have copies of her calendars for the years 2006, 2007.

10. Any and all documents in your or others possession where William E. Murray signed his name "as agreed".

RESPONSE: Petitioner has not yet located any documents responsive to this request, in addition to the documents previously produced.

11. Provide the names of all accountants Elizabeth Murray has used in the past ten (10) years.

RESPONSE: Objection. This is not a request for documents. Notwithstanding the objection, petitioner provided copies of her tax returns and Elizabeth Stylesetter's tax returns containing the contact information for the accountant she used.

12. Any and all tax returns for Elizabeth Murray and Elizabeth Stylesetter's from 2009 to present.

RESPONSE: Objection. This request is overly broad and unduly burdensome and will not lead to discovery of admissible evidence.

13. Any and all credit card statements containing transactions where Elizabeth Murray or Elizabeth Stylesetter's paid for goods or services at the Inn at Quague from 2000 to present.

RESPONSE: All documents responsive to this request have been previously produced and identified.

14. Any and all copies of checks from Gill Mestler.

RESPONSE: Petitioner produced a list of her banking transactions showing one deposit from Gil Mestler. Additionally, Petitioner is producing a copy of check 113 dated January 30, 2014 in the amount of $27.55

15. Any and all documentation of funds transferred or checks made to Dana Flavin, Collmed, or Dana Flavin's organizations or foundations.

RESPONSE: Objection. This request does not identify the maker of checks. Notwithstanding the objection, Petitioner produced copies of checks that were made to Collmed by persons other than petitioner, that were at some point in Petitioner's possession. See Doc Flavin Email000071.

16. Any and all documents showing the estate of Minnie Holmes Murray remains open and Elizabeth Murray is the administratix.

RESPONSE: All of these documents have been previously produced and identified.

17. Any and all correspondence to or from Nyesha Cherry from 2006 to present, including social media communications.

RESPONSE: Petitioner only corresponded with Ms. Cherry via her facebook account and will be producing the correspondence.

18. Produce Pam Murray's personal daily datebook with notations regarding William E. Murray's Health.

RESPONSE: All of these documents have been previously produced and identified.

19. Any and all documents relating to a 2013 claim involving a burglary as discussed during the deposition of Elizabeth Murray on December 9, 2014.

RESPONSE: Objection, this request is overly broad and unduly burdensome and is not reasonably calculated to lead to admissible evidence. Petitioner did not maintain any documentation regarding that claim after the claim was paid.

20. Any and all affidavits or verified pleadings signed by Elizabeth Murray regarding the Samuel Freeman Trust and lawsuit filed by US Trust.

RESPONSE: Objection. Hilton Smith and the Estate of William E. Murray were parties to the US Trust litigation and have access to those documents.

GEORGE J. KEFALOS, PA

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Oana D. Johnson, Esquire
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E-mail: steve@slotchiverlaw.com

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Elizabeth Murray's Responses to Thirteenth Set of Requests for Production, were served upon all counsel of record by electronic mail at the addresses indicated below on this 20th day of March, 2015:

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172 Meeting St
Charleston, SC 29401
molly.craig@hoodlaw.com

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Duggan@DugganLawGroup.com

Oana D. Johnson

DEVELOPMENT OFFICES
50 SUMMIT AVENUE, 7TH FLOOR
HAGERSTOWN, MARYLAND 21740
(301) 733-4365

FAX COVER SHEET

DATE: 12-11-97

TO: [illegible]

FAX: [illegible] PHONE: [illegible]

FROM: [illegible]

FAX: (301) [illegible]

PROJECT: [illegible]

MESSAGE: [illegible]

NUMBER OF PAGES INCLUDING THIS ONE: [illegible]

IF YOU HAVE ANY PROBLEMS RECEIVING THIS MATERIAL,
PLEASE CALL (301) 733-4365

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 or 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 U.S. Mail.

Thank you!

EXHIBIT
10

CERTIFIED MAIL

December 12, 1982

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 breach 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. As you are aware, the consequences of your default pursuant to the above Agreement are that the interest rate on your unpaid instalments has been automatically increased to 12% for the period in which it is in default and, if you fail to cure your default by making the required payments within 12 months after the date of this notice in writing 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-MVA-Default

Hilton Smith
Freeman Trust
rec'd by Lee 12/17/06

RECORD FOLDER

104816. MAP D

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Petition of UNITED STATES TRUST COMPANY, NATIONAL ASSOCIATION, as a co-Trustee of

THE SAMUEL FREEMAN CHARITABLE TRUST,

for an Order Removing and Surcharging WILLIAM E. MURRAY and HILTON CHARLES SMITH, JR. as co-Trustees thereof and Determining Whether the Purported Removal of ELIZABETH E. MURRAY and PAMELA HOLMES MURRAY as co-Trustees Was Effective.

ANSWER AND CROSS-PETITION

File No. 3944/2006

Pamela Holmes Murray ("Pamela") and Elizabeth E. Murray ("Elizabeth"), as and for their Answer and Cross-Petition in the above-captioned proceeding, respectfully state:

1. Admit the allegations contained in Paragraph 1 of the Petition.
2. Admit the allegations contained in Paragraph 2 of the Petition.
3. Admit the allegations contained in Paragraph 3 of the Petition.
4. Admit the allegations contained in Paragraph 4 of the Petition.
5. Admit the allegations contained in Paragraph 5 of the Petition.
6. Admit the allegations contained in Paragraph 6 of the Petition.
7. Admit the allegations contained in Paragraph 7 of the Petition.
8. Admit the allegations contained in Paragraph 8 of the Petition.
9. Admit the allegations contained in Paragraph 9 of the Petition.
10. Admit the allegations contained in Paragraph 10 of the Petition.
11. Admit the allegations contained in Paragraph 11 of the Petition.

EXHIBIT
Sabella
11

12. Admit the allegations contained in Paragraph 12 of the Petition.

13. Admit the allegations contained in Paragraph 13 of the Petition.

14. Admit the allegations contained in Paragraph 14 of the Petition.

15. Admit the allegations contained in Paragraph 15 of the Petition except aver that the purported effective date was September 28, 2006.

16. Admit the allegations contained in Paragraph 16 of the Petition.

17. Admit the allegations contained in Paragraph 17 of the Petition.

18. Admit the allegations contained in Paragraph 18 of the Petition.

19. Admit the allegations contained in Paragraph 19 of the Petition.

20. Admit the allegations contained in Paragraph 20 of the Petition.

21. Admit the allegations contained in Paragraph 21 of the Petition.

22. Admit the allegations contained in Paragraph 22 of the Petition.

23. Admit the allegations contained in Paragraph 23 of the Petition.

24. Admit the allegations contained in Paragraph 24 of the Petition.

25. Admit the allegations contained in Paragraph 25 of the Petition.

26. Admit the allegations contained in Paragraph 26 of the Petition.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27 of the Petition except admit the allegations contained in Paragraph 27 of the Petition insofar as they relate to Hilton Charles Smith, Jr. ("Hilton").

28. Admit the allegations contained in Paragraph 28 of the Petition.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of the Petition.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 of the Petition.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 of the Petition.

32. Admit the allegations contained in Paragraph 32 of the Petition.

33. Admit the allegations contained in Paragraph 33 of the Petition and aver that Hilton C. Smith III was also enrolled as a student at St. James during this time period.

34. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 of the Petition except Pamela avers that her daughters, Jeanette and Alison, applied for financial aid scholarships by submitting an application to the FAFSA, a program for Federal scholarship aid that is administered by the U.S. Department of Education, that their scholarship aid was granted and that they received a scholarship from St. James but had no knowledge that any grant from the Samuel Freeman Charitable Trust (the "Trust") had been the source of funds for said scholarships.

35. Repeat and reallege the answer to Paragraph 34.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 of the Petition.

37. Admit the allegations contained in Paragraph 37 of the Petition.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 38 of the Petition except aver that Pamela's daughters were invited by Hilton to participate in a TFAS trip and that it was Pamela's understanding that WEM, personally, was the source of funds for this trip.

39. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 39 of the Petition.

40. Admit the allegations contained in Paragraph 40 of the Petition.

41. Admit the allegations contained in Paragraph 41 of the Petition.

42. Admit the allegations contained in Paragraph 42 of the Petition.

43. Admit the allegations contained in Paragraph 43 of the Petition.

44. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 44 of the Petition except aver that Theresa had informed Elizabeth that she had won a scholarship to Marymount.

45. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45 of the Petition.

46. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 46 of the Petition.

47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47 of the Petition.

48. Admit the allegations contained in Paragraph 48 of the Petition.

49. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 of the Petition.

50. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50 of the Petition.

51. Admit the allegations contained in Paragraph 51 of the Petition.

52. Admit the allegations contained in Paragraph 52 of the Petition.

53. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 of the Petition.

54. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 of the Petition.

55. Admit the allegations contained in Paragraph 55 of the Petition.

56. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 of the Petition.

57. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 57 of the Petition.

58. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 of the Petition.

59. Admit the allegations contained in Paragraph 59 of the Petition.

60. Admit the allegations contained in Paragraph 60 of the Petition.

61. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 of the Petition.

62. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 62 of the Petition.

63. Admit the allegations contained in Paragraph 63 of the Petition.

64. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 64 of the Petition.

65. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 65 of the Petition.

66. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 66 of the Petition.

67. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 67 of the Petition.

68. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 68 of the Petition.

69. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 69 of the Petition.

70. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 70 of the Petition.

71. Admit the allegations contained in Paragraph 71 of the Petition.

72. Admit the allegations contained in Paragraph 72 of the Petition.

73. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 73 of the Petition.

74. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 74 of the Petition.

75. Admit the allegations contained in Paragraph 75 of the Petition.

76. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 76 of the Petition.

77. Admit the allegations contained in Paragraph 77 of the Petition.

78. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 78 of the Petition.

79. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 79 of the Petition.

80. Admit the allegations contained in Paragraph 80 of the Petition.

81. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 81 of the Petition.

82. Admit the allegations contained in Paragraph 82 of the Petition.

83. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 83 of the Petition.

84. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 84 of the Petition.

85. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 85 of the Petition.

86. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 86 of the Petition insofar as they pertain to WEM and admit that Hilton has breached his fiduciary duties to the Trust.

87. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 87 of the Petition except aver that the funds that Elizabeth received from the Trust for repairs, renovations and purchases of furniture and furnishings to St. Marguerite Bourgeoys Church or The Chapin School were remitted to vendors and that Elizabeth received no benefit for herself. Elizabeth further avers that she brought these facts to the attention of United States Trust Company, National Association ("U.S. Trust").

88. Admit the allegations contained in Paragraph 88 of the Petition.

89. Admit the allegations contained in Paragraph 89 of the Petition.

90. Admit the allegations contained in Paragraph 90 of the Petition.

91. Admit the allegations contained in Paragraph 91 of the Petition.

92. Admit the allegations contained in Paragraph 92 of the Petition.

93. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 93 of the Petition except admit that while WEM was in the hospital Hilton purported to have retained an attorney to represent both William E. Murray ("WEM") and Hilton and further aver that WEM later stated to Pamela and Elizabeth that he had no knowledge or memory of these attorneys being retained on his behalf.

94. Admit the allegations contained in Paragraph 94 of the Petition.

95. Admit the allegations contained in Paragraph 95 of the Petition except aver that the purported effective date was September 28, 2006.

96. Admit the allegations contained in Paragraph 96 of the Petition and aver that any purported removal of Elizabeth as a trustee was ineffective as a matter of law on the ground, among others, that WEM lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Elizabeth as a trustee.

97. Admit the allegations contained in Paragraph 97 of the Petition and aver that any purported removal of Elizabeth as a trustee was ineffective as a matter of law on the ground, among others, that WEM lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Elizabeth as a trustee.

98. Admit the allegations contained in Paragraph 98 of the Petition and aver that any purported removal of Elizabeth as a trustee was ineffective as a matter of law on the ground, among others, that WEM lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Elizabeth as a trustee.

99. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 99 of the Petition and aver that a purported letter of removal was never delivered to Pamela as required by the Agreement of Trust.

100. Admit the allegations contained in Paragraph 100 of the Petition and aver that any purported removal of Pamela as a trustee was ineffective as a matter of law on the ground, among others, that WEM lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Pamela as a trustee and that no replacement trustee was ever named as required by the Agreement of Trust.

101. Admit the allegations contained in Paragraph 101 of the Petition and aver that any purported removal of Pamela as a trustee was ineffective as a matter of law on the ground, among others, that WEM lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Pamela as a trustee.

102. Admit the allegations contained in Paragraph 102 of the Petition.

103. Admit the allegations contained in Paragraph 103 of the Petition and aver that Pamela and Elizabeth have been totally open, candid and forthright in responding to U.S. Trust's inquiries.

104. Admit the allegations contained in Paragraph 104 of the Petition.

105. Admit the allegations contained in Paragraph 105 of the Petition.

106. Admit the allegations contained in Paragraph 106 of the Petition.

107. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 107 of the Petition.

108. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 108 of the Petition.

109. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 109 of the Petition.

110. Admit the allegations contained in Paragraph 110 of the Petition.

111. Admit the allegations contained in Paragraph 111 of the Petition.

112. Admit the allegations contained in Paragraph 112 of the Petition.

113. Admit the allegations contained in Paragraph 113 of the Petition.

114. Admit the allegations contained in Paragraph 114 of the Petition.

115. Admit the allegations contained in Paragraph 115 of the Petition.

116. Admit the allegations contained in Paragraph 116 of the Petition.

WHEREFORE, Respondents respectfully submit that the Petition of U.S. Trust be granted to the extent of (a) surcharging Hilton for acts of self-dealing as a trustee of the Trust; (b) removing Hilton as a trustee of the Trust pursuant to SCPA 711; and (c) granting such other and further relief as this Court may deem just and proper.

