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THE STATE OF SOUTH CAROLINA
Charleston County
In The Court Of Common Pleas
Circuit Court Case No. 2014-CP-10-07038

Wendy C.H. Wellin,

vs.

Peter Wellin, Cynthia W. Plum, and Marjorie W. King,

vs.

Wendy C.H. Wellin, Hamilton College and Keith S. Wellin
Florida Revocable Living Trust, Campbell Hart and Heather Lane
and Friendship Management, LLC,

vs.

Wendy C.H. Wellin.

IN THE MATTER OF: Keith S. Wellin, Deceased.

June 12, 2019

McCormick, South Carolina

BEFORE:

The Honorable Frank R. Addy, Junior,
Circuit Court Judge

1 APPEARANCES:

2

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EXHIBITS

22

NO. DESCRIPTION ID EVDS.

23

NONE

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25

1 Thereupon, the following proceedings were had,

2 BAILIFF: All rise.

3 THE COURT: Thanks. Y'all have a seat. We're gonna
4 go back on the record in Wellin versus Wellin. Just one
5 quick housekeeping matter. Uhm, I understand that the
6 parties have arranged to have an independent court
7 reporter which is perfectly fine. I have no problem with
8 anything being taken down by an independent party just so
9 that we all understand though obviously the court
10 reporter that's a member of the judicial branch is the
11 official court reporter so you're welcome to use the
12 transcript in any way you need to internally but
13 obviously, uhm, this is my official reporter so anything
14 that needs to be transcribed or whatever on appeal, he
15 would be the go to guy for that. So I just wanted to
16 make sure that that's understood. We have a couple of
17 motions here today. Have you gotten everybody's name?

18 COURT REPORTER: Yes, sir.

19 THE COURT: We're good with that. Okay. The - and
20 I had my secretary print off because I think earlier
21 today there was a few additional, one or two additional
22 matters that were added to the roster. I know that, uhm,
23 perhaps the best way to handle this, there's a motion to
24 continue this case. Uhm, just so that the parties are
25 aware I have been in communication with Judge Young. We

1 are, looks like we are still good to go next week. He's
2 agreed to switch with me, take my assignments. I will
3 take the two weeks that he has down in Charleston that
4 are open, uhm, because everything that they have looks
5 like it's gotten resolved so we should be good to go next
6 week. I do understand that apparently the defendants
7 slash children in this case apparently have a wedding
8 obligation the second week of trial. Let me hear about
9 that.

10 MR. WOOTEN: Thank you, Your Honor. May it please
11 the Court. Patrick Wooten on behalf of the Wellin
12 children. Uhm, we, as you know, have three clients,
13 Cynthia Plum, Peter Wellin and Marjorie King, and Cynthia
14 Plum is the oldest child of Keith Wellin, the decedent
15 and she has two children, Keith Plum and Andy Plum and
16 Keith, her oldest child is getting married the week after
17 next in Colorado, uhm, and the rehearsal dinner is on
18 Thursday, the 7th, I believe, the wedding is on Friday
19 the 28th. It's been planned for about ten months, uhm,
20 and, of course, Cynthia Plum along with her siblings, our
21 other two clients, are planning to go with their families
22 and be at the wedding and the rehearsal dinner and all
23 the events surrounding it. Uhm, Your Honor, I think that
24 the, you know, I think that the one thing I want to
25 address is it seems like there was a misunderstanding

1 between us and you in terms of the trial date in this. I
2 know that Your Honor said in your letter that we had
3 known since January of this year that the trial would be,
4 was gonna be these two particular weeks, the last two
5 weeks of June, uhm, and we do not recall learning that or
6 hearing that until we got your email last week, uhm, on
7 Tuesday of last week, uhm, and so we didn't know that
8 this was a conflict until we got your email last week,
9 uhm, and, you know, frankly our clients have been, as you
10 know, well, this has been going on for a long time, for
11 six years and I know that's the large part of what is
12 driving you to want to have the trial and get it - get it
13 over with. Our clients have been living this for six
14 years and for it to end on, during our client's child's
15 wedding, you know, to get a jury verdict while he's
16 getting married, uhm, and while Keith Wellin's namesake,
17 Keith Plum is getting married, uhm, we think that would
18 be, you know, terrible for our clients frankly, uhm, just
19 from an emotional personal standpoint. Uhm, they all
20 plan to be part of this and be here the whole time. This
21 has been a huge part of their life and they want to be at
22 the trial, uhm, and we would just ask Your Honor, you
23 know, we, of course, take the position as you know that
24 this action is stayed in light of the appeal but if you
25 set that aside, uhm, we would just ask that you at least

1 continue it to the next available term of court. There
2 is no need to put our clients through this and force them
3 to have this emotional family dispute while, you know,
4 while Cynthia Plum's son is getting married. Uhm, so we
5 would just, you know, ask for Your Honor's, you know, we
6 would ask for Your Honor, you know, to accommodate us on
7 that. Uhm, I think it's a reasonable request but there
8 are several other grounds that we have in our motion,
9 uhm, that I would like to address if I may.

10 THE COURT: Sure. If I may, before you go there not
11 to interrupt but just while this is on my mind, earlier
12 today I did ask Judge Young, well, I asked yesterday and
13 he emailed it to me today, you asked for it to be
14 continued to another term of court and he made this
15 abundantly clear to me yesterday that with all the
16 construction litigation and everything that's going on
17 down in Charleston, uhm, as far as date certains, I mean,
18 they are booked until the end of the year and they even
19 have date certains backing up date certains and people
20 who are requesting date certains they are now being told,
21 uhm, look, the calendar is not out for 2020. Uhm, we'll
22 put you in line but you're not gonna be in a position to
23 jump in front of somebody else. We're simply going to
24 assign these as the calendar comes out and then they play
25 with them a little bit once that calendar for 2020 does

1 come out. So in terms of continuing it to another term
2 of court, uhm, jury term of court which was my segue into
3 what I was going to suggest but, you know, in terms of
4 continuing it to another jury term of court, uhm, or the
5 next, that - that - that won't do anything and, if
6 anything, it potentially may be more disruptive in the
7 sense that I might simply get notification, okay, well
8 this construction litigation has resolved so, Judge Addy,
9 you can have the, you can have the term plus two or three
10 days and then I've got to jump through all the hoops and
11 y'all will have to jump through all the hoops and I know
12 that the Hood Firm was involved in litigation in Anderson
13 County in front of Judge Maddox, I think, uhm, that got
14 resolved earlier this week on Tuesday so the stars are
15 kind of aligning for Wellin to be tried and resolved next
16 week.

17 Now, that said, we've had this continuing discussion
18 about jury as opposed to non jury. I really think that
19 it would behoove everybody and particularly the primary
20 parties involved in this, the children and Ms. Wellin to
21 give serious consideration to doing this non jury because
22 that will prevent us from being limited to the two weeks
23 that I'm going to permit in this particular case. Uhm, I
24 don't know the last time y'all tried a case in Charleston
25 but the logistics of it are really challenging in the

1 sense that you have to take into account the fact that
2 Charleston is such a spread out -- I know that you don't
3 have to take this into account. I have to take it into
4 account -- the fact that Charleston is a very expansive
5 county. The last time I tried a case there one juror had
6 a one and a half hour commute every day to get to the
7 courthouse so you're limited on when you can start. You
8 have to be concerned about lunch breaks. You have to be
9 concerned about obligations, child care, things like that
10 after work and for a two hour (sic) case involving this
11 sum of money you're gonna be drawing your jury from all
12 and all various parts of Charleston County that maybe is
13 not people with seven figure incomes. I don't know how
14 favorably they're gonna view all of the parties in this
15 case and I'm just speaking candidly but if you are living
16 in a 2000 square foot house with a mortgage payment, two
17 car payments and struggling living hand to mouth, I don't
18 really know that too many people are gonna be jumping up
19 wanting to hear about this litigation involving more
20 money than they will ever see in ten generations in their
21 family, okay? So that is a risk that you run.

22 If you are looking to make this wedding, if the
23 Wellin children absolutely, you know, have to be present
24 for trial, I can meet you half way but there's no way
25 that we can do this in a jury format and have it done by

1 Wednesday. That's simply not -- One side or the other is
2 wanting eight weeks. I can't give you eight weeks. I
3 can give you two weeks. I don't see any way that we can
4 reasonably have this done by Wednesday. If they want to
5 do this or if the parties are willing to try this as a
6 bench trial, we can go maybe next. We can maybe do it
7 later. I don't have to concern myself because they have
8 sufficient courtroom space. If y'all want to do this as
9 bench trial, we can forget about next week, we can forget
10 about the week after that and I can find some other time
11 to do that. But if all the parties want a jury trial,
12 the stars have aligned. We're doing it next week. I'm
13 sorry, but if that means they're gonna have to be missing
14 out on the verdict two weeks from Friday, but that's just
15 how it's gonna have to play out.

16 I don't know if that changes anything but it's
17 something you may need to talk to your clients about. I
18 assume you've already had a conversation but if you want
19 a continuance, that's fine. We can do it non jury and
20 we'll move it on back.

21 MR. BRUNSON: Your Honor, we're not willing to waive
22 the jury.

23 THE COURT: All right. Well, we're doing it next
24 week then and the week after so that's it.

25 MR. WOOTEN: And, Your Honor, uhm, the other grounds

1 we have in our motions that we filed with the Court and
2 if you don't want me to go --

3 THE COURT: No. Go right ahead. Go right ahead.

4 MR. WOOTEN: Uhm, and I will, if you would like me
5 to, but if you have already decided, then I don't --

6 THE COURT: No. Maybe there's something that I've
7 missed that would convince me that a continuance is
8 warranted. Go right ahead.

9 MR. WOOTEN: Okay. Uhm, well, we think that it
10 should be, uhm, there should not be a trial next week
11 because there is a stay in place under the rules, Court
12 of Appeals rules because we filed a notice of appeal. We
13 don't think there is an exception where the Circuit Court
14 believes the order that was appealed is not immediately
15 appealable. We think that that is a decision that must
16 be made by the South Carolina Court of Appeals and so it
17 must, until it's remitted to this Court, there's no
18 jurisdiction over this case and we don't want to have a
19 trial where the Court lacks jurisdiction.

20 THE COURT: Did -- I don't recall you moving for a
21 stay in State Court on this level, did you, with the
22 appeal?

23 MR. WOOTEN: Moving for a stay, Your Honor, the stay
24 is automatic whenever you file a notice of appeal. There
25 is no motion for stay that has to be filed after you've

1 file a notice of appeal.

2 THE COURT: My research indicated that it is not an
3 automatic stay, that there is nothing in your motion that
4 triggered an automatic stay under the rules. Can you -
5 can you point me to what automatically triggered --

6 MR. WOOTEN: Yes.

7 THE COURT: -- the stay? Because I ruled for you
8 mostly on that. I'm kind of curious as to why you're
9 appealing because I thought I ruled for you guys on most
10 of that stuff but am I wrong? What's the estate's
11 position or Ms. Wellin's position on that motion?

12 MR. HOOD: With respect to the stay?

13 THE COURT: Yeah.

14 MR. HOOD: We don't think the stay is applicable.

15 THE COURT: What is it? Can you point me to chapter
16 and verse.

17 MR. WOOTEN: Yes, Your Honor. The South Carolina
18 Appellate Court Rule 241(a). Uhm, as a general rule the
19 service of a notice of appeal in a civil matter acts to
20 automatically stay matters decided in the order of
21 judgment, decree or decision on appeal and automatically
22 stay the relief ordered in the appealed order of judgment
23 or decree or decision. That's the sentence. This - and
24 it continues. This automatic stay continues in effect
25 for the duration of the appeal unless lifted by order of

1 the lower court, the administrative tribunal, Appellate
2 Court, or Judge or Justice of the Appellate Court. Uhm,
3 the lower court or administrative tribunal retains
4 jurisdiction over matters not affected by the appeal
5 including the authority to enforce the matters not stayed
6 by the appeal.

7 And so, Your Honor, here the order being appealed
8 from is an order specifically governing the trial and so
9 the trial certainly would be a matter that is affected by
10 the appeal and so there's not a requirement or I don't
11 even know that you have the option of filing a motion to
12 stay. When you file the notice, it triggers an automatic
13 stay, uhm, and so we wouldn't want to have a, you know, a
14 trial where ultimately it's determined that the trial was
15 annulled. Uhm, and likewise, Rule 205 of the South
16 Carolina Appellate Court Rules provides that upon the
17 service of the notice of appeal the Appellate Court shall
18 have exclusive jurisdiction over the appeal, the lower
19 court or the administrative tribunal shall have
20 jurisdiction and retain petition for writs of supersedeas
21 provided by Rule 241, and it once again says nothing in
22 these rules shall prohibit the lower court, commission or
23 tribunal from proceeding on matters not affected by the
24 appeal.

25 So the only way that the stay would not apply with

1 respect to the trial next week is if the order that we
2 appealed from was one that such that the trial was not
3 affected by the appeal. In other words, if the order had
4 nothing to do with the trial, then the trial could go
5 forward but the order has everything to do with the
6 trial. It sets forth, you know, the fact that we're
7 gonna have only a two week trial and it's gonna be
8 bifurcated, you know, it's going to be, uh, only certain
9 issues tried, uhm, it's characterized as bifurcated,
10 bifurcation order, uhm, and so that's another ground for
11 continuing the case. After all this time we're gonna
12 have a trial where the court lacks jurisdiction.

