

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

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SC Court of Appeals

**APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas**

Edgar W. Dickson, Circuit Court Judge

**Appellate Case No. 2019-001065
Dorchester County Case No(s). 2019-CP-18-0677 and 2017-CP-18-1816**

In Re: The Estate of Doris Duane Colucci

**Michael C. Fox, Named Personal Representative
in the Last Will of Doris Duane Colucci Appellant,**

v.

**Andrew W. Chandler, in his capacity as Special
Administrator of the Estate of Doris Duane Colucci,
Michael C. Fox, Successor Trustee of the
Colucci Living Trust, dated February 24, 2005,
Michael Fredrick Antonio Colucci, John Martin Antonio,
Henry Burkes, and Richard M. Hyman, Jr.....Respondents.**

**RECORD ON APPEAL
(VOLUME II)
(492-954)**

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INDEX

Volume I

Orders

Temporary Order for the Appointment of a Special Administrator on an Emergency Basis (Dated 6/9/2017)	1
Consent Order for the Appointment of a Special Administrator (Dated 7/10/2017).....	5
Order Approving Special Administrator's Employment of Rosen, Rosen, & Hagood, LLC and Association of Lester S. Schwartz, Esquire (Dated 7/24/2017)	14
Order Approving Special Administrator's Employment of Evans, Carter, Kunes & Bennet, P.A. (Dated 7/28/2017).....	17
Motion and Order for Removal (Dated 10/5/2017).....	22
Application and Order to Sell Personal Property (Dated 10/16/2017)	24
Order Denying Motion to Alter or Amend (Dated 11/20/2017).....	26
Order of Withdrawal of Application to Restrain Special Administrator (Dated 2/23/2018).....	28
Order (Authorizing the Sale of Real Estate) (Dated 7/30/2018).....	29
Order Granting Summary Judgment and Ordering Probate of Will Dated June 18, 2013 (Dated 8/27/2018)	32
Modified Order for the Appointment of a Special Administrator (Dated 8/27/2018)	35
Order Denying Removal (Dated 1/8/2019).....	38
Order (Authorizing Distribution from Estate) (Dated 1/15/19).....	40
Order (Dated 2/7/2019).....	42
Order (Dated 2/13/2019).....	59
Temporary Order Restraining General Personal Representative (Dated 2/13/2019)	62

Order for Appointment of Temporary Special Administrator (Dated 2/13/2019)	66
Notice of Hearing (Dated 2/15/2019)	71
Order for Temporary Restraint of General Personal Representative (Dated 4/17/2019)	72
Order Lifting Stay (Dated 5/10/2019).....	78
Order (Dated 5/28/2019).....	82
Order Denying Appellant's Emergency Petition for Writ of Supersedeas (Dated 5/28/2019)	85

Pleadings

Application for Formal Appointment of Special Administrator (Dated 5/3/2017)	90
Information to Heirs and Devisees (Dated 8/4/2017)	100
Last Will and Testament of Doris D. Colucci (Dated 8/24/2017)	101
Letter from Dorchester County Probate Court (Dated 9/13/2017)	111
Petition to Determine Heirs (Dated 10/4/2017).....	112
Exhibit 1: Death Certificate	119
Exhibit 2: Case Report.....	120
Exhibit 3: Incident Report.....	128
Exhibit 4: Arrest Warrant.....	134
Inventory and Appraisement (Dated 10/10/2017)	136
Property Agreement (Dated February 24, 2005)	141
Motion to Alter or Amend (Dated 10/20/2017)	144
Application and Order for Informal Probate of Will and Appointment (Dated 10/24/2017)	147
Petition for Formal Testacy and Appointment (Dated 10/30/2017)	156

Motion and Order for Removal (Dated 10/30/2017)	167
David K. Haller Letter to Judge Blunt (Dated 11/30/2017).....	169
Answer and Objection of Andrew Chandler, Esquire (Dated 11/30/2017)	170
Affidavits of Service (Filed 1/2/2018 and 1/29/2018)	184
Application to Restrain Special Administrator (Dated 2/20/2018)	201
Motion to Withdraw Application to Restrain Special Administrator (Dated 2/20/2018)	206
E-Mail from Taylor Davis to Gordon Garrett (Dated 3/20/2018)	207
Petition for Sale of Real Property (Dated 3/19/2018).....	208
Lis Pendens (Dated 3/15/2018).....	212
Ivo Francesco Colucci's Motion for Summary Judgment on Petition for Formal Testacy (Dated 5/23/2018)	220
Andrew Chandler, Esquire, as Special Administrator of Doris Duane Colucci, Partial Opposition to Ivo Colucci's Motion for Summary Judgment on Petition for Formal Testacy and Appointment (Dated 8/15/2018)	224
Exhibit 1: Consent Order (Dated 7/10/2017).....	Removed (Find at p. 5)
Exhibit 2: Last Will and Testament	Removed (Find at p. 101)
Exhibit 3: Petition for Formal Appointment of Michael Fox	Removed (Find at p. 156)
Exhibit 4: Answer and Objection of Andrew Chandler.....	230
Exhibit 5: Affidavit of Andrew Chandler	239
Memorandum in Support of Summary Judgment (Dated 8/10/2018)	243
Application for Hearing to Approve Distribution (Dated 11/19/2018)	248
Motion to Restrain Special Administrator (Dated 11/26/2018).....	250
Exhibit A: Motion for Removal	Removed (Find at p. 667)

Exhibit B: Last Will and Testament.....	Removed (Find at p. 101)
Exhibit C: Temporary Order for the Appointment of a Special Administrator on an Emergency Basis (Dated 6/9/2017)	Removed (Find at p. 1)
Exhibit D: Consent Order for the Appointment of a Special Administrator (Dated 7/10/2017).....	Removed (Find at p. 5)
Exhibit E: Order Approving Special Administrator’s Employment of Rosen Rosen & Hagood and Association of Lester Schwartz (Dated 7/24/2017)	Removed (Find at p. 14)
Exhibit F: Acceptance of Trusteeship (Dated 10/27/2017)	Removed (Find at p. 954)
Exhibit G: Emails Exchange between Gordon Garrett and Elizabthe Palmer (Dated 11/3/2017)	263
Exhibit H: Assignment of Personal Property (Dated 11/26/2018)	265
Exhibit I: Affidavit of Service and Invoice (Dated 1/8/2018)	266
Exhibit J: Answer and Objection of Andrew Chandler, Esquire (Dated 11/30/2017)	Removed (Find at p. 170)
Exhibit K: Proposal for Distribution (Dated 9/25/2018)	268
Exhibit L: Amended Inventory and Appraisement (Dated 4/19/18)	269
Exhibit M: Accounting (Dated 7/5/2018)	274
Motion to Dismiss Petitioner Fox’s “Motion to Restrain Special Administrator” (Dated 12/6/2018)	276
Exhibit 1: Motion and Order for Removal (Dated 10/5/2017)	Removed (Find at p. 22)
Petition for Removal of Special Administrator (Dated 1/4/2019)	279
Motion for Removal (Dated 1/4/2019)	282
Motion for Emergency Hearing (Dated 1/8/2019).....	283
E-Mail from Dorchester County Probate Court (Dated 1/8/2019)	287

E-Mail from AWR Court Reporting to Taylor Davis (Dated 2/21/2019)	288
Emergency Application for Restraint of Personal Representative (Dated 2/13/2019)	290
Exhibit 1: Modified Order for the Appointment of a Special Administrator (Dated 8/27/2018)	Removed (Find at p. 35)
Exhibit 2: Order (Dated 2/7/2019)	Removed (Find at p. 42)
Exhibit 3: Statement of Creditor's Claim (Dated 2/13/2019)	296
Emergency Application for Apponitment of Temporary Special Administrator (Dated 2/13/2019)	297
Exhibit 1: Modified Order for the Appointment of a Special Administrator (Dated 8/27/2018)	Removed (Find at p. 35)
Exhibit 2: Order (Dated 2/7/2019)	Removed (Find at p. 42)
Exhibit 3: Statement of Creditor's Claim (Dated 2/13/2019)	Removed (Find at p. 296)
Rule to Show Cause (Dated 2/14/2019)	303
Exhibit A: Order (Dated 2/13/2019)	Removed (Find at p. 59)
Exhibit B: Emergency Application for Restraint of Personal Representative (Dated 2/13/2019)	Removed (Find at p. 290)
Exhibit C: Emergency Application for Apponitment of Temporary Special Administrator (Dated 2/13/2019)	Removed (Find at p. 297)
Exhibit D: Order for Appointment of Temporary Special Administrator (Dated 2/13/2019)	Removed (Find at p. 66)
Exhibit E: Temporary Order Restraining General Personal Representative (Dated 2/13/2019)	Removed (Find at p. 62)
Return to Emergency Application for Restraint of Personal Representative (Dated 2/22/2019)	306
Exhibit A: Emails between Dorchester County Court of Common Pleas and Counsel (Dated 2/12/2019)	311

Exhibit B: Rule to Show Cause (Dated 2/14/2019)	Removed (Find at p. 316)
Exhibit C: Email to Lester Schwartz, Esq. (Dated 2/12/2019)	335
Motion to Amend Findings by the Court and Motion for Relief from Order or Judgment (Dated 2/22/2019)	337
Return to Emergency Application for Appointment of Temporary Special Administrator (Dated 2/22/2019)	342
Motion to Amend Findings by the Court and Motion for Relief from Order or Judgment (Dated 2/22/2019)	347
Motion to Alter or Amend and Relief from Order or Judgment (Dated 2/22/2019)	352
Exhibit A: Emails between Dorchester County Court of Common Pleas and Counsel (Dated 2/12/2019)	Removed (Find at p. 311)
Exhibit B: Affidavits of Kim Colucci, Robert Colucci, and Stefan Colucci	Removed (Find at p. 361)
Respondent Chandler's Motion to Reconsider, Alter, or Amend (Dated 2/25/2019)	359
Exhibit 1: Modified Order for the Appointment of a Special Administrator (Dated 8/27/2018)	Removed (Find at p. 35)
Exhibit 2: Order (Dated 2/7/2019)	Removed (Find at p. 42)
Exhibit 3: Temporary Order Restraining General Personal Representative (Dated 2/13/2019)	Removed (Find at p. 62)
Exhibit 4: Order for Appointment of Temporary Special Administrator (Dated 2/13/2019)	Removed (Find at p. 66)
Exhibit 5: Email from Angus Lawton (Dated 2/13/2019)	368
Exhibit 6: Michael Fox Deposition Transcript Excerpt (Dated 1/25/2019)	371
Return to Respondent Chandler's Motion to Reconsider, Alter, or Amend (Dated 2/28/2019)	383
Exhibit A: Email from Elizabeth Palmer to the Dorchester County Court of Common Pleas (Dated 2/8/2019)	384

Exhibit B: Affidavits of Kim Colucci, Robert Colucci, and Stefan Colucci	361
Exhibit C: Email Exchange Between Counsel and the Dorchester County Court of Common Pleas (Dated 2/12/2019).....	387
Exhibit D: Chandler Proposed Order (Dated 3/4/2019)	426
E-Mail from Judge Dickson (Dated 3/5/2019)	429
Affidavit of Michael C. Fox (Dated 3/20/2019).....	430
Plaintiff's Jurisdictional Memo (Dated 3/20/2019)	433
Timeline (Dated 3/20/2019).....	438
Memorandum of Law: Respective Jurisdiction of Circuit Court and Probate Court (Dated 3/20/2019)	440
Exhibit 1: Order Denying Removal (Dated 1/8/2019)	Removed (Find at p. 38)
Exhibit 2: Motion and Order for Removal (Dated 10/5/2017)	Removed (Find at p. 22)
Exhibit 3: Order In re: James Brown (Dated 2/6/2007).....	446
Supplemental Memorandum in Support of Plaintiff's Rule to Show Cause (Dated 4/4/2019)	448
Limited Response to Plaintiff's "Jurisdictional Memo" (Dated 4/8/2019)	451
Exhibit 1: Order (Dated 2/7/2019).....	Removed (Find at p. 42)
Notice of Appeal (Dated 4/18/2019).....	453
Motion to Dismiss Appeal (Dated 4/30/2019).....	456
Exhibit 1: Email from Andrew Chandler to Elizabeth Palmer (Dated 10/24/2017)	465
Exhibit 2: Petition to Restrain Special Administrator (Dated 11/9/2017)	466
Exhibit 3: Doyle Settlement Statement (Dated 2/22/2018)	472

Exhibit 4: Motion to Restrain Special Administrator (Dated 11/26/2018)	Removed (Find at p. 250)
Exhibit 5: Email from Taylor Davis to Counsel (Dated 8/27/2018).....	474
Exhibit 6: Email from Molly Edwards to Counsel (Dated 1/16/2019).....	476
Exhibit 7: Motion to Alter or Amend and Relief from Order or Judgment (Dated 2/22/2019)	Removed (Find at p. 352)
Exhibit 8: Email From Molly Edwards to Counsel (Dated 1/16/2019)	477
Exhibit 9: Motion to Amend Findings by the Court and Motion for Relief from Order or Judgment (Dated 2/22/2019)	Removed (Find at p. 337)
Exhibit 10: Email From Molly Edwards to Counsel (Dated 2/13/2019)	478
Exhibit 11: Motion to Amend Findings by the Court and Motion for Relief from Order or Judgment (Dated 2/22/2019)	Removed (Find at p. 347)
Motion to Lift Stay (filed 5/1/2019)	479
Return to Respondent Chandlers Motion to Lift Stay (Dated 5/1/2019)	484
Petition for the Approval of Settlement of Litigation (Dated 5/14/2019)	487
Exhibit 1: Order for Appointment (Dated 2/13/2019)	Removed (Find at p. 59)

Volume II

Emergency Petition for Writ of Supersedeas (Filed 5/15/2019).....	492
Exhibit A: Petition for Approval of Settlement Litigation	Removed (Find at p. 487)
Supplement to the Emergency Petition for Writ of Supersedeas (Dated 5/17/2019)	500
Letter from Gordon Garrett to David Haller (Dated 5/1/2019)	503
Letter from David Haller to Gordon Garrett (Dated 5/1/2019)	505

Respondent Ivo Francesco Colucci’s Memorandum in Support [of] Motion for Reconsideration (Filed 5/22/2019)	507
Statement of Qualifications of Andrew W. Chandler, Esquire (Filed 5/22/2019)	511
Exhibit 1: Affidavit of Andrew Chandler	515
Exhibit 2: 1/9/2019 Emergency Hearing Transcript.....	(Removed (Find at p. 735))
Exhibit 3: Order dated 2/7/2019	(Removed Find at p. 42)
Statement of Qualifications of Michael Fox and Supplemental Memorandum in Opposition to Respondent Chandler’s Motion to Reconsider, Alter, or Amend (Dated 5/23/2019)	519
Angus Lawton Letter to the Dorchester County Court of Common Pleas (Dated 5/23/2019)	526
Angus Lawton Letter to Gordon Garrett (Dated 5/13/2019)	529
Affidavit of Michael C. Fox (Dated 5/23/2019).....	532
E-Mail from Judge Dickson (Dated 5/28/2019)	535
Settlement Agreement and Release (Dated 6/20/2019).....	538
Notice of Appeal (Dated 6/27/2019).....	549
Request for Hearing to Approve Distribution by Special Administrator (Dated 9/23/2019)	551
Motion for Disclosure of all Ex Parte Communication and for Recusal and/or Disqualification of the Honorable Mary Blunt and all Affiliated Persons (Dated 1/24/2020)	555
Exhibit 1: Order (Emergency Ex Parte) (Dated 4/20/2017).....	567
Exhibit 2: Dorchester County Probate Court Letter to Lester Schwartz (Dated 5/11/2017).....	568
Exhibit 3: Letter from Lester Schwartz to the Dorchester County Probate Court (Dated 5/12/2017).....	569
Exhibit 4: Order Appointing a Designated Examiner and Temporary Guardian Ad Litem (Sua Sponte) (Dated 5/23/2017).....	571

Exhibit 5: Demand for Notice (Dated 10/19/2017).....	574
Exhibit 6: Subpoena (Sua Sponte) (Dated 2/16/2018)	575
Exhibit 7: Order Granting Summary Judgment and Ordering Probate of Will (Dated 8/27/2018).....	562
Exhibit 8: Hearing Transcript Excerpt (Dated 1/19/2019).....	585
Exhibit 9: Order (Dated 2/7/2019)	588
Exhibit 10: Order (Dated 2/13/2019)	605
Exhibit 11: Emergency Application for Restraint of Personal Representative (Dated 2/13/2019).....	608
Exhibit 12: Emergency Application for Appointment of Temporary Special Administrator (Dated 2/13/2019).....	635
Exhibit 13: Order for Appointment of Temporary Special Administrator (Dated 2/13/2019).....	662
Exhibit 14: Temporary Order Restraining General Personal Representative (Dated 2/13/2019).....	667
Exhibit 15: Fox Interrogatories to Chandler (Dated 10/4/2019)	671
Exhibit 16: Fox Requests to Produce to Chandler (Dated 10/4/2019)	676
Exhibit 17: Demand for Notice (Dated 10/15/2019).....	678
Exhibit 18: Dorchester County Probate Court Letter to John Freeman (Dated 11/4/2019).....	679
Exhibit 19: Respondent Chandler's Motion for Protective Order (Dated 11/4/2019).....	685
Exhibit 20: Email from Angus Lawton to Elizabeth Palmer (Dated 11/5/2019).....	696
Exhibit 21: Letter from Angus Lawton to Elizabeth Palmer (Dated 11/6/2019).....	697
Exhibit 22: Letter from Angus Lawton to Dorchester County Probate Court and John Freeman (Dated 11/14/2019).....	699

Transcripts

Motion for Summary Judgment Hearing (Dated 8/13/2018).....	708
Emergency Hearing (Dated 1/9/2019)	735
Proposal for Distribution Hearing (Dated 1/9/2019)	804
Temporary Restraining Order Hearing (Dated 2/22/2019).....	818

Other Materials

Colucci Living Trust (Dated 2/24/2005).....	823
First Amendment to the Colucci Living Trust (Dated 6/18/2013)	936
Michael Fox's Acceptance of Trusteeship (Dated 10/27/2017)	954

THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM DORCHESTER COUNTY
Probate Court

Mary L. Blunt
Probate Court Judge

Case No. 2019-CP-18-0677

**Michael C. Fox, as Personal
Representative of the Estate
of Doris Duane Colucci..... Appellants,**

v.

**Andrew W. Chandler, Esquire,
in his capacity as Special
Administrator of the Estate
of Doris Dune Colucci,
Michael C. Fox, Trustee of the
Colucci Living Trust, Ivo Francesco
Colucci, Michael Fredrick
Antonio Colucci, John Martin Antonio,
Henry Burkes, and Richard M. Hyman, Jr., Esquire Respondents.**

EMERGENCY PETITION FOR WRIT OF SUPERSEDEAS

Appellant Michael C. Fox submits this Emergency Petition for Supersedeas, pursuant to Rule 241, SCACR, requesting a writ of supersedeas to suspend proceedings in the lower court. Fox would show this Court the following in support of his petition:

FACTUAL BACKGROUND

On February 13, 2019, the Dorchester County Court of Common Pleas found the Appellant

qualified and appointed him as the Personal Representative for the Estate of Doris Duane Colucci, thereby terminating the Respondent's appointment as Special Representative.

Following the issuance of this order, also on February 13, 2019, the Dorchester County Probate Court issued two *ex parte* orders: one that re-appointed the Respondent on an emergency basis as Special Administrator; and a second that totally restrained the Personal Representative in all capacities for 10 days pending an evidentiary hearing.

On April 17, 2019, the Dorchester County Probate Court issued a third order reincorporating the terms of the two February 13, 2019 orders. This order would last for at least six months and included language that completely bars Appellant from, "prosecut[ing] all claims on behalf of the Estate of Doris Duane Colucci, including, but not limited to Chandler v. Colucci, et al., Case No. 2017-CP-10-5393, and Chandler v. Colucci, et al., Case No. 2017-CP-18-1816 (an action pending under the "Slayer's Act"), with authority to settle the same, and to execute releases on behalf of the Estate, its devisees, and its statutory beneficiaries, pursuant to orders approving any settlement of those claims."

On April 18, 2019, the Appellant filed his Notice of Appeal from the Dorchester County Probate Court, staying the proceedings in the Probate Court. Following service of the Notice of Appeal, on May 1, 2019, Respondent moved the Probate Court to lift the automatic stay. On May 10, 2019, the Dorchester County Probate Court granted Respondent's Motion to Lift Stay.

On May 14, 2019, the Respondent filed a Petition for Approval of Settlement of Litigation. The Petition for Approval of Settlement of Litigation is attached as Exhibit A. The settlement agreement will dispose of property and assets that rightfully belong to the Trust and will be done over the objection of the Personal Representative and Trustee.

ARGUMENT

I. **The wrongful death and "Slayer Action" will be settled without knowledge or approval by the Personal Representative of the Trustee of the Colucci Living Trust.**

The above referenced lawsuits have been proposed for settlement in front of the Dorchester County Probate Court (see Exhibit A). The Special Administrator is attempting to settle the wrongful death suit, the "Slayer Action," and other major elements of the Estate and Trust without the consent or approval of the Personal Representative or Trustee. The above language grants the Special Administrator final authority to resolve these lawsuits. These are acts that will determine the final property rights to the decedent's sole devisee, the Colucci Family Trust. The Trust does not approve of the settlement and its terms resolve title to some jointly owned real estate but not others. This proposed settlement agreement leaves the Estate and the Trust in a position to continue to own property with Ivo Colucci. The Appellant wishes to resolve these suits in a way that does not leave the parties owning property together.

Given the effect of the May 10, 2019 Order Lifting Stay, the Appellant, Personal Representative of the Estate of Doris Duane Colucci and Trustee of the Colucci Living Trust, will not be able to prosecute, settle, or review the above referenced actions. This goes against the wishes of the testator and against the order of Formal Appointment issued by the Dorchester County Court of Common Pleas. Should these suits be approved by the Dorchester County Probate Court, it would be beyond the power of any court to provide any relief and the issues will become moot.

"In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to **prevent a contested issue from becoming moot.**" Rule 241, SCACR (emphasis added).

II. The “Edisto House” is a unique piece of real property that cannot be replaced if the stay is reinstituted and the home is sold.

The sale of the “Edisto House” is very problematic, and the Appellant has strong arguments why it should not be sold by order of the probate court. The “Edisto House” is trust property. The Respondent is attempting to sell it despite it being Trust property. To allow the Court to permit the sale of the Edisto Home would bar the Appellant and The Colucci Family Trust from receiving the home. According to Will, the Edisto Home should pass to the Trust and should be administered by the Trustee. Should the stay not be reinstituted, this property will be wrongfully sold, and it will be beyond the power of any court to rectify it.¹

III. Respondent’s Motion to Lift Stay was fatally deficient.

The Respondent’s Motion to Lift Stay was fatally deficient. “If the facts are subject to dispute, the petition shall be supported by affidavits or other sworn statements.” Rule 241(d)(4)(A), SCACR. The Respondent has failed to comply with the mandatory language of this rule. The Respondent’s motion is devoid of any affidavits or sworn statements that support their position. Further, the Court did not grant a hearing or examine any evidence.

The Respondent is required to state, “the grounds for the petition, and legal arguments with supporting points and authority.” Rule 241(d)(4)(B), SCACR. The Respondent’s motion does not cite any basis to grant their requested relief. Further, the Respondent’s motion was not verified by the client. In short, this Motion was granted without a hearing, introduction of any evidence, and

¹ A summons and application for sale of real estate must be served in accordance with the SCRPC Rule 4. The Appellant was not properly served with the summons and application pursuant to S.C. Code Ann. § 62-3-1305 and Rule 4, SCRPC. Instead the Special Administrator attempted to obtain service by sending a copy of the application to Appellant’s attorney via US First Class Mail. S.C. Code Ann. § 62-3-1305 and Rule 4, SCRPC require personal service. The Special Administrator did not request an acceptance of service nor did the Appellant agree to accept service. To compound the problem, the Special Administrator attempted to waive the hearing requirement of S.C. Code Ann. § 62-3-1309 by obtaining waivers. However, the Special Administrator did not obtain a waiver of hearing from the Appellant, who was also the sole devisee of the real estate. The Probate Court did conduct a hearing and the Appellant was not served with a copy of the order.

without nary an affidavit or a verification of the complaint to provide a factual basis for the Court's extraordinary acts.

IV. The Probate Court improperly granted Respondent's Motion to Lift Stay.

An order staying proceedings pending appeal should be made only when it appears that the application has just reason to apprehend that without a stay he would be deprived of a reasonable result of the appeal. Porter v. Lesesne, 85 S.C. 399, 67 S.E. 453 (1910). A court should determine the difficulty in restoring the status of the parties prior to the issuance of a stay pending an appeal. Id. Here, the administration of the Estate, the resolution of the "Slayer Action" and wrongful death action, and the disposition of the "Edisto House" should remain under the stay pending this appeal. The Trust is the sole devisee of the Estate. Should the above referenced actions be settled, it would be beyond the power of any court to restore the status of the parties prior to the issuance of the stay pending appeal. Furthermore, the Trust has a property interest in the "Edisto House" and can prove that the procedure to obtain the order of sale was defective. It would be extremely difficult to return the parties to their respective statuses, without a stay, pending the resolution of this appeal. The May 10, 2019 Order Lifting Stay is Attached as Exhibit B.

V. It is necessary to file this petition in the Circuit Court.

"Except where extraordinary circumstances make it impracticable, application for an order...for supersedeas must first be made to the lower court." Rule 241(d)(1), SCACR. On May 14, 2019, Respondent moved to approve the settlement of litigation (See attached Exhibit A). Given the time sensitive nature of the settlement and imminent sale of the "Edisto House" it would be impracticable to move the court that ordered the lift of the automatic stay for a Writ of Supersedeas. Further, this Court has the authority to review the May 10, 2019 Order Lifting Stay.

After the lower court or administrative tribunal has ruled, any party may petition the appellate court where the appeal is pending or an

individual judge or justice for review of this order. The individual judge or justice may grant or deny the relief on a temporary basis, and refer the matter to the full appellate court to hear and determine the matter, or he or she may issue a final order. Upon the issuance of a final order by an individual judge or justice, an aggrieved party may petition the full appellate court for review of that decision.

Rule 241(d)(2), SCACR. Shortly after the Respondent moved the Probate Court for a lift of the automatic stay, the Probate Court requested that the Respondent prepare a proposed order. Upon learning of this request, the Appellant objected and filed a return to the Respondent's motion. After the Appellant filed his return, the Respondent submitted a second proposed order with language dispensing of Appellant's arguments. The Probate Court then requested Respondent file a formal reply to Appellant's return. Despite this, the Probate Court signed the second proposed order, unchanged, without a hearing. The Appellant, as Personal Representative of the Estate and Trustee of the Trust seeks an emergency review of the Probate Court's order lifting the stay.

CONCLUSION

For the arguments set forth above, Appellant Michael C. Fox asks this Court to: (1) issue a Writ of Supersedeas suspending any and all activity in the lower court until this appeal is resolved, (2) reinstitute the stay in the Dorchester County Probate Court, and (3) issue such other and further relief as this Court deems just and appropriate.

CERTIFICATION

The undersigned, as an officer of the court, certifies there are exigent circumstances to warrant this Emergency Petition and notice should not be required. However, the other parties were notified via electronic filing.

Dated: 5/14/2019

s/Gordon H. Garrett
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Attorneys for Appellant

VERIFICATION

Personally appeared before me, Michael C. Fox, who being duly sworn does state as follows: I am the Appellant in this case, I have read the Petition for a Writ of Supersedeas and can and do verify under oath that to the best of my knowledge, the facts stated therein are true.

Further affiant sayeth not.

Michael C. Fox
Michael C. Fox

SWORN TO AND SUBSCRIBED BEFORE ME

this 15th day of May, 2019

(Signature) (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 10/25/2028



THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM DORCHESTER COUNTY
Probate Court

Mary L. Blunt
Probate Court Judge

Case No. 2019-CP-18-0677

**Michael C. Fox, as Personal
Representative of the Estate
of Doris Duane Colucci.....Appellants,**

v.

**Andrew W. Chandler, Esquire,
in his capacity as Special
Administrator of the Estate
of Doris Dune Colucci,
Michael C. Fox, Trustee of the
Colucci Living Trust, Ivo Francesco
Colucci, Michael Fredrick
Antonio Colucci, John Martin Antonio,
Henry Burkes, and Richard M. Hyman, Jr., Esquire Respondents.**

SUPPLEMENT TO THE EMERGENCY PETITION FOR WRIT OF SUPERSEDEAS

Based on recent correspondence, Appellant wishes to supplement his writ of supersedeas.
On May 16, 2019 Appellant received an email from counsel for the conservator of Ivo Colucci.

The email was titled: "Conflicts of Interest" and posed the following statements and questions:

As you know, I represent the Christa Yantis as Conservator for Ivo Francesco Colucci. I have received some information that your firm provided legal services and representation to Ivo Colucci in the spring of 2016 (and perhaps other times), including re-writing for

him the operating agreement for HID, LLC. Please let me know if you dispute this information.

I am also aware of the fiduciary relationship between Mr. Fox and Mr. Colucci prior to his incapacity in that Mr. Fox was Mr. Colucci's long-time accountant. Please let me know if you dispute that Mr. Fox was in a fiduciary relationship with Mr. Colucci.

The allegations are not true but have a chilling effect both on Counsel and in Appellant's relationship with Counsel. To be clear, neither Garrett Law Offices nor Gordon Garrett, Esq. has ever entered into an attorney-client agreement or represented Ivo Colucci. This email, however, is indicative of the difficulty Appellant has experienced in order to administer a clearly worded testamentary instrument.

Respectfully Submitted,

Dated: 5/17/2019

s/Gordon H. Garrett
Gordon H. Garrett
office@garrettlawsc.com
Ryan A. Love
rlove@garrettlawsc.com
Garrett Law Offices, LLC
1075 E. Montague Ave.
North Charleston, SC 29405
843.554.5515 (phone)
843.747.3198 (telefax)
Attorneys for Appellant

From: Gordon Garrett
Sent: Friday, May 17, 2019 11:03 AM
To: (general) Garrett Law Offices
Subject: FW: Conflicts of Interest

From: "David K. Haller" <dhaller@hallerlawfirm.com>
Date: Thursday, May 16, 2019 at 12:47 PM
To: Gordon Garrett <ggarrett@garrettlawsc.com>, Jason Luck <jluck@garrettlawsc.com>
Cc: Christa Yantis <cyantis@mycpafirm.org>
Subject: Conflicts of Interest

Gentlemen:

As you know, I represent the Christa Yantis as Conservator for Ivo Francesco Colucci. I have received some information that your firm provided legal services and representation to Ivo Colucci in the spring of 2016 (and perhaps other times), including re-writing for him the operating agreement for HID, LLC. Please let me know if you dispute this information.

I am also aware of the fiduciary relationship between Mr. Fox and Mr. Colucci prior to his incapacity in that Mr. Fox was Mr. Colucci's long-time accountant. Please let me know if you dispute that Mr. Fox was in a fiduciary relationship with Mr. Colucci.

Best,

David



David K. Haller

604 Savannah Highway, Charleston, South Carolina 29407
843-224-7860

www.dhallerlawfirm.com

Please note that the information contained in this e-mail does not create an attorney client relationship. An attorney-client relationship is not established until a signed agreement is made between the attorney and prospective client. Nevertheless, the information contained in this e-mail transmission is legally privileged and confidential. It is intended for the use of the individual or company to whom it is directed. If the receiver of this e-mail is not the intended recipient, you are hereby notified that no privilege is waived by virtue of your inadvertent receipt and that any distribution or copying of this e-mail is strictly prohibited by both State and Federal communications laws. If you have received this e-mail in error, please delete any and all copies of the same from any media to which it may have been stored and destroy any hard copies which may have been generated. This firm does not give tax advice of any kind.

Garrett Law Offices

Ltd. Co.

Gordon H. Garrett (Ret.)
Gordon H. Garrett
Jason Scott Luck
Ryan A. Love

1075 East Montague Avenue
North Charleston, SC 29405
843.554.5515 (O) 843.747.3198 (F)
office@garrettlawsc.com

May 1, 2019

David Haller, Esquire
Haller Law Firm
604 Savannah Highway
Charleston, South Carolina 29407

Re: Estate of Doris Colucci

David,

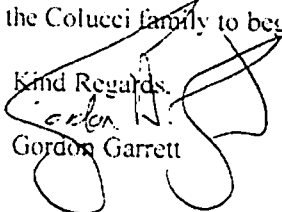
Thank you for reaching out to us in an attempt to resolve the wrongful death case. I have been able to fill my client in on some of the details of the wrongful death settlement that we discussed on the telephone last Thursday. We have also discussed your proposed consent order I received on Friday.

During the interim, on or around April 30, 2019, I understand you sent a letter to Colucci family members representing that Mr. Fox "continues to seek to be appointed as personal representative." Mr. Fox was found qualified and was appointed as the Personal Representative by the Dorchester County Circuit Court on February 13, 2019. The issue is that Andrew Chandler continues to seek Temporary Restraining Orders despite a clear order from the Circuit Court. These statements in your letter should be cleared up prior to requesting any action by the Colucci family members against Mr. Fox to contest his appointment.

Notwithstanding your correspondence, we have never intended or acted to prevent any money to be distributed to the wrongful death or trust beneficiaries. In fact, we would withdraw our appeal pursuant to Mr. Shelbourne's suggestion. To that end, all parties would comply with the terms of the February 13, 2019 Circuit Court Order and consent to the withdrawal of the April 17, 2019 Order for Temporary Restraint of General Personal Representative. After we have received the wrongful death file, we will then need 30 days to review the settlement offer and speak to the Colucci family. If the offer is acceptable to the Estate, then Mr. Fox will move for approval of the settlement. One condition from the outset is that all attorney's fees and costs from the wrongful death suit be held by Garrett Law Offices in escrow pending resolution by the South Carolina Resolution of Fee Disputes Board.

This offer creates a way forward for the Colucci family to begin to receive their money.

Kind Regards,


Gordon Garrett

Haller, David

1 May 2019

2 of 2

cc: Michael C. Fox:
Angus Lawton, Esq.: (via email)
Elizabeth Palmer, Esq.: (via email)
Brandt Shelbourne, Esq.: (via email)
Eduardo Curry, Esq.: (via email)
Chris Lizzi, Esq. (via email)



David K. Haller
Certified Civil Court Mediator

May 1, 2019

VIA EMAIL AND U.S. MAIL

Gordon H. Garrett, Esquire
Garrett Law Offices, LLC
1075 E. Montague Avenue
North Charleston, SC 29405

In Re: Resolution of Matters Between Estate of Doris Colucci and Ivo Colucci

Dear Gordon:

As you know, I represent Christa Yantis as Conservator for Ivo Francesco Colucci. Mr. Colucci is the surviving spouse of Doris Colucci and is the current beneficiary of the Doris Duane Colucci Trust. Your client, Michael Fox, owes fiduciary duties to Mr. Colucci in both his roles as trustee and personal representative of the Estate of Doris Colucci.

You also know that Andrew Chandler as Special Administrator of the Estate of Doris Duane Colucci, filed two lawsuits against Mr. Colucci: *Chander v. Colucci, et al.*, Case No. 2017-CP-10-5393 (an action pending under the South Carolina Wrongful Death Statutes), and *Chander v. Colucci, et al.*, Case No. 2017-CP-18-1863 (an action pending under the "Slayer's Act"). After mediation and sometimes contentious negotiations that lasted nearly two months, Ms. Yantis has negotiated a settlement of these claims that will allow Mr. Colucci to be fully and finally released while protecting his assets in order to maintain the high level of care Mr. Colucci requires. Mr. Colucci suffers from progressively debilitating dementia and requires twenty-four hour inpatient care at a skilled nursing facility.

The resolution of these suits and obtaining releases from these claims for Mr. Colucci is crucial for his long-term care and needs. At this point, we simply need court-approval of the settlements and confirmation that Andrew Chandler is authorized to sign the settlement agreements and releases. Recently, you filed a motion to substitute parties in the wrongful death suit and appealed several orders appointing Mr. Chandler as temporary Special Administrator. These moves have brought our efforts to end these matters to a halt.

Mr. Fox's beneficiary, Ivo Colucci, needs a resolution to these suits and Mr. Fox is impairing that ability. On behalf of your beneficiary, I am requesting that Mr. Fox withdraw the motion to be substituted and only so much of the appeal as would allow Mr. Chandler to finalize the settlements. I have previously provided you with a draft stipulation that I asked Mr. Fox to consider. I am enclosing that stipulation with this email.

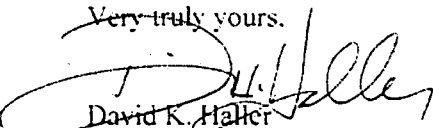
I am copying the lawyers for the remaining beneficiaries of the estate. Under Mr. Colucci's settlement of the Slayer's Act claim, he will waive any and all interest in the trust.

604 Savannah Highway • Charleston, South Carolina 29407 • (843) 224-7860
dhaller@hallerlawfirm.com

These individuals will become Mr. Fox's primary beneficiaries. I believe they join me in this request that he allow the settlements proceed with approval.

I am hopeful this issue can be resolved in an amicable fashion and in short order. Please let me hear from you on Mr. Fox's position.

Very truly yours,


David K. Haller

Enclosures

cc: Brandt Shelborne, Esq. (via email only)
Eduardo Curry, Esq. (via email only)
Chris Lizzi, Esq. (via email only)
Angus Lawton, Esq. (via email only)
Christa Yantis (via email only)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) FIRST JUDICIAL CIRCUIT
) CASE NO.: 2017-CP-18-1816

IN RE: THE ESTATE OF DORIS DUANE COLUCCI

Michael C. Fox, Named Personal Representative)
in the Last Will of Doris Duane Colucci,)

Petitioner,)

Versus)

Andrew Chandler, in his capacity as Special)
Administrator of the Estate of Doris Duane Colucci,)
Michael C. Fox, Successor Trustee of the Colucci)
Living Trust, dated February 24, 2005, Ivo)
Francesco Colucci, Michael Frederick Antonio)
Colucci, John Martin Antonio, Henry Burkes, and)
Richard M. Hyman, Jr.,)

Respondents.)

**RESPONDENT IVO FRANCESCO
COLUCCI'S MEMORANDUM
IN SUPPORT MOTION FOR
RECONSIDERATION**

TO: THE PARTIES HERETO AND THEIR COUNSEL

Respondent Ivo Francesco Colucci, by Christa M. Yantis, his Conservator, submits this memorandum in support of Respondent Andrew Chandler's motion to reconsider and respectfully requests that the Court find a genuine issue of material fact exists as to whether Petitioner Fox is suitable to serve as personal representative.

A year ago, Ms. Yantis, filed on behalf of Ivo Colucci, the surviving spouse of Doris Colucci, a motion for summary judgment seeking probate of Mrs. Colucci's Last Will and Testament and appointment of the named personal representative under the same, Petitioner Michael C. Fox. Ms. Yantis continues to believe that, had appointment been made at an earlier date, Mr. Fox very likely would have served honorably and completed the duties as personal representative in accord with the law. Furthermore, this respondent well-understands that few people have the level of respect that

"Mr. Mike" has with the members of the Colucci Family. He is, by many accounts, a person both Ivo and Doris Colucci were close to and trusted.

In May of 2017, Ms. Yantis was appointed conservator for Mr. Colucci, an 85 year old man with severe and debilitating dementia who requires 24 hour care and supervision. Soon into her work, it was clear that, because Mr. and Mrs. Colucci owned so many properties together, someone was needed to stand in for Mrs. Colucci. Because Mrs. Colucci's Last Will and Testament had not been located, the Dorchester County Probate Court appointed Andrew Chandler as Special Administrator. The directions from the probate court to both fiduciaries included liquidating the Coluccis' assets so that there would be cash available to provide for Mr. Colucci's care and to fund the trust that is the major beneficiary of Mrs. Colucci's Will. Mr. Chandler was, after much negotiating and discussion between the probate court and the parties, also empowered to bring wrongful death and Slayer's Act claims against Mr. Colucci.

Mrs. Colucci's Will was located in August of 2017 and filed by the undersigned with the Dorchester County Probate Court. It named Mr. Fox as personal representative in Mr. Colucci's stead. However, Mr. Fox did not seek appointment until the end of October of 2017. On May 21, 2018, Ms. Yantis (not Mr. Fox) filed the motion for summary judgment currently before the Court because she believed the situation at the time compelled her to do so.

However, much has occurred in the last year and Conservator Yantis now believes that a genuine issue of material fact exists as to whether appointment of Mr. Fox is suitable. Under S.C. Code Ann. §62-3-203(c)(2), the Court is empowered to reject the named personal representative if that person is, "unsuitable." S.C. Code Ann. §62-3-203(c)(2), ("No person is qualified to serve as a personal representative who is: (2) a person whom the court finds unsuitable in formal proceedings:"). The Court's discretion in this regard, after a formal hearing with testimony and evidence, was made clear early on:

[T]he Judge of Probate may deny administration to the person first entitled under the statute if upon the showing made before him he is satisfied that such person is not properly qualified for the position, and among other things the court calls attention to the fact that the granting of letters of administration is not automatic, because the law requires the issuance of a citation, to the end that the kindred or creditors of the intestate may show cause why the administration should not be granted to the person applying for it, notwithstanding such person may have the statutory priority...

In re McClam's Estate, 245 S.C. 315, 319, 140 S.E.2d 478, 479 (1965)(citing the identical language in the former citation of the statute).

In the current case, the Court may find that Mr. Fox is unsuitable to serve at this time because, among other reasons, the work has primarily been done and replacement of the existing fiduciary would serve as a waste of estate assets. As noted above, the charge of Ms. Yantis and Mr. Chandler handed down by the Dorchester County Probate Court was to liquidate the properties and bring legal actions to determine the rights of the beneficiaries to the estate and in tort claims. As of this week, almost all of the property will be liquidated or transferred to the estate's beneficiary (the Trust of which Mr. Fox is trustee) and the lawsuits have been settled.¹ Whether inserting a new fiduciary at this point, at excessive extra cost, might constitute the type of unsuitability that offends "the kindred or creditors" of the estate is an open question. These are the types of questions that can be answered with a full evidentiary hearing.

Mr. Fox's primary argument for appointment is that an accounting must be made of Mr. Chandler's acts. Mr. Fox currently serves without dispute as Trustee of the Colucci Living Trust, which is the primary beneficiary of the estate. As Trustee, Mr. Fox retains the right to demand in a separate proceeding a full accounting of Mr. Chandler's acts. It is important to note that Mr. Chalder has served under the watchful eye of the Dorchester County Probate Court and that most of the remaining acts are all subject to court approval.

¹ The cases were resolved in mediation and post-mediation settlement discussions pending approvals by the applicable courts. Those approvals have been stymied by Mr. Fox's current attempts to unseat Mr. Chandler.

While there may be other reasons to find Mr. Fox unsuitable, for purposes of the summary judgment motion as before the Court, the question of whether replacing fiduciaries will lay waste to the estate raises a genuine issue of material fact. Further, that the Court has requested of Mr. Chandler and Mr. Fox statements of qualification are matters to which the remaining respondents are entitled to inquiry and presentation of evidence, requiring reconsideration of the current order and denial of the motion.

For the reasons, and to the extent allowed, Ms. Yantis withdraws her motion for the appointment of Mr. Fox and requests the Court find a genuine issue of material fact exists as to Mr. Fox's suitability to serve at this time.

WHEREFORE the movants prays for the relief requested herein and such other relief as the court deems just, prudent, and proper.

HALLER LAW FIRM, P.C.

s/ David K. Haller

David K. Haller
604 Savannah Highway
Charleston, SC 29407
(843) 224-7860

dhaller@hallerlawfirm.com

ATTORNEYS FOR RESPONDENT IVO COLUCCI

22nd day of May, 2019

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO: 2017-CP-18-1816
IN RE: THE ESTATE OF DORIS	)	
DUANE COLUCCI, AKA DORIS D.	)	
COLUCCI,	)	
	)	
MICHAEL C. FOX, NAMED PERSONAL	)	
REPRESENTATIVE IN THE LAST WILL	)	
OF DORIS COLUCCI,	)	
	)	
PETITIONER,	)	
	)	
v.	)	
	)	
ANDREW W. CHANDLER, ESQUIRE,	)	
IN HIS CAPACITY AS SPECIAL	)	
ADMINISTRATOR OF THE ESTATE OF	)	
DORIS DUANE COLUCCI, MICHAEL C.	)	
FOX, SUCCESSOR TRUSTEE OF THE	)	
COLUCCI LIVING TRUST, DATED	)	
FEBRUARY 24, 2005, IVO FRANCESCO	)	
COLUCCI, MICHAEL FREDERICK	)	
ANTONIO COLUCCI, JOHN MARTIN	)	
ANTONIO, HENRY BURKES, AND	)	
RICHARD M. HYMAN, JR.,	)	
	)	
RESPONDENTS.	)	

STATEMENT OF QUALIFICATIONS OF ANDREW W. CHANDLER, ESQUIRE

This matter is before the Court on Respondent Andrew W. Chandler's Motion to Reconsider, Alter or Amend, which seeks reconsideration of this Court's Order, filed February 13, 2019, granting Petitioner Fox's Petition for Appointment.¹ Respondent Chandler's affidavit, outlining his knowledge, education, skill, experience, and training is attached hereto as Exhibit 1.

¹ Although the matter initially came before the Court on a Motion for Summary Judgment, a full hearing was held at which all interested parties and/or their attorneys were present and argument and evidence was presented as to the suitability and propriety of granting Mr. Fox's Petition for Appointment. As such, the Order resulting from that hearing indicates that it was granting the Petition for Appointment, which had the effect of rendering the Motion for Summary Judgment moot.

Mr. Chandler's educational and professional qualifications, as set forth in his Affidavit, speak for themselves and demonstrate that he is more than competent to serve in the role of Special Administrator of the Estate, leaving it unnecessary, and at this point, wasteful, to appoint anyone to serve in the role of Personal Representative.

Mr. Chandler was first appointed as Special Administrator of the Estate of Doris Duane Colucci on June 9, 2017, and has served in that role since then with one exception. This Court's February 13, 2019, Order granting the Petition for Appointment filed by Petitioner Fox, and appointing Mr. Fox as Personal Representative of the Estate, terminated Mr. Chandler's appointment as Special Administrator as a matter of law pursuant to S.C. Code Ann. § 62-3-618. However, several hours later the Dorchester County Probate Code restrained Mr. Fox as Personal Representative and reappointed Mr. Chandler as (temporary) Special Administrator, with all the powers of a general personal representative.

In this role, Mr. Chandler has accomplished more than can be succinctly set forth herein. Suffice it to say that this has been, and continues to be, a complex Estate requiring the specialized knowledge and skill that Mr. Chandler possesses. Mr. Chandler's testimony at the hearing on Mr. Fox's Petition to Remove Special Administrator includes a fair amount of information about his administration of this Estate and some of the challenges that have arisen. See 1/9/19 Transcript, attached as Exhibit 2, pp. 10-47.

In addition to his educational and professional achievements, a distinct reason that Mr. Chandler is qualified to serve as the Estate's fiduciary is his independence and lack of any conflicts of interest. Unlike Mr. Fox, who was intimately involved with the Colucci family for many years as their bookkeeper and self-described "best friend" of Ivo Colucci, Mr. Chandler had never met nor been involved with the Colucci family prior to his appointment. The

importance of this distinction, and an explanation of why Mr. Fox's conflicts of interest render him disqualified, is set forth in the Motion to Reconsider, Alter or Amend, pp. 7-8, which is incorporated herein.

Also qualifying Mr. Chandler is his depth of knowledge of, and familiarity with, this Estate, the Decedent's assets, and the pending lawsuits, which, were it not for Mr. Fox's repeated attempts to disrupt the administration of the Estate, would likely have been resolved at this point in time. The best interests of the Estate are not met by the appointment of anyone else as the person appointed, and his/her counsel, would necessarily need an extraordinary amount of time to become familiar with the Estate, all at the Estate's expense. As found by the Probate Court in its Order Denying Mr. Fox's Petition for Removal of Special Administrator:

"Based on the extremely litigious and multifaceted complications plaguing this Estate, removing the Special Administrator at this point would be illogical. It would cause an extreme hardship to the Estate for a new fiduciary to have to learn and understand all the management, negotiations, and issues that have been handled and will continue to need to be handled."

See 2/7/19 Order, p. 16, attached as Exhibit 3. Mr. Chandler's knowledge of, and experience with, this Estate, acquired over the almost two years of serving as Special Administrator, renders him the most qualified and compels the conclusion that his continued appointment as the Estate's sole fiduciary is in the Estate's best interests.

While Mr. Fox was necessarily considered for the role of Personal Representative of the Estate due to his being named a successor personal representative in the Decedent's Will, that fact alone does not render him qualified nor does it require his appointment. Likewise, the fact that Mr. Chandler was not named by the Decedent does not render him unqualified to serve as the Estate's sole fiduciary. Rather, the primary consideration must be: who is best qualified to administer the Estate efficiently, competently, and in the best interests of the Estate and those

interested in it. See Ex parte Small, 69 S.C. 43, 48 S.E. 40, 40-41 (1904) ("The law provides administration as a means for the collection and distribution of assets. The right of those interested to have collection and distribution according to law is the dominant right. The right of any particular person to take charge of the assets is a secondary right. If the allowance of the claim to exercise this secondary right would result in defeating the main purpose to be attained, it must be refused.").

CONCLUSION

Respondent Chandler respectfully submits that, for these reasons, and because of his experience, education, and specialized skill as set forth in his Affidavit, he is qualified to continue to serve as the sole fiduciary of the Estate of Doris Duane Colucci. Respondent Chandler further asks that this Court reconsider its Order granting Petitioner Fox's Petition for Appointment and deny the same, which would result in Mr. Chandler's continued appointment as Special Administrator and the Estate's sole fiduciary.

ROSEN HAGOOD, LLC

s/ Elizabeth J. Palmer

Elizabeth J. Palmer

151 Meeting Street, Suite 400

Charleston, South Carolina 29401

(843) 577-6726

cpalmer@rosenhagood.com

ATTORNEYS FOR RESPONDENT ANDREW W.
CHANDLER, ESQUIRE, TEMPORARY
SPECIAL ADMINISTRATOR OF THE ESTATE
OF DORIS DUANE COLUCCI

Charleston, South Carolina
May 22, 2019

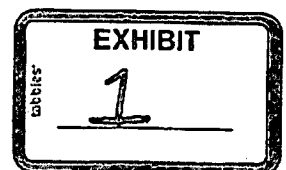
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) FOR THE FIRST JUDICIAL CIRCUIT
) CASE NO: 2017-CP-18-1816

IN RE: THE ESTATE OF DORIS)
DUANE COLUCCI, AKA DORIS D.)
COLUCCI,)
))
MICHAEL C. FOX, NAMED PERSONAL)
REPRESENTATIVE IN THE LAST WILL)
OF DORIS COLUCCI,)
))
PETITIONER,)
))
v.)
))
ANDREW W. CHANDLER, ESQUIRE,)
IN HIS CAPACITY AS SPECIAL)
ADMINISTRATOR OF THE ESTATE OF)
DORIS DUANE COLUCCI, MICHAEL C.)
FOX, SUCCESSOR TRUSTEE OF THE)
COLUCCI LIVING TRUST, DATED)
FEBRUARY 24, 2005, IVO FRANCESCO)
COLUCCI, MICHAEL FREDERICK)
ANTONIO COLUCCI, JOHN MARTIN)
ANTONIO, HENRY BURKES, AND)
RICHARD M. HYMAN, JR.,)
))
RESPONDENTS.)
_____)

AFFIDAVIT OF ANDREW W. CHANDLER, ESQUIRE

PERSONALLY APPEARED before me, Andrew W. Chandler, Esquire, who being duly sworn does state as follows:

1. My name is Andrew W. Chandler and I am a partner with the law firm of Evans, Carter, Kunes & Bennett, P.A., in Charleston, SC. I have over 18 years of experience in the areas of taxation, estate planning, estate administration, trust administration, trust law, charitable giving, and trust and estate litigation.



2. I am submitting this affidavit to set forth my qualifications as it relates to serving as the fiduciary, specifically, Special Administrator, of the Estate of Doris Duane Colucci.

3. My education is as follows:

- L.L.M. (Taxation) - New York University, 2002
- J.D. - University of South Carolina, 2001
- M.A. (Political Science) - Illinois State University, 1998
- B.S. (Public Administration) - Winthrop College, 1993

4. I am licensed to practice law in both South Carolina and Georgia.

5. I am a certified by the South Carolina Supreme Court as a Specialist in Estate Planning and Probate Law and I also currently serve as a member of the South Carolina Estate Planning and Probate Law Specialization Advisory Board.

6. I served on the South Carolina Probate Code Revision Committee and also on the South Carolina Trust Code Committee of the Probate, Estate Planning & Trust Section.

7. Additionally, I co-chaired, with Judge Carolyn Rogers, the Technical Corrections Committee tasked with reviewing the South Carolina Trust Code.

8. I served as an editor on the multi-volume treatise, *Estate Planning in South Carolina*, published by the South Carolina Bar.

9. I am currently a member, and formerly served as the Chairman, of the Probate, Estate Planning & Trust Section of the South Carolina Bar.

10. I am also a member of the Charleston Tax Council and the Charleston Tax Roundtable.

11. In 2015, I was elected a Fellow with the American College of Trust and Estate Counsel, which requires no less than 10 years' experience in the active practice of probate and

trust law or estate planning and is based on an attorney's "outstanding reputation, exceptional skill, and substantial contributions to the field by lecturing, writing, teaching and participating in bar activities."¹

12. I have served in a number of fiduciary roles, including as a Trustee, a Trust Protector and as a Trust Committee Member. I have been appointed as a Special Administrator of estates by both the Charleston County Probate Court and by the Dorchester County Probate Court. Additionally, I have been the attorney for a Personal Representative and/or Trustee in over 150 cases, many of which were taxable and complex estate matters, often involving litigation. Lastly, I previously have been retained as a consulting expert in two cases, one involving a trust matter and the other involving the review of an estate's administration and the removal of the estate's personal representative.

13. I was initially appointed to serve as the Special Administrator of the Estate of Doris Duane Colucci by the Dorchester County Probate Court on June 9, 2017, and, with one exception², have served in that capacity since that time.

14. Prior to my appointment, I had never had any involvement with, or knowledge of, the Decedent or her family members.

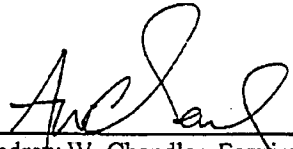
15. I am over the age of 18 and have personal knowledge of and am competent to testify about the matters addressed in this Affidavit.

[SIGNATURE FOLLOWS]

¹ <https://www.actec.org/directory/profile/Andrew-Chandler/4c42a2ba-b3c3-41a3-a66c-3a42602c0019/?lastname=chandler&state=sc&pagesize=0> (last accessed 5/22/19).

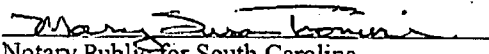
² On February 13, 2019, Judge Dickson of the Dorchester County Circuit Court issued an Order granting the Petition for Appointment filed by Michael Fox, and appointing Mr. Fox as Personal Representative of the Estate. Pursuant to S.C. Code Ann. § 62-3-618, Mr. Fox's appointment as Personal Representative terminated my appointment as Special Administrator. However, several hours later the Dorchester County Probate Code restrained Mr. Fox as Personal Representative and reappointed me as (temporary) Special Administrator, with all the powers of a general personal representative.

FURTHER AFFIANT SAYETH NOT.



Andrew W. Chandler, Esquire

SWORN to before me this
22 day of May, 2019



Notary Public for South Carolina
My commission expires: August 14, 2028

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
In Re:	)	No 2017-CP-18-1816
The Estate of Doris Duane Colucci,	)	
Michael C. Fox Personal Representative	)	Statement of Qualifications of Michael Fox
the Estate of Doris Duane Colucci,	)	
	)	and
Plaintiff,	)	
vs.	)	Supplemental Memorandum in Opposition
	)	to Respondent Chandler's Motion to
Andrew Chandler, in his capacity as	)	Reconsider, Alter, or Amend
Special Administrator of the Estate of	)	
Doris Duane Colucci, Michael C. Fox,	)	
Successor Trustee of the Colucci Living	)	
Trust, dated February 24, 2005, Ivo	)	
Francesco Colucci, Michael Frederick	)	
Antonio Colucci, John Martin Antonio,	)	
Henry Burkes, and Richard M. Hyman,	)	
Jr,	)	
	)	
Defendants.	)	

Petitioner Michael C. Fox respectfully requests that the Court deny Andrew Chandler's Motion to Reconsider, Alter, or Amend. As set forth below, along with the attached affidavit (Attached as Exhibit A), the grounds for denying this Motion are 1) Michael C. Fox is qualified to serve as Personal Representative; 2) The Testator intended for Fox to be her Personal Representative; 3) the Testator clearly intended to nominate an alternative executor familiar with her businesses; 4) The Testator clearly chose not to appoint an attorney before Mr. Fox; 5) there is no order for the wholesale liquidation of the properties and; 6) the probate process must be stopped to allow the named Personal Representative to understand the authority and reasoning

under which the Special Administrator has liquidated real property belonging to the estate and trust.

I. Mr. Fox is qualified to serve as Personal Representative of the Estate.

Michael Fox is one of the three people, outside of her husband, that Doris Colucci selected to manage and run the family business empire in the event of her death.

The Colucci family moved from New York to South Carolina in the early 1970s with their children. Michael Fox, an accountant, met the Coluccis shortly after their arrival. Fox, a native of Ravenel, SC, was a 1968 graduate of Palmer College where he had received a degree in higher accounting and business management. Fox's relationship with the Coluccis was both intimately familial and professional, and it lasted until the tragic death of Doris Colucci in 2017.

Over the next 40 years, the Colucci family prospered in South Carolina. While raising their family, they operated a jewelry store in North Charleston as their primary source of income. They amassed great wealth and began to invest in real estate throughout the tri-county area. This included extensive residential rental property, vacation property, and lots for investment. Throughout this time, and at nearly every step, Ivo and Doris Colucci used Michael Fox as an advisor, an accountant, and a friend. As such, Fox is one of the only people with direct business knowledge of the real property and assets of the Colucci family.

Outside of Fox's relationship with the Coluccis, Fox built his own very successful business as a bookkeeper and tax preparer. He has done business with countless contractors, small businesses, and investors throughout the North Corridor, North Charleston, and Berkeley and Dorchester Counties. Many of these same businesses worked alongside and with the Colucci family for a generation.

Fox has never been reprimanded by any government authority, been a party to any suit involving his work, or been accused of any act would indicate a lack of character or inability to do his job.

In addition to Fox's familiarity of the assets, Fox has the contacts and the relationships to continue to operate much of the Colucci family business. Fox knows the property managers, the repairmen, and all of the on-the-ground personnel involved in operating commercial and residential real estate. Fox knows the Colucci's business partners and has their confidence. Together, Fox has the ability to continue to operate and preserve much of the family business as set out in the Colucci Family Trust.

II. The Testator considered Michael Fox to be qualified.

The Testator named not one alternative personal representative after her husband, but three. Her appointments clearly indicate what skills and experience she considered most important in administering her estate.

Michael Fox is the first named alternate Personal Representative. He is not an attorney but is capable of hiring experts as is necessary. However, as discussed below, the third named alternative personal representative, Richard Hyman, is an attorney. The testator did not choose Mr. Hyman, however, to serve as the first alternative named personal representative. The testator chose Mr. Fox. It is clear that she did so because she believed that an in-depth knowledge, experience, and skill of her business was of paramount importance in naming her personal representative. It is clear she chose Fox for these reasons, because she chose as Fox's successor, Mr. Henry Burkes, another person familiar with the family business.

III. The Testator clearly intended to nominate an alternative executor with direct knowledge of her businesses assets.

Mr. Henry Burkes is a young and successful real estate developer. Understanding his history with the Colucci family is critical in order to understand the intent of the testator. Ivo and Doris Colucci had originally hired Mr. Burkes as an employee. Over the decades, Henry Burkes became a close family friend. He also grew wealthy through working with the Coluccis, and they began to invest in joint investments together. At the time of the testator's death, Mr. Burkes was actively in business with the Colucci family. Likewise, Mr. Burkes is not an attorney. However, he is intimately familiar with the Colucci business operations. Like Fox, Mr. Burkes is perhaps the only other person, outside of Ivo and Doris Colucci, with direct knowledge of the business operations, capable of operating the Colucci's family business, and understanding its value and profitability.

IV. The Testator clearly chose not to appoint an attorney before Mr. Fox

The testator named Richard Hyman as the third named personal representative. Attached as Exhibit B is Mr. Hyman's reference page from his website. He is member in good standing with the bar and represents that he practices in both fields of probate and personal injury.

Doris Colucci clearly had the opportunity to name an attorney or a probate specialist as her first alternate personal representative. The prior nominations of Michael Fox and Henry Burkes, however, indicate that she desired a different set of skills.

Mr. Hyman's and Mr. Burke's nominations are of great significance not because they reveal the testator's desired skills for her representative, but because the Court must adhere to the Priority of Appointment statute under the South Carolina Probate Code 62-3-203 prior to considering the appointment of Mr. Chandler as Personal Representative.

V. There is no order for the wholesale liquidation of the properties

The primary issue on appeal is the propriety of the sale of multiple pieces of real property that have occurred over the past two years. It has been unclear to the Appellant why the Special Administrator would act to sell income producing properties. Doris Colucci did not intend for her estate to be liquidated. If she had, she would have given a power of sale to her personal representative.

Mr. Haller, Counsel for the Conservator of Ivo Colucci, indicates in his memorandum (Pg. 3, Filed May 22, 2019, Memorandum in Support, Motion for Reconsideration):

As noted above, the **charge of Ms. Yantis and Mr. Chandler handed down by the Dorchester County Probate Court was to liquidate the properties** and bring legal actions to determine the rights of the beneficiaries to the estate and in tort claims. As of this week, almost all of the property will be liquidated or transferred to the estate's beneficiary (the Trust of which Mr. Fox is trustee) and the lawsuits have been settled. (emphasis added)

To be clear, this is the first notice that the Appellant has had throughout the course of the entire administration that the Dorchester County Probate Court "charged" the Special Administrator with "liquidating the properties." The Appellant would ask that this statement be cleared up as it would have a major impact on the appeal and the Trust's rights. If such an Order exists, it must be served on the Trust and would automatically be a final order subject to appeal.

The sales of these real properties are at the heart of Appellant's issue on appeal. The Appellant is aware of no order granting the general sale or "liquidation" of property in which the Trust or Estate had an interest. This "charge" requires notice and due process to the interested parties. In fact, the Appellant has gone to the Probate Court and requested a copy of all records and has not found any order directing the liquidation of the estate.

To be clear, the Last Will does not contain a power of sale. In fact, Probate Code Section 62-3-906 states that:

Unless a contrary intention is indicated by the will, such as the grant to the personal representative of a power of sale, the distributable assets of a decedent's estate must be distributed in kind to the extent possible...

The only way to prevent the purported sale of more real property is to permit the Appellant to proceed with his appeal and to supersede the jurisdiction of the probate court.

VI. The probate process must be stopped to allow the named Personal Representative to understand the authority and reasoning under which the Special Administrator has liquidated real property belonging to the Estate and Trust.

Several of the parties argue that this is simply too late to change the administrator of the estate. Mr. Fox would argue the opposite. In fact, the Circuit Court must stop the last of the sales of real property before everything is sold. Doris Colucci intended the Trust to inherit her business; her untimely and horrific death cannot change the terms of her distribution or the intent of whom she selected as her Representative. There is no exigency in the Court taking the time to examine the propriety of these sales. The wrongful death case has been moved to be continued past October, 2019 and the only other party to the wrongful death suit, Ivo Colucci, is represented in this appeal.

If the sales of the real estate are not supported by the appropriate authority, the effect will be execution of deeds that could be subject to being set aside. This is the purpose of an automatic stay and the purpose of supersedeas.

Dated: May 9, 2019

s/Gordon H. Garrett
Gordon H. Garrett
office@garrettlawsc.com
Ryan A. Love
rlove@garrettlawsc.com
Garrett Law Offices, LLC
1075 E. Montague Ave.
North Charleston, SC 29405
843.554.5515 (phone)
843.747.3198 (telefax)
Attorneys for Appellant



ANGUS M. LAWTON
S.C. BOARD CERTIFIED MEDIATOR
S.C. BOARD CERTIFIED CIVIL ARBITRATOR
NATIONAL BOARD OF TRIAL ADVOCACY
ANGUS@LAWTONLAWFIRM.NET

May 23, 2019

VIA EMAIL ONLY (edicksonsc@sccourts.org)

The Honorable Edgar W. Dickson
5200 E. Jim Bilton Blvd.
St. George, SC 29477

Re: Andrew W. Chandler, Esquire, as Special Administrator v. Ivo Francesco Colucci, AKA Ivo Colucci, AKA Ivo F. Colucci, Christa M. Yantis, as Conservator for Ivo Francesco Colucci, Alice M. Norton, as Guardian for Ivo Francesco Colucci, John Martin Antonio, and Michael Frederick Antonio Colucci
Case No.: 2017-CP-18-1816

Dear Judge Dickson:

I represent Michael Colucci and John Antonio in Doris Colucci's wrongful death case.

Michael and John are Doris' only biological children, which means that they are the only statutory beneficiaries of her estate. They are the only people who will recover in Doris' wrongful death case.

Both Michael and John would like to have the wrongful death and slayer cases resolved as soon as possible and without any further delay. This letter will explain their position.

Over two years ago, Ivo Colucci shot and killed my clients' mother. As you can imagine, the incident caused a great deal of distress among the family. Since the death, there have been multiple lawsuits and legal matters filed between family members, and many members of the family are not speaking to each other.

The wrongful death and slayer cases were filed eighteen (18) months ago. During that time period, there have been many depositions taken of family members, and tensions have remained very high between the two different sides of the family. There have also been newspaper articles and television stories about the various legal proceedings relating to the family.

In early February, after months of litigation the two parties mediated the wrongful death case, the slayer case, and a bystander liability case. The mediation took two days, and we made significant progress. After the mediation, additional work was done, and ultimately the parties reached a settlement.

My clients and I have been intimately involved in all aspects of the cases. We have had multiple meetings with the attorneys at Rosen Hagood and Lester Schwartz, and we have spent hours

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reviewing depositions and documents related to the lawsuits. Michael Colucci and I also attended the two day mediation.