As And For The Cross-Petition Of Pamela Holmes Murray And Elizabeth E. Murray Against William E. Murray, Hilton Charles Smith, Jr. And United States Trust Company, National Association

Pamela and Elizabeth, as and for their Cross-Petition against Respondents Hilton, WEM and U.S. Trust, respectfully state:

1. Pamela and Elizabeth are the daughters of Respondent WEM and as such have the greatest respect, love and affection for him and have the deepest concern for his welfare and well-being.

2. 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. Accordingly, he is regrettably no longer able to fulfill the duties of Chairman of the Trust.

3. This deterioration began in July, 1992, when WEM suffered a significant stroke and, in October, 1992, when he suffered a major automobile accident. These incidents were followed by a series of periodic mini-strokes or TIAs that left his health and his mental capacities increasingly impaired.

4. In August, 1999, WEM suffered another stroke and was hospitalized. As a result, his ability to reason, to use simple vocabulary and to recall names of people, places and things, much less give sustained attention to Trust matters, became even further impaired. WEM also became highly vulnerable to pressure and influence from Hilton, who is WEM's son-in-law, a business associate and a co-trustee of the Trust. Hilton lives close to WEM in Charleston, South Carolina, and has daily access to him.

5. Over the past several years, Hilton has exercised undue influence and control over WEM and used that control to manipulate grants of Trust funds to suit his own purposes. In recent months Hilton has controlled any direct and telephone access to WEM by third parties. Hilton seeks to prevent anyone from seeing or speaking to WEM without Hilton's permission. To the extent that anyone is permitted to see or speak to WEM, their visits or telephone calls are monitored by Hilton and others at his direction. Hilton has exercised control of access to WEM to the point of limiting the ability of Pamela and Elizabeth to see or speak to their father.

6. Since 2003, WEM has suffered from the effects of Parkinson's syndrome which has been manifested in his inability to carry out simple physical tasks such as bathing, dressing, eating, brushing his teeth, etc. At a commencement speech at the Spoleto Building dedication in Charleston, South Carolina, in June, 2003, WEM was unable to speak or stand on

his own. He collapsed on the ground and thereafter began to use a wheelchair whenever he traveled. He also became increasingly unable to verbalize his thoughts and intentions.

7. In late August, 2003, Elizabeth, who lives in New York, received a rambling and disjointed telephone call from WEM who was in Charleston. She promptly went to Charleston to visit WEM and found that he had deteriorated even further. He had lost approximately 60 pounds and was in a state of confusion about dates, times, events and places. After Elizabeth returned to New York she often received telephone calls from WEM inviting her to stop by his house for lunch even though she was hundreds of miles away.

8. In June, 2004, Pamela, alarmed at the deterioration of her father's condition, started to visit him in Charleston for periods of five days every four or five weeks. In February, 2005, at WEM's request, she moved to Charleston in order to help care for him.

9. The Agreement of Trust provides that WEM is Chairman of the trustees. (¶ 10.) WEM has the right under the Agreement of Trust to appoint, remove without cause and replace individual trustees by a duly acknowledged writing that is delivered to all the trustees. (¶ 9.) In May, 2004, Hilton launched a maneuver to eventually gain full control of the Trust. He demanded that Pamela and Elizabeth immediately execute an "Agreement," attached hereto as Exhibit A, that would confer upon Hilton the title of Vice Chairman of the Trust – despite the fact that the Agreement of Trust does not provide for the position of Vice Chairman. Hilton further proposed that upon WEM's resignation or demise, Hilton would become Chairman of the Trust with full authority "at any time and from time to time to appoint, remove or replace any individual trustee" -- despite the fact that the Agreement of Trust made no provision for <u>any</u> trustee, other than Samuel Freeman and WEM, to have such authority.

10. Hilton's brazen effort to get control of the Trust, including the power to discharge at will any individual trustee who might oppose him, was opposed by Pamela and Elizabeth who refused to sign the document. Thereafter, Hilton became increasingly hostile to Pamela and Elizabeth and regarded them as a threat to his control of the Trust.

11. Hilton has acknowledged that he is aware of WEM's diminished mental capacities. In March, 2006, Hilton called Elizabeth about a grant that WEM had wanted to make to Hackensack Medical Center. Hilton refused to proceed with any such grant. He told Elizabeth: "you and I both know that your father is incapable of understanding or making any grant decisions." Hilton further stated that any future grant proposals had to originate from or through him, alone, and that he would not approve or process any proposal that was initiated by WEM or anyone else.

12. Hilton has also exercised control over WEM's personal financial affairs. In or about April, 2006, at Hilton's urging, WEM executed a guarantee of a Wachovia bank loan for a business venture in which Hilton and WEM were involved. WEM's understanding of this guarantee was so limited that he told Elizabeth that the guarantee was for $500,000, when in fact it was for $5 million.

13. Because of WEM's declining mental and physical condition, WEM spent several weeks in June and July, 2006, in a HealthSouth rehabilitation facility in which he received therapy of various kinds. At the conclusion of WEM's stay there, his caseworker at that facility stated that WEM had been found to be mentally incompetent. The caseworker suggested that independent legal counsel should be hired to protect WEM's interests. Hilton was heard to caution Helen Flynn, WEM's companion, that "no one can know about this."

14. On information and belief, while WEM was hospitalized at HealthSouth, Hilton arranged to have WEM sign a letter retaining attorneys to represent him in connection with Trust matters and to sign a retention check for those attorneys. WEM later told both Pamela and Elizabeth that he had no memory whatsoever of having hired attorneys or having signed a retainer letter or check. WEM did not even recall having been in the hospital.

15. On information and belief, the attorneys that Hilton arranged to represent WEM while WEM was in the hospital were the same attorneys who represented Hilton and who continue to represent him in this proceeding.

16. In August, 2006, Hilton took WEM to another doctor for an examination of his mental competency. Elizabeth was in the neurologist's office and heard the neurologist state that the examination results indicated that WEM was partially incompetent, that he was highly subject to suggestion and that he had problems with reasoning, amounts, dates and logic.

17. In August, 2006, Pamela and Elizabeth arranged to have their father see an elder attorney who would represent and protect his interests. Hilton vigorously opposed any such retention of independent attorneys for WEM. He claimed it was unnecessary inasmuch as WEM had supposedly previously retained attorneys. Hilton then disclosed to Pamela, Elizabeth and to WEM, himself, that WEM had allegedly retained attorneys two months earlier at the time he was hospitalized.

18. From the Spring through the Fall of 2006, U.S. Trust was engaged in, among other things, an investigation of possible misconduct, breach of fiduciary duty and self-dealing by trustees of the Trust which has resulted in the allegations recounted in U.S. Trust's Petition. Hilton, believing that Pamela and Elizabeth had knowledge of his misconduct and were therefore a threat to him, conceived of a plan to thwart U.S. Trust's investigation and forestall his

own removal as trustee. His plan was to prevail upon WEM, as Chairman of the Trust, to discharge his two daughters as trustees. This would result in three remaining trustees – WEM, Hilton and U.S. Trust, with Hilton controlling two of the three votes.

19. WEM had, for some 20 years, expressed his intent to Pamela and Elizabeth to eventually appoint them as trustees of the Trust. On October 24, 2000, WEM appointed Elizabeth as trustee. That appointment was made by WEM, in person, after having had direct, face-to-face conversations with Elizabeth about becoming a trustee.

20. On information and belief, on or around September 28, 2006, Hilton, knowing that attorneys for U.S. Trust had interviewed Pamela and Elizabeth, among others, put his plan into action. He obtained WEM's signature on a document in which Elizabeth was purportedly discharged as trustee of the Trust. A copy of that document is annexed hereto as Exhibit B.

21. At the time WEM signed this document he was suffering from cataracts and macular degeneration, conditions that severely impaired his eyesight, as well as Parkinson's syndrome and dementia. It was not possible for him to have read the fine print of that document, much less have fully understood the import of a document that abruptly removed his daughter as trustee. The scrawl that is WEM's signature is, itself, compelling evidence of his physical deterioration. Several weeks after signing this document WEM underwent cataract eye surgery.

22. On information and belief, the "removal" of Elizabeth as trustee was conceived of, promoted and carried out by Hilton, not by WEM. On information and belief, the document that purportedly effected that removal was prepared by Hilton's lawyers and presented to WEM for signature. These are the same lawyers who purport to represent both Hilton and WEM in regard to this proceeding.

23. On or about October 4, 2006, Elizabeth received Exhibit B, the document that purported to remove her as trustee of the Trust. At no time before this document was sent to Elizabeth had WEM spoken to Elizabeth about the proposed removal of her as trustee. At no time before or after it was sent did WEM ever tell Elizabeth that he was dissatisfied with the manner in which she carried out her duties as trustee.

24. Subsequent to September 28, 2006, and prior to October 4, 2006, Elizabeth visited and/or had dinner with her father daily while he was in New York. At no time did WEM tell her he had purportedly discharged her as a trustee of the Trust or that he had been dissatisfied with her conduct as a trustee. On the contrary, he asked her to visit him in Charleston for a week in October.

25. Pamela was appointed by WEM to be a trustee of the Trust on June 16, 1999. On information and belief, a document dated sometime in October, 2006, which purported to remove Pamela as a trustee has been circulated but has never been delivered to Pamela. At no time, either before or after this purported removal occurred, did WEM ever tell Pamela that he intended to remove her as trustee, that he had in fact done so or that he was at all dissatisfied with her performance as a trustee.

26. The purported removal of Pamela and Elizabeth as trustees was engineered by Hilton for the purpose of solidifying his control over WEM and the Trust. It was designed to eliminate anyone whom he conceived to be a threat to that control. The purported removal of Pamela and Elizabeth, if valid, would have left Hilton in complete control of the Trust – and free to continue to dispense Trust assets in ways that served his own interests.

27. The purported removal of Elizabeth as trustee was ineffective as a matter of law for the reason that (a) WEM lacked the mental and physical capacity to read and

understand the removal document; (b) the purported removal did not comply with the requirement of the Agreement of Trust that a replacement trustee be appointed if any individual trustee were terminated; and (c) proper delivery of the document was not made to all trustees as required by the Agreement of Trust.

28. The purported removal of Pamela as trustee was ineffective as a matter of law for the reason that (a) WEM lacked the mental and physical capacity to read and understand the removal document; (b) the purported removal did not comply with the requirement of the Agreement of Trust that a replacement trustee be appointed if any individual trustee were terminated; and (c) proper delivery of the document to Pamela was not made as required by the Agreement of Trust.

29. Hilton has breached his fiduciary duty to the Trust through his misconduct, self-dealing and exercise of undue influence over WEM, whom Hilton has acknowledged lacks requisite mental capacity to serve as a trustee.

30. Hilton's manipulative and self-serving conduct, and his breach of fiduciary duty to the Trust, is further evidenced by the fact that even after U.S. Trust's Petition was filed exposing his misconduct to the Court, lawyers hired by Hilton continue to represent both Hilton and WEM -- notwithstanding the conflict of interest that renders such dual representation improper.

Necessary Parties

31. The names and post-office addresses of all persons interested in this proceeding who are required to be cited, or concerning whom the Court is required to have information, are set forth in subdivision (a) or (b):

(a) All persons and parties so interested herein who are of full age and sound mind, or which are corporations or associations, are as follows:

Name	Address	Description of Interest
United States Trust Company, National Association	114 West 47th Street New York, NY 11036	Trustee
Hilton Charles Smith, Jr.	5301 Old York Course Hollywood, SC 29449	Trustee
Pamela Holmes Murray	1561 Brianna Lane Charleston, SC 29412	Trustee
Elizabeth E. Murray	737 Park Avenue, Apt. #3B New York, NY 10021	Trustee
Hon. Eliot Spitzer, Attorney General of the State of New York	120 Broadway New York, NY 10271	Representative of Ultimate Charitable Beneficiaries

(b) All persons and parties so interested herein who are infants or incompetents or persons believed to be mentally incapable adequately to protect their rights, or whose existence, identity or whereabouts are unknown (including persons who are virtually represented under SCPA 315) are as follows:

Name	Address	Description of Interest
William E. Murray	One Vendue Place Charleston, SC 29401	Trustee

32. Upon information and belief, there are no persons interested in this proceeding other than those mentioned above.

33. Upon information and belief, none of the above-named persons is in the military service, as defined by the Act of Congress known as the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, and by the New York State Soldiers' Civil Relief Act of 1951, as amended.

34. This Court has jurisdiction over this Cross-Petition proceeding pursuant to SCPA 207 based on the fact that Petitioner U.S. Trust is a trustee of the Trust and has a principal place of business in New York State.

35. Venue in this county is proper based on the fact that U.S. Trust has a principal place of business in New York County.