13 THE COURT: Right. But that's what's confusing me
14 because in the previous hearings that we had the estate
15 simply wanted the final estate plan litigated and I said
16 that I was not willing to do this piecemeal. The order
17 that you're appealing from basically said we're going to
18 try the entire issue of capacity and undue influence in
19 the relevant time frame and again, my reasoning in doing
20 it that way is it gets to the heart of the matter. Was
21 there undue influence brought to bear, did Mr. Wellin
22 lack capacity when he reworked the estate plan that
23 changed everything from situation A to situation B. So I
24 kind of ruled for you on that. What is it that the
25 Wellin children are taking issue with in terms of the

1 appeal? Because I also, I think I ruled for y'all in
2 lifting the stay that had been in effect. Or no. It was
3 her motion. It was Ms. Wellin's motion. That's right.
4 What is it that y'all find troubling in the order?

5 MR. WOOTEN: Sure, Your Honor. Uhm, well, a great
6 deal frankly and, uhm, we do have it set forth in detail
7 in our, uhm, in our return to the, uhm, the estate's
8 motion to dismiss our appeal. Of course, that's
9 addressed in appealability as opposed to the merits of
10 the appeal. But if I could just briefly address that,
11 Your Honor. The biggest concern for us is one that we
12 addressed at the hearing with Your Honor on the motion to
13 bifurcate which is that this idea of bifurcating the
14 trial in this rather unconventional way, it's not a trial
15 on liability and then another trial on damages. It's
16 splitting, you know, it's not dividing at the joint.
17 It's dividing at the bones. Cutting the middle of the
18 case where some of the claims are tried and some of the
19 claims are not and the claims that get tried are the
20 claims that the other side, Mrs. Wellin would like to try
21 because of the burden. The burden establishing a lack of
22 capacity and the existence of undue influence is higher
23 than the burden for our tort claims against Mrs. Wellin.

24 What the estate and Mrs. Wellin have attempted to do
25 going back to years ago in front of Judge Norton is to

1 have a trial only on the issues that have the hardest
2 burden for us and to use those offensively against us on
3 our better claims, our tort claims against Mrs. Wellin
4 and the way that they do that is they say, well, we'll
5 have this first trial and that's going to streamline the
6 rest of the case, uhm, and, in fact, Mrs. Wellin's
7 attorney at the hearing, motion to bifurcate said, you
8 know, if we the children lose the first phase of trial,
9 it eviscerates our lawsuit. It's over. And the idea is
10 that, Your Honor, either this first trial is going to
11 streamline the case such that if we lose, we don't get to
12 pursue all of our claims against Mrs. Wellin. Uhm, or we
13 don't get to put all the evidence in that we want to in
14 which case we are prejudiced in a way that is not
15 contemplated by the law on bifurcation. We would be
16 prejudiced horribly if we're not able to put in our
17 claims, and our best claims ever because we have a trial
18 only on the claims they want to try and not on ours. Or
19 the only other option, Your Honor, is that after this
20 first phase of trial we can fully litigate our tort
21 claims against Mrs. Wellin in which case there was no
22 efficiency whatsoever. We have the same trial again
23 after this trial.

24 And so there really are only two options. Either
25 it's horribly prejudicial in denying our clients the

1 right to try the claims they would like to try or it's
2 horribly inefficient because we're gonna have the same
3 trial twice. And so, Your Honor, I'm arguing the merits
4 of - the merits of the bifurcation briefly again, Your
5 Honor. But, of course, the issue is nobody needs to
6 decide whether our arguments are good or not to decide
7 whether the automatic stay applies. The automatic stay
8 is agnominated, it applies irrespective of how good or
9 bad our arguments are on the merits of the appeal. Uhm,
10 the automatic stay applies upon the filing of a notice of
11 the appeal.

12 Uhm, but we also, Your Honor, you know, very
13 strongly object to a trial being limited to two weeks.
14 I, you know, I heard what you just said, Your Honor, uhm
15 --

16 THE COURT: And I cannot -- Two weeks for the guy
17 who lives in a 2000 square foot house where he's going
18 without pay over a multi gazillion dollar estate is
19 inherently unfair to any juror. I cannot ask a guy to
20 take \$20.00 a day in jury compensation when we are
21 litigating this. That's the simple truth of the matter
22 and I realize that is not your concern, but I would
23 strongly recommend that you in your minds simply lop off
24 a couple of zeros, that's what's got everybody up in arms
25 about this case. This case is no different from somebody

1 who has to weigh with a hundred thousand dollars. It's
2 the same standard in terms of testamentary capacity, it's
3 exactly the same procedure and what's got everybody
4 worked up is the money that's involved with this case
5 which I agree is amazingly substantial but that's exactly
6 what is going to turn off every juror that you folks want
7 to have to decide this matter and it's also what prevents
8 me from saying, okay, you can have more time to litigate
9 this matter.

10 Again, if it was non jury, I would do it all. I
11 would do it all and give you guys all the time in the
12 world. It's jury. We don't have all the time in the
13 world for those reasons and I have to be sympathetic to
14 that even though you're not. It has to be tried in two
15 weeks. That's the most I can give you.

16 MR. WOOTEN: Your Honor, if I could just make two
17 points --

18 THE COURT: Sure.

19 MR. WOOTEN: -- on that. One is, Your Honor, uhm, I
20 think that the reason this trial should take more than
21 two weeks is not driven entirely by the number of dollars
22 involved. Uhm, it has to do with the amount of - the
23 complexity, the amount of time period that's at issue,
24 and the number of witnesses frankly involved, the number
25 of documents and that is all information that we have

1 never provided to Your Honor. You know, what we
2 requested was the hearing specifically on the length of
3 the trial so that all the parties could say here's how
4 many witnesses there are, here's how long we expect them
5 to have to testify, you know, here's the amount of
6 documents involved, and there could be a decision from
7 the length of trial driven by the facts of the case, not
8 driven by the concern that you're expressing and we have
9 never had that so it's just been two weeks is the outside
10 limit.

11 Your Honor, if the - if the deal in South Carolina
12 is that you can't have a civil jury trial for more than
13 two weeks, you just can't based on practicalities, that
14 is a big deal that should be in the law, and our clients
15 should not have had to litigate for six years without
16 knowing that information. There's no law that says
17 that.

18 THE COURT: Rule 1 of the South Carolina Rules of
19 Civil Procedure says exactly that so I'm sorry. That's
20 exactly what Rule 1 says. Uhm, the way that this will
21 proceed, they have the initial burden of proving that the
22 will was properly executed, the burden then shifts and
23 then it shifts back so a day there, your day to rebut, a
24 day or two there, your turn to rebut, then they get
25 another shot at it. That's the way I have seen these

1 things play out before. That's the way I have done them
2 before.

3 MR. WOOTEN: And, Your Honor, on the burden, I know
4 this is shifting gears, but my, you know, there's a
5 statute as you've just mentioned that as you know on the
6 burden in a case like this and the burden on the estate
7 is merely to establish death and that the document was
8 executed subject to certain rules and we would be willing
9 to stipulate to those formalities such that the trial
10 starts with us having the burden and we go first. We
11 think that's the way it should be.

12 THE COURT: That would be fine.

13 MR. WOOTEN: But the other -- If I can just briefly,
14 Your Honor, address the other points in our motion. One
15 is that one of our, uhm, material witnesses, Professor
16 Crystal, is out of the country the next two weeks. We
17 filed an affidavit relating to the relevance and
18 importance of his testimony. Uhm, there's 18 dispositive
19 motions that we have a deadline to respond to them on
20 July 1st in Federal Court. Uhm, we, uh, another issue
21 is, uhm, this is not - this is not in our motion actually
22 but after we filed our motion for a continuance, Hamilton
23 College filed a 42 page motion for summary judgment. We
24 do not think the motion has any merit saying that
25 there's, you know, there's no genuine issue of material

1 fact as to undue influence which is unfathomable to us
2 but we don't have time to respond to that certainly a 42
3 page motion between now and next Monday. So if the Court
4 wants us to brief a motion for summary judgment that's 42
5 pages, we would need more time.

6 Uhm, and there's other - the other issues are that
7 we haven't had time to, uh, we haven't exchanged
8 exhibits, witness lists, done pretrial motions, motions
9 in limine, uhm, things like that and, you know, we just
10 frankly, Your Honor, hate to rush into the trial where we
11 haven't done all those things. Uhm, those, I believe,
12 are at least most of the grounds in our motion for a
13 continuance.

14 THE COURT: The motion concerning Professor Crystal,
15 I must have missed that one. Uhm, but while we are
16 searching for that, do y'all want to respond to the issue
17 of the stay and give me your position on that as well as
18 the other matters raised by the children?

19 MR. HOOD: Sure, Your Honor. Jaime Hood on behalf
20 of the estate. I think Mr. Wooten referred to Rule
21 241(a) talking about the general rule with respect to an
22 automatic stay. If I'm not mistaken, if that were
23 applicable and I'm not sure that it is, if the rule does
24 include, that it says this automatic stay continues in
25 effect for the duration of the appeal unless limited by

1 order of the lower court, the administrative tribunal,
2 Appellate Court, or a Judge or Justice of the Appellate
3 Court, I think that would give you, if there is, in fact,
4 a stay, the ability to lift any automatic stay for the
5 claim. We've moved to dismiss their appeal as improper
6 and that issue has been briefed and submitted to the
7 Court of Appeals.

8 With respect to all of the burdens that come with
9 trying this case in two weeks, I think they apply to
10 everyone but we've got to get the trial done and we'll do
11 everything we need to to get it done. Uhm, I'm not sure
12 what testimony Professor Crystal will have that would be
13 admissible that has not been preserved in a deposition.
14 I think we're looking at their motion for continuance.
15 There was an opinion, a new opinion that he was going to
16 opine that the inter vivos gift was the product of undo
17 influence which was not even proper opinion testimony to
18 begin with. So I think to continue this trial for Mr.
19 Crystal's availability would be the tail wagging the dog.
20 If we needed to do something to preserve his testimony in
21 short order, then I'm sure we can all scramble to get
22 that done.

23 With respect to his own motion briefing all that
24 sort of stuff, I mean, it's customary in the State Court
25 most of the time to deal with those motions on the Monday

1 after the jury selection and we think we can do that
2 here. We just need to have a go time to pick it and roll
3 so we're prepared and ready to do what we need to do to
4 get this thing started, Your Honor.

5 MR. BEACH: Your Honor, if I could briefly.

6 THE COURT: Yes, sir.

7 MR. BEACH: Good afternoon, Judge. John Beach for
8 Hamilton College.

9 THE COURT: Yes, Mr. Beach.

10 MR. BEACH: We agree with Mr. Hood with regard to
11 the timing of the Court's dealing with our motion for
12 summary judgment. Your Honor, we're certainly not asking
13 that the Court hear that motion prior to drawing the jury
14 for beginning this trial.

15 THE COURT: All right.

16 MR. BEACH: Your Honor, just for the record, the
17 motion is almost identical to the one that we filed in
18 Federal Court maybe on April 16th I believe and so it's
19 not new. There's no knew matter in there, Your Honor.

20 THE COURT: Okay. I'm having difficulty connecting
21 to the odrive. My secretary downloaded everything so my
22 clerk is now emailing me specific stuff and that's what
23 I'm looking at right now as far as the continuance motion
24 and I can't - I still haven't seen it yet but as it
25 relates to Nathan Crystal what is it that is so key in

1 terms of his testimony please? Oh, here. Okay. I've
2 come across it. It's page 7. Go ahead if you will.

3 MR. WOOTEN: Professor Crystal is one of our experts
4 who examined the facts surrounding the relationship
5 between Mrs. Wellin and Mr. Wellin and gives opinions
6 about the legal nature of their relationship and
7 basically the fact that Mr. Wellin placed trust and
8 confidence in Mrs. Wellin and the duties that were owed
9 by Mrs. Wellin to Mr. Wellin and the breach of those
10 duties and, of course, the relationship between Mr. and
11 Mrs. Wellin and the extent to which they had a
12 relationship that was one where he placed trust and
13 confidence in her and the confidential relationship is
14 really at the heart of the undue influence analysis.

15 And so, uhm, he also has given opinions with respect
16 to our clients' behavior, our clients' conduct
17 with respect to this transaction that sort of, this 2009
18 transaction where the other side is arguing in this case
19 that it was reasonable for Mr. Wellin to become angry
20 with his children because his children breached certain
21 duties back in 2009 and, therefore, the fact that he sued
22 them and disinherited them does not demonstrate a lack of
23 capacity or undue influence but rather it demonstrates
24 him being a rational actor and Professor Crystal gives
25 opinions about our clients' duties to their dad and the

1 fact that they fulfilled those duties, uhm, to the extent
2 they existed. And so again, that goes straight to their
3 defense in this case that Mr. Wellin was behaving
4 rationally by being angry at his children. And, Your
5 Honor --

6 THE COURT: You stated - you said that that started
7 -- I was trying to do two things, read your motion and
8 listen to you and find the affidavit. Uhm, you
9 referenced something in 2009 you said. What was that
10 about again?

11 MR. WOOTEN: So, uhm, when this dispute began in
12 2013, Mr. Wellin sued his children --

13 THE COURT: Right.

14 MR. WOOTEN: -- and said you all, you know,
15 defrauded me and breached your duties to me back in 2009
16 whenever I entered into this big transaction and our
17 clients' position is that, uhm, Mr. Wellin, the fact that
18 he sued them and believed that they stole from him and
19 defrauded him, uhm, that that is evidence of and very
20 powerful evidence of his diminished capacity and
21 Mrs. Wellin's undue influence over him, uhm, and the
22 estate has hired Professor John Freeman to give opinions
23 about how our clients, in fact, did breach their duties
24 back in 2009 and Professor Crystal has responded to those
25 opinions and explained why they didn't, uhm, and so that

1 is an important dynamic in the undue influence analysis
2 and the capacity analysis, uhm, and so he's one of our
3 important really good witnesses and we need him at
4 trial.