My clients and I are very comfortable with the terms of the settlement that has been reached, and we would like to have these matters concluded as quickly as possible. Michael and John, and I believe other family members, would like to avoid any further tension and conflict in the family, and they are ready for some closure. They would also like to avoid any unnecessary attorney's fees caused by any further motions or appeals.

I have also had multiple communications with Michael Fox and Gordon Garrett relating to Doris' estate, explaining that they have fiduciary duties to my clients. I have asked them to do whatever is needed to allow the settlements to proceed. A copy of a letter that I wrote to them on May 13, 2019 is attached hereto. I have not received any response from Mr. Fox or Mr. Garrett to that request.

We do understand that there may be questions about the way that the estate has been handled, and those questions can be reserved and handled separately from any settlements related to the wrongful death and slayer cases.

I have been practicing law in Charleston for over 30 years. I am also a mediator, and I have tried several wrongful death cases all the way to a verdict. Given my trial experience and the length of time that I have practiced as an attorney, I am comfortable in evaluating what amount would be appropriate for a wrongful death settlement. Given the various issues in Doris Colucci's case, I feel that the case should be settled on the agreed upon terms, and my clients agree. My clients and I are also comfortable with the 40% contingency fee that has been earned by Rosen Hagood and Lester Schwartz.

Please let me know if you need any further information regarding my clients' position in this matter.

Thank you for your consideration.

With kind personal regards, I remain,

Respectfully Yours,

Angus M. Lawton

Enclosure as stated

cc: Glenn Churchill, Esquire (via email)
Elizabeth Palmer, Esquire (via email)
David Haller, Esquire (via email)
Lester Schwartz, Esquire (via email)
Brandt Shelbourne, Esquire (via email)
Joe Weston, Esquire (via email)

Tom Milligan, Esquire (via email)
Eduardo Curry, Esquire (via email)
Gordon Garrett, Esquire (via email)



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May 13, 2019

VIA EMAIL & U.S. MAIL

Gordon H. Garrett, Esquire
Garrett Law Offices
1075 East Montague Avenue
North Charleston, SC 29405

Re: Andrew W. Chandler, Esquire as Special Administrator of the Estate of Doris Duane Colucci, also known as Doris D. Colucci v. Ivo Francesco Colucci a/k/a Ivo F. Colucci a/k/a Ivo Colucci, Christa M. Yantis, as Conservator for Ivo Francesco Colucci, Alice M. Norton, as Guardian for Ivo Francesco Colucci, Colucci's Jewelry Factory, Inc., and Terrivo Enterprises, LLC
Case No.: 2017-CP-10-5393

Andrew W. Chandler, Esquire, as Special Administrator v. Ivo Francesco Colucci, AKA Ivo Colucci, AKA Ivo F. Colucci, Christa M. Yantis, as Conservator for Ivo Francesco Colucci, Alice M. Norton, as Guardian for Ivo Francesco Colucci, John Martin Antonio, and Michael Frederick Antonio Colucci
Case No.: 2017-CP-18-1816

Dear Gordon:

This letter will follow up on our recent conversation regarding the wrongful death and the slayer cases relating to Doris Colucci.

As you know, I represent Michael Colucci and John Antonio, Doris Colucci's only statutory beneficiaries. My clients are the only people that will make any recovery from the wrongful death case. They are also beneficiaries of Doris Colucci's trust. This letter is to confirm their wishes to have both cases resolved immediately on the terms that have been negotiated, and to respectfully demand that Michael Fox agree to the settlements.

I understand that Michael Fox is named in Doris' will as a person who can act as Doris' personal representative, and he is also named as the trustee of the trust to be established on her death.

South Carolina law provides that if Mr. Fox acts as the personal representative of Doris Colucci's estate or the trustee of the related trust, then he has a fiduciary responsibility to the beneficiaries of Doris' estate and the related trust. Essentially, this means that Mr. Fox is to put their interests above his own interests.

The two referenced cases have been in litigation for over a year. Numerous depositions have been taken, and the various attorneys have spent hundreds of hours working on the cases.

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Page 2 of 3

Several months ago, the cases were mediated for two days, and additional work was done after the mediation to get the cases resolved.

My clients have agreed to the terms of the settlements, and I understand that all members of the Colucci family have agreed to the settlements. Apparently the only thing holding up the settlements is Michael Fox's questions and failure to approve the deal.

As noted earlier, this letter is to respectfully demand that Michael Fox approve the settlements that have been reached in the two cases, without any reservations, and that he sign off on any related documentation that will allow the cases to be closed. My clients and I are comfortable with the agreements reached, and we are comfortable with the way those two cases have been handled.

Please keep in mind that any further delays in the resolution of these matters will cause harm to Michael Colucci and John Antonio, and potentially other beneficiaries of the trust. In effect, if Mr. Fox causes any further delay, he will be harming the people that he is supposed to protect.

Please also understand that by agreeing to the settlements, Michael Fox is not waiving any rights to investigate the way that Doris Colucci's estate has been handled. My clients are reserving their rights to look into those issues and any potential claims related to the handling of the estate. Once the wrongful death and slayer act cases are settled, questions can still be asked and investigations can still proceed into the way the probate matter was handled. Mr. Fox will still be able to pursue any matters relating to Doris' estate other than the wrongful death and slayer act cases.

Please let me know by 5:00 p.m. on Monday, May 20, 2019 if Mr. Fox is willing to resolve the referenced cases on the terms negotiated without any reservations, and if he is willing to sign any related documents. Given the wishes of the people that he is required to protect, it is clearly the proper thing to do.

Thank you for your attention to this matter, and I look forward to hearing from you.

With kind personal regards, I remain,

Very Truly Yours,

Angus M. Lawton

AML/aml

cc: Glenn Churchill, Esquire
Elizabeth Palmer, Esquire
David Haller, Esquire
Lester Schwartz, Esquire
Brandt Shelbourne, Esquire
Joe Weston, Esquire

Tom Milligan, Esquire
Eduardo Curry, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
In Re:	)	No 2017-CP-18-1816
	)	
The Estate of Doris Duane Colucci,	)	
	)	
Michael C. Fox Personal Representative	)	Affidavit of Michael C. Fox
the Estate of Doris Duane Colucci,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Andrew Chandler, in his capacity as	)	
Special Administrator of the Estate of	)	
Doris Duane Colucci, Michael C. Fox,	)	
Successor Trustee of the Colucci Living	)	
Trust, dated February 24, 2005, Ivo	)	
Francesco Colucci, Michael Frederick	)	
Antonio Colucci, John Martin Antonio,	)	
Henry Burkes, and Richard M. Hyman,	)	
Jr,	)	
	)	
Defendants,	)	

Personally appeared before me, Michael C. Fox, who being duly sworn does state as follows:

1. I am the Plaintiff in the above-styled action and Trustee of the Colucci Living trust, sole devisee of the Estate of Doris Duane Colucci.
2. I have a 1968 degree from Palmer College in Higher Accounting and Business Administration.
3. I am a certified tax preparer.
4. After I graduated, I began working as a bookkeeper and tax preparer in 1969.
5. I have never been reprimanded or sued for my work as a bookkeeper and tax preparer.

6. I do business with countless contractors, small businesses, and investors, throughout the North Corridor, North Charleston, and Berkeley and Dorchester Counties.
7. I know all of the Colucci business partners; I have personally hosted them at my home on more than one occasion. In fact, I performed the marriage for one the Colucci's closest business partners, Terry Weidberg.
8. I have worked with the Colucci's finances from the time they moved to South Carolina and started their business over forty years ago.
9. I am personally familiar with the Colucci's properties, business, and assets. For example, I was familiar with the property located at Mary Street. There was no mortgage and all profits were income subject to ordinary business expenses. I would have never sold Mary Street; in fact, I have learned that it was recently included in the short-term (Airbnb) rental area in downtown Charleston.
10. I have a knowledge of property management. I know many property managers, repairmen, and other personnel throughout the tri-county area.
11. I remain close to the Colucci family.
12. I was named as Doris Colucci's first choice for alternate personal representative in her Will.
13. I am aware that Doris Colucci chose Henry Burkes, a real estate developer, as her second choice for alternate personal representative in her Will. Henry was a close of the Colucci's and I know he was intimately with the Colucci business operations.
14. I am aware that Doris Colucci had named as her third choice Richard Hyman, an attorney in good standing, for alternate personal representative in her Will.

FURTHER AFFIANT SAYETH NAUGHT

SWORN TO AND SUBSCRIBED BEFORE ME
this 5 Day of May, 2019

(Signature) (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires:



(Signature)
Michael C. Fox

From: Angus Lawton

Sent: Wednesday, May 29, 2019 9:24 AM

To: Dickson, Edgar W. Law Clerk (Nicholas McKinney); Jessica Bauman; Dickson, Edgar W. Secretary (Catherine C. Wilson)

Cc: gpclawfirm@gmail.com; Elizabeth Palmer; David Haller; Lester.Schwartz@sctaxlawyer.com; Shelbourne, Brandt; joe@wcalawfirm.com; 'Tom Milligan'; currylawfirm@bellsouth.net; Gordon Garrett; (general) Garrett Law Offices; Taylor Davis; Ryan Love

Subject: RE: Estate of Doris Duane Colucci, et al. v. Ivo Colucci, Case No.: 2017-CP-18-01816

Thank you.

Angus Lawton

843-881-9901

From: Dickson, Edgar W. Law Clerk (Nicholas McKinney) <edicksonlc@sccourts.org>

Sent: Wednesday, May 29, 2019 9:21 AM

To: Angus Lawton <angus@lawtonlawfirm.net>; Jessica Bauman <Jessica@lawtonlawfirm.net>; Dickson, Edgar W. Secretary (Catherine C. Wilson) <edicksonsc@sccourts.org>

Cc: gpclawfirm@gmail.com; Elizabeth Palmer <epalmer@rosenhagood.com>; David Haller <dhaller@hallerlawfirm.com>; Lester.Schwartz@sctaxlawyer.com; Shelbourne, Brandt <brandt@shelbournelaw.com>; joe@wcalawfirm.com; 'Tom Milligan' <tom@milliganlawfirm.com>; currylawfirm@bellsouth.net; Gordon Garrett <ggarrett@garrettlawsc.com>; office@garrettlawsc.com; Taylor Davis <tdavis@rosenhagood.com>; Ryan Love <rlove@garrettlawsc.com>

Subject: RE: Estate of Doris Duane Colucci, et al. v. Ivo Colucci, Case No.: 2017-CP-18-01816

Importance: High

In light of the orders that were filed yesterday, tomorrow's hearing is cancelled. In accordance with the orders, Probate Court now has sole jurisdiction over the case and it cannot be removed to Circuit Court until the case ends. (See orders). Thank you and please have a wonderful rest of your week.

Sincerely,

Nicholas McKinney

Law Clerk to Judge Edgar W. Dickson

P.O. Box 1949

Orangeburg, SC 29116

P: (803) 535-2187

E: edicksonlc@sccourts.org

From: Angus Lawton <angus@lawtonlawfirm.net>

Sent: Wednesday, May 29, 2019 9:11 AM

To: Dickson, Edgar W. Law Clerk (Nicholas McKinney) <edicksonlc@sccourts.org>; Jessica Bauman <Jessica@lawtonlawfirm.net>; Dickson, Edgar W. Secretary (Catherine C. Wilson) <edicksonsc@sccourts.org>

Cc: gpclawfirm@gmail.com; Elizabeth Palmer <epalmer@rosenhagood.com>; David Haller <dhaller@hallerlawfirm.com>; Lester.Schwartz@sctaxlawyer.com; Shelbourne, Brandt <brandt@shelbournelaw.com>; joe@wcalawfirm.com; 'Tom Milligan' <tom@milliganlawfirm.com>; currylawfirm@bellsouth.net; Gordon Garrett <ggarrett@garrettlawsc.com>; office@garrettlawsc.com;

Taylor Davis <tdavis@rosenhagood.com>

Subject: RE: Estate of Doris Duane Colucci, et al. v. Ivo Colucci, Case No.: 2017-CP-18-01816

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Mr. McKinney,

I understand that Judge Dickson signed and filed an order in this case yesterday. Does that mean that tomorrow's hearing is no longer necessary? Please let us know and thank you.

Angus Lawton
843-881-9901

From: Dickson, Edgar W. Law Clerk (Nicholas McKinney) <edicksonlc@sccourts.org>
Sent: Thursday, May 23, 2019 3:01 PM
To: Jessica Bauman <Jessica@lawtonlawfirm.net>; Dickson, Edgar W. Secretary (Catherine C. Wilson) <edicksonsc@sccourts.org>
Cc: gpclawfirm@gmail.com; Elizabeth Palmer <epalmer@rosenhagood.com>; David Haller <dhaller@hallerlawfirm.com>; Lester Schwartz <sctaxlawyer.com>; Shelbourne, Brandt <brandt@shelbournelaw.com>; joe@wcalawfirm.com; 'Tom Milligan' <tom@milliganlawfirm.com>; currylawfirm@bellsouth.net; Gordon Garrett <ggarrett@garrettlawsc.com>; office@garrettlawsc.com; Taylor Davis <tdavis@rosenhagood.com>; Angus Lawton <angus@lawtonlawfirm.net>
Subject: RE: Estate of Doris Duane Colucci, et al. v. Ivo Colucci, Case No.: 2017-CP-18-01816

Mr. Lawton/Ms. McDonald.

Judge Dickson thanks you for your letter submission. If you would be so kind, could you please file this with the Court Clerk's office in Dorchester County? Thank you.

Sincerely,
Nicholas McKinney
Law Clerk to Judge Edgar W. Dickson
P.O. Box 1949
Orangeburg, SC 29116
P: (803) 535-2187
E: edicksonlc@sccourts.org

From: Jessica Bauman <Jessica@lawtonlawfirm.net>
Sent: Thursday, May 23, 2019 1:54 PM
To: Dickson, Edgar W. Secretary (Catherine C. Wilson) <edicksonsc@sccourts.org>; Dickson, Edgar W. Law Clerk (Nicholas McKinney) <edicksonlc@sccourts.org>
Cc: gpclawfirm@gmail.com; Elizabeth Palmer <epalmer@rosenhagood.com>; David Haller <dhaller@hallerlawfirm.com>; Lester Schwartz <sctaxlawyer.com>; Shelbourne, Brandt <brandt@shelbournelaw.com>; joe@wcalawfirm.com; 'Tom Milligan' <tom@milliganlawfirm.com>

currylawfirm@bellsouth.net; Gordon Garrett <ggarrett@garrettlawsc.com>; office@garrettlawsc.com;
Taylor Davis <tdavis@rosenhagood.com>; Angus Lawton <angus@lawtonlawfirm.net>
Subject: Estate of Doris Duane Colucci, et al. v. Ivo Colucci, Case No.: 2017-CP-18-01816

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. *******

Good Afternoon:

I have attached a letter from Angus Lawton regarding the above referenced case.

Thank you,

Jessica B. McDonald
Paralegal
Lawton Law Firm
496 Bramson Court, Suite 100
Mount Pleasant, SC 29464
jessica@lawtonlawfirm.net
Phone: (843) 881-9901
Fax: (843) 881-8839

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## SETTLEMENT AGREEMENT AND RELEASE

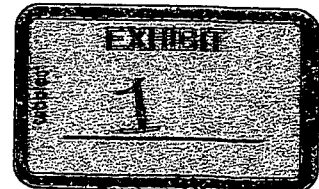
This Settlement Agreement and Release ("Agreement") is made and entered as of \_\_\_\_\_, 2019 (the "Effective Date") by the **Estate of Doris Duane Colucci**, by and through its Special Administrator, Andrew W. Chandler, Esquire ("Estate"); **Ivo Francesco Colucci**, an Incapacitated Adult, by and through his Conservator, Christa M. Yantis, CPA; John Martin Antonio; Michael Frederick Antonio Colucci; and the **Colucci Living Trust**, dated February 24, 2005, and any amendments thereto, by and through its Trustee, Michael C. Fox ("Trust") (collectively, the "Parties").

### Recitations

A. The Decedent, Doris Duane Colucci, died on April 14, 2017, after being shot in the head by her husband, Ivo Francesco Colucci. The Decedent's Last Will, dated June 18, 2013 ("Will"), was admitted to probate by order of the Dorchester County Circuit Court, filed August 27, 2018. The sole devisee of the Will is the Trust.

B. Andrew W. Chandler, Esquire, is the Special Administrator of the Estate, having been duly appointed by the Dorchester County Probate Court on July 10, 2017. His appointment, powers, and duties were confirmed following the admission of the Will to probate by the entry of a Modified Order for the Appointment of a Special Administrator, filed August 27, 2018. The afore-mentioned orders confer upon Mr. Chandler "all the powers of a general Personal Representative."

C. Christa M. Yantis, CPA, is the Conservator for Ivo Francesco Colucci, an incapacitated adult, having been duly appointed on the October 27, 2017, by the Probate Court of Dorchester County, South Carolina.





D. Michael C. Fox is the Trustee of the Trust, having accepted the trusteeship pursuant to S.C. Code Ann. § 62-7-701 on October 27, 2017.

E. Mr. Chandler initiated an action in the Dorchester County Probate Court by filing a “Petition to Determine Heirs” on October 4, 2017, and titled Andrew W. Chandler, Esquire, as Special Administrator v. Ivo Francesco Colucci, AKA Ivo Colucci, AKA Ivo F. Colucci, Christa M. Yantis, as Conservator for Ivo Francesco Colucci, Alice M. Norton, as Guardian for Ivo Francesco Colucci, John Martin Antonio, and Michael Frederick Antonio Colucci; Case No: 2017-ES-18-00294 (the “Lawsuit”). John Martin Antonio, and Michael Frederick Antonio Colucci are the statutory beneficiaries of the Estate and all also both beneficiaries of the Trust. The Lawsuit, which was subsequently removed to the Dorchester County Court of Common Pleas on October 5, 2017, and assigned Case No: 2017-CP-18-1816, was filed pursuant to S.C. Code Ann. § 62-2-803 (the “Slayer Act”) and seeks a determination that the Decedent’s husband, Ivo Francesco Colucci, is not entitled to benefit from the Estate, or from any assets that would otherwise pass to Mr. Colucci outside the Estate upon Decedent’s death, because he “feloniously and intentionally” killed the Decedent. The Lawsuit has since been remanded to the Dorchester County Probate Court.

F. Mrs. Yantis, on behalf of Ivo Francesco Colucci as his Conservator, has denied that Mr. Colucci “feloniously and intentionally” killed the Decedent and contends that, at the time of the shooting, Mr. Colucci was unable to form the requisite intent as a result of his progressively debilitating dementia.

G. The parties to the Lawsuit have conducted extensive discovery, however, the parties anticipate that additional discovery, including depositions of witnesses and experts, will be necessary and that such discovery will be expensive.

H. The Parties to this Agreement now seek to mutually and voluntarily end the pending Lawsuit upon the terms set forth below.

I. The Parties are informed and believe that the remaining assets and interests which are at issue in, and whose ownership would be determined by, the Lawsuit are as follows:

a. Ivo Francesco Colucci's Interest in the Trust:

Mr. Colucci is a beneficiary of the Trust. For example, during his lifetime, the Trust provides that Mr. Colucci is to receive the "entire net income" of the Trust as well as the ability to withdraw from the principal "an amount that shall not exceed the greater of five thousand dollars (\$5,000) or five percent (5%)" of the principal.

Mr. Colucci also has the right to receive payments, in the Trustee's discretion, from the principal for his "health, education, maintenance, or support." Additionally, the Trust provides Mr. Colucci with a Limited Power of Appointment, giving him the ability to appoint "some or all of the principal" of the Trust to the Decedent's descendants upon Mr. Colucci's death.

To date, no funds from the Trust have been distributed to Mr. Colucci or any other beneficiary and the parties are not aware of any prior exercise of the Limited Power of Appointment by Mr. Colucci.

John Martin Antonio and Michael Frederick Antonio Colucci are among the remainder beneficiaries of the Trust.

b. Ownership of 50% of the Proceeds of the Sale of the "Edisto House":

The "Edisto House" is a residential dwelling located at 7674 Legare Road, Edisto Island, SC, 29438, and was titled in the Decedent's name and Ivo Francesco Colucci's name as joint tenants with right of survivorship. It was sold in an arms' length transaction to a third-party on May 24, 2019, for a sales price of \$470,050.00, and net sales proceeds to the Estate of \$211,018.92 are currently held in a separate account pending resolution of the Slayer's Act claim.

At issue in the Lawsuit is whether, by operation of the Slayer Act, the joint tenancy was severed, entitling the Estate of Doris Duane Colucci to retain 50% of the proceeds of the sale of the Edisto House.

c. Ownership of the Decedent's IRA:

Following the Decedent's death, a Genworth Financial Individual Retirement Annuity Contract (Acct. # 424767476) was located that was titled in the name of

“Doris Colucci” and which named Ivo Francesco Colucci as the beneficiary. It was valued at approx. \$ 54,950.43 as of 4/2/19. At issue in the Lawsuit is whether, by operation of the Slayer Act, the Estate of Doris Duane Colucci is entitled to retain ownership of the IRA.

d. Ownership of 25% of the “NY Property”:

The “NY Property” is real property located at 3590 SR 145, Rensselaerville, NY. The Decedent and Mr. Colucci owned a 50% interest in that property. Under New York law, title to that 50% interest in the NY Property passed to Mr. Colucci upon the Decedent’s death. At issue in the Lawsuit is whether, by operation of the Slayer Act, the Estate of Doris Duane Colucci is entitled to retain ownership of a 25% interest in the NY Property. The appraised value of the entire parcel, obtained from two independent appraisers, as of March 2018 and June 2018, respectively, is \$ 50,000.00, making the appraised value of the 25% interest at issue approximately \$ 12,500.00.

e. Ownership of the “Slayer Bank Account”:

At the time of Decedent’s death, there was a small amount of cash in a joint bank account and there were a number of vehicles, which were titled “or” (joint tenants with right of survivorship) and one titled “and” (tenants in common). Upon the sale of these items, 50% of the sales proceeds of the “or” vehicles and 50% of the cash from the joint bank account were placed into a bank account at South State Bank (Acct. # 8010000301072) pending resolution of the Lawsuit. The balance of this account, as of 5/20/19, was \$ 14,310.64. The current balance, including proceeds of the sale of the Edisto House, is \$225,314.56 (as of May 29, 2019).

J. If the Lawsuit were to result in a determination that Mr. Colucci “feloniously and intentionally” killed the Decedent, he would be treated as if he had predeceased the Decedent (S.C. Code Ann. § 62-2-803(a)), thereby losing all interest in the Trust, and the assets described in ¶ I(b)-(e) and any other real or personal property that may be subject to the Slayer’s Act would be deemed to be assets of the Estate of Doris Duane Colucci (to be distributed to the Trust, the Estate of Doris Duane Colucci’s sole devisee). Conversely, if the Lawsuit resulted in a determination that Mr. Colucci did not “feloniously and intentionally” kill the Decedent, he would be entitled to the assets and interests described in ¶ I(a)-(e) and any other real or personal property that may be subject to the Slayer’s Act.

K. The Parties have agreed to resolve the Lawsuit upon terms appearing fair and reasonable in light of all attending circumstances.

**NOW THEREFORE**, in consideration of the mutual agreements and undertakings set forth herein, the sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

1. In exchange for receiving/retaining ownership of the assets listed in ¶ I(b)-(e) and any other real or personal property that may be subject to the Slayer's Act claim except the Trust, and for Mr. Chandler's agreement to take those actions necessary to effectuate the intent of the settlement, Ivo Francesco Colucci, by and through his Conservator, Mrs. Yantis, agrees to disclaim any interest or right Ivo Francesco Colucci has to the Trust, including any limited power of appointment. Upon the execution of this Agreement, Mr. Colucci shall be treated in all respects as if he predeceased the Decedent for purposes of the Trust and its administration, thereby allowing the remainder Trust beneficiaries, including John Martin Antonio and Michael Frederick Antonio Colucci, to receive the benefits of the Trust according to its terms.

2. As a material term of this Agreement, Mrs. Yantis warrants that she has made a reasonable inquiry and is not aware of any prior exercise of the limited power of appointment by Ivo Francesco Colucci and agrees that, should such an exercise be discovered at a later date, it shall be deemed void.

3. In exchange for Ivo Francesco Colucci's disclaimer of any interest in the Trust, and the agreement by Mrs. Yantis, his Conservator, to take those actions necessary to effectuate the intent of this Agreement, including the execution of a Disclaimer of Trust Interest, the Estate of Doris Duane Colucci, by its Special Administrator, Andrew W. Chandler, Esquire, agrees to disclaim any interest or right the Estate may have to the assets listed in ¶ I(b)-(e) and any other

real or personal property that may be subject to the Slayer's Act claim except the Trust. Mr. Chandler agrees to promptly transfer all such assets to Ms. Yantis for Mr. Colucci's benefit.

4. Michael C. Fox, as Trustee of the Colucci Living Trust, agrees that, upon the full execution of this Agreement, he will administer the Trust as if Ivo Francesco Colucci predeceased the Decedent and will accept and honor any Disclaimer of Trust Interest executed by Christa M. Yantis, CPA, as Conservator for Ivo Francesco Colucci.

5. Except for the express obligations created by this Agreement, the Estate of Doris Duane Colucci by its duly-appointed Special Administrator, Andrew W. Chandler, Esquire, its heirs, statutory beneficiaries, and devisees, and specifically Michael Antonio Colucci and John Antonio, for and in consideration of the terms set forth herein, the receipt and sufficiency of which is hereby acknowledged, does for itself, its employees, agents, representatives, fiduciaries, attorneys, successors, purchasers, and assigns, hereby remise, release, acquit, and forever discharge Ivo Francesco Colucci, and all of his employees, agents, representatives, fiduciaries, attorneys, successors, purchasers, and assigns, whether herein named or referred to or not, and who together with Ivo Francesco Colucci may be liable to the Estate of Doris Duane Colucci, from any and all debts, claims, demands, liabilities, obligations, causes of actions and rights, whether known or unknown, which the Estate of Doris Duane Colucci asserted in the Lawsuit or which could have been asserted pursuant to, or arising out of the Slayer Act, S.C. Code Ann. § 62-2-803. This Agreement does not contemplate or include the settlement of any other matter between the Parties.

6. Except for the express obligations created by this Agreement, Ivo Francesco Colucci, by his duly-appointed Conservator, Christa M. Yantis, CPA, for and in consideration of the terms set forth herein, the receipt and sufficiency of which is hereby acknowledged, does for

himself, his employees, agents, representatives, fiduciaries, attorneys, successors, purchasers, and assigns, hereby remise, release, acquit, and forever discharge the Estate of Doris Duane Colucci, and all of its employees, agents, representatives, fiduciaries, attorneys, successors, purchasers, and assigns, whether herein named or referred to or not, and who together with the Estate of Doris Duane Colucci may be liable to Ivo Francesco Colucci, from any and all debts, claims, demands, liabilities, obligations, causes of actions and rights, whether known or unknown, which Ivo Francesco Colucci asserted in the Lawsuit or which could have been asserted pursuant to, or arising out of, the Slayer Act, S.C. Code Ann. § 62-2-803. This Agreement does not contemplate or include the settlement of any other matter between the Parties.

7. The Parties are unaware of any effect the compromise would have on any minors, on unknown parties, or on unlocated parties.

8. The Parties hereby acknowledge that this settlement is the compromise of a doubtful and disputed claim and is not to be construed as an admission of liability on the part of any party but is entered into to avoid further litigation.

9. For the consideration set forth above, the Estate of Doris Duane Colucci, by its Special Administrator, Andrew W. Chandler, Esquire, has also agreed to execute, or cause its counsel to execute, a stipulation, order, or other documents required to dismiss the Lawsuit with prejudice.

10. The Parties declare and represent that they have read this Agreement and acknowledge that they have had the opportunity to be represented by legal counsel of their choice concerning the rights with respect to the form and content of this Agreement and the advisability of executing this Agreement. The Parties further understand and acknowledge that they may discover facts different from, or in addition to, those facts that they now know or believe to be

true and agree that this Agreement shall be and remain effective in all respects notwithstanding any such subsequent discovery of different and/or additional facts. Each party acknowledges that it has undertaken its own independent investigation of all the facts relating to the matter set forth herein and in entering into this Agreement, the Parties are not relying on any representation, warranty or statement of the other party except as expressly set forth herein.

11. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements and understandings of the Parties. There are no warranties, representations, or other agreements between the Parties in connection with the subject matter hereof except as specifically set forth herein. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Parties to the Agreement. No waiver of any of the provisions of this Agreement shall be deemed nor shall constitute a waiver of any of the other provisions of this Agreement, whether or not similar, nor shall such waiver constitute a continuing waiver. The Parties to this Agreement may amend or modify this Agreement in any such manner that may be agreed upon by written instrument executed by the Parties to this Agreement. All Parties are executing this Agreement in reliance upon and based on the promises of the other party. Each party hereto is an express beneficiary of the performance and promises of the other party.

12. This Agreement shall be governed and interpreted pursuant to the laws of the State of South Carolina. If any paragraph or part of this Agreement is found void or unenforceable, the remainder of this Agreement shall not be affected.

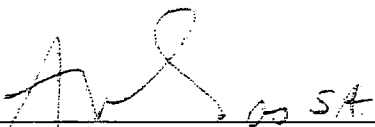
13. The Parties stipulate and agree that this Agreement satisfies all requirements of the South Carolina Rules of Civil Procedure and the laws of the State of South Carolina

necessary to constitute an enforceable settlement agreement. The Parties agree that if there is a breach of this Agreement the aggrieved party may file a motion with the Dorchester County Court of Common Pleas, State of South Carolina, and may immediately obtain an order of specific performance and/or injunction upon the court's determination that a prima facie showing of breach has been made, without the necessity of posting a bond. Such remedies shall be in addition to any other legal or equitable remedies that may apply. The prevailing party in any such proceeding shall be entitled to recover from the other party his attorneys' fees and costs.

14. The Parties believe that the effect of this compromise is just and reasonable and in the best interests each of them and those interested in each of them.

IN WITNESS WHEREOF, the undersigned have executed this document, agree to be bound by the same, and agree to take all actions necessary to effectuate the terms hereof, on the respective dates noted.

**ESTATE OF DORIS DUANE COLUCCI**

  
\_\_\_\_\_  
Andrew W. Chandler, Esquire, as  
Special Administrator of  
the Estate of Doris Duane Colucci

6/20/19  
\_\_\_\_\_  
Date

**IVO FRANCESCO COLUCCI**

\_\_\_\_\_  
Christa M. Yantis, as Conservator for  
Ivo Francesco Colucci

\_\_\_\_\_  
Date



IN WITNESS WHEREOF, the undersigned have executed this document, agree to be bound by the same, and agree to take all actions necessary to effectuate the terms hereof, on the respective dates noted.

**ESTATE OF DORIS DUANE COLUCCI**

\_\_\_\_\_  
Andrew W. Chandler, Esquire, as  
Special Administrator of the  
Estate of Doris Duane Colucci

\_\_\_\_\_  
Date

**IVO FRANCESCO COLUCCI**

*Christa M. Yantis as Conservator*  
*for Ivo Francesco Colucci*  
\_\_\_\_\_  
Christa M. Yantis, as Conservator for  
Ivo Francesco Colucci

*6/21/19*  
\_\_\_\_\_  
Date

**COLUCCI LIVING TRUST**

\_\_\_\_\_  
Michael C. Fox, as Trustee of the  
Colucci Living Trust, dated  
February 24, 2005, and any  
Amendments thereto

\_\_\_\_\_  
Date

**JOHN MARTIN ANTONIO**

\_\_\_\_\_  
John Martin Antonio

\_\_\_\_\_  
Date

**COLUCCI LIVING TRUST**

\_\_\_\_\_  
Michael C. Fox, as Trustee of the  
Colucci Living Trust, dated  
February 24, 2005, and any  
Amendments thereto

\_\_\_\_\_  
Date

**JOHN MARTIN ANTONIO**

John Antonio  
John Martin Antonio

7/1/07  
Date

**MICHAEL FREDERICK ANTONIO COLUCCI**

Michael F. Antonio Colucci  
Michael Frederick Antonio Colucci

7-15-19  
Date

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
First Judicial Circuit

Edgar W. Dickson, Circuit Court Judge

Case No. 2017-CP-18-1816

Michael C. Fox .....Appellant,

v.

Andrew W. Chandler, Esquire,  
in his capacity as Temporary Special  
Administrator of the Estate  
of Doris Duane Colucci,  
Michael C. Fox, in his capacity as Trustee of the  
Colucci Living Trust, Ivo Francesco  
Colucci, Michael Fredrick  
Antonio Colucci, John Martin Antonio,  
Henry Burkes, and Richard M. Hyman, Jr., Esquire .....Respondents.

NOTICE OF APPEAL

Appellant Michael C. Fox appeals the orders of the Honorable Edgar W. Dickson dated May 28, 2019. Appellant received written notice of the entry of the last order on May 28, 2019.

Dated: June 27, 2019

s/Gordon H. Garrett  
Gordon H. Garrett  
Garrett Law Offices, LLC  
1075-A E. Montague Ave.  
North Charleston, SC 29405  
843.554.5515 (phone)  
843.747.3198 (telefax)  
office@garrettlawsc.com  
Attorney for Appellant

Other counsel of record:

David K. Haller  
Haller Law Firm  
604 Savannah Highway  
Charleston, SC 29407  
(843) 224-7860  
Attorney for Christa M. Yantis, Conservator for Ivo F. Colucci

Elizabeth J. Palmer  
Rosen, Rosen & Hagood, LLC  
151 Meeting Street, Suite 400  
Charleston, SC 29401  
Attorney for Andrew Chandler

Angus Lawton  
Lawton Law Firm, LLC  
496 Bramson Court, Suite 100  
Mt. Pleasant, SC 29464  
Attorney for Michael A. Colucci and John M. Antonio

Adam Mlynarczyk  
Koontz Mlynarczyk, LLC  
1058 E. Montague Avenue  
North Charleston, SC 29405  
Attorney for Henry Burkes

M. Richardson Hyman, Jr.  
Law Firm of M. Richardson Hyman, Jr.  
P.O. Box 127  
Charleston, SC 29402

Gordon H. Garrett  
Garrett Law Offices, LLC  
1075-A E. Montague Ave.  
North Charleston, SC 29405  
Attorney for the Colucci Living Trust

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF DORCHESTER

APPLICATION FOR HEARING TO APPROVE DISTRIBUTION  
BY SPECIAL ADMINISTRATOR

IN THE MATTER OF THE ESTATE OF DORIS  
DUANE COLUCCI AKA DORIS D. COLUCCI

CASE NUMBER: 2017-ES-18-00294

(Decedent)

The undersigned states as follows:

I am the duly appointed Special Administrator for the Estate of Doris Duane Colucci a/k/a Doris D. Colucci (the "Estate").

The Estate has settled all outstanding litigation filed on behalf of the Estate and is ready to be closed, but for the remaining outstanding appeals to the South Carolina Court of Appeals filed by Mr. Fox. The Estate's remaining assets include a purse (and its contents) and liquid assets, which are held in Estate accounts at South State Bank.

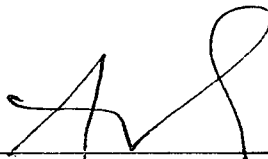
The Colucci Living Trust, dated February 24, 2005, is the sole devisee under the Will of Doris D. Colucci. The Special Administrator has previously distributed (i) on November 19, 2018, the deed of the Estate's interest in the real property located at 400 Murray Boulevard, Summerville, South Carolina, and other tangible personal property owned by the Decedent, to Michael C. Fox, Trustee of The Colucci Living Trust, and (ii) \$100,000 cash, paid pursuant to the January 15, 2019 Order of the Dorchester County Probate Court authorizing distribution from the Estate (which Order has been appealed by Mr. Fox to the Dorchester County Court of Common Pleas).

I request a Hearing be held to determine what amount may be distributed from the Estate to Michael C. Fox, Trustee of The Colucci Living Trust, dated February 24, 2005, and any amendments or restatements thereto, as determined by the Court (as devisee under the Will of Doris D. Colucci).

Executed this 23<sup>rd</sup> day of September, 2019.

Special  
Administrator

Signature:



Name:

Andrew W. Chandler, as Special Administrator

Address:

Evans, Carter, Kunes & Bennett, P.A.

115 Church Street

Charleston, SC 29401

Telephone (Work):

(843) 577-2300

Email:

chandler@eckb.com

SWORN to before me this 23<sup>rd</sup> day of  
September, 2019.

Notary Public for South Carolina

My commission expires: 6-10-2025

---

**ORDER FOR HEARING**

IT IS ORDERED that a hearing on this matter be set for:

DATE: \_\_\_\_\_

TIME: \_\_\_\_\_

PLACE: \_\_\_\_\_

Executed this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Mary Q. Blunt, Dorchester County Probate Judge

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF: DORCHESTER

**PROOF OF DELIVERY**

IN THE MATTER OF:  
DORIS DUANE COLUCCI  
(Decedent)

CASE NUMBER: 2017 ES 18 00294

On the 24<sup>th</sup> day of September 2019, I mailed the *Application for Hearing to Approve Distribution by Special Administrator dated September 23, 2019*.

- ☐ A copy of which is attached hereto and incorporated herein, or  
☒ The original of which is on file with the Court.

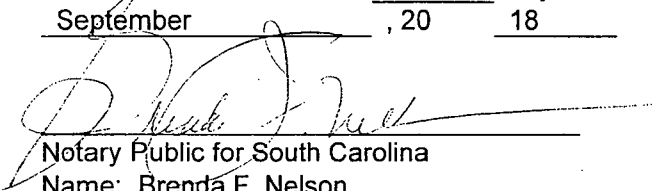
Delivery was accomplished by the following method (check appropriate box):

- ☐ personal delivery                      ☒ ordinary first-class mail  
☐ certified mail                          ☐ registered mail  
☐ commercial delivery                  ☐ electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

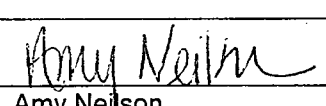
| NAME                                                                                                                                                                                                                                     | ADDRESS                                                 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| Gordon H. Garrett, Esq., Attorney for Michael C. Fox, Trustee of The Colucci Living Trust, dated February 24, 2005 and any amendments or restatements thereto as determined by the Court (as devisee under the Will of Doris D. Colucci) | 1075 East Montague Avenue<br>North Charleston, SC 29405 |
|                                                                                                                                                                                                                                          |                                                         |
|                                                                                                                                                                                                                                          |                                                         |
|                                                                                                                                                                                                                                          |                                                         |

SWORN to before me this 24<sup>th</sup> day of  
September, 2018

  
Notary Public for South Carolina

Name: Brenda F. Nelson

My Commission Expires: 11/05/2025

Signature:   
Name: Amy Nelson  
Address: Evans, Carter, Kunes & Bennett, P.A.  
115 Church Street  
Charleston, SC 29401  
Telephone: (843) 577-2300  
E-mail: amy@eckb.com  
Relationship to Estate: Paralegal to Andrew W. Chandler, Esq.

EVANS, CARTER, KUNES & BENNETT, P. A.  
ATTORNEYS AT LAW  
115 CHURCH STREET  
CHARLESTON, SOUTH CAROLINA 29401

T. HEYWARD CARTER, JR.  
ROBERT M. KUNES†  
EDWARD G. R. BENNETT\*\*  
ANDREW W. CHANDLER\*†  
M. JEAN LEE  
F. PATRICIA SCARBOROUGH\*\*††  
DAVID H. KUNES\*\*†  
JOURDAN T. PAGE

MAILING ADDRESS:  
P. O. BOX 369  
CHARLESTON, SC 29402-0369  
TELEPHONE (843) 577-2300  
TELECOPIER (843) 577-2055  
WWW.ECKB.COM

September 24, 2019

†CERTIFIED SPECIALIST IN ESTATE PLANNING AND PROBATE LAW  
\*\*LICENSED IN SC AND NY  
\*LICENSED IN SC AND GA  
\*\*LICENSED IN SC, NC, AND NY  
††CERTIFIED SPECIALIST IN TAXATION LAW

Ms. Morgan W. Lawley  
Dorchester County Probate Court  
5200 East Jim Bilton Blvd.  
St. George, SC 29477

RE: *The Estate of Doris Duane Colucci*  
Case No. 2017 ES 18 00294

Dear Ms. Lawley:

Enclosed for filing is an original and one copy of the *Application for Hearing to Approve Distribution by Special Administrator and Proof of Delivery*.

Once filed, please return the filed-stamped copies in the self-addressed envelope provided.

With kind regards, I am

Sincerely,



Amy Neilson  
Paralegal to Andrew W. Chandler, Esq.

/aln  
Enclosures  
cc: Mr. Gordon H. Garrett



STATE OF SOUTH CAROLINA PROBATE JUDGE IN THE PROBATE COURT  
DORCHESTER COUNTY

COUNTY OF DORCHESTER 2020 JAN 24 PM 12:52 CASE NO.: 2017-ES-18-00294

IN RE: THE ESTATE OF DORIS )  
DUANE COLUCCI, A.K.A. DORIS )  
D. COLUCCI, )

**MOTION FOR DISCLOSURE OF  
ALL EX PARTE COMMUNICATIONS  
AND FOR RECUSAL AND/OR  
DISQUALIFICATION OF THE  
HONORABLE MARY BLUNT AND  
ALL AFFILIATED PERSONS**

**TO THE HONORABLE MARY BLUNT, PROBATE JUDGE FOR DORCHESTER  
COUNTY:**

John Antonio hereby moves by and through his undersigned attorney and Guardian Ad Litem, for an Order (1) which provides for recusal and disqualification of Judge Mary Blunt and all affiliated persons in this matter; and (2) requiring full and complete disclosure of all ex parte communications which have taken place in this matter.

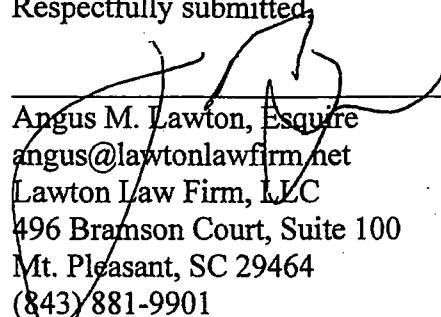
This motion is based on: the violations of the South Carolina Code of Judicial Conduct; the unreasonable and unnecessary delay the Court has caused in granting Mr. Antonio access to his funds; the ex parte communications which have taken place in this matter; the failure to disclose those ex parte communications to all interested persons; the apparent prejudice shown towards John Antonio; and the appearance of impropriety in the way that this matter has been handled. The motion is also based on lack of due process in the way that the matter has been handled in violation of the South Carolina and U.S. Constitutions.

This Motion will be supported by the record in this matter, and a memorandum of law which will be presented and filed with the court, with all related attachments.

By the signature below, the undersigned attorney hereby confirms that consultation with opposing counsel, the Court, or other parties in this matter would not serve any useful purpose,

given the Court's lack of response to counsel's previous requests for a hearing and for disclosures of ex parte communications.

Respectfully submitted,



Angus M. Lawton, Esquire  
angus@lawtonlawfirm.net  
Lawton Law Firm, LLC  
496 Bramson Court, Suite 100  
Mt. Pleasant, SC 29464  
(843) 881-9901

Mt. Pleasant, SC

Dated: 1-27-20

Attorney for John Antonio

PROBATE JUDGE  
IN THE PROBATE COURT

2020 JAN 24 PM 12:52 CASE NO.: 2017-ES-18-00294

**MEMORANDUM IN SUPPORT OF  
MOTION FOR DISCLOSURE OF  
ALL EX PARTE COMMUNICATIONS  
AND FOR RECUSAL AND/OR  
DISQUALIFICATION OF THE  
HONORABLE MARY BLUNT AND  
ALL AFFILIATED PERSONS**

John Antonio hereby submits the following memorandum of law in support of his motion for an Order (1) recusing and disqualifying Judge Mary Blunt and all affiliated persons in this matter; and (2) requiring full and complete disclosure of all ex parte communications which have taken place in this matter.

This matter originated out of the Estate of Doris Colucci, a probate matter that was initiated soon after Doris Colucci was killed by her husband Ivo Colucci on April 14, 2017.

557

his person or property". The persons "affiliated with John Antonio" have never been disclosed to Mr. Antonio or his attorney.

Thereafter, Mr. Antonio was directed to see Dr. William Mulbry, Jr., a psychiatrist, for an evaluation. Dr. Mulbry performed the evaluation on Mr. Antonio, and he prepared a report for the court. (A copy of Dr. Mulbry's report, dated June 23, 2017 is attached hereto.)

In addition to the matter involving John Antonio, Doris Colucci's death spawned several lawsuits among the various members of the Colucci family, including a wrongful death case against Ivo Colucci ("the wrongful death case"). That case was originally filed on October 19, 2017 by attorneys Elizabeth Palmer, Andrew Gowdown, and Brew Hagood with the Rosen Hagood Firm. Judge Blunt had selected the Rosen Hagood firm to handle Doris' wrongful death case, despite the fact that the law firm had no relationship with Doris Colucci or the beneficiaries in the case.

There were only two (2) statutory beneficiaries that would receive any proceeds from the wrongful death case, namely John Antonio and Michael Colucci, the only natural children of Doris Colucci. After two years of litigation, the wrongful death lawsuit was settled, and the settlement was approved by an Order of the Charleston County Circuit Court on July 2, 2019. Soon after the settlement was approved, Michael Colucci received his proceeds from the wrongful death case.

Despite the fact that his mother's wrongful death case was resolved over six months ago, John Antonio has not received any funds from that case. For those six months, Mr. Antonio's funds have been sitting in the trust account of the Rosen Firm, and Mr. Antonio has not been able to access those funds for any purpose, including his living expenses. During that six month period, Mr. Antonio's attorney and GAL have made significant efforts to allow Mr. Antonio to access his funds, including (1) meeting with Judge Blunt to discuss Mr. Antonio's receipt of the funds; (2)

sending multiple emails to Judge Blunt requesting that Mr. Antonio's funds be disbursed (copies of emails are attached); (3) meeting with a financial planner selected by Judge Blunt to discuss the handling of Mr. Antonio's funds; (4) writing letters to Judge Blunt regarding Mr. Antonio's capacity (letters from GAL to Judge Blunt attached); and (5) filing a Motion seeking authorization to disburse the funds. None of those efforts have been successful.

On November 4, 2019, Judge Blunt sent Mr. Antonio's counsel a letter requesting information about Mr. Antonio. That letter was also signed by John Freeman, an ethics professor from the University of South Carolina School of Law. (A copy of Judge Blunt's letter is attached.) In that letter, Judge Blunt states:

"Concerns were brought to the court and to court appointed fiduciaries about the capacity of John Antonio to manage and receive assets either through the estate or through settlement proceeds. (Page 1, paragraph 2);

"In 2010, . . . , Dan M. David (an attorney previously involved in the case) received a public reprimand . . ." (Footnote 4, page 2);

"There is a risk that Michael Colucci may attempt to gain access to John Antonio's funds." (Page 5, paragraph 2).

Mr. Antonio's counsel is not aware of anything in the record to support these statements from the Court.

Given the questions raised by Judge Blunt's letter, Mr. Antonio's counsel sent an email to Ms. Palmer at the Rosen Hagood Firm, seeking disclosure of any ex parte communications with the court relating to John Antonio. (Copy of email attached.) Ms. Palmer did not provide any response to this request, and no disclosures of any ex parte communications were provided.

On November 6, 2019, Mr. Antonio's counsel also sent a letter to Ms. Palmer at the Rosen Firm, again asking for disclosures of any ex parte communications with the Dorchester Probate Court. (A copy of that letter attached.) Ms. Palmer provided no response to this second request

for disclosures of ex parte communications, and no disclosures were provided of any ex parte communications with the court. In fact, Ms. Palmer has never responded in any way to either the email or the letter requesting disclosures of all ex parte communications.

On November 14, 2019, Mr. Antonio's counsel sent a letter to Judge Blunt and Professor Freeman, responding to their request for information. (A copy of this letter was also sent to the attorneys at the Rosen Firm that handled the wrongful death case, and a copy of Mr. Lawton's letter is attached.) Counsel's letter addressed all of the issues raised by the Court, and it also requested that the Court disclose all information regarding any ex parte communications that had taken place in this matter. Despite this third request for disclosures of ex parte communications, neither Judge Blunt, nor any members of the Rosen firm, have provided any disclosures of any ex parte communications.

There have been proceedings related to the instant matter where ex parte communications have been apparent. On January 9, 2019, there was a hearing on a motion filed by Beth Palmer on behalf of Andrew Chandler, the special administrator of Doris Colucci's estate. In that motion, Mr. Chandler and/or Ms. Palmer sought sanctions against Michael Fox, the trustee of the Colucci Living Trust, and his attorney. In Andrew Chandler's testimony relating to the hearing, he testified that he had a phone conference with Judge Blunt the day before the hearing. After the hearing, Judge Blunt sanctioned Mr. Fox, finding that Andrew Chandler's Motion for Sanctions should be granted in its entirety. (See page 27 of the transcript from the hearing on January 9, 2019. Copies of the pertinent pages of the transcript are attached, along with Judge Blunt's later email.) That Order granting sanctions against Mr. Fox is currently on appeal.

It is important to note that Mr. Fox, as trustee of Colucci Living Trust, has also requested disclosure of any ex parte communications that have taken place in this matter, and no disclosures

have been provided to Mr. Fox either. On October 4, 2019, Mr. Fox's attorney served Beth Palmer with Interrogatories and Requests for Production, seeking disclosure of any ex parte communications that have taken place in this matter. Those Interrogatories also sought disclosure of any legal authorities that would allow such communications to take place. Rather than respond to the questions presented, and rather than disclosing any ex parte communications, Ms. Palmer filed a Motion for a Protective Order, requesting that no such discovery should take place. That Motion is still pending.

At this point, the trustee of the Colucci Living Trust and two of the beneficiaries of that trust have asked for disclosures of any ex parte communications. Despite repeated requests by different parties for that information, not a single disclosure has been provided, either by the attorneys involved or the Court. Accordingly, Mr. Antonio has filed this motion seeking full disclosures of any ex parte communications, and recusal/disqualification of all court personnel that have taken part in any such prohibited communications.

Please also note that Mr. Antonio wants to see that his mother's estate is properly handled, in a process that is free of bias, prejudice or the appearance of impropriety. He also wants to make sure that due process is provided to all interested parties.

### **LEGAL AUTHORITY**

#### **1. EX PARTE COMMUNICATIONS ARE EXPRESSLY PROHIBITED BY THE SOUTH CAROLINA CODE OF JUDICIAL CONDUCT.**

Canon 3 of the S.C. Code of Judicial Conduct provides that a judge shall not initiate, permit or consider ex parte communications, or consider other communications made to the judge outside of the presence of the parties concerning a pending matter. (Note: there are limited exceptions to the rule, none of which apply here.)

As previously noted, Judge Blunt's letter of November 4, 2019 and her Order relating to John Antonio dated May 23, 2017 confirm that Judge Blunt has gained access to information that is not in the record and in communications that took place without Mr. Antonio or his attorney being present. Further, the transcript from the hearing on January 9<sup>th</sup>, 2019 confirms that there have been ex parte communications between Mr. Chandler and the Court relating to this matter. Any such communications are a clear violation of Canon 3 of the S.C. Code of Judicial Conduct.

**2. THE COURT IS REQUIRED BY THE SOUTH CAROLINA CODE OF JUDICIAL CONDUCT TO DISCLOSE ALL EX PARTE COMMUNICATIONS; NO SUCH DISCLOSURES HAVE BEEN PROVIDED IN THIS CASE.**

In the comments to Canon 3 of the S.C. Code of Judicial Conduct, it states "A judge must disclose to all parties all ex parte communications . . . regarding a proceeding pending or impending before the judge." (Emphasis added.) In this case, as outlined above, multiple requests have been made for disclosures of any ex parte contacts to the attorneys, and at least one request has been made to the court for such disclosures. No disclosures have been made despite the express requirement that all such communications must be provided to all counsel of record.

Based on the requirements of the South Carolina Code of Judicial Conduct, Mr. Antonio and his counsel are requesting that all information be disclosed, including but not limited to (a) all emails exchanged between any parties/attorneys and the court; (b) all bills relating to attorney's fees or fees charged by the Special Administrator which contain entries for communications with the court; (c) the opportunity to interview and depose if necessary the attorneys and parties that have engaged in such communications (to make sure that all verbal communications are disclosed); and (d) a disclosure of any legal authorities which allow any such communications. In the absence of such disclosures, the parties cannot be assured that due process has been followed in this matter.



**3. A JUDGE MAY NOT INDEPENDENTLY INVESTIGATE FACTS IN A CASE AND MUST CONSIDER ONLY THE EVIDENCE PRESENTED.**

Canon 3. Section 5 of the South Carolina Code of Judicial Conduct provides that a judge shall perform judicial duties without bias or prejudice, and the comments to the rule state: “a judge must not independently investigate facts in a case and must consider only the evidence presented.” (Emphasis added.) These rules have been violated.

As set out above, Judge Blunt and Professor Freeman have signed off on a letter that contains information that is not contained anywhere in the record in this case. Undersigned counsel has pointed this out to Judge Blunt and Professor Freeman, and the Court has not disclosed the source of the information in question.

**4. UNDER SOUTH CAROLINA LAW, A JUDGE MUST RECUSE HIM OR HERSELF IN A MATTER WHERE THE JUDGE’S IMPARTIALITY MIGHT REASONABLY BE QUESTIONED.**

Canon 3, Section E of the South Carolina Code of Judicial Conduct provides that “a judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding.” Furthermore, according to South Carolina case law, a judge’s impartiality can be reasonably questioned when his factual findings are not supported by the record. Ellis v. Proctor and Gamble, 315 S.C. 283, 433 S.E.2d 856 (S.Ct. 1993).

The following statements in the letter signed by Judge Blunt on November 4, 2019 show that Judge Blunt has already decided the issue of whether John Antonio needs a conservator:

“It is unclear what this finding means (referencing Dr. Mulbry’s statements in his letter); however the finding that John Antonio needs at least a limited

conservatorship is clear from the overall reading of the thirteen page report” (footnote 7, page 3);

“Professor Freeman accordingly recommends that a formal conservatorship action be initiated in accordance with Dr. Mulbry’s report. He recommends that the court shall issue an order directing the appropriate party to bring the conservatorship proceeding. If the appropriate party declines to do so, the court should initiate such an action sua sponte.” (Page 4)

Judge Blunt has made these decisions (1) without regard for the evidence in the record; (2) without regard to the applicable South Carolina statutes relating to incapacitated persons and the probate code; (3) without considering information from the GAL that Judge Blunt appointed; and (4) without considering any information to be presented at a hearing. It also appears that her decision is at least partly based on information gained outside of the record and through ex parte communications, which have not been disclosed.

### CONCLUSION

During the proceedings in this matter, Judge Blunt has consulted with John Freeman, a former ethics professor at the University of South Carolina School of Law. Professor Freeman has written an article which deals with the issues set forth herein, and it provides some guidance on the matters at hand. See John P. Freeman, *Appearance of Impropriety, Recusal, and the Segars-Andrews Case*, 62 S. C. L. Rev. 485 (2011). In his article, Professor Freeman writes:

At the center of the judicial role is the requirement that judges be fair to each side and partial to neither. Thus, judges called on to decide recusal motions must above all be sure that they conduct their decision making in accordance with the command of Canon 2A-namely, “in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” This means that judges faced with possible grounds for recusal need to confront and resolve the issue directly. This also means that judges need to make full and timely disclosure of all material facts on the record and that parties must be encouraged to review the facts carefully before advising the court of their positions. Freeman, page 512.

His article also states:

(R)ulings issued in cases where the existence of an appearance of impropriety is alleged against a judge need to confront that issue, rule on it, and provide reasons supporting the ruling. Rulings that dance around the issue, or avoid it entirely, resolve nothing and are counterproductive in that they enhance the complaining party's suspicion that, in the vernacular, "The fix is in." Freeman, page 505.

In this case, there have been no disclosures of the ex parte communications, despite the requirements of the South Carolina Code of Judicial Conduct, and direct requests made by multiple parties for disclosures. Rather than confronting the issue by making full and timely disclosures as suggested by Professor Freeman, Judge Blunt has avoided the issue, by failing to respond to a written request for disclosures of all ex parte communications.

For all of the aforementioned reasons, John Antonio hereby seeks an Order which (1) requires the Court and all other parties to disclose all ex parte communications that have taken place in this matter; (2) allows Mr. Antonio's counsel to interview and question under oath if necessary the attorneys and parties that have participated in any such communications; (3) allows Mr. Antonio's counsel to obtain all documents, emails, bills, and/or other documents that relate to ex parte communications; and (4) disqualifies and/or finds that Judge Blunt and all affiliated persons must be disqualified and/or recused in this matter.



Angus M. Lawton, Esquire  
angus@lawtonlawfirm.net  
Lawton Law Firm, LLC  
496 Bramson Court, Suite 100  
Mt. Pleasant, SC 29464  
(843) 881-9901

Mt. Pleasant, SC  
Dated: 1-24-20

Attorney for John Antonio

STATE OF SOUTH CAROLINA

COUNTY OF: DORCHESTER

IN THE MATTER OF:  
DORIS DUANE COLUCCI  
(Decedent)

PROBATE JUDGE  
DORCHESTER COUNTY  
2020 JAN 24 PM 12:53

IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2017-ES-18-00294

On the 24th day of January, 2020, I mailed or delivered the following document(s):

Motion for Disclosure of All Ex Parte Communications and for Recusal and/or Disqualification of the Honorable Mary Blunt and Affiliated Persons and Memorandum in Support of Motion for Disclosure of All Ex Parte Communications and for Recusal and/or Disqualification of the Honorable May Blunt and Affiliated Persons

- ☒ A copy of which is attached hereto and incorporated herein, or  
☐ The original of which is on file with the Court.

Delivery was accomplished by the following method (check appropriate box):

- ☒ personal delivery      ☒ ordinary first-class mail  
☐ certified mail      ☐ registered mail  
☐ commercial delivery      ☐ electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

| NAME                      | ADDRESS                                         |
|---------------------------|-------------------------------------------------|
| ELIZABETH J. PALMER, ESQ. | 151 MEETING STREET, #400, CHARLESTON, SC 29401  |
| GLENN CHURCHILL, ESQ.     | 115 RIVER LANDING DR #102, CHARLESTON, SC 29492 |
|                           |                                                 |
|                           |                                                 |
|                           |                                                 |
|                           |                                                 |
|                           |                                                 |

SWORN to before me this 24TH day of  
JANUARY, 2020

Notary Public for South Carolina  
My Commission Expires: 1-24-20

Relationship to  
Decedent/Estate:

Signature: [Signature]  
Print Name: MELISSA ALTMAN, PARALEGAL  
Address: 496 BRAMSON COURT, SUITE 100  
MOUNT PLEASANT, SC 29464  
Telephone (Work): 843-881-9901  
(Home):    
(Cell):    
E-mail: RECEPTION@LAWTONLAWFIRM.NET  
PARALEGAL FOR ANGUS LAWTON,  
ATTORNEY FOR JOHN ANTONIO

PROBATE JUDGE  
DORCHESTER COUNTY

2020 JAN 24 PM 12: 53

PROBATE JUDGE  
DORCHESTER COUNTY  
STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER  
IN THE PROBATE COURT  
CASE NO. 2017-GC-18-00004  
2017 APR 20 PM 1: 01

IN THE MATTER OF:  
IVO FRANCESCO COLUCCI

ORDER  
(Emergency Ex Parte)

PROBATE JUDGE  
DORCHESTER COUNTY  
Mary Q. Blunt

Based on the Motion to Secure Assets filed by John Sinclair, III, the Court-appointed attorney for Ivo Francesco Colucci (Mr. Colucci), the Court finds that it is in the best interest of Mr. Colucci that his assets be secured. Mr. Colucci has a considerable financial estate, including multiple homes, properties, and business interests, all of which have assets capable of conversion. Mr. Colucci is not in a position to secure or protect his assets or the assets of his business entities.

In order to ensure that Mr. Colucci's financial estate is properly secured and protected, access to Mr. Colucci's said properties and business interests shall be limited to only those persons duly authorized to enter upon said properties by the Court-appointed Emergency Temporary Conservator, Christa Yantis, CPA (Ms. Yantis). Further, Ms. Yantis shall have the exclusive authority to dictate the manner and parameters of said access, and no other person shall be allowed to remove, alter, sell, convert, or dispose of Mr. Colucci's assets without Mr. Yantis's express permission.

IT IS SO ORDERED!

April 20, 2017  
St. George, South Carolina

Mary Q. Blunt  
Hon. Mary Q. Blunt  
Probate Judge  
Dorchester County Probate Court



**DORCHESTER COUNTY PROBATE COURT**

5200 EAST JIM BILTON BLVD.  
ST. GEORGE, SC 29477

[www.dorchestercounty.net](http://www.dorchestercounty.net)

PROBATE JUDGE  
DORCHESTER COUNTY  
2020 JAN 24 PM 12:53

**MARY BLUNT**  
*Probate Judge*

**RUSSELL A. DEMOTT**  
*Associate Judge*

**MOLLY D. EDWARDS**  
*Associate Judge*

May 11, 2017

Lester S. Schwartz, Esquire  
Post Office Box 30356  
Charleston, SC 29417

Re: In the Estate of: DORIS DUANE COLUCCI  
Case Number: 2017ES1800294

Dear Counsel:

In staffing on this file, it has come to the Court's attention that John Martin Antonio, son of the deceased, is, to some extent, a special needs individual. We are asking for some clarity on the extent of Mr. Antonio's special needs, since he has executed documents submitted to the Court and may have need to again in the future. The Court wants to ensure that no fiduciary accommodations are required on his behalf to move forward.

We await your prompt compliance with this request, and we invite you to call if you have any questions. You may contact me directly at (843) 832-0282.

Sincerely,

Devan Kociuruba  
Estate Clerk

05/12/2017 11:17 LESTER

PROBATE JUDGE  
(FAX) 843-571-0881 COUNTY P.002/003

2020 JAN 24 PM 12:53

**LESTER S. SCHWARTZ**  
ATTORNEY AT LAW

708 SAINT ANDREWS BOULEVARD  
POST OFFICE BOX 30356  
CHARLESTON, SOUTH CAROLINA 29417-0356

LL.M. IN TAXATION

CERTIFIED SPECIALIST:  
TAXATION LAW, ESTATE PLANNING  
& PROBATE LAW

Lester.Schwartz@actaxlawyer.com  
[www.actaxlawyer.com](http://www.actaxlawyer.com)

TELEPHONE  
(843) 571-7919

FACSIMILE  
(843) 571-0881

May 12, 2017

Dorchester County Probate Court  
Attention: Ms. Devan Kociuruba, Estate Clerk  
5200 East Jim Bilton Boulevard  
St. George, S.C. 29477

RE: John Martin Antonio ("John")  
In Matter of: Estate of Doris Duane Colucci  
Dorchester County Probate Court Case No.: 2017-ES18-00294

Dear Devan:

I am in receipt of your letter dated May 11, 2017, inquiring about John. I have met with John several times and have been in communication with him since his Mother's death on April 14, 2017. John is autistic, but is certainly not mentally impaired or mentally incompetent.

I am aware that persons with autism can range from the low spectrum to the high spectrum. A person at the low spectrum would be an individual with low intelligence and poor communication skills and possibly no ability to speak. Such an individual at the low spectrum with low intelligence and deficient communication skills would likely require a Court appointed Guardian or Conservator, unless that individual had the requisite "contractual capacity" to execute a power of attorney appointing an agent.

John is not a person on the low spectrum. John is an adult with high functioning autism, who at the very least has normal intelligence, if not high intelligence. John also has normal communication and verbal skills. Had I not been informed prior to my first meeting with John that he had autism, I would not have realized it.

John graduated from Summerville High School in 1982. I am informed that John received a certificate of perfect attendance from first (1<sup>st</sup>) through twelfth (12<sup>th</sup>) grade. John attended trade school after high school, and has been employed for many years. John is literate, has a valid driver's license, and owns and drives his own truck. But for the high functioning autism, John seems normal to me in all other respects in intelligence, awareness, understanding, opinions, and communication skills.

*only fax received  
no hard copy of letter  
was received  
- Court -  
- Summerville -  
- 5/12/17*

Letter to Ms. Kociuruba  
Friday, May 12, 2017  
Page 2

LESTER S. SCHWARTZ ATTORNEY AT LAW

I would also state that, from my observation, John has handled the horrific event of his Mother's death and the lack of civility among certain family members normally and with wisdom, respect, and understanding.

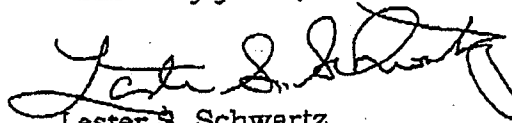
With respect to John's legal capacity to execute legal documents, John has the requisite "contractual capacity" to execute a power of attorney, as the Principal, as well as the much lower requisite "testamentary capacity" to execute a Last Will And Testament, as the Testator.

In my opinion, John does not require fiduciary accommodations for this matter to move forward.

Please inform me if you require any additional information from me concerning your inquiry.

With kind regards, I am

Sincerely yours,



Lester S. Schwartz

By Fax: (843) 832-0222 &  
By E-mail: dkociuruba@dorchestercounty.net  
LSS/lis



PROBATE JUDGE  
DORCHESTER COUNTY

2020 JAN 24 PM 12:53

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

IN THE PROBATE COURT  
CASE NO. 2017-ES-18-00294

IN THE ESTATE OF:  
DORIS DUANE COLUCCI

ORDER APPOINTING A  
DESIGNATED EXAMINER AND  
TEMPORARY GUARDIAN *AD LITEM*  
(Sua Sponte)

PROBATE JUDGE  
DORCHESTER COUNTY  
2017 MAR 23 PM 3:06

This matter came before the Court on its own motion to appoint a Designated Examiner for John Martin Antonio, who is the son and heir of the Decedent, Doris Duane Collucci. The Court has been informed by persons associated with John Martin Antonio, as well as attorneys and fiduciaries associated with this case, that he may have special needs to the extent that he lacks sufficient understanding or capacity to make responsible decisions regarding his person or property.

Recently, John Martin Antonio signed the following legal documents: (i) a Renunciation of Right to Administration and/or Nomination and/or Waiver of Bond (Renunciation) and (ii) a Specific Limited Durable Power of Attorney dated May 17, 2017 (DPOA). These documents have been filed with the Court.

Based on the concerns raised by persons familiar with John Martin Antonio and the Court's duty to insure that adequate representation is provided for a person alleged to be incapacitated, the Court finds it is necessary to appoint a Designated Examiner to evaluate John Martin Antonio and a Temporary Guardian *ad litem* to protect his interest in this matter.