36. No prior application has been made to this or any other Court for the relief requested in this Cross-Petition.

WHEREFORE, Cross-Petitioners Pamela and Elizabeth respectfully pray that this Court issue an order as follows:

(a) removing Hilton as a trustee of the Trust for self-dealing, as alleged in the Petition and Cross-Petition, and manipulation and abuse of WEM, whom Hilton knows lacks mental capacity;

(b) removing WEM as a trustee of the Trust on the ground that he is physically and mentally incapable of performing his duties as a trustee;

(c) directing that a guardian *ad litem* be appointed for WEM;

(d) determining that the documents that WEM purportedly signed to remove Pamela and Elizabeth as trustees are ineffective and void on the ground that WEM lacked mental capacity to exercise such a function as Chairman of the Trust and were the product of improper and undue influence exercised by Hilton over WEM and, in any event, that the procedures set forth in the Agreement of Trust for the removal of individual trustees were not followed;

(e) confirming that Pamela and Elizabeth continue to be trustees of the Trust;

(f) restraining Hilton from taking any action, making any representations or making any decisions on behalf of the Trust that do not include, or are inconsistent with, the roles of Pamela and Elizabeth as trustees; and

(g) granting such other and further relief as this Court may deem just and proper.

Dated: November 17, 2006

PAMELA HOLMES MURRAY

ELIZABETH E. MURRAY

SIDLEY AUSTIN LLP

By: Eileen Caulfield Schwab
Eileen Caulfield Schwab
Roger J. Hawke

787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300

Attorneys for Respondents and
Cross-Petitioners Pamela Holmes Murray
and Elizabeth E. Murray

(f) restraining Hilton from taking any action, making any representations or making any decisions on behalf of the Trust that do not include, or are inconsistent with, the roles of Pamela and Elizabeth as trustees; and

(g) granting such other and further relief as this Court may deem just and proper.

Dated: November 17, 2006

PAMELA HOLMES MURRAY

ELIZABETH E. MURRAY

SIDLEY AUSTIN LLP

By: _____
Eileen Caulfield Schwab
Roger J. Hawke

787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300

Attorneys for Respondents and
Cross-Petitioners Pamela Holmes Murray
and Elizabeth E. Murray

VERIFICATION

STATE OF ~~NEW YORK~~ Massachusetts)
Nantucket SS.:
COUNTY OF ~~NEW YORK~~)

Pamela Holmes Murray, being duly sworn, deposes and says: I am a Respondent and Cross Petitioner herein; I have read the foregoing Answer and Cross-Petition subscribed by me and know the contents thereof; the same is true of my own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe it to be true.

Pamela Holmes Murray

Sworn to before me this
9th day of November, 2006.

Notary Public

LORIS L. COOPER, Notary Public
My Commission Expires March 7, 2008

VERIFICATION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ELIZABETH E. MURRAY, being duly sworn, deposes and says: I am a Respondent and Cross-Petitioner herein; I have read the foregoing Answer and Cross-Petition subscribed by me and know the contents thereof; the same is true of my own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe it to be true.

ELIZABETH E. MURRAY

Sworn to before me this
17th day of November, 2006.

Notary Public

GEORGE L. CONOVER, JR.
Notary Public, State of New York
No. 01CO4883710
Qualified in New York County
Commission Expires February 23, 2007

AGREEMENT

This AGREEMENT of the Trustees of the Samuel Freeman Charitable Trust (hereinafter referred to as SFCT), dated this 12 day of May 2004, by and between WILLIAM E. MURRAY (hereinafter referred to as WEM), residing at 50 East 77th Street, The Carlisle, 7A, New York, NY 10021, HILTON C. SMITH, JR. (hereinafter referred to as HCS), residing at 5031 Old York Course, Hollywood, SC 29449, PAMELA HOLMES STACK (hereinafter referred to as PHS), residing at 395 Oak Glen, Marietta, Georgia 30067, and ELIZABETH EDWARDS MURRAY (hereinafter referred to as EEM), residing at 737 Park Ave, 3B, NY, NY 10021, hereinafter referred to as the Individual Trustees and US Trust Company of New York, the Corporate Trustee.

WHEREAS the Trustees agree that WEM is the Chairman of the SFCT, and

WHEREAS the Trustees hereby appoint HCS as the Vice Chairman. They further agree that subsequent to WEM's resignation or demise that HCS shall be appointed the Chairman of the SFCT, and

WHEREAS each Individual Trustee, other than the Chairman or Vice Chairman, may recommend one or more qualifying organization seeking to receive grants from the SFCT, provided that the total amount of the grants awarded by each Individual Trustee in any calendar year shall not exceed $50,000.00, and

WHEREAS the Corporate Trustee shall retain the right to recommend grants, and

WHEREAS the Chairman or Vice Chairman may sponsor qualifying organizations seeking to receive grants from the SFCT up to the remaining balance of the net income of the SFCT available for distribution, and

WHEREAS the Trustees confirm that until WEM's resignation or demise that WEM shall continue to receive the commissions allowed a sole Individual Trustee under the Laws of the State of New York, in effect at the time of payment. Thereafter, the Individual Trustees shall share in the amount allowed to a sole Trustee under the Laws of the State of New York in effect at the time of payment. HCS will receive $12,000 per year, and the remainder of the commissions shall be divided equally between the remaining Individual Trustees, and

WHEREAS HCS, as Chairman, has the authority at any time and from time to time to appoint, remove, or replace any Individual Trustee, by an instrument in writing, duly acknowledged and delivered to the Individual Trustees.

IN WITNESS WHEREOF and hereto have affixed their hands and seals the day and year first above written

WITNESS: Debi Hollis

BY: William E. Murray 5/12/04
William E. Murray, Chairman Date

WITNESS: Debi Hollis

BY: 5/8/04
Hilton C. Smith, Jr., Vice Chairman Date

WITNESS:

BY:
Pamela Holmes Stack, Trustee Date

WITNESS:

BY:
Elizabeth Edwards Murray, Trustee Date

WITNESS: Carolyn L. Lee

US Trust Company of New York

BY: 5/24/04
Linda Franciscovich, Managing Director Date

The Samuel Freeman Charitable Trust

Removal of Trustee

WHEREAS:

1. William E. Murray is a trustee under that certain Agreement of Trust (the "Agreement") dated April 29,1981 between Samuel Freeman, as Grantor, and William E. Murray, Samuel Freeman and the United States Trust Company of New York, as Trustees, establishing The Samuel Freeman Charitable Trust.

2. Paragraph 9 of the Agreement granted to Samuel Freeman and William E. Murray, jointly, or to the survivor, the authority to appoint up to five (5) additional trustees.

3. Elizabeth Murray was appointed as an additional trustee pursuant to the above power.

4. Paragraph 9 of the Agreement authorizes William E. Murray, as the survivor of Samuel Freeman and William E. Murray, to remove any trustee appointed pursuant to the provisions of Paragraph 9 of the Agreement.

5. William E. Murray intends to remove Elizabeth Murray as a trustee.

NOW, THEREFORE, William E. Murray, pursuant to the authority granted to him in Paragraph 9 of the Agreement, does hereby remove Elizabeth Murray as a trustee under the Agreement effective the date hereof.

IN WITNESS WHEREOF, each of the undersigned has hereunto set his hand and seal to this instrument as of the 28th day of September, 2006.

WILLIAM E. MURRAY

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.

On the 28th day of September in the year 2006 before me, the undersigned, personally appeared WILLIAM E. MURRAY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument in New York, New York.

Notary Public

HELEN KELLY
Notary Public, State of New York
No. 5005278
Qualified in Suffolk County
Commission Expires Dec. 7, 20[illegible]

668026_1

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) S.S.:
COUNTY OF NEW YORK)

I, Joan E. Senatore, being over the age of eighteen (18) years, and not a party to this action, and being first duly sworn, state on oath that on November 17, 2006 I caused the foregoing Answer and Cross-Petition to be served by first-class mail in the State of New York upon:

Mr. William E. Murray
One Vendue Place
Charleston, SC 29401

Joan E. Senatore

Subscribed and sworn to me this
17th day of November, 2006

Notary Public

WILLIAM U. GENG
Notary Public, State Of New York
No. 01GE4874791
Qualified In New York County
Commission Expires 05/31/2010

NY1 5986002v.1

159 - Affidavit of net worth, income and assets transferred; matrimonial: 22NYCRR 202.16, 3-98

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Supreme COURT State of New York
COUNTY OF New York

Index No. 0350789

Daniel P. Kelly

Plaintiff

against

Elizabeth E. Murray

Defendant

Statement of Net Worth (DRL § 236)

Date of Commencement of Action

(Complete all items, marking "NONE", "INAPPLICABLE", and "UNKNOWN," if appropriate)

STATE OF New York COUNTY OF New York SS.:

Elizabeth E. Murray, the [ ] Petitioner [ ] Respondent [ ] Plaintiff [X] Defendant herein, being duly sworn, deposes and says that the following is an accurate statement as of 9-1-06 of my net worth (assets of whatsoever kind and nature and wherever situated minus liabilities), statement of income from all sources and statement of assets transferred of whatsoever kind and nature and wherever situated:

I. FAMILY DATA:

(a) Husband's age 53
(b) Wife's age 52
(c) Date married 04/13/1985
(d) Date [ ] separated [ ] divorced
(e) Number of dependent children under 21 1
(f) Names and ages of children
Elspeth H. Kelly – 17 3/4
DOB 11/28/88

Custody of children [ ] Husband [ ] Wife [X] Joint [ ] N/A
Minor children of prior marriage: [ ] Husband [ ] Wife
Husband [ ] Paying [ ] Receiving $ 0 as alimony (maintenance) and/or
$ 0 child support in connection with prior marriage
Wife [ ] Paying [ ] Receiving $ 0 as alimony (maintenance) and/or
$ 0 child support in connection with prior marriage
Custody of children of prior marriage

(k) Is marital residence occupied by [ ] Husband [ ] Wife [X] Both [ ] N/A
(l) Husband's present address
737 Park Ave Apt. 3B
New York, New York 10021
Wife's present address
737 Park Ave Apt. 3B
New York, New York 10021
(m) Occupation of husband Banking
Occupation of wife Self-Employed
(n) Husband's employer
Societe General – Director
(o) Wife's employer
Self-Employed
Graduated 8/05

EXHIBIT 12

(p) Husband's education, training and skills
BS - Accounting Villanova 1974
MA - Accounting Bentley 1976
MBA --Fordam Finance 1985

(q) Wife's education, training and skills
BS - Wharton 1974
1/2 MBA Finance
AA - Interior Design, NY School of Design August, 2005
Certificate NCIDQ (National Council on Interior Design Qualifications) 2/3 complete, December 2005 (will finish 1/3 October 2006)

(r) Husband's health
good

(s) Wife's health
good

(t) Children's health
Receiving occasional therapy for anorexia; good

II. **EXPENSES** *(You may elect to list all expenses on a weekly basis or all expenses on a monthly basis, however, you must be consistent. If any items are paid on a monthly basis, divide by 4.3 to obtain weekly payments; If any items are paid on a weekly basis, multiply by 4.3 to obtain monthly payment. Attach additional sheet, if needed. Items included under "Other" should be listed separately with separate dollar amounts.)*

Expenses listed [ ] weekly [X] monthly

(a) Housing		
1. Christmas tips - Doorman	100.00	
2. Condominium charges	0.00	
3. Cooperative apartment maintenance	0.00	
4. Mortgage and amortization	0.00	
5. Real estate taxes	0.00	
6. Rent	2,000.00	
TOTAL: Housing		2,100.00
(b) Utilities		
1. Aol, Cable	100.00	
2. Cell Phones - Elizabeth and Elspeth	200.00	
3. Electricity & Gas	275.00	
4. Fuel oil	0.00	
5. Gas	0.00	
6. Telephone - Fax (3 lines)	200.00	
7. Water	0.00	
TOTAL: Utilities		775.00

(c) Food		
1. Deli	100.00	
2. Dining out	100.00	
3. Groceries	500.00	
4. Home entertainment	0.00	
5. Liquor/alcohol	50.00	
6. Lunches at work	0.00	
7. School lunches	0.00	
TOTAL: Food		750.00
(d) Clothing		
1. Children	100.00	
2. Husband	0.00	
3. Other	0.00	
4. Wife	150.00	
TOTAL: Clothing		250.00
(e) Laundry		
1. Dry cleaning	25.00	
2. Laundry at home	75.00	
3. Shoe repair and clothing repair/alt.	50.00	
TOTAL: Laundry		150.00
(f) Insurance		
1. Automotive	200.00	
2. Dental plan	0.00	
3. Disability	0.00	
4. Fire, theft and liability	0.00	
5. Homeowner's/tenant's	130.00	
6. Life	0.00	
7. Medical plan Cancer/AFLAC	0.00	
8. Optical plan	0.00	
9. Other	0.00	
10. Umbrella policy	0.00	
11. Worker's compensation	0.00	
TOTAL: Insurance		330.00
(g) Unreimbursed medical		
1. Dental -- ded., copays & unreimbursed	170.00	
2. Medical	200.00	
3. Optical	0.00	
4. Other	0.00	
5. Pharmaceutical (co-pays)	100.00	
6. Surgical, nursing, hospital	0.00	
TOTAL: Unreimbursed medical		470.00