5 THE COURT: Okay. I may need to take just a little
6 bit harder look at that. How central is that to --
7 That's -- All right. Let me ask it this way: Let's go
8 back and touch on something that we touched on a few
9 moments ago. You had said that part of the reason that
10 you're having such an issue with the bifurcation which I
11 do understand is that you also want to try the other
12 torts that you have against Mrs. Wellin, uhm, in the same
13 action which I understand that that is certainly your
14 preference. What torts have you alleged against her
15 which are not dependent upon the ultimate issue of
16 whether she exercised undue influence or otherwise tried
17 to interfere with the relationship between Mr. Wellin and
18 his kids? Which torts are those that are so essential to
19 that issue that - that -- The way I've always understood
20 it and the way I took your answer and the way I saw this
21 case, everything that you allege is really dependent on
22 the question of, okay, was there either lack of capacity
23 or was there undue influence. What is unrelated to those
24 that you could try that you would have, of course,
25 damages, that naturally and probably flow from presumably

1 the new estate plan which was created in 2013?

2 MR. WOOTEN: Right. So that is a very important
3 question, Your Honor, uhm, and all of our claims are
4 based on the evidence that is surrounding undue
5 influence. It's the same evidence.

6 THE COURT: Right.

7 MR. WOOTEN: The key is that we have a different and
8 lower burden with respect to our tort claims and I can
9 give multiple examples. For example, there is a
10 prenuptial agreement. Judge Norton has already ruled
11 that we're a third party beneficiary and we may sue Mrs.
12 Wellin for breach of contract in the prenuptial
13 agreement. She agreed contractually, this isn't a tort
14 claim, this is one of our contract claims, but she agreed
15 contractually to do certain things and not to do certain
16 things. She had to agree to guarantee reasonable access
17 between our clients and Mr. Wellin, for example. She had
18 to agree not to interfere, not to interfere with
19 Mr. Wellin's property. It's not that she couldn't unduly
20 influence him. She couldn't do - she couldn't interfere
21 at all. It's a much more significant restraint on
22 herself that she agreed to whenever she decided to marry
23 Mr. Wellin and signed that agreement.

24 If we have a trial, uhm, on our claims against
25 Mrs. Wellin, we would put in all of the evidence of undue

1 influence. It would be the same evidence that caused
2 that breach of contract claim but the jury doesn't get to
3 decide our breach of contract claim. They only get the
4 jury verdict form that has undue influence with Your
5 Honor reading them the law on undue influence which is a
6 much higher, more difficult burden for us.

7 So our clients would then have had a trial, and our
8 point, Your Honor, is either - there's two options then.
9 Either if we lose on undue influence, we're barred down
10 the road from having the trial again with the same
11 evidence on breach of contract, or, uhm, or we have the
12 same trial again in which case the first trial
13 accomplished nothing because we're having the trial with
14 the same evidence again. Uhm, and so our point is all
15 the claims should be tried together and there's many
16 examples of that, Your Honor. There's defamation. For
17 defamation we don't have to establish that Mrs. Wellin
18 unduly influenced her husband. We merely have to
19 establish defamation. And so it's the same exact
20 evidence, Your Honor, but it's a different burden.

21 THE COURT: No. I -- And that I understand but
22 those are two different causes of action. You can
23 proceed on a defamation cause of action and that's
24 completely independent of anything testamentary that
25 Mr. Wellin may have done. You can sue them, you know,

1 for defaming the children, okay? And the first cause of
2 action though that you mentioned, the interference with
3 the antenuptial agreement, uhm, your damages from that
4 tort, how do they not directly flow from whether or not
5 she exercised undue influence, poisoned the well? The
6 damages flow from the testamentary documents that were
7 created in 2013, no?

8 MR. WOOTEN: So, Your Honor, the, uhm - if you have
9 the trial on just undue influence and capacity, uhm, at
10 the end of the trial it could be the case that, uhm, the,
11 let's say that the estate plan that Mr. Wellin put in
12 place is, uhm, overturned and therefore our clients are
13 the residual beneficiaries again, they still have tort
14 claims against Mrs. Wellin but their damages have
15 changed, right? Uhm, or there could be this first trial
16 and the final estate plan is in place in which case our
17 clients' damages are much higher because they're no
18 longer beneficiaries. They're not residual
19 beneficiaries. They've largely been cut out of the will.
20 And so in those two scenarios, Your Honor, we, you know,
21 it's all the same evidence that relates to the trial and
22 which document applies. It's the same evidence that
23 comes in for that and it comes in for our breach of
24 contract in the tort claims but the jury is only allowed
25 to decide the document claims, the claims on which

1 version of the document it was.

2 THE COURT: But so what, what we would be faced with
3 then is the potential for, for inconsistent verdicts so
4 you have a, you have a lower standard in the antenuptial
5 agreement situation. And so what happens when the jury
6 says, okay, well, we agree that the children have met
7 their burden of showing that Ms. Wellin interfered with
8 the prenuptial agreement but we find he had testamentary
9 capacity and the interference was not so much, it was to
10 overbear the will of Mr. Wellin? So there was
11 interference and yet she, yet the estate still says that
12 there was.

13 MR. WOOTEN: That is - that is an outcome that
14 completely could happen, Your Honor. If you're
15 Mrs. Wellin and you enter into that prenuptial agreement,
16 a scenario could happen where your husband - where you
17 interfered with your husband, you restrict his kids
18 access and as a result, uhm, you know, your husband
19 changes his will, he changes his trust, you don't cross
20 the line of undo influence. You don't meet that high
21 burden, uhm, but you nevertheless have breached your
22 contract which has a lower standard than undue influence
23 and the remedy there, Your Honor, is that the new estate
24 planning documents are in place. This final version is
25 in place but our clients are entitled to damages from

1 Mrs. Wellin for breaching the contract and so they're
2 entitled to more damages because she was successful in
3 her interference efforts. Had she - had she unduly
4 influenced him to the point that the documents were
5 invalid and they were rendered invalid by virtue of undo
6 influence, then our clients' damages would go down.

7 THE COURT: I know, Mr. Hood, that we're debating
8 something that's already probably water under the bridge
9 but you have an expression on your face like you want to
10 say something?

11 MR. HOOD: Two things. One is if the quantum of
12 damages is determined in the first trial, then that's a
13 reason to have a bifurcated trial because you now know
14 what the estate plan is and now their argument that
15 either it was or it wasn't interfered with bears out one
16 way or the other. The second issue is when we're talking
17 about these two different burdens, that's an exact reason
18 to bifurcate this trial because what the Wellin children
19 would like to do is avoid the burden associated with
20 undue influence which is the burden --

21 THE COURT: Which is up there, yeah.

22 MR. HOOD: -- which is this burden associated with a
23 will that was probated and their challenge to it by
24 bringing in defamation claims and breach of contract
25 counterclaims in hopes that that evidence will some how

1 carry the day. So with conflicting and competing and
2 different burdens of proof, having a bifurcated trial
3 will be a simpler trial and much less likely to result in
4 jury confusion especially on limited admissibility of
5 different aspects of damages and facts and opinions
6 related to some of these different issues.

7 So we've had the conversation about the utility of
8 the bifurcation and I think we're going back to
9 questioning whether bifurcation is appropriate. We
10 wanted to have a narrower version and the Court's already
11 ruled that if we're gonna bifurcate it, we're going to do
12 it all, and it seems to me the rationale that was
13 applicable when the Court decided this back in May is no
14 different today and, if anything, it's only clearer why
15 the Wellin children are so concerned about the burden.

16 So we believe that the bifurcated process which we
17 have been advocating for many years is the right method
18 to try these cases and no one has ever suggested that
19 there wasn't going to be a second trial. No one ever
20 suggested that the Wellin children were forever going to
21 be barred. I think your order makes it clear that these
22 aspects are being bifurcated, that will be a trial and
23 the results of that, and then we'll all have to look to
24 see what the ramifications are for the next one and how
25 they apply, if at all, or to what extent they are

1 applicable. But the same thing in Federal Court. We're
2 gonna have to go to Federal Court at some point if
3 there's not a resolution of the case.

4 So the bifurcation isn't a silver bullet but it's a
5 simplification of credible issues which is why we've been
6 pursuing that.

7 THE COURT: Okay.

8 MR. HOOD: Yeah. I mean, it's sort of hard to
9 imagine that as an estate you file a will, to have a
10 probate, and it gets challenged and instead of having a
11 fight over the testamentary capacity and undue influence,
12 the challengers are able through their counterclaims to
13 upend 200 years of jurisprudence on testator's capacity
14 and bring in a defamation claim to sort of do an end run
15 on the burden of proof that they have to bear in this
16 case. And so we think that that is a perfectly
17 reasonable exercise of the Court's discretion to
18 bifurcate the case and reach the resolution of those
19 issues.

20 MR. WOOTEN: Your Honor, can I briefly reply to
21 that?

22 THE COURT: Please.

23 MR. WOOTEN: So no one has been talking about the
24 law on bifurcation which there's black letter law in
25 South Carolina which says the first thing the Judge does

1 in deciding whether to bifurcate is look at whether the
2 issues are so distinct that it makes sense to bifurcate.
3 Look at how distinct the issues are and whether there's
4 overlapping evidence. And what we're in here talking
5 about right now is just how overwhelmingly overlapping
6 the issues are. They're the same facts, they're the same
7 evidence that's going to come in, our undue influence
8 evidence and our breach of contract, our breach of
9 fiduciary duty evidence and as Your Honor just
10 recognized, it's the same facts that form the basis for
11 all of those claims. It is the opposite of the situation
12 where the South Carolina Appellate Courts have said that
13 a trial court should bifurcate. The issues are
14 intertwined and, in fact, the estate's motion to
15 bifurcate argued, they argued at the hearing these issues
16 permeate the case. Well, you don't bifurcate when they
17 permeate the case. You bifurcate when you have got
18 liability on the one hand and damages on the other and
19 the evidence is not overlapping.

20 And, Your Honor, these family will disputes happen
21 all over the country and have for years and there's not
22 cases all over the country where they bifurcate the will
23 contest and the trust contest from the tort claims. The
24 parties that are the challengers like us in those cases,
25 they sue for undue influence and they sue for various

1 other causes of action and there's not orders out there
2 saying, or opinions out there saying you should bifurcate
3 those because the issues are overlapping, Your Honor. It
4 really would be like bifurcating the recklessness claim
5 from the negligence claim in the case where they have
6 different burdens but the same evidence.

7 But, Your Honor, a threshold issue before we even
8 think about bifurcation really is this estate issue and I
9 do not want Your Honor to misunderstand the law on this.
10 Mr. Hood pointed out that Rule 241(a) says that the lower
11 court may lift the order. Uhm, I'm sorry. The lower
12 court may lift the stay with an order and that rule is
13 elaborated upon Rule 241(d) which is called the procedure
14 for obtaining lift of the stay or the supersedeas and so
15 what that, what 241(d) explains is that the lower court
16 may only issue an order lifting an automatic stay
17 whenever it's been verified and issued filed by a party
18 and meeting all sorts of requirements arguing as to why
19 the automatic stay should be lifted.

20 So what Mr. Hood is arguing is not that there is no
21 automatic stay. He's saying, at least implicitly, that
22 there is one but you could lift it. Well, you only can
23 do so if a party filed a verified petition under 241(d)
24 which, of course, no one has. And so that is the
25 threshold issue, Your Honor, because if we have a trial

1 next week before all of that is sorted out, we are
2 wasting our time and money on a trial where Your Honor
3 doesn't have jurisdiction because of the stay and that
4 would be tragic, of course, if that happened.

5 THE COURT: All right. I understand your position
6 that this Court shouldn't act because an automatic stay
7 is not in effect. I mean, have you filed for a stay with
8 the Court of Appeals? Because procedurally my
9 understanding is that, again, I don't think it's
10 automatically stayed. I understand your position. I
11 respect that but if that's the position that I'm taking,
12 I think that your next recourse is with the Court of
13 Appeals.

14 MR. WOOTEN: Your Honor, the rule says automatic and
15 I think, you know, our appellate team has looked at this
16 and you don't file a motion to stay after you file a
17 notice of appeal. It says anything affected by the order
18 is automatically stayed. That's inconsistent with
19 needing to file a motion.

20 THE COURT: I understand but typically it's final
21 orders that are subject to appeal and you simply can't
22 appeal every adverse ruling and more substantially most
23 of what I have ruled on in the order from some months
24 back is largely discretionary under the law. Uhm, I
25 understand you don't like it and I respect that and if I

1 were in your shoes, I would be saying the same thing to
2 me but I just don't see where anything is a final
3 adjudication and simply because you file a notice of
4 intent to appeal doesn't mean everything grinds to a
5 screeching halt.