**THEREFORE, it is ORDERED, ADJUDGED, and DECREED** that to better understand John Martin Antonio's capacity and to ensure that his interests as well as assets are protected, the Court hereby appoints L. William Mulbry, M.D. (Dr. Mulbry) as a Designated Examiner for John Martin Antonio. Dr. Mulbry shall be compensated from the assets of the Estate of Doris Duane Colucci. Dr. Mulbry is required to submit an Affidavit of Fees and Costs

WMB  
5/23/17

to the Court at the time of invoicing. The Court will issue an Order Approving Costs and Fees in the amount determined by the Court.

**AND IT IS FURTHER ORDERED** that in this role, Dr. Mulbry shall meet with John Martin Antonio and conduct a sufficient investigation to make a recommendation to this Court regarding (i) John Martin Antonio's capacities, (ii) if a need exists for a Guardian and/or Conservator for John Martin Antonio, (iii) any limitations that should be placed on a Guardian and/or Conservator if appointed, and (iv) if John Martin Antonio has capacity to sign and understand legal documents, including the previously filed Renunciation and DPOA.

**AND IT IS FURTHER ORDERED** that Dr. Mulbry shall make his recommendations in a report and file it with the Court within two weeks, or after further extension granted by this Court as requested by Dr. Mulbry.

**AND IT IS FURTHER ORDERED** that pending the recommendation of Dr. Mulbry, the Court appoints Glenn P. Churchill, Esquire (Mr. Churchill) as Temporary Guardian *ad litem* and attorney for John Martin Antonio. The Court may modify this to a full appointment upon the recommendation of Dr. Mulbry. Mr. Churchill shall be compensated at a rate of \$200.00/hour from the assets of the Estate of Doris Duane Colucci. Mr. Churchill is required to submit an Affidavit of Fees and Costs to the Court at the time of invoicing. The Court will issue an Order Approving Costs and Fees in the amount determined by the Court.

**AND IT IS FURTHER ORDERED** that Dr. Mulbry and Mr. Churchill shall have access to all reports, records, and information relevant to John Martin Antonio in order to ascertain the facts. Dr. Mulbry and Mr. Churchill are authorized to have access to records prepared or related to any medical and psychological treatment of John Martin Antonio and to discuss John Martin Antonio's medical and psychological treatment with any medical or health

care professional who has provided professional services to the alleged incapacitated person. This access is authorized by this Order, as provided by 45 CFR 164.512(e)(1)(i), the Health Insurance Portability and Accountability Act (HIPPA), which authorizes covered entities to disclose protected health information in the course of any judicial or administrative proceeding when responding to an Order of the Court.

**AND IT IS FURTHER ORDERED** that to facilitate reasonable investigation of information pertaining to John Martin Antonio, Dr. Mulbry and Mr. Churchill shall have access to John Martin Antonio and to all records and information, including authorization to speak with interested persons; including but not limited to the following sources: the legal guardian, law enforcement agencies, health care providers, mental health care providers, residential care providers; other care providers, the Department of Social Services (if applicable), the Department of Mental Health (if applicable), the Department of Health and Human Services (if applicable), schools, school officials, vocational rehabilitation centers (if applicable), and any financial institution in which it is believed that there are funds on deposit belonging to the alleged incapacitated person (if applicable).

**AND IT IS FURTHER ORDERED** that Dr. Mulbry and Mr. Churchill are also entitled to receive copies of any existing Will, Power of Attorney, Health Care Power of Attorney and/or Living Will executed by John Martin Antonio.

IT IS SO ORDERED!

May 23, 2017  
St. George, South Carolina

Mary Blunt  
Hon. Mary Q. Blunt  
Probate Judge  
Dorchester County Probate Court

IN THE PROBATE COURT

## DEMAND FOR NOTICE IN AN ESTATE

2017 NOV -1 CASE NUMBER: 2017-ES-18-00294

CHERYL GARRA.  
CLERK OF COURT  
DORCHESTER COUNTY

2017-CP-18-

**Decedent's Last Mailing Address:** 400 MURRAY BOULEVARD, SUMMERVILLE, SC 29483

I demand receipt of a copy of the following item(s) pertaining to the above estate. By filing this "Demand for Notice," I understand that it is the responsibility of the Personal Representative to provide me with a copy of all documents he/she files in this estate. **I understand this Demand shall expire one year from date of filing.**

[illegible]

Application for informal probate and/or informal appointment  
Petition for formal probate and/or formal appointment  
Information to Heirs and Devisees  
Proof of Publication of Notice to Creditors  
Inventory and Appraisement (including Supplementary, Amended or Corrected)  
Application for Settlement  
Accounting (Interim or Final)  
Proposal for Distribution  
Notice of Right to Demand Hearing  
Any petition and corresponding order  
Any hearings, Right to Appear, or Notice of Appearance  
Other (specify): ANY AND ALL DETAILS OF THE ESTATE

Executed this 19 day of OCTOBER, 2017.

**Signature:**

Print Name: MICHAEL COLUCCI

**Address:**

**Telephone (Work):**

(Home):

(Cell):

**Email:**

**Relationship to Decedent/Estate:** SON OF DORIS DUANE COLUCCI

Attorney: **ANGUS M. LAWTON**

**Address:** 496 BRAMSON COURT, SUITE 100

MT. PLEASANT, SC 29464

**Telephone:** (843)881-9901

Email: [angus@lawtonlawfirm.net](mailto:angus@lawtonlawfirm.net)

**\*A Demand for Notice requires a \$5.00 filing fee.**

**STATE OF SOUTH CAROLINA**

ISSUED BY THE PROBATE COURT IN THE COUNTY OF CHARLESTON

PROBATE JUDGE  
DORCHESTER COUNTY  
2020 JAN 24 PM 12:54

**IN RE: THE ESTATE OF DORIS DUANE  
COLUCCI AKA DORIS D. COLUCCI**

**SUBPOENA IN A CIVIL CASE**

Case Number: 2017-ES-18-00294

Pending in Dorchester County

**TO: FOX-CORDAY CO., ATTN: MICHAEL FOX, 4621 Durant Ave., North Charleston, SC 29405**

☐ YOU ARE COMMANDED to appear in the above-named court at the place, and time specified below to testify in the above case.

|                    |                    |
|--------------------|--------------------|
| PLACE OF TESTIMONY | COURTROOM          |
|                    | DATE AND TIME , AM |

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

|                     |                    |
|---------------------|--------------------|
| PLACE OF DEPOSITION | DATE AND TIME , AM |
|---------------------|--------------------|

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below:

See Exhibit A.

|                                                                                                     |                                             |
|-----------------------------------------------------------------------------------------------------|---------------------------------------------|
| <b>PLACE</b><br>ROSEN, ROSEN & HAGOOD, LLC<br>151 MEETING STREET, SUITE 400<br>CHARLESTON, SC 29401 | DATE AND TIME February 23, 2018 at 10:00 AM |
|-----------------------------------------------------------------------------------------------------|---------------------------------------------|

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

|          |                    |
|----------|--------------------|
| PREMISES | DATE AND TIME , AM |
|----------|--------------------|

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

|                                                              |                   |                                           |
|--------------------------------------------------------------|-------------------|-------------------------------------------|
| <i>Mary L. Blunt</i><br>Attorney/Issuing Officer's Signature | 2/16/2018<br>Date | The Honorable Mary L. Blunt<br>Print Name |
|                                                              |                   |                                           |
|                                                              |                   |                                           |
|                                                              |                   |                                           |

## PROOF OF SERVICE

|                  |       |                                                                                                                                                   |
|------------------|-------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SERVED</b>    | DATE  | <b>FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL</b><br><input type="checkbox"/> YES <input type="checkbox"/> NO <b>AMOUNT \$</b> |
|                  | PLACE |                                                                                                                                                   |
| <b>SERVED ON</b> |       | <b>MANNER OF SERVICE</b>                                                                                                                          |
| <b>SERVED BY</b> |       | <b>TITLE</b>                                                                                                                                      |

## DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

**(c) Protection of Persons Subject to Subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

## PROOF OF SERVICE

|           |       |                                                                                                                                        |
|-----------|-------|----------------------------------------------------------------------------------------------------------------------------------------|
| SERVED    | DATE  | FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON<br>DAILY ARRIVAL<br><input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$ |
|           | PLACE |                                                                                                                                        |
| SERVED ON |       | MANNER OF SERVICE                                                                                                                      |
| SERVED BY |       | TITLE                                                                                                                                  |

## DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

### (c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

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(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) Duties In Responding to Subpoena.**

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.



PROBATE JUDGE  
SOUTH CAROLINA  
2020 JAN 24 PM 12: 54

**EXHIBIT A**

**The following definitions apply to the requests below:**

*The term "Colucci Entities" shall mean Ivo Francesco Colucci, Doris Duane Colucci, and any business/entity with which they are/were affiliated, including, but not limited to: Terrivo Enterprises, LLC, I&M Colucci (a South Carolina Partnership), I&M Enterprises, LLC, I&D Enterprises, LLC, and H.I.D., LLC.*

*The term "document(s)" shall mean all writings, including all handwritten, typed, printed, or photocopied matter, all recordings, and graphic matter of any kind, including the originals and all the duplicates, carbon copies or any other nonidentical copies, whether different from the originals by reason of any notations or changes made on such copies, or otherwise, including, without limitation, correspondence, memoranda, notes, diaries, calendars, applications, statistics, letters, telegrams, minutes, contracts, agreements, reports, studies, computations, checks, statements, receipts, returns, summaries, pamphlets, books, interoffice and intraoffice communications, resumes, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, telefax, invoices, worksheets, all drafts, alterations, modification changes and amendments of any of the foregoing, graphic or oral recordings or representations of any kind, (including, without limitation, photographs, charts, graphs, microfiche, microfilm, video tapes, e-mails, recordings, motion pictures), and any electronic, mechanical or electrical records or representations of any kind, (including, without limitation, tapes, cassettes, disks, recordings, computer memories), or any other recorded information of any kind whatsoever, within the knowledge, possession, custody, control or subject to the control of, or accessible to you.*

*The term "electronically stored information" shall mean information recorded in a form that requires a computer or other machine to process it and that otherwise satisfies the definition of a record, and should be afforded the broadest possible definition and include (by way of example and not as an exclusive list) potentially relevant information electronically, magnetically or optically stored as:*

1. Digital communications (such as e-mail, voicemail, instant messaging);
2. Word processing documents (such as Word or Word Perfect documents and drafts);
3. Spreadsheets and tables (such as Excel or Lotus 123 worksheets);
4. Accounting work papers and drafts;
5. Accounting application data;
6. Image and facsimile files (such as .pdf, .tiff, .jpg, .gif images);
7. Sound recordings (such as .wav and .mp3 files);
8. Video and animation (such as .avi and .mov files);
9. Databases (such as Quickbooks, Access, Oracle, SQL and SAP server data);
10. Contact and relationship management data (such as Outlook and ACT!);
11. Calendar and diary application data (such as Outlook PST, Yahoo, blog tools);
12. Presentations (such as Powerpoint);
13. Network access and server activity logs;
14. Project management application data;
15. Computer aided design/drawing files; and
16. Back-up and archival files (such as .zip and .gho).

PROBATE JUDGE  
WORCESTER COUNTY  
2020 JAN 24 PM 12:54

**DOCUMENTS TO BE PRODUCED:**

1. All correspondence (including emails) to, from, or concerning the Colucci Entities (defined above) from 1/1/14 to present.
2. All documents provided to you by the Colucci Entities (or anyone acting on their behalf) from 1/1/14 to present.
3. General ledgers for each of the Colucci Entities from 1/1/14 to present.
4. Profit and loss statements for each of the Colucci Entities from 1/1/14 to present.
5. Balance Sheets for each of the Colucci Entities from 1/1/14 to present.
6. All monthly, quarterly, or annual account statements from 1/1/14 to present for any and all investment accounts, retirement accounts, 401(k) accounts, annuity accounts, brokerage accounts, or other accounts owned, either individual or jointly, by and of the Colucci Entities.
7. All federal and state tax returns, both original and amended, from 1/1/2014 to present prepared by you or in your possession prepared for or at the request of one or more of the Colucci Entities.
8. Copies of all tax preparer work papers in your possession relating to the tax returns described in No. 7 above.
9. Copies of all auditor work papers in your possession, including permanent files, relating to any of the Colucci Entities from 1/1/14 to present.
10. Copies of all compiled and/or audited financial statements for any of the Colucci Entities from 1/1/14 to present.
11. All monthly bank account records, reconciliations, canceled checks, deposit slips and check registers from 1/1/14 to present related to any one of the Colucci Entities.
12. All monthly credit card records, statements, and reconciliations from 1/1/14 to present related to any one of the Colucci Entities.
13. Copies of all W-2s, 1099s, and K-1s related to the Colucci Entities from 1/1/14 to present.
14. Copies of your invoices for work performed for one or more of the Colucci Entities from 1/1/14 to present.
15. Any and all monthly mortgage statements, mortgage loan documentation, monthly equity line statements, and/or other loan/mortgage/lien documentation from 1/1/14 to present concerning or relating to all real estate owned, individually or jointly, by one or more of the Colucci Entities.
16. All documents related to any loan either given or received by any of the Colucci Entities, including, but not limited to promissory notes, loan agreements, amortization schedules, and records of payments, from 1/1/00 to present.

17. All financial statements (including any audited statements, reviews, compilations, or otherwise) from 1/1/14 to present related to any of the Colucci Entities.
18. All QuickBooks or other electronic data related to any one of the Colucci Entities from 1/1/14 to present.
19. All estate planning documents related to Ivo or Doris Colucci in your possession.
20. All documents relating to the Colucci Living Trust or any other trust related to one or more of the Colucci Entities.
21. All notes, memos, and journals related to one or more of the Colucci Entities.
22. All organizational documents with any amendments for each of the Colucci Entities.
23. All Federal tax elections filed and IRS acceptance letters received for any of the Colucci Entities.
24. All IRS and/or state notices for any of the Colucci Entities dated 1/1/14 to present.
25. All asset purchase agreements, invoices, and/or documents related to the purchase of any assets held by any of the Colucci Entities.
26. All inside and outside basis schedules maintained for the partners or shareholders of each of the Colucci Entities.

PROBATE JUDGE  
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER )

CASE NO.: 2017-CP-18-1816

IN RE: THE ESTATE OF DORIS )  
DUANE COLUCCI, AKA DORIS D. )  
COLUCCI, )

MICHAEL C. FOX, NAMED PERSONAL )  
REPRESENTATIVE IN THE LAST WILL )  
OF DORIS COLUCCI, )

Petitioner, )

Versus )

ANDREW W. CHANDLER, ESQUIRE, )  
IN HIS CAPACITY AS SPECIAL )  
ADMINISTRATOR OF THE ESTATE OF )  
DORIS DUANE COLUCCI, MICHAEL C. )  
FOX, SUCCESSOR TRUSTEE OF THE )  
COLUCCI LIVING TRUST, DATED )  
FEBRUARY 24, 2005, IVO FRANCESCO )  
COLUCCI, MICHAEL FREDERICK )  
ANTONIO COLUCCI, HENRY BURKES, )  
AND RICHARD HYMAN, JR., )

Respondents. )

**ORDER GRANTING SUMMARY  
JUDGMENT AND ORDERING  
PROBATE OF WILL DATED  
JUNE 18, 2013**

THIS MATTER was before the Court on Motion for Summary Judgment filed by Christa M. Yantis as Conservator for Ivo Francesco Colucci seeking, among other things, probate of a Last Will and Testament of Doris Duane Colucci dated June 18, 2013, and filed with the Dorchester County Probate Court on August 24, 2017 (hereinafter "the Will"). Petitioner Michael C. Fox is named as successor personal representative under the Will and filed a Petition for Formal Testacy that was removed to this Court. This order addresses only that portion of the motion relating to the probate of the Will.

Pursuant to S.C. Code Ann. § 62-3-405, the Court may probate the Will on the pleadings before it with no testimony:

If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of Section 62-3-409 have been met or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit (including an affidavit of self-proof executed in compliance with Section 62-2-503) or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

*S.C. Code Ann. §62-3-405.*

At the call of the motion, no party raised any objection to the Will being probated. A review of the pleadings before the Court indicates that all parties are in agreement that the Will is the Last Will and Testament of Doris Duane Colucci. According, the motion is properly granted as to the prayer for probate of the Will only and the Will is entered into probate.

THEREFORE IT IS ORDERED that the Last Will and Testament of Doris Duane Colucci dated June 18, 2013 is probated as the Will of Doris Duane Colucci.

AND IT IS SO ORDERED!

\_\_\_\_\_  
Edgar W. Dickson  
Presiding Judge

This \_\_\_\_ day of \_\_\_\_\_, 2018

At \_\_\_\_\_, South Carolina

PROBATE JUDGE  
DORCHESTER COUNTY  
2020 JAN 24 PM 12:55



Dorchester Common Pleas

**Case Caption:** Estate of Doris Duane Colucci VS Ivo Francesco Colucci , defendant,  
et al  
**Case Number:** 2017CP1801816  
**Type:** Order/Summary Judgment

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2018-08-27 09:43:43 page 3 of 3

ELECTRONICALLY FILED - 2018 Aug 27 10:01 AM - DORCHESTER - COMMON PLEAS - CASE#2017CP1801816

STATE OF SOUTH CAROLINA ) PROBATE COURT  
COUNTY OF DORCHESTER ) CASE NO.: 2017-ES-10-00294

2018 JAN 24 PM 12:55

IN RE: THE ESTATE OF DORIS DUANE  
COLUCCI,

MICHAEL C. FOX, NAMED PERSONAL  
REPRESENTATIVE IN THE LAST WILL  
OF DORIS DUANE COLUCCI,

-VS-

ANDREW CHANDLER, IN HIS CAPACITY  
AS SPECIAL ADMINISTRATOR OF THE  
ESTATE OF DORIS DUANE COLUCCI,  
MICHAEL C. FOX, SUCCESSOR  
TRUSTEE OF THE COLUCCI LIVING  
TRUST, DATED FEBRUARY 24, 2005,  
IVO FRANCESCO COLUCCI, MICHAEL  
FREDERICK ANTONIO COLUCCI, JOHN  
MARTIN ANTONIO, HENRY BURKES,  
AND RICHARD M. HYMAN, JR.,

---

EMERGENCY HEARING BEFORE HONORABLE MARY L. BLUNT

Date Taken: Wednesday, January 9th, 2019  
Time Taken: 12:09 p.m.  
Location: Dorchester County Courthouse  
5200 Highway 78  
St. George, South Carolina 29477  
Reported By: Judy W. Galuppo, Court Reporter  
Job No.: 453298

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| Page 2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 A-P-P-E-A-R-A-N-C-E-S<br/> 2 Appearances for the Petitioner Michael C. Fox<br/> 3 By: Gordon Garrett, Esquire<br/> 4 GARRETT LAW OFFICES<br/> 5 1075 East Montague Avenue<br/> 6 Charleston, South Carolina 29405<br/> 7 843.556.5515<br/> 8 Office@garrettlawsc.com<br/> 9<br/> 10 Appearances for the Special Administrator Andrew<br/> 11 Chandler<br/> 12 By: Elizabeth J. "Beth" Palmer, Esquire<br/> 13 ROSEN ROSEN &amp; HAGOOD, LLC<br/> 14 151 Meeting Street, Suite 400<br/> 15 Charleston, South Carolina 29401<br/> 16 843.577.6726<br/> 17 Epalmer@rrhlawfirm.com<br/> 18 Appearances for the Conservator Ms. Yantis<br/> 19 By: David C. Holler, Esquire<br/> 20 LEE ERTER WILSON HOLLER &amp; SMITH, LLC<br/> 21 126 N. Main Street<br/> 22 Sumter, South Carolina 29150<br/> 23 803.778-2471<br/> 24 Davidholler@leeandmoise.com<br/> 25<br/> 26 Appearances for Michael Colucci and John Antonio<br/> 27 By: Angus M. Lawton, Esquire<br/> 28 LAWTON LAW FIRM, LLC<br/> 29 496 Bramson Court, Suite 100<br/> 30 Mount Pleasant, South Carolina 29464<br/> 31 843.881.9901<br/> 32 Angus@lawtonlawfirm.net<br/> 33 Appearances for Stephan Colucci<br/> 34 By: Eduardo K. Curry, Esquire<br/> 35 THE CURRY LAW FIRM, LLC<br/> 36 Post Office Box 42270<br/> 37 North Charleston, South Carolina 29423<br/> 38 843.767.5284<br/> 39 Currylawfirm@bellsouth.net</p> | <p>1 APPEARANCES CONTINUED<br/> 2 Appearances for Robert Colucci<br/> 3 By: P. Brandt Shelbourne, Esquire<br/> 4 SHELBOURNE LAW FIRM<br/> 5 131 E. Richardson Avenue<br/> 6 Summerville, South Carolina 29483<br/> 7 843.871.2210<br/> 8 Brandt@shelbournelaw.com<br/> 9<br/> 10 Also Present<br/> 11<br/> 12 Stephan Colucci<br/> 13 Samo Colucci<br/> 14<br/> 15<br/> 16<br/> 17<br/> 18<br/> 19<br/> 20<br/> 21<br/> 22<br/> 23<br/> 24<br/> 25</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Page 4                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>1 INDEX TO EXAMINATION<br/> 2 Page<br/> 3 Andrew Chandler Sworn 10<br/> 4 Direct Examination by Mr. Garrett 10<br/> 5 Reporter's Certificate 58<br/> 6 INDEX TO EXHIBITS<br/> 7 Petitioner's<br/> 8 No. Description Page<br/> 9 G Entered Into Evidence 46<br/> 10 Repspondent's<br/> 11 No. Description Page<br/> 12 No Exhibits Marked or Offered<br/> 13<br/> 14<br/> 15<br/> 16<br/> 17<br/> 18<br/> 19<br/> 20<br/> 21<br/> 22<br/> 23<br/> 24<br/> 25</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <p>1 - - -<br/> 2 THE COURT: I have the sign-in sheet for<br/> 3 everyone that is here. We received an affidavit from<br/> 4 Ms. Yantis prior to the hearing. Are there any other<br/> 5 matters we need to take up before we go on the<br/> 6 record?<br/> 7 MR. GARRETT: No.<br/> 8 MS. PALMER: Not from us, Your Honor.<br/> 9 THE COURT: Today is January 9th, 2019.<br/> 10 We're here today in the Estate of Doris Colucci.<br/> 11 It's Case No. 2017-ES-18-00529.<br/> 12 I have numerous parties and their<br/> 13 attorneys present in the courtroom. So I am just<br/> 14 going to go down my list.<br/> 15 I have Andrew Chandler, who is the<br/> 16 special administrator, and his attorney, Beth Palmer.<br/> 17 I have attorney Brandt Shelbourne, who<br/> 18 represents Robert Colucci.<br/> 19 Eduardo Curry, who represents Stephan<br/> 20 Colucci.<br/> 21 David Holler, who represents Christa<br/> 22 Yantis, who is the conservator for Ivo Colucci.<br/> 23 Gordon Garrett and Ryan Love are the<br/> 24 attorneys for the Colucci Trust and Michael Fox.<br/> 25 And Angus Lawton, who is the attorney for</p> |



1 attack of any nature upon any provision of my will or  
2 any codicil to it shall be paid from my Probate Estate  
3 as expenses of administration."

4 Q Would you agree that it's a provision of  
5 Doris Colucci's will that Michael Fox be appointed as  
6 the personal representative?

7 A Say that again.

8 Q Would you agree that the will says that  
9 it's a provision of the will that Michael Fox be  
10 appointed as the successor personal representative?

11 A I would agree that Doris Colucci's will  
12 names as one of the successor personal representatives  
13 Michael Fox.

14 Q The damages that you're requesting that I  
15 pay for trying to have Michael Fox appointed as the  
16 personal representative, Doris Colucci has directed  
17 that those be paid out of the estate?

18 A No, Mr. Garrett. I'm telling you that my  
19 expenses associated with you trying to have me  
20 restrained and removed for baseless reasons is why I  
21 have asked the court to assess you my fees. Not to  
22 have Mr. Fox appointed. This says, "expenses to  
23 resist any contest." I don't ever recall contesting  
24 her will.

25 Q Do you believe that you're filing to

1 prevent the appointment of a personal representative  
2 was an effort to resist Michael Fox being appointed as  
3 the personal representative?

4 A No. I believe I was answering a petition  
5 on which I was formally served. I don't recall  
6 challenging the will.

7 Q Now, you had just stated earlier in your  
8 testimony that you've discussed this case regularly  
9 with the court.

10 A I don't believe I said regularly. I  
11 believe I said I seek the court's guidance where  
12 necessary. I have filed a variety of applications. I  
13 have filed a variety of petitions.

14 Q When is the last time you had a telephone  
15 conversation with Judge Blunt?

16 A Probably yesterday, because I saw the  
17 court's deference to hold emergency hearing today.

18 Q Was I present at that conversation?

19 A No.

20 Q Do you believe that you and I are both  
21 parties to this action?

22 A Mr. Garrett, I am appointed by the court.  
23 I'm a court-appointed fiduciary. I can always speak  
24 to the court. I am not a lawyer in this action,  
25 Mr. Garrett. I am a court-appointed fiduciary. And I

1 am permitted to speak to the judges whenever they're  
2 willing to speak to me.

3 Q Do you believe the Estate of Doris  
4 Colucci should be completed with you as the special  
5 administrator? Or that the South Carolina Probate  
6 Court requires appointment of a personal  
7 representative?

8 A First, let me say I do not believe that  
9 the Probate Code requires appointment of a personal  
10 representative. I don't believe that at all. There's  
11 many, many estates in which there's only a special  
12 administrator. James Brown, as an example, a rather  
13 famous man here in South Carolina. So no, there's no  
14 requirement that a personal representative be  
15 appointed in an estate. What was the first part of  
16 your question? That I think I should be special  
17 administrator? I serve at the pleasure of the court.  
18 So long as the court asks me to serve, I will do so.

19 Q Do you feel you have a duty to the  
20 Colucci Living Trust?

21 A Do I believe I have a legal duty?

22 Q Yes.

23 A In what way?

24 Q To act in its best interest, to make sure  
25 that it gets funded, to make sure that money flows

1 through the trust, the terms of the will are complied  
2 with?

3 A Yes. I believe that the designee of this  
4 will is the Colucci Family Trust, yes, and I believe  
5 the funds would flow through the Colucci Family Trust,  
6 yes.

7 For example, I had noticed you of this  
8 hearing today as a proposal for distribution. I have  
9 made one distribution to you already. I proposed to  
10 distribute cash to you. So yes, I'm doing exactly  
11 what you're suggesting I have to do. That was today,  
12 or is today. However, you tried to restrain me from  
13 making distribution, so -- anyway, go ahead.

14 Q Do you have any ballpark idea what your  
15 current fees are that you charged the estate at this  
16 time?

17 A I mean, I don't recall. I think it's  
18 something -- I think from your petition you said it  
19 was \$89,000, and it's probably something in the  
20 neighborhood of \$105,000 now. I mean, the last six  
21 months that's probably -- or \$110,000. I'll note to  
22 you that my fees collected is something like 3 percent  
23 of the estate, whereas a PR commission would have been  
24 5 percent of the estate. So I think that you're  
25 suggesting that my fees are excessive or lavish or

PROBATE JUDGE  
DORCHESTER COUNTY  
JAN 24 PM 12:55

STATE OF SOUTH CAROLINA ) IN THE PROBATE COURT  
COUNTY OF DORCHESTER ) CASE NO: 2017-ES-18-00294  
IN RE: THE ESTATE OF DORIS )  
DUANE COLUCCI, AKA DORIS D. )  
COLUCCI, )  
MICHAEL C. FOX, NAMED PERSONAL )  
REPRESENTATIVE IN THE LAST WILL )  
OF DORIS COLUCCI, )  
Petitioner, ) ORDER  
v. )  
ANDREW W. CHANDLER, ESQUIRE, )  
IN HIS CAPACITY AS SPECIAL )  
ADMINISTRATOR OF THE ESTATE OF )  
DORIS DUANE COLUCCI, MICHAEL C. )  
FOX, SUCCESSOR TRUSTEE OF THE )  
COLUCCI LIVING TRUST, DATED )  
FEBRUARY 24, 2005, IVO FRANCESCO )  
COLUCCI, MICHAEL FREDERICK )  
ANTONIO COLUCCI, JOHN MARTIN )  
ANTONIO, HENRY BURKES, AND )  
RICHARD M. HYMAN, JR., )  
Respondents. )

PROBATE JUDGE  
DORCHESTER COUNTY  
2019 FEB -7 PM 3:30

This matter came before the Court on Petitioner Michael Fox's Petition for Removal of Special Administrator pursuant to S.C. Code Ann. § 62-3-611. For the reasons set forth herein, and after considering the evidence presented, law, and arguments of counsel, this Court finds that the Petition should be denied and that certain costs and fees should be assessed against Petitioner Fox pursuant to S.C. Code Ann. § 62-1-111.

**PROCEDURAL HISTORY**

Doris Duane Colucci was killed by her husband, Ivo F. Colucci, on April 14, 2017. Respondent Andrew W. Chandler, Esquire, was appointed Special Administrator of the

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Estate of Doris Duane Colucci (the "Estate") by this Court on June 9, 2017, on a temporary basis and then, by Consent Order dated July 10, 2017, on a permanent basis.

On August 24, 2017, Decedent's purported Last Will and Testament, dated June 18, 2013 (the "Will"), was filed with this Court, although no petition seeking to have the Will admitted to probate was filed at that time. The Will nominates Ivo F. Colucci as the personal representative and Michael Fox, Henry Burkes, and Richard Hyman (in that order) as successor personal representatives. The primary devisee of the Will is the Colucci Living Trust (the "Trust"), dated February 24, 2005, which names Petitioner Fox as a successor trustee. On October 27, 2017, Petitioner Fox accepted the trusteeship of the Trust and, to date, continues to serve in that capacity.

On October 30, 2017, Petitioner Fox filed a Petition for Formal Testacy and Appointment, seeking to have the Decedent's Will admitted to probate and also seeking to have himself appointed as the personal representative of the Estate. Upon motion by Petitioner Fox, the Petition for Formal Testacy and Appointment was removed to the Dorchester County Court of Common Pleas by Order of this Court filed November 20, 2017. By Circuit Court Order filed August 27, 2018, Decedent's Will was admitted to probate, making the Colucci Living Trust the sole devisee of the Estate. To date, no decision has been rendered by the Circuit Court on Petitioner Fox's Petition for Appointment as personal representative. Following the probate of the Will, this Court entered a Modified Order for the Appointment of a Special Administrator, confirming Respondent Chandler's appointment as Special Administrator in this matter and directing that he administer the Estate pursuant to the terms of the Will.

On January 4, 2019, Petitioner Fox filed a Petition for Removal of Special Administrator<sup>1</sup> as well as a Motion for Removal, seeking to remove the Petition for Removal of Special Administrator to the Dorchester Court of Common Pleas. By Order filed on January 8, 2019, this Court denied the Motion for Removal on the basis that a petition seeking removal of a Special Administrator is not removable to the circuit court as a matter of right pursuant to S.C. Code Ann. § 61-1-302.

Also on January 8, 2019, Respondent Chandler filed a Motion for Emergency Hearing, requesting that Petitioner Fox's Petition for Removal of Special Administrator be scheduled for an emergency hearing and that the Estate's costs and fees incurred in responding to, and defending, Petitioner Fox's Petition, be assessed against Petitioner Fox pursuant to S.C. Code Ann. § 62-1-111. The request for an emergency hearing was granted, and that hearing was held on January 9, 2019. In attendance were: Gordon Garrett, Esquire, and Ryan Love, Esquire, counsel for Petitioner Fox; Respondent Chandler with his attorney, Elizabeth Palmer, Esquire; David Haller, Esquire, counsel for Christa M. Yantis, as Conservator for Ivo Colucci, and Alice Norton, as Guardian for Ivo Colucci; Brandt Shelbourne, Esquire, counsel for Robert Colucci; Eduardo Curry, Esquire, counsel for Stefan Colucci; and Angus Lawton, Esquire, counsel for Michael Antonio and Michael Colucci.

#### APPLICABLE LAW

A personal representative, which is defined to include a special administrator, is a fiduciary under this state's probate code. S.C. Code Ann. § 62-3-703; S.C. Code Ann. §

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<sup>1</sup> While titled "Petition for Removal of Special Administrator," the Petition attaches a Motion to Restrain Special Administrator, previously filed by Petitioner Fox in the Circuit Court on November 26, 2018, and requests that this Court grant the relief sought therein. As such, before this Court is both Petitioner Fox's request that Respondent Chandler be removed and also that he be restrained.

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62-1-201. A special administrator must "take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession" and has a duty "to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate." S.C. Code Ann. §§ 62-3-703(a), 62-3-709. A special administrator "shall use the authority conferred upon him by this code, the terms of the will, and any order in proceedings to which he is party for the best interests of successors to the estate." S.C. Code Ann. § 62-3-703(a).

"A person interested in the estate may petition for removal of a [special administrator] for cause at any time." S.C. Code Ann. § 62-3-611(a). "Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a [special administrator] or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the [special administrator] has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office." S.C. Code Ann. § 62-3-611(b). The power to remove a special administrator "should be executed with great caution, and not at all, unless it is made to appear to be necessary for the protection of the estate, to prevent loss or injury to it from misappropriation, maladministration or fraud." Blackmon v. Weaver, 366 S.C. 245, 251, 621 S.E.2d 42, 45 (Ct. App. 2005) (quoting Smith v. Heyward, 115 S.C. 145, 164, 105 S.E. 275, 282 (1920)).

## FINDINGS OF FACT & CONCLUSIONS OF LAW

### **I. S.C. Code Ann. § 62-3-615 does not require the removal of Respondent Chandler.**

Petitioner Fox contends that S.C. Code Ann. § 62-3-615 requires that he, or one of the other individuals named as successor personal representatives in Decedent's Will, be appointed as special administrator and, therefore, Respondent Chandler's appointment must be terminated. That section provides as follows:

#### § 62-3-615. Special administrator: who may be appointed.

(a) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available and qualified.

(b) In other cases, any proper person may be appointed special administrator.

This section is inapplicable to the matter before the Court and provides no basis for the removal of Respondent Chandler.<sup>2</sup> Contrary to the assertion of Petitioner Fox, Respondent Chandler was not appointed as Special Administrator pursuant to S.C. Code Ann. § 62-3-615 but was instead appointed pursuant to S.C. Code Ann. § 62-3-617. See Consent Order for the Appointment of a Special Administrator at 4, July 10, 2017. The statute cited by Petitioner Fox relates to a temporary appointment process for a special administrator. However, pursuant to this Court's July 10, 2017 Consent Order for the Appointment of a Special Administrator, Respondent Chandler was appointed pursuant to a formal proceeding that grants a special administrator the full duties and responsibilities

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<sup>2</sup> The Court would further note that, contrary to Petitioner Fox's argument, this section, even when applicable, does not provide for the automatic appointment of a nominated personal representative as special administrator. Rather, just as with the appointment of a personal representative, there must first be a determination by a court of competent jurisdiction that the individual is available and qualified.

as a personal representative. Therefore, Petitioner Fox's request that the Court remove Respondent Chandler as Special Administrator pursuant to S.C. Code Ann. § 62-3-615 is inappropriate and contrary to the current posture of this case.

**II. The Special Administrator's fees, and those of his attorney, are not excessive and provide no basis for his removal as Special Administrator.**

Petitioner Fox contends that the fees paid from the Estate to Respondent Chandler and his counsel for matters related to the administration of the Estate, as well as the contingency fee of 40% related to the wrongful death lawsuit that is pending, are excessive but he has failed to present evidence to substantiate this claim. Rather, Petitioner Fox makes the assumption that the fees paid to Respondent Chandler and his counsel, totaling approximately \$165,000.00 as shown on the last Accounting filed by Respondent Chandler, are improper.<sup>3</sup> The Court disagrees and would further note that Respondent Chandler and his counsel are compensated for their work in this matter at an hourly rate of \$200.00, which is substantially less than their standard hourly rates. Further, this Court has reviewed the detailed invoices submitted by Respondent Chandler, and on each occasion, has found them to be appropriate.

The fees collected by Respondent Chandler and his counsel in the amount of \$165,849.91 that are challenged by Petitioner Fox are approximately 5.7% of the value of the Estate at the time of Decedent's death (\$2,865,316.20). The statutorily allowed commission for personal representatives is 5% of the appraised value of the personal

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<sup>3</sup> That Petitioner Fox made this claim of excessive fees without support is evidenced by the following statement in his Petition: "The Movant requires the Special Administrator's billing statements to determine which actions and how much time was spent by the Special Administrator and his experts to prevent the appointment of a Personal Representative. To date, the Movant has been prohibited from inspecting the records." The Court finds it concerning that Petitioner Fox would accuse two members of the Bar of excessive billing without having any knowledge as to the nature and extent of work performed by Respondent Chandler and his counsel.

property of the probate estate (plus the sales proceeds of real property of the probate estate received on sales directed or authorized by will or court order). S.C. Code Ann. § 62-3-719. Fees incurred by a personal representative's attorney are generally paid out of an estate in addition to those paid to the personal representative. As such, just on its face, the amount paid here to Respondent Chandler and his counsel is reasonable given that, jointly, it is just slightly above that which is customarily allowed solely for the personal representative. Moreover, the Court has reviewed the reasonableness of these fees taking into consideration the novel and complex nature of the legal issues that have been addressed by Respondent Chandler and his counsel, the nature and quality of the work that has been performed, and the benefit that the Estate has derived from that work and confirms and concludes that the fees are reasonable and appropriate.

Likewise, Petitioner Fox's assertion that the contingency fee agreement between the Estate and Rosen, Rosen & Hagood, LLC ("RRH"), for the prosecution of the pending wrongful death lawsuit is excessive is without merit. Petitioner Fox contends that the contingency fee agreement, which provides for legal fees of 40% of the recovery from the wrongful death lawsuit, and which was previously approved by this Court, is "lavish" and "extraordinary." Petitioner Fox failed to present any argument or evidence substantiating his claim that the contingency fee agreement is unreasonable, and the Court takes notice that the contingency fee agreement is typical of those in other personal injury actions. The Court finds no basis on which to revisit its prior determinations that this agreement and the hiring of RRH to prosecute the wrongful death lawsuit are appropriate.

In questioning the fees RRH are receiving to serve as attorney for Respondent Chandler in matters related to the administration of the Estate as well as the contingency



fee arrangement related to the pending wrongful death lawsuit, Petitioner Fox tried to establish that the law firm was double billing. Counsel for Respondent Chandler explained on the record RRH's billing practices with this case and how they actually benefit the Estate:

Related to the fees issue, there are these allegations, I think, of double dipping. This arises out of the fact that my law firm is handling both the wrongful death action, obviously on contingency basis because it's a wrongful death, and also representing Mr. Chandler as his attorney as he administers the estate. Now, part of the administration of the estate includes the Slayer action which is currently pending. It would not be unusual for Mr. Chandler or for this Court to appoint two separate law firms to represent [him], one to do the wrongful death and one to represent Mr. Chandler in the administration. If that was the case here, the [estate] would be charged for the discovery that's being done in these cases. So the Slayer case and the wrongful death, we have effectively combined or consolidated them for the purposes of discovery, because the discovery is very similar in the two of them. We have not charged one penny to the estate for any of the discovery. None of the expert witness fees, none of the court reporter fees. . . . [T]he fact that my firm is representing both has benefited the estate.

Hearing Transcript, pp. 49-50.

Therefore, by allowing RRH to serve the dual role as attorney for Respondent Chandler in his administration of the Estate and pursuing the Slayer case as well as representing him in the pending wrongful death case, the Estate is receiving a substantial benefit. The Estate is not having to pay for any attorney's fees or costs associated with the discovery RRH has done in pursuit of the Slayer case. RRH will only be compensated for their time and the costs they have incurred from the settlement proceeds of the wrongful death action. If the Court had allowed Respondent Chandler to engage separate attorneys to handle the slayer cases and the wrongful death, the Estate would have been liable to pay the attorney handling the Slayer case for their time and costs incurred in completing the

discovery for that case in addition to what RRH will already receive as compensation from the wrongful death action.

Based on the foregoing, the Court finds that the fees paid to Respondent Chandler and his counsel are reasonable, the rate at which they are being compensated is reasonable, and that the work performed by Respondent Chandler and his counsel, which has involved novel and complex legal issues, has directly benefited the Estate.

**III. The Special Administrator has appropriately collected and distributed the Estate's assets.**

As a Special Administrator with all the powers of a general personal representative, Respondent Chandler is required to settle and distribute the Estate as expeditiously and efficiently as is consistent with the best interests of the estate. S.C. Code Ann. § 62-3-703. Petitioner Fox contends that Respondent Chandler has "unreasonably failed to disburse the Estate's assets according to the wishes of Doris Colucci." Petitioner Fox also takes issue with the manner in which Respondent Chandler has effectuated distributions to the Trust, stating: "On November 19, 2018, without any warning, the Special Administrator attempted to have hand delivered an envelope containing the jewelry to Mr. Fox, via his attorney, without any explanation, itemization, or receipt."

These claims are without merit and provide no basis for the removal of Respondent Chandler. Petitioner Fox has failed to present evidence that there has been any unreasonable delay in distributing the Estate's assets to the Trust. The Trust, of which Petitioner Fox is the trustee, did not become the devisee of the Estate until the Will was probated on August 27, 2018. Given the circumstances surrounding the administration of this Estate, including, but not limited to, ongoing litigation and outstanding tax issues and

potential tax liability, the Court finds that Respondent Chandler's actions with regard to the distribution of assets to the Trust have been proper and appropriate.

The Court further takes notice that Petitioner Fox and his counsel have taken measures to frustrate Respondent Chandler's distribution of Estate assets to the Trust. On November 19, 2018, counsel for Petitioner Fox refused to accept certain assets that the Estate distributed to the Trust, assets which were listed on the Proposal for Distribution filed by Respondent Chandler on or about September 24, 2018, and served on counsel for Petitioner Fox. Petitioner Fox and his counsel also attempted to hinder the sale of a ring by the Special Administrator. The Special Administrator had obtained an Order from this Court approving the sale of the ring to create liquid assets in the Estate. Petitioner Fox filed a Application to Restrain the Special Administrator from selling the ring, and then withdrew the Application. Additionally, while Petitioner Fox takes issue with the lack of cash distributed to the Trust from the Estate, Petitioner Fox was on notice that Respondent Chandler filed a second Proposal for Distribution on November 20, 2018, proposing the distribution of \$10,000.00 to the Trust. A hearing on that Proposal for Distribution was initially scheduled for January 9, 2019. However, Petitioner Fox filed his Petition for Removal of Special Administrator with the stated intention of postponing the hearing on the Proposal for Distribution, which would result in the distribution of cash to the Trust being postponed.

Petitioner Fox also states that "complaints have been raised to [his] counsel that the house is in poor condition and the Special Administrator has failed to conduct maintenance." Petitioner Fox failed to present any evidence supporting this claim and the Court finds that this is not a basis for Respondent Chandler's removal.

**IV. The Special Administrator has not breached any duties owed to the Colucci Living Trust concerning the provision of information or the reimbursement of the Trustee's costs.**

Petitioner Fox claims that Respondent Chandler has failed to provide him with information, stating that "[o]utside of the Proposed Distribution, Mr. Fox had not been forwarded a single document, including basic estate documents such as the Inventory and Appraisement and the estate account." The documents to which Petitioner Fox refers are attached to his Petition, namely, the Inventory and Appraisement which was filed in April 2018 and the Accounting which was filed in July 2018. The Trust did not become the devisee of the Estate until August 27, 2018. Prior to that time, Respondent Chandler had no duty to provide Petitioner Fox with any information given that Petitioner Fox neglected to file a Demand for Notice. Furthermore, the Estate file is a public record and was available to Petitioner Fox to review anytime. Petitioner Fox has failed to substantiate his claim that Respondent Chandler failed to provide him with information that Respondent Chandler had a duty to provide to him.

Petitioner Fox also appears to argue that Respondent Chandler acted improperly by not reimbursing him, as Trustee of the Colucci Living Trust, for "his costs to probate the [Decedent's] Last Will." The Court finds no impropriety on the part of Respondent Chandler and Petitioner Fox failed to present any authority to support his contention that Respondent Chandler is required to reimburse such costs. The Court further takes notice that Petitioner Fox has not submitted any request for payment to Respondent Chandler. The Court makes no determination as to whether those costs are properly reimbursed by the Estate, but only notes that Petitioner Fox had the opportunity to submit a claim for payment pursuant to the procedure set forth in S.C. Code Ann. § 62-3-804.

**V. The Special Administrator's use of Estate funds to object to the appointment of Petitioner Fox as personal representative of the Estate is not grounds for his removal.**

After being served with Petitioner Fox's Petition for Formal Testacy and Appointment, which was removed to Circuit Court, Respondent Chandler submitted an Answer and Objection and, at a hearing, argued that the appointment of Petitioner Fox would not be in the best interests of the Estate. Petitioner Fox argues in his Petition that Respondent Chandler "has acted unreasonably and against the interest[s] of the Estate by using estate assets to prevent the appointment of a Successor Personal Representative as specified in the Last Will of Doris Colucci." The Court disagrees.

As Special Administrator, Respondent Chandler is required to use the authority conferred upon him by the Probate Code for the best interests of the successors to the Estate, which, in this case, is the Trust. S.C. Code Ann. § 62-3-703. He is also required to "take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession." S.C. Code Ann. § 62-3-709.

Respondent Chandler testified at length as to the basis for his objection to Petitioner Fox's appointment as personal representative of the Estate.

Q: What was your basis for Mr. Fox to be disqualified?

A: Let me back up and say, when you filed formal probate, it was removed at your request. I was served. I answered, as is required. I'd have to review my answer. And I'm happy, if you want to hand me my answers. But as I recall, by that point, because it had been several months, but at that point we were fully engaged in the administration of this estate. Which is not a simple estate. And so there's -- there has been or there is a vast array of litigation. But I'd have to review my answer. But as I recall, I believe Mr. Fox, or anyone else, frankly, nothing necessarily to do with Mr. Fox; it would be very inefficient for the court to appoint someone at that point as the personal representative because we'd already begun the process and were involved in a variety of pieces of litigation. It's, again, a complex estate. It had lots of moving parts. And the time it takes to be up to speed

on all of those issues is not insignificant. And so at some point, it is not in the best interest of the beneficiaries.

... It would be very difficult and would be costly for anyone else at that point to have been appointed, in my view. At the end of the day it's for the court to determine who the fiduciary is. It's not me who decides that. It's for the court to determine who is qualified, who is appropriate. In simple cases, perhaps it's easiest just to follow the will. This is not a simple case, Mr. Garrett. This is a very complex case.

On top of that, Mr. Fox, it just so happens, who had been a longtime friend of the Coluccis, had done their bookkeeping and tax returns for years, decades perhaps, would likely have been a witness. It turns out he is a witness. And he has been deposed and will be deposed. So as I predict, he potentially had a conflict. That may not be true of the next person in line. Although, Henry Burkes is also a witness to this killing. And that may not have been true of the next person in line. But again, it is a complex estate, it is costly to transfer it to someone else.

However, as special administrator, and being involved with a very complex case, which thankfully a lot of it has been resolved, but we still have ongoing litigation, it was just extremely inefficient and foolish, in my opinion, to transfer it to anyone else.

Hearing Transcript, pp. 16-19.

The estate is so complex that Petitioner Fox's attorney, Gordon Garrett, offered to hire Mr. Chandler as an expert if Mr. Chandler would agree to allow Petitioner Fox to serve as the Personal Representative.

Q. Did I offer to retain you as an expert to work for the Estate of Doris Colucci prior to the hearing in Court of Common Pleas in the summer of 2017<sup>4</sup>?

A. Did you ask me to?

Q. Serve as an expert if Mr. Fox was appointed as the personal representative?

A. Let me tell you what I recall from that conversation which occurred outside of Judge Dickson's courtroom. What I recall is, you said, well, if Mr. Fox is appointed – or if you agreed to have Mr. Fox appointed – which again I'm telling you I couldn't have agreed to that because that's not my role – but if Mr. Fox were to be appointed, you know, we could hire you, Andrew, and Ms. Palmer, to continue to do what you do. But in the meantime, we'll also be in there, and then whatever you would do.

And from my perspective, that is in no way beneficial to the beneficiaries

<sup>4</sup> The hearing was in the summer of 2018 not 2017.

of this estate, which now it turns out that the designee, Mr. Fox, has accepted trusteeship. That is in no way beneficial to those beneficiaries, whoever they may have been, to go from the fees that we are charging, which by the way are a fraction of my regular billing rate, to add two more people and add their rate. I mean, how is that beneficial or helpful to the estate? No way do I think that's appropriate. And I think I told you such. But I don't know that I realized that it was a job offer.

Hearing Transcript, pp. 21-22.

The Court has a voluminous Estate file on this matter with over one thousand documents, and a sister guardianship and conservatorship file which is equally voluminous. The Estate file is rife with litigation and complex issues. On file with the Court are a large web of business interests involved in litigation and negotiation including I&M Colucci, HID LLC, and Terrivo Enterprises LLC. All of these businesses held real property that have complicating factors. The Estate also has multiple parcels of real property in multiple jurisdictions and multiple states with various ownership interests. There is litigation that was in place before Mrs. Colucci's death and after her death. For example, there is litigation involving the Slayer case, wrongful death, I&M Colucci, and Terrivo Enterprises LLC. Numerous attorneys are involved in the case representing various parties and interests which further complicates the Estate.

Additionally, there are ongoing and significant tax issues that the Special Administrator is attempting to resolve. For example, Mr. Chandler testified that Petitioner Fox, who had been the Colucci's long-time bookkeeper and tax preparer, had filed a tax return that is "patently wrong on its face ... that works a tremendous hardship on the estate and the beneficiaries of the estate." Hearing Transcript p. 40. Mr. Chandler testified at length about the complicating tax issues facing the Estate.

Q. Are you aware that Ms. Palmer requested Michael Fox to prepare a Schedule K for an LLC called HID?

Q. [Chandler] What do you mean by "Schedule K"?

A. [Garrett] A partnership return.

Q. Okay. So that's a different number. But yes, I am aware of that.

Q. So you believe that Mr. Fox was competent to prepare that document?

A. What I know is that HID is managed and controlled by Henry Burkes, whose name we've heard before. And he is the manager of that company. He hired Mr. Fox to prepare tax returns for that company. Ms. Doris Colucci owned 30 percent in that company. That's it. She doesn't control anything in that company. Mr. Burkes controls -- he prepares tax returns, not me. In fact, Mr. Fox prepared a tax return which is patently wrong on its face, and we simply asked him to correct the K1's, which by the way, if they're not corrected -- and I'll also note, Mr. Garrett, that Mr. Fox replied to your email saying he'll be glad to amend them. And then you in December decided, nevermind, we're not going to do that. But that works at tremendous hardship on the estate and the beneficiaries of the estate. Because if Mr. Fox does not amend that return, or Mr. Burkes does not amend that return properly and make a sub 4 election on the return and produce a K1 that is accurate, the estate of Doris Colucci would potentially lose a basic step up in its assets which negatively impacts the beneficiaries of that estate. So yes, I'm aware of that.

Q. But you're also a member of HID?

A. I am. Well, I'm not, but the estate is.

Q. The estate is. And you're capable of preparing the proper tax [return]?

A. I'm not qualified. I don't have the books and the things that are required to prepare returns, Mr. Garrett. Mr. Burkes has those items. He hires who he wants to prepare the returns. If he hired Mr. Fox, that's fine. If he thinks that's the proper person, great. But the return is not properly prepared. And it was filed improperly. For example, he listed [I&D], which is an accommodation party. It does not have an EIN. It is not a taxpayer. He filed that return on the IRS. That is absolutely an improperly filed return. It will be pulled. Mr. Colucci and Doris Colucci's estate are going to have issues because of that, because you can't file a return without an EIN. And I would think Mr. Fox would know that.<sup>5</sup>

Hearing Transcript pp. 39-41.

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<sup>5</sup> Mr. Chandler is a Certified Specialist in Estate Planning and has an L.L.M. in Taxation.



Based on the extremely litigious and multifaceted complications plaguing this Estate, removing the Special Administrator at this point would be illogical. It would cause an extreme hardship to the Estate for a new fiduciary to have to learn and understand all the management, negotiations, and issues that have been handled and will continue to need to be handled. Therefore, the Court finds no impropriety in Respondent Chandler's actions in objecting to the appointment of Petitioner Fox as personal representative of the Estate. Respondent Chandler is required to take all steps to protect the Estate and preserve its assets, and the Court is satisfied that his objection was based on a valid concern that the interruption of his administration of the Estate would not be in the best interests of the Estate or the Trust, its sole devisee, as it would result in unnecessary delay and expense.

Petitioner Fox also argues that, "[h]ad the Special Administrator truly believed that Mr. Fox was not qualified for any reason, he should have immediately notified any of the next two Successor Personal Representatives of his concerns." The Court is aware of no legal duty on the part of Respondent Chandler to take this action, nor did Petitioner Fox present any authority to support his contention that such a duty exists.

**VI. The award of costs and expenses against Petitioner Fox is appropriate.**

In a formal proceeding, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the estate that is the subject of the controversy. S.C. Code Ann. § 62-1-111. Petitioner Fox made a number of accusations against Respondent Chandler and his counsel but failed to present to this Court any evidence or law in support of his arguments that cause exists to remove Respondent Chandler as Special Administrator.<sup>6</sup>

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<sup>6</sup> Rule 11 of the South Carolina Rules of Civil Procedures states that "[t]he written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleadings, motion or other paper;

The Court finds that justice and equity require that Petitioner Fox pay the Estate's costs and expenses, including reasonable attorney's fees, incurred in responding to his Petition to Remove Special Administrator. Respondent Chandler and his counsel have submitted Affidavits of Fees and Costs which this Court has considered and finds to be appropriate.

**IT IS HEREBY ORDERED** that Petitioner Fox's Petition for Removal of Special Administrator is **DENIED**; and

**IT IS FURTHER ORDERED** that Petitioner Fox, pursuant to S.C. Code Ann. § 62-1-111, shall pay costs and expenses, including reasonable attorney's fees, incurred by the Estate in responding to the Petition to Remove Special Administrator in the amount of \$10,882.96.

**AND IT IS SO ORDERED!**

Mary Blunt  
The Honorable Mary Q. Blunt  
Dorchester County Probate Court

February 7, 2019  
St. George, South Carolina

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that to the best of his knowledge, information and belief there is good grounds to support it; and that it is not interposed for delay." Based on Attorney Garrett's presentation of the case, it is clear that his intention in filing the Petition for Removal of Special Administrator was to interpose delay in administering the Decedent's Estate. Further, he failed to present any evidence to show that he had good grounds to support his Petition.

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

PROBATE JUDGE  
DORCHESTER COUNTY  
2020 JAN 24 PM 12:55

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

In Re:

No 2017-CP-18-1816

The Estate of Doris Duane Colucci,

Michael C. Fox, Named Personal  
Representative in the Last Will of Doris  
Duane Colucci,

Order

Plaintiff,

vs.

Andrew Chandler, in his capacity as  
Special Administrator of the Estate of  
Doris Duane Colucci, Michael C. Fox,  
Successor Trustee of the Colucci Living  
Trust, dated February 24, 2005, Ivo  
Francesco Colucci, Michael Frederick  
Antonio Colucci, John Martin Antonio,  
Henry Burkes, and Richard M. Hyman,  
Jr,

Defendants.

**THIS MATTER** comes before this Court on a Petition for Formal Testacy and Appointment filed in the Dorchester County Probate Court on October 30, 2017, and subsequently removed to this Court. This Petition was heard on August 13, 2018, and on August 27, 2018, this Court admitted the Last Will and Testament of Doris Duane Colucci to probate and took the matter of appointment of the Personal Representative under advisement. After careful consideration of the arguments of counsel and the record, this Court finds as follows:

The Last Will and Testament of Doris Duane Colucci, executed June 18, 2013, was admitted to probate on August 27, 2018 with no objection from any party. This Will named the following persons, in order of priority, as Personal Representative of the state: (1) Ivo Colucci, (2) Michael C. Fox, (3) Henry Burkes, (4) M. Richardson Hyman, Jr., Esq.

This Court finds Michael C. Fox is qualified to serve as the Personal Representative of the Estate of Doris Colucci, and hereby appoints him to serve in this position in accordance with the Last Will.<sup>1</sup> See S.C. Code §§ 62-3-203, 62-3-414 & 62-3-618.

This Court additionally orders that the Special Administrator Mr. Andrew Chandler, Esq., and any former special administrators, forward Mr. Fox all records of the Estate forthwith for Mr. Fox's review to ensure that there has been no waste, abuse, or fraud within the Estate and to fulfill the duties bestowed upon him by the Decedent. This Court further orders that the Special Administrator Mr. Chandler and the Personal Representative Mr. Fox work together for the benefit of the Estate.

Based on the removal order of the Probate Court, the Probate Court retained jurisdiction on all other issues other than what was indicated on the removal order. Other than this Court's decision above, all additional issues and motions are remanded back to the Probate Court in compliance with its removal order, unless the Probate Court has vested the Circuit Court with the power to decide the matter.<sup>2</sup>

**IT IS SO ORDERED.**

Edgar Dickson  
Circuit Court Judge

St. George, South Carolina

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<sup>1</sup> The Court has been made aware that property located at 39-41 Mary Street, Charleston, SC is scheduled to close on or about February 21, 2019. The property is owned by I&M Colucci, a general partnership, of which Mrs. Colucci's estate owns a twenty-five and a half (25.5%) interest. Nothing in this order should be construed as to limit the ability of Michael C. Fox, as Personal Representative of the Estate of Doris Duane Colucci, from acting on behalf of the Estate in the business of I&M Colucci, a general partnership, and he is authorized to execute any and all documents necessary to act on behalf of the Estate's interest in the partnership to effectuate the sale of 39-41 Mary Street.

<sup>2</sup> Pending before this Court are also a Petition to Restrain the Special Administrator and a Motion to Dismiss this Petition. Both of these motions are moot and therefore will not need to be addressed by the Circuit Court.



Dorchester Common Pleas

**Case Caption:** Estate of Doris Duane Colucci , plaintiff, et al VS Ivo Francesco Colucci , defendant, et al  
**Case Number:** 2017CP1801816  
**Type:** Order/Other

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2019-02-12 16:12:31 page 3 of 3

PROBATE JUDGE  
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA )

COUNTY OF DORCHESTER )

IN RE: THE ESTATE OF DORIS )  
DUANE COLUCCI, AKA DORIS D. )  
COLUCCI, )

ELIZABETH J. PALMER, ESQUIRE, ON )  
BEHALF OF ROSEN HAGOOD, LLC, )

Applicant, )

v. )

MICHAEL C.FOX, IN HIS CAPACITY AS )  
PERSONAL REPRESENTATIVE OF THE )  
ESTATE OF DORIS DUANE COLUCCI, )  
MICHAEL C. FOX, IN HIS CAPACITY )  
AS SUCCESSOR TRUSTEE OF THE )  
COLUCCI LIVING TRUST, DATED )  
FEBRUARY 24, 2005, IVO FRANCESCO )  
COLUCCI, MICHAEL FREDERICK )  
ANTONIO COLUCCI, JOHN MARTIN )  
ANTONIO, HENRY BURKES, AND )  
RICHARD M. HYMAN, JR., )

Respondents. )

IN THE PROBATE COURT 2017 JAN 24 PM 12:56

CASE NO: 2017-ES-18-00294

**EMERGENCY APPLICATION  
FOR RESTRAINT OF  
PERSONAL  
REPRESENTATIVE**

TO: ATTORNEY FOR RESPONDENT MICHAEL C. FOX

PLEASE TAKE NOTICE that Applicant Elizabeth J. Palmer, Esquire, on behalf of Rosen Hagood, LLC, will move before the Presiding Judge of the Probate Court for the First Judicial Circuit at the Dorchester County Probate Court at 5200 E. Jim Bilton Blvd., St. George, SC 29477, as soon as possible should a hearing be required, for an Order Restraining Personal Representative. The grounds for this Application are as follows:

1. The Decedent was killed by her husband on April 14, 2017.

2. Andrew W. Chandler, Esquire, was appointed Special Administrator of the Estate by this Court on June 9, 2017, on a temporary basis and then, by Consent Order dated July 10, 2017, on a permanent basis.

3. By Order filed July 24, 2017, this Court approved Mr. Chandler's hiring of Rosen Hagood, LLC ("RH"), to "represent him in his capacity as Special Administrator of the Estate in connection with the investigation and pursuit of all litigation matters and claims related to the Estate."

4. RH has represented Mr. Chandler in the administration of the Estate since that time, including filing two lawsuits in October 2017: (1) a wrongful death action pending in Charleston County Court of Common Pleas; and (2) a Petition to Determine Heirs, which was brought pursuant to the "Slayer's Act" and is pending in Dorchester County Court of Common Pleas.

5. In August 2017, Decedent's purported Last Will and Testament, dated June 18, 2013, was filed with this Court.

6. It was not until October 30, 2017, that Michael C. Fox, who is named as a successor personal representative in the Will, filed a Petition for Formal Testacy and Appointment, seeking to have the Will admitted to probate and to have himself admitted as personal representative of the Estate.

7. A hearing on the Petition was held on August 13, 2018, and, by Order filed August 27, 2018, the Dorchester County Court of Common Pleas ordered that the Will be admitted to probate. A decision concerning the appointment of Mr. Fox as personal representative was taken under advisement.

8. Following the admission of the Will to probate, and with full knowledge of the fact that Mr. Fox was named as a successor personal representative of the Estate, this Court entered a Modified Order for the Appointment of a Special Administrator, dated August 27, 2018, which found that "[t]he continued appointment and service of Andrew W. Chandler as the Special Administrator for the Decedent's Estate is necessary to preserve the estate, to secure its proper administration, to avoid actual and potential conflicts of interest, and to protect its assets." Modified Order attached as Exhibit 1.

9. On February 13, 2019, the Dorchester County Court of Common Pleas issued its Order concerning the appointment of Mr. Fox, ordering that Mr. Fox be appointed as personal representative.

10. The appointment of Mr. Fox terminated Mr. Chandler's appointment as Special Administrator pursuant to S.C. Code Ann. § 62-3-618.

11. As a result of the termination of Mr. Chandler's appointment, RH became a creditor of the Estate and, as such, pursuant to S.C. Code Ann. § 62-1-201(23), an "interested person." RH Creditor's Claim is attached as Exhibit 2.

12. RH is making this Application pursuant to S.C. Code Ann. § 62-3-607(a) because Mr. Fox's appointment as personal representative unreasonably jeopardizes the interests of the Estate and those interested in it.

13. Mr. Fox has demonstrated on numerous occasions that his intentions do not align with, and run afoul of, the best interests of the Estate and the timely and efficient administration of the Estate. For example, on more than one occasion Mr. Fox has taken measures to frustrate the administration of the Estate and Mr. Chandler's attempts to distribute Estate assets to its sole devisee, the Colucci Living Trust. A



description of these measures, as well as this Court's determination that "[Mr.] Fox and his counsel have taken measures to frustrate [Mr.] Chandler's distribution of Estate assets to the Trust" is contained in this Court's Order, filed on February 7, 2019, which denied Mr. Fox's petition seeking the removal of Mr. Chandler as special administrator. See Order, attached as Exhibit 3, p. 10.

14. In fact, this Court ordered that Mr. Fox pay the Estate the attorneys' fees and costs incurred in defending Mr. Fox's Petition for Removal of Special Administrator, presumably because of the Court's determination that he "failed to present to this Court any evidence or law in support of his arguments that cause exists to remove [Mr.] Chandler as Special Administrator." Order, p. 16. Additionally, the Court noted that, based on the presentation of the case, it was clear that the "intention in filing the Petition for Removal of Special Administrator was to interpose delay in administering the Decedent's Estate." Order (Ex. 3), pp. 16-17, fn. 6.

15. Additionally, the Estate is facing complicated tax issues which Mr. Fox is not fit and able to handle (largely due to the fact that he may bear some responsibility for those issues which may have detrimental impacts on the Estate). Some of those issues are described in this Court's Order, pp. 13-16 (Ex. 3).

16. As it pertains to the handling of the two pending lawsuits described *infra*, ¶ 4, Applicant has concerns that Mr. Fox's allegiance and long-time friendship with Ivo Colucci, the primary defendant in both actions, poses a conflict of interest and would interfere in his ability to pursue the highest and best recovery for the Estate. Mr. Fox was

deposed as a fact witness in both of these lawsuits on January 25, 2019, and testified that Mr. Colucci, who shot and killed the Decedent, was his "best friend."<sup>1</sup>

17. To be sure, at this juncture in the administration of the Estate, nearly two years following Decedent's death, changing the fiduciary, regardless of who that replacement may be, would inevitably result in delay and waste, all to the detriment of the Estate. This Court has already determined the following:

Based on the extremely litigious and multifaceted complications plaguing this Estate, removing the Special Administrator at this point would be illogical. It would cause an extreme hardship to the Estate for a new fiduciary to have to learn and understand all the management, negotiations, and issues that have been handled and will continue to need to be handled.

Order (Ex. 3), p. 16.

18. Pursuant to S.C. Code Ann. § 62-3-607, Applicant requests that the Court restrain Mr. Fox, on a temporary basis until a hearing can be held, as general Personal Representative, from exercising any powers or discharging any duties of his office, pursuant to S.C. Code Ann. § 62-3-607.

WHEREFORE, Applicant Elizabeth J. Palmer, on behalf of Rosen Hagood, LLC, requests that the Court restrain Michael C. Fox as general personal representative of the Estate of Doris Duane Colucci from exercising any powers or discharging any duties of his office, pursuant to S.C. Code Ann. § 62-3-607, both temporarily and, following a hearing, indefinitely, and for such other and further relief as this Court may deem just and proper.

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<sup>1</sup> Applicant has attempted to obtain a copy of the transcript of Mr. Fox's deposition but was informed that the court reporter would not release it as she is waiting for counsel for Mr. Fox to provide her with certain exhibits.