(h) Household maintenance		
1. Appliances, including maintenance	100.00	
2. Cleaning supplies	50.00	
3. Computer Maintenance	50.00	
4. Extermination	0.00	
5. Furniture, furnishings, housewares	75.00	
6. Other	0.00	
7. Painting	50.00	
8. Repairs	100.00	
9. Rug Cleaning	75.00	
10. Windows/Floor Cleaning	50.00	
TOTAL: Household maintenance		550.00
(i) Household help		
1. Baby sitter	0.00	
2. Domestic (housekeeper, maid, etc.)	300.00	
3. Other	0.00	
TOTAL: Household help		300.00
(j) Automotive		
1. Car wash	25.00	
2. Gas and oil	75.00	
3. Other	0.00	
4. Parking and tolls	30.00	
5. Payments	0.00	
6. Registration and license	20.00	
7. Repairs	50.00	
TOTAL: Automotive		200.00
(k) Educational		
1. Chapin	1,000.00	
2. College	0.00	
3. College Visits	0.00	
4. Nursery and pre-school	0.00	
5. Other	0.00	
6. Post-graduate	0.00	
7. Religious instruction	0.00	
8. School events/activities	0.00	
9. School supplies/books	0.00	
10. School transportation	0.00	
11. Tutoring	0.00	
TOTAL: Educational		1,000.00

(l) Recreational		
1. Birthday parties	0.00	
2. Cable television	0.00	
3. Country club/pool	0.00	
4. Health club	0.00	
5. Hobbies	0.00	
6. Miscellaneous expenses	400.00	
7. Movies	0.00	
8. Music/dance lessons	0.00	
9. Sporting goods	0.00	
10. Sports lessons	0.00	
11. Summer camp	0.00	
12. Tapes, cd's, etc.	0.00	
13. Team sports	0.00	
14. Theatre, ballet, etc.	0.00	
15. Travel on Holidays, Funerals, Weddings	100.00	
16. Vacations	100.00	
17. Video rentals	0.00	
TOTAL: Recreational		600.00
(m) Income taxes		
1. City	0.00	
2. Federal	0.00	
3. Social security and medicare	0.00	
4. State	0.00	
TOTAL: Income taxes		0.00
(n) Miscellaneous		
1. Accounting & tax return	50.00	
2. Alimony and maintenance payments(prior m	0.00	
3. Beauty aids/cosmetics, drug items	100.00	
4. Beauty parlor/barber/manicures, etc.	300.00	
5. Books, magazines, newspapers	50.00	
6. Cabs	100.00	
7. Charitable contributions	0.00	
8. Child support payment(prior marriage)	0.00	
9. Children's allowances & transportation	50.00	
10. Cigarettes/tobacco	0.00	
11. Commutation & transportation cabs & bus	50.00	
12. Gifts Daughter - Xmas, B'day, etc.	150.00	
13. Miscellaneous unexpected expenses	120.00	
14. Postage/mailing	50.00	
15. Union and organization dues	0.00	

16. Veterinarian/pet expenses	0.00	
17. miscellaneous (daughter)	30.00	
TOTAL: Miscellaneous		1,050.00
(o) Other		
1. gas and electric	0.00	
TOTAL: Other		0.00
TOTAL EXPENSES	$ 8,525.00	

III. GROSS INCOME: *(State source of income and annual amount. Attach additional sheet, if needed).*

(a) Salary or wages: *(State whether income has changed during the year preceding date of this affidavit* No *. If so, set forth name and address of all employers during preceding year and average weekly wage paid by each. Indicate overtime earnings separately. Attach previous year's W-2 or income tax return.)*

$3,000/month from William E. Murray
$10,000/year for Elspeth Kelly's Tuition from W.E.M. 0.00

(b) Weekly deductions:

1. Federal tax	0.00
2. NewYork State tax	0.00
3. Local tax	0.00
4. Social Security	0.00
5. Medicare	0.00
6. Other payroll deductions *(specify)*	0.00

(c) Social Security number
(d) Number and names of dependants claimed:
Elspeth H. Kelly -- 17 3/4
DOB 11/26/88

(e)	Bonus, commissions, fringe benefits *(use of auto, memberships, etc.)*	0.00
(f)	Partnership, royalties, sale of assets *(income and installment payment)*	0.00
(g)	Taxable Dividends and interest	0.00
	Non-Taxable Dividends and interest	0.00
(h)	Real estate *(income only)*	0.00
(i)	Trust, profit sharing and annuities *(principal distribution and income)*	0.00
(j)	Pension *(income only)*	0.00
(k)	Awards, prizes, grants *(state whether taxable)*	0.00
(l)	Bequests, legacies and gifts	0.00
(m)	Income from all other sources *(including alimony, maintenance or child support from prior marriage)*	0.00
(n)	Tax preference items:	
	1. Long term capital gain deduction	0.00
	2. Depreciation, amortization or depletion	0.00
	3. Stock options - *excess of fair market value over amount paid*	0.00
(o)	If any child or other member of your household is employed, set forth name and that person's annual income	0.00
		0.00
(p)	Social Security	0.00
(q)	Disability benefits	0.00
(r)	Public assistance	0.00
(s)	Other	0.00

TOTAL INCOME $ 0.00

IV. ASSETS: *(If any asset is held jointly with spouse or another, so state, and set forth your respective shares. Attach additional sheets, if needed.)*

A. Cash Accounts

Cash

1.1	a. Location b. Source of funds c. Amount	Union Savings Bank Connecticut, value unknown marital (title holder Daniel P. Kelly & Elspeth) $0.00	
			Total: Cash $0.00

Checking Accounts

2.1	a. Financial institution b. Account number c. Title holder d. Date opened e. Source of funds f. Balance	Citibank Money Market Daniel Kelly (amount unknown) $.00	
2.2	a. Financial institution b. Account number c. Title holder d. Date opened e. Source of funds f. Balance	Bank of New York Elizabeth Murray $20.00	
2.3	a. Financial institution b. Account number c. Title holder d. Date opened e. Source of funds f. Balance	Chase JP Morgan 116-063-648 Elizabeth Style Setters $.00	
2.4	a. Financial institution b. Account number c. Title holder d. Date opened e. Source of funds f. Balance	Citibank Checking Daniel Kelly (amount unknown) $.00	
			Total: Checking $20.00

Savings Accounts

3.1	a. Financial institution b. Account number c. Title holder d. Date opened e. Type of account f. Source of funds g. Balance	 Daniel Kelly with Elspeth Kelly (amount unknown) gifts $0.00	
3.2	a. Financial institution b. Account number c. Title holder d. Date opened e. Type of account f. Source of funds g. Balance	Citibank Savings Daniel Kelly (amount unknown) $0.00	
			Total: Savings $0.00

Other

5.1 a. Location
b. Title owner
c. Type of deposit
d. Source of funds
e. Date of deposit
f. Amount

$0.00

Total: Other $0.00

TOTAL: CASH ACCOUNTS $ 20.00

B. Securities

Bonds, notes, mortgages

1.1 a. Description of security
Societe Generale Restricted Stock

b. Title holder Daniel Kelly
c. Location
d. Date of acquisition
e. Original price or value 0.00
f. Source of funds to acquire amount unknown
g. Current value

$0.00

Total: Bonds $0.00

Stocks, options and commodity contracts

2.1 a. Description of security
None

b. Title holder
c. Location
d. Date of acquisition
e. Original price or value .00
f. Source of funds to acquire
g. Current value

$0.00

Total: Stocks, options, etc. $0.00

Broker margin accounts

3.1 a. Name and address of broker
None

b. Title holder
c. Date account opened
d. Original price or value 0.00
e. Source of funds
f. Current value

$0.00

Total: Margin accounts $0.00

TOTAL: VALUE OF SECURITIES: $ 0.00

DIV0019

C. Loans to others and accounts receivable

1.1 a. Debtor's name and address

b. Original amount of loan 0.00
c. Source of funds from which loan made or origin of debt

d. Date payment(s) due
e. Current amount due $0.00

Total: Loans and accounts receivable $0.00

D. Value of interest in any business

1.1 a. Business name and address
Elizabeth Stylesetters

b. Type of business *(corporate, partnership, sole proprietorship or other)*

c. Your capital contribution 7,900.00
d. Your percentage of interest 0
e. Date of acquistion
f. Original price or value 0.00
g. Source of funds to acquire
h. Method of valuation
i. Other relevant information
(inactive business)

j. Current net worth of business $0.00

Total: Value of business interest $0.00

E. Cash surrender value of life insurance

1.1 a. Insurer's name and address
None

b. Name of insured
c. Policy number
d. Face amount of policy 0.00
e. Policy owner
f. Date of acquisition
g. Source of funds to acquire
h. Current cash surrender value $0.00

Total: Value of life insurance $0.00

F. Vehicles *(automobile, boat, plane, truck, camper, etc.)*

1.1 a. Description
Scion 2005

b. Title owner	Elizabeth Murray
c. Date of acquisition	2005
d. Original price	0.00
e. Source of funds to acquire	Insurance proceeds from totalled car, WEM ($7k)
f. Amount of current lien unpaid	0.00
g. Current fair market value	$15,000.00

1.2 a. Description
1999 Ford Taurus
(fair market value unknown)

b. Title owner	Daniel Kelly
c. Date of acquisition	2006
d. Original price	0.00
e. Source of funds to acquire	
f. Amount of current lien unpaid	0.00
g. Current fair market value	$0.00

Total: Value of vehicles $15,000.00

G. Real estate *(including real property, lease holds, life estates, etc. at market value - do not deduct any mortgage)*

1.1 a. Description
House, Katonah, 113 Lake Shore Drive, Katonah, NY 10536

b. Title owner	Both
c. Date of acquisition	11/86
d. Original price	240000
e. Source of funds to acquire	Separate and Marital
f. Amount of mortgage or lien unpaid	0.00
g. Estimated current market value	$645,000.00

Total: Value of real estate $645,000.00

H. Vested interests in trusts *(pension, profit sharing, legacies, deferred compensation and others)*

1.1 a. Description of trust
Security Pacific Trusteed Retirement Income Plan

b. Location of assets	
c. Title owner	Daniel Kelly (present value unknown)
d. Date of acquisition	1984
e. Original investment	0.00
f. Source of funds	marital
g. Amount of unpaid liens	0.00
h. Current value	$0.00

1.2 a. Description of trust
Societe Generale Defined Benefit as of 12/31/04

b. Location of assets	Societe Generale	
c. Title owner	Daniel Kelly (present value unknown)	
d. Date of acquisition	1990	
e. Original investment	0.00	
f. Source of funds	marital	
g. Amount of unpaid liens	0.00	
h. Current value		$0.00

1.3 a. Description of trust
Societe Generale Deferred Compensation 12/31/04

b. Location of assets		
c. Title owner	Daniel Kelly (present value unknown)	
d. Date of acquisition		
e. Original investment	0.00	
f. Source of funds	marital	
g. Amount of unpaid liens	0.00	
h. Current value		$0.00

1.4 a. Description of trust
Societe Generale Non Qualified Plan as of 12/31/04

b. Location of assets		
c. Title owner	Daniel Kelly (present value unknown)	
d. Date of acquisition		
e. Original investment	0.00	
f. Source of funds		
g. Amount of unpaid liens	0.00	
h. Current value		$0.00

1.5 a. Description of trust

b. Location of assets		
c. Title owner		
d. Date of acquisition		
e. Original investment	0.00	
f. Source of funds		
g. Amount of unpaid liens	0.00	
h. Current value		$0.00

Total: Vested Interest in trusts $0.00

I. Contingent interests *(stock options, interests subject to life estates, prospective inheritances, etc.)*

1.1 a. Description
Societe Generale as of 12/31/04

b. Location		
c. Date of vesting		
d. Title owner	Daniel Kelly (present value unknown)	
e. Date of acquisition		
f. Original price or value	0.00	
g. Source of funds to acquire		
h. Method of valuation		
i. Current value		$0.00

Total: Contingent Interest $0.00

J. Household furnishings

1.1 a. Description
see list attached

b. Location
c. Title owner
d. Original price 0.00
e. Source of funds to acquire
f. Amount of lien unpaid 0.00
g. Current value $0.00

Total: Household furnishings $0.00

K. Jewelry, art, antiques, precious objects, gold and precious metals (only if valued at more than $500)

1.1 a. Description
Jewelry - various of minimal value - any of value were inherited or gifted, most costume

b. Location
c. Title owner
d. Original price 0.00
e. Source of funds to acquire
f. Amount of lien unpaid 0.00
g. Current value $0.00

1.2 a. Description
Art - acquired prior to marriage (exceot for small prints of small value)

b. Location 737 Park Avenue
c. Title owner
d. Original price 0.00
e. Source of funds to acquire
f. Amount of lien unpaid 0.00
g. Current value $0.00

1.3 a. Description
George Jensen Silver, acquired prior to marriage

b. Location
c. Title owner
d. Original price 0.00
e. Source of funds to acquire pre-marital
f. Amount of lien unpaid 0.00
g. Current value $0.00

Total: Jewelry, art, etc. $0.00

L. Other *(e.g., tax shelter investments, collections, judgments, causes of action, patents, trademarks, copyrights, and any other asset not previously itemized)*

1.1 a. Description
Two tax shelters. since change in tax laws same are only applicable to active investments: 215 East Bay Realty Associates -- upon death of Wife's father, there will be $20,000 liability for each tax shelter.
b. Location
c. Title owner
d. Original price 0.00
e. Source of funds to acquire gift from wife's father
f. Amount of lien unpaid 0.00
g. Current value $0.00

1.2 a. Description
Vanderhorst Realty Associates -- upon death of Wife's father there will be a $20,000 liability on this shelter.

b. Location		
c. Title owner		
d. Original price	0.00	
e. Source of funds to acquire	gift from wife's father	
f. Amount of lien unpaid	0.00	
g. Current value		$0.00