6 MR. WOOTEN: There's an opinion, a recent opinion,
7 Your Honor, from the South Carolina Supreme Court, the
8 Morrow case and it is a case where the trial court issued
9 an order bifurcating, calling it a bifurcation, said
10 we're bifurcating the trial between this set of claims
11 and this set of claims. The plaintiffs appealed just
12 like in this case, they filed an appeal and, Your Honor,
13 it went up to the - the other side said you can't file an
14 appeal. It's a bifurcation order. Bifurcation orders
15 are not immediately appealable, uhm, in most cases and
16 the Court of Appeals agreed. They said this is
17 interlocutory. You can't immediately appeal a
18 bifurcation order. It goes up to the South Carolina
19 Supreme Court, they issued an opinion saying this type of
20 bifurcation order is immediately appealable and this is
21 from last year, Your Honor, 2018. I'm sorry. 2015.
22 That's correct.

23 THE COURT: Morrow?

24 MR. WOOTEN: The Morrow case and, Your Honor, it's
25 discussed in our -- I've got the cite right here -- it's

1 discussed in out motion for continuance. Uhm, it is, the
2 cite 412 SC 534 and, Your Honor, the key point, of
3 course, is that if in that case the trial Judge had said
4 no, bifurcation orders aren't immediately appealable. I
5 think I can go forward with the trial, uhm, or if the
6 trial Judge had held off until the Court of Appeals had
7 said it's not immediately appealable and then gone
8 forward, you would have had a trial that was a complete
9 nullity once the Supreme Court opinion came down.

10 In that case, I mean, the way that that case played
11 out, this case is on all fours with that Morrow case,
12 uhm, and Your Honor should not proceed with trial for the
13 same reasons that trial Judge didn't proceed with trial,
14 uhm, because you have to find out whether or not the
15 order is immediately appealable and that's not -- We
16 don't have a system in South Carolina where the trial
17 Judge makes his or her own decision about whether the
18 order is immediately appealable and only if he or she'
19 thinks it is immediately appealable is there an automatic
20 stay. No. The automatic stay applies upon the notice of
21 appeal and then the Court of Appeals gets to decide
22 whether or not it's immediately appealable and this is --
23 I mean, we take the position that it's on all fours with
24 Morrow. It is at minimum extremely close to Morrow such
25 that there would be an enormous gamble to have a trial

1 where it may end up being immediately appealable.

2 THE COURT: I - I respect you. I found it in your
3 brief and my clerk just emailed it to me and if I'm
4 looking at this right, it looks like three years
5 transpired between the time that the Court of Appeals
6 ruled that it was not immediately appealable and the
7 Supreme Court said that it was.

8 MR. WOOTEN: Your Honor, that is --

9 MR. LAY: The Morrow case deals with a substantial
10 right which is different than this. It's a very specific
11 circumstance in that Morrow case. This kind of
12 bifurcation order that you have done in this case is not
13 immediately appealable. If it were, there would be no
14 bifurcation. Nobody would be able to grant it without
15 assuring that there would be an appeal on the case. The
16 Morrow case is a very specific circumstance. We have
17 dealt with that in our motion to dismiss that's currently
18 in the Court of Appeals.

19 MR. WOOTEN: Your Honor, the key is not -- We can
20 sit here and argue about whether Morrow applies. The key
21 is the process is not for the trial court to hear
22 arguments about whether the order is immediately
23 appealable and if he or she is persuaded that it's not
24 immediately appealable proceed as though there's no
25 automatic stay. The process is the Court of Appeals

1 sorts that out. The action - the order that is appealed
2 from is stay under the rule until, unless and until
3 there's a remittitur to the Circuit Court. And I
4 understand, Your Honor, you raised the practical concern
5 about it could take a long time but that is not a reason
6 to proceed with trial during an automatic stay.

7 THE COURT: I fully -- I'm on the trial bench and we
8 are forced to deal with practical concerns as opposed to
9 those on the Appellate Courts who get to spend their time
10 with more intellectual pursuits, but I like to deal with
11 the practical and the meaningful as opposed to the
12 intellectual, I guess. Out of fairness to them, let me
13 take a - let me take a few moments. Let me take a quick
14 look at Morrow. Uhm, I realize that we're burning
15 daylight on this case, uhm, but I do want to look at
16 Morrow and obviously, you know, while we're on break
17 where I stand right now is that there's not an automatic
18 stay. If I'm incorrect, I apologize but that's my
19 reading of the law. If the Court of Appeals tells me to
20 stop or the Supreme Court tells me to stop, that's
21 something entirely different. I know how to take orders
22 but my reading of the law is that it's not automatically
23 stayed. If I am mistaken, I'm sorry. I'm gonna look at
24 Morrow to try and make my --

25 MR. BEACH: You Honor --

1 THE COURT: -- belief different. Yes, sir.

2 MR. BEACH: -- briefly. John Beach for Hamilton
3 College again. If the Court has any thought about
4 possibly changing it's decision on bifurcation, I do have
5 a couple points that I would like to make.

6 THE COURT: I'm pretty comfortable on the
7 bifurcation issue.

8 MR. BEACH: Thank you, Your Honor.

9 THE COURT: All right. That's res judicata. We're
10 not gonna revisit that.

11 MR. BEACH: Understood. Thank you.

12 THE COURT: Even though we just did. Five minutes,
13 five, ten minutes and then we'll deal with it.

14 (Short break.)

15 BAILIFF: All rise.

16 THE COURT: We'll go back on the record. And I have
17 had a chance to review Morrow and that does seem to be a
18 case that affects a fundamental right, a nursing home
19 liability issue where the trial court basically didn't
20 allow a second theory to go forward against a different
21 corporate defendant. As a practical matter in its order
22 a three two split with Justice Pleicones and Kittredge in
23 the descent. Uhm, I don't believe Morrow applies and if
24 I'm wrong, I'm sure I'll be told that soon enough so
25 that's where we stand with that.

1 All right. I have not had the chance to really look
2 at the affidavit again from Dr. Crystal. If it is true
3 that his testimony is contained in the deposition
4 somewhere, then I would think we could read his
5 deposition testimony at trial but I'll take a second look
6 at the motion for a continuance and the attachments this
7 evening. Uhm, but again, I would think that we could
8 simply use deposition testimony if need be so that's kind
9 of where we stand on that but I will take a second look
10 at Dr. Crystal's information. Mr. Beach, additionally my
11 clerk told me that you were injured and I didn't, I don't
12 have a good line of sight to you so you don't need to
13 stand. Just wave, okay?

14 MR. BEACH: Thank you, Your Honor. I'm doing just
15 fine.

16 THE COURT: Okay.

17 MR. BEACH: I appreciate it.

18 THE COURT: She said that you looked uncomfortable
19 so you don't have to stand.

20 MR. BEACH: Thank you, Your Honor.

21 MS. BRYANT: He always looks uncomfortable.

22 MR. BRUNSON: So, Your Honor, just so we're clear,
23 if I could.

24 THE COURT: Please.

25 MR. BRUNSON: You're denying the motion for

1 continuance?

2 THE COURT: That's my -- My impression as it relates
3 to Morrow as far as those grounds are concerned, yes.
4 Factually it looks as is relates to Dr. Crystal, let me
5 look at that again tonight because if you are right, I
6 want to be fair to you and if there's no other way to get
7 his testimony but have him attend, and if it is that
8 central to your case, I've just got to mull that over and
9 look at that again tonight what you've submitted.

10 MR. BRUNSON: And you've also denied it as to the
11 wedding?

12 THE COURT: Yes. I'm sorry. If y'all are going to
13 start first, your clients will probably be there that
14 first week and they can make the wedding and I'm sorry
15 that they're gonna have to miss a verdict but you'll be
16 at liberty to explain that to the jury, of course, in
17 your opening or in your closing or whenever, okay?
18 People understand that and as much as I would like to
19 accommodate it, I can't for that reason.

20 MR. BRUNSON: I'm not trying to re-argue it. I just
21 wanted to make sure I understood your ruling.

22 THE COURT: And again, with all due respect to them,
23 yeah, they have to get to that wedding. Uhm, I can't
24 rearrange court around every social obligation folks may
25 have and if it was a situation where they would need to

1 be there on Thursday or Friday to testify and they're
2 going to be in Colorado, that might be different
3 entirely. With you guys going first, agreeing that the
4 will was executed properly, et cetera, they can testify
5 to what they need to early in the week and perhaps even
6 be available on Wednesday the following week for any kind
7 of reply that you might need to offer. You needed to say
8 something?

9 MR. LAY: I was just gonna say with, uhm, with Dr.
10 Crystal, I mean, there is a fundamental difference of
11 opinion about whether his testimony is even admissible
12 beyond that. If there is a new opinion that they want to
13 offer with him, that this week we could take his
14 deposition and figure out what that is and that can be
15 offered with the deposition testimony. He had an
16 extensive video deposition that has been done and that
17 can be used for his testimony and if there is a new
18 opinion that needs to be provided, we can try to work it
19 out this week with them to videotape that deposition so
20 he can, that testimony so he can go on vacation so we can
21 work that out and we can work around that.

22 THE COURT: I trust y'all will.

23 MR. LAY: Yes.

24 THE COURT: Very good.

25 MR. BRUNSON: Your Honor, we have another matter to

1 raise --

2 THE COURT: Sure.

3 MR. BRUNSON: -- if you are agreeable.

4 THE COURT: Please.

5 MR. BRUNSON: Your Honor, yesterday we filed a
6 request for default as to our declaratory judgment action
7 and obviously the issue that that relates to is the
8 Wellin children's declaratory judgment action against the
9 revocable trust and Wendy Wellin as trustee of the
10 revocable trust has not answered. It's been over a year
11 so they're in default and so I think that will have an
12 effect on how the proof is presented at trial because the
13 issues as to the trust should be determined and the only
14 issues at the trial reserving all our objections as to
15 jurisdiction would relate to the will so that seems like
16 an important procedural issue that we need to deal
17 with.

18 THE COURT: Okay. What's Ms. Wellin's position on
19 that?

20 MR. HOOD: Well, I haven't had a great opportunity
21 to read it. It was filed last night about five or so
22 when I saw it, uh, and maybe it wasn't filed at five.
23 Maybe I just saw it at five. But it appears to be that
24 when we prepared our reply to their counterclaims that
25 brought Ms. Wellin in as trustee of the revocable trust,

1 that there's a clerical error where we didn't - we
2 identified her as special administrator as opposed to,
3 uh, as opposed to the trustee of the 2009, or 2001
4 revocable trust and what we did doesn't match up with our
5 signature block which you see that says attorneys for
6 Wendy Wellin as special administrator and as trustee.
7 That's what it says in our signature block and I think
8 when you read the entirety introductory paragraph that
9 counsel was nice enough to identify the clerical error
10 in, you will see that it lists Wendy Wellin and talks
11 about her as the petitioner as well as counter respondent
12 and when you look at it, it clearly, those two words
13 would cover her actions in terms of trustee and the
14 answer itself, or reply rather substantively responds to
15 the allegations directed to it. So if what they have
16 identified is a clerical error that is significant, it
17 can be revised. It may very well be that my answer or
18 reply as filed is satisfactory. I do know that they
19 served discovery and the parties have participated as
20 counsel for her as trustee so certainly they are, or have
21 taken the position that she is actively involved in this
22 case and it wasn't until yesterday that that issue was
23 raised.

24 THE COURT: Any reply?

25 MR. WOOTEN: Yes. Well, one issue that has to be

1 raised, Your Honor, is that Mrs. Wellin has a pending
2 motion before you to place us in default.

3 THE COURT: Right.

4 MR. WOOTEN: Uhm, and so in that instance as Your
5 Honor may know, uhm, she argued that we're in default
6 because even though we didn't file a reply, she had
7 counterclaimed to a counterclaim which is not an
8 admissible pleading in South Carolina. There's no
9 deadline to file a reply to a counterclaim that is
10 contained in a reply. There's only a deadline to file a
11 reply to a counterclaim that's contained in an answer.
12 That's in Rule 12. Uhm, and so even though we answered
13 their counterclaims in Federal Court years earlier, even
14 though we have litigated those counterclaims, served
15 discovery on them, they argue we should be held in
16 default, now on this motion for default Mrs. Wellin's
17 attorney is, you know, arguing it's just an error that we
18 made. We just made a mistake. It's not a big deal. We
19 shouldn't be held in default, uhm, so those issues should
20 be decided together.

21 Of course, the answer or the reply that the estate
22 filed that Mr. Hood just referenced on the declaratory
23 judgment action claim, it says that Mrs. Wellin is only
24 responding to the extent that, to the extent that our
25 claim is alleged against Mrs. Wellin as special

1 administrator. Of course, it's not alleged at all
2 against Mrs. Wellin as special administrator so there's
3 been no response whatsoever to that counterclaim. They
4 have only responded to the extent we asserted against her
5 in a capacity in which we do not assert against her and
6 so we think that Your Honor should consider both of those
7 motions at the same time. Of course, the estate hasn't
8 even filed a motion to set aside the default. We have
9 filed a motion to set aside the default, uhm, but we
10 think those issues should be considered together because
11 they're somewhat related. We're prepared to argue their
12 motion to put us in default and our motion to set it
13 aside.

14 THE COURT: All right. Well, Mr. Hood, my
15 understanding of Rule 12 is the same as Mr. Wooten's.
16 You want to address your motion as it relates to, uhm,
17 you're actually holding them in default.

18 MR. HOOD: I'll let Mr. Lay do that. That was his
19 motion because that had to do with counterclaims that
20 were filed by Wendy Wellin individually.

21 THE COURT: Okay.

22 MR. HOOD: But let's just back up for just a second
23 and get this timing because Mr. Wooten just said we
24 hadn't sought leave for relief of default. I got this
25 yesterday, as I said, at 5:00 p.m. Here I am today for

1 you're hearing at 2:00 and while I would like to have had
2 the opportunity to have done that, I haven't yet had it.