ROSEN HAGOOD, LLC



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H. Brewton Hagood

Andrew D. Gowdown

Elizabeth J. Palmer

151 Meeting Street, Suite 400

Charleston, South Carolina 29401

(843) 577-6726

Charleston, South Carolina  
February 13, 2019

PROBATE JUDGE  
DORCHESTER COUNTY

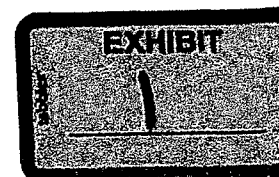
2019 JAN 24 PM 12:56

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )  
IN THE MATTER OF THE ESTATE )  
OF DORIS DUANE COLUCCI, )  
ALSO KNOWN AS DORIS D. )  
COLUCCI )  
IN THE PROBATE COURT  
CASE NO. 2017-ES-18-00294  
MODIFIED ORDER FOR THE  
APPOINTMENT OF A SPECIAL  
ADMINISTRATOR

PROBATE JUDGE  
DORCHESTER COUNTY  
2019 FEB 13 PM 12:11  
2019 AUG 27 PM 12:16

This modification of the Probate Court's July 10, 2017 Consent Order for the Appointment of a Special Administrator is in response to the Order dated August 27, 2018, of the Honorable Edgar Dickson of the First Judicial Circuit granting Summary Judgement for the Probate of the Last Will of Doris D. Colucci. Based on the Order probating the Last Will of Doris D. Colucci, the Probate Court makes the following modifications to its July 10, 2017 Consent Order for the Appointment of a Special Administrator:

1. The administration of the probate Estate of Doris D. Colucci (the "Decedent") shall proceed pursuant to the terms of the Last Will of Doris D. Colucci;
2. The sole devisee under the Last Will of Doris D. Colucci is the "Colucci Living Trust, dated February 24, 2005 and any amendments or restatements thereto" and, therefore, all assets that will be distributable out of the Decedent's Estate shall be transferred to the then-serving Trustee of the Colucci Living Trust, unless otherwise ordered by this Court;
3. The Court has appointed Andrew W. Chandler, Esquire, as the Special Administrator for the Decedent's Estate;
4. Andrew W. Chandler has extensive experience in probate matters, is recognized state-wide for his knowledge in this area, and has ably served as a fiduciary to this Court; and



5. The continued appointment and service of Andrew W. Chandler as the Special Administrator for the Decedent's Estate is necessary to preserve the estate, to secure its proper administration, to avoid actual and potential conflicts of interest, and to protect its assets.

NOW THEREFORE,

A. Andrew W. Chandler shall continue to serve as the Special Administrator of the Estate of Doris Duane Colucci, pursuant to the terms of the Last Will of Doris D. Colucci, the applicable terms of the Consent Order dated July 10, 2017, and the terms of this modified Order;

B. Andrew W. Chandler, as Special Administrator of Decedent's Estate, has retained the services of an accountant and attorneys with the prior express approval of the Court and may continue to retain such services as he determines necessary for the proper administration of the Decedent's Estate;

C. Until such time that a determination is made pursuant to S.C. Code Ann. § 62-2-803(f) of the South Carolina Probate Code regarding the status of Ivo Francesco Colucci (as an heir of the Decedent's Estate, a beneficiary of the Colucci Living Trust, a joint owner with right of survivorship, and a designated beneficiary) pursuant to the Slayer's Act, Andrew W. Chandler, as Special Conservator, shall hold any funds or property to which Ivo Francesco Colucci may otherwise be entitled as a joint owner with right of survivorship or a designated beneficiary, if the Slayer's Act does not apply, in a separate account, unless otherwise ordered by this Court;

D. Pursuant to S.C. Code Ann. § 62-3-617, and other relevant statutory provisions of the South Carolina Probate Code, Andrew W. Chandler, as Special Administrator, shall continue to have all the powers of a general Personal Representative as applied under PART 7 (S.C. Code

Ann. §§ 62-3-701 through 62-3-721) of the South Carolina Probate Code, and such powers are incorporated herein by specific reference thereto.

E. This Order is subject to such further orders of the Dorchester County Probate Court or the First Judicial Circuit Court as may be or shall become necessary for the custody, control, and administration of the Estate of Doris Colucci.

AND IT IS SO ORDERED.

Mary Q. Blunt  
The Honorable Mary Q. Blunt  
Dorchester County Probate Court

27th day of August, 2018  
St. George, South Carolina

PROBATE JUDGE  
DORCHESTER COUNTY  
2020 JAN 24 PM 12:56

|                                  |   |                           |
|----------------------------------|---|---------------------------|
| STATE OF SOUTH CAROLINA          | ) | IN THE PROBATE COURT      |
|                                  | ) |                           |
| COUNTY OF DORCHESTER             | ) | CASE NO: 2017-ES-18-00294 |
|                                  | ) |                           |
| IN RE: THE ESTATE OF DORIS       | ) |                           |
| DUANE COLUCCI, AKA DORIS D.      | ) |                           |
| COLUCCI,                         | ) |                           |
|                                  | ) |                           |
| MICHAEL C. FOX, NAMED PERSONAL   | ) |                           |
| REPRESENTATIVE IN THE LAST WILL  | ) |                           |
| OF DORIS COLUCCI,                | ) |                           |
|                                  | ) |                           |
| Petitioner,                      | ) |                           |
|                                  | ) |                           |
| v.                               | ) |                           |
|                                  | ) |                           |
| ANDREW W. CHANDLER, ESQUIRE,     | ) |                           |
| IN HIS CAPACITY AS SPECIAL       | ) |                           |
| ADMINISTRATOR OF THE ESTATE OF   | ) |                           |
| DORIS DUANE COLUCCI, MICHAEL C.  | ) |                           |
| FOX, SUCCESSOR TRUSTEE OF THE    | ) |                           |
| COLUCCI LIVING TRUST, DATED      | ) |                           |
| FEBRUARY 24, 2005, IVO FRANCESCO | ) |                           |
| COLUCCI, MICHAEL FREDERICK       | ) |                           |
| ANTONIO COLUCCI, JOHN MARTIN     | ) |                           |
| ANTONIO, HENRY BURKES, AND       | ) |                           |
| RICHARD M. HYMAN, JR.,           | ) |                           |
|                                  | ) |                           |
| Respondents.                     | ) |                           |

ORDER

PROBATE JUDGE  
DORCHESTER COUNTY  
2019 FEB -7 PM 3:30

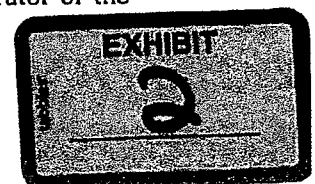
FILED  
2020 JAN 13 PM 1:11

This matter came before the Court on Petitioner Michael Fox's Petition for Removal of Special Administrator pursuant to S.C. Code Ann. § 62-3-611. For the reasons set forth herein, and after considering the evidence presented, law, and arguments of counsel, this Court finds that the Petition should be denied and that certain costs and fees should be assessed against Petitioner Fox pursuant to S.C. Code Ann. § 62-1-111.

# PROCEDURAL HISTORY

Doris Duane Colucci was killed by her husband, Ivo F. Colucci, on April 14, 2017. Respondent Andrew W. Chandler, Esquire, was appointed Special Administrator of the

MB  
2/11/19



Estate of Doris Duane Colucci (the "Estate") by this Court on June 9, 2017, on a temporary basis and then, by Consent Order dated July 10, 2017, on a permanent basis.

On August 24, 2017, Decedent's purported Last Will and Testament, dated June 18, 2013 (the "Will"), was filed with this Court, although no petition seeking to have the Will admitted to probate was filed at that time. The Will nominates Ivo F. Colucci as the personal representative and Michael Fox, Henry Burkes, and Richard Hyman (in that order) as successor personal representatives. The primary devisee of the Will is the Colucci Living Trust (the "Trust"), dated February 24, 2005, which names Petitioner Fox as a successor trustee. On October 27, 2017, Petitioner Fox accepted the trusteeship of the Trust and, to date, continues to serve in that capacity.

On October 30, 2017, Petitioner Fox filed a Petition for Formal Testacy and Appointment, seeking to have the Decedent's Will admitted to probate and also seeking to have himself appointed as the personal representative of the Estate. Upon motion by Petitioner Fox, the Petition for Formal Testacy and Appointment was removed to the Dorchester County Court of Common Pleas by Order of this Court filed November 20, 2017. By Circuit Court Order filed August 27, 2018, Decedent's Will was admitted to probate, making the Colucci Living Trust the sole devisee of the Estate. To date, no decision has been rendered by the Circuit Court on Petitioner Fox's Petition for Appointment as personal representative. Following the probate of the Will, this Court entered a Modified Order for the Appointment of a Special Administrator, confirming Respondent Chandler's appointment as Special Administrator in this matter and directing that he administer the Estate pursuant to the terms of the Will.



On January 4, 2019, Petitioner Fox filed a Petition for Removal of Special Administrator<sup>1</sup> as well as a Motion for Removal, seeking to remove the Petition for Removal of Special Administrator to the Dorchester Court of Common Pleas. By Order filed on January 8, 2019, this Court denied the Motion for Removal on the basis that a petition seeking removal of a Special Administrator is not removable to the circuit court as a matter of right pursuant to S.C. Code Ann. § 61-1-302.

Also on January 8, 2019, Respondent Chandler filed a Motion for Emergency Hearing, requesting that Petitioner Fox's Petition for Removal of Special Administrator be scheduled for an emergency hearing and that the Estate's costs and fees incurred in responding to, and defending, Petitioner Fox's Petition, be assessed against Petitioner Fox pursuant to S.C. Code Ann. § 62-1-111. The request for an emergency hearing was granted, and that hearing was held on January 9, 2019. In attendance were: Gordon Garrett, Esquire, and Ryan Love, Esquire, counsel for Petitioner Fox; Respondent Chandler with his attorney, Elizabeth Palmer, Esquire; David Haller, Esquire, counsel for Christa M. Yantis, as Conservator for Ivo Colucci, and Alice Norton, as Guardian for Ivo Colucci; Brandt Shelbourne, Esquire, counsel for Robert Colucci; Eduardo Curry, Esquire, counsel for Stefan Colucci; and Angus Lawton, Esquire, counsel for Michael Antonio and Michael Colucci.

#### **APPLICABLE LAW**

A personal representative, which is defined to include a special administrator, is a fiduciary under this state's probate code. S.C. Code Ann. § 62-3-703; S.C. Code Ann. §

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<sup>1</sup> While titled "Petition for Removal of Special Administrator," the Petition attaches a Motion to Restrain Special Administrator, previously filed by Petitioner Fox in the Circuit Court on November 26, 2018, and requests that this Court grant the relief sought therein. As such, before this Court is both Petitioner Fox's request that Respondent Chandler be removed and also that he be restrained.

mw  
2/7/19

62-1-201. A special administrator must "take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession" and has a duty "to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate." S.C. Code Ann. §§ 62-3-703(a), 62-3-709. A special administrator "shall use the authority conferred upon him by this code, the terms of the will, and any order in proceedings to which he is party for the best interests of successors to the estate." S.C. Code Ann. § 62-3-703(u).

"A person interested in the estate may petition for removal of a [special administrator] for cause at any time." S.C. Code Ann. § 62-3-611(a). "Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a [special administrator] or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the [special administrator] has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office." S.C. Code Ann. § 62-3-611(b). The power to remove a special administrator "should be executed with great caution, and not at all, unless it is made to appear to be necessary for the protection of the estate, to prevent loss or injury to it from misappropriation, maladministration or fraud." Blackmon v. Weaver, 366 S.C. 245, 251, 621 S.E.2d 42, 45 (Ct. App. 2005) (quoting Smith v. Heyward, 115 S.C. 145, 164, 105 S.E. 275, 282 (1920)).

## **FINDINGS OF FACT & CONCLUSIONS OF LAW**

### **I. S.C. Code Ann. § 62-3-615 does not require the removal of Respondent Chandler.**

Petitioner Fox contends that S.C. Code Ann. § 62-3-615 requires that he, or one of the other individuals named as successor personal representatives in Decedent's Will, be appointed as special administrator and, therefore, Respondent Chandler's appointment must be terminated. That section provides as follows:

#### **§ 62-3-615. Special administrator; who may be appointed.**

(a) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available and qualified.

(b) In other cases, any proper person may be appointed special administrator.

This section is inapplicable to the matter before the Court and provides no basis for the removal of Respondent Chandler.<sup>2</sup> Contrary to the assertion of Petitioner Fox, Respondent Chandler was not appointed as Special Administrator pursuant to S.C. Code Ann. § 62-3-615 but was instead appointed pursuant to S.C. Code Ann. § 62-3-617. See Consent Order for the Appointment of a Special Administrator at 4, July 10, 2017. The statute cited by Petitioner Fox relates to a temporary appointment process for a special administrator. However, pursuant to this Court's July 10, 2017 Consent Order for the Appointment of a Special Administrator, Respondent Chandler was appointed pursuant to a formal proceeding that grants a special administrator the full duties and responsibilities

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<sup>2</sup> The Court would further note that, contrary to Petitioner Fox's argument, this section, even when applicable, does not provide for the automatic appointment of a nominated personal representative as special administrator. Rather, just as with the appointment of a personal representative, there must first be a determination by a court of competent jurisdiction that the individual is available and qualified.

as a personal representative. Therefore, Petitioner Fox's request that the Court remove Respondent Chandler as Special Administrator pursuant to S.C. Code Ann. § 62-3-615 is inappropriate and contrary to the current posture of this case.

**II. The Special Administrator's fees, and those of his attorney, are not excessive and provide no basis for his removal as Special Administrator.**

Petitioner Fox contends that the fees paid from the Estate to Respondent Chandler and his counsel for matters related to the administration of the Estate, as well as the contingency fee of 40% related to the wrongful death lawsuit that is pending, are excessive but he has failed to present evidence to substantiate this claim. Rather, Petitioner Fox makes the assumption that the fees paid to Respondent Chandler and his counsel, totaling approximately \$165,000.00 as shown on the last Accounting filed by Respondent Chandler, are improper.<sup>3</sup> The Court disagrees and would further note that Respondent Chandler and his counsel are compensated for their work in this matter at an hourly rate of \$200.00, which is substantially less than their standard hourly rates. Further, this Court has reviewed the detailed invoices submitted by Respondent Chandler, and on each occasion, has found them to be appropriate.

The fees collected by Respondent Chandler and his counsel in the amount of \$165,849.91 that are challenged by Petitioner Fox are approximately 5.7% of the value of the Estate at the time of Decedent's death (\$2,865,316.20). The statutorily allowed commission for personal representatives is 5% of the appraised value of the personal

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<sup>3</sup> That Petitioner Fox made this claim of excessive fees without support is evidenced by the following statement in his Petition: "The Movant requires the Special Administrator's billing statements to determine which actions and how much time was spent by the Special Administrator and his experts to prevent the appointment of a Personal Representative. To date, the Movant has been prohibited from inspecting the records." The Court finds it concerning that Petitioner Fox would accuse two members of the Bar of excessive billing without having any knowledge as to the nature and extent of work performed by Respondent Chandler and his counsel.

property of the probate estate (plus the sales proceeds of real property of the probate estate received on sales directed or authorized by will or court order). S.C. Code Ann. § 62-3-719. Fees incurred by a personal representative's attorney are generally paid out of an estate in addition to those paid to the personal representative. As such, just on its face, the amount paid here to Respondent Chandler and his counsel is reasonable given that, jointly, it is just slightly above that which is customarily allowed solely for the personal representative. Moreover, the Court has reviewed the reasonableness of these fees taking into consideration the novel and complex nature of the legal issues that have been addressed by Respondent Chandler and his counsel, the nature and quality of the work that has been performed, and the benefit that the Estate has derived from that work and confirms and concludes that the fees are reasonable and appropriate.

Likewise, Petitioner Fox's assertion that the contingency fee agreement between the Estate and Rosen, Rosen & Hagood, LLC ("RRH"), for the prosecution of the pending wrongful death lawsuit is excessive is without merit. Petitioner Fox contends that the contingency fee agreement, which provides for legal fees of 40% of the recovery from the wrongful death lawsuit, and which was previously approved by this Court, is "lavish" and "extraordinary." Petitioner Fox failed to present any argument or evidence substantiating his claim that the contingency fee agreement is unreasonable, and the Court takes notice that the contingency fee agreement is typical of those in other personal injury actions. The Court finds no basis on which to revisit its prior determinations that this agreement and the hiring of RRH to prosecute the wrongful death lawsuit are appropriate.

In questioning the fees RRH are receiving to serve as attorney for Respondent Chandler in matters related to the administration of the Estate as well as the contingency

fee arrangement related to the pending wrongful death lawsuit, Petitioner Fox tried to establish that the law firm was double billing. Counsel for Respondent Chandler explained on the record RRH's billing practices with this case and how they actually benefit the Estate:

Related to the fees issue, there are these allegations, I think, of double dipping. This arises out of the fact that my law firm is handling both the wrongful death action, obviously on contingency basis because it's a wrongful death, and also representing Mr. Chandler as his attorney as he administers the estate. Now, part of the administration of the estate includes the Slayer action which is currently pending. It would not be unusual for Mr. Chandler or for this Court to appoint two separate law firms to represent [him], one to do the wrongful death and one to represent Mr. Chandler in the administration. If that was the case here, the [estate] would be charged for the discovery that's being done in these cases. So the Slayer case and the wrongful death, we have effectively combined or consolidated them for the purposes of discovery, because the discovery is very similar in the two of them. We have not charged one penny to the estate for any of the discovery. None of the expert witness fees, none of the court reporter fees. . . . [T]he fact that my firm is representing both has benefited the estate.

Hearing Transcript, pp. 49-50.

Therefore, by allowing RRH to serve the dual role as attorney for Respondent Chandler in his administration of the Estate and pursuing the Slayer case as well as representing him in the pending wrongful death case, the Estate is receiving a substantial benefit. The Estate is not having to pay for any attorney's fees or costs associated with the discovery RRH has done in pursuit of the Slayer case. RRH will only be compensated for their time and the costs they have incurred from the settlement proceeds of the wrongful death action. If the Court had allowed Respondent Chandler to engage separate attorneys to handle the slayer cases and the wrongful death, the Estate would have been liable to pay the attorney handling the Slayer case for their time and costs incurred in completing the

discovery for that case in addition to what RRH will already receive as compensation from the wrongful death action.

Based on the foregoing, the Court finds that the fees paid to Respondent Chandler and his counsel are reasonable, the rate at which they are being compensated is reasonable, and that the work performed by Respondent Chandler and his counsel, which has involved novel and complex legal issues, has directly benefited the Estate.

**III. The Special Administrator has appropriately collected and distributed the Estate's assets.**

As a Special Administrator with all the powers of a general personal representative, Respondent Chandler is required to settle and distribute the Estate as expeditiously and efficiently as is consistent with the best interests of the estate. S.C. Code Ann. § 62-3-703. Petitioner Fox contends that Respondent Chandler has "unreasonably failed to disburse the Estate's assets according to the wishes of Doris Colucci." Petitioner Fox also takes issue with the manner in which Respondent Chandler has effectuated distributions to the Trust, stating: "On November 19, 2018, without any warning, the Special Administrator attempted to have hand delivered an envelope containing the jewelry to Mr. Fox, via his attorney, without any explanation, itemization, or receipt."

These claims are without merit and provide no basis for the removal of Respondent Chandler. Petitioner Fox has failed to present evidence that there has been any unreasonable delay in distributing the Estate's assets to the Trust. The Trust, of which Petitioner Fox is the trustee, did not become the devisee of the Estate until the Will was probated on August 27, 2018. Given the circumstances surrounding the administration of this Estate, including, but not limited to, ongoing litigation and outstanding tax issues and

potential tax liability, the Court finds that Respondent Chandler's actions with regard to the distribution of assets to the Trust have been proper and appropriate.

The Court further takes notice that Petitioner Fox and his counsel have taken measures to frustrate Respondent Chandler's distribution of Estate assets to the Trust. On November 19, 2018, counsel for Petitioner Fox refused to accept certain assets that the Estate distributed to the Trust, assets which were listed on the Proposal for Distribution filed by Respondent Chandler on or about September 24, 2018, and served on counsel for Petitioner Fox. Petitioner Fox and his counsel also attempted to hinder the sale of a ring by the Special Administrator. The Special Administrator had obtained an Order from this Court approving the sale of the ring to create liquid assets in the Estate. Petitioner Fox filed a Application to Restrain the Special Administrator from selling the ring, and then withdrew the Application. Additionally, while Petitioner Fox takes issue with the lack of cash distributed to the Trust from the Estate, Petitioner Fox was on notice that Respondent Chandler filed a second Proposal for Distribution on November 20, 2018, proposing the distribution of \$10,000.00 to the Trust. A hearing on that Proposal for Distribution was initially scheduled for January 9, 2019. However, Petitioner Fox filed his Petition for Removal of Special Administrator with the stated intention of postponing the hearing on the Proposal for Distribution, which would result in the distribution of cash to the Trust being postponed.

Petitioner Fox also states that "complaints have been raised to [his] counsel that the house is in poor condition and the Special Administrator has failed to conduct maintenance." Petitioner Fox failed to present any evidence supporting this claim and the Court finds that this is not a basis for Respondent Chandler's removal.



**IV. The Special Administrator has not breached any duties owed to the Colucci Living Trust concerning the provision of information or the reimbursement of the Trustee's costs.**

Petitioner Fox claims that Respondent Chandler has failed to provide him with information, stating that "[o]utside of the Proposed Distribution, Mr. Fox had not been forwarded a single document, including basic estate documents such as the Inventory and Appraisement and the estate account." The documents to which Petitioner Fox refers are attached to his Petition, namely, the Inventory and Appraisement which was filed in April 2018 and the Accounting which was filed in July 2018. The Trust did not become the devisee of the Estate until August 27, 2018. Prior to that time, Respondent Chandler had no duty to provide Petitioner Fox with any information given that Petitioner Fox neglected to file a Demand for Notice. Furthermore, the Estate file is a public record and was available to Petitioner Fox to review anytime. Petitioner Fox has failed to substantiate his claim that Respondent Chandler failed to provide him with information that Respondent Chandler had a duty to provide to him.

Petitioner Fox also appears to argue that Respondent Chandler acted improperly by not reimbursing him, as Trustee of the Colucci Living Trust, for "his costs to probate the [Decedent's] Last Will." The Court finds no impropriety on the part of Respondent Chandler and Petitioner Fox failed to present any authority to support his contention that Respondent Chandler is required to reimburse such costs. The Court further takes notice that Petitioner Fox has not submitted any request for payment to Respondent Chandler. The Court makes no determination as to whether those costs are properly reimbursed by the Estate, but only notes that Petitioner Fox had the opportunity to submit a claim for payment pursuant to the procedure set forth in S.C. Code Ann. § 62-3-804.

**V. The Special Administrator's use of Estate funds to object to the appointment of Petitioner Fox as personal representative of the Estate is not grounds for his removal.**

After being served with Petitioner Fox's Petition for Formal Testacy and Appointment, which was removed to Circuit Court, Respondent Chandler submitted an Answer and Objection and, at a hearing, argued that the appointment of Petitioner Fox would not be in the best interests of the Estate. Petitioner Fox argues in his Petition that Respondent Chandler "has acted unreasonably and against the interest[s] of the Estate by using estate assets to prevent the appointment of a Successor Personal Representative as specified in the Last Will of Doris Colucci." The Court disagrees.

As Special Administrator, Respondent Chandler is required to use the authority conferred upon him by the Probate Code for the best interests of the successors to the Estate, which, in this case, is the Trust. S.C. Code Ann. § 62-3-703. He is also required to "take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession." S.C. Code Ann. § 62-3-709.

Respondent Chandler testified at length as to the basis for his objection to Petitioner Fox's appointment as personal representative of the Estate.

**Q:** What was your basis for Mr. Fox to be disqualified?

**A:** Let me back up and say, when you filed formal probate, it was removed at your request. I was served. I answered, as is required. I'd have to review my answer. And I'm happy, if you want to hand me my answers. But as I recall, by that point, because it had been several months, but at that point we were fully engaged in the administration of this estate. Which is not a simple estate. And so there's -- there has been or there is a vast array of litigation. But I'd have to review my answer. But as I recall, I believe Mr. Fox, or anyone else, frankly, nothing necessarily to do with Mr. Fox, it would be very inefficient for the court to appoint someone at that point as the personal representative because we'd already begun the process and were involved in a variety of pieces of litigation. It's, again, a complex estate. It had lots of moving parts. And the time it takes to be up to speed

on all of those issues is not insignificant. And so at some point, it is not in the best interest of the beneficiaries.

... It would be very difficult and would be costly for anyone else at that point to have been appointed, in my view. At the end of the day it's for the court to determine who the fiduciary is. It's not me who decides that. It's for the court to determine who is qualified, who is appropriate. In simple cases, perhaps it's easiest just to follow the will. This is not a simple case, Mr. Garrett. This is a very complex case.

On top of that, Mr. Fox, it just so happens, who had been a longtime friend of the Coluccis, had done their bookkeeping and tax returns for years, decades perhaps, would likely have been a witness. It turns out he is a witness. And he has been deposed and will be deposed. So as I predict, he potentially had a conflict. That may not be true of the next person in line. Although, Henry Burkes is also a witness to this killing. And that may not have been true of the next person in line. But again, it is a complex estate, it is costly to transfer it to someone else.

However, as special administrator, and being involved with a very complex case, which thankfully a lot of it has been resolved, but we still have ongoing litigation, it was just extremely inefficient and foolish, in my opinion, to transfer it to anyone else.

Hearing Transcript, pp. 16-19.

The estate is so complex that Petitioner Fox's attorney, Gordon Garrett, offered to hire Mr. Chandler as an expert if Mr. Chandler would agree to allow Petitioner Fox to serve as the Personal Representative.

Q. Did I offer to retain you as an expert to work for the Estate of Doris Colucci prior to the hearing in Court of Common Pleas in the summer of 2017<sup>4</sup>?

A. Did you ask me to?

Q. Serve as an expert if Mr. Fox was appointed as the personal representative?

A. Let me tell you what I recall from that conversation which occurred outside of Judge Dickson's courtroom. What I recall is, you said, well, if Mr. Fox is appointed – or if you agreed to have Mr. Fox appointed – which again I'm telling you I couldn't have agreed to that because that's not my role – but if Mr. Fox were to be appointed, you know, we could hire you, Andrew, and Ms. Palmer, to continue to do what you do. But in the meantime, we'll also be in there, and then whatever you would do.

And from my perspective, that is in no way beneficial to the beneficiaries

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<sup>4</sup> The hearing was in the summer of 2018 not 2017.

of this estate, which now it turns out that the designee, Mr. Fox, has accepted trusteeship. That is in no way beneficial to those beneficiaries, whoever they may have been, to go from the fees that we are charging, which by the way are a fraction of my regular billing rate, to add two more people and add their rate. I mean, how is that beneficial or helpful to the estate? No way do I think that's appropriate. And I think I told you such. But I don't know that I realized that it was a job offer.

Hearing Transcript, pp. 21-22.

The Court has a voluminous Estate file on this matter with over one thousand documents, and a sister guardianship and conservatorship file which is equally voluminous. The Estate file is rife with litigation and complex issues. On file with the Court are a large web of business interests involved in litigation and negotiation including I&M Colucci, HID LLC, and Terrivo Enterprises LLC. All of these businesses held real property that have complicating factors. The Estate also has multiple parcels of real property in multiple jurisdictions and multiple states with various ownership interests. There is litigation that was in place before Mrs. Colucci's death and after her death. For example, there is litigation involving the Slayer case, wrongful death, I&M Colucci, and Terrivo Enterprises LLC. Numerous attorneys are involved in the case representing various parties and interests which further complicates the Estate.

Additionally, there are ongoing and significant tax issues that the Special Administrator is attempting to resolve. For example, Mr. Chandler testified that Petitioner Fox, who had been the Colucci's long-time bookkeeper and tax preparer, had filed a tax return that is "patently wrong on its face ... that works a tremendous hardship on the estate and the beneficiaries of the estate." Hearing Transcript p. 40. Mr. Chandler testified at length about the complicating tax issues facing the Estate.

Q. Are you aware that Ms. Palmer requested Michael Fox to prepare a Schedule K for an LLC called HID?

Q. [Chandler] What do you mean by "Schedule K"?

A. [Garrett] A partnership return.

Q. Okay. So that's a different number. But yes, I am aware of that.

Q. So you believe that Mr. Fox was competent to prepare that document?

A. What I know is that HID is managed and controlled by Henry Burkes, whose name we've heard before. And he is the manager of that company. He hired Mr. Fox to prepare tax returns for that company. Ms. Doris Colucci owned 30 percent in that company. That's it. She doesn't control anything in that company. Mr. Burkes controls -- he prepares tax returns, not me. In fact, Mr. Fox prepared a tax return which is patently wrong on its face, and we simply asked him to correct the K1's, which by the way, if they're not corrected -- and I'll also note, Mr. Garrett, that Mr. Fox replied to your email saying he'll be glad to amend them. And then you in December decided, nevermind, we're not going to do that. But that works at tremendous hardship on the estate and the beneficiaries of the estate. Because if Mr. Fox does not amend that return, or Mr. Burkes does not amend that return properly and make a sub 4 election on the return and produce a K1 that is accurate, the estate of Doris Colucci would potentially lose a basic step up in its assets which negatively impacts the beneficiaries of that estate. So yes, I'm aware of that.

Q. But you're also a member of HID?

A. I am. Well, I'm not, but the estate is.

Q. The estate is. And you're capable of preparing the proper tax [return]?

A. I'm not qualified. I don't have the books and the things that are required to prepare returns, Mr. Garrett. Mr. Burkes has those items. He hires who he wants to prepare the returns. If he hired Mr. Fox, that's fine. If he thinks that's the proper person, great. But the return is not properly prepared. And it was filed improperly. For example, he listed [I&D], which is an accommodation party. It does not have an EIN. It is not a taxpayer. He filed that return on the IRS. That is absolutely an improperly filed return. It will be pulled. Mr. Colucci and Doris Colucci's estate are going to have issues because of that, because you can't file a return without an EIN. And I would think Mr. Fox would know that.<sup>5</sup>

Hearing Transcript pp. 39-41.

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<sup>5</sup> Mr. Chandler is a Certified Specialist in Estate Planning and has an L.L.M. in Taxation.

Based on the extremely litigious and multifaceted complications plaguing this Estate, removing the Special Administrator at this point would be illogical. It would cause an extreme hardship to the Estate for a new fiduciary to have to learn and understand all the management, negotiations, and issues that have been handled and will continue to need to be handled. Therefore, the Court finds no impropriety in Respondent Chandler's actions in objecting to the appointment of Petitioner Fox as personal representative of the Estate. Respondent Chandler is required to take all steps to protect the Estate and preserve its assets, and the Court is satisfied that his objection was based on a valid concern that the interruption of his administration of the Estate would not be in the best interests of the Estate or the Trust, its sole devisee, as it would result in unnecessary delay and expense.

Petitioner Fox also argues that, "[h]ad the Special Administrator truly believed that Mr. Fox was not qualified for any reason, he should have immediately notified any of the next two Successor Personal Representatives of his concerns." The Court is aware of no legal duty on the part of Respondent Chandler to take this action, nor did Petitioner Fox present any authority to support his contention that such a duty exists.

**VI. The award of costs and expenses against Petitioner Fox is appropriate.**

In a formal proceeding, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the estate that is the subject of the controversy. S.C. Code Ann. § 62-1-111. Petitioner Fox made a number of accusations against Respondent Chandler and his counsel but failed to present to this Court any evidence or law in support of his arguments that cause exists to remove Respondent Chandler as Special Administrator.<sup>6</sup>

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<sup>6</sup> Rule 11 of the South Carolina Rules of Civil Procedures states that "[t]he written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleadings, motion or other paper;

The Court finds that justice and equity require that Petitioner Fox pay the Estate's costs and expenses, including reasonable attorney's fees, incurred in responding to his Petition to Remove Special Administrator. Respondent Chandler and his counsel have submitted Affidavits of Fees and Costs which this Court has considered and finds to be appropriate.

**IT IS HEREBY ORDERED** that Petitioner Fox's Petition for Removal of Special Administrator is **DENIED**; and

**IT IS FURTHER ORDERED** that Petitioner Fox, pursuant to S.C. Code Ann. § 62-1-111, shall pay costs and expenses, including reasonable attorney's fees, incurred by the Estate in responding to the Petition to Remove Special Administrator in the amount of \$10,882.96.

**AND IT IS SO ORDERED!**

Mary Blunt  
The Honorable Mary Q. Blunt  
Dorchester County Probate Court

February 7, 2019  
St. George, South Carolina

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that to the best of his knowledge, information and belief there is good grounds to support it; and that it is not interposed for delay." Based on Attorney Garrett's presentation of the case, it is clear that his intention in filing the Petition for Removal of Special Administrator was to interpose delay in administering the Decedent's Estate. Further, he failed to present any evidence to show that he had good grounds to support his Petition.

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

IN THE MATTER OF:  
DORIS DUANE COLUCCI  
(Decedent)

IN THE PROBATE COURT  
PROBATE JUDGE  
DORCHESTER COUNTY

STATEMENT OF CREDITOR'S CLAIM

CASE NUMBER: 2017 ES 18 00294

2020 JAN 24 PM 12: 56

Decedent's Date of Death (if known): April 14, 2017

Decedent's Last Mailing Address: c/o Andrew W. Chandler, 115 Church Street, Charleston, SC 29401

|                                                                                                            |                         |
|------------------------------------------------------------------------------------------------------------|-------------------------|
| Creditor:                                                                                                  | Rosen Hagood, LLC       |
| Address:                                                                                                   | P.O. Box 893            |
|                                                                                                            | Charleston, SC 29402    |
| Telephone:                                                                                                 | (843) 577-6726          |
| Email:                                                                                                     | epalmer@rrhlawfirm.com  |
| Original Creditor:                                                                                         | n/a                     |
| Address<br>(if different from above)                                                                       | n/a                     |
| Claim Amount Due:                                                                                          | \$6,301.72              |
| Account Number:                                                                                            | 9719-00M                |
| Other Reference Number:                                                                                    | n/a                     |
| Basis of claim (Ex: Contract,<br>Services Rendered for<br>decedent, etc):                                  | Legal Services Rendered |
| Date claim will become due<br>(if not already due)                                                         | Due Now                 |
| Nature of uncertainty<br>as to the claim, if any<br>(i.e. contingent claim,<br>amount of claim, due date): | n/a                     |
| Description of security<br>as to the claim, if any<br>(Ex: Collateral for the debt)                        | n/a                     |

Signature: Elizabeth J. Palmer

Name: Elizabeth J. Palmer, Esq.

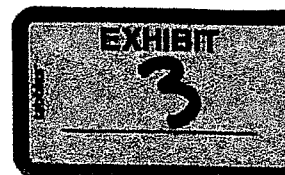
Title: Creditor Representative

Date: 2/13/19

**INSTRUCTIONS:** Claims **MUST** be filed with the Probate Court of the county in which the Decedent's Estate is under administration and may be delivered or mailed to the fiduciary appointed to administer the Estate (see SCPC 62-3-803, 62-3-804, and 62-3-806).

No claim against a Decedent's estate may be presented or legal action commenced against a Decedent's Estate prior to the appointment of a Personal Representative to administer the Decedent's Estate (except see SCPC 62-3-804(1)(b)).

Satisfaction or withdrawal of claim (FORM 325) **MUST** be filed once claim is resolved.





PROBATE JUDGE  
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA ) IN THE PROBATE COURT  
2020 JAN 24 PM 12:56 )

COUNTY OF DORCHESTER ) CASE NO: 2017-ES-18-00294

IN RE: THE ESTATE OF DORIS )  
DUANE COLUCCI, AKA DORIS D. )  
COLUCCI, )

ELIZABETH J. PALMER, ESQUIRE, ON )  
BEHALF OF ROSEN HAGOOD, LLC, )

Applicant, )

v. )

MICHAEL C.FOX, IN HIS CAPACITY AS )  
PERSONAL REPRESENTATIVE OF THE )  
ESTATE OF DORIS DUANE COLUCCI, )  
MICHAEL C. FOX, IN HIS CAPACITY )  
AS SUCCESSOR TRUSTEE OF THE )  
COLUCCI LIVING TRUST, DATED )  
FEBRUARY 24, 2005, IVO FRANCESCO )  
COLUCCI, MICHAEL FREDERICK )  
ANTONIO COLUCCI, JOHN MARTIN )  
ANTONIO, HENRY BURKES, AND )  
RICHARD M. HYMAN, JR., )

Respondents. )

**EMERGENCY APPLICATION  
FOR APPOINTMENT OF  
TEMPORARY SPECIAL  
ADMINISTRATOR**

PROBATE COURT  
DORCHESTER COUNTY  
2019 OCT 13 PM 12:12

TO: ATTORNEY FOR RESPONDENT MICHAEL C. FOX

PLEASE TAKE NOTICE that Applicant Elizabeth J. Palmer, Esquire, on behalf of Rosen Hagood, LLC, will move before the Presiding Judge of the Probate Court for the First Judicial Circuit at the Dorchester County Probate Court at 5200 E. Jim Bilton Blvd., St. George, SC 29477, as soon as possible should a hearing be required, for an Order appointing Andrew W. Chandler, Esquire, as Temporary Special Administrator of the Estate of Doris Duane Colucci ("Estate"). The grounds for this Application are as follows:

1. The Decedent was killed by her husband on April 14, 2017.
2. Andrew W. Chandler, Esquire, was appointed Special Administrator of the Estate by this Court on June 9, 2017, on a temporary basis and then, by Consent Order dated July 10, 2017, on a permanent basis.
3. By Order filed July 24, 2017, this Court approved Mr. Chandler's hiring of Rosen Hagood, LLC ("RH"), to "represent him in his capacity as Special Administrator of the Estate in connection with the investigation and pursuit of all litigation matters and claims related to the Estate."
4. RH has represented Mr. Chandler in the administration of the Estate since that time, including filing two lawsuits in October 2017: (1) a wrongful death action pending in Charleston County Court of Common Pleas; and (2) a Petition to Determine Heirs, which was brought pursuant to the "Slayer's Act" and is pending in Dorchester County Court of Common Pleas.
5. In August 2017, Decedent's purported Last Will and Testament, dated June 18, 2013, was filed with this Court.
6. It was not until October 30, 2017, that Michael C. Fox, who is named as a successor personal representative in the Will, filed a Petition for Formal Testacy and Appointment, seeking to have the Will admitted to probate and to have himself admitted as personal representative of the Estate.
7. A hearing on the Petition was held on August 13, 2018, and, by Order filed August 27, 2018, the Dorchester County Court of Common Pleas ordered that the Will be admitted to probate. A decision concerning the appointment of Mr. Fox as personal representative was taken under advisement.

8. Following the admission of the Will to probate, and with full knowledge of the fact that Mr. Fox was named as a successor personal representative of the Estate, this Court entered a Modified Order for the Appointment of a Special Administrator, dated August 27, 2018, which found that “[t]he continued appointment and service of Andrew W. Chandler as the Special Administrator for the Decedent’s Estate is necessary to preserve the estate, to secure its proper administration, to avoid actual and potential conflicts of interest, and to protect its assets.” Modified Order attached as Exhibit 1.

9. On February 13, 2019, the Dorchester County Court of Common Pleas issued its Order concerning the appointment of Mr. Fox, ordering that Mr. Fox be appointed as personal representative.

10. The appointment of Mr. Fox terminated Mr. Chandler’s appointment as Special Administrator pursuant to S.C. Code Ann. § 62-3-618.

11. As a result of the termination of Mr. Chandler’s appointment, RH became a creditor of the Estate and, as such, pursuant to S.C. Code Ann. § 62-1-201(23), an “interested person.” RH Creditor’s Claim is attached as Exhibit 2.

12. RH is making this Application in order to protect the Estate, prevent waste, and ensure that it continues to be administered efficiently and effectively.

13. Mr. Fox has demonstrated on numerous occasions that his intentions do not align with, and run afoul of, the best interests of the Estate and the timely and efficient administration of the Estate. For example, on more than one occasion Mr. Fox has taken measures to frustrate the administration of the Estate and Mr. Chandler’s attempts to distribute Estate assets to its sole devisee, the Colucci Living Trust. A description of these measures, as well as this Court’s determination that “[Mr.] Fox and

his counsel have taken measures to frustrate [Mr.] Chandler's distribution of Estate assets to the Trust" is contained in this Court's Order, filed on February 7, 2019, which denied Mr. Fox's petition seeking the removal of Mr. Chandler as special administrator. See Order, attached as Exhibit 3, p. 10.

14. In fact, this Court ordered that Mr. Fox pay the Estate the attorneys' fees and costs incurred in defending Mr. Fox's Petition for Removal of Special Administrator, presumably because of the Court's determination that he "failed to present to this Court any evidence or law in support of his arguments that cause exists to remove [Mr.] Chandler as Special Administrator." Order, p. 16. Additionally, the Court noted that, based on the presentation of the case, it was clear that the "intention in filing the Petition for Removal of Special Administrator was to interpose delay in administering the Decedent's Estate." Order (Ex. 3), pp. 16-17, fn. 6.

15. At this juncture in the administration of the Estate, nearly two years following Decedent's death, changing the fiduciary, regardless of who that replacement may be, would inevitably result in delay and waste, all to the detriment of the Estate. This Court has already determined the following:

Based on the extremely litigious and multifaceted complications plaguing this Estate, removing the Special Administrator at this point would be illogical. It would cause an extreme hardship to the Estate for a new fiduciary to have to learn and understand all the management, negotiations, and issues that have been handled and will continue to need to be handled.

Order (Ex. 3), p. 16.

16. The ongoing litigation matters, business matters, and tax matters in this Estate require a fiduciary familiar with the issues, who lacks any actual or potential conflicts of interest. Mr. Chandler has extensive experience in probate matters, is

recognized state-wide for his knowledge in this area, and has ably served as a fiduciary to this Court. The appointment and service of Mr. Chandler as the Temporary Special Administrator for the Decedent's Estate is necessary to preserve the estate, to secure its proper administration, to avoid actual and potential conflicts of interest, and to protect its assets. The best interests of the Estate of Doris D. Colucci are protected by the appointment of Andrew W. Chandler as Temporary Special Administrator.

17. Mr. Chandler has demonstrated beyond question that he is capable of administering this complex Estate and that he has done so in a competent and efficient manner.

18. Pursuant to S.C. Code Ann. § 62-3-614(1), Applicant requests that Mr. Chandler be appointed as the temporary special administrator of the Estate and be ordered to take appropriate actions involving estate assets with all of the powers of a general personal representative.

WHEREFORE, Applicant Elizabeth J. Palmer, on behalf of Rosen Hagood, LLC, moves the Court to appoint Andrew W. Chandler, Esquire, as the temporary special administrator of the Estate of Doris Duane Colucci on an emergency basis and for such other and further relief as this Court may deem just and proper.

ROSEN HAGOOD, LLC



H. Brewton Hagood  
Andrew D. Gowdown  
Elizabeth J. Palmer  
151 Meeting Street, Suite 400  
Charleston, South Carolina 29401

(843) 577-6726

Charleston, South Carolina  
February 13, 2019

FILED  
JAN 24 2020

PROBATE JUDGE  
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )  
IN THE MATTER OF THE ESTATE )  
OF DORIS DUANE COLUCCI, )  
ALSO KNOWN AS DORIS D. )  
COLUCCI )

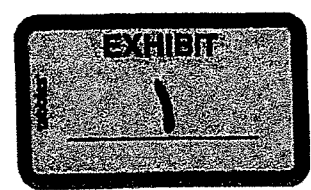
IN THE PROBATE COURT  
2020 JAN 24 PM 12:57  
CASE NO. 2017-ES-18-00294  
MODIFIED ORDER FOR THE  
APPOINTMENT OF A SPECIAL  
ADMINISTRATOR

PROBATE JUDGE  
DORCHESTER COUNTY  
2020 AUG 27 AM 12:16

This modification of the Probate Court's July 10, 2017 Consent Order for the Appointment of a Special Administrator is in response to the Order dated August 27, 2018, of the Honorable Edgar Dickson of the First Judicial Circuit granting Summary Judgement for the Probate of the Last Will of Doris D. Colucci. Based on the Order probating the Last Will of Doris D. Colucci, the Probate Court makes the following modifications to its July 10, 2017 Consent Order for the Appointment of a Special Administrator:

1. The administration of the probate Estate of Doris D. Colucci (the "Decedent") shall proceed pursuant to the terms of the Last Will of Doris D. Colucci;
2. The sole devisee under the Last Will of Doris D. Colucci is the "Colucci Living Trust, dated February 24, 2005 and any amendments or restatements thereto" and, therefore, all assets that will be distributable out of the Decedent's Estate shall be transferred to the then-serving Trustee of the Colucci Living Trust, unless otherwise ordered by this Court;
3. The Court has appointed Andrew W. Chandler, Esquire, as the Special Administrator for the Decedent's Estate;
4. Andrew W. Chandler has extensive experience in probate matters, is recognized state-wide for his knowledge in this area, and has ably served as a fiduciary to this Court; and

Page 1 of 3  
mbs  
8/27/18



5. The continued appointment and service of Andrew W. Chandler as the Special Administrator for the Decedent's Estate is necessary to preserve the estate, to secure its proper administration, to avoid actual and potential conflicts of interest, and to protect its assets.

NOW THEREFORE,

A. Andrew W. Chandler shall continue to serve as the Special Administrator of the Estate of Doris Duane Colucci, pursuant to the terms of the Last Will of Doris D. Colucci, the applicable terms of the Consent Order dated July 10, 2017, and the terms of this modified Order;

B. Andrew W. Chandler, as Special Administrator of Decedent's Estate, has retained the services of an accountant and attorneys with the prior express approval of the Court and may continue to retain such services as he determines necessary for the proper administration of the Decedent's Estate;

C. Until such time that a determination is made pursuant to S.C. Code Ann. § 62-2-803(f) of the South Carolina Probate Code regarding the status of Ivo Francesco Colucci (as an heir of the Decedent's Estate, a beneficiary of the Colucci Living Trust, a joint owner with right of survivorship, and a designated beneficiary) pursuant to the Slayer's Act, Andrew W. Chandler, as Special Conservator, shall hold any funds or property to which Ivo Francesco Colucci may otherwise be entitled as a joint owner with right of survivorship or a designated beneficiary, if the Slayer's Act does not apply, in a separate account, unless otherwise ordered by this Court;

D. Pursuant to S.C. Code Ann. § 62-3-617, and other relevant statutory provisions of the South Carolina Probate Code, Andrew W. Chandler, as Special Administrator, shall continue to have all the powers of a general Personal Representative as applied under PART 7 (S.C. Code



Ann. §§ 62-3-701 through 62-3-721) of the South Carolina Probate Code, and such powers are incorporated herein by specific reference thereto.

E. This Order is subject to such further orders of the Dorchester County Probate Court or the First Judicial Circuit Court as may be or shall become necessary for the custody, control, and administration of the Estate of Doris Colucci.

AND IT IS SO ORDERED.

Mary Q. Blunt  
The Honorable Mary Q. Blunt  
Dorchester County Probate Court

27th day of August, 2018  
St. George, South Carolina

2020 JAN 24 PM 12: 57

STATE OF SOUTH CAROLINA ) IN THE PROBATE COURT  
COUNTY OF DORCHESTER ) CASE NO: 2017-ES-18-00294  
IN RE: THE ESTATE OF DORIS )  
DUANE COLUCCI, AKA DORIS D. )  
COLUCCI, )  
MICHAEL C. FOX, NAMED PERSONAL )  
REPRESENTATIVE IN THE LAST WILL )  
OF DORIS COLUCCI, )

Petitioner,

ORDER

v.

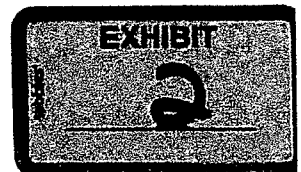
ANDREW W. CHANDLER, ESQUIRE, )  
IN HIS CAPACITY AS SPECIAL )  
ADMINISTRATOR OF THE ESTATE OF )  
DORIS DUANE COLUCCI, MICHAEL C. )  
FOX, SUCCESSOR TRUSTEE OF THE )  
COLUCCI LIVING TRUST, DATED )  
FEBRUARY 24, 2005, IVO FRANCESCO )  
COLUCCI, MICHAEL FREDERICK )  
ANTONIO COLUCCI, JOHN MARTIN )  
ANTONIO, HENRY BURKES, AND )  
RICHARD M. HYMAN, JR., )

Respondents.

This matter came before the Court on Petitioner Michael Fox's Petition for Removal of Special Administrator pursuant to S.C. Code Ann. § 62-3-611. For the reasons set forth herein, and after considering the evidence presented, law, and arguments of counsel, this Court finds that the Petition should be denied and that certain costs and fees should be assessed against Petitioner Fox pursuant to S.C. Code Ann. § 62-1-111.

#### PROCEDURAL HISTORY

Doris Duane Colucci was killed by her husband, Ivo F. Colucci, on April 14, 2017. Respondent Andrew W. Chandler, Esquire, was appointed Special Administrator of the



Estate of Doris Duane Colucci (the "Estate") by this Court on June 9, 2017, on a temporary basis and then, by Consent Order dated July 10, 2017, on a permanent basis.

On August 24, 2017, Decedent's purported Last Will and Testament, dated June 18, 2013 (the "Will"), was filed with this Court, although no petition seeking to have the Will admitted to probate was filed at that time. The Will nominates Ivo F. Colucci as the personal representative and Michael Fox, Henry Burkes, and Richard Hyman (in that order) as successor personal representatives. The primary devisee of the Will is the Colucci Living Trust (the "Trust"), dated February 24, 2005, which names Petitioner Fox as a successor trustee. On October 27, 2017, Petitioner Fox accepted the trusteeship of the Trust and, to date, continues to serve in that capacity.

On October 30, 2017, Petitioner Fox filed a Petition for Formal Testacy and Appointment, seeking to have the Decedent's Will admitted to probate and also seeking to have himself appointed as the personal representative of the Estate. Upon motion by Petitioner Fox, the Petition for Formal Testacy and Appointment was removed to the Dorchester County Court of Common Pleas by Order of this Court filed November 20, 2017. By Circuit Court Order filed August 27, 2018, Decedent's Will was admitted to probate, making the Colucci Living Trust the sole devisee of the Estate. To date, no decision has been rendered by the Circuit Court on Petitioner Fox's Petition for Appointment as personal representative. Following the probate of the Will, this Court entered a Modified Order for the Appointment of a Special Administrator, confirming Respondent Chandler's appointment as Special Administrator in this matter and directing that he administer the Estate pursuant to the terms of the Will.

On January 4, 2019, Petitioner Fox filed a Petition for Removal of Special Administrator<sup>1</sup> as well as a Motion for Removal, seeking to remove the Petition for Removal of Special Administrator to the Dorchester Court of Common Pleas. By Order filed on January 8, 2019, this Court denied the Motion for Removal on the basis that a petition seeking removal of a Special Administrator is not removable to the circuit court as a matter of right pursuant to S.C. Code Ann. § 61-1-302.

Also on January 8, 2019, Respondent Chandler filed a Motion for Emergency Hearing, requesting that Petitioner Fox's Petition for Removal of Special Administrator be scheduled for an emergency hearing and that the Estate's costs and fees incurred in responding to, and defending, Petitioner Fox's Petition, be assessed against Petitioner Fox pursuant to S.C. Code Ann. § 62-1-111. The request for an emergency hearing was granted, and that hearing was held on January 9, 2019. In attendance were: Gordon Garrett, Esquire, and Ryan Love, Esquire, counsel for Petitioner Fox; Respondent Chandler with his attorney, Elizabeth Palmer, Esquire; David Haller, Esquire, counsel for Christa M. Yantis, as Conservator for Ivo Colucci; and Alice Norton, as Guardian for Ivo Colucci; Brandt Shelbourne, Esquire, counsel for Robert Colucci; Eduardo Curry, Esquire, counsel for Stefan Colucci; and Angus Lawton, Esquire, counsel for Michael Antonio and Michael Colucci.

#### **APPLICABLE LAW**

A personal representative, which is defined to include a special administrator, is a fiduciary under this state's probate code. S.C. Code Ann. § 62-3-703; S.C. Code Ann. §

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<sup>1</sup> While titled "Petition for Removal of Special Administrator," the Petition attaches a Motion to Restrain Special Administrator, previously filed by Petitioner Fox in the Circuit Court on November 26, 2018, and requests that this Court grant the relief sought therein. As such, before this Court is both Petitioner Fox's request that Respondent Chandler be removed and also that he be restrained.

62-1-201. A special administrator must "take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession" and has a duty "to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate." S.C. Code Ann. §§ 62-3-703(a), 62-3-709. A special administrator "shall use the authority conferred upon him by this code, the terms of the will, and any order in proceedings to which he is party for the best interests of successors to the estate." S.C. Code Ann. § 62-3-703(a).

"A person interested in the estate may petition for removal of a [special administrator] for cause at any time." S.C. Code Ann. § 62-3-611(a). "Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a [special administrator] or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the [special administrator] has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office." S.C. Code Ann. § 62-3-611(b). The power to remove a special administrator "should be executed with great caution, and not at all, unless it is made to appear to be necessary for the protection of the estate, to prevent loss or injury to it from misappropriation, maladministration or fraud." Blackmon v. Weaver, 366 S.C. 245, 251, 621 S.E.2d 42, 45 (Ct. App. 2005) (quoting Smith v. Heyward, 115 S.C. 145, 164, 105 S.E. 275, 282 (1920)).

### FINDINGS OF FACT & CONCLUSIONS OF LAW

**I. S.C. Code Ann. § 62-3-615 does not require the removal of Respondent Chandler.**

Petitioner Fox contends that S.C. Code Ann. § 62-3-615 requires that he, or one of the other individuals named as successor personal representatives in Decedent's Will, be appointed as special administrator and, therefore, Respondent Chandler's appointment must be terminated. That section provides as follows:

§ 62-3-615. Special administrator; who may be appointed.

(a) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available and qualified.

(b) In other cases, any proper person may be appointed special administrator.

This section is inapplicable to the matter before the Court and provides no basis for the removal of Respondent Chandler.<sup>2</sup> Contrary to the assertion of Petitioner Fox, Respondent Chandler was not appointed as Special Administrator pursuant to S.C. Code Ann. § 62-3-615 but was instead appointed pursuant to S.C. Code Ann. § 62-3-617. See Consent Order for the Appointment of a Special Administrator at 4, July 10, 2017. The statute cited by Petitioner Fox relates to a temporary appointment process for a special administrator. However, pursuant to this Court's July 10, 2017 Consent Order for the Appointment of a Special Administrator, Respondent Chandler was appointed pursuant to a formal proceeding that grants a special administrator the full duties and responsibilities

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<sup>2</sup> The Court would further note that, contrary to Petitioner Fox's argument, this section, even when applicable, does not provide for the automatic appointment of a nominated personal representative as special administrator. Rather, just as with the appointment of a personal representative, there must first be a determination by a court of competent jurisdiction that the individual is available and qualified.

as a personal representative. Therefore, Petitioner Fox's request that the Court remove Respondent Chandler as Special Administrator pursuant to S.C. Code Ann. § 62-3-615 is inappropriate and contrary to the current posture of this case.

**II. The Special Administrator's fees, and those of his attorney, are not excessive and provide no basis for his removal as Special Administrator.**

Petitioner Fox contends that the fees paid from the Estate to Respondent Chandler and his counsel for matters related to the administration of the Estate, as well as the contingency fee of 40% related to the wrongful death lawsuit that is pending, are excessive but he has failed to present evidence to substantiate this claim. Rather, Petitioner Fox makes the assumption that the fees paid to Respondent Chandler and his counsel, totaling approximately \$165,000.00 as shown on the last Accounting filed by Respondent Chandler, are improper.<sup>3</sup> The Court disagrees and would further note that Respondent Chandler and his counsel are compensated for their work in this matter at an hourly rate of \$200.00, which is substantially less than their standard hourly rates. Further, this Court has reviewed the detailed invoices submitted by Respondent Chandler, and on each occasion, has found them to be appropriate.

The fees collected by Respondent Chandler and his counsel in the amount of \$165,849.91 that are challenged by Petitioner Fox are approximately 5.7% of the value of the Estate at the time of Decedent's death (\$2,865,316.20). The statutorily allowed commission for personal representatives is 5% of the appraised value of the personal

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<sup>3</sup> That Petitioner Fox made this claim of excessive fees without support is evidenced by the following statement in his Petition: "The Movant requires the Special Administrator's billing statements to determine which actions and how much time was spent by the Special Administrator and his experts to prevent the appointment of a Personal Representative. To date, the Movant has been prohibited from inspecting the records." The Court finds it concerning that Petitioner Fox would accuse two members of the Bar of excessive billing without having any knowledge as to the nature and extent of work performed by Respondent Chandler and his counsel.

property of the probate estate (plus the sales proceeds of real property of the probate estate received on sales directed or authorized by will or court order). S.C. Code Ann. § 62-3-719. Fees incurred by a personal representative's attorney are generally paid out of an estate in addition to those paid to the personal representative. As such, just on its face, the amount paid here to Respondent Chandler and his counsel is reasonable given that, jointly, it is just slightly above that which is customarily allowed solely for the personal representative. Moreover, the Court has reviewed the reasonableness of these fees taking into consideration the novel and complex nature of the legal issues that have been addressed by Respondent Chandler and his counsel, the nature and quality of the work that has been performed, and the benefit that the Estate has derived from that work and confirms and concludes that the fees are reasonable and appropriate.

Likewise, Petitioner Fox's assertion that the contingency fee agreement between the Estate and Rosen, Rosen & Hagood, LLC ("RRH"), for the prosecution of the pending wrongful death lawsuit is excessive is without merit. Petitioner Fox contends that the contingency fee agreement, which provides for legal fees of 40% of the recovery from the wrongful death lawsuit, and which was previously approved by this Court, is "lavish" and "extraordinary." Petitioner Fox failed to present any argument or evidence substantiating his claim that the contingency fee agreement is unreasonable, and the Court takes notice that the contingency fee agreement is typical of those in other personal injury actions. The Court finds no basis on which to revisit its prior determinations that this agreement and the hiring of RRH to prosecute the wrongful death lawsuit are appropriate.

In questioning the fees RRH are receiving to serve as attorney for Respondent Chandler in matters related to the administration of the Estate as well as the contingency



fee arrangement related to the pending wrongful death lawsuit, Petitioner Fox tried to establish that the law firm was double billing. Counsel for Respondent Chandler explained on the record RRH's billing practices with this case and how they actually benefit the Estate:

Related to the fees issue, there are these allegations, I think, of double dipping. This arises out of the fact that my law firm is handling both the wrongful death action, obviously on contingency basis because it's a wrongful death, and also representing Mr. Chandler as his attorney as he administers the estate. Now, part of the administration of the estate includes the Slayer action which is currently pending. It would not be unusual for Mr. Chandler or for this Court to appoint two separate law firms to represent [him], one to do the wrongful death and one to represent Mr. Chandler in the administration. If that was the case here, the [estate] would be charged for the discovery that's being done in these cases. So the Slayer case and the wrongful death, we have effectively combined or consolidated them for the purposes of discovery, because the discovery is very similar in the two of them. We have not charged one penny to the estate for any of the discovery. None of the expert witness fees, none of the court reporter fees. . . . [T]he fact that my firm is representing both has benefited the estate.

Hearing Transcript, pp. 49-50.

Therefore, by allowing RRH to serve the dual role as attorney for Respondent Chandler in his administration of the Estate and pursuing the Slayer case as well as representing him in the pending wrongful death case, the Estate is receiving a substantial benefit. The Estate is not having to pay for any attorney's fees or costs associated with the discovery RRH has done in pursuit of the Slayer case. RRH will only be compensated for their time and the costs they have incurred from the settlement proceeds of the wrongful death action. If the Court had allowed Respondent Chandler to engage separate attorneys to handle the slayer cases and the wrongful death, the Estate would have been liable to pay the attorney handling the Slayer case for their time and costs incurred in completing the

discovery for that case in addition to what RRH will already receive as compensation from the wrongful death action.

Based on the foregoing, the Court finds that the fees paid to Respondent Chandler and his counsel are reasonable, the rate at which they are being compensated is reasonable, and that the work performed by Respondent Chandler and his counsel, which has involved novel and complex legal issues, has directly benefited the Estate.

**III. The Special Administrator has appropriately collected and distributed the Estate's assets.**

As a Special Administrator with all the powers of a general personal representative, Respondent Chandler is required to settle and distribute the Estate as expeditiously and efficiently as is consistent with the best interests of the estate. S.C. Code Ann. § 62-3-703. Petitioner Fox contends that Respondent Chandler has "unreasonably failed to disburse the Estate's assets according to the wishes of Doris Colucci." Petitioner Fox also takes issue with the manner in which Respondent Chandler has effectuated distributions to the Trust, stating: "On November 19, 2018, without any warning, the Special Administrator attempted to have hand delivered an envelope containing the jewelry to Mr. Fox, via his attorney, without any explanation, itemization, or receipt."

These claims are without merit and provide no basis for the removal of Respondent Chandler. Petitioner Fox has failed to present evidence that there has been any unreasonable delay in distributing the Estate's assets to the Trust. The Trust, of which Petitioner Fox is the trustee, did not become the devisee of the Estate until the Will was probated on August 27, 2018. Given the circumstances surrounding the administration of this Estate, including, but not limited to, ongoing litigation and outstanding tax issues and

potential tax liability, the Court finds that Respondent Chandler's actions with regard to the distribution of assets to the Trust have been proper and appropriate.

The Court further takes notice that Petitioner Fox and his counsel have taken measures to frustrate Respondent Chandler's distribution of Estate assets to the Trust. On November 19, 2018, counsel for Petitioner Fox refused to accept certain assets that the Estate distributed to the Trust, assets which were listed on the Proposal for Distribution filed by Respondent Chandler on or about September 24, 2018, and served on counsel for Petitioner Fox. Petitioner Fox and his counsel also attempted to hinder the sale of a ring by the Special Administrator. The Special Administrator had obtained an Order from this Court approving the sale of the ring to create liquid assets in the Estate. Petitioner Fox filed a Application to Restrain the Special Administrator from selling the ring, and then withdrew the Application. Additionally, while Petitioner Fox takes issue with the lack of cash distributed to the Trust from the Estate, Petitioner Fox was on notice that Respondent Chandler filed a second Proposal for Distribution on November 20, 2018, proposing the distribution of \$10,000.00 to the Trust. A hearing on that Proposal for Distribution was initially scheduled for January 9, 2019. However, Petitioner Fox filed his Petition for Removal of Special Administrator with the stated intention of postponing the hearing on the Proposal for Distribution, which would result in the distribution of cash to the Trust being postponed.

Petitioner Fox also states that "complaints have been raised to [his] counsel that the house is in poor condition and the Special Administrator has failed to conduct maintenance." Petitioner Fox failed to present any evidence supporting this claim and the Court finds that this is not a basis for Respondent Chandler's removal.

**IV. The Special Administrator has not breached any duties owed to the Colucci Living Trust concerning the provision of information or the reimbursement of the Trustee's costs.**

Petitioner Fox claims that Respondent Chandler has failed to provide him with information, stating that "[o]utside of the Proposed Distribution, Mr. Fox had not been forwarded a single document, including basic estate documents such as the Inventory and Appraisal and the estate account." The documents to which Petitioner Fox refers are attached to his Petition, namely, the Inventory and Appraisal which was filed in April 2018 and the Accounting which was filed in July 2018. The Trust did not become the devisee of the Estate until August 27, 2018. Prior to that time, Respondent Chandler had no duty to provide Petitioner Fox with any information given that Petitioner Fox neglected to file a Demand for Notice. Furthermore, the Estate file is a public record and was available to Petitioner Fox to review anytime. Petitioner Fox has failed to substantiate his claim that Respondent Chandler failed to provide him with information that Respondent Chandler had a duty to provide to him.

Petitioner Fox also appears to argue that Respondent Chandler acted improperly by not reimbursing him, as Trustee of the Colucci Living Trust, for "his costs to probate the [Decedent's] Last Will." The Court finds no impropriety on the part of Respondent Chandler and Petitioner Fox failed to present any authority to support his contention that Respondent Chandler is required to reimburse such costs. The Court further takes notice that Petitioner Fox has not submitted any request for payment to Respondent Chandler. The Court makes no determination as to whether those costs are properly reimbursed by the Estate, but only notes that Petitioner Fox had the opportunity to submit a claim for payment pursuant to the procedure set forth in S.C. Code Ann. § 62-3-804.

**V. The Special Administrator's use of Estate funds to object to the appointment of Petitioner Fox as personal representative of the Estate is not grounds for his removal.**

After being served with Petitioner Fox's Petition for Formal Testacy and Appointment, which was removed to Circuit Court, Respondent Chandler submitted an Answer and Objection and, at a hearing, argued that the appointment of Petitioner Fox would not be in the best interests of the Estate. Petitioner Fox argues in his Petition that Respondent Chandler "has acted unreasonably and against the interest[s] of the Estate by using estate assets to prevent the appointment of a Successor Personal Representative as specified in the Last Will of Doris Colucci." The Court disagrees.

As Special Administrator, Respondent Chandler is required to use the authority conferred upon him by the Probate Code for the best interests of the successors to the Estate, which, in this case, is the Trust. S.C. Code Ann. § 62-3-703. He is also required to "take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession." S.C. Code Ann. § 62-3-709.

Respondent Chandler testified at length as to the basis for his objection to Petitioner Fox's appointment as personal representative of the Estate.

**Q:** What was your basis for Mr. Fox to be disqualified?

**A:** Let me back up and say, when you filed formal probate, it was removed at your request. I was served. I answered, as is required. I'd have to review my answer. And I'm happy, if you want to hand me my answers. But as I recall, by that point, because it had been several months, but at that point we were fully engaged in the administration of this estate. Which is not a simple estate. And so there's -- there has been or there is a vast array of litigation. But I'd have to review my answer. But as I recall, I believe Mr. Fox, or anyone else, frankly, nothing necessarily to do with Mr. Fox, it would be very inefficient for the court to appoint someone at that point as the personal representative because we'd already begun the process and were involved in a variety of pieces of litigation. It's, again, a complex estate. It had lots of moving parts. And the time it takes to be up to speed

on all of those issues is not insignificant. And so at some point, it is not in the best interest of the beneficiaries.

...

It would be very difficult and would be costly for anyone else at that point to have been appointed, in my view. At the end of the day it's for the court to determine who the fiduciary is. It's not me who decides that. It's for the court to determine who is qualified, who is appropriate. In simple cases, perhaps it's easiest just to follow the will. This is not a simple case, Mr. Garrett. This is a very complex case.

On top of that, Mr. Fox, it just so happens, who had been a longtime friend of the Coluccis, had done their bookkeeping and tax returns for years, decades perhaps, would likely have been a witness. It turns out he is a witness. And he has been deposed and will be deposed. So as I predict, he potentially had a conflict. That may not be true of the next person in line. Although, Henry Burkes is also a witness to this killing. And that may not have been true of the next person in line. But again, it is a complex estate, it is costly to transfer it to someone else.