Total: Other $0.00

TOTAL ASSETS $660,020.00

V. LIABILITIES

A. Accounts payable

1.1 a. Name and address of creditor
Citibank Master Charge

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 246.00
g. Amount of current debt $10,945.21

1.2 a. Name and address of creditor
Capital One Visa

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 216.00
g. Amount of current debt $6,918.27

1.3 a. Name and address of creditor
Fleet Visa/Bank of America

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 80.00
g. Amount of current debt $3,498.78

1.4 a. Name and address of creditor
Optima

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 100.00
g. Amount of current debt $2,738.86

1.5 a. Name and address of creditor
American Express

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 1,195.00
g. Amount of current debt $2,570.66

1.6 a. Name and address of creditor
Diner's Club

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 975.00
g. Amount of current debt $2,519.29

1.7 a. Name and address of creditor
Discover

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 180.00
g. Amount of current debt $8,679.17

1.8 a. Name and address of creditor
HFC Group
64461000173219

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 0.00
g. Amount of current debt $2,112.49

1.9 a. Name and address of creditor
Dr. Asner (medical bills)

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 0.00
g. Amount of current debt $400.00

1.10 a. Name and address of creditor
Mechanical Response

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose To bring A/C up to code
f. Monthly or other periodic payment 0.00
g. Amount of current debt $1,500.00

Total: Accounts payable $41,882.71

B. Notes Payable

1.1 a. Name and address of note holder

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 0.00
g. Amount of current debt $0.00

Total: Notes payable $0.00

C. Installment accounts payable *(security agreements, chattel mortgages)*

1.1 a. Name and address of note creditor

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 0.00
g. Amount of current debt $0.00

Total: Installment accounts payable $0.00

D. Brokers' margin accounts

1.1 a. Name and address of note broker

b. Amount of original debt 0.00
c. Date of incurring debt
d. Purpose
e. Monthly or other periodic payment 0.00
f. Amount of current debt $0.00

Total: Brokers' margin accounts $0.00

E. Mortgages payable on real estate

1.1 a. Name and address of mortgagee

b. Address of property mortgaged

c. Mortgagor(s)

d. Original debt 0
e. Date of incurring debt
f. Monthly or other periodic payment 0.00
g. Maturity date
h. Amount of current debt $0.00

Total: Mortgages payable $0.00

F. Taxes payable

1.1 a. Description of tax

b. Date due
c. Amount of tax $0.00

Total: Taxes payable $0.00

G. Loans on life insurance policies

1.1 a. Name and address of insuror

b. Amount of loan 0.00
c. Date incurred
d. Purpose
e. Name of borrower
f. Monthly or periodic payment 0.00
g. Amount of current debt $0.00

Total: Loans on life insurance $0.00

H. Other Liabilities

1.1 a. Description
Divorce Fee Loan

b. Name and address of creditor
Father

c. Debtor
d. Original amount of debt 0.00
e. Date incurred
f. Purpose
g. Monthly or periodic payment 0.00
h. Amount of current debt $20,000.00

Total: Other liabilities $20,000.00

TOTAL LIABILITIES $61,882.71

NET WORTH

TOTAL ASSETS:	$660,020.00
TOTAL LIABILITIES:	($61,882.71)
NET WORTH	$598,137.29

VI. ASSETS TRANSFERRED: *(List assets transferred in any manner during the preceding three years, or length of the marriage, whichever is shorter [transfers in the routine course of business which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed where such assets are otherwise identified in the statement of net worth.])*

Description of Property	To Whom Transferred and Relationship to Transferee	Date of Transfer	Value
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00

VII. SUPPORT REQUIREMENTS:

(a) Deponent is at present [ ] *paying* [ ] *receiving* $ 0.00 per [ ] *week* [ ] *month*, and prior to separation [ ] *paid* [ ] *received* $ 0.00 per [ ] *week* [ ] *month* to cover expenses for

These payments are being made [ ] *voluntarily* [ ] *pursuant to court order or judgment* [ ] *pursuant to separation agreement*, and there are arrears outstanding, (in the some of $ 0.00 to date).

(b) Deponent requests for support of each child $ 500.00 per [ ] *week* [X] *month*.
Total for children $ 0.00

(c) Deponent requests for support of self $ 2,500.00 per [ ] *week* [X] *month*.

(d) The day of the [ ] *week* [X] *month* on which payment should be made is Oct. 2006 or when H. moves

VIII. COUNSEL FEE REQUIREMENTS:

(a) Deponent requests for counsel fee and disbursements the sum of $ 0.00

(b) Deponent has paid counsel the sum of $ 0.00 and has agreed with counsel concerning fees as follows: see retainer attached

(c) There is a retainer agreement or written agreement relating to payment of legal fees. *(A copy of any such agreement must be annexed.)*

IX. ACCOUNTANT AND APPRAISAL FEE REQUIREMENTS:

(a) Deponent requests for accountants' fees and disbursements the sum of $0.00
(Include basis for fee, e.g., hourly rate, flat rate)

(b) Deponent requests for appraisal fees and disbursements the sum of $ 0.00
(Include basis for fee, e.g., hourly rate, flat rate)

(c) Deponent requires the services of an accountant for the following reasons:

(d) Deponent requires the services of an appraiser for the following reasons:

X. **Other data concerning the financial circumstance of the parties that should be brought to the attention of the court are:**
House in Katonah funded with monies borrowed from the Estate of Minnie Holmes Murray (wife's mother) prinicpal must be refunded to Estate - the interest payments on the loan were made from Wife's separate property income and are to be refunded to Wife. Wife prepaid $10,000, the balance of daugther's 2006-2007 tuition. House expenses are not included in the calculations - house to be rented out. House expenses including insurance and repairs run approx $2000 per month.

The forgoing statements *and a rider consisting of page(s) annexed hereto and made part hereof* have been carefully read by the undersigned who states that they are true and correct.

Sworn to before me on 9-19-06

Valerie S. Wolfman
VALERIE S. WOLFMAN
Notary Public, State of New York
No. 4956657
Qualified in New York County

Signature (Rules 130-1.1-a) 9/19/06
Valerie S. Wolfman

[ ] Petitioner [ ] Plaintiff [ ] Respondent [X] Defendant
Elizabeth E. Murray

159 - Affidavit of net worth, income and assets transferred; matrimonial: 22NYCRR 202.16. 3-98

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Supreme COURT State of New York
COUNTY OF New York

Index No. 0350789

Daniel P. Kelly

Plaintiff

against

Elizabeth E. Murray

Defendant

Statement of Net Worth (DRL § 236)

Date of Commencement of Action

(Complete all items, marking "NONE", "INAPPLICABLE", and "UNKNOWN." if appropriate)

STATE OF New York COUNTY OF New York SS.:

Elizabeth E. Murray, the [ ] Petitioner [ ] Respondent [ ] Plaintiff [X] Defendant herein, being duly sworn, deposes and says that the following is an accurate statement as of ~~8-1-08~~ 5/21/07 of my net worth (assets of whatsoever kind and nature and wherever situated minus liabilities), statement of income from all sources and statement of assets transferred of whatsoever kind and nature and wherever situated:

I. FAMILY DATA:

(a) Husband's age 53
(b) Wife's age 53
(c) Date married 04/13/1985
(d) Date [ ] separated [ ] divorced
(e) Number of dependent children under 21 1
(f) Names and ages of children
Elspeth H. Kelly -- 18 1/2
DOB 11/26/88

(g) Custody of children [ ] Husband [ ] Wife [X] Joint [ ] N/A
(h) Minor children of prior marriage: [ ] Husband [ ] Wife
(i) Husband [ ] Paying [ ] Receiving $ 0 as alimony (maintenance) and/or
$ 0 child support in connection with prior marriage
Wife [ ] Paying [ ] Receiving $ 0 as alimony (maintenance) and/or
$ 0 child support in connection with prior marriage
(j) Custody of children of prior marriage

(k) Is marital residence occupied by [ ] Husband [ ] Wife [X] Both [ ] N/A
(l) Husband's present address
737 Park Ave Apt. 3B
New York, New York 10021
Wife's present address
737 Park Ave Apt. 3B
New York, New York 10021
(m) Occupation of husband Banking
Occupation of wife Self-Employed
(n) Husband's employer
Societe General -- Director

(o) Wife's employer
Self-Employed
Graduated 8/05
NCIDQ Certification Program (2/3 completed on 12/31/05)

(p) Husband's education, training and skills
BS - Accounting Villanova 1974
MA - Accounting Bentley 1976
MBA --Fordam Finance 1985

(q) Wife's education, training and skills
BS - Wharton 1974
1/2 MBA Finance (Non-Transferrable Credits)
AA - Interior Design, NY School of Design August, 2005
Certificate NCIDQ (National Council on Interior Design Qualifications) 2/3 complete, December 2005 (will finish 1/3 October 2006)

(r) Husband's health
good

(s) Wife's health
good

(t) Children's health
Former anorexic, now in good health.

II. EXPENSES *(You may elect to list all expenses on a weekly basis or all expenses on a monthly basis, however, you must be consistent. If any items are paid on a monthly basis, divide by 4.3 to obtain weekly payments; If any items are paid on a weekly basis, multiply by 4.3 to obtain monthly payment. Attach additional sheet, if needed. Items included under "Other" should be listed separately with separate dollar amounts.)*

Expenses listed [ ]	weekly [X] monthly	
(a) Housing		
1. Christmas tips - Doorman	100.00	
2. Condominium charges	0.00	
3. Cooperative apartment maintenance	0.00	
4. Mortgage and amortization	0.00	
5. Real estate taxes	0.00	
6. Rent	2,000.00	
TOTAL: Housing		2,100.00
(b) Utilities		
1. Aol, Cable	100.00	
2. Cell Phones - Elizabeth and Elspeth	200.00	
3. Electricity & Gas	275.00	
4. Fuel oil	0.00	
5. Gas	0.00	
6. Telephone - Fax (3 lines)	200.00	
7. Water	0.00	
TOTAL: Utilities		775.00

(c) Food			
1. Deli		100.00	
2. Dining out		100.00	
3. Groceries		500.00	
4. Home entertainment		0.00	
5. Liquor/alcohol		50.00	
6. Lunches at work		0.00	
7. School lunches		0.00	
	TOTAL: Food		750.00
(d) Clothing			
1. Children		100.00	
2. Husband		0.00	
3. Other		0.00	
4. Wife		150.00	
	TOTAL: Clothing		250.00
(e) Laundry			
1. Dry cleaning		25.00	
2. Laundry at home		75.00	
3. Shoe repair and clothing repair/alt.		50.00	
	TOTAL: Laundry		150.00
(f) Insurance			
1. Automotive		200.00	
2. Dental plan		0.00	
3. Disability		0.00	
4. Fire, theft and liability		0.00	
5. Homeowner's/tenant's		130.00	
6. Life		0.00	
7. Medical plan Cancer/AFLAC		0.00	
8. Optical plan		0.00	
9. Other		0.00	
10. Umbrella policy		0.00	
11. Worker's compensation		0.00	
	TOTAL: Insurance		330.00
(g) Unreimbursed medical			
1. Dental -- ded., copays & unreimbursed		170.00	
2. Medical		200.00	
3. Optical		0.00	
4. Other		0.00	
5. Pharmaceutical (co-pays)		200.00	
6. Surgical, nursing, hospital		0.00	
	TOTAL: Unreimbursed medical		570.00

(h) Household maintenance		
1. Appliances, including maintenance	100.00	
2. Cleaning supplies	50.00	
3. Computer Maintenance	50.00	
4. Extermination	0.00	
5. Furniture, furnishings, housewares	75.00	
6. Other	0.00	
7. Painting	50.00	
8. Repairs	100.00	
9. Rug Cleaning	75.00	
10. Windows/Floor Cleaning	50.00	
TOTAL: Household maintenance		550.00
(i) Household help		
1. Baby sitter	0.00	
2. Domestic (housekeeper, maid, etc.)	300.00	
3. Other	0.00	
TOTAL: Household help		300.00
(j) Automotive		
1. Car wash	25.00	
2. Gas and oil	120.00	
3. Other	0.00	
4. Parking and tolls	30.00	
5. Payments	0.00	
6. Registration and license	20.00	
7. Repairs	50.00	
TOTAL: Automotive		245.00
(k) Educational		
1. Chapin	0.00	
2. College	0.00	
3. College Visits	0.00	
4. Nursery and pre-school	0.00	
5. Other	0.00	
6. Post-graduate	0.00	
7. Religious instruction	0.00	
8. School events/activities	0.00	
9. School supplies/books	0.00	
10. School transportation	0.00	
11. Tutoring	0.00	
TOTAL: Educational		0.00

(l) Recreational		
1. Birthday parties	0.00	
2. Cable television	0.00	
3. Country club/pool	0.00	
4. Health club	0.00	
5. Hobbies	0.00	
6. Miscellaneous expenses	400.00	
7. Movies	0.00	
8. Music/dance lessons	0.00	
9. Sporting goods	0.00	
10. Sports lessons	0.00	
11. Summer camp	0.00	
12. Tapes, cd's, etc.	0.00	
13. Team sports	0.00	
14. Theatre, ballet, etc.	0.00	
15. Travel on Holidays, Funerals, Weddings	250.00	
16. Vacations	100.00	
17. Video rentals	0.00	
	TOTAL: Recreational	750.00
(m) Income taxes		
1. City	0.00	
2. Federal	0.00	
3. Social security and medicare	0.00	
4. State	0.00	
	TOTAL: Income taxes	0.00
(n) Miscellaneous		
1. Accounting & tax return	50.00	
2. Alimony and maintenance payments(prior m	0.00	
3. Beauty aids/cosmetics, drug items	100.00	
4. Beauty parlor/barber/manicures, etc.	300.00	
5. Books, magazines, newspapers	50.00	
6. Cabs	100.00	
7. Charitable contributions	0.00	
8. Child support payment(prior marriage)	0.00	
9. Children's allowances & transportation	50.00	
10. Cigarettes/tobacco	0.00	
11. Commutation & transportation cabs & bus	50.00	
12. Gifts Daughter - Xmas, B'day, etc.	150.00	
13. Miscellaneous unexpected expenses	120.00	
14. Postage/mailing	50.00	
15. Union and organization dues	0.00	