3 THE COURT: Sure.

4 MR. HOOD: But as you just heard him say, what you
5 see in our reply is to the extent it addresses Wendy
6 Wellin as special administrator. That's the clerical
7 error carried out throughout the pleading. It should say
8 to the extent this addresses Wendy Wellin as co-trustee.
9 And again, Your Honor, that pleading is signed as counsel
10 for Wendy Wellin as special administrator and as trustee.
11 So we believe that the signature block would put them on
12 notice to cure any clerical error and certainly there has
13 been no, anything that's transpired to suggest that a
14 different course of action would have been taken
15 with respect to this case or preparation, anything
16 amounting to any sort of prejudice so with that I would
17 sit down with respect to yesterday's motion to hold me in
18 default and let Mr. Lay talk about the motion he filed.

19 MR. LAY: Your Honor, we have a brief with exhibits
20 Ms. Joyner is going to be arguing this motion.

21 MR. BEACH: Your Honor, before Ms. Joyner begins and
22 while she's standing up, I think I heard Robert Brunson
23 say something that suggested that there might be some
24 procedural difference in the way this case is tried if,
25 in fact, Wendy Wellin is found not to have responded in

1 her capacity as trustee, and if that's what they're
2 saying, I would say, Judge, that on the validity of the
3 trusts which is the part of the declaratory judgment
4 action that we're talking about here, these are the trust
5 that leave the twenty million to Hamilton College and
6 Hamilton College has answered fully and denied that they
7 are invalid and, in fact, has affirmatively asserted that
8 the final three trusts that were signed by Keith Wellin
9 in 2013 and 2014 are valid and are not a product of undue
10 influence. And so I don't understand, if there is some
11 argument that they have a procedural advantage in some
12 way from this, I would say that the trial should - those
13 issues should have been joined and clearly there are
14 parties who have completely disagreed with the relief
15 that the Wellin children have requested in the
16 declaratory judgment action with regard to the validity
17 of the trusts.

18 THE COURT: Thank you for making that point. Ms.
19 Joyner, let me hear from you.

20 MR. LAY: I'm gonna stand in the corner.

21 THE COURT: That's fine. Go ahead, Ms. Joyner.
22 I'm ready whenever you are.

23 MS. JOYNER: All right, Your Honor. Well, I guess
24 it's their motion and, uhm, well, I guess we had a motion
25 to make an entry of default and then they filed a motion

1 to deny that entry of default and set it aside since it
2 had already been entered. At this point the entry was
3 not made so I guess I can make it. This response to you
4 is in opposition to their motion as opposed to our
5 motion. Our motion was simply that in February of '18
6 when they were permitted to amend to add all of the in
7 personam claims against Mrs. Wellin, uhm, when they did
8 so, when we answered, when we replied, uhm, probably
9 about three weeks later, I think it was February 6th,
10 they filed February 21st, we filed a motion to dismiss
11 and did a partial answer.

12 In that partial answer we included our
13 counterclaims, uhm, and that never - those counterclaims
14 were never responded to until after we requested entry of
15 default. At that time the Wellin children rather than
16 making it part of their motion, uhm, just sought to file
17 a late answer slash reply and that's where - they have
18 done that so, Your Honor, there was no, as our affidavit
19 in the motion has stated, there have been no response to
20 it and, uhm, they had asked us about those counterclaims
21 in discovery requests in State Court but they have not
22 filed a reply so that's why we requested the entry of
23 default.

24 THE COURT: Your position is still the same, that
25 Rule 12 doesn't apply in this particular situation?

1 MR. WOOTEN: Correct, Your Honor. The parties only
2 default is they missed the deadline to file a responsive
3 pleading and there is no deadline to file a reply to a
4 counterclaim contained in the reply and it's crystal
5 clear in Rule 12, Your Honor. If you look at Rule 12(a),
6 it says that, uhm, Rule 12(a) distinguishes between a
7 party, in some instances it says a party, it uses that
8 broad term which can mean, you know, a plaintiff or a
9 defendant. In other instances it only refers to a
10 plaintiff, uhm, or a defendant. And it also
11 distinguishes between a reply and an answer. Those are
12 all differentiated in South Carolina Rules of Civil
13 Procedure.

14 And so if you look at Rule 12(a), a party served
15 with a pleading stating a cross claim against them shall
16 serve an answer thereto within 30 days. The plaintiff
17 shall serve his reply to a counterclaim in the answer
18 within 30 days after service of the answer or reply
19 forwarded by the Court within 30 days. So the only party
20 that has a deadline to file a reply to a counterclaim is
21 a plaintiff, uhm, and the reason that's important, Your
22 Honor, of course, is because if it were not so, if Mrs.
23 Wellin could receive our counterclaims and file a reply
24 to our counterclaims with more counterclaims in it, there
25 would be a never ending loop.

1 We could reply to her counterclaims through our
2 counterclaims and we could assert counterclaims to the
3 counterclaims to the counterclaims and so on ad infinitum
4 and there are cases explaining exactly what I've just
5 said that we put in our brief. They say if we allowed
6 that, this would go on forever. We have to have
7 someplace that it stops. And that's why, Your Honor,
8 under Rule 8 of the South Carolina Rules of Civil
9 Procedure, Rule 8(d), it says that averments in a
10 pleading to which no responsive pleading is required or
11 permitted shall be taken as denied or avoided. And what
12 that contemplates, Your Honor, is there is such a thing
13 as a pleading to which you can't respond to. There has
14 to be an end at some point to the pleading cycle, and if
15 you get to a point where it's over and you can't file a
16 responsive pleading, well, then the averments in there
17 are deemed to be denied by you so you don't have to file
18 yet another pleading.

19 And the rules are clear on this, Your Honor, uhm,
20 and we filed a brief on this a while back that lays out
21 our position. Ms. Joyner has handed us what looks like a
22 31 page brief that we just received so I, of course,
23 haven't read any of that, uhm, but again, the rules are
24 clear. Uhm, there's also - there's also, uhm, you know,
25 the fact that we had been litigating this same issue in

1 Federal Court, these counterclaims. Uhm, the fact that
2 we served discovery on them has no bearing on whether or
3 not there's a deadline to file a responsive pleading so
4 the default should be denied.

5 MS. JOYNER: Uhm, Your Honor, obviously we disagree
6 with Mr. Wooten and the Wellin children's reading of the
7 rules. We believe that there are hobbling together
8 specific parts of the rules rather than reading them in
9 total. Mr. Wooten pointed you to cases. None of those
10 cases are actually in South Carolina. Uhm, in South
11 Carolina there's Mauro v. Clabaugh, 299 SC 184. Uhm,
12 that's on page 22 of our brief, and in that the Court of
13 Appeals found no merit in the plaintiff's contention that
14 the Court should have declared the counterclaim which was
15 styled as such by the defendant as a request for set-off
16 and in that case which was a legal malpractice action,
17 the plaintiff did not respond to the counterclaim because
18 his lawyer believed it to be a set-off request not
19 requiring a reply even though just as in this case the
20 request was denominated as such and so the Court finds
21 that if a claim is denominated as a counterclaim, it must
22 be responded to as a counterclaim and the Wellin children
23 were free to move to dismiss it because they believe it
24 to be a counterclaim to a counterclaim but they couldn't
25 just make that interlocutory determination on their own.

1 Additionally, other arguments that they made in
2 their brief regarding the rules were as to Rules 7, uhm,
3 12 and 13 and Rule 7 very clearly states that there shall
4 be a complaint and an answer and a reply to the
5 counterclaim denominated as such and that is what the
6 Court of Appeals looks to in that Mauro matter.

7 Mrs. Wellin very clearly did not name her
8 counterclaims as counterclaims throughout her responsive
9 pleading which was, uhm -- I mean, it mentions them
10 multiple times. If you look at page 23 of our brief,
11 there's that sort of how it was drafted in the responsive
12 pleading and with the counterclaims. If you want to move
13 on beyond the -- I mean, I don't know whether they're
14 gonna take up other arguments in their motion to deny
15 entry of default or just address Rule 12. I'm happy to
16 keep going but I'll leave that up to them since this is a
17 response to their motion.

18 THE COURT: All right. Here's kind of how I'm --
19 And again, Ms. Joyner, I say this without the benefit of
20 having obviously read everything --

21 MS. JOYNER: Yes, Your Honor.

22 THE COURT: -- in this three inch thick binder.
23 Uhm, I've never actually had to cite Rule 1 twice in a
24 proceeding before but that's my favorite rule and I think
25 there's a reason they made it number 1, and it basically

1 says that the rules of evidence should be interpreted as
2 to provide fair, just and speedy resolution of disputes
3 and cost effective, uhm, so that's how the rules should
4 be read. As a practical matter the Court is aware that
5 this litigation has been going on for some time and that
6 in pretty much every respect the State Court litigation
7 closely mirrors, if it's not actually identical, to the
8 Federal litigation. The purpose of pleadings is to help
9 narrow the issues so that the parties can understand
10 exactly what is at issue in the case. That's the basic
11 purpose of that. The idea of default is that somebody
12 just not needing to respond or wanting to respond or is
13 acting in due diligence to respond.

14 In light of the procedural history in this case as
15 well as Rule 1, I'm not holding anybody in default. I
16 think that after everything that's been going on both in
17 the Federal and the State level to do so would probably
18 vitiate the very purpose of the rule and that is to allow
19 people, to allow the pleadings to communicate what is an
20 issue in this case and this late in the game I think
21 everybody knows what the issues are. If there was
22 Scrivener's errors, if there was a minor oversight on the
23 part of one party or the other, the Court doesn't find
24 that that warrants an entry of default as it relates to
25 either the counterclaims or to the action against Ms.

1 Wellin as trustee slash special administrator slash
2 whoever or whatever hat she happened to be wearing at
3 that particular time. So that's my ruling on that.
4 Nobody gets defaulted. Thank you.

5 MR. BRUNSON: So just for clarity of the record,
6 uhm, that would be a -- Let's just make sure we're clear
7 on what motions have been granted or denied because I
8 think there's --

9 THE COURT: I'm not holding anyone in default so
10 whoever was opposing defaults won, okay? You won on
11 their motion, the children won on the estate's motion.

12 MR. BRUNSON: So Wendy Wellin moved for entry of
13 default with respect to the Wellin children and you're
14 denying that motion?

15 THE COURT: Right.

16 MR. BRUNSON: The Wellin children moved to set aside
17 that default and you're granting that motion?

18 THE COURT: Granting that motion. Correct.

19 MR. BRUNSON: And the Wellin children moved to, or
20 requested to default against the trust and you're denying
21 that motion?

22 THE COURT: That's exactly right. Because I feel
23 like everybody knows where everybody stands in this case
24 and it's a little bit late to be providing some technical
25 or procedural advantage to one side or the other, uhm, so

1 we're not going down that road. We've still got a little
2 bit of time.

3 MR. BRUNSON: We have some other issues with respect
4 to the trial we would like to raise at this point.

5 THE COURT: Right. There was a motion to compel, I
6 think, that we needed to compel some discovery responses
7 and there was another evidentiary issue I think that
8 y'all are raising. Am I wrong? Or is that --

9 MR. BRUNSON: Actually, we were interested in
10 talking about the scope of the trial, allocation of time.

11 MR. LAY: I think some of those -- I'm in agreement.
12 I think some of those issues don't affect the trial, this
13 trial so we could push those off and talk about trial
14 logistics.

15 THE COURT: Okay. Let's go ahead and discuss
16 those.

17 MR. BRUNSON: Well, we can talk about -- We'll do it
18 however you like, Your Honor. I'm not sure what motion
19 you're referring to.

20 LAW CLERK: March 28th.

21 THE COURT: I had a motion to compel discovery
22 responses.

23 MS. JOYNER: Yes. Your Honor, I believe that's our
24 motion as to Friendship Management, and Friendship
25 Management is not going to be a --

1 THE COURT: Party.

2 MS. JOYNER: Well, correct me if I'm wrong here. I
3 don't think Friendship Management is a part of this, uhm,
4 trial.

5 THE COURT: Okay. That can get pushed off then.
6 Uhm, we're holding your motion in abeyance for Hamilton,
7 okay?

8 MR. BEACH: Yes, Your Honor.

9 THE COURT: Okay.

10 MR. BRUNSON: So while we're on the discovery issue,
11 your order we have appealed from included granting our
12 motion to depose Wendy Wellin for six hours and Mr. - her
13 counsel has not made her available for that deposition
14 because they have indicated that they believe there's an
15 automatic stay in place. Your Honor says there's not an
16 automatic stay in place. We would like to schedule that
17 deposition for Monday. That's one.

18 Secondly, Your Honor also ordered subpoena response
19 from Dr. Bachman which the estate's counsel we understand
20 is handling. We have never received a response to that
21 order either and I don't know why.

22 MR. LAY: Uhm, I mean, from our perspective the idea
23 that Wendy Wellin they have been asking us for dates and
24 we haven't made her available is fundamentally not true.