However, as special administrator, and being involved with a very complex case, which thankfully a lot of it has been resolved, but we still have ongoing litigation, it was just extremely inefficient and foolish, in my opinion, to transfer it to anyone else.

Hearing Transcript, pp. 16-19.

The estate is so complex that Petitioner Fox's attorney, Gordon Garrett, offered to hire Mr. Chandler as an expert if Mr. Chandler would agree to allow Petitioner Fox to serve as the Personal Representative.

Q. Did I offer to retain you as an expert to work for the Estate of Doris Colucci prior to the hearing in Court of Common Pleas in the summer of 2017<sup>4</sup>?

A. Did you ask me to?

Q. Serve as an expert if Mr. Fox was appointed as the personal representative?

A. Let me tell you what I recall from that conversation which occurred outside of Judge Dickson's courtroom. What I recall is, you said, well, if Mr. Fox is appointed – or if you agreed to have Mr. Fox appointed – which again I'm telling you I couldn't have agree to that because that's not my role – but if Mr. Fox were to be appointed, you know, we could hire you, Andrew, and Ms. Palmer, to continue to do what you do. But in the meantime, we'll also be in there, and then whatever you would do.

And from my perspective, that is in no way beneficial to the beneficiaries

<sup>4</sup> The hearing was in the summer of 2018 not 2017.

of this estate, which now it turns out that the designee, Mr. Fox, has accepted trusteeship. That is in no way beneficial to those beneficiaries, whoever they may have been, to go from the fees that we are charging, which by the way are a fraction of my regular billing rate, to add two more people and add their rate. I mean, how is that beneficial or helpful to the estate? No way do I think that's appropriate. And I think I told you such. But I don't know that I realized that it was a job offer.

Hearing Transcript, pp. 21-22.

The Court has a voluminous Estate file on this matter with over one thousand documents, and a sister guardianship and conservatorship file which is equally voluminous. The Estate file is rife with litigation and complex issues. On file with the Court are a large web of business interests involved in litigation and negotiation including I&M Colucci, HID LLC, and Terrivo Enterprises LLC. All of these businesses held real property that have complicating factors. The Estate also has multiple parcels of real property in multiple jurisdictions and multiple states with various ownership interests. There is litigation that was in place before Mrs. Colucci's death and after her death. For example, there is litigation involving the Slayer case, wrongful death, I&M Colucci, and Terrivo Enterprises LLC. Numerous attorneys are involved in the case representing various parties and interests which further complicates the Estate.

Additionally, there are ongoing and significant tax issues that the Special Administrator is attempting to resolve. For example, Mr. Chandler testified that Petitioner Fox, who had been the Colucci's long-time bookkeeper and tax preparer, had filed a tax return that is "patently wrong on its face ... that works a tremendous hardship on the estate and the beneficiaries of the estate." Hearing Transcript p. 40. Mr. Chandler testified at length about the complicating tax issues facing the Estate.

Q. Are you aware that Ms. Palmer requested Michael Fox to prepare a Schedule K for an LLC called HID?

Q. [Chandler] What do you mean by "Schedule K"?

A. [Garrett] A partnership return.

Q. Okay. So that's a different number. But yes, I am aware of that.

Q. So you believe that Mr. Fox was competent to prepare that document?

A. What I know is that HID is managed and controlled by Henry Burkes, whose name we've heard before. And he is the manager of that company. He hired Mr. Fox to prepare tax returns for that company. Ms. Doris Colucci owned 30 percent in that company. That's it. She doesn't control anything in that company. Mr. Burkes controls -- he prepares tax returns, not me. In fact, Mr. Fox prepared a tax return which is patently wrong on its face, and we simply asked him to correct the K1's, which by the way, if they're not corrected -- and I'll also note, Mr. Garrett, that Mr. Fox replied to your email saying he'll be glad to amend them. And then you in December decided, nevermind, we're not going to do that. But that works at tremendous hardship on the estate and the beneficiaries of the estate. Because if Mr. Fox does not amend that return, or Mr. Burkes does not amend that return properly and make a sub 4 election on the return and produce a K1 that is accurate, the estate of Doris Colucci would potentially lose a basic step up in its assets which negatively impacts the beneficiaries of that estate. So yes, I'm aware of that.

Q. But you're also a member of HID?

A. I am. Well, I'm not, but the estate is.

Q. The estate is. And you're capable of preparing the proper tax [return]?

A. I'm not qualified. I don't have the books and the things that are required to prepare returns, Mr. Garrett. Mr. Burkes has those items. He hires who he wants to prepare the returns. If he hired Mr. Fox, that's fine. If he thinks that's the proper person, great. But the return is not properly prepared. And it was filed improperly. For example, he listed [I&D], which is an accommodation party. It does not have an EIN. It is not a taxpayer. He filed that return on the IRS. That is absolutely an improperly filed return. It will be pulled. Mr. Colucci and Doris Colucci's estate are going to have issues because of that, because you can't file a return without an EIN. And I would think Mr. Fox would know that.<sup>5</sup>

Hearing Transcript pp. 39-41.

<sup>5</sup> Mr. Chandler is a Certified Specialist in Estate Planning and has an L.L.M. in Taxation.

MB  
2/7/19



Based on the extremely litigious and multifaceted complications plaguing this Estate, removing the Special Administrator at this point would be illogical. It would cause an extreme hardship to the Estate for a new fiduciary to have to learn and understand all the management, negotiations, and issues that have been handled and will continue to need to be handled. Therefore, the Court finds no impropriety in Respondent Chandler's actions in objecting to the appointment of Petitioner Fox as personal representative of the Estate. Respondent Chandler is required to take all steps to protect the Estate and preserve its assets, and the Court is satisfied that his objection was based on a valid concern that the interruption of his administration of the Estate would not be in the best interests of the Estate or the Trust, its sole devisee, as it would result in unnecessary delay and expense.

Petitioner Fox also argues that, "[h]ad the Special Administrator truly believed that Mr. Fox was not qualified for any reason, he should have immediately notified any of the next two Successor Personal Representatives of his concerns." The Court is aware of no legal duty on the part of Respondent Chandler to take this action, nor did Petitioner Fox present any authority to support his contention that such a duty exists.

**VI. The award of costs and expenses against Petitioner Fox is appropriate.**

In a formal proceeding, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the estate that is the subject of the controversy. S.C. Code Ann. § 62-1-111. Petitioner Fox made a number of accusations against Respondent Chandler and his counsel but failed to present to this Court any evidence or law in support of his arguments that cause exists to remove Respondent Chandler as Special Administrator.<sup>6</sup>

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<sup>6</sup> Rule 11 of the South Carolina Rules of Civil Procedures states that "[t]he written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleadings, motion or other paper;

The Court finds that justice and equity require that Petitioner Fox pay the Estate's costs and expenses, including reasonable attorney's fees, incurred in responding to his Petition to Remove Special Administrator. Respondent Chandler and his counsel have submitted Affidavits of Fees and Costs which this Court has considered and finds to be appropriate.

**IT IS HEREBY ORDERED** that Petitioner Fox's Petition for Removal of Special Administrator is **DENIED**; and

**IT IS FURTHER ORDERED** that Petitioner Fox, pursuant to S.C. Code Ann. § 62-1-111, shall pay costs and expenses, including reasonable attorney's fees, incurred by the Estate in responding to the Petition to Remove Special Administrator in the amount of \$10,882.96.

**AND IT IS SO ORDERED!**

Mary Blunt  
The Honorable Mary Q. Blunt  
Dorchester County Probate Court

February 7, 2019  
St. George, South Carolina

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that to the best of his knowledge, information and belief there is good grounds to support it; and that it is not interposed for delay." Based on Attorney Garrett's presentation of the case, it is clear that his intention in filing the Petition for Removal of Special Administrator was to interpose delay in administering the Decedent's Estate. Further, he failed to present any evidence to show that he had good grounds to support his Petition.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE MATTER OF:  
DORIS DUANE COLUCCI  
(Decedent)

PROBATE JUDGE  
IN THE PROBATE COURT  
DORCHESTER COUNTY

2019 FEB 13 PM 12: 2020 JAN 24 PM 12: 57  
STATEMENT OF CREDITOR'S CLAIM

CASE NUMBER: 2017 ES 18 00294

Decedent's Date of Death (if known): April 14, 2017

Decedent's Last Mailing Address: c/o Andrew W. Chandler, 115 Church Street, Charleston, SC 29401

|                                                                                                            |                         |
|------------------------------------------------------------------------------------------------------------|-------------------------|
| Creditor:                                                                                                  | Rosen Hagood, LLC       |
| Address:                                                                                                   | P.O. Box 893            |
|                                                                                                            | Charleston, SC 29402    |
| Telephone:                                                                                                 | (843) 577-6726          |
| Email:                                                                                                     | epalmer@rrhlawfirm.com  |
| Original Creditor:                                                                                         | n/a                     |
| Address<br>(if different from above)                                                                       | n/a                     |
| Claim Amount Due:                                                                                          | \$6,301.72              |
| Account Number:                                                                                            | 9719-00M                |
| Other Reference Number:                                                                                    | n/a                     |
| Basis of claim (Ex: Contract,<br>Services Rendered for<br>decedent, etc):                                  | Legal Services Rendered |
| Date claim will become due<br>(if not already due)                                                         | Due Now                 |
| Nature of uncertainty<br>as to the claim, if any<br>(i.e. contingent claim,<br>amount of claim, due date): | n/a                     |
| Description of security<br>as to the claim, if any<br>(Ex: Collateral for the debt)                        | n/a                     |

Signature:

Name: Elizabeth J. Palmer, Esq.

Title: Creditor Representative

Date: 2/13/19

**INSTRUCTIONS:** Claims **MUST** be filed with the Probate Court of the county in which the Decedent's Estate is under administration and may be delivered or mailed to the fiduciary appointed to administer the Estate (see SCPC 62-3-803, 62-3-804, and 62-3-806).

No claim against a Decedent's estate may be presented or legal action commenced against a Decedent's Estate prior to the appointment of a Personal Representative to administer the Decedent's Estate (except see SCPC 62-3-804(1)(b)).

Satisfaction or withdrawal of claim (FORM 325) **MUST** be filed once claim is resolved.



STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )  
IN THE MATTER OF THE ESTATE )  
OF DORIS DUANE COLUCCI, )  
ALSO KNOWN AS DORIS D. )  
COLUCCI )

IN THE PROBATE COURT 2020 JAN 24 PM 12:57  
CASE NO. 2017-ES-18-00294

2019 FEB 13 PM 2:13

ORDER FOR APPOINTMENT OF  
TEMPORARY SPECIAL ADMINISTRATOR

This matter came before the Court on the Emergency Application to Appoint Temporary Special Administrator filed on February 13, 2019 by Elizabeth J. Palmer, Esquire, on behalf of Rosen Hagood, LLC, as a creditor of the Estate Doris D. Colucci. For the reasons set forth herein, and after considering the emergency nature of this matter and the complexity of this Estate, this Court finds that the Emergency Application to Appoint a Temporary Special Administrator should be granted.

#### PROCEDURAL HISTORY

Doris Duane Colucci was killed by her husband, Ivo F. Colucci, on April 14, 2017. Applicant Andrew W. Chandler, Esquire, was appointed Special Administrator of the Estate of Doris Duane Colucci (the "Estate") by this Court on June 9, 2017, on a temporary basis and then, by Consent Order dated July 10, 2017, on a permanent basis.

On August 24, 2017, Decedent's purported Last Will and Testament, dated June 18, 2013 (the "Will"), was filed with this Court, although no petition seeking to have the Will admitted to probate was filed at that time. The Will names Ivo F. Colucci as the personal representative and Michael Fox, Henry Burkes, and Richard Hyman (in that order) as successor personal representatives. The primary devisee of the Will is the Colucci Living Trust (the "Trust"), dated February 24, 2005, which names Mr. Fox as a successor trustee. On October 27, 2017, Mr. Fox accepted the trusteeship of the Trust and, to date, continues to serve in that capacity.

On October 30, 2017, Mr. Fox filed a Petition for Formal Testacy and Appointment, seeking to have the Decedent's Will admitted to probate and also seeking to have himself appointed as the personal representative of the Estate. Upon motion by Mr. Fox, the Petition for Formal Testacy and Appointment was removed to the Dorchester County Court of Common Pleas by Order of this Court filed November 20, 2017. By Circuit Court Order filed August 27, 2018, Decedent's Will was admitted to probate, making the Colucci Living Trust the sole devisee of the Estate. Following the probate of the Will, this Court entered a Modified Order for the Appointment of a Special Administrator, confirming Mr. Chandler's appointment as Special Administrator in this matter and directing that he administer the Estate pursuant to the terms of the Will.

By Circuit Court Order filed February 13, 2019, Mr. Fox was appointed as General Personal Representative.

#### **APPLICABLE LAW**

An interested person is defined to include "heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding." S.C. Code Ann. § 62-1-201(23).

A special administrator may be appointed:

(1) informally by the court on the application of an interested person when necessary:

(a) to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in Section 62-3-609;

(b) for a creditor of the decedent's estate to institute any proceeding under Section 62-3-803; or

(c) to take appropriate actions involving estate assets;

S.C. Code Ann. § 62-3-614.

The appointment of a special administrator may be temporary. Estate of Boyce v. Work 305 S.C. 43, 406 S.E.2d 184 (Ct. App. 1991) (the appointment of a Special Administrator is temporary and therefore not immediately appealable).

#### **FINDINGS OF FACT & CONCLUSIONS OF LAW**

**I. Rosen Hagood, LLC is an Interested Person within the meaning of S.C. Code Ann. § 62-1-201(23).**

Rosen Hagood, LLC filed a creditor's claim on February 13, 2019, along with an Emergency Application to Appoint Temporary Special Administrator. A creditor is clearly delineated as an Interested Person within the meaning of S.C. Code Ann. § 62-1-201(23) and may bring an emergency application for purposes of S.C. Code Ann. § 62-3-614.

**II. The best interests of the Estate of Doris D. Colucci are protected by the appointment of a Temporary Special Administrator.**

The ongoing litigation matters, business matters and tax matters in this Estate require a fiduciary familiar with the issues, who lacks any actual or potential conflicts of interest. Andrew W. Chandler has extensive experience in probate matters, is recognized state-wide for his knowledge in this area, and has ably served as a fiduciary to this Court. The appointment and

service of Andrew W. Chandler as the Temporary Special Administrator for the Decedent's Estate is necessary to preserve the estate, to secure its proper administration, to avoid actual and potential conflicts of interest, and to protect its assets. The best interests of the Estate of Doris D. Colucci are protected by the appointment of Andrew W. Chandler as Temporary Special Administrator. The Court further adopts the findings of fact and conclusions of law from its Order dated February 7, 2019, which are incorporated herein by reference and shall become a part of this Order.

**IT IS HEREBY ORDERED** that the Emergency Application to Appoint Temporary Special Administrator is **GRANTED**; and

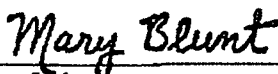
**IT IS FURTHER ORDERED** that

1. The administration of the probate Estate of Doris D. Colucci shall proceed pursuant to the terms of the Last Will of Doris D. Colucci;
2. The Court has appointed Andrew W. Chandler, Esquire, as the Temporary Special Administrator for the Decedent's Estate;
3. Andrew W. Chandler shall serve as the Temporary Special Administrator of the Estate of Doris Duane Colucci, pursuant to the terms of the Last Will of Doris D. Colucci and the terms of this Order, though the Court incorporates by reference the relevant provisions of the Consent Order dated July 10, 2017 and the August 27, 2018 Modified Order for the Appointment of a Special Administrator;
4. Andrew W. Chandler, in his prior role as the Special Administrator of Decedent's Estate, had retained the services of an accountant and attorneys and other agents with the prior express approval of the Court and may continue to retain such services as Temporary Special Administrator as he determines necessary for the proper administration of the Decedent's Estate;

5. Until such time that a determination is made pursuant to S.C. Code Ann. § 62-2-803(f) of the South Carolina Probate Code regarding the status of Ivo Francesco Colucci (as an heir of the Decedent's Estate, a beneficiary of the Colucci Living Trust, a joint owner with right of survivorship, and a designated beneficiary) pursuant to the Slayer's Act, Andrew W. Chandler, as Temporary Special Administrator, shall hold any funds or property to which Ivo Francesco Colucci may otherwise be entitled as a joint owner with right of survivorship or a designated beneficiary, if the Slayer's Act does not apply, in a separate account, unless otherwise ordered by this Court;

6. Pursuant to S.C. Code Ann. § 62-3-617, and other relevant statutory provisions of the South Carolina Probate Code, Andrew W. Chandler, as Temporary Special Administrator, shall continue to have all the powers of a general Personal Representative as applied under PART 7 (S.C. Code Ann. §§ 62-3-701 through 62-3-721) of the South Carolina Probate Code, and such powers are incorporated herein by specific reference thereto.

**AND IT IS SO ORDERED!**

  
\_\_\_\_\_  
Presiding Judge  
Dorchester County Probate Court

This \_\_\_\_ day of February, 2019  
St. George, South Carolina



2020 JAN 24 PM 12: 57

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )  
IN THE MATTER OF THE ESTATE OF DORIS DUANE COLUCCI, )  
ALSO KNOWN AS DORIS D. )  
COLUCCI )

JURCHESIL C  
2019 FEB 13 ) PM 2: 13

IN THE PROBATE COURT  
CASE NO. 2017-ES-18-00294  
TEMPORARY ORDER RESTRAINING  
GENERAL PERSONAL REPRESENTATIVE

This matter came before the Court on the Emergency Application to Restrain General Personal Representative filed on February 13, 2019 by Elizabeth J. Palmer, on behalf of Rosen Hagood, LLC, as a creditor of the Estate Doris D. Colucci. For the reasons set forth herein, and after considering the emergency nature of this matter and the complexity of this Estate, this Court finds that the Emergency Application to Restrain General Personal Representative should be granted.

#### PROCEDURAL HISTORY

Doris Duane Colucci was killed by her husband, Ivo F. Colucci, on April 14, 2017. Applicant Andrew W. Chandler, Esquire, was appointed Special Administrator of the Estate of Doris Duane Colucci (the "Estate") by this Court on June 9, 2017, on a temporary basis and then, by Consent Order dated July 10, 2017, on a permanent basis.

On August 24, 2017, Decedent's purported Last Will and Testament, dated June 18, 2013 (the "Will"), was filed with this Court, although no petition seeking to have the Will admitted to probate was filed at that time. The Will names Ivo F. Colucci as the personal representative and Michael Fox, Henry Burkes, and Richard Ilyman (in that order) as successor personal representatives. The primary devisee of the Will is the Colucci Living Trust (the "Trust"), dated February 24, 2005, which names Mr. Fox as a successor trustee. On October 27, 2017, Mr. Fox accepted the trusteeship of the Trust and, to date, continues to serve in that capacity.

On October 30, 2017, Mr. Fox filed a Petition for Formal Testacy and Appointment, seeking to have the Decedent's Will admitted to probate and also seeking to have himself appointed as the personal representative of the Estate. Upon motion by Mr. Fox, the Petition for Formal Testacy and Appointment was removed to the Dorchester County Court of Common Pleas by Order of this Court filed November 20, 2017. By Circuit Court Order filed August 27, 2018, Decedent's Will was admitted to probate, making the Colucci Living Trust the sole devisee of the Estate. Following the probate of the Will, this Court entered a Modified Order for the Appointment of a Special Administrator, confirming Mr. Chandler's appointment as Special Administrator in this matter and directing that he administer the Estate pursuant to the terms of the Will.

By Circuit Court Order filed February 13, 2019, Mr. Fox was appointed as General Personal Representative.

#### APPLICABLE LAW

A personal representative may be restrained from exercising any and all powers by temporary order, upon application of an interested person. The matter shall be set for hearing within 10 days or at such other times as the parties may agree. S.C. Code Ann. § 62-3-607.

An interested person is defined to include "heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding." S.C. Code Ann. § 62-1-201(23).

### **FINDINGS OF FACT & CONCLUSIONS OF LAW**

- I. Rosen Hagood, LLC is an Interested Person within the meaning of S.C. Code Ann. § 62-1-201(23).**

Rosen Hagood, LLC filed a creditor's claim on February 13, 2019, along with an Emergency Application to Restrain General Personal Representative. A creditor is clearly delineated as an Interested Person within the meaning of S.C. Code Ann. § 62-1-201(23) and may bring an emergency application for purposes of S.C. Code Ann. § 62-3-607.

- II. The best interests of the Estate of Doris D. Colucci are protected by restraining the general Personal Representative.**

The Estate of Doris D. Colucci is complex. There are several pending litigation matters, business matters and tax matters that require a fiduciary familiar with the issues and who lacks any actual or potential conflicts of interest. The Court finds that Mr. Fox is not an appropriate fiduciary to serve as the general Personal Representative of the Estate of Doris D. Colucci given his actual or potential conflicts of interest and further adopts the findings of fact and conclusions of law from its Order dated February 7, 2019, which are incorporated herein by reference and shall become a part of this Order. The Court finds it is in the best interests of the Estate of Doris D. Colucci to restrain Mr. Fox, on a temporary basis until a hearing can be held, as general Personal Representative, from exercising any powers or discharging any duties of his office, pursuant to S.C. Code Ann. § 62-3-607.

**IT IS HEREBY ORDERED** that the Emergency Application to Restrain General Personal Representative is **GRANTED**; and

**IT IS FURTHER ORDERED** that Mr. Fox shall be restrained, on a temporary basis until a hearing can be held, as general Personal Representative, from exercising any powers or discharging any duties of his office, pursuant to S.C. Code Ann. § 62-3-607.

**AND IT IS SO ORDERED!**

*Mary Blunt*

---

Presiding Judge  
Dorchester County Probate Court

This \_\_\_\_ day of February, 2019  
St. George, South Carolina

PROBATE JUDGE  
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

2020 JAN 24 PM 12:58

IN THE PROBATE COURT

COUNTY OF DORCHESTER

DORCHESTER COUNTY

In Re:

No 2017-ES-18-0294

The Estate of Doris Duane Colucci,

Michael C. Fox, Named Personal  
Representative in the Last Will of Doris  
Duane Colucci,

Michael C. Fox's Interrogatories to Andrew  
Chandler

Plaintiff.

vs.

Andrew Chandler, in his capacity as  
Special Administrator of the Estate of  
Doris Duane Colucci, Michael C. Fox, in  
his capacity as Trustee of the Colucci  
Living Trust, Ivo Francesco Colucci,  
Michael Frederick Antonio Colucci, John  
Martin Antonio, Henry Burkes, and  
Richard M. Hyman, Jr,

Defendants.

Michael C. Fox requires you to answer the following Interrogatories, under oath, in accordance with Rule 33, SCRCP:

### Special Instructions

In responding to these Discovery Requests in this action, you are requested to follow the following instructions, which the Plaintiff believes are consistent with the South Carolina Rules of Civil Procedure:

- i. Unless otherwise requested, please produce for inspection and not copying, all requested documents and things at the offices of your lead counsel in South Carolina, at the time indicated in the Discovery Requests. You may produce copies for Plaintiff without expense to Plaintiff in lieu of production of documents at your counsel's office.
- ii. Where no discoverable matter exists which would be responsive to a Discovery Request, please so state.
- iii. Please respond to Discovery Requests by furnishing all responsive discoverable matter either in your possession, in your control, or accessible to you by reasonable inquiry. This includes discoverable matter in the possession, custody, or control of your (a) agents, (b) employees; (c) attorneys. (d) corporate departments or divisions; (e) your parent or

subsidiary corporations; (f) corporate affiliates; and (g) any other persons, firms, or corporations which because of your business relationship would readily respond to your inquiry in the ordinary course of business.

- iv. Where documents and things exist which fall within the descriptive terms of one of these Discovery Requests, and production of the same will be made by you, please produce such documents and things in a manner corresponding to the numbered request in which they are described, so that identification with the appropriate request can readily be made.
- v. In addition to the original of any such requested documents, any request for a document also includes:
  - a. any copy by whatever name called, which relates to the original, specifically including any material underlying, supporting, or used in the preparation of any such original document;
  - b. any and all attachments to the original;
  - c. any and all documents referred to in the original;
  - d. any and all subsequent additions, deletions, substitutions, amendments, or modifications to the original of any sort.
- vi. If you are unsure of the meaning of a word, phrase, or abbreviation used in any Discovery Request, please contact the undersigned counsel for in writing, specify the word or phrase whose meaning you claim is unclear, and ask for written clarification of the word or phrase in question. To the extent any ambiguity genuinely exists, such clarification will be promptly provided to you.

#### Definitions and Abbreviations

Michael C. Fox provides the following definitions of words, phrases, and abbreviations used by him in propounding the Discovery Requests to help you understand the objectives of his discovery efforts and to locate and disclose all discoverable matter sought by the Discovery Requests without engaging in semantic arguments:

*"Communication(s)"* and *"communicate"* means and includes all interchanges of messages or ideas by speech or writing.

*"Court rule"* or *"court rules"* means and refers to the South Carolina Rules Governing the Practice of Law; the South Carolina Rules Governing the Judiciary, Employees of the Judicial Department, and Others Assisting the Judiciary; the South Carolina Probate Court Rules; The South Carolina Rules of Evidence; and the South Carolina Rules of Civil Procedure.

*"Court"* means and includes the Dorchester County Probate Court, its staff, clerks, and judges.

*"Document"* means and includes all "papers" of any kind or character, correspondence, writings, records, meeting minutes, reports, studies, evaluations, projections, analyses, presentations, memoranda, drawings, graphs, charts, books, statements, ledgers, financial records, checks, drafts, receipts, forms prescribed by government agencies, photographs, motion pictures, videotape, videodisc, audiotape or other sound recording, any method or medium by which information is utilized by computers, including e-mail, computer tapes, computer drives, computer discs, computer printouts, photocopies, microfilm, microfiche and any other data, sound or image compilation or recording from which information regarding the described transactions can be obtained, translated if necessary by you through appropriate and necessary devices into reasonably usable and intelligible form.

*"Medium"* means and refers to the manner in which a communication occurred, including, but not limited to, electronic messages, facsimiles, in person conversations, letters, telephone calls, and telephone call logs.

*"Other party"* and *"other parties"* means and includes all parties except you.

*"Party"* and *"parties"* means and includes any person and their counsel who have appeared in this case.

*"Person"* means and includes any individual, public or private corporation partnership, government agency, estate, trust, incorporated association, or unincorporated association.

*"Statute"* means and refers to the South Carolina Code of Laws.

*"This case"* or *"the case"* means and includes the above captioned case, Case Number(s): 2017-CP-18-1816, 2019-CP-18-0677; 2017-CP-10-5393, and S.C. Court of Appeals Case Number: 2019-001065.

*"You"* and *"your"* means and refers to Andrew Chandler, any member of his law firm, and any agent thereof.

#### **Interrogatories**

1. State whether you have had any communications with the Court regarding any issue, including, but not limited to scheduling, administrative matters, or emergencies, regarding this case, outside the presence of the other parties from April 17, 2017, to present.

2. If your answer to the proceeding interrogatory is in the affirmative, please state for each communication:

a. The date of the communication;

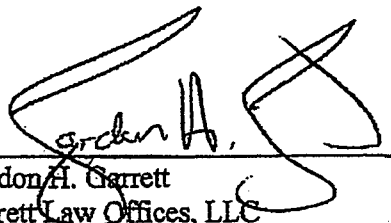
- b. The medium of the communication;
  - c. The name of the person sending and/or initiating the communication;
  - d. The name of the person who received the communication;
  - e. The nature, purpose, subject, and substance of the communication;
  - f. Whether the communication was disclosed to any of the other parties;
  - g. The names of the other parties to whom the communication was disclosed;
  - h. When the communication was disclosed to the other parties.
3. State whether you have had any communications with the Court regarding the substantive matters or issues of this case, outside the presence of the other parties and their respective counsels, from April 17, 2017, to present.
4. If your answer to the proceeding interrogatory is in the affirmative, please state for each communication:
- a. The date of the communication;
  - b. The medium of the communication;
  - c. The name of the person sending and/or initiating the communication;
  - d. The name of the person who received the communication;
  - e. The nature, purpose, subject, and substance of the communication;
  - f. Whether the communication was disclosed to any of the other parties;
  - g. The names of the other parties to whom the communication was disclosed; and
  - h. When the communication was disclosed to the other parties.



5. Is it your contention that you, as special administrator, are permitted to communicate with the Court, outside the presence of the other parties and their respective counsels, regarding the substantive matters or issues of the case?<sup>1</sup>

6. Please cite the statute or court rule that permits you, as special administrator, to communicate with the Court, outside the presence of the other parties and their respective counsels, regarding the substantive matters or issues of the case.

Dated: 10/4/2019



Gordon H. Garrett  
Garrett Law Offices, LLC  
1075 E. Montague Ave.  
North Charleston, SC 29405  
843.554.5515 (phone)  
843.747.3198 (telefax)  
office@garrettlawsc.com  
Attorney for Michael C. Fox

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<sup>1</sup> For reference please see Emergency Hr'g. Tr. 27:22-28:2, Jan. 8, 2019.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE PROBATE COURT

DORCHESTER COUNTY

In Re:

No 2017-ES-18-0294

The Estate of Doris Duane Colucci,

Michael C. Fox, Named Personal  
Representative in the Last Will of Doris  
Duane Colucci,

Plaintiff,

vs.

Andrew Chandler, in his capacity as  
Special Administrator of the Estate of  
Doris Duane Colucci, Michael C. Fox,  
Successor Trustee of the Colucci Living  
Trust, dated February 24, 2005, Ivo  
Francesco Colucci, Michael Frederick  
Antonio Colucci, John Martin Antonio,  
Henry Burkes, and Richard M. Hyman,  
Jr,

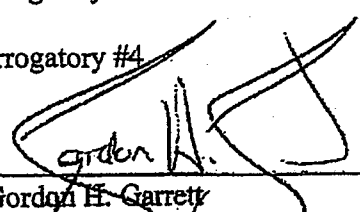
Defendants.

Plaintiff's First Set of Requests to Produce

Michael C. Fox requires you to answer the following Requests for Production in accordance with Rule 34, SCRCP:

1. Any and all communications identified in Interrogatory #2.
2. Any and all communications identified in Interrogatory #4.

Dated: 10/4/2019

  
Gordon H. Garrett  
Garrett Law Offices, LLC  
1075 E. Montague Ave.  
North Charleston, SC 29405  
843.554.5515 (phone)  
843.747.3198 (telefax)  
office@garrettlawsc.com  
Attorney for Michael C. Fox

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

In Re:

The Estate of Doris Duane Colucci,

Michael C. Fox, Named Personal  
Representative in the Last Will of Doris  
Duane Colucci,

Plaintiff,

vs.

Andrew Chandler, in his capacity as  
Special Administrator of the Estate of  
Doris Duane Colucci, Michael C. Fox,  
Successor Trustee of the Colucci Living  
Trust, dated February 24, 2005, Ivo  
Francesco Colucci, Michael Frederick  
Antonio Colucci, John Martin Antonio,  
Henry Burkes, and Richard M. Hyman,  
Jr,

Defendants.

IN THE PROBATE COURT

DORCHESTER COUNTY

No 2017-ES-18-0294

Certificate of Service

The undersigned certifies that Andrew Chandler was served with Michael C. Fox's First Set of Interrogatories and Requests to Produce by placing them in the U.S. Mail, first class, postage-prepaid on the date below to the following address(es):

Elizabeth Palmer  
Rosen & Hagood  
151 Meeting Street  
Suite 400  
Charleston, SC 29410

Dated: October 4, 2019

  
Ryan A. Love  
Garrett Law Offices, LLC  
1075 E. Montague Ave.  
North Charleston, SC 29405  
843.554-5515 (phone)  
843.747-3198 (telefax)  
office@garrettlawsc.com

STATE OF SOUTH CAROLINA )

COUNTY OF: DORCHESTER )

IN THE MATTER OF: )

DORIS DUANE COLUCCI )

(Decedent) )

2019 OCT 15 PM 4:44 )

IN THE PROBATE COURT JUDGE  
DORCHESTER COUNTY

DEMAND FOR NOTICE IN AN ESTATE

2020 JAN 24 PM 12:58

CASE NUMBER: 2017-ES-18-00294

Decedent's Date of Death (if known): APRIL 14, 2017

Decedent's Last Mailing Address: \_\_\_\_\_

I demand receipt of a copy of the following item(s) pertaining to the above estate. By filing this \*Demand for Notice, I understand that it is the responsibility of the Personal Representative to provide me with a copy of all documents he/she files in this estate. I understand this Demand shall expire one year from date of filing.

- ☒ Application for informal probate and/or informal appointment
- ☒ Petition for formal probate and/or formal appointment
- ☒ Information to Heirs and Devisees
- ☒ Proof of Publication of Notice to Creditors
- ☒ Inventory and Appraisement (including Supplementary, Amended or Corrected)
- ☒ Application for Settlement
- ☒ Accounting (Interim or Final)
- ☒ Proposal for Distribution
- ☒ Notice of Right to Demand Hearing
- ☒ Any petition and corresponding order
- ☒ Any hearings, Right to Appear, or Notice of Appearance
- ☒ Other (specify): ANY AND ALL DETAILS OF THE ESTATE

Executed this 10 day of OCTOBER, 2019.

Signature: \_\_\_\_\_

Print Name: MICHAEL COLUCCI

Address: \_\_\_\_\_

Telephone (Work): \_\_\_\_\_

(Home): \_\_\_\_\_

(Cell): \_\_\_\_\_

Email: \_\_\_\_\_

Relationship to Decedent/Estate: SON OF DORIS DUANE COLUCCI

Attorney: ANGUS M. LAWTON

Address: 496 BRAMSON COURT, SUITE 100

MT. PLEASANT, SC 29464

Telephone: (843)881-9901

Email: angus@lawtonlawfirm.net

\*A Demand for Notice requires a \$5.00 filing fee.



**DORCHESTER COUNTY PROBATE COURT**

5200 EAST JIM BILTON BLVD.  
ST. GEORGE, SC 29477

[www.dorchestercountysc.gov/probate](http://www.dorchestercountysc.gov/probate)

PROBATE JUDGE  
DORCHESTER COUNTY  
2020 JAN 24 PM 12:58

MARY BLUNT  
Probate Judge

MOLLY D. EDWARDS  
Associate Judge

November 4, 2019

Professor John Freeman  
[REDACTED]

Re: Estate of Doris Duane Colucci  
Re: 2007-ES-18-00294

Dear Professor Freeman:

I am writing to confirm our discussion regarding issues about disbursal of assets to John Martin Antonio (John Antonio). In accordance with SCACR 407, Rule 501, Canon 3B(7)(b), no action will be taken concerning any advice you have provided until the parties have been notified of the substance of your advice and afforded a reasonable opportunity to respond.

Procedural History

On April 14, 2017, Doris Colucci was shot and killed by her husband, Ivo Colucci. John Antonio and Michael Frederick Antonio Colucci<sup>1</sup> (Michael Colucci) are the two biological children of the decedent, Doris Colucci. During the commencement of the administration of this estate, concerns were brought to the court and to court-appointed fiduciaries about the capacity of John Antonio to manage and receive assets either through the estate or through settlement proceeds which may result from the decedent's cause of death.

On May 3, 2017, Lester S. Schwartz, Esquire filed a Summons and Petition to be appointed as Special Administrator for the estate of Doris Colucci. In the Verification section, Mr. Schwartz listed in the signature block that his priority was because he was the "Nominee of children of Decedent." On May 3, 2017, Mr. Schwartz also filed Waivers of the Petition for Probate, Waivers of the Hearing, and a Renunciations and Nominations of appointment as Special Administrator from John Antonio and Michael Colucci. On May 5, 2017, Mr. Schwartz filed a letter with the court that he sent to Christa Yantis, the Conservator for Ivo Colucci, which further confirms that Mr. Schwartz represented John Antonio and Michael Colucci.

<sup>1</sup> Michael Frederick Antonio had a name change to make his last name Colucci. The court has confirmed this with family court records. Michael Colucci was not adopted by Ivo Colucci but simply received an order for a name change.

On May 11, 2017, the court wrote a letter to Mr. Schwartz asking for clarification on John Antonio's capacity issues. On May 12, 2017, Mr. Schwartz, Esquire faxed a letter to the court claiming that John Antonio had autism, but concluded that in his opinion, John Antonio had contractual capacity.<sup>2</sup>

On May 18, 2017, a Specific Limited Durable Power of Attorney (DPOA)<sup>3</sup> for John Antonio was filed with this court by Lester Schwartz, Esquire. The twenty-one page DPOA contains specific references to allowing the Agent to manage matters in the Estate of Doris Colucci (Article 2, §A, (1), pages 3-4). In the DPOA, Dan M. David, Esquire<sup>4</sup> is named as the primary Agent (1.1, page 1). While the language is not the traditional appointment language, the DPOA appears to appoint Lester S. Schwartz, Esquire as the first alternate Agent, and Michael Colucci<sup>5</sup> as the second alternate Agent (3, page 2). The DPOA was witnessed and notarized by Lester S. Schwartz, Esquire (pages 19-21).

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<sup>2</sup> A little over two months later, on July 28, 2017, Mr. Schwartz filed a motion to withdraw as attorney of record for John Antonio and Michael Colucci. An Order granting the motion was signed and filed on July 28, 2017.

<sup>3</sup> The DPOA appears to have been executed on May 17, 2017, and filed with the Dorchester County Register of Deeds on May 18, 2017.

<sup>4</sup> In 2010, Opinion No. 26778, Dan M. David received a public reprimand and admitted that, by his misconduct, he had violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client); Rule 1.15 (a lawyer shall hold client property in the lawyer's possession in connection with a representation separate from the lawyer's own property; client property shall be identified as such and appropriately safeguarded, with complete records of such account funds and other property kept by the lawyer; a lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying service charges on that account, but only in an amount necessary for that purpose; a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive); Rule 5.1 (a lawyer who possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct); Rule 5.3 (a lawyer who possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that a nonlawyer employee's conduct is compatible with the professional obligations of the lawyer and a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer); and Rule 8.4(a) (it is professional misconduct for a lawyer to violate the Rules of Professional Conduct).

Dan M. David further admitted his misconduct constituted grounds for discipline under Rule 7(a)(1) of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR (it shall be a ground for discipline for a lawyer to violate the Rules of Professional Conduct). Finally, Dan M. David admitted he failed to comply with the recordkeeping requirements of Rule 417, SCACR.

<sup>5</sup> Michael Colucci is currently awaiting a second trial for the alleged murder of his wife.

On May 18, 2017, Dan M. David filed an Agent's Certification as to the Validity of Power of Attorney and Agent's Authority. The Certification appears to have been executed on May 17, 2017.

Due to the concerns the court had about the capacity of John Antonio and his ability to understand and execute legal documents including the Renunciation and Nomination and a complex twenty-one-page DPOA, the court issued an Order Appointing Designated Examiner and Temporary Guardian *ad litem* (*sua sponte*) on May 23, 2017.<sup>6</sup>

On December 18, 2017, the Designated Examiner, Dr. William Mulbry, filed a detailed report with the court (Mulbry Report). In his report, he finds, in his professional opinion, that John Antonio is an "incapacitated person to such an extent that he lacks sufficient understanding or capacity to make all responsible decisions concerning his property without assistance of legal counsel where one would be appropriate."<sup>7</sup> (Mulbry Report, page 1) (emphasis original to Mulbry Report) Further, John Antonio requires the appointment of a "Limited Conservator to protect his self-interest in his efforts to manage, protect, sustain and preserve his estate, assets, money and property." (Mulbry Report, page 1) (emphasis original to Mulbry Report)

In support of his findings, Dr. Mulbry reports that, "He [John Antonio] had difficulty subtracting \$.065 from \$1.00, 'I'm not good at math' [stated John Antonio]." (Mulbry Report, page 5) The report reveals that John Antonio does not know what his monthly bills are, but that "Lester [Schwartz] takes care of it [his bills]." (Mulbry Report, page 5) Dr. Mulbry's report also states that John Antonio cashed out his retirement CDs to invest in a health insurance company owned by a friend of his father's. John Antonio could not provide specifics on the investment but stated that the friend comes to the house once a month. (Mulbry Report, page 6) When asked about a Power of Attorney, John Antonio replied that, "I don't know the legal terms [of a Power of Attorney] or what it does." (Mulbry Report, page 7) At a second interview, after Angus Lawton became attorney for John Antonio, John Antonio stated that he had given Power of Attorney to Mr. Lawton. (Mulbry Report, page 9) On at least three occasions, John Antonio states that if he needed help, he would turn to his brothers, Michael Colucci and Stefan Colucci. (Mulbry Report, page 9, 10)

On March 13, 2018, Angus Lawton, Esquire filed a motion to be substituted as counsel for John Antonio<sup>8</sup> which was granted on the same day.

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<sup>6</sup> Glenn Churchill, Esquire was appointed as Guardian *ad litem* for John Antonio.

<sup>7</sup> It is unclear what this finding means; however, the finding that John Antonio needs at least a limited conservatorship is clear from an overall reading of the thirteen-page report.

<sup>8</sup> While Michael Colucci was not included in this motion, Mr. Lawton proceeded to act on behalf of both John Antonio and Michael Colucci including handling receipt of wrongful death proceeds for Michael Colucci and appearing at a court hearing stating he was the attorney for both John Antonio and Michael Colucci.

Currently, Rosen Hagood LLC is holding in its IOLTA account the amount of \$180,889.44<sup>9</sup> for disbursement to John Antonio via his attorney, Angus Lawton. On August 19, 2019, the amount of \$175,889.44 (after costs and attorney's fees) was paid to Lawton Law Firm for Michael Colucci. All interested parties agreed on the record that no funds would be paid to John Antonio until a court-approved plan is in place to ensure proper protections for John Antonio.

This court has met informally with Glenn Churchill<sup>10</sup> and Angus Lawton as well as exchanged numerous e-mails in order to find a method to protect the funds for John Antonio. The court was informed that the net amount after attorney's fees and costs that would be payable to John Antonio would be in the approximate amount of \$130,000, approximately \$60,000 less than the amount that is currently being held by Rosen Hagood LLC. The proposal of Mr. Churchill and Mr. Lawton is as follows: John Antonio's funds are to be placed with a financial planner. If John Antonio requests over \$2,000, then the financial planner is to report this to Glenn Churchill.<sup>11</sup>

On October 18, 2019, Angus Lawton filed a Motion to Authorize Disbursement (of funds to John Antonio).

In light of the Mulbry Report, the cognitive problems of John Antonio, including lack of money management skills, and the vulnerability of John Antonio, this court sought guidance from Professor Freeman as to the court's obligation to assure fair treatment of parties and discharge of ethical duties when the funds are turned over to John Antonio. The court also asked for guidance on any related ethical issues that Professor Freeman recommends that the court address.

#### Professor Freeman's Opinions and Recommendations

It is this court's understanding that Professor Freeman has advised that the following actions be taken by the court:

1. It appears that John Antonio lacks the skills he needs to personally manage the money he will receive. It appears that to date the parties have been unable to provide the court with a suitable system to manage John Antonio's funds outside of the conservatorship process. Professor Freeman accordingly recommends that a formal conservatorship action be initiated in accordance with Dr. Mulbry's report. He recommends that the court issue an order directing the appropriate party to bring the conservatorship proceeding. If the appropriate party declines to do so, the court should initiate such an action sua sponte. Funds payable to John Antonio should continue to be held by Rosen Hagood

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<sup>9</sup> In addition to the wrongful death funds, it is uncertain what additional funds may be due to John Antonio through the estate/trust.

<sup>10</sup> Glenn Churchill has submitted an affidavit and billing statement for his legal work on this matter. In approximately forty-five of the time entries, Ms. Churchill corresponded or met with Angus Lawton without further elaboration of the content of the discussions.

<sup>11</sup> Various e-mails from between Glenn Churchill, Angus Lawton, and the court are included in the attachments which span from August 13, 2019 through October 11, 2019.



LLC until a full hearing on the merits can be held and an order issued regarding John Antonio's need for a conservatorship.

2. Angus Lawton is representing both Michael Colucci and John Antonio. John Antonio appears to be a vulnerable adult who will receive a large amount of funds. It appears that Michael Colucci and John Antonio have actual or potentially divergent interests. There is a risk that Michael Colucci may attempt to gain access to John Antonio's funds. If this were to happen, John Antonio would need his interests to be protected by a fiduciary who was looking solely to protect John Antonio's interests, i.e., a qualified fiduciary with no divided loyalty. Professor Freeman is concerned that Mr. Lawton's representation of Michael Colucci could work to the disadvantage of John Antonio, his other client before the court. Pursuant to Rule of Professional Conduct 1.7, both Michael Colucci and John Antonio must provide informed consent, given in writing, that Mr. Lawton may represent them both. However, it is unclear that John Antonio has the ability to give the requisite informed consent, to knowingly waive any conflicts, or that he understands the legal aspects of the consent and waiver. Professor Freeman recommends that John Antonio be served by an independent advisor solely representing John Antonio's interests. He agrees with Dr. Mulbry's recommendation of appointment of a "Limited Conservator to protect [John Antonio's] self-interest in his efforts to manage, protect, sustain and preserve his estate, assets, money and property."
3. Before any funds are disbursed to Lawton Law Firm, the court would be required to review and approve all costs and fees that may be payable to Angus Lawton or Lester Schwartz. It appears from Glenn Churchill's billing statement that he reviewed a fee agreement between John Antonio and Mr. Lawton. This agreement shall be provided to the court for review in connection with issues concerning any conflict of interest waivers and any fees and costs that Mr. Lawton will be seeking. Professor Freeman recommends that all conflict waivers between Mr. Lawton and Michael Colucci and John Antonio should be presented to the court for review. He recommends that the court inquire as to whether, given John Antonio's impaired cognitive ability, any waiver John Antonio gave was properly obtained.
4. Professor Freeman notes that Mr. Schwartz's previous joint representation of Michael Colucci and John Antonio also raises the specter of conflict problems. Because of Professor Freeman's concerns regarding Mr. Schwartz's joint representation of Michael Colucci and John Antonio at the time Mr. Schwartz prepared the DPOA and took other actions affecting John Antonio, Professor Freeman recommends that the court should request, obtain, and review the written conflict waivers obtained by Mr. Schwartz from Michael Colucci and John Antonio pursuant to SCACR 407, Rule 1.7, and inquire as to whether, given John Antonio's impaired cognitive ability, any waiver John Antonio gave was properly obtained.

Sincerely,

*Mary Blunt*

Mary Blunt  
Judge of Probate

Please state whether the foregoing report fairly presents the opinions and recommendations you gave me concerning issues pertaining to assuring fairness toward John Antonio.

Response From Professor Freeman:

*The report accurately states my opinion +  
recommendations. Please feel free to circulate  
it.*

Dated: 10/30/19

John P. Freeman  
John P. Freeman

Attachments: all referenced documents are attached

2020 JAN 24 PM 12: 59

STATE OF SOUTH CAROLINA )

COUNTY OF DORCHESTER )

In Re: )

The Estate of Doris Duane Colucci, )

Michael C. Fox, Named Personal  
Representative of the Last Will of Doris  
Duane Colucci, )

Petitioner, )

vs. )

Andrew Chandler, in his capacity as  
Special Administrator of the Estate of  
Doris Duane Colucci, Michael C. Fox, in  
his capacity as Trustee of the Colucci  
Living Trust, Ivo Francesco Colucci,  
Michael Frederick Antonio Colucci, John  
Martin Antonio Colucci, Henry Burkes,  
and Richard M. Hyman, Jr., )

Respondents. )

IN THE PROBATE COURT  
CASE NO. 2017-ES-18-0294

**RESPONDENT CHANDLER'S MOTION  
FOR PROTECTIVE ORDER**

**TO: PETITIONER MICHAEL C. FOX AND HIS COUNSEL**

YOU WILL PLEASE TAKE NOTICE THAT pursuant to South Carolina Rule of Civil Procedure 26, Respondent Andrew Chandler, Special Administrator of the Estate of Doris Duane Colucci (hereinafter the "Respondent"), through his undersigned attorneys, hereby moves the Court for a protective order involving the Interrogatories and Requests to Produce served on him by Petitioner Fox on October 4, 2019, copies of which are attached hereto collectively as Exhibit 1. Specifically, Respondent seeks an Order that this discovery not be had on the grounds set forth herein.

### PROCEDURAL HISTORY

Doris Colucci was shot and killed by her husband, Ivo Colucci, on April 14, 2017. Respondent Chandler was appointed as Special Administrator of the Estate by this Court on July 10, 2017 (having been temporarily appointed as Special Administrator upon the Court's request on June 9, 2017).

In August 2017, the Decedent's Will was submitted to this Court. The Will appointed Ivo Colucci as the personal representative, and named the following persons, in order of priority, as successor personal representatives: 1) Michael C. Fox; 2) Henry Burkes; and 3) Richard Hyman, Jr., Esquire.

On October 30, 2017, Petitioner Fox filed a Petition for Formal Testacy and Appointment, seeking both to have the Decedent's Will admitted to probate and to be appointed as personal representative of the Estate. The Petition was removed from this Court to the circuit court and was heard on August 13, 2018. By Order filed August 27, 2018, the circuit court admitted the Will to probate, taking the issue of Mr. Fox's appointment under advisement. Upon the Will's admission to probate, the "Colucci Living Trust, dated February 24, 2005 and any amendments or restatements thereto" (the "Trust") became the sole devisee of the Estate. Mr. Fox, who was named as a successor trustee of the Trust, executed an "Acceptance by Successor Trustee" on October 27, 2017, and has served as the Trustee since that time.

Following its receipt of the circuit court's Order admitting the Will to probate, this Court issued a Modified Order for the Appointment of a Special Administrator, finding in part that "[t]he continued appointment and service of Andrew W. Chandler as the Special Administrator for the Decedent's Estate is necessary to preserve the estate, to secure its proper administration, to avoid

actual and potential conflicts of interest, and to protect its assets.” See Modified Order, ¶ 5, attached as Exhibit 2.

On January 4, 2019, Mr. Fox filed a Petition for Removal of Special Administrator (“PRSA”) in this Court.<sup>1</sup> An emergency hearing, upon motion of Respondent Chandler, was scheduled and heard on January 9, 2019. By Order filed February 7, 2019, the Court denied Mr. Fox’s PRSA, holding that “Petitioner Fox made a number of accusations against Respondent Chandler and his counsel but failed to present to this Court any evidence or law in support of his arguments that cause exists to remove Respondent Chandler as Special Administrator.” See 2/7/19 Order, p. 16, attached as Exhibit 3. This Court also ordered, pursuant to S.C. Code Ann. § 62-1-111, that Mr. Fox pay the Estate’s costs and fees in opposing the PRSA, which sum amounted to slightly over \$10,000.00. As of the filing of this Motion, Mr. Fox has not complied with the Court’s Order.

On February 13, 2019, the circuit court issued an Order finding Mr. Fox qualified to serve as the General Personal Representative of the Estate of Doris Duane Colucci and thereby appointed him to serve in that position in accordance with her Will. Pursuant to S.C. Code Ann. § 62-3-618, Mr. Chandler’s appointment as special administrator terminated upon the appointment of Mr. Fox.

By Temporary Order Restraining General Personal Representative and Order for Appointment of Temporary Special Administrator, both entered on February 13, 2019, this Court temporarily restrained Mr. Fox “from exercising any powers or discharging any duties of his office” and appointed Mr. Chandler as the temporary special administrator of the Estate with “all the powers of a general Personal Representative.”

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<sup>1</sup> Previously, on November 26, 2018, Mr. Fox filed a Motion to Restrain Special Administrator in the circuit court. His Motion made the same accusations and allegations, verbatim, as the PRSA filed in this Court months later.

On February 25, 2019, Respondent Chandler filed a Motion to Reconsider, Alter, or Amend, asking the circuit court to reconsider its order appointing Mr. Fox as personal representative. After extensive supplemental briefing at the court's request, the circuit court reconsidered its prior order, and by order filed May 28, 2019, denied Mr. Fox's Petition for Appointment, finding that Mr. Fox was not qualified to serve as personal representative. Mr. Fox has appealed this Order to the S.C. Court of Appeals.

On April 18, 2019, Mr. Fox, purportedly in his capacity as personal representative of the Estate, appealed nine separate orders of the probate court by filing a Notice of Appeal in the circuit court. One of the orders appealed was this Court's February 7, 2019, Order denying Mr. Fox's PRSA.<sup>2</sup> Respondent Chandler filed a Motion to Dismiss Appeal on the basis that the appeals were either untimely, moot, and/or not final orders as required by S.C. Code Ann. § 62-1-308. Respondent Chandler also filed a Motion to Lift Stay in this Court, which was granted.

After this Court granted Respondent Chandler's Motion to Lift Stay, Mr. Fox filed an "Emergency Petition for Writ of Supersedeas" in the circuit court, seeking to "suspend proceedings in the [probate] court." On May 28, 2019, the circuit court denied Mr. Fox's Emergency Petition on the basis that it was procedurally deficient. As discussed in more detail below, the circuit court's Order denying Mr. Fox's Emergency Petition appears to have also dismissed Mr. Fox's appeals (of those nine probate court orders). Mr. Fox has also appealed this Order to the S.C. Court of Appeals, where it is currently pending.

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<sup>2</sup> The other orders Mr. Fox appealed consisted of the following: 10/24/17 Order Denying Informal Probate; 10/26/17 Order to Sell Personal Property; 7/30/18 Order Authorizing the Sale of Real Estate; 8/27/18 Modified Order for Appointment of Special Administrator; 1/15/19 Order Authorizing Distribution from Estate; 2/13/19 Order for Appointment of Temporary Special Administrator; 2/13/19 Temporary Order Restraining General Personal Representative; and 4/17/19 Order for Temporary Restraint of General Personal Representative

It warrants mention that, but for the actions of Mr. Fox, this Estate would be closed by now. Instead, it continues to incur expenses and fees, reducing the amount that will eventually be distributed to the Trust, the Estate's sole devisee, of which Mr. Fox is the Trustee.

### **LEGAL STANDARD**

When the discovery process threatens to become abusive or to create a particularized harm to a litigant or third party, the Rules allow the trial judge broad latitude in limiting the scope of discovery. See Palmetto Alliance v. South Carolina Pub. Serv. Comm'n, 282 S.C. 430, 434, 319 S.E.2d 695, 698 (1984) (scope and conduct within sound discretion of trial judge). Rule 26, SCRPC, provides “[u]pon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court...may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense, including one or more of the following: (1) that the discovery not be had....” The rulings of a trial judge in matters involving discovery will not be disturbed on appeal absent a clear showing of an abuse of discretion. Evening Post Pub. Co. v. Berkeley Cty. Sch. Dist., 392 S.C. 76, 85, 708 S.E.2d 745, 750 (2011).

### **LEGAL ARGUMENT**

#### **I. Mr. Fox is not entitled to conduct discovery.**

The South Carolina Probate Code does not specifically provide for the use of discovery in probate proceedings. Rather, it states that the South Carolina Rules of Civil Procedure govern formal proceedings, which are “civil actions” as defined in Rule 2, SCRPC. See S.C. Code Ann. § 62-1-304; see also S.C. Code Ann. § 62-1-201(17) (“‘Formal proceedings’ means actions commenced by the filing of a summons and petition with the probate court and service of the summons and petition upon the interested persons. Formal proceedings are governed by and

subject to the rules of civil procedure adopted for circuit courts and other rules of procedure in this title.”). Thus, it follows that, to conduct discovery as permitted under the SCRCP in a probate matter, there must be a pending formal proceeding. See Rule 26(b)(1), SCRCP (permitting parties to obtain discovery relevant to “the subject matter involved in the *pending* action”) (emphasis added).

There is no formal proceeding currently pending in this Estate in this Court. The only formal proceedings initiated by Mr. Fox<sup>3</sup> were: 1) the Petition for Testacy and Appointment, which was removed to the Circuit Court by order dated November 20, 2017; and 2) the Petition for Removal of Special Administrator (“PRSA”), filed on January 4, 2019. Following the filing of the PRSA, Respondent filed a Motion for Emergency Hearing on January 8, 2019, which was granted and a hearing set for the following day. Notably, Mr. Fox was already scheduled to be before this Court on January 9, 2019, as a hearing on Respondent’s Proposal for Distribution, which sought approval of a distribution of Estate funds to the Trust, had previously been set for that day. Mr. Fox, through his attorney, received notice of that hearing in early December (the Proof of Delivery was filed December 12, 2018). Additionally, a review of the transcript of the January 9, 2019, hearing reveals that at no time did counsel for Mr. Fox state any objection to the hearing being held on an emergency basis, nor did he request additional time from the Court to conduct discovery. See Transcript of January 9, 2019, hearing, attached as Exhibit 4.<sup>4</sup>

Following the hearing on January 9, 2019, this Court denied the PRSA, thus concluding that “formal proceeding.” See S.C. Code Ann. § 62-3-107 (“Each proceeding before the Court is

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<sup>3</sup> The caption on the discovery at issue indicates that it is purportedly being served in a proceeding in which Mr. Fox is the “Petitioner”.

<sup>4</sup> As noted in the Procedural History section above, Mr. Fox had made the exact same allegations against Respondent Chandler in a “Motion to Restrain Special Administrator” filed in November in circuit court. Although the circuit court dismissed that Motion as moot on February 13, 2019, at no time prior to the hearing on the PRSA in probate court did Mr. Fox conduct any form of discovery relating to his Motion.



independent of any other proceeding involving the same estate.”). Although Mr. Fox filed a “Motion to Alter or Amend and Relief From Judgment or Order Pursuant to South Carolina Rules of Civil Procedure 52(b), 59(e), & 60(b)(4) & (5)”, Mr. Fox thereafter appealed the denial of his PRSA to the circuit court, and, in so doing, took the position that his Motion to Alter or Amend before this Court was “constructively denied”. See Return to Motion to Dismiss Appeal, pp. 4-7, attached as Exhibit 5; see also Elrod v. All, 243 S.C. 425, 436, 134 S.E.2d 410, 416 (1964) (“The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. It follows that a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are to be taken as true against the pleader for the purpose of the action.”).

As noted above, Mr. Fox has appealed the Order denying his PRSA to the circuit court, further compelling the conclusion that it is not pending in probate court. Admittedly, the circuit court appears to have dismissed Mr. Fox’s appeal based on language in the Order Denying Appellant’s Emergency Petition for Writ of Supersedeas:

**IT IS FURTHER ORDERED** that this estate is to remain in the complete jurisdiction of the Probate Court until a final order is issued by the Probate Court disposing of all matters before it. At that point, should any appeals be necessary, only then can parties petition the Circuit Court in an appellate fashion. No appeals to the Circuit Court may be had or filed until this case is completed in Probate Court.

See Order Denying Appellant’s Emergency Petition for Writ of Supersedeas, p. 4, attached as Exhibit 6; see also Doe v. Bishop of Charleston, 407 S.C. 128, 135, 754 S.E.2d 494, 498 (2014) (“As a general rule, judgments are to be construed like other written instruments. The determinative factor is the intent of the court, as gathered, not from an isolated part thereof, but from all the parts of the judgment itself. Hence, in construing a judgment, it should be examined and considered in its entirety. If the language employed is plain and unambiguous, there is no room

for construction or interpretation, and the effect thereof must be declared in the light of the literal meaning of the language used.”).

However, Mr. Fox has appealed the Order Denying Appellant’s Emergency Petition for Writ of Supersedeas, thus staying the dismissal of the appeal. See Rule 241(a), SCACR (“As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, or decree on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.”). Therefore, the appeal of the probate court’s Order denying the PRSA is either pending before the circuit court, or, if dismissed by the circuit court, that dismissal has been stayed by the appeal to the S.C. Court of Appeals.

Regardless of whether Mr. Fox’s Motion to Alter or Amend is pending, and regardless of whether his appeal of the Order denying the PRSA is pending (and if so, in which court), there is no rule or authority permitting discovery following this Court’s issuance of that Order. In Flag Fables, Inc. v. Jean Ann’s Country Flags & Crafts, Inc., 753 F. Supp. 1007 (D. Mass. 1990), the defendant prevailed at trial. As part of its post-trial motions, including a motion for a new trial, plaintiff sought an order compelling the defendant to submit to discovery. Id. at 1016. The plaintiff claimed to need certain documents for use on appeal or a new trial. In denying the plaintiff’s motion, the court stated:

Both Rule 26 and the local rules anticipate the use of discovery devices to unearth evidence before or during a trial. The rules make no explicit provision for post-trial discovery, and the Court knows of no case where post-trial discovery was allowed. The trial is over; *a fortiori*, discovery is over.

Id. Likewise, the PRSA has been ruled upon and that distinct proceeding is concluded in this Court, therefore the time and ability to conduct discovery has passed.

The matter in which Mr. Fox seeks discovery is no longer pending in this Court. Therefore, his untimely attempt to conduct discovery should not be permitted.

II. Even if Mr. Fox were entitled to conduct discovery, the discovery requests at issue seek information that is not relevant to the subject matter of any “pending action”.

Even if Mr. Fox were permitted to conduct discovery at this juncture, the discovery sought would nonetheless be improper. Discovery must be relevant to the subject matter involved in the pending claim. Rule 26(c), SCRPC; In re Mt. Hawley Ins. Co., 427 S.C. 159, 167, 829 S.E.2d 707, 712 (2019). The discovery sought by Mr. Fox is not relevant to his PRSA and would not contribute to the resolution of any issues connected to Mr. Fox’s claims.

Mr. Fox brought the PRSA under S.C. Code Ann. § 62-3-611(b), which provides that “[c]ause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office.”<sup>5</sup> The PRSA is replete with allegations of wrongdoing, all of which, after a hearing during which Mr. Fox was given the opportunity to present evidence and elicit testimony from Respondent, were found to be without merit. See Ex. 3, 2/7/19 Order denying PRSA. In fact, the Court ordered that, pursuant to S.C. Code Ann. § 62-1-111, Mr. Fox pay the costs and fees incurred by the Estate in responding to the PRSA. Importantly, none of the PRSA’s allegations of wrongdoing implicate, or relate to, the information that is now being sought through Mr. Fox’s discovery requests and the scope of a formal proceeding is framed by the petition. See Unif. Probate Code § 3-107 cmt. In other words, the discovery being sought is irrelevant to whether or

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<sup>5</sup> While S.C. Code Ann. § 62-3-611 applies to the removal of personal representatives, S.C. Code Ann. § 62-3-618 makes it applicable also to the removal of special administrators, such as Respondent.

not, under the applicable standards of S.C. Code Ann. § 62-3-611(b), cause exists to remove Respondent as Special Administrator (which proceeding, again, has been concluded).

To be fair, in his Motion to Alter or Amend the Order denying the PRSA, Mr. Fox submits that the Order “does not consider or explain the alleged *ex parte* communications between the [Respondent] and the Court”, citing Rule 3(b)(7), CJC, Rule 501, SCACR. Even if this one sentence in his Motion to Alter or Amend (which per Mr. Fox, was constructively denied) acted so as to make it an issue that is currently pending before the Court, Mr. Fox’s “allegation” is not one of misconduct on the part of Respondent. Rather, Mr. Fox cites the Code of Judicial Conduct, and thus is implicitly, if not explicitly, making an accusation aimed at the Court itself. The discovery, even if timely served, is simply not relevant to whether or not cause exists to remove Respondent as Special Administrator. It is difficult to ignore the fact that Mr. Fox’s accusation of “alleged *ex parte* communications” came on the heels of the Court’s denial of his PRSA and its imposition of over \$10,000 in sanctions. It also bears mentioning that these discovery requests were served after the Court ordered Mr. Fox to prepare and submit an accounting of the maintenance and expenditure of funds in the Trust during a hearing on August 7, 2019.<sup>6</sup> See Exhibit 7, Transcript of 8/7/19 hearing, pp. 17-19. Regardless of what Mr. Fox’s motives were in serving the discovery at issue, one thing is certain: the discovery sought is neither timely nor relevant and should not be allowed.

### CONCLUSION

Mr. Fox is not entitled to conduct the discovery at issue, and even if he were, Respondent’s Motion must be granted because the discovery is simply not relevant. Additionally, it is clear from the timing and the wording of the discovery requests that Mr. Fox’s primary intent is to annoy and

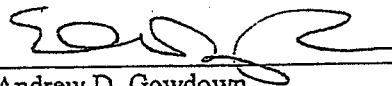
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<sup>6</sup> The hearing was on Respondent’s Application to Approve Compromise, which sought the Court’s approval of the settlement of the “Slayer Lawsuit”.

harass. Justice requires that the Estate be protected from this abusive discovery and from incurring even the slightest expense in responding. Pursuant to Rule 26(c), SCRCP, and the arguments and law set forth above, Respondent is entitled to Order granting this Motion and directing that the discovery not be had.

WHEREFORE, Respondent Chandler respectfully moves this Court for a protective order as stated herein and to award such other and further relief as this Court may deem just and proper.

ROSEN HAGOOD, LLC



Andrew D. Gowdown  
Elizabeth J. Palmer  
151 Meeting Street, Suite 400  
Charleston, South Carolina 29401  
(843) 577-6726

ATTORNEYS FOR RESPONDENT ANDREW  
CHANDLER, AS SPECIAL ADMINISTRATOR  
OF THE ESTATE OF DORIS DUANE COLUCCI

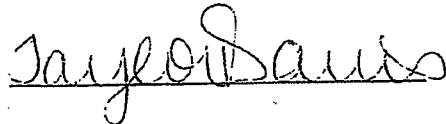
Charleston, South Carolina  
November 4, 2019

CERTIFICATE OF SERVICE

I certify that on 11/14, 2019, I caused  
to be:

- ☒ mailed
- ☐ hand delivered
- ☐ faxed
- ☐ e-mailed

a true copy of the foregoing pleading(s) to  
each counsel of record.



## Colucci estate

Angus Lawton

Tue 11/5/2019 3:35 PM

To: Elizabeth Palmer &lt;epalmer@rosenhagood.com&gt;

Beth, I would like some information from you regarding the Colucci matter and John Antonio. Specifically I would like to know the following:

1. Have you, Andrew Chandler, or any member of your firm had any communication with Judge Blunt or any member of the Dorchester County Probate court regarding John Antonio since July 2, 2019?
2. Did you, Andrew Chandler or any member of your firm have any role in drafting the letter signed by Judge Blunt and John Freeman which I received yesterday, dated November 4, 2019 regarding John Antonio?
3. Have you answered the questions and provided the documentation requested in Gordon Garrett's interrogatories and request for production to you dated October 4, 2019? I understand those responses were due yesterday.

I called you yesterday to discuss these issues and left a message. Once I receive your responses to these questions, I imagine there will be some follow up questions.