16. Veterinarian/pet expenses	100.00	
17. miscellaneous (daughter)	30.00	
TOTAL: Miscellaneous		1,150.00
(o) Other		
1. gas and electric	0.00	
TOTAL: Other		0.00
TOTAL EXPENSES	$ 7,920.00	

III. GROSS INCOME: *(State source of income and annual amount. Attach additional sheet, if needed).*

(a) Salary or wages: *(State whether income has changed during the year preceding date of this affidavit* No
If so, set forth name and address of all employers during preceding year and average weekly wage paid by each. Indicate overtime earnings separately. Attach previous year's W-2 or income tax return.)
$3,000/month from William E. Murray
($2,000 reimbursement for liabilities incurred for Inn at Quogue; $1,000 gift subject to availability) 0.00

(b) Weekly deductions:

1. Federal tax	0.00
2. NewYork State tax	0.00
3. Local tax	0.00
4. Social Security	0.00
5. Medicare	0.00
6. Other payroll deductions *(specify)*	0.00

(c) Social Security number

(d) Number and names of dependants claimed:
Elspeth H. Kelly – 18 1/2
DOB 11/26/88

(e)	Bonus, commissions, fringe benefits *(use of auto, memberships, etc.)*	0.00
(f)	Partnership, royalties, sale of assets *(income and installment payment)*	0.00
(g)	Taxable Dividends and interest	0.00
	Non-Taxable Dividends and interest	0.00
(h)	Real estate *(income only)*	0.00
(i)	Trust, profit sharing and annuities *(principal distribution and income)*	0.00
(j)	Pension *(income only)*	0.00
(k)	Awards, prizes, grants *(state whether taxable)*	0.00
(l)	Bequests, legacies and gifts	0.00
(m)	Income from all other sources *(including alimony, maintenance or child support from prior marriage)*	0.00
(n)	Tax preference items:	
	1. Long term capital gain deduction	0.00
	2. Depreciation, amortization or depletion	0.00
	3. Stock options - *excess of fair market value over amount paid*	0.00
(o)	If any child or other member of your household is employed, set forth name and that person's annual income	0.00
(p)	Social Security	0.00
(q)	Disability benefits	0.00
(r)	Public assistance	0.00
(s)	Other	0.00

TOTAL INCOME $ 0.00

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IV. ASSETS: *(If any asset is held jointly with spouse or another, so state, and set forth your respective shares. Attach additional sheets, if needed.)*

A. Cash Accounts

Cash

1.1	a. Location	Union Savings Bank Connecticut, value unknown	
	b. Source of funds	marital (title holder Daniel P. Kelly & Elspeth)	
	c. Amount	$0.00	
			Total: Cash $0.00

Checking Accounts

2.1	a. Financial institution	Citibank Money Market	
	b. Account number		
	c. Title holder	Daniel Kelly (amount unknown)	
	d. Date opened		
	e. Source of funds		
	f. Balance	$.00	
2.2	a. Financial institution	Bank of New York	
	b. Account number		
	c. Title holder	Elizabeth Murray	
	d. Date opened		
	e. Source of funds		
	f. Balance	$20.00	
2.3	a. Financial institution	Chase JP Morgan	
	b. Account number	116-063-548	
	c. Title holder	Elizabeth Style Setters	
	d. Date opened		
	e. Source of funds		
	f. Balance	$.00	
2.4	a. Financial institution	Citibank Checking	
	b. Account number		
	c. Title holder	Daniel Kelly (amount unknown)	
	d. Date opened		
	e. Source of funds		
	f. Balance	$.00	
2.5	a. Financial institution	Citibank Checking	
	b. Account number		
	c. Title holder	Daniel Kelly (amount unknown)	
	d. Date opened		
	e. Source of funds		
	f. Balance	$.00	
2.6	a. Financial institution	Chase JP Morgan	
	b. Account number	116-06-548	
	c. Title holder	Elizabeth Style Setters	
	d. Date opened	2005	
	e. Source of funds	Income	
	f. Balance	$1,085.00	
			Total: Checking $1,105.00

Savings Accounts

3.1	a. Financial institution		
	b. Account number		
	c. Title holder	Daniel Kelly with Elspeth Kelly (amount unknown)	
	d. Date opened		
	e. Type of account		
	f. Source of funds	gifts	
	g. Balance	$0.00	

3.2 a. Financial institution Citibank Savings
b. Account number
c. Title holder Daniel Kelly (amount unknown)
d. Date opened
e. Type of account
f. Source of funds
g. Balance $0.00

Total: Savings $0.00

Security deposits, earnest money, etc.

4.1 a. Location
b. Title owner
c. Type of deposit
d. Source of funds
e. Date of deposit
f. Amount $0.00

Total: Security deposits, etc. $0.00

Other

5.1 a. Location
b. Title owner
c. Type of deposit
d. Source of funds
e. Date of deposit
f. Amount $0.00

Total: Other $0.00

TOTAL: CASH ACCOUNTS $ 1,105.00

B. Securities

Bonds, notes, mortgages

1.1 a. Description of security
Societe Generale Restricted Stock

b. Title holder Daniel Kelly
c. Location
d. Date of acquisition
e. Original price or value 0.00
f. Source of funds to acquire amount unknown
g. Current value $0.00

Total: Bonds $0.00

Stocks, options and commodity contracts

2.1 a. Description of security
None

b. Title holder
c. Location
d. Date of acquisition
e. Original price or value .00
f. Source of funds to acquire
g. Current value $0.00

Total: Stocks, options, etc. $0.00

Broker margin accounts

3.1 a. Name and address of broker
None

b. Title holder
c. Date account opened
d. Original price or value 0.00
e. Source of funds
f. Current value $0.00

Total: Margin accounts $0.00

TOTAL: VALUE OF SECURITIES: $ 0.00

C. Loans to others and accounts receivable

1.1 a. Debtor's name and address

b. Original amount of loan 0.00
c. Source of funds from which loan made or origin of debt

d. Date payment(s) due
e. Current amount due $0.00

Total: Loans and accounts receivable $0.00

D. Value of interest in any business

1.1 a. Business name and address
Elizabeth Stylesetters

b. Type of business *(corporate, partnership, sole proprietorship or other)*
Sole Proprietor
c. Your capital contribution 7,900.00
d. Your percentage of interest 0
e. Date of acquistion c. 1984
f. Original price or value 0.00
g. Source of funds to acquire Savings
h. Method of valuation Income Received
i. Other relevant information
Soliciting new clients.

j. Current net worth of business $1,085.00

Total: Value of business interest $1,085.00

E. Cash surrender value of life insurance

1.1 a. Insurer's name and address
None

b. Name of insured
c. Policy number
d. Face amount of policy 0.00
e. Policy owner
f. Date of acquisition
g. Source of funds to acquire
h. Current cash surrender value $0.00

Total: Value of life insurance $0.00

F. Vehicles *(automobile, boat, plane, truck, camper, etc.)*

1.1 a. Description
Scion 2005

b. Title owner	Elizabeth Murray
c. Date of acquisition	2005
d. Original price	0.00
e. Source of funds to acquire	Insurance proceeds from totalled car, WEM ($7k)
f. Amount of current lien unpaid	0.00
g. Current fair market value	$12,000.00

1.2 a. Description
1999 Ford Taurus
(fair market value unknown)

b. Title owner	Daniel Kelly
c. Date of acquisition	2006
d. Original price	0.00
e. Source of funds to acquire	
f. Amount of current lien unpaid	0.00
g. Current fair market value	$0.00

Total: Value of vehicles $12,000.00

G. Real estate *(including real property, lease holds, life estates, etc. at market value - do not deduct any mortgage)*

1.1 a. Description
House, Katonah, 113 Lake Shore Drive, Katonah, NY 10536

b. Title owner	Both
c. Date of acquisition	11/86
d. Original price	240000
e. Source of funds to acquire	Separate and Marital
f. Amount of mortgage or lien unpaid	0.00
g. Estimated current market value	$645,000.00

Total: Value of real estate $645,000.00

H. Vested interests in trusts *(pension, profit sharing, legacies, deferred compensation and others)*

1.1 a. Description of trust
Security Pacific Trusteed Retirement Income Plan

b. Location of assets	
c. Title owner	Daniel Kelly (present value unknown)
d. Date of acquisition	1984
e. Original investment	0.00
f. Source of funds	marital
g. Amount of unpaid liens	0.00
h. Current value	$0.00

1.2 a. Description of trust
Societe Generale Defined Benefit as of 12/31/04

b. Location of assets	Societe Generale
c. Title owner	Daniel Kelly (present value unknown)
d. Date of acquisition	1990
e. Original investment	0.00
f. Source of funds	marital
g. Amount of unpaid liens	0.00
h. Current value	$0.00

1.3 a. Description of trust
Societe Generale Deferred Compensation 12/31/04

b. Location of assets	
c. Title owner	Daniel Kelly (present value unknown)
d. Date of acquisition	
e. Original investment	0.00
f. Source of funds	marital
g. Amount of unpaid liens	0.00
h. Current value	$0.00

1.4 a. Description of trust
Societe Generale Non Qualified Plan as of 12/31/04

b. Location of assets	
c. Title owner	Daniel Kelly (present value unknown)
d. Date of acquisition	
e. Original investment	0.00
f. Source of funds	
g. Amount of unpaid liens	0.00
h. Current value	$0.00

1.5 a. Description of trust

b. Location of assets	
c. Title owner	
d. Date of acquisition	
e. Original investment	0.00
f. Source of funds	
g. Amount of unpaid liens	0.00
h. Current value	$0.00

Total: Vested interest in trusts $0.00

I. Contingent interests *(stock options, interests subject to life estates, prospective inheritances, etc.)*

1.1 a. Description
Societe Generale as of 12/31/04

b. Location	
c. Date of vesting	
d. Title owner	Daniel Kelly (present value unknown)
e. Date of acquisition	
f. Original price or value	0.00
g. Source of funds to acquire	
h. Method of valuation	
i. Current value	$0.00

Total: Contingent Interest $0.00

J. Household furnishings

1.1 a. Description
see list attached

b. Location
c. Title owner
d. Original price 0.00
e. Source of funds to acquire
f. Amount of lien unpaid 0.00
g. Current value $0.00

Total: Household furnishings $0.00

K. Jewelry, art, antiques, precious objects, gold and precious metals (only if valued at more than $500)

1.1 a. Description
Jewelry - various of minimal value - any of value were inherited or gifted, most costume

b. Location
c. Title owner
d. Original price 0.00
e. Source of funds to acquire
f. Amount of lien unpaid 0.00
g. Current value $0.00

1.2 a. Description
Art - acquired prior to marriage (exceot for small prints of small value)

b. Location 737 Park Avenue
c. Title owner
d. Original price 0.00
e. Source of funds to acquire
f. Amount of lien unpaid 0.00
g. Current value $0.00

1.3 a. Description
Jewelry -- inherited or gifts, costume jewelry, minimal value.
Art -- acquired prior to marriage or with non-marital inherited money (except for small prints of small value)

b. Location New York City Apt. & Katonah House
c. Title owner
d. Original price 20,000.00
e. Source of funds to acquire pre-marital
f. Amount of lien unpaid 0.00
g. Current value $20,000.00

Total: Jewelry, art, etc. $20,000.00

L. Other *(e.g., tax shelter investments, collections, judgments, causes of action, patents, trademarks, copyrights, and any other asset not previously itemized)*

1.1 a. Description
Two tax shelters. since change in tax laws same are only applicable to active investments: 215 East Bay Realty Associates -- upon death of Wife's father, there will be $20,000 liability for each tax shelter.

b. Location
c. Title owner
d. Original price 0.00
e. Source of funds to acquire gift from wife's father
f. Amount of lien unpaid 0.00
g. Current value $0.00

1.2 a. Description

b. Location			
c. Title owner			
d. Original price	0.00		
e. Source of funds to acquire			
f. Amount of lien unpaid	0.00		
g. Current value		$0.00	

Total: Other $0.00

TOTAL ASSETS $679,190.00

V. LIABILITIES

A. Accounts payable

1.1 a. Name and address of creditor
Citibank Master Charge

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 245.00
g. Amount of current debt $11,609.00

1.2 a. Name and address of creditor
Capital One Visa

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 215.00
g. Amount of current debt $7,358.00

1.3 a. Name and address of creditor
Fleet Visa/Bank of America

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 80.00
g. Amount of current debt $3,904.00

1.4 a. Name and address of creditor
Optima

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 100.00
g. Amount of current debt $14,547.00

1.5 a. Name and address of creditor
American Express

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 1,195.00
g. Amount of current debt $11,972.00

1.6 a. Name and address of creditor
Diner's Club

b. Debtor Elizabeth Murray
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 975.00
g. Amount of current debt $8,828.00