25 MR. BRUNSON: I'll show you.

1 MR. LAY: We are now at the eve of trial and they're
2 trying to take her deposition on the Monday before trial
3 when they've known about this for over a month. There
4 has been a discussion about discovery. They're saying
5 they want the whole case stayed or they don't want part
6 of it stayed. They want their cake and eat it too. We
7 were gonna see what was happening with all of this. But
8 there hasn't been any attempt nor even a specific request
9 to take her deposition on a specific day. That's not
10 right. We have taken the position that either the case
11 is stayed or it's not stayed. That was the dispute that
12 has been going on. But they haven't noticed her
13 deposition. They haven't called about a specific date to
14 take her deposition at a specific time. In fact, she
15 can't sit consecutively for the number of hours that they
16 are trying to take her deposition. We've got a doctor
17 that will provide an affidavit to that effect. It can't
18 be done.

19 THE COURT: Mrs. Wellin does reside in Charleston
20 still?

21 MR. LAY: What's that?

22 THE COURT: Where is she living?

23 MR. LAY: She lives in Charleston.

24 THE COURT: Still in Charleston. All right. What
25 about the - you said it was Bachman --

1 MR. BRUNSON: Bachman.

2 THE COURT: -- that you were still missing.

3 MR. BRUNSON: Right. I don't know why those records
4 haven't been produced.

5 THE COURT: Can anybody speak to that over there?

6 MR. HOOD: Yeah, Your Honor. And I take the
7 position as to when this order went up to be stayed or
8 went to be appealed we weren't worried about - well, not
9 worried about it, but we weren't doing the work to comply
10 with it but we can certainly do that. To the extent we
11 have responsive materials we can get them to them this
12 week.

13 THE COURT: All right. So you have them in your
14 possession?

15 MR. HOOD: I don't any -- I don't believe we have
16 any responsive materials in our possession. We need to
17 find out whether Bachman has responsive materials. I
18 think we have done that work. I don't believe that he
19 has but I need to have his lawyer to verify that to be
20 the case. He's separately represented.

21 THE COURT: Right.

22 MR. HOOD: Because he works for the university or he
23 used to.

24 MR. BRUNSON: Your Honor, could we take Dr.
25 Bachman's deposition? We can do it during, while the

1 trial is going on. We can have somebody depose him. We
2 -- He is a very important witness because he examined
3 Mr. Wellin while he was still alive and the issue is
4 capacity and undue influence.

5 THE COURT: I agree and that's why I told you that's
6 why I want him deposed or that's why I want - that's why
7 I think you're fully entitled to that discovery. He
8 could be the linchpin in the whole thing --

9 MR. BRUNSON: Right.

10 THE COURT: -- from your perspective.

11 MR. BRUNSON: And we would like to get those records
12 and take his deposition and we would be glad to do it
13 during the trial if we need to.

14 THE COURT: Yeah. His deposition has got to be
15 taken ASAP. Uhm, I believe you when you say Mrs. Wellin
16 cannot sit for more than just a few hours without
17 substantial breaks so we will need to find some time in
18 the coming days when that can be accomplished with all
19 due respect being given to any kind of physical ailment
20 that she has. How old is she again?

21 MR. LAY: She's 78.

22 THE COURT: 78.

23 MR. LAY: And the doctor, as I understand it, says
24 she's, and I don't particularly want to go into this in
25 open court, but there's some substantial physical issues.

1 She could testify for a couple hours at a time.

2 THE COURT: Fair enough. The Court will take
3 judicial notice that you have to treat a 78 year old
4 witness differently than you do a 28 year old witness so
5 whatever time she needs is the time that she needs so
6 long as we can accomplish that deposition within the
7 coming days, okay? So if she needs to go just a few
8 hours in the morning and resume in the afternoon and then
9 resume two hours the next day, so be it. I'm leaving
10 that to y'all to work out. We are going forward next
11 week. That will be done ASAP, okay? I'm not gonna get
12 involved in all the logistics of it. All due respect
13 will be given to Mrs. Wellin and her condition. All
14 right.

15 MR. BRUNSON: Okay. So the next issue, if it's okay
16 with Your Honor, that we would like to discuss is exactly
17 what the scope of the trial is gonna be.

18 THE COURT: Certainly.

19 MR. BRUNSON: So we understand the Court's order to
20 mean the only issues being litigated are our challenges
21 to capacity and undo influence in the years 2013 and 2014
22 and is that with respect to the execution of the wills
23 only?

24 THE COURT: I anticipate that the way I see this
25 playing out because you obviously have evidence of undue

1 influence you referenced or Mr. Wooten referenced a few
2 moments ago the thing from 2009, okay, that involves Dr.
3 Crystal, I fully anticipate that you are going to be able
4 to get into the background of this because if I were in
5 your position, I would be wanting to show obviously what
6 the prior estate plans were, the nature of the
7 relationship between the children and Mr. Wellin prior to
8 the events of 2013. So I'm not saying that you're simply
9 limited to events that took place in 2013. Am I making
10 myself clear?

11 MR. BRUNSON: You are. But I guess my question
12 really is what is the jury going to decide based on this?

13 THE COURT: The jury, okay, the jury, the issue that
14 will go to the jury is the ultimate issue that I think
15 really determines most of the State Court cause of
16 action, most of the Federal cause of action, and that is
17 what happened in 2013 and subsequently those documents,
18 those trust documents, the estate documents, were they
19 the product of either Wendy Wellin's undue influence or
20 did Mr. Wellin lack the capacity to execute those
21 documents. That will determine which set controls and I
22 think, and I realize there's no way to solve this
23 litigation, the Federal litigation in one fell swoop, we
24 can all agree on that, but I think that solves a lot of
25 it.

1 MR. BRUNSON: And so the questions to the jury will
2 be whether the wills and trusts executed in those years
3 were or were not valid --

4 THE COURT: Correct.

5 MR. BRUNSON: -- because of undue influence and lack
6 of capacity.

7 THE COURT: And/or lack of capacity. Yes.

8 MR. BRUNSON: Okay. So that's what I wanted to
9 know.

10 MR. HOOD: Because we have a cascading series of
11 them, I believe that there are four different, I think
12 the Wellin children are saying we go back to the 2011
13 version and there might have been three changes in
14 between or maybe it was four and that's the change of the
15 will and the revocable trust. So would you envision that
16 we move sequentially in reverse chronological order?

17 THE COURT: What I said in the order when we drafted
18 the order, my understanding from reading the stuff was .
19 that the wheels really came off this bus in 2013. That's
20 when I started talking about a 2013 time frame and they
21 referenced something in 2009 with Dr. Crystal that maybe
22 I read and maybe I just missed it, but if the
23 relationship, if there's evidence that this relationship
24 started to deteriorate prior to 2013, clearly y'all can
25 talk about either the relationship -- I'm not limiting

1 you temporally to the 2013 time frame because obviously
2 everybody gets a fair chance to say, okay, well, leading
3 up until this time these were the natural objects of his
4 affection. He loved these children. He -- That's gonna
5 be their case, you know. Everything was fine.
6 Everything was going great until this sequence of events
7 started and we're blaming Wendy Wellin for these sequence
8 of events and also we noticed that our father started
9 behaving more strangely in 2011, '12, '13, whatever the
10 case may be, okay? Y'all know the case factually better
11 than me but when you're saying cascading documents, I'm
12 --

13 MR. HOOD: Let me clarify what I mean. So in June,
14 June 27th, 2014, Keith Wellin signed his last will --

15 THE COURT: Right.

16 MR. HOOD: -- and revocable trust in that same day
17 --

18 THE COURT: Right.

19 MR. HOOD: -- same documents, signing two other
20 documents. There is a prior version from 2013 of a
21 revocable trust amendment. There's actually three prior
22 versions of it. So there would be - there would be four
23 sets of documents that I think the Wellin children would
24 agree meet the statutory self executing qualifications
25 and if I understand South Carolina jurisprudence on this,

1 where there's a preceding last will testamentary
2 documents and one is disproven, you then go back to the
3 next one in order and either that one's valid or invalid
4 and you keep going until you end up with a valid one.

5 THE COURT: Okay.

6 MR. HOOD: Does that make sense?

7 THE COURT: Yes. I think I understand. The most
8 recent -- Let's handle it this way. Which set of
9 documents do the Wellin children want to see probated?

10 MR. BRUNSON: Right. From August 2011 there's a
11 will and amended trust, I believe it is, from August of
12 2011. Those are what we contend are the operative
13 documents. That's the will. The Wellin children in
14 their counter petition have sued upon.

15 THE COURT: All right.

16 MR. BRUNSON: And the stay --

17 THE COURT: Anything that's applicable to 2011 the
18 Wellin children simply are not happy with.

19 MR. BRUNSON: That's correct.

20 THE COURT: Mr. Wooten, you were about to jump up.

21 MR. WOOTEN: Yeah. What we are having the jury
22 decide in this case is just whether the versions of the
23 will and the trust executed after 2011 until the day
24 Mr. Wellin passed away in 2014 whether they are invalid
25 by virtue of incapacity and/or undue influence or not and

1 that's it.

2 THE COURT: Right. But my intent had been to
3 handle, to put it his way, to handle everything after --
4 We're not -- Because y'all made the valid point. There's
5 no point in us doing this piecemeal on the bifurcation
6 thing and handling the 2014 will and having another trial
7 on the 2013, stack of documents and on further back. So
8 my - my intent was to have the jury rule on the ultimate
9 issue of capacity and undue influence and if there's four
10 sets of documents that y'all are contesting, I might just
11 have to think that through because, you know, it's,
12 because undue influence could obviously take place at a
13 greater point in time before capacity kicks in and I'm
14 just trying to think through here because he could be -
15 it could be that the jury finds that he lacked capacity
16 for 2013 and 2014 but there's a 2012 is there that might
17 be the product of undue influence.

18 MR. BRUNSON: I don't think there's any contention
19 that there's undue influence or lack of capacity
20 affecting the 2011 will and trust.

21 THE COURT: Right.

22 MR. BRUNSON: Is that fair?

23 THE COURT: 2011, that's fair.

24 MR. BRUNSON: So that's the one we're advocating
25 for. It would only prevail if the others are set aside.

1 THE COURT: Correct. So I'm kind of dealing with
2 those other, everything that happened after 2011. You
3 said there's four in that group or two or three.

4 MR. BEACH: Your Honor, I think the point that
5 Mr. Hood was making is that if we try this in the way
6 that you envision it, it seems to me that the first
7 question that we would ask the jury is, is the 2014 will
8 and the 2014 trust, June 27th, 2014 valid? And the - if
9 the answer to that is yes, then we don't need the jury to
10 even address the prior ones because they are, in fact,
11 the last will and the last trust of Keith Wellin.
12 Likewise, the next question that you would ask them if
13 their answer is no, is, is the October 2nd, 2013 trust
14 valid?

15 THE COURT: All right.

16 MR. BEACH: Because that's the next one in line.

17 THE COURT: Here's how we're gonna handle this. I
18 don't know how I'm gonna send the inquiry back to the
19 jury and that's gonna really depend on what is argued at
20 trial. From the children's perspective it's a pretty
21 much all or nothing. You're really gonna be unhappy if
22 anything after 2011 ends up being valid so it may be a
23 situation where I simply ask the -- You know, I don't
24 know how I'm gonna put, pose the question to the jury,
25 but it is going to address -- The jury's gonna answer

1 this - is gonna answer this question. Uhm, are we
2 probating the 2011 documents? Are we gonna use those to
3 control disposition of his estate? Or will it be one of
4 the documents that come later? And I don't know how I'm
5 gonna answer that, or ask them that question on a verdict
6 form, uhm, but they are stipulating, and I want to get to
7 the meat of this because, I mean, they are stipulating
8 that all four -- And you said that there were four?

9 MR. HOOD: Yes, sir. So if I could just do it for
10 the record.

11 THE COURT: Please.

12 MR. HOOD: On June 27th, 2014 the final will and
13 trust was executed. On October the 2nd of 2013 an
14 amendment to his revocable trust was executed. On July
15 11th, 2013 an amended will and trust were executed. On
16 July 1, 2013 an amended will and trust were executed.
17 And on June 20th, 2013 an amended will and trust were
18 executed.

19 THE COURT: Okay. So that would be basically five
20 sets of documents that the - the primary ones being
21 everything except the October -- The October 2nd, 2013
22 was not that substantial, was it?

23 MR. HOOD: Well, they're all substantial but that
24 was only with respect to --

25 THE COURT: Trust.

1 MR. HOOD: -- the trust.

2 THE COURT: Right.

3 MR. HOOD: So, I mean, it's our position that having
4 probated a legally valid document, the question for the
5 jury is whether the challengers have proved by their
6 burden that that document was the result of either undue
7 influence or is invalid for lack of testamentary capacity
8 and then they answer that question however they do, and
9 then you go to the, depending on that answer with your
10 instruction they would go to the next set. If you go
11 about it the other way, we're not going to get clarity as
12 to what is a final version. You have to have the jury
13 determine what version is valid and so we have probated
14 the June 27th, '14 documents and we believe those are the
15 ones that first need to be determined.

16 THE COURT: I understand. Uhm, and I may simply ask
17 the jury did Mr. Wellin ultimately lack capacity to
18 exercise or to execute revisions to his estate plan, yes
19 or no? Yes. And I'll ask, okay. When did that happen?
20 I don't know. I'm not sure how I'm gonna put this
21 question to them yet. I'll figure it out by the time we
22 charge the jury but we're gonna be trying -- What I'm not
23 gonna do is ask the jury, uhm, okay, well, was the June
24 27th, 2014, uh, amended will and trust the subject of
25 undue influence or lack of capacity? If no, stop there.

1 If yes, was the October 2nd, 2013 amendment to revoke the
2 trust the result of, et cetera, et cetera. I'm not going
3 to cascade the verdict form that way. I'm going to do it
4 some other way but it will give us a definitive, a
5 definitive answer. Because if they say he never was
6 subject of undo influence or lack of capacity, by
7 definition the June 27th, 2014 controls. We're not gonna
8 cascade backwards.