Thank you.

Angus M. Lawton, Esquire  
Lawton Law Firm  
496 Bramson Court, Suite 100  
Mount Pleasant, SC. 29464  
(843) 881-9901

PROBATE JUDGE  
DORCHESTER COUNTY

2020 JAN 24 PM 12: 59



PROBATE JUDGE  
DORCHESTER COUNTY  
ANGUS M. LAWTON  
SC BOARD CERTIFIED MEDIATOR  
SC BOARD CERTIFIED CIVIL ARBITRATOR  
NATIONAL BOARD OF TRIAL ADVOCACY  
2020 JAN 24 PM 12:59  
ANGUS@LAWTONLAWFIRM.NET

November 6, 2019

**BY EMAIL AND US MAIL**

Elizabeth Palmer, Esquire  
Rosen Hagood  
P.O. Box 893  
Charleston, SC 29401

Re: Estate of Doris Duane Colucci  
Case # 2017-ES-18-00294

Dear Beth:

This letter will follow up on the phone message which I left for you on Monday, November 4, 2019.

My clients, John Antonio and Michael Colucci have a number of questions regarding the way that their mother's estate has been handled. As you represented Andrew Chandler, the special administrator handling the estate, we would appreciate your providing us with the following information:

1. Have you, Andrew Chandler, or any member of your firm had any communication with Judge Blunt or any member of the Dorchester County Probate court regarding John Antonio since July 2, 2019?
2. Did you, Andrew Chandler or any member of your firm have any role in drafting the letter signed by Judge Blunt and John Freeman which I received the day before yesterday, November 4, 2019, regarding John Antonio?
3. I understand that you have not answered the questions and provided the documentation requested in Gordon Garrett's interrogatories and request for production to you of October 4, 2019. (Yesterday I received your Motion for a Protective Order, asking that you not be required to provide those responses.)

Given your position on those issues, we are asking that you provide to me all information regarding any ex parte communications that you, Andrew Chandler, or any member of your firm have had with Judge Blunt, Judge Edwards, or any representatives of the Dorchester County Probate Court since I made an appearance in the case as the attorney for John Antonio and Michael Colucci. (I am asking that you provide me with copies of any such communications, any billing records from your firm or Mr. Chandler's firm that

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MOUNT PLEASANT, SC 29464

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reference such communications, and any notes from those communications. If any such communications took place on the phone or verbally, I would like to ask the attorneys involved to tell me what was discussed.)

Please let me know by noon on Friday, November 8, 2019 if you will voluntarily provide me with this information. (The reason for this deadline is that I have been given a deadline by Judge Blunt to present any positions in response to John Freeman's report.) If you will provide this information, my paralegals can make arrangements for me to come to your office to review these materials next week.

We feel that this request is appropriate, given the fiduciary obligations that your firm and Andrew Chandler owe to my clients.

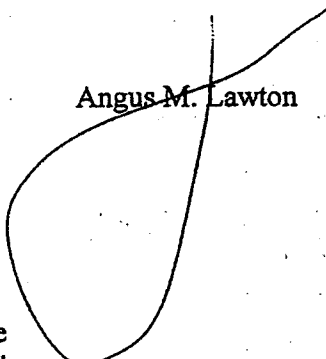
Please also understand that given the value of the estate and the questions that my clients have regarding their mother's estate there may be additional information that they would like for your firm and Mr. Chandler's firm to provide.

Thank you.

With kind personal regards, I remain,

Very Truly Yours,

Angus M. Lawton

A large, stylized handwritten signature in black ink, which appears to be 'Angus M. Lawton', is written over the typed name and extends downwards into the cc list area.

Enclosures as stated

AML/jm

cc: Glenn Churchill, Esquire  
Brewton Hagood, Esquire  
Andrew Gowdown, Esquire



# LAWTON

LAW FIRM, LLC

ANGUS M. LAWTON  
S.C. BOARD CERTIFIED MEDIATOR  
S.C. BOARD CERTIFIED CIVIL ARBITRATOR  
NATIONAL BOARD OF TRIAL ADVOCACY  
ANGUS@LAWTONLAWFIRM.NET  
2020 JAN 24 PM 12:59

November 14, 2019

VIA EMAIL & U.S. MAIL

Professor John Freeman

The Honorable Mary Blunt  
Dorchester County Probate Court  
5200 East Jim Bilton Blvd.  
St. George, SC 29477

Re: The Estate of Doris Duane Colucci  
2007-ES-18-00294

Dear Professor Freeman (and Judge Blunt):

Thank you for your help in this case. Due to the ethical concerns expressed in your recent letter, we have taken a great deal of time to evaluate the situation and provide appropriate information in response. We also believe item # 6 below should be resolved properly before any other issues are decided. In doing so, everyone involved can make sure that this case is handled properly, impartially and without any appearance of impropriety.

I would like to give you some additional background to make sure that you have all of the necessary information to provide your opinions in this matter. Like many probate disputes, the conflicts in this family go back decades. Since Doris Colucci's death, there have been at least 5 different lawsuits filed involving different family members. There have been disputes about family property, family debts, and related criminal proceedings, and it has been extremely contentious. There is one order sanctioning a party. (My clients were not involved in that order.) There have also been rumors about various family members that do not need to be repeated, and the family's disputes have been covered by the local newspapers and news stations.

Doris Colucci died on April 14, 2017, over two years ago, yet the estate has not been closed. The individual beneficiaries have not received any distributions from the estate. At least part of the probate matter is on appeal, which means that it will probably be at least another year before the family members can get closure.

My clients are the only natural children of Doris Colucci, and they are both beneficiaries in her will. They have multiple questions regarding the way their mother's estate has been handled.

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Both of my clients simply want the matter resolved fairly and properly, so they can move on with their lives.

I have tried to address your concerns below:

1. **Informed consent forms:** I have attached Waiver of Conflict forms signed by John Antonio and Michael Colucci. (Exhibits 1 and 2). John Antonio's form is also signed by Glenn Churchill, who is the independent GAL appointed by the court. Mr. Churchill is an attorney in Charleston, and he has been practicing for 34 years. He was appointed as John Antonio's GAL before I became involved in the case.

Glenn's approval of decisions relating to John Antonio should satisfy any concerns that John needs an independent advisor. Glenn was selected by the court, and not by John Antonio or any member of his family. Glenn has no relationship with Michael Colucci or any other member of the Colucci family. He has acted solely on behalf of John in all proceedings.

As you can see from the attached fee agreement with John Antonio (Exhibit 3), Glenn also signed that fee agreement nearly 2 years ago approving the terms of my representation. The fee agreement also dealt with any potential conflict and how it would be handled. Glenn can also confirm that I have acted properly in protecting John, and that there are currently no conflicts between Michael Colucci and John Antonio. In that respect, please see the affidavit Glenn signed relating to any potential conflict. (Exhibit 4.)

2. **Fee agreement with John Antonio:** As referenced above, my fee agreement with John Antonio dated December 15, 2017, is also attached. (Exhibit 3.) Based on the rate that Glenn Churchill was charging (\$200 an hour), I reduced my usual rate by one third to that same rate.

John Antonio's fee agreement discussed what would happen if a conflict arose between Michael and John. Further, as set forth in the affidavit of John's GAL, there are no conflicts between Michael and John, and any such issues have been resolved to the satisfaction of the GAL.

(As an aside, Dr. Mulbry's letter indicates that John thought he had given me a POA. This letter will confirm that John has not signed any power of attorney giving me the rights to handle any issues for him. I think Dr. Mulbry's letter references the fee agreement that John and Glenn Churchill signed. I would not be comfortable with having John sign a POA, and any POA presented to Mr. Antonio would have to be approved by his GAL.)

The fee agreement also provides that any dispute relating to the fees shall be submitted to the Fee Disputes Board of the South Carolina Bar. It does not appear that there is any dispute about the fees, as John and Glenn have approved of the same.

3. **Bills for the work that I have performed**: Judge Blunt, as we discussed in the emails exchanged on August 29, 2019, I respectfully don't think court approval is necessary on my fees if a conservator is not appointed. I thought you had come to the same conclusion, based on your email to me of August 29, 2019 regarding my fees. Your email, which was included in the package to Professor Freeman, states "I only need Glenn's affidavit and billing statement since he was court appointed, not yours. Sorry for any confusion on that."

Please rest assured that both Glenn and John have approved of my fees all along, and I understand that they are both fine with the fees now. If a conservator is appointed, I will be happy to present all of my bills to the conservator so that they can be reviewed and a decision be made by the appropriate court or board as to whether they are appropriate. So far, I have not received any fees from the work done on John's behalf, and I have been working for him for nearly 2 years.

Given the issues raised in this letter, and the questions about the conservator issue, I would like to wait until those issues have been resolved before presenting my bills to anyone other than my clients.

4. **Lester Schwartz/Dan David**: Until I received your letter, I did not know that there was any concern regarding Lester Schwartz's fees or his representation of John Antonio, and I had no indication that Mr. Schwartz intended to charge John for any work performed. I have now confirmed with Mr. Schwartz that he is not seeking any fees from John, so there should be no issue in that respect.

In terms of Dan David, I have no indication that he is planning to charge John any fees. Mr. David has not been involved in the case for nearly 2 years, and he has never told me that intends to collect any fees from John. During my representation, Mr. David's only involvement has been to provide me with necessary information so that I could continue the representation. Mr. David has provided all such information as requested.

Please let me know if there are any remaining issues regarding Mr. Schwartz or Mr. David. I am not aware of any complaints or concerns that Michael or John have voiced regarding Mr. Schwartz or Mr. David.

5. **Conservatorship/GAL**: I understand the legal issues relating to the appointment of a conservator. As I indicated at the hearing on August 7, 2019, I am happy to work with the appropriate court to make sure that an order is put in place given the issues. I am comfortable that Glenn is willing to do so as well.

There are several statutes in the probate code that should give the court guidance:

- a. The court shall exercise its authority to encourage maximum self reliance and independence of the protected person and issue orders only to the extent necessitated by the protected person's mental and adaptive limitations. (SC Code Ann. Section 62-5-407.) (We feel like John has shown independence and reliability; he has a full time job, pays his bills, and lives alone.)
- b. In determining whether to appoint a conservator, the burden of proof seems to be "clear and convincing evidence". (SC Code Ann. Section 62-5-404 (B)); and
- c. The court may limit the power of a conservator. (SC Code Ann. Section 62-5-404 (C))

Glenn and I recently met with John, and I believe John's biggest concern is that if a conservator is appointed, John may have to get court approval for ordinary living expenses, like clothing, groceries, utility bills, etc. Frankly, given John's living situation, it does not seem productive or necessary for there to be such restrictions on his account. He will also have to pay the conservator to apply for approval of such expenses, which will reduce the amount of money that John receives. A bond and annual accountings may be required, which will cost John additional money.

Based on all the factors, Glenn and I submitted a proposal that allowed Glenn, an independent attorney, to remain involved in John's finances, and which would allow John to withdraw up to \$2,000.00 a month without any supervision. We thought that proposal would give John some independence, as required in the statute above, and protect his principal from waste or interference. Glenn and I have been willing to adjust that number so that John can have access to funds to help him with his day to day expenses.

As it stands now, neither John, Glenn, nor I know what type of restrictions, protections, or limitations the court feels are necessary, other than the apparent feeling that a conservator or limited conservator needs to be appointed. It is not clear whether John will need court approval to withdraw money for his basic living expenses, like clothes, gas, etc. It may be that a limited conservator would be useful and proper, as long as the restrictions on John's access to the money are not too severe. John is opposed to having someone totally control his money so that he cannot access the funds even to buy a pair of shoes.

Once the issues in this letter are addressed, Glenn and I are willing to work to obtain the proper balance between giving John access to some money on a regular basis to allow for his independence, with some restrictions on his use or access of the money. An updated report from Dr. Mulbry could also provide some benefit. Such a report would resolve any questions about his specific conclusions, or how his first report is to be interpreted.

6. **Ex parte communications:** I realize that this is a sensitive topic, but my clients have a number of questions regarding the way that their mother's estate has been handled. It appears that there may have been ex parte communications with the court, and we would like to obtain full and complete disclosure of all information regarding any such communications. (In this respect, please see page 27 of the transcript from the hearing on January 9, 2019, where Mr. Chandler testifies that he had a phone conference with Judge Blunt the day before a hearing. Copies of the pertinent pages of the transcript are attached as Exhibit 5.)

It also appears that there may have been information provided to the court about Michael Colucci and/or John Antonio that is not contained in the record. Specifically in the letter of November 4, 2019 it states:

"Concerns were brought to the court and to court appointed fiduciaries about the capacity of John Antonio to manage and receive assets either through the estate or through settlement proceeds which may result from the decedent's cause of death." (Page 1, paragraph 2);

"In 2010, . . . , Dan M. David received a public reprimand . . ." (Footnote 4, page 2);

"There is a risk that Michael Colucci may attempt to gain access to John Antonio's funds." (Page 5, paragraph 2).

I am not aware of any information in the record to support these statements.

Given those concerns, I requested that Beth Palmer and Andrew Chandler, the court appointed special administrator, provide me with all information regarding any ex parte communications that have taken place with the court. (Please see email to Beth Palmer dated November 5, 2019 and letter to Beth Palmer dated November 6, 2019, attached hereto as Exhibit 6.) For some reason, neither Ms. Palmer nor Mr. Chandler have provided **any** response to my requests. From my client's perspective, it is concerning that the attorneys handling their mother's estate have not responded to this request for information.

Please also note that Michael Fox, the trustee of Doris' estate, has sought similar information from Ms. Palmer and Mr. Chandler in the form of Interrogatories and Requests for Production (attached hereto as Exhibit 7). Those discovery requests also ask that Ms. Palmer and Mr. Chandler set out any legal authorities that permit such communications. (See Interrogatory 6.)

Ms. Palmer and Mr. Chandler did not answer those discovery responses either; rather they filed a Motion for a Protective Order.

At this point, the trustee of Doris Colucci's estate and two of the beneficiaries have asked for disclosure of any ex parte communications that have taken place. Upon information and belief, Ms. Palmer and Mr. Chandler owe at least some fiduciary obligations to the trustee and beneficiaries, yet they have not provided the requested information. If any such communications have taken place, we would like full disclosure of all information about such communications. For example, we would like to know:

- A: What, if any, ex parte communications have taken place;
- B: Who initiated those communications;
- C: Who participated in those communications;
- D: Exactly what was discussed in those communications;
- E: Why the other parties and attorneys were not given notice of those communications or allowed to participate;
- F: Are there any emails, notes or other documents that were exchanged in those communications? If there are any such materials, we would like to obtain copies;
- G: Are there any South Carolina authorities which allow such communications; and
- H: What are the obligations of the attorneys and others involved if any such communications have taken place?

Again, I understand the delicate nature of these questions. However, given the size of the estate (apparently over \$2,000,000.00), the fact that the case involves the death of my client's mother, and their questions regarding the way the estate has been handled, we think this request is appropriate.

We ask that there be full, factual and complete disclosure of this information so that all parties can be assured that the process is handled properly in a manner that promotes public confidence in the system and all persons involved. We have asked for this information, or at least similar information, from Ms. Palmer and Mr. Chandler, yet no answers have been provided.

As mentioned earlier, my clients mainly want to see that their mother's estate is properly handled, in a process that is free of bias, prejudice or the appearance of impropriety. They also want to make sure that due process is provided to all interested parties. We don't believe information should be considered that is not part of the record, especially if

my clients and I are not aware of the information provided, and we are given no opportunity to respond.

We would like to receive the information set forth in this section before proceeding on any other issues.

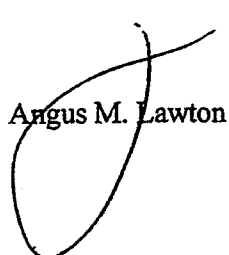
We welcome your input on these issues and the various issues raised herein and in your letter of November 4.

Thank you once again.

With kind personal regards, I remain,

Very Truly Yours,

Angus M. Lawton



Enclosures as stated

Cc: Beth Palmer, Esquire  
Andrew Chandler, Esquire  
Glenn Churchill, Esquire  
Lester Schwartz, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE MATTER OF:

PROBATE JUDGE  
DORCHESTER COUNTY  
2020 JAN 24 PM 12:52

IN THE PROBATE COURT

REQUEST FOR HEARING

CASE NUMBER: 2017-ES-18-00294

John Antonio

Petitioner

The Estate of Doris Duane Colucci

A.K.A. Doris D. Colucci

Respondent

Attorney for Petitioner: Angus M. Lawton

Address: Lawton Law Firm, LLC

496 Bramson Court, Suite 100, Mt. Pleasant, SC 29464

Telephone: (843) 881-9901

Fax: (843) 881-8839

Email: angus@lawtonlawfirm.net

Attorney for Respondent: Elizabeth J. Palmer

Address: Rosen Hagood, LLC

151 Meeting Street, Suite 400, Charleston, SC 29401

Telephone: (843) 577-6726

Fax: (843) 724-8036

Email: epalmer@rosenhagood.com

Contested? ☒ Yes or ☐ No

Type of Case: Wrongful death

Time Needed: 15 minutes

Dates and Times Unavailable

January: 22, 23, 27, 28, 30; February: 3, 4, 6, 7, 10, 13, 17, 18, 19,  
27; March: 2, 5, 9, 10, 11, 12, 13, 16, 17, 18, 19, 26, 27; April: 3, 8,

(provide dates for three months): 13

Comments and Issues: \_\_\_\_\_

Hearing Requested by: Angus M. Lawton

For: ☒ Petitioner ☐ Respondent

Date: 1-24-20

Please return this form to the Probate Court as soon as possible.



**The Probate Court cannot schedule your case until this Request is complete.**

Estate of Doris Duane Colucci v Ivo Francesco Colucci, et al  
Motion for Summary Judgment  
August 13, 2018

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PROCEEDINGS

THE COURT: This is the defendant's motion for summary judgment? Yes sir, your name?

MR. HALLER: Your Honor, I'm David Haller. I represent Christa Yantis who is the Conservator for Ivo Colucci.

THE COURT: Okay. Let me just make sure I can see your name is on here.

[Whereupon, the court reviews document]

THE COURT: Your name again is what?

MR. HALLER: David Haller.

THE COURT: Oh, I see you Mr. Haller. And you represent who?

MR. HALLER: I represent Christa Yantis who is the Conservator for Ivo Colucci.

THE COURT: Okay, the Conservator's attorney. Okay. Yes sir, and you?

MR. GARRETT: Your Honor, I'm Gordon Garrett. My client Michael Fox is named as the Personal Representative in the last Will and Testament and he has filed the petition for formal Probate, Your Honor.

THE COURT: Okay. And he's the Personal Representative?

MR. GARRETT: The named Personal -- currently, there is a Special Administrator overseeing the estate.

Estate of Doris Duane Colucci v Ivo Francesco Colucci, et al  
Motion for Summary Judgment  
August 13, 2018

1 Mr. Fox is applying as the Personal Representative.

2 THE COURT: All right. Yes, ma'am?

3 MS. PALMER: Your Honor, I'm Beth Palmer and I  
4 represent Andrew Chandler who is the Special  
5 Administrator of the estate of Doris Colucci.

6 THE COURT: Okay. Yes, sir?

7 MR. CHANDLER: Andrew Chandler, Your Honor.

8 THE COURT: You are the Special Administrator?

9 MR. CHANDLER: I'm the Special  
10 Administrator yes, sir. I was appointed by Judge Blunt.

11 THE COURT: Okay. And your name? There is a  
12 gentleman behind you that was...

13 MR. LAWTON: Your Honor, I'm Angus Lawton. I  
14 represent two of the beneficiaries of the estate. I'm  
15 just here to observe but I might go sit up by Mr.  
16 Chandler if that's all right?

17 THE COURT: And you represent two beneficiaries?

18 MR. LAWTON: Yes sir, Michael Colucci and John  
19 Antonio who are two of the beneficiaries of the Will.

20 THE COURT: Okay. And you just want to make sure  
21 -- I don't know which side you're pulling for but you're  
22 here to make sure if something happens it doesn't affect  
23 their ---

24 MR. LAWTON: --- I'm just observing with interest  
25 but if you would like to hear from us later I'm happy to

Estate of Doris Duane Colucci v Ivo Francesco Colucci, et al  
Motion for Summary Judgment  
August 13, 2018

1 weigh in if you would like.

2 THE COURT: I guess I need to just kind of find out  
3 what is going on. So this is the defendant's motion so  
4 Mr. Haller?

5 MR. HALLER: Thank you, Your Honor. May it please  
6 the Court? Your Honor, my client's ward Ivo Colucci  
7 suffers from a serious cognitive defect which what most  
8 people would commonly call dementia. And in the course  
9 of that in April of 2017 he shot and killed his wife,  
10 Doris Colucci of which there is now a gazillion pieces of  
11 litigation.

12 When Mr. Colucci -- when Mrs. Colucci first died in  
13 April her Will had not been located. And so accordingly  
14 because there were multiple business matters going on at  
15 the same time as a Conservator was being appointed for  
16 Mr. Colucci, that would be my client, Mr. Chandler was  
17 appointed as the Special Administrator for Mrs. Colucci's  
18 estate.

19 Four months later a Will was located and that Will  
20 was then filed with the Dorchester County Probate Court  
21 and that Will named my client's ward, Mr. Colucci as the  
22 primary Personal Representative. But because of his  
23 incapacity he was unable to serve. The secondary named  
24 Personal Representative in the Will is Michael Fox who is  
25 represented by Mr. Garrett. Mr. Fox is sitting here

Estate of Doris Duane Colucci v Ivo Francesco Colucci, et al  
Motion for Summary Judgment  
August 13, 2018

1 behind Mr. Garrett. Mr. Fox filed a petition for formal  
2 proceedings to probate the Will. And those proceedings  
3 were then removed from the Probate Court to the Circuit  
4 Court. So the motion for summary judgment today although  
5 technically we are defendants slash respondents with the  
6 exception of Mr. Chandler all of the respondents in the  
7 case are individuals who are beneficiaries and heirs to  
8 the estate of Mrs. Colucci and Mr. Chandler is the  
9 Special Administrator.

10 So the motion for summary judgment that is before  
11 you this morning, Your Honor has two different parts. I  
12 think the first part is fairly easy; that is a motion for  
13 summary judgment to formally probate the Will of Mrs.  
14 Colucci that is dated -- it was filed with the Probate  
15 Court on August the 24th, 2001 and it is dated June 18,  
16 2013. The original is on file with the Court.

17 Pursuant to 62-3-405 the Court is authorized to  
18 probate a Will based upon the pleadings. There is no  
19 issue or dispute among any of the heir's beneficiaries  
20 that the Will that was filed in August 2017 is the last  
21 Will and Testament of Doris Colucci. And for that reason  
22 summary judgment was appropriate to file and -- excuse  
23 me, to probate the Will as her testamentary document.  
24 That is the first item.

25 THE COURT: Is there any objection to that?

Estate of Doris Duane Colucci v Ivo Francesco Colucci, et al  
Motion for Summary Judgment  
August 13, 2018

1 MS. PALMER: Your Honor, none that we are aware of.

2 THE COURT: Okay. Were y'all ---

3 MS. PALMER: --- and we don't object to the  
4 probate, issuing the Will to Probate.

5 THE COURT: Okay. So one down.

6 MR. HALLER: Thank you, Your Honor. Your Honor,  
7 the second one may be the issue that is a tad bit more  
8 contentious is the actual appointment of a Personal  
9 Representative. The Will as I mentioned names first Mr.  
10 Colucci who because of his incapacity is unable to serve,  
11 and second is the first successor Personal Representative  
12 named in the Will, which has now been probated, is  
13 Michael Fox.

14 I would also point out, Your Honor, that the Will  
15 does have a pretty detailed no contest clause which  
16 prohibits heirs and beneficiaries from contesting most of  
17 the terms of the Will including the appointment of a  
18 personal representative. In that regard Your Honor the  
19 only person who contests the appointment of Mr. Fox as  
20 the Personal Representative is Mr. Chandler the Special  
21 Administrator.

22 The point of our motion for summary judgment this  
23 morning, Your Honor is not to say whether Mr. Chandler or  
24 Mr. Fox would be better at administering this estate. It  
25 is simply that a Special Administrator is not an

1 interested person in the estate sufficient to be able to  
2 contest a testatrix's appointment, individual appointment  
3 of a Personal Representative. Pursuant to 62-3-11 a  
4 person who has an interest in the estate is entitled to  
5 ask and seek the removal of a Personal Representative or  
6 challenge the qualifications of the removal of a Personal  
7 Representative.

8 But when you look at the definition of interested  
9 person in the Probate Code at 62-1-20123 it defines an  
10 interested person as an heir, a beneficiary, a creditor  
11 or anybody else who has a property interest in the  
12 estate. A Personal Representative is a creature of  
13 statute of limited authority who comes in at the  
14 direction of a Court to serve at the pleasure of the  
15 Court and for the time level established by the Court  
16 until a general Personal Representative is appointed.

17 They come in and they usually come in in a situation  
18 where either the Personal Representative has some sort of  
19 conflict or there is some sort of dispute within the  
20 confines of the -- between the heirs and within the  
21 confines of the estate. Pursuant to Section 63-618 the  
22 appointment of a Personal Representative terminates --  
23 excuse me, the authority of a Special Administrator  
24 terminates upon the appointment of a Personal  
25 Representative. In the order appointing Mr. Chandler as

1 Special Administrator it specifically states that the  
2 reason why the Court was appointing a Special  
3 Administrator was because no Will had been found and it  
4 uses the words unless and until a Will is found that the  
5 appointment will continue.

6 A Will now having been found and Your Honor now  
7 having probated that Will the duties of Mr. Chandler as  
8 the Special Administrator have now come to a conclusion.  
9 I would just -- which is why we believe even though he is  
10 the only person who contests the appointment of Mr. Fox  
11 he has no standing to make that appointment by statute.  
12 I would also point out; Your Honor that the cardinal rule  
13 of interpretation of a Will is the testatrix's intent.

14 Mrs. Colucci named first her husband, then Mr. Fox  
15 who is a long time accountant and friend of the Colucci's  
16 and knows their finances and the details of their family  
17 dealings very well. And she felt so -- and then she  
18 designated to other individuals who would have the  
19 ability to serve ahead of Mr. Chandler before you then  
20 start to get to those people who have statutory  
21 authorities which would include her children ahead of Mr.  
22 Chandler. And the cardinal rule of the interpretation of  
23 a Will is the intention of a testatrix. She named in her  
24 Will those people that she thought would be best suited  
25 to manage her estate. And she went so far as wanting to



Estate of Doris Duane Colucci v Ivo Francesco Colucci, et al  
Motion for Summary Judgment  
August 13, 2018

1 ensure the dignity of her choices were selected that she  
2 did put in a no contest clause which prohibit all of the  
3 other people who actually have an interest in the estate  
4 from making that determination. So the point of the  
5 motion today is simply that the only person who has come  
6 forward to say that Michael Fox should not be appointed  
7 as Personal Representative is a person who is otherwise a  
8 stranger to the estate. He has no standing to make those  
9 claims and that is why summary judgment is appropriate  
10 and Mr. Fox should be appointed as Personal  
11 Representative.

12 THE COURT: But he was appointed by the Court?

13 MR. HALLER: Mr. Chandler was appointed as Special  
14 Administrator by the Court shortly after Mrs. Colucci's  
15 death when no Will had been found.

16 THE COURT: No, I understand that. But was that by  
17 the Probate Court or the ---

18 MR. HALLER: --- yes, sir ---

19 THE COURT: --- Circuit Court?

20 MR. HALLER: It was by the Probate Court.

21 THE COURT: Okay. So...

22 MR. HALLER: A petition was -- just for historical  
23 -- Your Honor's historical knowledge a petition was filed  
24 by Mr. Angus -- Mr. Lawton's clients -- a predecessor of  
25 representation of Mr. Lawton's clients to appoint a

Estate of Doris Duane Colucci v Ivo Francesco Colucci, et al  
Motion for Summary Judgment  
August 13, 2018

1 Special Administrator. And I think they had actually  
2 nominated that lawyer to be ---

3 THE COURT: --- okay ---

4 MR. HALLER: --- the Court then sua sponte  
5 appointed Mr. Chandler to serve as Special Administrator  
6 to begin the process of collecting the assets,  
7 marshalling the assets and those kinds of things. The  
8 Will -- excuse me, the order of appointment which should  
9 be on file with the Court, I have a copy if you would  
10 like to see it.

11 THE COURT: It should be in that rather small file.  
12 So I should be able to find it.

13 MR. HALLER: Your file is much smaller than the  
14 rest of ours; I can tell you that.

15 THE COURT: No, I get the feeling that it is. And  
16 you said Mr. Fox was their accountant?

17 MR. HALLER: Yes, sir.

18 THE COURT: And this is that gentleman over  
19 [indicates] -- that's Mr. Fox?

20 MR. HALLER: Yes, Your Honor. It was their tax  
21 preparer slash bookkeeper. I'm not sure that he's  
22 actually a CPA. But he has been involved with their  
23 finances for going back as far as I know at least 40  
24 years.

25 THE COURT: Okay. Anything else you need to tell

Estate of Doris Duane Colucci v Ivo Francesco Colucci, et al  
Motion for Summary Judgment  
August 13, 2018

1 me?

2 MR. HALLER: No, sir. Thank you, Your Honor.

3 THE COURT: Thank you. Ms. Palmer?

4 MS. PALMER: Yes, Your Honor.

5 THE COURT: Yes, ma'am?

6 MS. PALMER: Like Mr. Haller said Mr. Chandler was  
7 hand-picked by the Probate Court, Dorchester County  
8 Probate Court to serve as Special Administrator. Mr.  
9 Haller used the term sua sponte; that's not entirely  
10 correct. He was appointed as Special Administrator by  
11 consent order including Mr. Haller's client, Ms. Yantis  
12 who consented to that and all the other interested  
13 parties consented to that.

14 So to his argument that we lack standing to be  
15 before Your Honor contesting the appointment of a  
16 Personal Representative I disagree. We are Mr. Chandler  
17 is currently the representative of the estate of Doris  
18 Colucci. In that capacity he is duty bound to look out  
19 for the best interest of the estate and state what his  
20 position is on the best interest of the estate. So  
21 that's why we're here.

22 THE COURT: Okay.

23 MS. PALMER: And I want to make it clear to the  
24 Court and to Mr. Fox that our objection has nothing to do  
25 with his character, calling into question his character;

1 it is nothing to that extent at all. He is a lovely man.  
2 I've met him now twice. Our objection is because first  
3 of all this estate has been administered by Mr. Chandler  
4 and to some extent myself as his attorney for over 14  
5 months at this point.

6 As Mr. Haller said there has been a gazillion pieces  
7 of litigation. It is a complicated estate. We have made  
8 a lot of progress but there are still some things that  
9 remain to be done, some of which are outlined or set  
10 forth in Mr. Chandler's affidavit which was attached to  
11 our memo.

12 THE COURT: Okay.

13 MS. PALMER: The fact of the matter is a Personal  
14 Representative never has to be appointed. The Will can  
15 be admitted to Probate without a Personal Representative  
16 being appointed. And the fact that somebody is named as  
17 a PR in a Will doesn't end the inquiry. It is not an  
18 automatic thing. The Court must find that the person is  
19 qualified. And in order to be qualified the person has  
20 to be suitable.

21 The Court also has a duty to look at what is in the  
22 best interest of the estate. At this point in time if we  
23 were to transition the administration of this estate to  
24 Mr. Fox and his attorney it would cause a huge delay. It  
25 would grind to a stop the progress that we're making and

Estate of Doris Duane Colucci v Ivo Francesco Colucci, et al  
Motion for Summary Judgment  
August 13, 2018

1 would cause -- I cannot even begin to think how much time  
2 it would cost for us to transition everything to them and  
3 in effect the estate would be paying two fiduciaries and  
4 two attorneys during that process. There is just not  
5 good cause to do that. And Mr. Haller speaks to the  
6 testator's intent. That is not being frustrated by Mr.  
7 Chandler continuing to serve or Mr. Fox being denied  
8 appointment.

9 That is because with your admission of that Will to  
10 Probate it is now a testate estate and the sole  
11 beneficiary is a living Trust of which Mr. Fox is the  
12 Trustee and has accepted that position as Trustee. So  
13 now we will be able to start transferring the assets that  
14 we have gathered and collected to the Trust and Mr. Fox  
15 will ultimately be the person effectuating the  
16 distribution of those assets to the beneficiaries.

17 THE COURT: He is in charge of the Trust; Mr. Fox?

18 MS. PALMER: Yes, Your Honor. He was named as  
19 Trustee and he has accepted that position by filing the  
20 acceptance letters.

21 THE COURT: Excuse me; and the sole beneficiary of  
22 the Will is the Trust?

23 MS. PALMER: Yes, Your Honor.

24 THE COURT: Okay. Keep going.

25 MS. PALMER: And another issue with intent I mean I

Estate of Doris Duane Colucci v Ivo Francesco Colucci, et al  
Motion for Summary Judgment  
August 13, 2018

1 don't think you could -- I think it would fairly be  
2 assumed that no Testator intends for their estate to be  
3 wasted. In the Probate code the Probate code is to be  
4 construed and applied in order to have speedy efficient  
5 administration of estates. I think I covered -- is there  
6 anything that Mr. Haller stated that you would like me to  
7 address?

8 THE COURT: Well, one thing I am -- it does seem to  
9 be an issue to me that Mr. Chandler was appointed because  
10 there was no Will. And now that the Will has been  
11 probated if the Will has named somebody the reason I  
12 shouldn't change over is because it's going to cost the  
13 estate that much more money to do that, is that one of  
14 the issues?

15 MS. PALMER: Yes, Your Honor. We believe it will  
16 be wasteful. We have come so far in these 14 months if  
17 the Will was filed with the Court back in August Mr.  
18 Fox's petition ---

19 THE COURT: --- August of last year?

20 MS. PALMER: Yes, Your Honor.

21 THE COURT: Okay.

22 MS. PALMER: We might be in a different position if  
23 we were talking about this in August of last year. But  
24 we believe good cause exists to deny that petition as to  
25 Mr. Fox being appointed and to allow Mr. Chandler to

1 continue and wrap up this estate.

2 THE COURT: To your knowledge Ms. Palmer is there  
3 any South Carolina cases on this?

4 MS. PALMER: On the issue of added expense not  
5 specifically. But as to the ability of the Court to look  
6 at the best interest of the estate yes Your Honor, it is  
7 cited in our memo.

8 THE COURT: Okay. But just out of -- the best  
9 interest of the estate is all based on the wastefulness,  
10 right?

11 MS. PALMER: And efficiency.

12 THE COURT: And efficiency.

13 MS. PALMER: Yes, Your Honor.

14 THE COURT: Okay. Anything else you want to tell  
15 me? Oh, Mr. Chandler wants to tell you -- you can talk  
16 to her.

17 MR. CHANDLER: I'll just tell you Your Honor and  
18 we've talked about this. One of the things -- I was  
19 appointed by Judge Blunt and I'm happy to serve but I'm  
20 also happy for someone else to serve. Having said that  
21 we have administered this estate for some period of time  
22 now but there are issues remaining. And among those  
23 issues are issues that Mr. Fox could potentially be a  
24 witness in, which in a normal case the Probate Judge  
25 would appointment a Special Administrator to deal with

Estate of Doris Duane Colucci v Ivo Francesco Colucci, et al  
Motion for Summary Judgment  
August 13, 2018

1 those discrete issues. So it seems doubly wasteful to  
2 appoint a Personal Representative to replace a Special  
3 Administrator to only turn around and appoint a Special  
4 Administrator for those issues.

5 THE COURT: Mr. Chandler, can you tell me what  
6 issues that he would be a witness in?

7 MR. CHANDLER: For example, there is a slayer  
8 action pending in your Court.

9 THE COURT: There is a what?

10 MR. CHANDLER: A slayer action.

11 THE COURT: Oh.

12 MR. CHANDLER: There is a, and as Mr. Haller noted  
13 Mr. Fox has been a long time friend and confidant of the  
14 Colucci's for a very long period of time. He would  
15 clearly be a witness in a slayer action.

16 THE COURT: Now, the slayer action has to do with?

17 MR. CHANDLER: Whether or not Mr. Colucci is  
18 allowed to be an heir or beneficiary.

19 THE COURT: Okay. But -- oh, you mean a -- okay.

20 MR. CHANDLER: That's just an example. For example  
21 there is the wrongful death claim that is ongoing. Mr.  
22 Fox will likely be a witness in that action. There are  
23 we have a variety of tax returns that have been recently  
24 filed that are based on tax returns filed by Mr. Fox. If  
25 they are audited he will be a witness and they would



1 likely have to be a Special Administrator appointed to  
2 deal with those issues. Those are the types of issues  
3 Your Honor that we have remaining. As Ms. Palmer pointed  
4 out we have administered a good bit of the estate. We  
5 have handled a good bit of the issues that were  
6 immediate.

7 But the things that remain are complicated and  
8 frankly ones that -- and I'm not saying that Mr. Fox  
9 wouldn't otherwise be capable of doing them but he is  
10 also a witness to many of them. And in those cases  
11 typically the Probate Court is going to appoint a Special  
12 Administrator anyway and then you have two fiduciaries  
13 serving, which definitely seems inefficient and  
14 unnecessary.

15 THE COURT: Okay. But Mr. Fox is supposed to be  
16 the Trustee of the Trust.

17 MR. CHANDLER: And he is. The Trustee of course  
18 the Trust is not subject to ongoing Probate Court  
19 administration or oversight. He is the Trustee. My job  
20 now that you have allowed the probate of the Will, which  
21 I support, would be to transfer at the appropriate time  
22 the assets to the Trustee and Mr. Fox as Trustee will  
23 administer that Trust pursuant to its terms for the  
24 benefit of its beneficiaries. So he will be involved.

25 THE COURT: Okay. Thank you, sir.

Estate of Doris Duane Colucci v Ivo Francesco Colucci, et al  
Motion for Summary Judgment  
August 13, 2018

1 MR. CHANDLER: Thank you.

2 THE COURT: And Mr. Lawton I don't know whether you  
3 had anything you wanted to add to this or not.

4 MR. LAWTON: I'll add one thing. Mr. Fox is a  
5 witness in a case that we are set to try in about five  
6 weeks, Your Honor. Both sides Mr. Haller's client and I  
7 have named him as a witness in this case over property  
8 dispute. I've known Mr. Fox. He's a gentleman and his  
9 attorney is a gentleman and I'm not here to take sides on  
10 this issue. But he is a witness and has been named by  
11 both sides in that lawsuit.

12 THE COURT: And that case will affect the estate?

13 MR. CHANDLER: The outcome of that case, Your Honor  
14 would potentially affect the case I suppose. At the end  
15 of the day my attorney has to be -- we are named as a  
16 party. So I have to participate just because I'm named  
17 as a party.

18 THE COURT: But I mean the case involves an asset  
19 that would go into the Trust?

20 MR. CHANDLER: Well, the estate owns an interest in  
21 an asset that is part of this dispute.

22 THE COURT: Okay.

23 MR. CHANDLER: It's complicated.

24 THE COURT: Okay. Anything else?

25 MS. PALMER: No, Your Honor.

1 THE COURT: All right. Mr. Haller -- if you want  
2 to Mr. Garrett I'll let you talk and then Mr. Haller I'll  
3 let you kind of come back and...

4 MR. HALLER: Thank you, Your Honor.

5 MR. GARRETT: Your Honor, I would just very briefly  
6 say that a few months after the original Will was  
7 discovered we filed for informal probate that was denied.  
8 We immediately turned around and filed for formal  
9 probate, Your Honor. Mr. Fox has been -- has done what  
10 he is required to do under the South Carolina Probate  
11 Code to fulfill Doris Colucci's wishes.

12 He has been a representative and a friend of the  
13 family for 50 years. These are -- this is a very  
14 emotional case. These are very difficult decisions to  
15 make. Those are the reasons that Mr. Fox wants to  
16 represent Mrs. Colucci in this because he feels that his  
17 understanding of her and her personality would help guide  
18 this in a way that would be appropriate. Mr. Chandler  
19 has done an excellent job. He never met the Colucci's;  
20 he never had that relationship with them, Your Honor.

21 And when we go to intent I think that is relevant.  
22 And I think it becomes more relevant when you have a  
23 complicated and very difficult fact pattern as we did  
24 before the Court involving this case. Mr. Chandler has  
25 raised the specter of IRS audits, which simply haven't

Estate of Doris Duane Colucci v Ivo Francesco Colucci, et al  
Motion for Summary Judgment  
August 13, 2018

1 occurred.

2 THE COURT: I don't know that it's so much as  
3 raising a specter. What I, just so you will address this  
4 if there are issues that Mr. Fox is going to need to  
5 testify to his contention is about different parts of the  
6 estate which I'm assuming must be a fairly large estate.

7 MR. GARRETT: Yes, Your Honor.

8 THE COURT: Okay. He would be both a witness and  
9 be the Personal Representative of the estate whereas he  
10 is going to be the Trustee and all the assets are going  
11 into a Trust; right?

12 MR. GARRETT: Yes, Your Honor. I think everybody  
13 would agree that this estate is not at a point that it is  
14 going to be closed in a month or two months.

15 THE COURT: Right.

16 MR. GARRETT: This is going to go on for a  
17 significant period of time.

18 THE COURT: And there are ongoing suits that will  
19 affect the assets in the estate?

20 MR. GARRETT: Some of them absolutely, yes Your  
21 Honor.

22 THE COURT: Okay. And in those suits is he going  
23 to be a witness as to that do you think?

24 MR. GARRETT: I don't understand how he would be  
25 relevant to the wrongful death case, Your Honor. He

1 wasn't at the jewelry store. I don't think that he is  
2 relevant towards -- that goes towards my second point,  
3 Your Honor Judge.

4 THE COURT: Okay.

5 MR. GARRETT: Is that I think we risk creating a  
6 very bizarre precedent in South Carolina where I can  
7 raise prospective issues and prevent an estate from being  
8 probated and a Personal Representative from being  
9 appointed.

10 The Will was found in August of 2017. The Special  
11 Administrator was appointed because the Will wasn't  
12 found. When it was found instead of talking about how  
13 we've been on this a year Your Honor they should have  
14 consented to the probate of the Will back then when it  
15 was very clear that it was a valid instrument.

16 THE COURT: Okay.

17 MR. GARRETT: And I disagree with the argument that  
18 we've been in it long enough and we should stay now. I  
19 think it's a very clear statement that when a Will is  
20 probated that the PR should be appointed. If an issue  
21 arises -- his conflicts of interest arise at a later time  
22 that's for a later Court to determine the most  
23 appropriate action. We can't prospectively run estates  
24 based on what may or may not happen in the future. Thank  
25 you, Your Honor.

1 THE COURT: I'm just curious. Are you aware of any  
2 cases as Ms. Palmer was indicating where someone who was  
3 named as Personal Representative of an estate wasn't...

4 MR. GARRETT: Yes, Your Honor. In many of those  
5 cases there is a particular one, a glaring example where  
6 the PR was a very -- a person of very poor character that  
7 the heirs and the beneficiaries disagreed with his  
8 appointment and that there was contention from all  
9 parties about the appointment of this person as a  
10 Personal Representative.

11 And I don't think those facts are present here,  
12 Judge where you have the heirs and beneficiaries -- where  
13 you have the Special Administrator himself saying that  
14 this is not a person of poor character or somebody who is  
15 dishonest or would maladminister this estate.

16 THE COURT: Okay. Thank you, Mr. Garrett. Mr.  
17 Haller?

18 MR. HALLER: Thank you, Your Honor. I'll be brief.  
19 As to everyone's consent to Mr. Chandler's appointment as  
20 Special Administrator that is correct. However, the  
21 order and the consent was limited in paragraph 3 to the  
22 time unless and until the originally executed last Will  
23 of the decedent was located and admitted to Probate in  
24 this Court. That occurred in August of last year and  
25 with being the intent of everyone at that point in time

1 including the Court that the probate, that upon the  
2 probate of a Will the Will would take effect and the  
3 estate would be administered according to that. So to  
4 the extent that there is some argument that we waived the  
5 right to have a Personal Representative appointed I think  
6 the terms of the order are clear about that.

7 Two; and I think maybe Your Honor was picking up on  
8 this about waste, at some point in time the duty of a  
9 Special Administrator by statute is to collect assets  
10 until a general Personal Representative is appointed once  
11 that Personal Representative is appointed to surrender  
12 them. So in this case the assets that Mr. Chandler has  
13 been correct collecting as Special Administrator he has  
14 to turn over to Mr. Fox anyway because he is the Trustee  
15 and the sole beneficiary -- as Trustee the sole  
16 beneficiary of the estate.

17 So all of the things that they are talking about  
18 being wasteful are things that he is obligated by statute  
19 in my court order to do anyway and that is to surrender  
20 those materials over to Mr. Fox to administer according  
21 to the terms of the Trust.

22 And last Your Honor about this issue of being a  
23 witness there are three lawsuits that are major lawsuits.  
24 The lawsuit that Mr. Lawton talked about has very little  
25 impact as to estate -- as to the share of the estate that

Estate of Doris Duane Colucci v Ivo Francesco Colucci, et al  
Motion for Summary Judgment  
August 13, 2018

1 would go into -- the share of the company that is at  
2 issue there that actually is a lawsuit that is between my  
3 client and Mr. Lawton's client; of which Mrs. Colucci's  
4 estate is kind of caught in the middle of. And Mr. Fox  
5 may be a witness in that. I think he has been -- he has  
6 been noticed as a witness and he has been deposed.

7       The other three cases that are out there, which  
8 likely are going to come back in front of you at some  
9 point in time because we're here in Dorchester County and  
10 Judge Goodstein has recused herself so it's probably  
11 going to be you. One is a wrongful death case and one is  
12 a survival action and then there is an action involving a  
13 minor who happened to be present at the store.

14       I'm not aware that Mr. Fox has been named as a  
15 witness in those. He may have been. Let's assume that  
16 he was. Mr. Chandler has also been named as a witness in  
17 all of those. And I'm sure Your Honor has tried enough  
18 wrongful death and survival actions involving just a  
19 prototypical intersectional wreck case for example where  
20 let's say in that situation where we have a wreck case  
21 and the husband is killed in a car accident. Who gets  
22 appointed as the Personal Representative? The wife.  
23 Why? Because that's what the statute says. The first  
24 person in line is the surviving spouse. That person is,  
25 that wife is routinely a witness as to the damages that



1 have been suffered by the beneficiary. So the rule that  
2 Mr. Chandler is apparently asking Your Honor to carve out  
3 is anytime you are a witness you are not suitable to be a  
4 fiduciary. And there is nothing in our laws that say  
5 that whatsoever because if that were the case every  
6 Trustee, every Conservator, every Personal Representative  
7 where there is any kind of dispute and you're going to be  
8 called to offer some information inside or outside of  
9 your service as Personal Representative disqualifies you.

10 People die every day. When they die their Wills go  
11 into effect. When they die and there Will goes into  
12 effect they have a Personal Representative who is named  
13 in it. That Personal Representative can often be  
14 controversial among the family.

15 THE COURT: Right.

16 MR. HALLER: I'm sure when Your Honor practiced you  
17 remember having the fights with you know Momma loved you  
18 better so I'm going to get back at your now, right. And  
19 that's ---

20 THE COURT: --- but Mr. Haller I did not get that  
21 impression. I think he was just expressing his concerns  
22 about whether or not that would be a problem later on.  
23 So we don't need to -- you don't need to go into that.

24 MR. HALLER: Thank you, Your Honor. That's all --  
25 that's fine.

1 THE COURT: All right. And Ms. Palmer anything?

2 MS. PALMER: Yes, just quickly. I just wanted to  
3 reiterate the appointment as PR is not an automatic  
4 thing. Being named in a Will does not make it an  
5 automatic thing. It's still incumbent upon the Court to  
6 look to ensure that the person is suitable and that the  
7 appointment is in the best interest of the estate. And  
8 our position is simply that it's not in the best interest  
9 of the estate given the delay, inefficiency and costs.

10 THE COURT: Okay. Well, what I will do is let me  
11 just look over everything and I will get back to y'all.  
12 Now, Mr. Haller you're going to do an order granting the  
13 first motion?

14 MR. HALLER: Yes, sir.

15 THE COURT: And put it -- because this is  
16 electronic and I'm learning how to do that you're going  
17 to go ahead and send it to me in the word form but put it  
18 in the line, right?

19 MR. HALLER: I'm sure I'll figure out exactly what  
20 you're talking about.

21 THE COURT: Well, the electronic filing of the  
22 order you're going to do that?

23 MR. HALLER: Yes, sir.

24 THE COURT: It will automatically come to me and I  
25 can look it over and approve it like that.

Estate of Doris Duane Colucci v Ivo Francesco Colucci, et al  
Motion for Summary Judgment  
August 13, 2018

1 MR. HALLER: Okay. Yes, Your Honor.

2 THE COURT: The other one I'll get back to y'all  
3 and let y'all know what I'm going to do.

4 MS. PALMER: Thank you, Your Honor.

5 MR. HALLER: Thank you, Your Honor.

6 MR. GARRETT: Thank you, Your Honor.

7 THE COURT: Thank y'all very much. I appreciate  
8 it.

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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official  
Circuit Court Reporter for the Ninth Judicial Circuit of  
the State of South Carolina, do hereby certify that the  
foregoing is a true, accurate, and complete Transcript of  
Record of the proceedings had and evidence introduced in  
the trial of the captioned case, relative to appeal, in  
the Court of Common Pleas for Dorchester County, South  
Carolina on the 13th day of August, 2018.

I do further certify that I am neither of kin,  
counsel, nor interest to any party hereto.

November 16, 2018

---

Joyce C. Rueger, CVR-M  
Court Reporter

STATE OF SOUTH CAROLINA ) PROBATE COURT  
COUNTY OF DORCHESTER ) CASE NO.: 2017-ES-10-00294  
IN RE: THE ESTATE OF DORIS DUANE  
COLUCCI,

MICHAEL C. FOX, NAMED PERSONAL  
REPRESENTATIVE IN THE LAST WILL  
OF DORIS DUANE COLUCCI,

-VS-

ANDREW CHANDLER, IN HIS CAPACITY  
AS SPECIAL ADMINISTRATOR OF THE  
ESTATE OF DORIS DUANE COLUCCI,  
MICHAEL C. FOX, SUCCESSOR  
TRUSTEE OF THE COLUCCI LIVING  
TRUST, DATED FEBRUARY 24, 2005,  
IVO FRANCESCO COLUCCI, MICHAEL  
FREDERICK ANTONIO COLUCCI, JOHN  
MARTIN ANTONIO, HENRY BURKES,  
AND RICHARD M. HYMAN, JR.,

---

EMERGENCY HEARING BEFORE HONORABLE MARY L. BLUNT

Date Taken: Wednesday, January 9th, 2019  
Time Taken: 12:09 p.m.  
Location: Dorchester County Courthouse  
5200 Highway 78  
St. George, South Carolina 29477  
Reported By: Judy W. Galuppo, Court Reporter  
Job No.: 453298

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Also Present

Stephan Colucci

Samo Colucci

|    |                                   |      |
|----|-----------------------------------|------|
| 1  | INDEX TO EXAMINATION              |      |
| 2  |                                   | Page |
| 3  | Andrew Chandler Sworn             | 10   |
| 4  | Direct Examination by Mr. Garrett | 10   |
| 5  | Reporter's Certificate            | 58   |
| 6  | INDEX TO EXHIBITS                 |      |
| 7  | Petitioner's                      |      |
| 8  | No. Description                   | Page |
| 9  | G Entered Into Evidence           | 46   |
| 10 | Repsondent's                      |      |
| 11 | No. Description                   | Page |
| 12 | No Exhibits Marked or Offered     |      |
| 13 |                                   |      |
| 14 |                                   |      |
| 15 |                                   |      |
| 16 |                                   |      |
| 17 |                                   |      |
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1 - - -

2 THE COURT: I have the sign-in sheet for  
3 everyone that is here. We received an affidavit from  
4 Ms. Yantis prior to the hearing. Are there any other  
5 matters we need to take up before we go on the  
6 record?

7 MR. GARRETT: No.

8 MS. PALMER: Not from us, Your Honor.

9 THE COURT: Today is January 9th, 2019.  
10 We're here today in the Estate of Doris Colucci.  
11 It's Case No. 2017-ES-18-00529.

12 I have numerous parties and their  
13 attorneys present in the courtroom. So I am just  
14 going to go down my list.

15 I have Andrew Chandler, who is the  
16 special administrator, and his attorney, Beth Palmer.

17 I have attorney Brandt Shelbourne, who  
18 represents Robert Colucci.

19 Eduardo Curry, who represents Stephan  
20 Colucci.

21 David Holler, who represents Christa  
22 Yantis, who is the conservator for Ivo Colucci.

23 Gordon Garrett and Ryan Love are the  
24 attorneys for the Colucci Trust and Michael Fox.

25 And Angus Lawton, who is the attorney for

1 Michael Colucci and John Antonio.

2 And then I have Stephan Colucci (ph) and  
3 Samo Colucci (ph).

4 So at this time, let's go ahead and  
5 proceed on Mr. Garrett's petition for removal of  
6 Special Administrator which we have scheduled today  
7 on an emergency basis. So I will go ahead and turn  
8 the floor over to you, sir.

9 MR. GARRETT: May it please the court.  
10 Your Honor, this motion consists of two parts; one is  
11 a legal question; the second part is a factual  
12 question. I would like to proceed by addressing the  
13 legal issue without calling any factual witnesses and  
14 perhaps present that issue to the court and then  
15 proceed by examining Mr. Chandler as it goes towards  
16 some factual issues that we believe are relevant. Is  
17 that satisfactory?

18 THE COURT: Any objection?

19 MS. PALMER: No.

20 THE COURT: Okay.

21 MR. GARRETT: To refresh, and be on the  
22 same page as everybody's facts, Doris Colucci passed  
23 away in April of 2017. There was no will that was  
24 found at that time. Your Honor held an emergency  
25 hearing and issued an order in June of 2017 that

1 appointed Andrew Chandler as the special  
2 administrator. This was in the absence of a last  
3 will and testament document.

4 Mr. Chandler was appointed with the  
5 duties under Section 616 of the Probate Code.  
6 Another month went by, the will still had not been  
7 found. And this court, along with Mr. Chandler and  
8 several other parties, entered into a consent order  
9 that solidified Mr. Chandler's position and gave him  
10 general duties of a personal representative under  
11 Section 617 of the Probate Code, Your Honor.

12 Paragraph 3 of that secondary consent  
13 order referred to the potential discovery of Doris  
14 Colucci's last will. That will was discovered in  
15 August of 2017. An informal probate application was  
16 filed in October, and a formal application was filed  
17 on October 30th, 2017, Your Honor.

18 The first part of our motion to terminate  
19 Mr. Chandler falls under Probate Code Section  
20 62-3-615 which states that once a proceeding to  
21 probate a will has been filed and those proceedings  
22 have taken place that the special administrator who  
23 must be appointed is the person who is named as  
24 executor in the will.

25 Therefore, the first basis of our motion

1 to terminate Mr. Chandler would be the Section 615 of  
2 the Probate Code appoints Mr. Fox upon the filing of  
3 the Probate Application. And if you'd like to give  
4 Ms. Palmer an opportunity to respond to that? Or I  
5 can complete the remainder of my argument, Your  
6 Honor?

7 THE COURT: Okay. Ms. Palmer?

8 MS. PALMER: Thank you, Your Honor.  
9 Section 615 does not appoint Mr. Fox. The  
10 appointment is done by order of the court. And if  
11 615 were to be interpreted the way that Mr. Garrett  
12 just explained, then it would actually be Mr. Ivo  
13 Colucci who would be named personal representative of  
14 the will.

15 THE COURT: In addition, I note that 615  
16 says that they shall be appointed if they are  
17 qualified.

18 MS. PALMER: Absolutely not. I think  
19 that we need throughout this hearing to keep in mind  
20 that this is removal of Mr. Chandler, not the  
21 appointment of Mr. Fox. So that is a pending matter.

22 One other thing, 615, if a special  
23 administrator is to be appointed pending the probate  
24 of a will. Mr. Chandler wasn't appointed pending the  
25 probate of the will. Sometimes special

1 administrators are appointed for that limited time  
2 period. That wasn't the case here.

3 THE COURT: Okay.

4 MR. GARRETT: Your Honor, if I may? By  
5 the time that these applications were filed, Ivo  
6 Colucci had been determined by this court to lack  
7 capacity. He was found to be unqualified by virtue  
8 of the court's determination that a conservatorship  
9 was necessary. The next available personal  
10 representative would have been Mr. Fox, followed by  
11 a gentleman named Henry Burkes, followed by another  
12 gentleman, Richard Hyman, who is an active, qualified  
13 member of the South Carolina Bar.

14 It's our position that there's no  
15 evidence to suggest that Mr. Fox was disqualified.  
16 There's been no finding of facts by any court of any  
17 disqualifying factors regarding Mr. Fox. Even if  
18 that were the case, the appropriate response would be  
19 to go down the list and choose Mr. Burkes or choose  
20 Mr. Hyman to take over as the special administrator.  
21 Ms. Palmer is perfectly correct that the appointment  
22 of a personal representative is at the Circuit Court  
23 level right now. But today we are requesting the  
24 termination of the special administrator and the  
25 appointment of Mr. Fox as the special administrator,

1 because Section 615 gives him the -- the statute uses  
2 the word "shall." Shall be pointed, Your Honor, as  
3 the special administrator.

4 THE COURT: Ms. Palmer?

5 MS. PALMER: I would just point out that  
6 it's not an automatic thing. Even if you're named as  
7 a personal representative in the will, there still  
8 must be a finding that you are qualified, and that  
9 issue is still pending in Circuit Court.

10 THE COURT: Okay. Thank you.

11 MR. GARRETT: Thank you, Your Honor. I'd  
12 like to call Andrew Chandler as a witness, Your  
13 Honor.

14 THE COURT: Mr. Chandler, if you'd come  
15 on over here, we will get you sworn in.

16 - - -

17 Whereupon, Andrew Chandler, having been first  
18 duly sworn, testifies as follows:

19 - - -

20 THE COURT: Please be seated. Give us  
21 your name, and of course you'll answer any questions  
22 that Mr. Garrett has and any questions that your  
23 attorney will have.

24 THE WITNESS: Yes, ma'am. My name is  
25 Andrew Chandler. And I'm special administrator

1 appointed by this court for the Estate of Doris  
2 Colucci.

3 DIRECT EXAMINATION

4 BY MR. GARRETT:

5 Q Thank you very much for coming today,  
6 Mr. Chandler, for this motion. If we could briefly go  
7 over your initial appointment. Were you contacted by  
8 the Dorchester County Probate Court initially to  
9 become involved in this case?

10 A Yes.

11 Q Were you contacted via email or telephone  
12 or....?

13 A I don't recall.

14 Q Did you have the file sent down to your  
15 office in Charleston? Or did you come up and meet  
16 here at the courthouse?

17 A As I recall, I had phone conversations.  
18 I had certainly been to the court before. On this  
19 estate, I believe I spoke on the phone intro.

20 Q And that was Judge Blunt here?

21 A Yes. And I admit that I am called often  
22 by various probate judges to serve in fiduciary roles.

23 Q Now, you agreed to serve as special  
24 administrator on an emergency basis?

25 A Initially, yes.

1 Q And initially you had agreed that your  
2 duty was defined by Section 615 of the Probate Court?  
3 Sorry. Section 616 of the Probate Court. Would you  
4 like a copy of that?

5 A Sure.

6 Q And I can show you this order that refers  
7 to you being bound by Section 616 as well. Would you  
8 like to see a copy of that as well?

9 A No, no, I recall that as well.

10 Q Part of your obligation under 616 is to  
11 deliver the assets of the estate to the personal  
12 representative?

13 A Yes. If you recall, this is occurring  
14 within a month or so of the killing of -- or two  
15 months of the killing of Ms. Colucci.

16 Q Yes, sir.

17 A So it was very early in the  
18 administration of the estate that I would have been  
19 initially appointed temporarily and then subsequently  
20 appointed by consent, and then subsequently appointed  
21 by the court.

22 Q Yes, sir. What steps did you take to  
23 seek out the last will and testament of Doris Colucci?

24 A My paralegal and I wrote to -- we had  
25 Ms. Colucci's purse. So we inventoried her purse,



1 looked through her wallet and her cards. There were  
2 a variety of attorney cards in her purse. We wrote to  
3 all the attorneys whose names appeared amongst her  
4 belongings. I met with Christa Yantis, who is the  
5 conservator for Ivo Colucci, very early, within a few  
6 days of my appointment. And she shared with me a memo  
7 and some information she had as far as the assets of  
8 the estate based on which she knew. She hadn't been  
9 appointed for very long at that point either. But it  
10 was helpful to get a sense of what she found. But we  
11 wrote to all the attorneys that we found in her purse.  
12 And we contacted the sons of Ms. Colucci, because they  
13 were the attorneys who she had gone to. It became  
14 apparent that she had done her planning with Kuhn &  
15 Kuhn, which is a law firm locally. But we still wrote  
16 to everyone to see if anyone had a copy of that, or  
17 had an original will.

18 Q And you never found a copy of the  
19 original will?

20 A I did not, no. The attorneys did  
21 respond -- most of them responded, but those who did  
22 either said no, or Kuhn & Kuhn had a copy.

23 Q Now, you would agree the will showed up  
24 at the courthouse sometime around August of 2017.

25 A As I recall, Mr. Holler took the original

1 will, how he got it I don't recall, to the court, yes.  
2 Which, again, is common. Wills are found and often  
3 deposited to the court.

4 Q Now, at this point you were aware of the  
5 second consent order that had appointed you the  
6 general powers of the personal representative?

7 A Yes.

8 Q This is a copy of a consent order. And I  
9 just want to use it to refresh your memory. This is  
10 already an item of record with the Probate Court, if  
11 there's no objection. And I would just like you to  
12 read paragraph 3 of that order.

13 A "Unless and until the originally executed  
14 last will of the decedent was located and admitted to  
15 Probate and this court, the administration to the  
16 Probate Estate shall proceed pursuant to the South  
17 Carolina laws of the intestate succession."

18 Q Okay. So Mr. Holler brought the will in  
19 August, and we had what appeared to be a valid,  
20 signed, notarized will; is that correct?

21 A I can't tell you I knew at the time it  
22 was valid. But yes, it was signed.

23 Q Did you review the document?

24 A Yes.

25 Q And it appeared to you, in your

1 expertise, to be a valid will?

2 A That's your words. What I just read was  
3 that it was to be admitted in the Probate, as I  
4 recall. You can read it back to me. But at the time  
5 the will was delivered to the court, of course I  
6 received a copy and I reviewed it, yes.

7 Q Did the discovery of the will have any  
8 impact on your legal duty as special administrator?

9 A The discovery of the will?

10 Q Yes.

11 A No.

12 Q Did the filing of the formal probate  
13 proceedings have any impact on your legal duty as  
14 special administrator?

15 A The filing of the formal probate? No.

16 Q So you don't believe that Section 615  
17 would have required for you to step down as the  
18 special administrator and for the named executor under  
19 the will to become the special administrator?

20 A I do not. Because the Probate Code  
21 requires that the court appoint the personal  
22 representative, whatever it may be, that they be  
23 qualified. And there's a qualification process that  
24 every probate court in South Carolina goes through to  
25 determine if a person is named or not named is

1 appropriately qualified and therefore appointed. So  
2 the mere naming of someone in a will does not mean  
3 anything, other than you may be first in line based on  
4 the statute.

5 Q You would also agree that the vast  
6 majority of appointments of personal representatives,  
7 and whether they're qualified or not, is done through  
8 consent, often without hearings?

9 A You mean -- well, you're talking about  
10 informal probate. So we're talking about formal  
11 probate. So I can't answer your question. To answer  
12 your question I would have to see statistics to know  
13 if in formal probate that's true. And I suspect  
14 that's not true.

15 Q On November 26th you filed an answer in  
16 objection to the appointment of a personal  
17 representative.

18 A Right.

19 Q What was your basis for Mr. Fox to be  
20 disqualified?

21 A Let me back up and say, when you filed  
22 formal probate, it was removed at your request. I was  
23 served. I answered, as is required. I'd have to  
24 review my answer. And I'm happy, if you want to hand  
25 me my answers. But as I recall, by that point,

1 because it had been several months, but at that point  
2 we were fully engaged in the administration of this  
3 estate. Which is not a simple estate. And so  
4 there's -- there has been or there is a vast array of  
5 litigation. But I'd have to review my answer. But as  
6 I recall, I believe Mr. Fox, or anyone else, frankly,  
7 nothing necessarily to do with Mr. Fox, it would be  
8 very inefficient for the court to appoint someone at  
9 that point as the personal representative because we'd  
10 already begun the process and were involved in  
11 a variety of pieces of litigation. It's, again,  
12 a complex estate. It had lots of moving parts. And  
13 the time it takes to be up to speed on all of those  
14 issues is not insignificant. And so at some point, it  
15 is not in the best interest of the beneficiaries. And  
16 at that point I had an in testacy, so I had heirs.  
17 Which is not Mr. Fox. Which I know you continue to  
18 say Mr. Fox is an heir. Mr. Fox is not an heir.  
19 Mr. Fox is a designee. But at that time I did have  
20 heirs, Ivo Colucci and Doris Colucci's two sons.

21 It would be very difficult and would be  
22 costly for anyone else at that point to have been  
23 appointed, in my view. At the end of the day it's for  
24 the court to determine who the fiduciary is. It's not  
25 me who decides that. It's for the court to determine

1 who is qualified, who is appropriate. In simple  
2 cases, perhaps it's easiest just to follow the will.  
3 This is not a simple case, Mr. Garrett. This is  
4 a very complex case.

5 On top of that, Mr. Fox, it just so  
6 happens, who had been a long time friend of the  
7 Coluccis, had done their bookkeeping and tax returns  
8 for years, decades perhaps, would likely have been  
9 a witness. It turns out he is a witness. And he has  
10 been deposed and will be deposed. So as I predict, he  
11 potentially had a conflict. That may not be true of  
12 the next person in line. Although, Henry Burkes is  
13 also a witness to this killing. And that may not have  
14 been true of the next person in line. But again, it  
15 is a complex estate, it is costly to transfer it to  
16 someone else.