1.7 a. Name and address of creditor
Discover

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 180.00
g. Amount of current debt $8,839.00

1.8 a. Name and address of creditor
HFC Group
64481000173219

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 0.00
g. Amount of current debt $1,700.00

1.9 a. Name and address of creditor
Miscellaneous Physicians (medical bills)

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 0.00
g. Amount of current debt $280.00

1.10 a. Name and address of creditor

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 0.00
g. Amount of current debt $0.00

Total: Accounts payable $69,037.00

B. Notes Payable

1.1 a. Name and address of note holder

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 0.00
g. Amount of current debt $0.00

Total: Notes payable $0.00

C. Installment accounts payable *(security agreements, chattel mortgages)*

1.1 a. Name and address of note creditor

b. Debtor
c. Amount of original debt 0.00
d. Date of incurring debt
e. Purpose
f. Monthly or other periodic payment 0.00
g. Amount of current debt $0.00

Total: Installment accounts payable $0.00

D. Brokers' margin accounts

1.1 a. Name and address of note broker

b. Amount of original debt 0.00
c. Date of incurring debt
d. Purpose
e. Monthly or other periodic payment 0.00
f. Amount of current debt $0.00

Total: Brokers' margin accounts $0.00

E. Mortgages payable on real estate

1.1 a. Name and address of mortgagee

b. Address of property mortgaged

c. Mortgagor(s)

d. Original debt 0
e. Date of incurring debt
f. Monthly or other periodic payment 0.00
g. Maturity date
h. Amount of current debt $0.00

Total: Mortgages payable $0.00

F. Taxes payable

1.1 a. Description of tax

b. Date due
c. Amount of tax $0.00

Total: Taxes payable $0.00

G. Loans on life insurance policies

1.1 a. Name and address of insurer

b. Amount of loan 0.00
c. Date incurred
d. Purpose
e. Name of borrower
f. Monthly or periodic payment 0.00
g. Amount of current debt $0.00

Total: Loans on life insurance $0.00

H. Other Liabilities

1.1 a. Description
Divorce Fee Loan

b. Name and address of creditor
Father

c. Debtor
d. Original amount of debt 0.00
e. Date incurred
f. Purpose
g. Monthly or periodic payment 0.00
h. Amount of current debt $20,000.00

1.2 a. Description
Mortgage Loan (Katonah)

b. Name and address of creditor
Estate of Minnie Holmes Murray, Deceased

c. Debtor	Wife	
d. Original amount of debt	158,000.00	
e. Date incurred	1986-1992	
f. Purpose	Purchase/Renovation Katonah House	
g. Monthly or periodic payment	0.00	
h. Amount of current debt		$442,400.00

Total: Other liabilities $462,400.00

TOTAL LIABILITIES $531,437.00

NET WORTH

TOTAL ASSETS:	$679,190.00
TOTAL LIABILITIES:	($531,437 00)
NET WORTH	$147,753.00

VI. **ASSETS TRANSFERRED:** *(List all assets transferred in any manner during the preceding three years, or length of the marriage, whichever is shorter [transfers in the routine course of business which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed where such assets are otherwise identified in the statement of net worth.])*

Description of Property	To Whom Transferred and Relationship to Transferee	Date of Transfer	Value
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00
			$.00

VII. **SUPPORT REQUIREMENTS:**

(a) Deponent is at present [ ] *paying* [ ] *receiving* $ 0.00 per [ ] *week* [ ] *month*, and prior to separation [ ] *paid* [ ] *received* $ 0.00 per [ ] *week* [ ] *month* to cover expenses for

These payments are being made [ ] *voluntarily* [ ] *pursuant to court order or judgment* [ ] *pursuant to separation agreement*, and there are arrears outstanding, (in the some of $ 0.00 to date).

(b) Deponent requests for support of each child $ 0.00 per [ ] *week* [X] *month*.
Total for children $ 0.00

(c) Deponent requests for support of self $ 2,500.00 per [ ] *week* [X] *month*.

(d) The day of the [ ] *week* [X] *month* on which payment should be made is Oct. 2006 or when H. moves

VIII. COUNSEL FEE REQUIREMENTS:

(a) Deponent requests for counsel fee and disbursements the sum of $ 0.00

(b) Deponent has paid counsel the sum of $ 0.00 and has agreed with counsel concerning fees as follows: See retainer attached

(c) There is a retainer agreement or written agreement relating to payment of legal fees. *(A copy of any such agreement must be annexed.)*

IX. ACCOUNTANT AND APPRAISAL FEE REQUIREMENTS:

(a) Deponent requests for accountants' fees and disbursements the sum of $0.00 *(Include basis for fee, e.g., hourly rate, flat rate)*

(b) Deponent requests for appraisal fees and disbursements the sum of $ 0.00 *(Include basis for fee, e.g., hourly rate, flat rate)*

(c) Deponent requires the services of an accountant for the following reasons:

(d) Deponent requires the services of an appraiser for the following reasons:

X. **Other data concerning the financial circumstance of the parties that should be brought to the attention of the court are:** House in Katonah funded with monies borrowed from the Estate of Minnie Holmes Murray (wife's mother) prinicpal must be refunded to Estate - the interest payments on the loan were made from Wife's separate property income and are to be refunded to Wife. Wife prepaid $10,000, the balance of daugther's 2006-2007 tuition, ending 6/07. House expenses are not included in the calculations - house to be rented out. House expenses including insurance and repairs run approx $2000 per month.

The foregoing statements and rider consisting of page(s) annexed hereto and made part hereof, have been carefully read by the undersigned who states that they are true and correct.

Sworn to before me on 5/21/07

Notary Public, State of New York
No. 01NO6137981
Qualified in Kings County
Commission Expires 12/05/2009

[ ] Petitioner [ ] Plaintiff [ ] Respondent [X] Defendant
Elizabeth E. Murray

Signature (Rule 130-1.1-a)
Valerie S. Wolfman

Affidavit of Service

State of New York
ss.:
County of New York

Chuck Noell, being duly sworn, deposes and says:

I am over 18 years of age.
I reside in Brooklyn, NY 11201.
I am not a party to this action.
On **May 21, 2007** I served true copies of he within

Amended Statement of Net Worth

within the State of New York, by sending same by fax and first class mail, pre-paid, from a U.S.P.S. depository in New York, NY 10022, to the following Plaintiff's Attorneys at their last known address:

Judith Coulston
41 E. 57th St.
New York, NY 10022
Copy by Fax # 212 751 [illegible]

.....
Chuck Noell

Sworn to before me
this **21st** day of **May**,
2007.

.....
Valerie S. Wolfman
Notary Public, State of New York
License # 02 WO 4956657
Qualified in New York County
Expires: 12/9/11

DIV2800



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,

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 2/10/06 Witnessed

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)

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

his death. 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?

A. 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.

Q. So is your medical opinion as Mr. Murray's treating neurologist that as of May 2007, Mr. Murray did not have the mental capacity to enter into the contract that is marked as Defendant's Exhibit 5, or any contract for that matter?

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,

1025215



MUSC
MEDICAL UNIVERSITY
OF SOUTH CAROLINA

Department of Neurosciences
Division of
Adult Neurology
96 Jonathan Lucas Street
Suite 309
PO Box 250606
Charleston • SC 29425

Ph (843) 792-3221
Fax (843) 792-8626
http://www.musc.edu

Hilton C. Smith, Jr.
East Bay Co., LTD
215 East Bay Street, Suite 504
P.O. Box 1298
Charleston, SC 29402

July 2, 2007

RE: Mr. William E. Murray

Dear Mr. Smith and Mr. Ma:

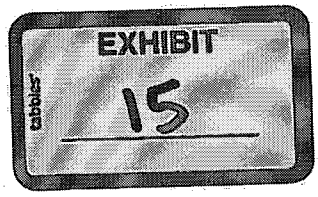
At the request of Hilton C. Smith, Jr. and Helen Flynn, I am writing this letter. I last examined Mr. Murray on June 13, 2007 during a recent hospitalization. At that time, I also had the opportunity to review his medical records.

It is my opinion, within a degree of medical certainty, that Mr. Murray's neurological condition renders him incapable of managing his affairs.

I hope this letter provides you with the information you need.

Sincerely,

David L. Bachman, MD
Professor of Neurosciences
Medical University of South Carolina





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MUSC
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OF SOUTH CAROLINA

Movement Disorders Program
Neurology
Charleston Memorial Hospital
326 Calhoun St. • Ste. 308
P.O. Box 250108
Charleston • S.C. 29401

Ph (843) 792-7262
Fax (843) 792-1751
http://www.musc.edu

June 29, 2007

Re: William E. Murray
DOB 09/01/1925
MUH #1025215

Mr. Hilton C. Smith, Jr.
Mr. Honjiang Ma
215 East Bay Street
Suite 504
Charleston, South Carolina 29401

Dear Mr. Smith and Mr. Ma,

At the request of Mr. Hilton and Ms Helen Flynn, I have recently examined Mr. William E. Murray and reviewed his medical records.

In light of his present condition, it is my opinion that Mr. Murray is not physically capable of managing his affairs.

Sincerely yours,

Kenneth J. Bergmann, MD, FAAN
Associate Professor, Neurosciences

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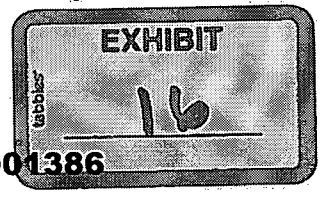
WILLIAM E. MURRAY
ONE VENDUE RANGE
CHARLESTON, SC 29401

June 21, 2007

Dear Elizabeth

In summary of our lengthy discussions of June 19th and 20th, 2007, I have asked you to notate the following understandings we have reached to resolve financial issues that remain. It is my hope that we may go forward without rancor and hurt:

1.) My daughter, Elizabeth, may remove articles from a locked closet in Room 52 at The Inn at Quogue, and/or items that were stored there previously if they have been moved, and various other personal and miscellaneous artwork, including two pictures of significant value (Holmes and Kaufman), accessories, and furniture throughout the Inn property that she used to enhance the appearance of the Inn when she worked there 1999-2002. She will provide an accounting to me of these items after they are removed and will note any missing items that she had left there that are missing. I have asked Theresa Fontana, via a phone call in Elizabeth's presence, to cooperate along with any other staff to assist her in any way possible.
2.) Elizabeth is to receive the principal sum of $117K plus accrued credit card and cash line of credit interest from proceeds upon the sale of the Inn at Quogue and related entities. This principle amount represents design items purchased on behalf of the Inn which were charged on her charge cards and cash advance accounts, and use of her cash, less various repayments made, as indicated in her accounting. This has been evidenced by receipts rendered and examined by me, which has been done, and James Ma, who had reviewed the same in February of 2003 and is summarized in the Excel Accounting prepared by Pamela Murray, which is attached to this document. Such payments shall be for items purchased by her for or by used by the Inn, cash advances used to support payroll and emergency expenses related to her work there, her past due payroll for design work from the summer of 1999 at a rate of $5,000 per month, as well as one $5,000 repayment which was erroneously credited twice to her account on behalf of the restaurant which was also due in that amount for her commission for finding of a tenant for the Restaurant at the Inn who would pay for design work there at his own expense. I have made various payments from my personal account at a rate of $2,000 per month, which payments began in January, 2006 after her completion of design school and certification exams. I also noted these payments and liability in a recent notarized statement in June of this year. These monies shall be paid out of the monies due to me at the closing of The Inn at Quogue and its related companies' sale which should be closed in the near future. I will accept the accounting as rendered by Pamela Murray, subject to any gross misrepresentations, and subject to reasonable questions, and will then receive all receipts, as outlined in the books originally tendered to me in March, 2003 for payment, including interest due, for the same.
3.) Elizabeth, thereby, by virtue of payment of amounts due and interest paid thereon, and in recognition of those monies paid by me on behalf of her support and tuition and supplies for NYSID and for the tuition paid on behalf of her daughter,



Elspeth, waives any and all claims to the proceeds of The Inn at Quogue on account of her 10% ownership interest thereon upon full payment of #2 and receipt of items or their value in #1 above.

4.) I also recognize that I had committed to spend between $12,500 and $15,000 on furnishing the two bedroom house at 1565 Brianna Lane in Charleston, so that it could be used for a guest house when she was not in residence, and that Elizabeth thereby expended personal monies and brought personal items to that residence in reliance upon my offer to gift that property and the furnishings therein, subject to her agreement for permitted use of that residence as a guest house for East Bay Company when not being used by her, subject to East Bay covering all expenses, and carrying costs and maintenance costs thereon including water, taxes, utilities and customary community fees. I hereby agree to either gift to her this house, free and clear as I originally stated, or reimburse her for the value of same, her expenses and fees for her work over and above what was repaid from an operating account held by Pamela for this purpose, which I approved. I also agree to reimburse her for a $500 payment that was cashed by my daughter Brianna for work on the home which she failed to perform. I have now given houses to all my children in Charleston so that they visit me and with one another with greater ease. If Elizabeth sells this house after my death, which is permitted by me in this transfer of property, I direct her to use the proceeds to support her apartment in New York City as her divorce settlement leaves her at great exposure. I would suggest that she attempt to rent it out so that she has an income stream to assist in her support. I have expressed this wish to her.