9 MR. HOOD: Yeah. And my problem with that is when
10 we go back to look at the verdict form and how it speaks
11 to the evidence as presented, we're gonna be unclear as
12 to whether they have demonstrated that evidence of undue
13 influence came to bear on particular testamentary act.

14 THE COURT: I will figure this out. That's my
15 problem. It's not yours. This will be - it will be
16 clear.

17 MR. BRUNSON: I just - I just want to be clear. For
18 purposes of the res judicata, claim for collusion in the
19 future, that the only issues that are being tried and the
20 only issues we're being allowed to try are undo influence
21 and capacity with respect to the wills and trusts in 2013
22 and 2014. There are no other issues?

23 THE COURT: That is correct. Because I feel like if
24 we get that resolved, a lot of other stuff can get
25 resolved, too, and perhaps without the need for trial.

1 All right. Judge Young who is in charge of Common Pleas
2 is trying to reach me. Let me take a break and let me
3 get back with him, okay? Be right back.

4 (Short break.)

5 BAILIFF: All rise.

6 THE COURT: All right. We'll go back on the record.
7 I think we've got pretty much everybody we need here.
8 Uhm, I just got off the phone with Judge Young and, uhm,
9 it's still looking extremely, extremely favorable to try
10 this next week and he said he hopes to know in the next
11 30 minutes, he had to leave the courthouse and everybody
12 else did, too, so he's a little bit out of pocket making
13 his way back to his house because of the flooding so
14 that's where things are. So we're still looking good
15 though.

16 Uhm, we were talking logistics and let me ask this
17 question, uhm, and I understand your position that you
18 need eight weeks to try this thing, you know, and I
19 respect that. How long do you anticipate your case once
20 the stipulation is made as to the execution of the final
21 five documents that are at issue in this case, how long
22 do you anticipate, how many witnesses do you anticipate
23 calling in terms of people that really have to testify?
24 How long do you think that will take?

25 MR. BRUNSON: Well, we're still in the process of

1 paring down our evidence which, of course, we object to.
2 Uhm, and how many witnesses? I would say something on
3 the order of eight to 10.

4 THE COURT: Eight to 10. Okay.

5 MR. WOOTEN: And just to be clear, we're not saying
6 if we had all the time we wanted. We're saying based on
7 two weeks.

8 MR. BRUNSON: This is based on my assumption that
9 we're gonna get about three or four days to try this
10 case.

11 THE COURT: Right. That's probably a fair, a pretty
12 fair assumption, okay? Uhm, again, I would be handed a
13 witness list in a homicide case that contains 43
14 witnesses and, yeah, all of those people have something
15 to say and all of them could give you something that's
16 relevant to an issue involved in the case and we end up
17 taking testimony of 12 of them so that's how these things
18 go. Uhm, your case in reply you think will take about?

19 MR. HOOD: Well, I just sort of envision that the
20 parties would be given equal amount of time and we would
21 just keep a, keep a running clock and everybody --

22 THE COURT: I'm bringing my stop watch.

23 MR. HOOD: And so, you know, if we're looking at
24 this like we've got ten trial days and those days include
25 selecting a jury, openings, charges and closings, that

1 usually gives you eight days in between.

2 THE COURT: Okay. Do y'all anticipate any - you
3 alluded to maybe Crystal's - you may have an objection to
4 that. Do you anticipate either side a lot of objections
5 to the exhibits or can y'all agree to most of that stuff
6 beforehand do you think?

7 MR. HOOD: Well, I mean, the easy exhibits are the
8 documents --

9 THE COURT: Right.

10 MR. HOOD: -- obviously. I think a lot of the
11 exhibits are emails, letters, those sorts of things that
12 probably would be with the proper foundation fairly easy
13 to move into evidence assuming foundation is proper.

14 THE COURT: I don't want to waste a lot of time on
15 this trial with is this a true and accurate reflection of
16 the email that you received from so and so on such and
17 such date so we need to dispense with that formality and
18 go ahead and get -- I'm assuming that the witnesses have
19 been shown these documents in the depositions and have already
20 been confronted with them and if that's the case, I don't
21 want to be jumping through or burning time and I don't
22 think you want to be burning time on a bunch of
23 procedural stuff that doesn't get to the meat of this.

24 MR. LAY: I don't think we're gonna have a lot of
25 problems. I mean, there might be some select issues but

1 on authentication I don't think there's gonna be a lot of
2 debate about it. Where there's going to be admissibility
3 debate on evidence will probably come in on relevance and
4 there will be some competency type Daubert type motions
5 with some of the experts. I think that's where you're
6 gonna get some admissibility. But the exhibits
7 themselves, authentication, on probably 95 percent of
8 them I don't think there's gonna be an issue from our
9 perspective.

10 MR. BRUNSON: We are planning on filing, I think we
11 had something like four or five motions in limine that we
12 think should be addressed at that time. One of those
13 which relates to Keith Wellin's deposition. He was
14 deposed for one hour while he was still alive in February
15 of 2014, uhm, and in Federal Court immediately after the
16 deposition we moved in limine to exclude much of his
17 testimony because of leading questions that counsel for,
18 that his counsel asked him. It was just throughout the
19 first half of the deposition. It was all leading
20 questions. Judge Norton granted that motion in part,
21 denied it in part, specified question and answer by
22 question and answer which ones he would allow. We
23 understand from the estate that they're not going to
24 agree that that order controls here so we're gonna have
25 to ask this Court to do the same thing. That's just one

1 of them.

2 THE COURT: Let me suggest that maybe you send me
3 that deposition. If somebody has it in electronic
4 format, they need to send it to me as well as Judge
5 Norton's order on that particular thing because, of
6 course, I have the highest respect for a person who out
7 ranks me which Judge Norton does.

8 MR. HOOD: And, Judge, I think that issue would come
9 up after you hear some testimony from some medical
10 doctors who cared and treated Keith Wellin because until
11 you understand his physical condition and the challenge
12 that speaking presented for him, you will understand why
13 the questions are couched in the way that they are. It
14 was a physical task for him to say a sentence given his
15 medical condition so I think once you hear the context
16 and we'll bring it up at the appropriate time.

17 THE COURT: I would still like to look at the actual
18 deposition myself --

19 MR. HOOD: Sure.

20 THE COURT: -- and see what Judge Norton ruled on as
21 it relates to that deposition but that's a fair point.
22 If there is a need for leading questions or something,
23 that might go to weight as opposed to admissibility but
24 at the same time I want to see what Judge Norton decided
25 and see the actual deposition of Mr. Wellin.

1 MR. ROBERT HOOD: Your Honor, Judge Norton ruled
2 without a hearing or argument on this subject. I took
3 the deposition of my client Keith Wellin. I asked
4 leading questions on purpose because of his medical
5 condition. Judge Norton has never heard any arguments
6 about that so as you read his ruling, yes, there are
7 leading questions. They are on purpose so the witness
8 could take time to answer the questions the best he could
9 without getting exhausted and we could get through the
10 material.

11 MR. BRUNSON: Your Honor, just, that's just false.
12 There was a hearing. Mr. Hood was there. He argued.

13 THE COURT: Clearly, clearly if we have a transcript
14 of that hearing, feel free to send that to me as well.
15 All right.

16 MR. ROBERT HOOD: If there was a hearing, I don't
17 remember it.

18 THE COURT: Okay. Well --

19 MR. ROBERT HOOD: There's been a lot of hearings.

20 THE COURT: Maybe they've got a transcript. If they
21 do, they're gonna send it to us. The college, how
22 involved are you guys going to be in all of this do you
23 think?

24 MR. BEACH: Well, Your Honor, we will be intimately
25 involved with the entire trial but we will be probably

1 asking some questions on cross examination that address
2 local issues and also, of course, the question of
3 Hamilton College. One of the points that we really were
4 trying to make with our motion for summary judgment,
5 Judge, is that one of the issues or one of the legal
6 points that we're gonna be addressing is the idea of
7 partial validity because there's no evidence or at least
8 we contend that there's no evidence that the gifts to
9 Hamilton were a product of undue influence so we'll be
10 asking questions about that and we'll be briefly wanting
11 to open, Your Honor. We have at least one witness that
12 we would like to present as efficiently as possible to
13 give the jury Hamilton's perspective and also obviously
14 cover Keith Wellin's history of giving to Hamilton
15 College so that that supports the notion that he would
16 have left this gift to Hamilton in his, in his trust. So
17 we're gonna want to present a witness and we'll open and
18 we'll also ask the questions but we will not be spending
19 a lot of time on any of that.

20 THE COURT: From your - from review of your motion
21 it's the Court's understanding that the college can
22 present evidence that there's a pattern of giving
23 throughout the course of his life to Hamilton that
24 started in the '90s or some many, many moons ago. I was
25 largely assuming that the - that Ms. Wellin on this side

1 of the courtroom would be using that as evidence to
2 support the fact that he was lucid and otherwise knew
3 what he was doing so I'm hearing that you have a witness
4 that you need to put up and that's fine. I just want to
5 make sure that we're allotting time sufficiently. I'm
6 hearing that you will not need, what you're telling me is
7 you're not gonna need a lot of time. You've got one
8 witness that will recount his donations over the years,
9 the millions he's given and that will probably be it.

10 MR. BEACH: Right, Your Honor. And as we pointed
11 out we believe - as you pointed out, we believe that that
12 actually goes to the validity of the entire document
13 because if you can show, certainly we believe that if you
14 can show that a portion of it was well thought out and a
15 reasoned, uhm, gift then it supports the notion of the
16 entire document.

17 THE COURT: All right.

18 MR. BRUNSON: So I just want some clarity for
19 planning purposes. The allocation of time as I
20 understand it is 50 percent here, 50 percent there. They
21 can divide that up as they choose.

22 THE COURT: Pretty much.

23 MR. BRUNSON: And that's fine with us. And the --

24 THE COURT: The way I saw this playing out --
25 Forgive me for interrupting you. I'm sorry. But the way

1 I kind of saw this playing out, we pick the jury on
2 Monday. Uhm, maybe address, if there are issues that we
3 can address with exhibits, et cetera, that are in
4 dispute, I would like -- Every time you have to send the
5 jury out of the courtroom in Charleston, it takes 15
6 minutes to get them back, okay? And that's the problem.
7 So I don't want to be burning a lot of time with ladies
8 and gentlemen of the jury, please, you know, leave us for
9 a few moments while we take up an issue of law. That
10 will absolutely derail this and it will eat into
11 everybody's time so much. And so Monday afternoon once
12 we have the jury, uhm, if we can deal with those
13 housekeeping matters, some stuff, like you said or like
14 you said, the issues with Mr. Wellin's medical condition,
15 that might simply have to be taken up at some point in
16 the evening once we have released the jury and I have
17 heard that testimony and then we have an argument on that
18 on whether the depo is used or not. But aside from that,
19 we pick the jury, deal with housekeeping issues, get
20 exhibits marked that y'all have already agreed to over
21 the weekend, maybe do openings Monday, if not, Tuesday
22 morning hit the ground running. You'd have roughly -
23 you'd have roughly four days. You know, I would probably
24 give you Tuesday through Friday or something like that
25 and then shift over to y'all.

1 MR. BRUNSON: Right. And so, of course, a couple
2 issues with that. One is cross examination. So if I put
3 up Peter Wellin first, then obviously they're gonna cross
4 examine him. That's their time, not my time.

5 THE COURT: I will be keeping a - I will be keeping
6 a stop watch and keeping track of the time so the intent
7 will be, if at all possible, we are going to start around
8 9:00 in the morning in Charleston which is hard for
9 jurors. I've got a -- Once we have that jury, I will
10 have a better idea if we have somebody coming from
11 Awendaw, it's an hour and a half drive. If we have
12 somebody coming from Goose Creek that's gonna end up
13 hitting traffic every morning and we end up delaying the
14 start of the trial, once we have the jury picked I can
15 get a better feel for the unexpected which is going to
16 happen in this case, uhm, and then we'll allocate time
17 equally. But yeah. If you burn it on cross, you don't
18 necessarily get to use it on direct. The time is split.
19 So that will encourage efficiency. I did the same thing
20 on a homicide case. The whole homicide. Did the same
21 thing in a med mal case, two med mal cases, same doctor,
22 worked beautifully. Everybody was very efficient.

23 MR. BRUNSON: So I'm just sort of doing some math on
24 my fingers which is what I have to do. Uhm, if we're
25 gonna do four days, you're thinking maybe seven hours a

1 day, so 28 hours --

2 THE COURT: Roughly.

3 MR. BRUNSON: -- each side?

4 THE COURT: Roughly. I'll have to do the math
5 myself.

6 MR. HOOD: I would say I have never seen a seven
7 hour trial day.

8 THE COURT: I'm sorry?

9 MR. HOOD: I've never seen a seven hour trial day
10 between morning break, afternoon break, lunch break. I
11 think a good day is six.

12 THE COURT: Yeah. We will get sandwiches. We will
13 get sandwiches for the jury for lunch, if that's how we
14 have to do it, uhm, in Charleston because if we don't,
15 then we don't get them back. The hour lunch break turns
16 into a two hour lunch break because somebody had to run
17 an errand. It's the most logistically impossible place
18 to try a case so I'm telling you, and if we wind up with
19 logistical issues with the jury, that comes off of
20 everybody's time I guess.