17 On top of that, Mr. Fox is a witness to  
18 a variety of things. I'm not a witness. I'm  
19 a special administrator. I didn't know any of these  
20 people beforehand. And so I don't bring conflicts to  
21 the table with respect to the entities that this  
22 estate owns and the various family members and groups  
23 that are involved. It's a very complex case. And for  
24 those reasons, as I recall, I said to the court that  
25 while Mr. Fox -- I had no objection to the will being

1     probated. I had no reason to think it was valid or  
2     invalid. That's where her family could come forward  
3     and say this was a subject of duress. Which could  
4     have happened, Mr. Garrett. I didn't know. I didn't  
5     know Doris Colucci. So how did I know if that was  
6     valid or invalid? I didn't know that until the day we  
7     had the hearing, and no one came and objected.

8                     However, as special administrator, and  
9     being involved with a very complex case, which  
10    thankfully a lot of it has been resolved, but we still  
11    have ongoing litigation, it was just extremely  
12    inefficient and foolish, in my opinion, to transfer it  
13    to anyone else. Not something personal against  
14    Mr. Fox. That's my opinion. And I answered your  
15    petition, which is a formal petition served upon me  
16    formally. And I answered it.

17            Q        I understand your argument that it would  
18    be foolish and what you believe as inefficient. My  
19    question is, what material facts did you possess that  
20    made Michael Fox disqualified to serve as the personal  
21    representative of the Estate of Doris Colucci?

22            A        I don't determine his qualifications.  
23    The judge determined it.

24            Q        But you objected to it.

25            A        Yes. But I don't determine his

1 qualifications, the judge determines that. And I'll  
2 note that the judge has not appointed Mr. Fox.

3 Q You've made an allegation he is not  
4 qualified. My question is, on what basis did you make  
5 the allegation that he's not qualified?

6 A I said he is not qualified because it's  
7 inefficient and expensive and an unnecessary expense  
8 to the estate that beneficiaries, who turn out to be  
9 Mr. Fox as trustee, and he has potential conflicts, or  
10 conflicts of interest. That was my view. I'm not  
11 saying he's disqualified, to use your word.

12 I'm saying my opinion was, and I answered  
13 your petition with my opinion. And Judge Dickson  
14 could agree with me or disagree with me. Judge Blunt  
15 could agree with me or disagree with me. They decide  
16 after determining if he's qualified who should be  
17 personal representative, not me.

18 Q If you had consented to the appointment  
19 of Michael Fox as the personal representative, could  
20 a consent order have been signed in August 2017  
21 without a hearing?

22 A I would say no.

23 Q A hearing --

24 A Without a hearing? You're saying  
25 a consent order without a hearing? No. I'm saying



1     that couldn't occur. Because again, a probate judge  
2     in a formal probate, a probate judge makes  
3     determinations regarding qualifications. Frankly, in  
4     informal probate, the application is made to the  
5     Probate Court. The Probate Court could choose not to  
6     appoint someone in informal probate, it's not  
7     automatic. Certainly in probate, formal probate, it  
8     is the judge's determination to determine who is  
9     appropriate to serve as fiduciary. So no, I don't  
10    think I have to enter into a settlement agreement, nor  
11    was I asked to. Go ahead.

12           Q     Did I offer to retain you as an expert to  
13    work for the Estate of Doris Colucci prior to the  
14    hearing in Court of Common Pleas in the summer of  
15    2017?

16           A     Did you ask me to?

17           Q     Serve as an expert if Mr. Fox was  
18    appointed as the personal representative.

19           A     Let me tell you what I recall of that  
20    conversation which occurred outside of Judge Dickson's  
21    courtroom. What I recall is, you said, well, if  
22    Mr. Fox is appointed -- or if you agreed to have  
23    Mr. Fox appointed -- which again I'm telling you I  
24    couldn't have agreed to that because that's not my  
25    role -- but if Mr. Fox were to be appointed, you know,

1 we could hire you, Andrew, and Ms. Palmer, to continue  
2 to do what you do. But in the meantime, we'll also be  
3 in there, and then whatever you would do.

4 And from my perspective, that is in no  
5 way beneficial to the beneficiaries of this estate,  
6 which now it turns out that the designee -- the  
7 designee of the trust, Mr. Fox, has accepted  
8 trusteeship. That is in no way beneficial to those  
9 beneficiaries, whoever they may have been, to go from  
10 the fees that we are charging, which by the way are  
11 a fraction of my regular billing rate, to add two more  
12 people and add their rate. I mean, how is that  
13 beneficial or helpful to the estate or to the  
14 beneficiaries of the estate? No way do I think that's  
15 appropriate. And I think I told you as such. But I  
16 don't know that I realized that it was a job offer.

17 Q You're seeking sanctions today against me  
18 for filing this motion?

19 A Yes.

20 Q Because you feel that I have no good  
21 faith basis to bring this motion?

22 A I think two things. One, that you  
23 already brought a petition before formal probate which  
24 is diminutive. So you're bringing a second petition  
25 for formal probate, which is wasteful and obligatory.

1 And I'm not really sure how legally you would do that,  
2 first of all. Second of all, you have no basis to  
3 suggest, as you do in your filing, that I have done  
4 anything improper or inappropriate. Everything I have  
5 done has either been by a court order. And you make  
6 a lot of hay in your petition that I have -- I'm going  
7 to get my fees and 40 percent contingency. That's  
8 just, frankly, false. That is not true. I don't get  
9 any part of wrongful death contingency. And frankly,  
10 40 percent contingency is standard in law, and is  
11 based on a court order this court issued. So your one  
12 of your basis for my removal is something that is  
13 patently false. I'm doing this, you know, but I just  
14 don't expect members of the bar to laud baseless  
15 accusations about my actions as a fiduciary in this  
16 case. I've done everything based on the Probate Code.  
17 I have done everything based on the law, based on  
18 orders that this Court has. And you suggest in your  
19 petition where I have failed to give you and Mr. Fox  
20 notice. I don't know, five or six people filed  
21 demands for notice, including Mr. Shelbourne and  
22 Mr. Curry, who have received every single thing I have  
23 filed in this court post their decisions to file  
24 demands for notice. Mr. Garrett, you never filed a  
25 demand for notice. So why should you be so shocked

1 that you didn't receive something from me? Again,  
2 a baseless claim.

3 In my view, what you have done is force  
4 me to spend a lot of hours, a lot of time to put my  
5 carrier on notice because you make baseless claims in  
6 your petition and make me come up here and sit here  
7 before the judge.

8 The judge knows very well what I have  
9 done. The judge knows I have submitted multiple  
10 things for her consideration. She has issued orders;  
11 I have followed those orders. And I view your  
12 petition as, frankly, ridiculous. And for that reason  
13 I have asked the judge to assess these fees against  
14 not Mr. Fox but against you.

15 Q And how much are you seeking?

16 A Well, I'll have my affidavit if the court  
17 so does issue that order. I will send an affidavit of  
18 my time in preparing for this hearing.

19 Q So you don't have a bill prepared at this  
20 time?

21 A No, Mr. Garrett, I don't.

22 Q I'd like you to look very quickly at the  
23 last will of Doris Colucci. Have you had an  
24 opportunity to review that document?

25 A Not recently. But I have in the past,

1 yes.

2 Q Would you agree that it nominates Michael  
3 Fox as the personal representative of the Estate of  
4 Doris Colucci?

5 A As I recall, it might Ivo Colucci.

6 Q But you agree that Ivo Colucci is under  
7 conservatorship and is not qualified to serve as  
8 personal representative?

9 A I would agree he's under a  
10 conservatorship, yes. Next in line is Mr. Fox. And  
11 after Mr. Fox is Henry Burkes. And after Henry Burkes  
12 is Richard M. Hyman, Jr., an attorney. I don't know  
13 him. But again, the recommendation to a court through  
14 a will of who the personal representative should be is  
15 only part of the process. Probate Code specifically  
16 says that a court qualifies the personal  
17 representative.

18 Q I'd like you to reflect to page 42, the  
19 last page of the will.

20 A Not the last page, but okay.

21 Q I'm sorry. Forty-three. And  
22 specifically I'm looking at this paragraph here which  
23 refers to the expenses. And could you just please  
24 read that one sentence into the record, please?

25 A "Expenses to resist any above contest or

1     attack of any nature upon any provision of my will or  
2     any codicil to it shall be paid from my Probate Estate  
3     as expenses of administration."

4           Q        Would you agree that it's a provision of  
5     Doris Colucci's will that Michael Fox be appointed as  
6     the personal representative?

7           A        Say that again.

8           Q        Would you agree that the will says that  
9     it's a provision of the will that Michael Fox be  
10    appointed as the successor personal representative?

11          A        I would agree that Doris Colucci's will  
12    names as one of the successor personal representatives  
13    Michael Fox..

14          Q        The damages that you're requesting that I  
15    pay for trying to have Michael Fox appointed as the  
16    personal representative, Doris Colucci has directed  
17    that those be paid out of the estate?

18          A        No, Mr. Garrett. I'm telling you that my  
19    expenses associated with you trying to have me  
20    restrained and removed for baseless reasons is why I  
21    have asked the court to assess you my fees. Not to  
22    have Mr. Fox appointed. This says, "expenses to  
23    resist any contest." I don't ever recall contesting  
24    her will.

25          Q        Do you believe that you're filing to

1 prevent the appointment of a personal representative  
2 was an effort to resist Michael Fox being appointed as  
3 the personal representative?

4 A No. I believe I was answering a petition  
5 on which I was formally served. I don't recall  
6 challenging the will.

7 Q Now, you had just stated earlier in your  
8 testimony that you've discussed this case regularly  
9 with the court.

10 A I don't believe I said regularly. I  
11 believe I said I seek the court's guidance where  
12 necessary. I have filed a variety of applications. I  
13 have filed a variety of petitions.

14 Q When is the last time you had a telephone  
15 conversation with Judge Blunt?

16 A Probably yesterday, because I saw the  
17 court's deference to hold emergency hearing today.

18 Q Was I present at that conversation?

19 A No.

20 Q Do you believe that you and I are both  
21 parties to this action?

22 A Mr. Garrett, I am appointed by the court.  
23 I'm a court-appointed fiduciary. I can always speak  
24 to the court. I am not a lawyer in this action,  
25 Mr. Garrett. I am a court-appointed fiduciary. And I

1 am permitted to speak to the judges whenever they're  
2 willing to speak to me.

3 Q Do you believe the Estate of Doris  
4 Colucci should be completed with you as the special  
5 administrator? Or that the South Carolina Probate  
6 Court requires appointment of a personal  
7 representative?

8 A First, let me say I do not believe that  
9 the Probate Code requires appointment of a personal  
10 representative. I don't believe that at all. There's  
11 many, many estates in which there's only a special  
12 administrator. James Brown, as an example, a rather  
13 famous man here in South Carolina. So no, there's no  
14 requirement that a personal representative be  
15 appointed in an estate. What was the first part of  
16 your question? That I think I should be special  
17 administrator? I serve at the pleasure of the court.  
18 So long as the court asks me to serve, I will do so.

19 Q Do you feel you have a duty to the  
20 Colucci Living Trust?

21 A Do I believe I have a legal duty?

22 Q Yes.

23 A In what way?

24 Q To act in its best interest, to make sure  
25 that it gets funded, to make sure that money flows



1 through the trust, the terms of the will are complied  
2 with?

3 A Yes. I believe that the designee of this  
4 will is the Colucci Family Trust, yes, and I believe  
5 the funds would flow through the Colucci Family Trust,  
6 yes.

7 For example, I had noticed you of this  
8 hearing today as a proposal for distribution. I have  
9 made one distribution to you already. I proposed to  
10 distribute cash to you. So yes, I'm doing exactly  
11 what you're suggesting I have to do. That was today,  
12 or is today. However, you tried to restrain me from  
13 making distribution, so -- anyway, go ahead.

14 Q Do you have any ballpark idea what your  
15 current fees are that you charged the estate at this  
16 time?

17 A I mean, I don't recall. I think it's  
18 something -- I think from your petition you said it  
19 was \$89,000, and it's probably something in the  
20 neighborhood of \$105,000 now. I mean, the last six  
21 months that's probably -- or \$110,000. I'll note to  
22 you that my fees collected is something like 3 percent  
23 of the estate, whereas a PR commission would have been  
24 5 percent of the estate. So I think that you're  
25 suggesting that my fees are excessive or lavish or

1 overstated, and again, patently false. You have the  
2 inventory and appraisal. You have my accounting. You  
3 can do a calculation.

4 Q How much cash is available in the estate  
5 right now?

6 A Something around 525,000, something like  
7 that.

8 Q Why is the distribution only \$15,000?

9 A As I recall, it's only \$10,000.

10 Q \$10,000. Sorry.

11 A Because I was going to make  
12 a distribution and have the court approve that  
13 distribution and have you suggest a budget. You know,  
14 Mr. Garrett, you never contacted me to ask me for any  
15 information. We, months ago, asked you to open a bank  
16 account and get prepared for things to start coming to  
17 you. My thought was to apply to the court to have  
18 a hearing, which is today, to ask the court to approve  
19 you. Because I have to have court approval to make  
20 distribution to you, or I want court approval to make  
21 a distribution to you, to open an account to start the  
22 process. You could explain to the court which trust  
23 you're going to administer, which -- because there are  
24 a variety of amendments, and you can tell me what your  
25 needs are, and I could provide my distributions to

1     you, or whatever the court approves. That was the  
2     point of today.

3             Q       You attempted to deliver jewelry to my  
4     office in December of 2018?

5             A       Yes. I had delivered everything else to  
6     your office.

7             Q       Your office manager --

8             A       Well, I was out that day, so I had my  
9     office manager bring it to you. And as I recall, you  
10    refused to accept it.

11            Q       Why not call my office or call Mr. Fox  
12    before delivering something like that to let them know  
13    it's coming?

14            A       It's paperwork and jewelry. Your office  
15    is open Monday through Friday 8:30 to 5:30, or  
16    something like that. It's very common. Ms. Palmer  
17    emailed you and told you we're going to start making  
18    distributions. I'm not sure that's unusual. I sent  
19    you a cover letter. I sent you an original deed. I  
20    sent you a bill of sale. I sent the remaining  
21    jewelry, all inventoried. Why is that so strange? I  
22    mean, I deliver things to people's offices all the  
23    time much more valuable than that. And you refused to  
24    accept it. Which I think is very out of the  
25    customary. So we took it to Mr. Fox, which he

1     accepted it. It's my job, as you know, to transfer  
2     things to you.

3           Q           Did you know that it was not delivered to  
4     Mr. Fox?

5           A           It was delivered to his office. I used  
6     the address he gave the court.

7           Q           It was delivered to a young lady there  
8     named Janice; are you aware of that?

9           A           I mean, I have a young lady at the front  
10    of my office as well.

11          Q           Did you direct Ms. Palmer to write an  
12    email to me shortly after I filed a formal probate  
13    application to inform the court that if I proceeded  
14    that I could be personally sanctioned or that my  
15    client could be personally sanctioned?

16                   MS. PALMER: Objection. Calls for  
17    privileged material.

18                   THE COURT: I agree.

19    BY MR. GARRETT:

20          Q           Mr. Chandler, this is an email that was  
21    sent from your attorney to me. Are you aware of the  
22    existence of that email?

23          A           This is November 3rd, 2017. Yes, I'm  
24    aware of this email. That was your question. Yes,  
25    I'm aware of that.

1 Q And this is marked as Exhibit G?

2 MS. PALMER: May I look at it?

3 MR. GARRETT: Yes (document tendered to  
4 Ms. Palmer).

5 MS. PALMER: Oh, it's in your petition?

6 MR. GARRETT: Yes.

7 BY MR. GARRETT:

8 Q And I would just like you to read the  
9 second to last paragraph of that email.

10 A It's an email sent on November 3rd, 2017,  
11 which is not related to your petition for formal  
12 probate, as I recall. It is related to your petition  
13 to restrain me from selling a ring. And that is in  
14 the paragraphs before. So I don't want this taken out  
15 of context. Because you suggested when you handed it  
16 to me this was related to the petition of probate. In  
17 reality, this is related, as I recall, to your  
18 petition to restrain me from selling a ring, which was  
19 an item of personal property on the body of  
20 Ms. Colucci when she was killed. And it says, "We are  
21 doing our best to keep costs down in this estate. And  
22 frankly, I would carefully consider filing your  
23 petition," which was a petition to restrain,  
24 "especially given the court's ability to personally  
25 assess costs and fees against you and Mr. Fox should

1 it determine that it was frivolous. If the court has  
2 already issued an order approving the sale of the ring  
3 with, as you point out, full knowledge of the fact  
4 that the will and may be entered into probate at some  
5 point."

6 And as a matter of just setting the  
7 table, this was a time, November 3rd, 2017, not long  
8 after I had been appointed, there were no assets in  
9 this estate at this point. There was no cash. There  
10 was nothing in this estate. I was determining what  
11 assets existed. This ring was now available. And I  
12 was asking the court to permit me to sell the ring to  
13 put into the estate to help pay for things like, you  
14 know, appraisers and things of that nature. And so  
15 that is the timeframe which this was written.

16 Frankly, I think it was very nice of her  
17 to remind you of Section 62-1-111, because the Court  
18 had already approved my sale of the ring.

19 Q So you agree that on November 3rd that  
20 this email, as well as through your response to my  
21 motion, you have threatened sanctions against me  
22 personally and against my client?

23 A No, I have not. And as I read that email  
24 from Beth Palmer, she is reminding you of that  
25 section. I don't view that as a threat. That is

1 a reminder. If you think that what you're trying to  
2 bring to the court is nonfrivolous, by all means bring  
3 it, and there should not be sanctions. But if it is  
4 frivolous, be prepared.

5 Q Do you think a will that says I appoint  
6 Michael Fox as the personal representative is  
7 frivolous?

8 A It's not my will.

9 Q That's my question. Do you believe  
10 a will that says I appoint Michael Fox as my personal  
11 representative is frivolous?

12 A The will appoints Mr. Fox as a successor  
13 personal representative. And no, I don't believe that  
14 it was frivolous.

15 Q Do you believe it's frivolous for him to  
16 attempt to become personal representative?

17 A No.

18 Q So why are you seeking sanctions against  
19 him when you refuse to step down as the special  
20 administrator and he's simply attempting to comply  
21 with the last will and testament of Doris Colucci?

22 A Well, again, what I read was the petition  
23 related to the ring. What you're talking about is the  
24 petition for formal probate and for his appointment.  
25 And I told you, I'm asking the court to assess you for

1 your frivolous petition with no basis or evidence  
 2 attacking me for things that are completely untrue.  
 3 So I'm not asking the court to assess those costs  
 4 against Mr. Fox. I'm asking the court to assess those  
 5 costs against Mr. Garrett. You're the lawyer, not  
 6 Mr. Fox.

7 Q Have you given us a key to the house?

8 A I'm sorry?

9 Q A key to the house.

10 A Have I given you a key to the house?

11 Q Yes.

12 A I don't believe I've been asked for  
 13 a key.

14 Q Do you have a key to the house?

15 A I may. I don't go to the house.

16 Q Do you feel you have a duty to secure the  
 17 house once you began as special administrator?

18 A Yes. And Christa Yantis as conservator,  
 19 and me as special administrator, agreed that  
 20 Ms. Colucci's son could remain in the house. He  
 21 secures the house.

22 Q Did you sign a lease agreement with him?

23 A We did not. We chose not to sign a lease  
 24 agreement with him, frankly, upon the advice of  
 25 Ms. Yantis' attorney, Mr. Holler. But I agreed it was



1 better not to have a lease. He was there. It's the  
2 home he's had for a very long time. It was  
3 appropriate for him to remain there. And he secures  
4 the home. I don't think anyone would dispute that he  
5 secures the home.

6 Q Have you collected an income off the  
7 home?

8 A No. He does not pay rent. In exchange,  
9 he pays utility and things of that nature. This is  
10 a large property with lots of animals on it. This  
11 home is in significant disrepair, it was true when  
12 Ms. Colucci was killed, it remains true today. It has  
13 significant structural issues. But at the time that  
14 that email was sent to you, Mr. Garrett, there weren't  
15 any funds to repair that home.

16 Q But there are funds available now?

17 A Yes, and Mr. Fox owns the house.

18 Q Do you think there's more than \$15,000  
19 worth of repairs that need to be made to the house?

20 A Possibly. I'm not sure if some of those  
21 repairs are necessary or not. Mr. Lawton had  
22 requested over the course of several months, here and  
23 there, for things to be repaired. He represents  
24 Mr. John Antonio, who is Ms. Colucci's son, who lives  
25 there. I, as special administrator, was always

1 willing to pay half of those things. And I did so.

2 Q Did you secure the personal property of  
3 Doris Colucci inside the home.

4 A Yes. I asked John Antonio not to dispose  
5 of those assets; he has not.

6 Q Did Doris Colucci have fur coats?

7 A To my knowledge, no.

8 Q Did Alice Colucci have fur coats?

9 A I have no idea. You have to ask Alice  
10 Colucci.

11 Q Do you know there was a mixture of  
12 different people's personal property inside the house?

13 A I do know that, yes, there was. Michael  
14 Colucci had storage rooms full of items in that home.  
15 I know that the other Colucci daughter, Lizzy, she  
16 had -- her last name is Lizzy, she had a variety of  
17 things stored in that home.

18 Q Did you act to segregate or secure the  
19 personal property of Doris Colucci inside the home?

20 A Yes. We had -- we asked John Antonio to  
21 protect and maintain those items. He alone goes in  
22 and out of the house.

23 Q There are resources available, and there  
24 are resources available now, that that personal  
25 property could have been put in storage?

1           A           At the time, no. Now it could. I did  
2   take the stuff and have an appraiser, I think a highly  
3   qualified appraiser, review all the items in that home  
4   and give me a sense of if they were really valuable  
5   items or just standard, everyday house items. Her  
6   opinion was they were standard, everyday house items.  
7   Nothing required any significant storage. Things that  
8   were valuable, we had them in a safe deposit box, we  
9   transferred those to you, Mr. Garrett, you refused  
10   them, as Mr. Fox, so that we didn't have the expense  
11   of the safe deposit box any longer.

12           Q           Are you aware that Ms. Palmer requested  
13   Michael Fox to prepare a Schedule K for an LLC called  
14   HID.

15           Q           What do you mean by "Schedule K"?

16           A           A partnership return.

17           Q           Okay. So that's a different number. But  
18   yes, I am aware of that.

19           A           Okay.

20           Q           So you believe that Mr. Fox was competent  
21   to prepare that document?

22           A           What I know is that HID is managed and  
23   controlled by Henry Burkes, whose name we've heard  
24   before. And he is the manager of that company. He  
25   hired Mr. Fox to prepare tax returns for that company.

1 Ms. Doris Colucci owned 30 percent in that company.  
2 That's it. She doesn't control anything in that  
3 company. Mr. Burkes controls -- he prepares tax  
4 returns, not me. In fact, Mr. Fox prepared a tax  
5 return which is patently wrong on its face, and we  
6 simply asked him to correct the K1's, which by the  
7 way, if they're not corrected -- and I'll also note,  
8 Mr. Garrett, that Mr. Fox replied to your email saying  
9 he'll be glad to amend them. And then you in December  
10 decided, nevermind, we're not going to do that. But  
11 that works at tremendous hardship on the estate and  
12 the beneficiaries of the estate. Because if Mr. Fox  
13 does not amend that return, or Mr. Burkes does not  
14 amend that return properly and make a sub 4 election  
15 on the return and produce a K1 that is accurate, the  
16 estate of Doris Colucci would potentially lose a basic  
17 step up in its assets which negatively impacts the  
18 beneficiaries of that estate. So yes, I'm aware of  
19 that.

20 Q But you're also a member of HID?

21 A I am. Well, I'm not, but the estate is.

22 Q The estate is. And you're capable of  
23 preparing the proper tax?

24 A I'm not qualified. I don't have the  
25 books and the things that are required to prepare

1 returns, Mr. Garrett. Mr. Burkes has those items. He  
2 hires who he wants to prepare the returns. If he  
3 hired Mr. Fox, that's fine. If he thinks that's the  
4 proper person, great. But the return is not properly  
5 prepared. And it was filed improperly.

6 For example, he listed IND, which is an  
7 accommodation party. It does not have an EIN. It is  
8 not a taxpayer. He filed that return on the IRS.  
9 That is absolutely an improperly filed return. It  
10 will be pulled. Mr. Colucci and Doris Colucci's  
11 estate are going to have issues because of that,  
12 because you can't file a return without an EIN. And I  
13 would think Mr. Fox would know that.

14 Q How would you -- if I use the term,  
15 "flow-over will," would you agree that's a will where  
16 the flowing of assets are to immediately flow over  
17 into a trust, a testamentary trust?

18 A I would take out the word "immediately."

19 Q Okay.

20 A But otherwise, yes, I would follow that.  
21 I mean, a flow-over will is a will that pours assets  
22 over to something, usually the revocable trust, always  
23 subject to the creditors of the estate, don't forget,  
24 lest we forget people who are persons here, and  
25 claims, et cetera. So no, "immediately" is not

1 a proper word to use in that sentence, but otherwise,  
2 yes.

3 Q Based on your definition, would you  
4 describe the last will of Doris Colucci to contain  
5 a flow-over provision into the Colucci Trust?

6 A Yes.

7 Q What is your basis for requiring  
8 a hearing to distribute the \$10,000?

9 A My basis is that I am a court-appointed  
10 fiduciary. And generally I ask the court to approve  
11 cash distributions like that. Or I think it's  
12 appropriate to ask the court to approve cash  
13 distributions. I saw it as an opportunity for you and  
14 Mr. Fox to come and explain what the needs of the  
15 trust were, what you anticipated your budget would be,  
16 what you might ask the court to distribute out of the  
17 estate to the trust. Again, I'm a special  
18 administrator. I make distributions. But you can bet  
19 your bottom dollar I make distributions based on the  
20 court approving them, of cash. So that's why I did  
21 that.

22 Q Have you received cash payments towards  
23 your attorneys fees?

24 A Yes.

25 Q Did you have a hearing in Probate Court

1 for those distributions?

2 A No, but I had court approval. But that,  
3 Mr. Garrett, is the common administrative expenses  
4 associated with the estate. That is not  
5 a distribution. That's a disbursement. And they're  
6 totally different. This is a distribution governed by  
7 sections of the Probate Code. And I think it's  
8 absolutely totally appropriate in a case like this  
9 with all the people that I sent notices to, because  
10 they filed demands for notice, I thought it was a  
11 totally appropriate thing to ask the probate judge to  
12 rule on whether that was appropriate to make that  
13 distribution, and ask you, since you don't seem to be  
14 concerned with asking or giving me information, to  
15 asking what your budget was and what you felt you  
16 needed for distribution. But there's lots of  
17 litigation ongoing in this case.

18 Q Have you ever written a report or  
19 a letter to Mr. Fox letting him know about the  
20 administration of the estate?

21 A Until Mr. Fox was -- well, until the will  
22 was probated on August something like 27th or 8th of  
23 2018, Mr. Fox was not an heir.

24 Q Okay.

25 A He was a presumptive designee. But until

1 the court, some court probated that will, he did not  
2 have an interest as an heir. He's not an heir.  
3 Post-August 27th or 8th, or something -- and by the  
4 way, I'll note that the Probate Court of Dorchester  
5 County issued an order, which you like to ignore,  
6 which reappointed me as special administrator to  
7 probate the estate consistent and pursuant to the  
8 will. But I don't believe I have written a report to  
9 Mr. Fox. I believe I sent to him every single thing I  
10 filed in this court because he is the designee. I  
11 believe that I've distributed -- I distributed to him  
12 personal property, a piece of real property, and I  
13 proposed distribution to him, and that was just in  
14 August, and it's only beginning of January, cash. So  
15 I think I've communicated with him about what we're  
16 doing in the estate, and that was trying to make  
17 distributions to him, which this petition you file  
18 calls.

19 Q You requested a hearing today at noon?

20 A I requested that the Court consider  
21 holding an emergency hearing because your petition  
22 works to attempt to restrain the special administrator  
23 from acting other than very specific things. This, as  
24 I note to you, estate is very complex. There is a lot  
25 of pieces of litigation happening in several courts.



1 There are depositions happening this week alone. And  
2 it's important that I be able and my attorney be able  
3 to continue with the administration of the estate in  
4 the normal course.

5 I'm delighted to have you argue to the  
6 judge that I should make a distribution. That's very  
7 contrary to your client's interests. But to me, this  
8 is an emergency. First, you're making baseless  
9 allegations against me. And secondly, it's just not  
10 proper for this estate to be frozen in any way that is  
11 naturally to be administered.

12 Q And you think ignoring the last will and  
13 testament of Doris Colucci is the natural  
14 administration of this estate?

15 A I'm not ignoring anything. I'm  
16 administering this estate consistent with that will,  
17 as I was ordered to do.

18 Q You would have driven up here today  
19 anyways, whether I had filed the emergency motion or  
20 not?

21 A Certainly.

22 Q And you would have spent the time driving  
23 up here in your car and you would have spent the time  
24 driving back to Charleston?

25 A Yeah.

1           Q           So you're certainly not asserting that I  
2   caused you to drive up to Dorchester County?

3           A           I'm sorry. Did I say that?

4           Q           No. But you're asking the court for  
5   personal sanctions against me.

6           A           Yes.

7           Q           So the time that you drove up here would  
8   not be part of that time because you were going to  
9   drive up here anyways, correct?

10          A           Yes.

11                   MR. GARRETT: Your Honor, I ask to admit  
12   the Exhibit G email to be admitted as an exhibit of  
13   this court.

14                   THE COURT: That's already been filed.

15                   MR. GARRETT: Yes, Your Honor, it's been  
16   filed as an exhibit, but I don't know that it's been  
17   admitted as an exhibit. Any objection?

18                   MS. PALMER: No objection.

19                   THE COURT: I have it in there.

20                   (Exhibit G is offered into evidence  
21   identification.)

22                   MR. GARRETT: Thank you, Judge.

23                   MS. PALMER: I don't have any questions  
24   of Mr. Chandler, if Mr. Garrett is finished. But I  
25   would like to make our legal argument to the court.

1 THE WITNESS: Do you have any questions?

2 THE COURT: I don't think so. You  
3 explained everything. Thank you very much.

4 Ms. Palmer?

5 MS. PALMER: Thank you. May it please  
6 the court. I don't want to take up too much of the  
7 court's time. And I appreciate the opportunity to  
8 respond to Mr. Garrett's arguments, his accusation,  
9 allegations, and frankly, the complete lack of any  
10 factual or legal support for those.

11 As Mr. Chandler just testified, and  
12 pretty much did my job for me up there, but it's the  
13 serious nature of the accusations that were made  
14 against both of us, as well as the implications of  
15 Mr. Garrett's petition, that we asked Your Honor to  
16 schedule this emergency hearing. Generally I think  
17 what Mr. Garrett is arguing is that Mr. Chandler and  
18 I have acted inappropriately, that we've acted in not  
19 the best of interest of the estate, not in the best  
20 interest of the devisee, which obviously is the  
21 trust. Perhaps most offensive, that we have somehow  
22 taken advantage of the estate or mismanaged its  
23 assets.

24 The petition seeks the removal of  
25 Mr. Chandler. There is a standard for that. The

1 power to remove should not be exercised unless  
2 necessary for the protection of the estate to prevent  
3 misappropriate misadministration or fraud. So that's  
4 the standard we're looking at in Mr. Garrett's burden  
5 of proof.

6 One of the big issues, which Mr. Chandler  
7 has addressed somewhat, is the fees. Our hourly  
8 fees, the court's obviously aware because the court  
9 reduced them. It's very disappointing that  
10 Mr. Garrett would look at a number, the amount of  
11 those fees, and then levy accusations against two  
12 fellow members of the bar without knowing more.

13 He claims we've damaged the estate. I  
14 disagree. I believe we have officially and  
15 effectively advanced the best interest of the estate.  
16 We have saved the estate money in lots of ways. And  
17 we've done so at a rate of \$200 an hour, which is  
18 somewhat less than what our normal hourly rates are.  
19 But I think Mr. Garrett's petition says, you know,  
20 165,000 in fees. And that's Mr. Chandler and myself  
21 combined, in an estate of 2.8 million. \$165,000 is  
22 5.8 percent of 2.8 million. Five percent, as Your  
23 Honor knows, is the amount allowed as personal  
24 representative commission. And typically you have  
25 your PR fee. And on top of that you'll have your PR

1 attorney fee. Here, our fees combined are just  
2 slightly above what is allowable to a personal  
3 representative.

4 To our contingency agreement.

5 Mr. Garrett colorfully refers to it as "lavish and  
6 extraordinary." If you Google "standard contingency  
7 fee agreement," the little instant answer that comes  
8 up is 40 percent. And Google doesn't know  
9 everything. But if you ask any practitioner that  
10 regularly uses contingency fee agreements, I think  
11 you would find that 40 percent is standard. Not to  
12 mention the fact that there was a motion made to  
13 approve this arrangement, there were no objections,  
14 and the order and the agreement was approved by this  
15 court.

16 Related to the fees issues, there are  
17 these allegations, I think, of double dipping. This  
18 arises out of the fact that my law firm is handling  
19 both the wrongful death action, obviously on  
20 contingency basis because it's a wrongful death, and  
21 also representing Mr. Chandler as his attorney as he  
22 administers the estate. Now, part of the  
23 administration of the estate includes the Slayer  
24 action which is currently pending. It would not be  
25 unusual for Mr. Chandler or for this Court to appoint

1 two separate law firms to represent, one to do the  
2 wrongful death and one to represent Mr. Chandler in  
3 the administration. If that was the case here, the  
4 estimate would be charged for the discovery that's  
5 being done in these cases. So the Slayer case and  
6 the wrongful death, we have effectively combined or  
7 consolidated them for the purposes of discovery,  
8 because the discovery is very similar in the two of  
9 them. We have not charged one penny to the estate  
10 for any of the discovery. None of the expert witness  
11 fees, none of the court reporter fees. So to say  
12 we're double dipping is just ridiculous. I think  
13 we're -- it would be more like half dipping. Again,  
14 the fact that my firm is representing both has  
15 benefited the estate. It has not hurt the estate.

16 In one of the first paragraphs of  
17 Mr. Garrett's petition he states, and I quote,  
18 that -- or accuses Mr. Chandler of "neglecting basic  
19 duties to the beneficiary." I assume he means  
20 devisee. One of those ways, the particulars, is we  
21 haven't given information to the trustee, to Mr. Fox.  
22 He has not explained exactly what he thinks that  
23 Mr. Chandler should have done that he did not do. As  
24 Mr. Chandler testified, the trust did not appoint the  
25 devisee until the moment that will was probated in

1 August. From that point forward, the trust received  
2 everything it is entitled to receive and that  
3 Mr. Chandler is required to provide to it. There was  
4 no demand for notice from Mr. Garrett or Mr. Fox.  
5 Likewise, there's been no request for information  
6 from either of them. To come now and accuse  
7 Mr. Chandler and I of wrongdoing for not providing  
8 information that was never requested is ludicrous.  
9 Mr. Chandler has covered the transfer of -- or  
10 distribution to the trust issue quite well. But I  
11 would just reiterate that our efforts to distribute  
12 assets to the trust have been frustrated by  
13 Mr. Garrett.

14 In his petition he says that he refused  
15 acceptance or refused possession of items of personal  
16 property and that it was titled to 400 Murray, the  
17 family residence, because it was delivered without  
18 warning. Well, the day that the will was probated  
19 and the trust became the devisee, I notified  
20 Mr. Garrett that Mr. Chandler was in the process of  
21 preparing a notice of distribution. And I wrote to  
22 him and said, "When do you anticipate that Mr. Fox  
23 will be in a position to begin accepting conveyances  
24 of assets? Do you plan on seeking guidance from the  
25 court on anything? For example, getting an order

1     instructing him to administer the Trust pursuant to  
2     the 2013 Trust Amendment. Please let me know if I  
3     can help in any way."

4                 So that's the first indication something  
5     is coming his way. He received a copy of the  
6     proposal for distribution with those very assets, yet  
7     he still says he has no warning. And again most  
8     recently he has filed his petition with his stated  
9     intention to postpone the hearing on the proposal of  
10    distribution of cash. Which I still cannot figure  
11    out. Because he recently expressed concerns in an  
12    email that taxes were going to be due on 400 Murray  
13    and that the trust needed cash. So why he would  
14    block that, I have no idea. And it certainly isn't  
15    any wrongdoing on Mr. Chandler's part.

16                Another particular of this alleged --  
17    that's alleged in the petition is that Mr. Chandler  
18    hasn't reimbursed Mr. Fox for certain things, or for  
19    his costs in getting the will administered to  
20    probate. No request has ever been made from Mr. Fox  
21    or Mr. Garrett for any reimbursement for anything.  
22    Not to mention the fact there's a section in the  
23    Probate Code, I believe it's 304, that sets forth the  
24    procedure for claims. He's welcome to submit  
25    a claim.



1                   It's also been alleged that we have acted  
2                   improperly. And I think that really is the primary,  
3                   the crux of that is that we have objected to the  
4                   appointment of Mr. Fox as the personal  
5                   representative. And Mr. Chandler covered that pretty  
6                   thoroughly. But I would like to add that as special  
7                   administrator Mr. Chandler has a duty to look out for  
8                   and advocate for the best interest of the estate. He  
9                   explained the reasons why he believed it was in the  
10                  best interest of the estate. And I believe those are  
11                  valid reasons.

12                 We have fully briefed and argued the  
13                 issue of Mr. Fox's qualification, and in fact, the  
14                 transcript from that hearing was attached to  
15                 Mr. Gordon's petition and it's still pending in  
16                 Circuit Court.

17                 The petition's paragraph 47 states, "Had  
18                 the special administrator truly believed Mr. Fox was  
19                 not qualified for any reason, he should have  
20                 immediately notified the next two successor personal  
21                 representatives of his concerns." I am not aware of  
22                 any Probate Code section or case law precedent that  
23                 required Mr. Chandler to do that, and I certainly  
24                 don't believe that that is a basis for his removal.

25                 We discussed already a little bit that

1 the threatening of sanctions, and that was in  
2 reference to an email. There was nothing that  
3 prevented Mr. Fox from proceeding with his -- he  
4 filed first as a petition and then correctly filed it  
5 as an application to restrain; he could have  
6 proceeded with that. And I believe that as special  
7 administrator, again, he's got to look out for the  
8 best interest of the estate. If any person or any  
9 entity causes the estate to incur unnecessary costs,  
10 or if it would be unjust, I think is the term in the  
11 statute, unjustly incurred costs, then he has a duty  
12 to try to recoupe those costs, just as we're asking  
13 the Court to do today.

14           There's been a lot of discussion about  
15 intent and how that plays into all of this. And I  
16 realize this is a hearing on a petition to remove.  
17 It is not on petition to appoint. But I think it is  
18 safe to say that every person's testamentary intent  
19 includes the desire to, as efficiently as possible,  
20 get assets to the devisee, which is the trust, then  
21 to the beneficiaries. That is what Mr. Chandler has  
22 been doing, and completely not what Mr. Fox or  
23 Mr. Garrett have been doing. They have been  
24 obstructing our ability to proceed and administer the  
25 trust.

1                   So in conclusion, Your Honor, I do not  
2 believe that Mr. Garrett has met the burden of proof  
3 required to remove Mr. Chandler as special  
4 administrator pursuant to 62-1-111. I believe that  
5 it is not just or equitable that the estate be forced  
6 to bear the expense of defending this baseless  
7 petition, a petition that is based on incorrect  
8 statements of law and assumptions, allegations that  
9 are unsupported by any facts or evidence. I request  
10 that these costs be assessed against counsel for  
11 Mr. Fox. Thank you, Your Honor.

12                   THE COURT: Mr. Fox? Or Mr. Garrett?

13                   MS. PALMER: Mr. Garrett, I'm sorry.  
14 Counsel for Mr. Fox.

15                   THE COURT: Thank you.

16                   Do we have anything further on the  
17 Petition for Removal of Special Administrator?

18                   MR. GARRETT: Your Honor, the only other  
19 issue I wish to clarify is that while we are  
20 petitioning to remove Mr. Chandler as the special  
21 administrator, Section 62-3-615 would properly  
22 appoint Mr. Fox as the special administrator. So  
23 we're in no way arguing that we're coming before this  
24 court to request the appointment of a personal  
25 representative. We're requesting the termination of

1 Mr. Chandler as the special administrator and the  
2 appointment of Mr. Fox as the special administrator  
3 pursuant to Section 615. We believe that action is  
4 in good faith. We believe it is supported both by  
5 Probate Code and by the will of Doris Colucci. Thank  
6 you, Your Honor.

7 THE COURT: I only have this down as  
8 a removal.

9 Did you have anything, Ms. Palmer?

10 MS. PALMER: Same response as before,  
11 that this section applies to when a special  
12 administrator is to be appointed pending probate of a  
13 will, and that's not the situation.

14 THE COURT: All right. So I will hold my  
15 decision on this matter in abeyance. And do we need  
16 to take a break or can we move right into  
17 Mr. Chandler's proposal for distribution?

18 MR. GARRETT: That's fine.

19 THE COURT: Let us get off and start us  
20 with a new hearing for that one.

21 MR. CHANDLER: Your Honor, if I may?

22 THE COURT: Yes.

23 MR. CHANDLER: I'm just asking if Your  
24 Honor was going to make the determination for the  
25 petition to remove at a later date that I would

1 request that the court issue an order allowing me to  
2 administer the estate in the normal course other than  
3 to make distributions.

4 MR. GARRETT: We would not object to  
5 that, Your Honor.

6 THE COURT: I think that's the way we'll  
7 keep things going. So, Ms. Palmer, can you prepare  
8 an order to that effect?

9 MS. PALMER: Yes, Your Honor.

10 (The hearing is adjourned at 1:30 p.m.)  
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CERTIFICATE

I HEREBY CERTIFY that the witness was duly sworn  
by me and that the deposition is a true record of the  
testimony given by the witness.

*Judy W. Galuppo*  
Judy W. Galuppo,



Court Reporter/Notary Public

Commission Expires 3/18/2023

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supervision of the certifying reporter.)

STATE OF SOUTH CAROLINA ) PROBATE COURT  
COUNTY OF DORCHESTER ) CASE NO.: 2017-ES-10-00294  
IN RE: THE ESTATE OF DORIS DUANE  
COLUCCI,

MICHAEL C. FOX, NAMED PERSONAL  
REPRESENTATIVE IN THE LAST WILL  
OF DORIS DUANE COLUCCI,

-vs-

ANDREW CHANDLER, IN HIS CAPACITY  
AS SPECIAL ADMINISTRATOR OF THE  
ESTATE OF DORIS DUANE COLUCCI,  
MICHAEL C. FOX, SUCCESSOR  
TRUSTEE OF THE COLUCCI LIVING  
TRUST, DATED FEBRUARY 24, 2005,  
IVO FRANCESCO COLUCCI, MICHAEL  
FREDERICK ANTONIO COLUCCI, JOHN  
MARTIN ANTONIO, HENRY BURKES,  
AND RICHARD M. HYMAN, JR.,

---

PROPOSAL FOR DISTRIBUTION

HEARING BEFORE HONORABLE MARY L. BLUNT

Date Taken: Wednesday, January 9th, 2019  
Time Taken: 1:32 p.m.  
Location: Dorchester County Courthouse  
5200 Highway 78  
St. George, South Carolina 29477  
Reported By: Judy W. Galuppo, Court Reporter  
Job No.: 453298

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11   Chandler  
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|----|------------------------|-------------------------------|------|
| 1  | INDEX TO EXAMINATION   |                               |      |
| 2  |                        |                               | Page |
| 3  | Reporter's Certificate |                               | 25   |
| 4  | INDEX TO EXHIBITS      |                               |      |
| 5  | Petitioner's           |                               |      |
| 6  | No.                    | Description                   | Page |
| 7  |                        | No Exhibits Marked or Offered |      |
| 8  | Repsondent's           |                               |      |
| 9  | No.                    | Description                   | Page |
| 10 |                        | No Exhibits Marked or Offered |      |
| 11 |                        |                               |      |
| 12 |                        |                               |      |
| 13 |                        |                               |      |
| 14 |                        |                               |      |
| 15 |                        |                               |      |
| 16 |                        |                               |      |
| 17 |                        |                               |      |
| 18 |                        |                               |      |
| 19 |                        |                               |      |
| 20 |                        |                               |      |
| 21 |                        |                               |      |
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THE COURT: We are back on the record in the matter of Doris Colucci. This is case No. 2017-ES-18-00294. And I'm just going to go ahead and restate who is present in the courtroom, because now we're addressing the issue for approval of Proposal of Distribution No. 2 filed by Special Administrator, Andrew Chandler, distributions to the trustee of the Colucci Living Trust.

And we do have present Andrew Chandler; Attorney Beth Palmer; Brandt Shelbourne, who represents Robert Colucci; David Holler, who represents Christa Yantis, who is the conservator for Ivo Colucci; Gordon Garret and Ryan Love who are the attorney for Michael Fox and the Colucci Trust; Angus Lawton, who is the attorney for Michael Colucci and John Antonio. And that's who we have present in the courtroom for this proceeding.

So on this matter I guess I'll go ahead and have Ms. Palmer proceed on the proposal for distribution.

MS. PALMER: Your Honor, this is simple. We're proposing to distribute \$10,000 from the estate to the devisee of the Colucci Trust.

MR. CHANDLER: Your Honor, I had simply

1 requested this hearing so that the court could  
2 inquire as to what needs the trust could identify,  
3 what it might propose be distributed later, and any  
4 of the questions the court may have for the trustee.

5 THE COURT: Thank you. And I'll tell you  
6 what we have filed here with us, I have the amendment  
7 to the trust, dated June 18th, 2013. This wasn't  
8 actually filed as an amendment but was, I believe,  
9 one of Mr. Chandler's exhibits to one of his  
10 pleadings, I think some response of pleadings. I  
11 don't have the initial trust agreement that is  
12 supposedly dated February 24th, 2015. And at one  
13 point, although I couldn't put my hands on it -- I'm  
14 sorry. My file is this thick. I think I saw a trust  
15 agreement that had handwritten notes on it. So one  
16 of my concerns, before I approve a distribution, is  
17 what is the governing instrument that's going to be  
18 the trust that we're looking at? So I wanted to see  
19 if maybe I can get some clarification for that.

20 MR. GARRETT: Your Honor, your assertion  
21 that there's a trust document with handwritten notes  
22 is news to me. I've never even seen that. So the  
23 only document I have is a clean copy that is executed  
24 on the last -- on the execution page. And then  
25 there's some assignments of personal property which

1 is unsigned, and that's the version that I've seen  
2 getting kicked around, and I believe that's the  
3 version that --

4 MS. PALMER: I don't believe I've ever  
5 seen a full, signed 2005 Trust Agreement, the  
6 original. So we've got the dispositive provisions in  
7 the '13. But what my understanding is, is that the  
8 Coluccis went back to Kuhn & Kuhn in 2016 to revise  
9 documents, but that was never completed because there  
10 were issues between them and Kuhn & Kuhn, who  
11 resigned as their attorney, said there was a conflict  
12 of interest. So it looks like it was the 2013  
13 amendment that in 2016 they had made some notes on  
14 it. I don't know who made the notes. I don't know  
15 if it was the attorney. I don't know if it was the  
16 Coluccis.

17 MR. CHANDLER: My understanding from the  
18 Kuhn & Kuhn attorneys was that was Doris Colucci's  
19 handwriting. Whether that's -- in South Carolina,  
20 you can have an oral trust. So whether or not that's  
21 a valid trust amendment, I don't know. That's a  
22 question for Mr. Fox, and one I would think he would  
23 ask the Court to confirm, or you know, to clarify.  
24 But I don't know which trust instrument is the valid  
25 one. The will, of course, the 2005 trust, which is

1       how I have styled my Proposal for Distribution. But  
2       if that's not correct, I need to know that. Hence,  
3       this hearing.

4               MR. GARRETT: I mean, there's some  
5       question of whether it's a valid trust document. We  
6       have accepted the trusteeship of this trust based on  
7       the documents that have been filed with the  
8       Dorchester County Court, which were executed  
9       documents. That's the version that we've been  
10      working on. The amendment to that appointment,  
11      Mr. Fox as the successor trustee of that trust,  
12      that's the assumption that we've been working on.

13             THE COURT: But do you have the 2005?  
14      Because this --

15             MR. GARRETT: My file also, Judge, is --

16             MR. CHANDLER: I will just note that I  
17      know Mr. Garrett said he copied 6,000 pages, or  
18      something. So he's got the same thing you have in  
19      your file. So he would have the one with the  
20      handwritten notes.

21             THE COURT: Can anybody help?

22             MR. HOLLER: Yes, Your Honor. May it  
23      please the Court. Your Honor, I have, not printed  
24      out, but a copy provided -- a clean copy provided to  
25      me from by Kuhn & Kuhn of the joint Trust Agreement

1 document from 2005 with the 2013 amendments, which  
2 I'm happy to print out and deliver to the court.

3 MR. CHANDLER: And I would just note,  
4 that's exactly what's already in the court file.

5 MR. HOLLER: Okay.

6 MR. CHANDLER: They produced the same  
7 thing for me.

8 MR. HOLLER: Okay.

9 THE COURT: So I think, Mr. Garrett, if  
10 you're representing Michael Fox as trustee, I would  
11 want all the trust -- sounds like Mr. Holler is  
12 willing to give those to you.

13 MR. GARRETT: Yes, Your Honor.

14 MR. CHANDLER: And as far as the  
15 handwritten notations of whether they alter who the  
16 beneficiaries are, Mr. Fox cannot administer this  
17 trust without knowing who the beneficiaries are.

18 MR. GARRETT: I mean, as I understand  
19 from the Court of Common Pleas hearing, that the  
20 Trust may not be administered (inaudible) in Probate  
21 Court.

22 MR. CHANDLER: What?

23 THE COURT: We wouldn't -- so  
24 Mr. Garrett, we do have exclusive jurisdictions over  
25 trusts. Mostly the cases that I hear are if the

1 trust is being modified, if a specific trustee is  
2 being appointed. But I think before I feel  
3 comfortable saying let's give these things to  
4 a trustee of a trust, what's the governing, have all  
5 the kinks been worked out. Because, as you know,  
6 this is a very litigious group. And if there's  
7 something out there, if there's another trust, I  
8 don't know if there's another amendment, if this  
9 handwritten version has any bearing. I think that  
10 all has to be sorted out. I think that's your job,  
11 if you're members of the trustee, to get that sorted  
12 out.

13 MR. GARRETT: Yes, Your Honor.

14 MR. HOLLER: If I may, Your Honor? As I  
15 understand, the handwritten notes on that are for the  
16 subsequent beneficiaries of the Trust upon either  
17 Mr. Colucci's disqualification or his death. The  
18 trust document, as I understand it, leaves all of the  
19 corpus and interest in the trust for the benefit of  
20 the survivor of the two of them, either Mrs. or  
21 Mr. Colucci. Which is, in this case, Mr. Colucci.  
22 Which is why I'm here today.

23 As to how the trust would be administered  
24 today, I don't think that there's any dispute between  
25 the parties that Mr. Colucci stands, as at least in

1 terms of Your Honor's current standing orders of the  
2 court, that he be treated like any other beneficiary,  
3 and of the black letter writing of the trust, that  
4 Mr. Colucci is the primary beneficiary. In which  
5 case I believe that in terms of making distributions  
6 to the trust that that question is today as to who  
7 would be the beneficiary of that trust is answered.

8 MR. CHANDLER: Your Honor, I would simply  
9 just -- because I have no dog in that fight, that's  
10 between Mr. Garrett and Mr. Holler. But we have a  
11 Slayer action. And the action would determine  
12 whether Mr. Colucci has a right to that trust or not.  
13 And that has not been determined.

14 MR. HOLLER: The overwhelming medical  
15 evidence, despite the special administrator's  
16 advocacy on behalf of one beneficiary over others, is  
17 that Mr. Colucci was incapacitated. Regardless, that  
18 is not the issue before Your Honor today.

19 MR. CHANDLER: I mean, you're propounding  
20 to the court that there's no question of who the  
21 beneficiary of that trust is. And I'm simply saying,  
22 as the person who was required by and duty bound to  
23 bring the Slayer action, that that has not been  
24 determined, Mr. Holler. That has not been  
25 determined.



1 MR. HOLLER: That's -- I -- I --

2 MR. CHANDLER: I mean, that's between you  
3 and Mr. Garrett.

4 MR. HOLLER: I must correct you. Because  
5 the order of your appointment says that you are  
6 required to treat Mr. Colucci like any other  
7 beneficiary.

8 THE COURT: I am going to ask y'all just  
9 to direct your comments to me.

10 MR. HOLLER: I'm sorry.

11 THE COURT: And in the Proposal for  
12 Distribution, Mr. Chandler does write, the trustee  
13 should take notice of the impact of the Petition to  
14 Determine Heirs, which is the Slayer statute filed in  
15 Dorchester Probate Court, which was removed to  
16 Circuit Court, because that would decide -- be the  
17 decision maker. And you're right. I can't take into  
18 consideration things that are not before me or what  
19 examinations have or haven't been rendered at this  
20 time. That's going to be for the Circuit Court to  
21 decide that. But I just -- there is so much. I just  
22 want to make sure that we pass it off, and then  
23 there's problems later on. And so I'm not --

24 MR. CHANDLER: Yes, ma'am.

25 THE COURT: -- I'm not sure.

1 Mr. Garrett, how are you going to advise your client  
2 to manage?

3 MR. GARRETT: Your Honor, right now we've  
4 established a bank account for the Colucci Living  
5 Trust, that's there, it's got an EIN number. It's  
6 established. The sum of \$10,000 is -- it's tricky.  
7 I mean, I could advise my client, you know, you  
8 should go spend all that on a bond. But at the same  
9 time I've got a number of attorneys sitting here  
10 contacting me on a regular basis saying when are  
11 these distributions going to be made. And I assume  
12 I'm going to have to contact these attorneys and say  
13 there's certain startup costs that is going to eat up  
14 a lot of that \$10,000. I have got to go in the house  
15 and figure out what the current situation with that  
16 home is. If it's got to be sold, John Antonio, we  
17 have got to find a situation for him that leaves him  
18 in a humane situation. We've got animals over there.  
19 I mean, this is a lot to do with \$10,000. I would  
20 imagine that trying to do some things to tie off  
21 what's going on over at that property is going to be  
22 my first -- my first real focus, Your Honor.

23 MR. HOLLER: If I may, Your Honor. The  
24 Murray -- as I understand it, the Murray Drive  
25 property has already been transferred over to the

1 trust. Regardless of who the beneficiaries are of  
2 the trust, Mr. Colucci has an ownership interest in  
3 that property already. And Ms. Yantis in her role as  
4 conservator has been comanaging that with, prior to  
5 now, Mr. Chandler. We put into the record her  
6 affidavit of approximately \$4,000 as of October 31st.  
7 That figure does not include the property taxes,  
8 which Ms. Yantis has informed me that she has already  
9 paid on behalf of both Mr. and Mrs. Coluccis'  
10 interests. And so as a primary matter of how much  
11 money gets sent over to the trust, we would want to  
12 ensure that the co-owner of the property with us,  
13 with Mr. Colucci, has enough money to be able to bear  
14 their share of the expenses of the property, number  
15 one.

16 Number two, we want the trust and  
17 Mrs. Colucci's intent through the trust to be  
18 exercised as quickly as possible. That means that to  
19 the extent Mr. Colucci is a beneficiary, and as Your  
20 Honor has already ruled, he is to be treated as a  
21 beneficiary until declared otherwise, that there be  
22 sufficient assets in the trust to care for him.

23 To date, Ms. Yantis has had to pay about  
24 \$95,000 in room and board. He is completely  
25 incapacitated, he is noncommunicative, his expenses

1 are approximately \$4,000 a month in 24-hour care.  
2 And so those are costs and expenses for Mr. Colucci  
3 that Ms. Yantis, in her role as his conservator, are  
4 obligated to ask the court to have available for him.

5 Number three, in carrying out the intent  
6 of Ms. Colucci and the Trust, we are now almost two  
7 years into this administration, and it is time for  
8 assets to begin to move into the trust so that  
9 Mrs. Colucci's intent can be carried out.

10 One of the questions that did not come up  
11 in the earlier discussion of the removal of the  
12 special administrator is, what's left to be done?  
13 And the fact is, we're getting very close -- by  
14 everybody's hard work, we're getting very close to  
15 the end. When we started all of this, there were  
16 several pieces of property that are out there. We  
17 heard a little bit about HID. There's a minor tax  
18 issue out there that is left to be done that has  
19 actually more to do with Mr. Chandler than it does  
20 with Ms. Yantis. There's an entity called Terivo  
21 Enterprises (ph). There is one small piece of  
22 property that has not been sold, but as of last night  
23 we actually received a cash contract on that.

24 MR. CHANDLER: Take it.

25 MS. PALMER: Ray Miller?

1 MR. HOLLER: Yes.

2 MS. PALMER: Wow! Nice.

3 MR. HOLLER: 22-5.

4 MS. PALMER: Done.

5 MR. HOLLER: Now, it's not been sold. So  
6 Terivo (ph) is about wound up. In Terivo is  
7 approximately, and please don't hold me to these  
8 numbers, but we sold the diamond center several  
9 months ago, two months ago, which we sold for more  
10 than \$2 million, which, Your Honor, was higher than  
11 what the appraised value of it was. So it was an  
12 excellent piece of work by Ms. Yantis to get that  
13 sold, of which, because we've reached a deal with the  
14 Wybergs (ph) to buy them out, there's about a million  
15 dollars more that will go into the Colucci estate.

16 The last company is I&M which  
17 Ms. Colucci's estate, Mr. Colucci and Michael Colucci  
18 are all co-owners of, we have a contract for the sale  
19 of that property. It is proceeding through due  
20 diligence. We've got an excellent contract, again,  
21 more than what the fair market value of the property  
22 is. As with everything that has the name Colucci on  
23 it, it's got some wrinkle in it. This is an old  
24 plat -- there's no plat of the property, and that is  
25 what is holding that up. And then there's the house

1 at Edisto which is maybe the major Slayer's piece of  
2 property. A small lot in New York that I have not  
3 been diligent in providing a -- we have a contract  
4 for that also.

5 And then there's the litigation of which  
6 there are three pieces of litigation that we are all  
7 kind of in together with. And the litigation I would  
8 separate, and the need of somebody who may be  
9 dispassionate -- or excuse me -- that is not  
10 connected to Mr. Colucci to operate. And so that's  
11 a long way of me saying that there's not a whole lot  
12 left to be done. I would expect that maybe in the  
13 next 120 days that the major, with the exception of  
14 the Edisto piece of property, that the major assets  
15 will be taken care of. And then after that, what  
16 is -- if we don't settle in mediation, we have  
17 mediation scheduled for the first week in February,  
18 it'll be the lawsuits.

19 And so I think what we ask the court to  
20 look at, in terms of what distributions need to be  
21 made over to the trust, is what does Mr. Chandler  
22 need to finish up his duties? And what can then go  
23 into the trust so that Ms. Colucci's intent can be  
24 carried out?

25 As far as \$10,000 goes, I can tell you

1 just from Ms. Yantis' administration of Murray Drive,  
2 that that's not sufficient. That probably what we  
3 need is closer to 50 to \$100,000, just to make sure  
4 that costs and expenses of trust administration are  
5 covered and so that Murray Drive can be covered as  
6 well. Thank you, Your Honor.

7 THE COURT: Thank you. I guess the other  
8 way of looking at it is, the trustee can act how the  
9 trustee acts, and it will be up to -- if anybody has  
10 a concern about that, then they can bring a formal  
11 action before the court.

12 If we're talking numbers, are we that  
13 close to being done? I get that we are much closer  
14 than we were a few months ago.

15 MR. CHANDLER: I think, Your Honor, it is  
16 absolutely true that most of the real properties  
17 associated with these entities has been sold. I  
18 would expect Ms. Yantis to propose to terminate some  
19 of those LLCs any day now. One of the things of my  
20 long list of things to do was to ask her when she  
21 plans to terminate those.

22 And then as far as the litigation, Your  
23 Honor, Mr. Holler predicting that could be resolved  
24 in February, I'm telling you, that would be great.  
25 But if it's not, I don't know how long that could

1 take. I just don't have any sense of how long that  
2 could take.

3 THE COURT: And the tax issues?

4 MR. CHANDLER: And we do have tax issues,  
5 and we have to work through the tax liabilities that  
6 still exist. Because many returns haven't been able  
7 to be filed because we're waiting on the terms. So I  
8 don't think, frankly, that's going to be exorbitant.  
9 But I don't really know that. But I think the estate  
10 could absorb transferring 50 to \$100,000 out.

11 THE COURT: That is my question, are you  
12 comfortable with those numbers, rather than having  
13 them map everything out and take the time to do that?

14 MR. CHANDLER: Yes, I'm comfortable with  
15 that.

16 THE COURT: You're comfortable with  
17 getting that out of the estate?

18 MR. CHANDLER: Yes, ma'am.

19 THE COURT: So what is the number, then,  
20 instead of \$10,000? Want to do 50?

21 MR. CHANDLER: Mr. Garrett?

22 MR. GARRETT: Whatever Mr. Chandler  
23 advises you.

24 THE COURT: Procedurally, do you think it  
25 would be best for you to do -- I don't think you



1       should do another proposal for distribution. Can you  
2       just do an order from today's hearing?

3                   MR. CHANDLER: Yes, ma'am. I'll just do  
4       an order. And I would propose that we distribute  
5       \$100,000.

6                   MR. HOLLER: Your Honor, on behalf of  
7       Ms. Yantis, I join in that. If for no other reason,  
8       it likely will keep us from coming back on this  
9       issue.

10                  THE COURT: Right.

11                  MR. CHANDLER: Precisely.

12                  THE COURT: And now that we've done this  
13       and we've gotten straight, and Mr. Garrett's going to  
14       get all the trust documents, for future distributions  
15       we can maybe do it by consent order, or something  
16       like that, so everyone doesn't have to drive up here.  
17       But I think it was important for the first one, at  
18       least for my comfort level, to know what's going on.  
19       Because once this money is out, I don't want somebody  
20       to bring a trust action before the court. I don't  
21       know what's going on with this. Everyone has worked  
22       so hard to corral all these assets and businesses and  
23       real properties. So I just want to make sure, as  
24       closely as I can, that it is going where it is  
25       supposed to go.

1                   And Mr. Garrett, your client was here at  
2   10 o'clock, but then I noticed he was not here for  
3   the hearing.

4                   MR. GARRETT: Yes, Your Honor. He had to  
5   leave. I apologize for that, Your Honor.

6                   THE COURT: All right. So we will  
7   approve Proposal for Distribution for what you have  
8   with the only modification that we'll increase that  
9   amount from \$10,000 to 100,000.

10                  MR. CHANDLER: Yes, ma'am.

11                  THE COURT: Does anybody have anything  
12   else?

13                  MR. CHANDLER: Your Honor, could I  
14   confirm that you want me to prepare an order allowing  
15   the estate to be administered in the normal course  
16   with these mediations and liti -- everything  
17   continuing normally, but that distributions shall not  
18   be made without court approval, and they can be by  
19   consent, but they should not be made without court  
20   approval?

21                  THE COURT: That's fine. And Mr. Garrett  
22   agreed with everything.

23                  MR. CHANDLER: I am just confirming.

24                  MR. GARRETT: I think Mr. Chandler's  
25   major concern, Your Honor, is that we have this

1       upcoming mediation on this wrongful death suit, and  
2       nobody wants to be in the situation where one of the  
3       parties consents to the settlement of the wrongful  
4       death, and that person, when it comes down to  
5       creating the order and affecting the settlement is no  
6       longer in control, and that can throw a wrench into  
7       this whole --

8               THE COURT: Well, I don't think it's  
9       going to take me long to get an order.

10              MR. GARRETT: Well, I -- Judge Dixon's  
11       order to appoint or not appoint a personal  
12       representative.

13              THE COURT: I have no control over that.

14              MR. GARRETT: Yes, Your Honor. So the  
15       concern would be that we enter into some settlement  
16       of the wrongful death suit and then at some later  
17       point Judge Dixon issues an order saying this person,  
18       Burkes or Fox, is supposed to be the PR, now we've  
19       got a signature from Mr. Chandler, is that effective?

20              MR. CHANDLER: But this is approved by  
21       the court anyway, so --

22              MR. GARRETT: If we can get it approved  
23       by the court.

24              MR. CHANDLER: I'm saying, wrongful death  
25       settlements are approved by the court anyway.

1 MS. PALMER: And I point out that a later  
2 appointment of a PR doesn't nullify anything that's  
3 been done before.

4 THE COURT: That's what I'm trying to  
5 follow, was trying to understand that. It's not  
6 retroactive back, so....

7 MR. CHANDLER: No. Thank you, Your  
8 Honor.

9 THE COURT: All right. Is there anything  
10 else?

11 MR. SHELBOURNE: Your Honor, Brandt  
12 Shelbourne on behalf of Robert Colucci. You  
13 mentioned the trust with some handwritten notes. And  
14 I don't know if the court has a copy of that or if I  
15 could ask for a copy of that. We don't have a copy.  
16 That's the first I heard of it.

17 MR. CHANDLER: I'll be happy to email it  
18 to you.

19 MR. SHELBOURNE: That would be great.

20 THE COURT: That must have been where I  
21 saw it, was that --

22 MR. CHANDLER: It was filed in the court,  
23 I'm sure. It's in there somewhere. But I have it.

24 THE COURT: This one -- like I say, this  
25 one, Judge Edwards found it, and it was not filed as

1 a standalone document, it was filed as part of an  
2 answer. So we're having to go into 700 pages of  
3 filings to try to dig out, and I just didn't have the  
4 time to get it done.

5 MR. SHELBOURNE: And that's why I haven't  
6 seen it.

7 THE COURT: And I vaguely remembered  
8 seeing it, and had to confirm with Judge Edwards and  
9 Nancy, but yeah, it had floated around at some point.

10 MR. SHELBOURNE: Mr. Chandler has offered  
11 to do that. Thank you.

12 THE COURT: You know what, Mr. Chandler?  
13 Do you mind sending a copy to us as well? And I'm  
14 going to put it in as a standalone document in case  
15 anybody ever needs to look for it.

16 Is there anything else? Mr. Lawton, did  
17 you have anything?

18 MR. LAWTON: Your Honor, at this time,  
19 no, other than I am glad to be moving this matter  
20 towards conclusion and towards resolution; both John  
21 Antonio and Michael, and I think the rest of the  
22 beneficiaries would like closure as well.

23 THE COURT: And I do want to say, the  
24 amount of work, the time consuming -- it's very time  
25 consuming, it's a very complex case, so many moving

1 parts. And the work that I've seen done has been  
2 very impressive. Ms. Yantis has done a wonderful job  
3 as conservator, and Mr. Chandler as special  
4 administrator, and all the folks around them. This  
5 was -- I just didn't even know how we were going to  
6 get here today. But here we are. So that's great.  
7 And let's see if we can get this going forward and  
8 eventually closed.