5.) Elizabeth has also expended various monies on behalf of work, purchases, and repairs done at my residence at 50 East 77th Street, New York. Although the bulk of these purchases were paid for, I hereby direct her to finish up that work, with special attention made to those issues that will make both me and my companion, Helen Flynn, more comfortable and safe in our advancing ages as well as those additional items I have requested and various repairs and purchases made after those last payments were received. Upon the rendering of an accounting to be reviewed by me and James Ma and Helen Flynn. I direct that those monies be paid to her within 15 days of her submission of same.

6.) I understand that various papers were subpoenaed for Elizabeth's divorce and those needed for an appropriate settlement were withheld from her in my residence in New York City, to my great regret. I have directed Mercedes the maid by phone to release those papers to her but significant injury was caused by their withholding, which resulted in inaccurate numbers used for the basis of ongoing maintenance, past maintenance, and legal fees, as well as expenses and tax refunds due her that were awarded to her husband in lieu of evidence to the contrary in her divorce settlement. These inaccuracies resulted in costs to her in the following amounts which are damages to her financially and represent both monies inherited from her mother and my wedding gift to her, the proceeds of which were invested into her Katonah house, and monies due to her from the Inn, see #2. which were not properly represented as repayments vs. income or gifts. I apologize to Elizabeth on behalf of her sister Brianna and others who work for me who were misled as to my intentions and I wish to make Elizabeth whole regarding these injustices. Therefore, I agree to pay Elizabeth:

Past maintenance of $3,000/month, withheld due to misrepresentation of repayments on the Quogue Debt	$ 24,000
Doorman Christmas Tips	1,000

Legal Fees awarded by Judge Beeler from marital funds	20,000
Allocation of $70K in tax refunds,	70,000
$12K in educational fees for Elspeth	12,000
Wolfman Legal fees for order, subpoena and bench warrant for Brianna	3,000
Total Due to Elizabeth due to misrepresentations of family members	$125.000

This sum above shall be due to Elizabeth by the end of fiscal 2007 or upon my death with interest at 10% from 12/31/2007 onwards.

I hereby commit to reimburse her these expenses because I was unknowingly made part of this theft of property and misrepresentations by virtue of other's use of my apartment, records, and misrepresentations made on my behalf using my stationary and my signature powers. Elizabeth may select an option to have the lump sum paid as outlined above or repaid at a rate of $5K per month or payment of the same may be substituted by the transfer of mutually acceptable property so that she will be made whole in her divorce proceedings, which would have been possible had these regrettable actions not been taken by Brianna and Hilton.

Elizabeth has confirmed to me that the final settlement of her divorce includes her possession of both tax shelters that I gave her for a wedding present and I direct her to retain these properties so that she may profit from their increase in value.

The above constitutes a full and total accounting of all financial representations and accountings and acceptable satisfaction thereof. I have also assured her that she and her sister Pamela have been restored, or will be shortly, to their full status under my will as equal recipients with their sisters in all ways and have directed my attorney, Edward Bennett, to send them a letter noting the same, which I have written and directed for distribution by him to them stating that "I wish all of my daughters to be treated equally under my will in all ways". I am satisfied as to Elizabeth's intent and interest in protecting me and have affirmed to my best understanding her love and devotion and loyalty to me.

Love,

Dad

Agreed to in full pages 1-3 as initialed _____
Elizabeth E. Murray

William Edwards Murray _____
Date of Signature:

Witnessed by _____ 1561 Briana Ln Charleston, SC 29412
Name and Address printed and date
LARRY C Bump July 21, 2007

_____ 1569 Brianna 7/21/07
Name and Address printed and date

EEM003009

Larry C. Bump
1561 Brianna Lane
Charleston, SC 29412

Mr. Murray came for dinner to the house I share with Pam Murray in late July, 2007. It was a Saturday afternoon. He came in the late in the day with his nurse Nyeesha and we took him for a walk. He came with the intention of signing a document regarding Pam's sister Liz. He wanted to do this because he said that they wouldn't let him do what he wanted unless it was what they wanted.

After we took him out, he came back and wanted to finish this document. Pam told me he had tried to sign it with Svetlana as a witness in the park when Pam took him for a walk several weeks earlier but that he couldn't write because his hand was so weak.

Mr. Murray had Pam read him the letter to Liz although he seemed to be impatient with hearing it. He said "I know what it says. I wrote it".

My neighbor came by to witness his signature because the bank was closed and the only notary that I knew was away at Edisto Island at the time.

Mr. Murray signed the document in my presence and in Jeff and Pam's presence. I know it involved the house next door and some stuff about Liz's divorce, which had just finished up. It also had something to do with Brianna not doing work next door which she was supposed to do. I knew about the latter because I was originally supposed to do the work.

Mr. Murray signed the letter at about 6:00, Jeff left, and we had dinner here. Mr. Murray was fairly quiet but was not under any pressure to do this that I could see. He seemed happy after that and mentioned that now his children all had houses near him. That seemed to make him very happy.

Larry C. Bump

MY COMMISSION EXPIRES JULY 1ST, 2008

EEM003011

On Saturday, July 21, 2007, my neighbors, Pamela Murray and Larry Bump, were taking their father for a walk in his wheelchair past my house and I went out to say hello to them and her father (I was working in my garage at that time so I saw them passing). They asked me to come over later to witness a signature on a document that Mr. Murray wanted to sign. Mr. Murray told me to come have dinner with them but I was already having dinner with my mother. It was late Saturday afternoon and the bank was closed.

It was a two or three page document and from what I heard Pam reading it seemed to have something to do with repayment of some money and some stuff in an inn with an odd name, something about his own home in New York, some money relating to her divorce expenses, and confirmation of his gift of the house next door, which Mr. Murray told me "he was giving her". There was a figure mentioned that was over $100,000 but the house was not valued, just given. I knew that he had given his other daughters houses in this area so it seemed in line and reasonable and Mr. Murray was anxious to have it completed. I was aware that she had been furnishing it as furniture had arrived in the past showing her as the purchaser. Sometimes I had put deliveries into my garage when it was raining.

Pam read the document to him before he signed it. He seemed to know what it contained and to understand it and what he was signing and said he already knew what it said and seemed impatient at her reading it, although Pam insisted upon doing so. He seemed anxious to do this and said her wanted "all of his children to have houses near one another". When he first tried to sign it he could not connect the pen with the paper so I went and got a heavy duty marker for his to use because it had a larger circumference for him to grip. Although his writing was still quite shaky, this seemed to help. He completed signing it in their living room and then said he wanted to eat. He seemed clear so far as his understanding of what he was signing although he was not very conversational.

His attendant Sherry (?) was there to assist him that day, a tall very slim African American woman who was quite pretty and fashionable. No one else was there but me, Sherry, Pam, and Larry. I saw Mr. Murray's van leave later in the evening and that was the last time I ever saw him.

KRYSTAL PENDARVIS
COMM. EXP.
NOTARY
PUBLIC
APRIL 17, 2018
SOUTH CAROLINA

06/3/08

EEM003010

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**

Factual Background

17 JUL 8 PM 1:4

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.

By: _____

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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

STATE OF [illegible]

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 19 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

17 JUL 18 AM 11:44
PROBATE COURT
CHARLESTON COUNTY

EXHIBIT
A

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, 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

001420

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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PROBATE COURT
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. Ost (SEAL)
Witness

Pamela Holmes Murray Smith (SEAL)
Pamela Holmes Murray Smith

Joseph S. Ost (SEAL)
Witness

Elizabeth Edwards Murray (SEAL)
Elizabeth Edwards Murray
(and as Administratrix DBN of the Estate of Minnie Holmes Murray)

Joseph S. Ost (SEAL)
Witness

Catherine Peronneau Murray-Smith (SEAL)
Catherine Peronneau Murray-Smith

Legal Document from WE M 2/18/04
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. Spencer Notary Charleston, SC

My commission expires July 28, 2015

CC: Daniel P. Kelly
The Honorable Judge Harold Beeler
Valerie Wolfman, Esq.

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

FILED
17 JUL 18 AM 11:46
PROBATE COURT
CHARLESTON COUNTY

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.

WEM Signatures 0048

001438

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]

3943240

3943240

WEM Signatures 0049

001439

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.

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

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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

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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

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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.

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(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.

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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.

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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

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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.

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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

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 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.

27. On December 02, 1992 Hilton outlined his proposal for proceeding to resolve the debt issue, attached hereto as an Exhibit 6.

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

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
COMM EXP
NOTARY
PUBLIC
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:

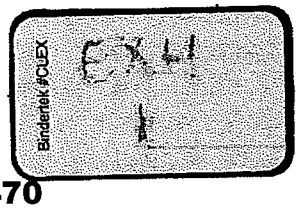
1. The exchange of the note from William E. Murray to the estate in the amount of $240,000 for William E. Murray's Sea Island property, subject to the following:

   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

EEM006926

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

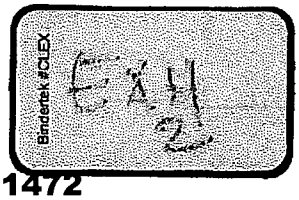
Dear Liz and Pam:

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



EEM002152

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.

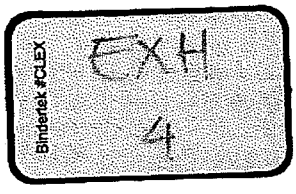
Upon the completion of this review, it is the intention of the beneficiaries to liquidate the estate. Should there be any other information which you believe is important to review, please advise.

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-H\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

DATE OF LIQUIDATION OF ESTATES ASSETS

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

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 SITTERS ALLERGIES, BAGGAGE TIPS, MEALS, ETC.

Catherine/Hilton's travel to Atlanta

180 mile @ 28¢/mi	50.40
~~the~~ 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.

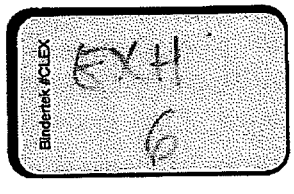
2) A letter needs to be prepared to Uncle Jimmy advising him that each of you at this point will continue to receive 1/3 of the estate's interest and the Huger Street Limited Partnership assets.

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) 733-4365

FAX COVER SHEET

DATE: 12/11/97

TO: Eliz. Hines

FAX: [illegible] PHONE:

FROM: [illegible]

FAX: (301) 733-3609

PROJECT:

SUBJECT:

TOTAL # OF PAGES INCLUDING THIS SHEET: [illegible]

IF YOU HAVE ANY PROBLEMS RECEIVING THIS MATERIAL
PLEASE CALL (301) 733-4365

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!

EXH 1

Binderek #CLEX

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. As 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 12% for the period in which it is past due, 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-MVA-Default

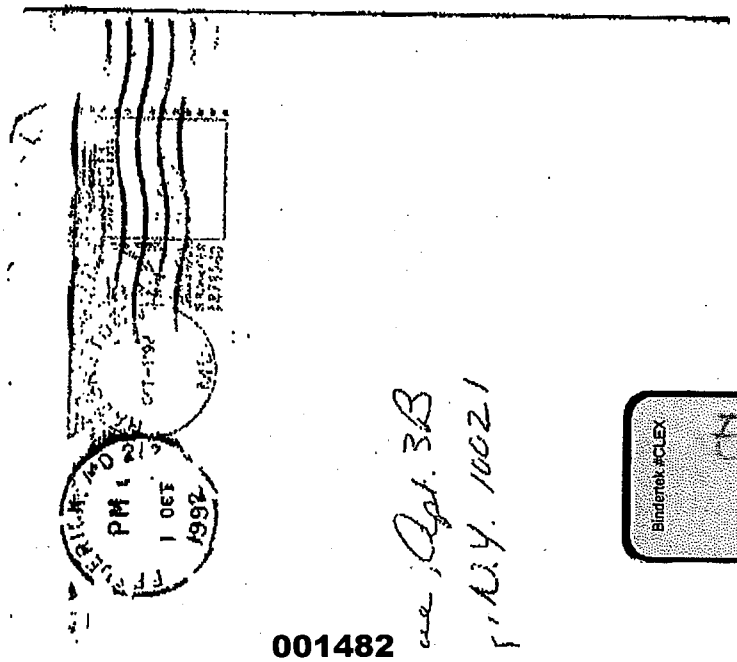
Please allow this to authorize Hilton Smith and Daniel Kelly to act on behalf of the Estate of Minnie Holmes Murray and myself, (Pamela Murray Stack)/(Elizabeth Murray Kelly)/Catherine Murray Smith) with regard to obtaining or giving information, and authorizing actions pertinent to any accounting process, 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



001482

EX 4

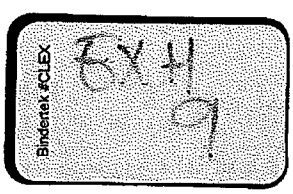
JUN FILES

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



EEM006448

DECEMBER 12, 1992

MEMORANDUM

TO: William E. Murray

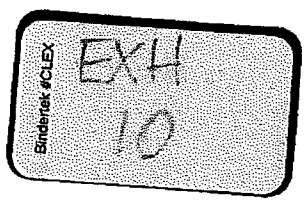
FROM: Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith

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

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. 13, 1994

EEM006956

STATE OF Georgia ss.: 065-40-8313

COUNTY OF Fulton

On this 14th 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. 14, 1994

Notary Public

EEM006957

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

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

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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) 573-39194

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 CASE NO.

WILLIAM EDWARDS MURRAY, 2007-ES-10-1116

Deceased.

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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Columbia, SC (803)731-5224	Greenville, SC (864)234-7030	Charlotte, NC (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

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(803) 731-5224	(864) 234-7030	(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