21 MR. BRUNSON: So we also get rebuttal time as the
22 plaintiff?

23 THE COURT: Yes, and that one, you'd probably have
24 to account for that in additional time.

25 MR. BRUNSON: Okay.

1 THE COURT: So it's not like we're gonna burn half
2 the time on yours, half the time on theirs and then you
3 get another bite at the apple. That's not -- The
4 intention is to get this to the jury no later than a week
5 from Friday that morning.

6 MR. BRUNSON: Okay. So are we at 24 hours? I just
7 want clarity.

8 THE COURT: Let me just run some numbers and I'll
9 get back to y'all on that.

10 MR. BRUNSON: Okay. Thank you.

11 MR. LAY: I wanted to say, it's not gonna be 24
12 precise hours because there's gonna be interruptions and
13 arguments and that sort of stuff so it's gonna be an
14 allocation of 50 percent of the time?

15 THE COURT: I'll send you all an email sometime
16 tomorrow afternoon explaining how I do it. If somebody
17 makes an objection and it takes 15 minutes to argue that
18 objection and the objection is overruled, that 15 minutes
19 comes off of the party who made the objection. If it's
20 sustained, uhm, you know, it comes off of the party who
21 asked the wrong question so that's how it has to be.
22 Limit objections and keep it focused on the really
23 important stuff.

24 MR. HOOD: Judge, we have a couple of hundred
25 depositions of which some from some party may want to use

1 and there's been generally a discussion of using the
2 Federal Court depositions in the State Court. I believe
3 all the parties are the same and would be admissible
4 under Rule 32 but probably we ought to address that now
5 before anybody spends a significant amount of time doing
6 deposition designation for witnesses that are
7 unavailable.

8 MR. BRUNSON: Is the issue are we going to use the
9 Federal depositions in the State Court?

10 THE COURT: I think we've agreed that we're gonna
11 use the Federal depositions in the State Court so...

12 MR. BRUNSON: That's fine with us. That would
13 include the malpractice action which none of us - well,
14 we're not a party to it. The estate is a party to it.

15 THE COURT: If somebody testified in a deposition
16 under oath to any relevant issue in this case, that can
17 be used.

18 MR. LAY: Not everyone is involved in the legal
19 malpractice case. The ones where all the parties are the
20 same.

21 THE COURT: I understand, but if -- I assume
22 everybody has been there and everybody is familiar with
23 everything that's out there. Am I wrong?

24 MR. LAY: I'm not really familiar with the
25 malpractice depositions at all. I mean, that's not

1 something I have been involved in at all.

2 THE COURT: Which ones were you looking at using?

3 MR. BRUNSON: That's the case I'm talking about.

4 We're not a party to that case either but the estate, so
5 the estate sued Mr. Wellin's former estate planner at
6 Nixon Peabody and there's been a lot of discovery in that
7 case. Wendy Wellin was deposed in that case. Peter
8 Wellin. All of our clients were deposed in that case as
9 were other witnesses. All of the parties in this case
10 have been invited to attend those depositions but not to
11 participate so a lot of us have attended remotely and,
12 you know, there are rules by which you decide whether a
13 deposition from another case can be used. I think it's
14 whether their interests were adequately represented but
15 I'm going off the top of my head with that. I think we
16 would favor using it and if there's something
17 specifically objectionable, then we would raise that at
18 the time. That's what I would suggest.

19 THE COURT: Let's handle it this way. If you're
20 gonna be the party wanting to use it, go ahead and
21 designate those portions of the deposition that you're
22 talking about that you think you might want to use and
23 let them know. If there's no objection, then there's no
24 problem. If there is an objection, we can take it up
25 Monday. That's the only way I can see that, uhm, because

1 I haven't read the depos. Y'all have. I don't know what
2 they say.

3 MR. LAY: I haven't. To be clear, I haven't seen
4 any of those depositions. We just haven't participated
5 in that litigation. It's a separate case. It's not
6 consolidated.

7 MR. BEACH: It's a Federal situation.

8 MR. LAY: I think that's a good way to deal with
9 its.

10 THE COURT: Well, I'm a big fan of giving the jurors
11 as much information as you possibly can especially if it
12 goes to the central issue so designate what it is you
13 want to use and if it's terribly relevant or if it's
14 relevant to your case, uhm, let them see it and obviously
15 forward any depositions to them because as he says, he
16 hasn't seen them so there might be something in there he
17 could use after you designate what portions you want to
18 use.

19 MR. BRUNSON: Right. If we designate, we'll
20 certainly give it in advance and to that point, I hope
21 it's okay to direct this to counsel, I'm a big proponent
22 of exchanging ahead of time who your witnesses are so you
23 can be prepared. We're going first so it seems like it
24 would benefit these guys for us to do that. There's some
25 kind of 72 hour notice rule. I didn't know if you had a

1 preference or not.

2 THE COURT: You're still narrowing down exactly who
3 it is you really want to testify. I'm assuming the three
4 children will testify.

5 MR. BRUNSON: Two. One of them is gonna be away.
6 But the other two will be here.

7 THE COURT: Okay.

8 MR. BRUNSON: The mother of the groom is not going
9 to be here.

10 THE COURT: I thought the wedding is not until a
11 week from Thursday?

12 MR. BRUNSON: It's not, Your Honor, but this is her
13 son and she's gonna participate in the wedding. That's -
14 her family is very important and frankly I would probably
15 do the same thing.

16 THE COURT: And that's fine. I was in the wedding
17 but I didn't really get involved until a couple of days
18 beforehand and that's the only thing that kept me sane
19 so...

20 MR. BRUNSON: I think it's a little different for
21 the mother of the bride than for the mother of the
22 participants.

23 THE COURT: Well, I had my mother stay out of my
24 wedding largely, the planning, and I love her.

25 MR. BRUNSON: But at any rate, I'm not gonna

1 identify my witnesses at this moment but if we could just
2 agree on, you know, and if that's - if you'd rather just
3 surprise with who you show up with, we can do that, too.
4 It's just that I would like to know.

5 THE COURT: Okay. Go ahead and -- If y'all can go
6 ahead and exchange. I'm happy to learn about them
7 whenever they're called. Uhm, I trust you guys to try
8 the case. If you go ahead and exchange them between each
9 other say by Saturday afternoon or something if at all
10 possible, that would be great. If not, maybe Sunday or
11 something.

12 MR. HOOD: What I would suggest is we exchange
13 witness list and then the day before that person is gonna
14 testify, we send each other an email saying, hey, I
15 expect all these three people or these six people
16 tomorrow.

17 MR. BRUNSON: That's not enough notice.

18 THE COURT: Yeah. Let's - let's -- I mean, they're
19 going first so they're already having to figure out --

20 MR. LAY: And the -- I didn't mean to interrupt your
21 thought but, I mean, we're talking about providing a real
22 witness list, both sides exchanging it and, you know, the
23 problem with saying, all right, here's my order, uhm, is
24 that things change during trial. But what I was
25 contemplating is, all right, the night before like here's

1 our witness list. Of our witness list here's who we
2 think, anticipate we're calling tomorrow. That's kind of
3 what I envisioned.

4 THE COURT: I agree that things change during trial
5 but with the amount of discovery that's already taken
6 place in this case, if y'all haven't figured it out what
7 folks are gonna say and which witnesses that you're gonna
8 use to rebut what they say, uhm, you know --

9 MR. HOOD: It's not really who. It's just like what
10 order and what time. I mean, that's all it is because if
11 we're gonna give them a list of 20 people, then they're
12 gonna get ready for 20 people. It's just which ones do I
13 need to sharpen up on tonight.

14 THE COURT: Okay.

15 MR. BRUNSON: So you want us to just give you notice
16 the night before of our witness?

17 MR. HOOD: No. What I would propose, Your Honor, is
18 what I suggested which is we exchange witness list before
19 the trial and then the day before that witness so that on
20 Sunday, because we're not gonna have any witnesses
21 Sunday, we're gonna call witnesses the first day on
22 Tuesday or Monday or whenever you say, hey, guys, these
23 are the seven people we hope to get to tomorrow.

24 MR. BRUNSON: And my point is I can do a lot better
25 than that --

1 THE COURT: Yeah.

2 MR. BRUNSON: -- but only if it's reciprocal.

3 THE COURT: Yeah. I feel like we need to go ahead
4 and have it out there who you folks -- You know what the
5 people are gonna say. They have to go first. You know
6 who you're gonna call. Let's go ahead and get those --
7 Let's go ahead and we need to - we need to address that
8 on the front end anyway so that I don't show up and I
9 hear, well, you know, gosh, this witness that we were
10 gonna call is now unavailable. We need to go ahead and
11 peg down these people are available at 9:00 when your
12 case starts a week from Monday, you know, these people
13 are going to be the first ones out of the chute. They're
14 the ones we anticipate calling and we're confirming,
15 we've confirmed that they are going to be available at
16 these time blocks because we don't have the time to wait
17 for witnesses.

18 MR. LAY: I hear you completely. How about a
19 compromise on this. We're -- You know, it sounds like
20 they're gonna have eight to 10 witnesses.

21 THE COURT: Right.

22 MR. LAY: We know who that's going to be. We'll try
23 to exchange that over the weekend and we're gonna
24 identify our witnesses and do the same thing. We will
25 have a proposed schedule that we're talking about but if

1 you would, please, allow us some flexibility with that if
2 there's something that goes on during the trial.

3 THE COURT: Every trial there has to be some measure
4 of flexibility. Things don't - things never go like
5 anyone expects for plaintiffs at trial so there will be
6 flexibility. That's a given.

7 MR. BRUNSON: Okay. So we are going to exchange our
8 list of, let's just call it our 10 witnesses.

9 THE COURT: Right.

10 MR. BRUNSON: Some number on Sunday.

11 THE COURT: Yeah.

12 MR. BRUNSON: I'll tell you who we're planning to
13 call during trial next week and you're gonna do the same.

14 THE COURT: That's fair.

15 MR. BRUNSON: And I'll do my best to tell you
16 order.

17 THE COURT: That's fair.

18 MR. BRUNSON: That's what you want.

19 THE COURT: That's fair.

20 MR. BRUNSON: If you have changes, tell me.

21 MR. LAY: How about Sunday morning?

22 THE COURT: That's - that's what we're gonna do.

23 MR. BRUNSON: Yeah. I mean, that's reciprocal.
24 You're gonna give me --

25 THE COURT: Right.

1 MR. BRUNSON: -- yours, the order that you're
2 anticipating.

3 THE COURT: We -- And that way we can avoid any
4 duplication, if there is any, et cetera, and we can have
5 confirmation that those people are gonna be available
6 when your respective cases start. All right. Good
7 enough. I'll -- I have taken sort of the motion for
8 continuance under advisement. I will look at that and
9 try to get y'all information on that, uhm, if not
10 tonight, uhm, perhaps tomorrow morning and you have our
11 emails if there is anything else that arises, okay?

12 MR. BRUNSON: Just for clarification, Judge. Only
13 one thing. We talked about Hamilton's 42 page summary
14 judgment motion but I'm not clear on when or if that's
15 gonna be argued before trial.

16 THE COURT: I'm not really sure we are going to
17 argue that before trial because I'm concerned that that
18 might be an interlocutory order that could in fact be
19 subject to a stay. I'm not entirely up to speed on that.
20 We did research earlier today on that and so I might just
21 let that one sit and you might have to be with us the
22 next two weeks.

23 MR. BEACH: Understood, Your Honor.

24 MR. BRUNSON: If you granted that motion, you'd be
25 granting the entire, it's not just Hamilton.

1 THE COURT: What - what - what made me, and I'm
2 gonna be completely candid. What made me uncomfortable
3 about granting that motion, I don't think there's any
4 dispute that Hamilton, uhm, was the benefit of much of
5 Mr. Wellin's largesse but if I grant your motion to say,
6 okay, yeah, Hamilton should be getting money from some of
7 these estate documents, it's almost implicitly
8 acknowledging that the 2013, 2014 documents were kind of
9 maybe sort of valid. I don't know. I'm not -- I'm a
10 little bit weary about making that kind of ruling and I
11 think that's what scares them and so I'm probably not
12 going to address that prior to trial.

13 MR. BEACH: I understand, Your Honor. We may raise
14 the issue at the directed verdict motion or something to
15 that effect and maybe at that point the relief we're
16 requesting will be a little bit clearer.

17 THE COURT: That's fair. We'll deal with it at the
18 DV stage.

19 MR. BEACH: Plus, Your Honor, part of the utility of
20 that motion is it places everyone on notice that this is
21 an issue that Hamilton College will be exploring during
22 the trial.

23 THE COURT: We'll deal with it a week from Friday at
24 the DV stage.

25 MR. BEACH: Yeah.

1 THE COURT: Thanks. Safe travels. Charleston's
2 under water.

3 WHEREUPON, THE HEARING WAS CONCLUDED.
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CERTIFICATE OF REPORTER

(STATE OF SOUTH CAROLINA)

(COUNTY OF LEXINGTON)

I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R., and Official Circuit Court Reporter for the Eleventh Judicial Circuit in and for the State of South Carolina, do hereby certify that I reported the proceedings in the before captioned case in the Court of Common Pleas in and for the State of South Carolina on the 12th day of June, 2019.

I FURTHER CERTIFY that the forgoing 94 pages constitute a true and accurate record of said proceedings.

I FURTHER CERTIFY that I am neither related, counsel to, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand at Lexington County, this 6th day of August, 2019.

By:s/Steven E. LeBlanc

Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.