9 (The hearing is concluded at 1:56 p.m.)

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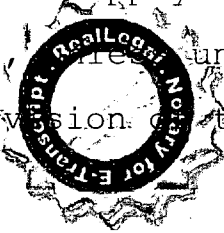
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CERTIFICATE

I HEREBY CERTIFY that the witness was duly sworn  
by me and that the deposition is a true record of the  
testimony given by the witness.

Judy W. Galuppo,  
Court Reporter/Notary Public  
Commission Expires 3/18/2023

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*Judy W. Galuppo*

PROBATE HEARING IN RE: DORIS DUANE COLUCCI  
BEFORE THE HONORABLE MARY BLUNT.  
DORCHESTER COUNTY COURTHOUSE.

February 22, 2019

ST. GEORGE, SC

PROCEEDINGS

THE COURT: Let me get us on the record.

Today is February 22, 2019. We're here today in the matter of Doris Duane Colucci, 2017-CP-06-00294.

Today's hearing is a review hearing on the temporary order restraining personal representative.

Elizabeth Palmer on behalf of Rosen and Hagood is here. She's filed as a creditor of the estate. And also we have Gordon Garrett and Jason Luck, who represent Michael Fox.

I understand your client is not present today.

MR. GARRETT: Your Honor, my client's defenses to the matter of the petitioning application are legal defenses, they're not factual defenses.

THE COURT: Just as a practical matter, though. He's personal representative and



|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <p style="text-align: right;">Page 2</p> <p>1 trustee, but he doesn't still need to be here?</p> <p>2 MR. GARRETT: No. He's just --</p> <p>3 THE COURT: You don't get to ask me</p> <p>4 questions. I'm asking you why your client's not</p> <p>5 here?</p> <p>6 MR. GARRETT: Your Honor, my client believes</p> <p>7 that his defenses to this matter are based in</p> <p>8 law.</p> <p>9 THE COURT: All right. Notice was provided</p> <p>10 by the Court, it's deemed proper. So I guess, at</p> <p>11 this point, I guess we'll turn the floor over to</p> <p>12 Ms. Palmer.</p> <p>13 MS. PALMER: Thank you, Your Honor. I would</p> <p>14 note Mr. Hammond is not here to sign his</p> <p>15 application as an exhibit. Also contact. As the</p> <p>16 Court knows, we're here on Rosen Hagood's</p> <p>17 application under code Section 63-3-607. The</p> <p>18 court personal representative. If it appears to</p> <p>19 the Court that the personal representative</p> <p>20 otherwise may take some action that would</p> <p>21 jeopardize unreasonably the applicant or of some</p> <p>22 other interested person. The Court is familiar</p> <p>23 with this matter and the parties involved.</p> <p>24 Unless the court would like additional background</p> <p>25 information.</p>                                                                                                                                                                                 | <p style="text-align: right;">Page 3</p> <p>1 We have multiple concerns. And the primary,</p> <p>2 I think, that replacing Mr. Fox, at this stage,</p> <p>3 is illogical. It would be detrimental to the</p> <p>4 estate, and it would unreasonably jeopardize the</p> <p>5 interests of everybody that is interested in the</p> <p>6 estate.</p> <p>7 In king a step back. The fact that Mr. Fox</p> <p>8 is named as personal representative does not</p> <p>9 necessarily entitle him to be involved in the</p> <p>10 administration of the estate. In ex parte Small,</p> <p>11 that's cited 59, South Carolina 43, the supreme</p> <p>12 court says that the law provides administration</p> <p>13 to the collection and distribution of assets.</p> <p>14 The rights of those distributions is according to</p> <p>15 law is the dominant right. The right of any</p> <p>16 particular person to take charge is a secondary</p> <p>17 right. If you allow him to claim, to exercise</p> <p>18 his secondary right, we believe that allowing</p> <p>19 Mr. Fox to appeal would impede and would</p> <p>20 frustrate the administration of the estate.</p> <p>21 Those are sufficient grounds to deny appointment.</p> <p>22 I submit it's sufficient grounds for restraint.</p> <p>23 This court, in its February 7th order</p> <p>24 denying Mr. Fox's administrative order, has</p> <p>25 already concluded that based on the position</p> |
| <p style="text-align: right;">Page 4</p> <p>1 consistent with the estate, changing the</p> <p>2 fiduciary, at this point, would be illogical, and</p> <p>3 very difficult to learn and understand all the</p> <p>4 management, negotiations, and issues that have</p> <p>5 been handled, and will continue to be handled.</p> <p>6 And by way of just one example. In just a</p> <p>7 matter of hours, after Mr. Fox was appointed by</p> <p>8 order of the circuit court, and then this court's</p> <p>9 order was issued restraining him, there were</p> <p>10 multiple emails concerning a piece of property to</p> <p>11 the estate. And by necessity, both Mr. Garrett</p> <p>12 and myself were on those emails. I feel certain</p> <p>13 that that type of double billing would occur for</p> <p>14 the foreseeable future; if not for the remainder</p> <p>15 of the administration of this estate, and that</p> <p>16 jeopardizes the interests of those that are</p> <p>17 interested in this estate.</p> <p>18 A second component we have is Mr. Fox,</p> <p>19 through his attorney, history of guardian of the</p> <p>20 estate. This Court as already heard testimony,</p> <p>21 and made findings, that Mr. Fox has taken</p> <p>22 measures, previously, to frustrate the</p> <p>23 administration of the estate that came into play.</p> <p>24 This fact was also set forth in that February 7th</p> <p>25 order. As a result of a claim against Mr. Ferrin</p> | <p style="text-align: right;">Page 5</p> <p>1 and myself, taking up this Court's time, and but</p> <p>2 for the Court's order awarding costs and fees,</p> <p>3 they would have been looking at about \$10,000 in</p> <p>4 expense for that. So the motion is based on that</p> <p>5 as well.</p> <p>6 Of course now he's asking the Court to</p> <p>7 reconsider the order of the motion which, I</p> <p>8 believe, creates a conflict of interest, where he</p> <p>9 could act on behalf of the estate. And then</p> <p>10 appealing an order requiring him to compensate</p> <p>11 the estate for expenses that the Court has found</p> <p>12 to be unjust that the estate has to bear.</p> <p>13 It's apparent that, if he's given the</p> <p>14 opportunity, that Mr. Fox intends to retain new</p> <p>15 lawyers to handle any future pending lawsuits.</p> <p>16 And we were informed last week, early this week,</p> <p>17 that Mr. Garrett has actually approached another</p> <p>18 attorney about handling the estate already.</p> <p>19 I believe this shows an -- with regard to</p> <p>20 dispute. The beneficiaries of the estate,</p> <p>21 Michael and John, who would receive the proceeds</p> <p>22 of that wrongful death action.</p> <p>23 These are complex cases, with multiple</p> <p>24 assets, which present a tremendous amount of</p> <p>25 discovery, spanning over the past 18 months. It</p>                       |

1 would take months for anyone coming into this to  
2 get up to speed, review the thousands and  
3 thousands of documents, the medical records, the  
4 deposition transcripts. It would be simply hours  
5 of video inside the solicitor's office. How  
6 could it be in the best interest of the estate to  
7 bring these lawsuits to a complete stop,  
8 especially from what we're hearing from attorneys  
9 for the family members, is that they desperately  
10 want this nightmarish chapter of their lives to  
11 come to a conclusion. Delaying that is not going  
12 to help anything.

13 And my partner is here today, Andrew Gowden,  
14 who is the head of my firm's personal injury  
15 practice. And he can answer any questions the  
16 Court may have about the wrongful death action  
17 and where we are.

18 I would just submit that we have made  
19 discovery. And even though we did not reach a  
20 settlement, during mediation, Mr. Howe will agree  
21 we have continued with negotiations. I want to  
22 make sure that Mr. Michael Colucci's attorney  
23 plans to follow that.

24 And another area of concern that we believe  
25 that will go to the restraint of Mr. Fox is his

1 same for them. They were so far right in social  
2 relationships, they were my best of friends as  
3 well as my clients.

4 Mr. Fox also testified in his deposition  
5 that he had visited Mr. Colucci in the nursing  
6 home facility. And we know, from the videos of  
7 the jail visitation, that he's visited him in  
8 jail. Although I don't know if he actually  
9 spoke to him in jail or not.

10 Your Honor, the evidence we believe  
11 jeopardizes the interest of everyone in this  
12 estate, someone he calls his best friends, closer  
13 to him than his own brother, who was visiting  
14 with at the time, being in charge of prosecuting  
15 these two actions, is required that we prove that  
16 he erroneously and intentionally killed Doris  
17 Colucci. And in the wrongful death action, and  
18 in benefiting Doris's two sons, both of which  
19 these actions speak to, by assets from the  
20 estate, to the benefit of Michael and John.

21 Not only does his deposition testimony show  
22 his bias, he is a applicant in both of these  
23 actions. He testified that he frequently was  
24 around the Coluccis, that he noticed that a  
25 hearing, after the death of Doris, more frequent

1 bias, which would unreasonably jeopardize his  
2 interest in the estate. Those ex parte has South  
3 Carolina 300 and in re: McClellan estate, 235  
4 South Carolina 315 clings to the proposition that  
5 it is not appropriate for a person to act as his  
6 personal representative where there's a conflict  
7 of interest.

8 Mr. Fox was deposed less than a month ago,  
9 on January 23rd, and I intended to bring a copy  
10 of his deposition and have it made as part of the  
11 record. And I would ask the Court to allow me to  
12 supplement it. I left it on my desk. But we  
13 will get you a copy of it and have that admitted  
14 into evidence.

15 THE COURT: Okay.

16 MS. PALMER: During Mr. Fox's deposition,  
17 which was January 22nd of this year, he  
18 testified, and I will tell you this, that in  
19 regards to both parties, they're talking about:  
20 I've had a friendship with Eva Colucci, and Kay  
21 Reinberg, that was closer than I had with my own  
22 brother and my family. Those two fellows were  
23 the most honest fellows in the world, and if I  
24 wanted them to do me a favor, and anything I  
25 asked of them, day or night, and I would do the

1 argument that there were finances, in fact it was  
2 prior to that.

3 So on that basis alone, Your Honor, we  
4 believe he's not fit to serve as PR, at a  
5 minimum, in the capacity of prosecuting these two  
6 lawsuits.

7 Another issue we have is the tax issue.  
8 That Mr. Fox testified to previously,  
9 extensively, and at prior hearing, and the Court  
10 has, in it's February 3rd order, makes note of  
11 that.

12 Ms. Manis states there issues with IRS are  
13 expected, given both the errors made in some of  
14 there reports made by Mr. Fox in the tax returns  
15 for the certain company. It would not be  
16 appropriate for Mr. Fox to handle those issues.  
17 And so administration of his estate would be  
18 moot. And we'll show, without wasting time and  
19 money, without double billing the estate,  
20 unnecessarily, subsection 52-1-102 mandates that  
21 should be applied with the underlying purpose and  
22 policy of probating assistant system contributing  
23 to the estate. We believe that Ms. Manis does  
24 not meet that underlying purpose. And as to  
25 53-3, we would ask that that Mr. Fox continue to

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| <p style="text-align: right;">Page 10</p> <p>1 be restrained and, at a minimum, be restrained,<br/> 2 until the conclusion of the pending lawsuit, and<br/> 3 any appeals, at which time the court could do<br/> 4 what is proper about those things.<br/> 5 Does Your Honor have any questions for me?<br/> 6 THE COURT: I don't. Thank you.<br/> 7 MS. PALMER: Thank you very much.<br/> 8 THE COURT: Mr. Garrett.<br/> 9 MR. GARRETT: May it please the Court, Your<br/> 10 Honor. I'll be very brief.<br/> 11 The court of common pleas issued an order on<br/> 12 February 13th at 8:45 of the appointment of<br/> 13 Mr. Fox as personal representative and found him<br/> 14 qualified.<br/> 15 The arguments that Ms. Palmer has presented<br/> 16 to the Court were presented to the court of<br/> 17 common pleas. There's extensive emails showing<br/> 18 that these concerns were voiced to the court of<br/> 19 common pleas. There's been no evidence showing<br/> 20 that the February 7th order was presented to the<br/> 21 court of common pleas for its consideration.<br/> 22 This Court is bound by the February 13th order.<br/> 23 The facts that Ms. Palmer has stated is<br/> 24 bound by res judicata. The only fact that she<br/> 25 has alluded to, that has emerged since the</p> | <p style="text-align: right;">Page 11</p> <p>1 issuance of this order, is a reference to several<br/> 2 emails regarding sales manage fee.<br/> 3 It's the personal representative's position<br/> 4 that the existence of those emails in no way acts<br/> 5 to disqualify Mr. Fox as the personal<br/> 6 representative.<br/> 7 Thank you, Your Honor.<br/> 8 THE COURT: Ms. Palmer, do you have anything<br/> 9 further?<br/> 10 MS. PALMER: Yes, Your Honor, briefly. The<br/> 11 court of common pleas ruled on one issue, and<br/> 12 that was the appointment of Mr. Fox. This Court<br/> 13 has not removed Mr. Fox, but it has the power to<br/> 14 do so. And Mr. Garrett argued that if this had<br/> 15 not arisen, this Court would not have the ability<br/> 16 to remove or restrain any fiduciary in the<br/> 17 estate, because there's always going to be an<br/> 18 order preceding that. Mr. Garret's client,<br/> 19 Mr. Fox, is still the named personal<br/> 20 representative.<br/> 21 I would like to point out that concerning<br/> 22 your February 7th order, to be considered by the<br/> 23 circuit court, we don't know if the circuit court<br/> 24 considered that. We submitted it on May 23rd for<br/> 25 reconsideration for the filing. The circuit</p> |
| <p style="text-align: right;">Page 12</p> <p>1 court will put that into that. Because that<br/> 2 order was provided to the circuit court in<br/> 3 connection with our motion to dismiss Mr. Fox's<br/> 4 motion to restrain Mr. Chandler, which was<br/> 5 dismissed as moot by the Court. So that was<br/> 6 never heard by the Court. To try to estop is a<br/> 7 nonargument. The same issue was necessarily<br/> 8 litigated, relied upon, and the issue of whether<br/> 9 or not Mr. Fox should be restrained is solely<br/> 10 before Your Honor. Thank you.<br/> 11 THE COURT: Mr. Garrett, anything?<br/> 12 MR. GARRETT: Just very briefly, Your Honor.<br/> 13 This court has ongoing jurisdiction, I believe.<br/> 14 And I in no way dispute that. The findings of<br/> 15 the circuit court were made on February 13th. If<br/> 16 there is fraud or waste for some action or event<br/> 17 that occurs, after the Court has made its<br/> 18 findings, certainly this Court has jurisdiction<br/> 19 to administer this case under its jurisdiction.<br/> 20 Thank you.<br/> 21 THE COURT: Anything further, Ms. Palmer?<br/> 22 Mr. Garrett?<br/> 23 MS. PALMER: No.<br/> 24 MR. GARRETT: Your Honor, I have some other<br/> 25 parties here. I would like to have the Court</p>               | <p style="text-align: right;">Page 13</p> <p>1 inquire if there are any other parties that wish<br/> 2 to speak.<br/> 3 THE COURT: Well, the hearing is filed on<br/> 4 the restraint of the personal representative,<br/> 5 which was filed by Ms. Palmer. I don't know what<br/> 6 you want anyone else to say.<br/> 7 MR. GARRETT: Then your Honor doesn't feel<br/> 8 it would be appropriate then.<br/> 9 THE COURT: I'm just trying to understand<br/> 10 procedurally what else would fit in.<br/> 11 MR. GARRETT: If Your Honor feels that the<br/> 12 individual members of the Colucci family, who are<br/> 13 beneficiaries under the trust, and not under the<br/> 14 will. So I understand the Court's position, that<br/> 15 their opinion may not be relevant at this<br/> 16 procedural --<br/> 17 THE COURT: We're here on the restraint, the<br/> 18 temporary restraint of the personal<br/> 19 representative of the estate of Doris Colucci.<br/> 20 MR. GARRETT: Yes, Your Honor. And if Your<br/> 21 Honor feels that their input would not be<br/> 22 helpful, then it would be a waste of the Court's<br/> 23 time to inquire. If the Court feels it would be<br/> 24 helpful, that's the only other point I would ask<br/> 25 consideration on.</p>                |

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| <p style="text-align: right;">Page 14</p> <p>1 THE COURT: This is so unusual to just<br/> 2 invite people to chime in. And I've never really<br/> 3 had anybody say to me: Will you ask everyone<br/> 4 else here what they think? If they want to be<br/> 5 before us, they can file something. I mean it's<br/> 6 not -- I'm just not following exactly what you're<br/> 7 saying. Maybe Ms. Palmer can enlighten me as to<br/> 8 what you're trying to do at this point.<br/> 9 MR. GARRETT: Your Honor, I would point to<br/> 10 the three affidavits that we filed with this<br/> 11 Court as additional evidence, then, and I have<br/> 12 nothing further.<br/> 13 THE COURT: Okay.<br/> 14 MR. GARRETT: Thank you.<br/> 15 MS. PALMER: Nothing further, Your Honor.<br/> 16 THE COURT: Okay. I have the three<br/> 17 affidavits that have been filed. I don't think I<br/> 18 have any other questions at this point. So thank<br/> 19 you very much. And go ahead and draft the order.<br/> 20 MS. PALMER: Thank you, Your Honor.<br/> 21 MR. GARRETT: Thank you, Your Honor.<br/> 22<br/> 23<br/> 24<br/> 25</p> | <p style="text-align: right;">Page 15</p> <p style="text-align: center;">CERTIFICATE OF REPORTER</p> <p>1<br/> 2<br/> 3 I, G. Michael Alexander, Reporter and Notary<br/> 4 Public for the State of South Carolina at large, do<br/> 5 hereby certify that the foregoing transcript is as<br/> 6 accurate, and complete, as I was able to record.<br/> 7 Given the fact that I was unable to hear, and my audio<br/> 8 backup was inadequate to pick up as accurately as I<br/> 9 had hoped, I cannot certify that this is all the<br/> 10 proceedings, as I know there is some missing. If I<br/> 11 was an official, I would certainly have recording<br/> 12 devices for everyone, and well as the judge, but being<br/> 13 that this was a rare occasion to be in, I have to<br/> 14 attest that there are parts missing.<br/> 15 I further certify that I am neither related<br/> 16 to nor counsel for any party to the cause pending or<br/> 17 interested in the events thereof.<br/> 18 Witness my hand, I have hereunto affixed my<br/> 19 official seal this 11th day of June, 2019 at<br/> 20 Summerville, Dorchester County, South Carolina.<br/> 21<br/> 22<br/> 23<br/> 24 G. Michael Alexander<br/> Professional Reporter, CSR<br/> My Commission expires<br/> May 24, 2026<br/> 25</p> |
| <p style="text-align: right;">Page 16</p> <p>1<br/> 2<br/> 3<br/> 4<br/> 5<br/> 6<br/> 7<br/> 8<br/> 9<br/> 10<br/> 11<br/> 12<br/> 13<br/> 14<br/> 15<br/> 16<br/> 17<br/> 18<br/> 19<br/> 20<br/> 21<br/> 22<br/> 23<br/> 24<br/> 25</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

# **COLUCCI LIVING TRUST**

**Name of Trust:** COLUCCI LIVING TRUST

**Date Established:** February 24, 2005

**Successor Trustees of IVO F. COLUCCI:**

DORIS D. COLUCCI  
(1) MICHAEL FOX, CPA  
(2) RICHARD M. HYMAN, JR.  
(3) EMILY SCOTT MCDANIEL

**Successor Trustees of DORIS D. COLUCCI:**

IVO F. COLUCCI  
(1) MICHAEL FOX, CPA  
(2) RICHARD M. HYMAN, JR.  
(3) EMILY SCOTT MCDANIEL

**Informal Trust Name:** COLUCCI LIVING TRUST, dated February 24, 2005

**Formal Trust Name (Title to all Assets in the Trust are Vested in this Name):**

IVO F. COLUCCI and DORIS D. COLUCCI, Trustees, or their successors in trust, under the COLUCCI LIVING TRUST, dated February 24, 2005, and any amendments thereto

**THIS SUMMARY IS NOT PART OF THE TRUST**

This  
**LIVING TRUST**  
prepared for  
**IVO F. COLUCCI**  
and  
**DORIS D. COLUCCI**

**Kuhn and Kuhn, LLC**  
**38 Broad Street, 2nd Floor**  
**Charleston, South Carolina 29401**  
**(843) 577-3700**  
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# **COLUCCI LIVING TRUST**

## **Table of Contents**

|                         |                                                              |             |
|-------------------------|--------------------------------------------------------------|-------------|
| <b>Article One</b>      | <b>Creation of Our Trust.....</b>                            | <b>1-1</b>  |
| <b>Article Two</b>      | <b>Trust Property .....</b>                                  | <b>2-1</b>  |
| <b>Article Three</b>    | <b>Trustees. ....</b>                                        | <b>3-1</b>  |
| <b>Article Four</b>     | <b>Lifetime Rights of Trustors.....</b>                      | <b>4-1</b>  |
| <b>Article Five</b>     | <b>Trust Administration at Death of First Trustor .....</b>  | <b>5-1</b>  |
| <b>Article Six</b>      | <b>Specific Distributions of Trust Estate .....</b>          | <b>6-1</b>  |
| <b>Article Seven</b>    | <b>Division into Survivor's Trust and Family Trust. ....</b> | <b>7-1</b>  |
| <b>Article Eight</b>    | <b>Survivor's Trust.....</b>                                 | <b>8-1</b>  |
| <b>Article Nine</b>     | <b>Family Trust.....</b>                                     | <b>9-1</b>  |
| <b>Article Ten</b>      | <b>Marital Trust .....</b>                                   | <b>10-1</b> |
| <b>Article Eleven</b>   | <b>Distributions to Beneficiaries .....</b>                  | <b>11-1</b> |
| <b>Article Twelve</b>   | <b>Lack of Designated Beneficiaries. ....</b>                | <b>12-1</b> |
| <b>Article Thirteen</b> | <b>Trustee Provisions.....</b>                               | <b>13-1</b> |
| <b>Article Fourteen</b> | <b>Powers of Our Trustee .....</b>                           | <b>14-1</b> |
| <b>Article Fifteen</b>  | <b>Other Trust Provisions .....</b>                          | <b>15-1</b> |

# **COLUCCI LIVING TRUST**

## **Article One**

### **Creation of Our Trust**

#### **Section 1. Parties**

Our Trust Agreement, dated February 24, 2005, is made between IVO F. COLUCCI, the Husband Trustor, also known as IVO FRANK COLUCCI, and DORIS D. COLUCCI, the Wife Trustor, also known as DORIS DUANE COLUCCI (collectively referred to as "Trustors"), and the Initial Trustees as appointed under Section 4 of Article Three.

#### **Section 2. Trust Name**

Our Trust may be referred to as the:

COLUCCI LIVING TRUST, dated February 24, 2005

The formal name of our Trust and the designation to be used for the transfer of title to the name of our Trust is:

IVO F. COLUCCI and DORIS D. COLUCCI, Trustees, or their successors in trust, under the COLUCCI LIVING TRUST, dated February 24, 2005, and any amendments thereto

#### **Section 3. Trust is Revocable**

Our Trust is a revocable trust. Our Trust is a grantor trust under the provisions of Sections 673-677 of the Code. Either the Husband Trustor's Social Security Number, 088-30-3748, or the Wife Trustor's Social Security Number, 138-36-7694, may be used as the tax identification number for our Trust.

#### **Section 4. Family Members**

Unless specifically provided otherwise in subsequent provisions of our Trust Agreement, and in expansion of the definition provisions of Section 20.c. of Article Fifteen, all references to "our children", subject to the exclusion of any child under any subsequent provision of this Section, are to all of the children so identified in this Section (including Joint, Husband's, Wife's and Deceased children) but only to those children and any children born to or adopted by us subsequent to the execution of our Trust Agreement.



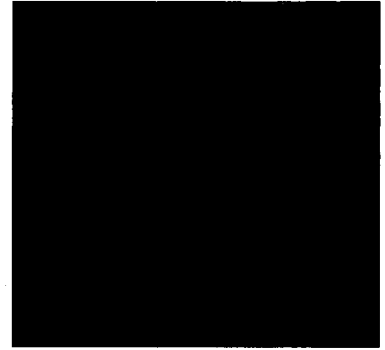
**a. Children**

The names and birth dates of our children are as follows:

Name

Birth Date

STEFAN JOHN COLUCCI  
ALICE COLUCCI NORTON  
KIM COLUCCI NIEMEYER  
WILLIAM COLUCCI  
ROBERT JOHN COLUCCI  
JOHN MARTIN ANTONIO  
MICHAEL F. COLUCCI



**b. Deceased Children**

We have no deceased children.

**c. Exclusion of Certain Descendants**

We hereby acknowledge the existence of ALICE COLUCCI NORTON and intentionally, with full knowledge, have chosen to exclude her and her descendants under the terms of our Trust Agreement, except to the extent that we leave a gift of one-hundred dollars (\$100.00) to her under our Specific Distributions in Article Six of this Trust.

We hereby acknowledge the existence of WILLIAM COLUCCI and intentionally, with full knowledge, have chosen to exclude him, but him only (and not his descendants, none of whom have been excluded), under the terms of our Trust Agreement.

**Section 5. Citizenship of Trustors**

We are both citizens of the United States of America.

## **Article Two**

### **Trust Property**

#### **Section 1. Initial Trust Property**

We hereby assign, convey, transfer and deliver to our Trustee all property set forth on Schedule "A", attached hereto, and made part of our Trust Estate. Our Trustee acknowledges receipt of all assets listed on the attached Schedule and agrees to hold, manage and distribute our Trust Estate under the provisions set forth in our Trust Agreement.

All assets titled in the name of our Trust, in the name of our Trustee, or in the name of a nominee as authorized under our Trust Agreement, but not listed on Schedule "A", shall be considered a part of our Trust Estate as if they had been set forth on the attached Schedule.

Each Trustor acknowledges and understands the nature of each Trustor's property as tenancy in common property.

#### **Section 2. Additional Trust Property**

We, or any other person or entity, may transfer or devise to our Trustee additional assets, real or personal, and may name our Trustee as the beneficiary of life insurance policies, annuities, retirement plans or similar contracts. Except where such transfer would cause the loss of a Marital Deduction, such assets, policies and proceeds, upon notice and acceptance by our Trustee, shall be a part of our Trust Estate and subject to all the terms of our Trust Agreement.

#### **Section 3. Character of Trust Property**

Concurrent with the execution of our Trust Agreement, we executed a Property Agreement identifying all of our property as being owned as tenants in common with one another. All such property transferred by a Trustor, and income thereon less withdrawals thereof, shall be such Trustor's separate Contributive Share of our Trust Estate.

#### **Section 4. Acceptance of Trust Property**

All property transferred to our Trust, and accepted by our Trustee, shall be held, administered and distributed according to the terms of our Trust Agreement.

## **Section 5. Trust Property Schedules**

The trust property transferred to our Trust is set forth on the following Schedule:

**Schedule "A" Tenancy in Common Property**

# **Article Three**

## **Trustees**

### **Section 1. Definition**

All uses of the word "Trustee" in our Trust Agreement shall be deemed a reference to the person or entity then serving as Trustee and shall include alternate or Successor Trustees or Co-Trustees (if multiple trustees are serving), unless the context requires otherwise.

### **Section 2. Trustee's Resignation**

Any Trustee may resign at any time without court approval by giving written notice to each then living and competent Trustor. If neither of us is then living and competent, written notice shall be given to our next Successor Trustee; or if there is no next Successor Trustee, to the beneficiaries then entitled to receive income or principal distributions under our Trust Agreement or their respective Personal Representatives, or if any of such beneficiaries are then minors, to the persons having the care or custody of any such minor. Such resignation shall be effective upon the appointment of a Successor Trustee.

### **Section 3. Trustee's Removal**

Any Trustee may be removed under our Trust Agreement as follows:

#### **a. Trustors Are Both Alive and Competent**

While we are both alive and competent, and if we both agree, we shall have the right to add, remove or replace any other Trustee appointed under our Trust Agreement at any time without cause.

#### **b. One Trustor Is Alive and Competent**

After the incapacity or death of one of us, the surviving, competent Trustor shall not have the power to add, remove or replace any other Trustee appointed under our Trust Agreement.

#### **c. Removal by Other than Trustors**

After the death or incapacity of both of us, a majority in interest of the beneficiaries then entitled to receive income or principal distributions from a separate trust, or their respective Personal Representatives, shall have the discretion and power to remove any serving Trustee of such separate trust at any time for cause, as defined under Section 20 of Article Fifteen. The serving

Trustee who is being removed for cause may accept such removal, or may, within thirty days of receiving written notice of removal, petition a court of competent jurisdiction for a determination as to whether sufficient cause exists for such Trustee's removal and shall continue to serve until otherwise ordered by such court.

A majority in interest of the then living income beneficiaries of any trust hereunder (in the case of a minor beneficiary, the legal guardian or natural parent of the minor beneficiary) shall have the right to remove any corporate trustee of such trust by a written instrument duly acknowledged and delivered to such corporation. Concurrent with the exercise of this right, the income beneficiaries (in the case of a minor beneficiary, the legal guardian or natural parent of the minor beneficiary) shall appoint a successor corporate trustee by a written instrument duly acknowledged and delivered to the corporation appointed successor trustee; provided, however that such corporation must be a trust company or bank possessing trust powers organized under the laws of the United States or one of the states thereof and it must have under its management a minimum of One Hundred Million Dollars (\$100,000,000) in trust assets. Upon receipt by the removed corporation of the written notice of acceptance of appointment by the successor corporation, the removed corporation shall forthwith surrender and deliver to the successor corporate trustee all of the assets in the trust estate, and the trusteeship of the removed corporation shall terminate.

**d. Notice to Removed Trustee**

Unless a serving Trustee has petitioned, or will petition within thirty days, a court as provided in the paragraph above, written notice of removal under our Trust Agreement shall be effective immediately when signed by the person or persons authorized to make the removal and delivered to our Trustee personally or within three business days after mailing by certified mail, return receipt requested. The written notice removing a Trustee shall identify the Successor Trustee appointed pursuant to the other provisions of this Article.

**e. Transfer of Trust Property**

Unless petitioning the court as provided above, the Trustee so removed shall promptly transfer and deliver to the Successor Trustee all property of our Trust under the removed Trustee's possession and control.

## **Section 4. Appointment of Trustees**

We shall serve as the Initial Trustees. If for any reason either of us is unwilling or unable to serve as Trustee while both of us are living, the other Trustor shall become sole Trustee. If for any reason both of us are unwilling or unable to serve as Trustee, then MICHAEL FOX, CPA shall serve as Successor Trustee. If for any reason MICHAEL FOX, CPA were unwilling or unable to serve as Trustee, then RICHARD M. HYMAN, JR. shall serve as Trustee. If for any reason RICHARD

M. HYMAN, JR. were unwilling or unable to serve as Trustee, then EMILY SCOTT MCDANIEL, shall serve as Trustee. Unless otherwise specified, if Co-Trustees are serving as Successor Trustee, the next following Successor Trustee shall serve only after all the Co-Trustees are unwilling or unable to serve as Successor Trustee. If for any reason all of the above named Successor Trustees are unwilling or unable to serve, then a Successor Trustee shall be appointed as provided in Section 6 of this Article.

### **Section 5. Trust(s) for Beneficiaries**

Unless otherwise provided under our Trust Agreement, if any share or trust created under our Trust is for the benefit of our beneficiaries, the then serving Trustee (the Initial Trustee or the Successor Trustee appointed under Section 4 above, as the case may be) shall act as the Trustee of such share or trust. If the list of Successor Trustees appointed under Section 4 has been exhausted, then a Trustee for such share or trust shall be appointed under the provisions of Section 6 of this Article. The above provisions may also be limited as set forth in Section 9 of this Article.

### **Section 6. No Designated and Qualified Successor Trustees**

If at any time there is no Trustee acting under our Trust Agreement and there is no person or entity designated and qualified as a Successor Trustee, a majority in interest of the beneficiaries then eligible to receive distributions of income or principal under our Trust Agreement, or their Legal Representatives, shall appoint a Successor Trustee. If any trust existing under our Trust Agreement lacks a Trustee and no successor is appointed pursuant to this Article, the vacancy shall be filled by a court of competent jurisdiction.

### **Section 7. Rights, Responsibilities and Duties of Successor Trustees**

Other than amending or revoking our Trust, or appointing or removing a Trustee, a Successor Trustee shall have the same rights, powers, duties, discretion and immunities as if named as Initial Trustee under our Trust Agreement. No Successor Trustee shall be personally liable for any act, or failure to act, of any predecessor Trustee or shall have any duty to examine the records of any predecessor Trustee. A Successor Trustee may accept the account rendered and the property delivered by, or on behalf of, a predecessor Trustee as a full and complete discharge of the duties of the predecessor Trustee without incurring any responsibility or liability for doing so.

### **Section 8. Co-Trustee's Responsibility for Acts of Other Co-Trustees**

No Co-Trustee shall be responsible for the act, omission or default of any other Co-Trustee without actual knowledge thereof.

## **Section 9. Special Co-Trustee Provisions**

The function of the Special Co-Trustee is to protect the financial resources controlled and governed by our Trust and the interests of the beneficiaries.

### **a. Appointment of Special Co-Trustee**

In the event a Special Co-Trustee is needed to act, the first Successor Trustee who is independent within the meaning set forth in Code Section 672(c) shall act as Special Co-Trustee, or if no such individual is available, a majority of the Successor Trustees designated under Section 4 of this Article, shall have the right to designate by written instrument a Special Co-Trustee who is qualified, as defined in Paragraph b. hereunder.

### **b. Qualifications of Special Co-Trustee**

A candidate for service as Special Co-Trustee must be independent and may not be related to, or be subordinate to, any member of our family or the family of any direct or indirect beneficiary. Any person who provides professional services to any one or more members of our family is not per se a prohibited person if compensation for services rendered constitutes, excluding compensation for service as Special Co-Trustee, two percent or less of his, her or its income during any calendar year.

### **c. Special Co-Trustee May Not Serve as Trustee**

Except for the special fiduciary authority given to a Special Co-Trustee, a Special Co-Trustee, including any Successor Special Co-Trustee, may not serve as a Trustee. This is in keeping with our intent and purpose that the Special Co-Trustee's only interest will be to protect the financial resources governed by our Trust Agreement and the beneficiaries thereto. It is further provided and required that the Special Co-Trustee may never have any personal financial interest in any property of our Trust or in the outcome of any transaction or any business by or for our Trust other than the payment of a fair and reasonable compensation for his, her or its services as the Special Co-Trustee. The responsibilities of the Special Co-Trustee shall be limited to the exercise of the power, duty, or discretionary authority as provided throughout our Trust Agreement. Said Special Co-Trustee shall not be concerned with, nor shall have, any authority with respect to any other aspects of administration of our Trust Estate.

**d. Special Fiduciary Authority of Special Co-Trustee**

In addition to the authority specifically given to the Special Co-Trustee under various provisions throughout our Trust Agreement, the Special Co-Trustee will have the authority to perform any one or more of the following functions to the extent that the discretionary authority of our Trustee to perform a function might constitute an act of self-dealing or might jeopardize the tax status of our Trust.

**1. Valuation**

The value of certain property of our Trust may not be readily ascertainable, for example, real estate and securities held in a closely held corporation, partnership, limited liability company or other investment or business organization. Marketable securities shall be included in this category if and to the extent that market quotations are not readily available for trades of the security in an established securities market. Whenever our Trustee's right to determine the value of this kind of property may be self-serving or may produce a possible conflict of interest or adverse taxation issues, the Special Co-Trustee is to value the property of our Trust.

**2. Voting Rights**

Whenever our Trustee's right to vote an equity interest in a corporation, partnership, limited liability company, investment trust or business trust or other entity may be interpreted as self-serving or may produce a possible conflict of interest or adverse taxation issues, the Special Co-Trustee will have the right to vote the equity interest. Voting rights will include decision making authority with regard to the sale, exchange, or liquidation of any equity interest in a closely held corporation, partnership, limited liability company, investment or business trust or other entity.

**3. Life Insurance Policies**

Whenever our Trustee's rights as to the control and maintenance of a life insurance policy or any interest in a life insurance policy could result in the inclusion of the proceeds of the policy in the estate of the insured for tax purposes, decision making with regard to a life insurance policy or interest in a policy is to be made by the Special Co-Trustee.

**4. Discretionary Distributions of Trust Income and Principal**

To the extent our Trustee has the discretionary authority to make distributions of income or principal to or among beneficiaries or to retain all or any part of the income, and to the extent this



discretionary authority may result in, or appear to be, a conflict of interest or an opportunity for self-dealing or may produce adverse tax consequences, the Special Co-Trustee is to make all decisions with regard to the discretionary distributions of income and principal and the retention of income.

#### **5. Gifting Powers**

To the extent our Trustee has the authority to make gifts of income or principal to such Trustee and to the extent this authority to gift may result in, or appear to be, a conflict of interest or an opportunity for self-dealing or may produce adverse tax consequences, the Special Co-Trustee is to make all decisions with regard to any gifts made to such Trustee.

#### **6. Property Located In Another Jurisdiction**

The Special Co-Trustee may appoint an Ancillary Trustee to control and administer property located in another jurisdiction.

### **e. Amendment Powers**

#### **1. Changes in Law or Beneficiary Circumstances**

The Special Co-Trustee may, from time to time, amend our Trust Agreement, including any subtrust created hereunder, to address changes in federal or state law, or other circumstances which may affect our Trust and its beneficiaries or to delete provisions rendered obsolete due to changes in law or beneficiary circumstances. In exercising such power, the Special Co-Trustee shall consider the overall best interest of the present and future beneficiaries and shall be guided by what the Special Co-Trustee believes, in his or her discretion, would have been our intent in light of such changed circumstances.

#### **2. Repeal of Federal Death Taxes**

In the event of the repeal of the federal estate tax and generation-skipping transfer tax (as currently set forth in Chapters 11 and 13 of the Code) after the death or disability of both of us, the Special Co-Trustee may terminate our Trust Agreement, or any subtrust created hereunder, by distributing the trust principal to our living descendants in whatever proportion the Special Co-Trustee deems appropriate. In exercising such power, the Special Co-Trustee shall, in addition to the factors set forth in the preceding paragraph, consider the following:

- A. The enactment of any federal income, capital gains or other tax which would impact adversely on, or offset, the tax benefits of any proposed trust or subtrust termination;
- B. The benefits afforded to the beneficiaries by the continuation of our Trust, such as protection against the claims of judgment creditors, divorcing spouses, and insulation from the reach of governmental agencies; and
- C. The likelihood of re-enactment of a federal estate, gift, or generation-skipping transfer tax or comparable tax which would subject our Trust Estate to the imposition of such tax or taxes in the hands of, or upon lifetime or testamentary transfers by, the beneficiaries to whom our Trust Estate would have been distributed upon termination.

**f. Consultation**

Our Trustee is authorized to consult with the Special Co-Trustee as to any matter relating to the investment of assets, discretionary distributions and the use of principal, tax matters, dealings with the beneficiaries, and any other matter relating to the administration of our Trust in keeping with the objectives and purpose of this Trust Agreement. Our Trustee will not be liable for any act or omission to act if acting according to the written instructions of, or with the written consent of, the Special Co-Trustee.

**g. Accounting and Transaction Reports**

The Special Co-Trustee will have the authority to receive and review any and all accounting reports, records, tax returns, transaction reports and ownership records concerning our Trust. All records of our Trust must be open for inspection at all reasonable times by the Special Co-Trustee.

**h. Resolution of Disputes**

The Special Co-Trustee may unilaterally resolve any dispute, claim or conflict between beneficiaries, including those who have, or claim to have, a present or future interest in property, between a beneficiary and a trustee, or between trustees. Such resolution shall be binding on all parties to our Trust and shall not be subject to review.

No one may file or instigate a claim in a court of law without first submitting the claim to the Special Co-Trustee for resolution together with detailed supporting information and a detailed supporting memorandum of law. In the event the

Special Co-Trustee finds the supporting information or memorandum of law insufficient, the Special Co-Trustee may request such additional information as the Special Co-Trustee reasonably feels necessary to resolve such claim. The Special Co-Trustee may employ, and may act upon the advice of, legal counsel in making a resolution of any issue of fact and law. The Special Co-Trustee may submit the claim or dispute for mediation and/or binding arbitration. Subsequent to his or her review, the Special Co-Trustee may give any claimant the authority to file and maintain an action in a court of law. Whenever a dispute, conflict, or claim involves an interpretation or construction of our Trust Agreement, the Special Co-Trustee may file an action in a court of competent jurisdiction for the interpretation and construction of such Trust Agreement, or the Special Co-Trustee may instruct our Trustee to do so.

**i. Business Judgment**

The Special Co-Trustee is permitted and authorized to exercise "Business Judgment" in the course of service in the capacity of Special Co-Trustee. The Special Co-Trustee will not be liable for any act or omission to act unless it is conclusively established that the act or omission to act was motivated by an actual intent to harm our Trust or a beneficiary of our Trust or is an act of self-dealing for personal pecuniary benefit. Our Trust will pay or reimburse the costs of defending and/or settling any claim made against the Special Co-Trustee unless it is conclusively established that the Special Co-Trustee's conduct was motivated by an actual intent to harm our Trust or a beneficiary of our Trust. All provisions of our Trust Agreement that limit the liability of our Trustee will likewise apply in limiting the liability of the Special Co-Trustee.

**j. Authority of Successor Special Co-Trustee**

A Successor Special Co-Trustee will have all of the authority and duties of the Special Co-Trustee by original appointment, but will not be responsible for the acts, or omissions to act, of his, her, or its predecessor.

**k. Compensation**

A Special Co-Trustee may receive reasonable compensation as an expense of administration. The Special Co-Trustee is entitled to reasonable reimbursement for expenses and costs incurred on behalf of our Trust. Payment of compensation shall be from the funds of our Trust.

**l. Bond**

Unless otherwise required in written articles of appointment, the Special Co-Trustee will serve without the requirement of bond or other security.

## **Article Four**

### **Lifetime Rights of Trustors**

#### **Section 1. Income and Principal**

##### **a. Right to Trust Income and Principal**

During our joint lifetimes, our Trustee shall pay to, or apply for the benefit of, a Trustor, all or such part of the income and principal of such Trustor's respective Contributive Share as such Trustor may direct.

##### **b. Trustee Liability**

Upon any distribution of the income or principal of a Trustor's Contributive Share of our Trust Estate authorized or directed by such Trustor, our Trustee shall incur no liability to the other Trustor in respect to such distribution; shall be under no obligation to seek the approval, verification, or the concurrence of the other Trustor to such distribution; and shall have no responsibility for the application of any distribution made in the name of a Trustor.

##### **c. Accounting**

Our Trustee shall retain reasonable records sufficient under the circumstances to enable tracing of the property of each Contributive Share.

#### **Section 2. Incapacity of a Trustor**

##### **a. Intent to Return Home**

Notwithstanding any other provision of our Trust Agreement, as a notification to any governmental benefits provider, if a Trustor becomes incapacitated it is conclusively presumed that such Trustor intends to return home.

##### **b. Distribution of Income and Principal**

Our Trustee, during any period of a Trustor's incapacity, shall pay to such Trustor's Personal Representative, or apply for such Trustor's benefit, as much of the net income and principal of such Trustor's Contributive Share as our Trustee, in our Trustee's discretion, shall deem necessary or advisable. Any undistributed net income shall be added to principal.

**c. Distribution of Income and Principal for Non-Incapacitated Trustor and Dependent Children**

After making payments authorized under Section 2.b. of this Article, during any period of such Trustor's incapacity, our Trustee shall pay to, or apply for the benefit of, the other Trustor, and any child of the incapacitated Trustor who our Trustee, in our Trustee's discretion, deems dependent on the incapacitated Trustor, as much of the incapacitated Trustor's Contributive Share as our Trustee, in our Trustee's discretion, shall deem necessary or advisable, from time to time, for such other Trustor and any dependent child's health, education, maintenance or support, taking into consideration their other income and resources. Any undistributed net income shall be added to principal. Any distribution for a child shall first be distributed to the other Trustor, for use for any such child.

**Section 3. Right to Amend or Revoke Trust During Life and at Death**

**a. Power to Revoke and Amend While Both Are Living**

While both of us are alive, we may at any time or times amend any provision hereof or revoke our Trust in whole or in part, provided, however, that each of us shall only hold the powers to amend or revoke as to each Trustor's respective Contributive Share of our Trust Estate; and each Trustor shall have the power to partition our Trust into separate trusts consisting of each Trustor's respective Contributive Share.

**b. Power to Revoke and Amend After Death of First Trustor**

Upon the death of the first of us, the Family Trust and the Marital Trust, if any, and any subtrusts created under the Family Trust and Marital Trust shall become irrevocable and shall not be subject to amendment or revocation. The Surviving Trustor may at any time or times amend or revoke any provision of the Survivor's Trust, in whole or in part, as to the Surviving Trustor's Contributive Share of our Trust Estate and any portion of the Deceased Trustor's Contributive Share subject to a general power of appointment by the Surviving Trustor.

**c. Method to Revoke or Amend During Life**

Any allowable amendment or revocation of our Trust Agreement made during a Trustor's life shall be by a written instrument signed by the Trustor making the revocation or amendment and delivered to our Trustee. A copy of the instrument making the amendment or revocation as to a Trustor's Contributive Share shall also be delivered to the other Trustor.

**d. Trustee Consent**

Any exercise of a power of amendment substantially affecting the duties, rights

and liabilities of our Trustee shall be effective upon our Trustee only if agreed to by our Trustee in writing.

**e. Delivery of Property After Revocation**

After any revocation with respect to a Trustor's Contributive Share, our Trustee shall promptly deliver the trust property to the Trustor or Trustors to the extent of each Trustor's Contributive Share of our Trust Estate.

**f. Trustee's Retention of Assets Upon Revocation**

In the event of a revocation of all or a part of a Trustor's respective Contributive Share, our Trustee shall be entitled to retain sufficient assets from such Trustor's Contributive Share to reasonably secure the payment of liabilities our Trustee has lawfully incurred in administering the revoking Trustor's Contributive Share of our Trust unless either of us indemnify our Trustee against loss or expense.

**Section 4. Exercise of Trustors' Rights and Powers by Others**

Any right or power that either Trustor may exercise under the terms of this Trust Agreement other than (i) an amendment by Will, or (ii) any right or power that would constitute a general power of appointment if held by an Attorney-in-Fact, over such Trustor's respective Contributive Share may be exercised for and on behalf of such Trustor by any Attorney-in-Fact who, at the time of the exercise, is duly appointed and acting for such Trustor under a valid and enforceable Power of Attorney executed by such Trustor. Only if no such Attorney-in-Fact is then available may a Personal Representative appointed by a court of competent jurisdiction exercise such right or power.

Other than as provided in this Section, the powers of any Trustor under our Trust Agreement are personal to such Trustor and may not be exercised by any other person or entity.

**Section 5. Property Held as Nominee**

Subject at all times to the principle of our Trust Agreement that each Trustor's Contributive Share represents a segregated share of our Trust Estate, for administrative convenience it is contemplated that certain assets may be added to our Trust Estate from time to time with the possession and control thereof retained by or redelivered to us. Notwithstanding such control or redelivery, such assets shall be assets of our Trust Estate and held by us as the nominees of our Trustee. During the period such assets are in our possession, they shall be subject to the following terms and conditions:

- a. We may receive directly and devote to our own use and benefit any dividends, interest, income, or proceeds or distributions from or upon such assets, and neither we nor our Trustee shall have any duty of accounting to the other or to any other person with regard thereto.

- b. Any sale, exchange or other transfer of such assets by us shall constitute a withdrawal of such assets from our Trust Estate, and our Trustee shall have no further interest therein or duties with regard thereto. Though not a condition precedent to any such withdrawal, we agree to notify our Trustee of all such withdrawals.
- c. We shall be responsible for reporting the income from such assets to the appropriate taxing authorities, and our Trustee shall have no responsibility for including such income on any fiduciary returns prepared by our Trustee or for the preparation of any other government filing with respect thereto unless we duly notify our Trustee of such income items and a full and adequate accounting thereof is made and presented to our Trustee.
- d. We shall protect and indemnify our Trustee against all losses, liabilities and expenses that may result directly or indirectly from our use, possession, management or control of such assets.
- e. Upon the death or incapacity of either of us, our Trustee shall remain entitled to the possession thereof and shall continue to have all the rights, powers and duties with respect to such assets that are granted to our Trustee herein. Our Trustee is not responsible for assets held by us as nominee. However, it is also understood that our Trustee shall use any reasonable and prudent means to secure possession of any trust assets of which our Trustee has knowledge. Our Trustee shall have no duty, accountability or responsibility to us or to any other person with respect to any assets of which our Trustee has no knowledge or of which our Trustee is unable to obtain possession and control.

## **Section 6. Government Assistance and Medicaid Planning**

### **a. General Planning Authority**

If at any time during our joint lifetimes either or both of us become incapacitated, our Trustee shall have the power to deal with governmental agencies and to make applications for, receive and administer benefits on behalf of the Trustors, including but not limited to, Social Security, Medicare, Medicaid, Supplemental Security Income, In-Home Support Services, and any other government resources and community support services available to the elderly or incapacitated. Our Trustee shall also cooperate in government assistance and Medicaid planning initiated by such incapacitated Trustor's Attorney-in-Fact appointed under a Durable Power of Attorney; or, if none, with any Personal Representative that may be appointed by a court of competent jurisdiction. Such planning shall include, but is not necessarily limited to, the power and authority to:

- 1. Transfer ownership of the assets of our Trust Estate from our Trust back to ownership in the name(s) of the

contributing Trustor(s):

2. Make home improvements and additions to our family residence;
3. Pay off, partly or in full, the encumbrance, if any, on our family residence;
4. Purchase a family residence, if we do not own one;
5. Purchase a more expensive family residence;
6. Purchase an annuity under the guidelines provided by HCFA Transmittal No. 64 or any successor guidelines issued by the Centers for Medicare and Medicaid Services or similar government agency;
7. Make gifts as directed by the incapacitated Trustor's Attorney-in-Fact;
8. Make payments under any care contract negotiated by the incapacitated Trustor's Attorney-in-Fact; and
9. Make payments as generally suggested as part of a "spend-down" program by the incapacitated Trustor's Attorney-in-Fact.

In exercising the above powers, our Trustee shall take into consideration that our primary concern shall be for our mutual welfare and all government assistance and Medicaid Planning shall be of secondary importance to our welfare.

**b. Creation of Community Spouse Resource Allowance Trust**

If either of us makes an application for Medicaid (such Trustor hereinafter referred to as the "Institutionalized Trustor"), our Trustee may segregate, and thereafter hold and administer a separate trust hereunder for the use and benefit of the non-incapacitated Trustor (hereinafter referred to as the "Community Trustor"). Such trust shall consist of all assets of our Trust Estate that may be lawfully included within the "Community Spouse Resource Allowance" or similar allowance or deduction to which the Community Trustor is entitled under the provisions of the Medicaid program as administered by the applicable agency of our state of residency. Such separate trust shall be referred to as the "Community Spouse Resource Allowance Trust" (hereinafter referred to as the "CSRA Trust"). In determining the amount of our Trust Estate included in the CSRA Trust, our Trustee shall:

1. Ascertain from the government agency which administers



Medicaid in our state of residency the standard value of the Community Spouse Resource Allowance; and

2. Determine whether the Community Trustor is entitled to have additional assets classified within the Community Spouse Resource Allowance for the purpose of providing additional income to the Community Trustor to make up any shortfall between the Community Trustor's actual income and the minimum income to which the Community Trustor may be entitled under the Medicaid program as administered by the applicable agency of our state of residency, sometimes referred to as the "Community Spouse Need Standard" (CSNS) or "Minimum Monthly Maintenance Needs Allowance" (MMMNA).

**c. Administration and Distribution of CSRA Trust**

All of the terms, conditions, and provisions of our Trust Agreement shall be applicable to the administration and distribution of the net income and principal of the CSRA Trust except as follows:

1. If the Institutionalized Trustor has not previously resigned as a Co-Trustee of our Trust, or has not previously been determined to be incapacitated and unable to perform the duties of a Co-Trustee, as set forth elsewhere in our Trust Agreement, upon making an application for Medicaid, the Institutionalized Trustor shall not serve as a Trustee or Co-Trustee over any trust established under our Trust Agreement. The Institutionalized Trustor shall have no power to amend or revoke our Trust, nor to remove or add trustees to serve under our Trust Agreement;
2. None of the net income or principal of the CSRA Trust shall be distributed to or for the benefit of the Institutionalized Trustor during the lifetime of the Community Trustor;
3. Should the Community Trustor predecease the Institutionalized Trustor, the undistributed net income and principal of the CSRA Trust shall be distributed to the person or persons who would have been entitled thereto had the Institutionalized Trustor predeceased the Community Trustor, unless the laws that at such time are applicable to the Medicaid program as administered by the applicable agency of our state of residency impose a legally enforceable lien or charge against such trust assets so that the Community Spouse may not lawfully direct that the

same be distributed to others free and clear of such lien, or the provisions of such laws unconditionally require any distributees of the CSRA Trust to pay such assets over in whole or in part as reimbursements to such state agency, in either of which events that portion of the undistributed net income and principal of the CSRA Trust required to satisfy the lien or relieve the distributees from such liability for payment of reimbursements shall be so applied, and the remainder, if any, of such undistributed net income and principal shall be distributed to the beneficiaries as hereinabove provided. For purposes of the distribution provisions under Articles Six through Twelve of our Trust Agreement, the allocation of assets from the Institutionalized Trustor's Contributive Share to the CSRA Trust shall not change the character of such assets.

## **Article Five**

### **Trust Administration at Death of First Trustor**

#### **Section 1. Trustor's Testamentary Power of Appointment**

Subject to any payments required under Section 3 of this Article, upon the death of the First Trustor, our Trustee shall distribute that portion of our Trust Estate comprising the Deceased Trustor's Contributive Share, if any, including the trust principal and accrued and undistributed income, to any person or entity and upon any trust terms and conditions, as the Deceased Trustor shall appoint by the Deceased Trustor's Will or codicil, or by any other written instrument filed with our Trustee prior to the Deceased Trustor's death and specifically referring to and exercising this testamentary general power of appointment. This power of appointment shall be exercisable by the Deceased Trustor alone and in all events. Our Trustee may rely upon any instrument that our Trustee, in good faith, believes to comply with the provisions above in carrying out the terms of this power of appointment and shall not be liable for any good faith act in reliance upon that Will, codicil, or other written instrument even if for any reason it is later determined to be invalid with respect to its purported exercise of this power of appointment. If our Trustee receives no notice, within six (6) months after the death of the First Trustor, of the existence of a Will or codicil of the Deceased Trustor that exercises this power of appointment, our Trustee may distribute our Trust Estate as though this power of appointment had not been exercised and shall be conclusively presumed to have acted in good faith even if a valid Will or codicil exercising this power is thereafter discovered.

#### **Section 2. Immediate Distribution of Specific Devises**

As soon as practicable after the death of the First Trustor, our Trustee shall make certain distributions from the Deceased Trustor's Contributive Share in the manner and amounts and to the persons and/or entities specified in Article Six of our Trust Agreement. The remainder of the Deceased Trustor's Contributive Share, after all the foregoing distributions have been made, and including any lapsed gifts (unless otherwise stated in Article Six), shall be held, administered and distributed as set forth in Section 3 of this Article.

#### **Section 3. Creation, Administration and Distribution of Administrative Trust Upon and After Death of First Trustor**

Upon the death of the First Trustor, our Trust Estate, including any additions thereto by reason of such death of the First Trustor, shall thereafter be known as the "Administrative Trust". Our Trustee shall:

- a. Pay all expenses, debts, claims and taxes from the Administrative Trust as provided in Section 4 of this Article;

- b. Distribute that portion of the Administrative Trust consisting of any property effectively appointed pursuant to the provisions of Section 1 of this Article (the "Appointed Property"); and
- c. Distribute the remainder of the Administrative Trust (the "Remainder Property") as provided under the Articles that follow.

Our Trustee may distribute the Appointed Property and allocate the Remainder Property in a single distribution or allocation or in a series of partial distributions or allocations. If an allocation is to be made to one or more trusts, then until full allocation has been made to any such trust, the Trustee of the Administrative Trust may pay to any beneficiary of such trust such amounts of income and/or principal as are consistent with the terms of such trust. Such payments shall be in lieu of, and thus credited toward, the income and/or principal remaining to be allocated to such trust. No payment shall be made to any beneficiary of any trust which exceeds the amount of income and/or principal then remaining to be allocated to such trust as provided herein, nor shall any payment of income and/or principal be made to any beneficiary of any trust which exceeds the amount which might properly be distributed to such beneficiary at that time under the terms of such trust. No payment shall be made to the Surviving Trustor and credited toward any amount which would otherwise be allocated to the Marital Trust, if any, if such payment involves trust assets which are prohibited from being allocated to the Marital Trust under the provisions of Article Seven.

#### **Section 4. Payment of Expenses, Debts, Claims and Taxes**

Unless other provisions for payment have been made, our Trustee shall pay the Deceased Trustor's following expenses, debts, claims and taxes:

- a. Final medical expenses and all funeral costs;
- b. Legally enforceable claims against the Deceased Trustor;
- c. Reasonable expenses of the administration of our Trust, including those attributable to the Deceased Trustor's Contributive Share and the Deceased Trustor's Probate Estate or those attributable to the distribution of any bequest;
- d. Any allowances mandated by a court of competent jurisdiction to those dependent upon the Deceased Trustor;
- e. Any estate, inheritance, succession, generation-skipping transfer tax, or similar taxes payable by reason of the death of the first of us; and
- f. Any penalties or interest on any of the above expenses, claims, debts or taxes owed by the Deceased Trustor or the Deceased Trustor's Probate Estate.

## **Section 5. Source of Payment of Death Taxes, Claims and Expenses**

### **a. Payment Out of Trust Property**

Except as specifically provided for elsewhere in our Trust Agreement, all Death Taxes, claims and expenses payable under the provisions of this Article may be paid by our Trustee out of the Deceased Trustor's Contributive Share of the Administrative Trust. Such payments may be allocated, partly or wholly, in our Trustee's discretion, to income or principal, keeping in mind the provisions of Treasury Regulation Section 20.2056(b)-4(d)(1)(ii).

### **b. Exception for Trust Retirement Assets**

The provisions of Paragraphs h. and i. of Section 1 of Article Fifteen shall control the payment of all Death Taxes, claims and expenses attributable to Retirement Plan Death Benefits payable to our Trustee as the result of the death of the First Trustor.

### **c. Exception for Property Passing Outside of Trust**

All Death Taxes, claims and expenses attributable to assets passing outside of our Trust or the Deceased Trustor's Probate Estate shall be assessed against those persons receiving such property. Notwithstanding the preceding sentence, our Trustee may, in our Trustee's discretion, pay all or part of that portion of the Death Taxes, claims and expenses attributable to assets passing outside of our Trust that would otherwise be chargeable against a beneficiary's interest in such outside property using funds provided by such beneficiary, funds from such beneficiary's share of our Trust Estate, or both.

### **d. Payment from Surviving Trustor's Contributive Share**

Those administration costs allocable to the Surviving Trustor's Contributive Share shall be charged against the Survivor's Trust, as hereinafter defined. To the extent the Survivor's Trust includes any interest in Community Property, debts allocable against Community Property shall be charged against the various trusts in accordance with the state law in effect at the date of the Deceased Trustor's death, but the charges against the Survivor's Trust shall not exceed the value of Community Property allocable to the Survivor's Trust.

## **Section 6. Apportionment of Expenses, Claims, Taxes and Liabilities**

Unless specifically directed otherwise by another separate provision of our Trust Agreement, all expenses, claims, share of the taxes and liabilities attributable to any specifically distributed property shall be apportioned to the beneficiaries of such specific distributions. Any distribution of specific trust property under our Trust Agreement shall pass subject to all liens, mortgages or encumbrances attributable thereto.

## **Section 7. Exceptions to Apportionment of Death Taxes**

### **a. No Apportionment of Death Taxes to Property Qualifying for Marital or Charitable Deduction**

Notwithstanding any provision in our Trust Agreement to the contrary, it is our intent that no Death Taxes shall be apportioned to, or against, any part of our Trust Estate, or any beneficiary thereof, which qualifies for the federal estate tax Marital or Charitable Deduction.

### **b. Apportionment to Exempt and Non-Exempt Trusts**

Death Taxes chargeable among trusts hereunder that are substantially identical except that one trust is exempt and the other trust is non-exempt shall be charged first to the Non-Exempt Trust until exhausted and then to the Exempt Trust. The preceding sentence shall not apply to the extent that charging and paying such taxes as provided in such sentence increases the Inclusion Ratio of any Exempt Trust hereunder.

## **Section 8. Payment by Trustee or Personal Representative**

Our Trustee, in our Trustee's discretion, may make distributions authorized under this Article either directly to the person or entities to whom payment is owed or to the Personal Representative of the Deceased Trustor's probate estate. Written statements by the Deceased Trustor's Personal Representative that such sums are due and payable by the estate shall be sufficient evidence of their amount and propriety for the protection of our Trustee. Our Trustee shall be under no duty to see to the application of any such payments made to the Deceased Trustor's Personal Representative.

## **Section 9. Tax Elections**

If no Personal Representative has been appointed with regard to the payment of any income tax, gift tax, estate tax, inheritance tax, generation-skipping transfer tax or any other tax due because of the death of the first of us, our Trustee shall have the right to make any available elections allowed under the law or to sign and file any tax return. If a Personal Representative has been appointed, the Personal Representative shall have such rights and duties.

## **Section 10. Termination of Administrative Trust**

The Administrative Trust shall be deemed terminated when all of the assets of the Administrative Trust have been paid or distributed in accordance with the provisions of Section 3 of this Article, except for a reasonable amount which is set aside for the payment of unascertained or contingent liabilities and expenses (excluding any claim by a beneficiary in his or her capacity as such).

## **Article Six**

### **Specific Distributions of Trust Estate**

#### **Section 1. Distributions Other Than as Provided Under Article Six**

Except for the distributions directed in the following Sections of this Article Six, all distributions of our Trust Estate shall be made in accordance with the Articles that follow.

#### **Section 2. Disposition of Tangible Personal Property by Separate Writing**

If at the death of the first Trustor to die, the Trust Estate shall be comprised, other than any specific devises provided for under this Article, of tangible articles of a personal nature of that Trustor, such as jewelry, clothing, household furniture and furnishings, musical instruments, books, pictures, paintings, objects of art, silverware and silver pieces, rugs, linen, automobiles and the like, then such assets shall be distributed, to the extent permitted by state law, according to the provisions of a written instrument signed by that Trustor and delivered to our Trustee. To the extent that all such property is not effectively disposed of by such written instrument or in the event that Trustor fails to execute such written instrument directing the distribution of such tangible personal property, then our Trustee shall distribute such assets, according to the other provisions of this Trust.

If at the death of the surviving Trustor, the Trust Estate shall be comprised, other than any specific devises provided for under this Article, of such tangible articles of a personal nature of either of the Trustors, then such assets shall be distributed, to the extent permitted by state law, according to the provisions of a written instrument signed by the Trustors and delivered to our Trustee. To the extent that all such property is not effectively disposed of by such written instrument or in the event we fail to execute such written instrument directing the distribution of our tangible personal property, then our Trustee shall distribute such assets with the remainder of the Trust Estate as if it had been an original part thereof. With respect to any property to which a minor child shall become entitled under this Section, our Trustee may, in our Trustee's reasonable discretion deems such property unsuitable for such minor's use, sell such property and add the proceeds from such sale to such minor child's share of the Trust Estate. Any such property which our Trustee, in our Trustee's reasonable discretion, shall deem suitable for such minor's use shall be delivered either (I) without bond to the Guardian of the person of such child, or if there is no such Guardian, any suitable person who has the care or control of such child, or (II) directly to such child if, in our Trustee's judgment, such minor child is of maturity to properly administer such property. Notwithstanding any other provision of our Trust Agreement, property distributed under this Section shall not be subject to apportionment and/or payment of any estate, inheritance or other death taxes.

### **Section 3. Specific Distribution Not Part of Contributive Share**

If the property making up any specific distribution set forth in this Article is not a part of the Contributive Share of the indicated Deceased Trustor at the time such specific distribution is directed to be made, and will not become a part thereof within a reasonable time, our Trustee shall disregard that specific distribution.

### **Section 4. Specific Gifts**

Upon the death of the designated Trustor(s), our Trustee shall make the following specific distributions of trust property. If the designated Trustor is the first of the Trustors to die, except where the distributions under this Section would otherwise qualify for the federal estate tax Marital or Charitable Deduction, the specific distribution of trust property shall be made from the Contributive Share of the designated Trustor, which would otherwise have been allocated to the Family Trust.

#### **a. Specific Distribution of Cash to ALICE COLUCCI NORTON**

Upon the death of IVO F. COLUCCI and DORIS D. COLUCCI, our Trustee shall distribute one-hundred dollars (\$100.00) to ALICE COLUCCI NORTON, free of trust. THIS IS OUR ONLY GIFT OR DISTRIBUTION TO OUR DAUGHTER, ALICE COLUCCI NORTON, AND HER FAMILY. If such beneficiary should die prior to the time that this distribution is directed to be made, this gift shall lapse and our Trustee shall administer this specific distribution in accordance with the Articles that follow. This specific distribution shall be free and clear of all expenses, claims, liens, encumbrances and taxes relative to this specific distribution. In addition to other exonerations of this specific distribution, if any, this specific distribution shall bear no Death Taxes.

#### **b. Specific Distribution of Real Estate to JOHN MARTIN ANTONIO**

Upon the death of IVO F. COLUCCI and DORIS D. COLUCCI, our Trustee shall distribute 120 Duane Lane, Summerville, South Carolina and one acre of land surrounding the house to JOHN MARTIN ANTONIO, free of trust. If such beneficiary should die prior to the time that this distribution is directed to be made, this gift shall lapse and our Trustee shall administer this specific distribution in accordance with the Articles that follow. This specific distribution shall be free and clear of all expenses, claims, liens, encumbrances and taxes relative to this specific distribution. In addition to other exonerations of this specific distribution, if any, this specific distribution shall bear no Death Taxes.



## **Article Seven**

### **Division into Survivor's Trust and Family Trust**

#### **Section 1. Division of Remainder Property**

Upon the death of the first of us, our Trustee shall allocate and distribute the Remainder Property into two separate trusts to be identified as the Survivor's Trust and the Family Trust.

**a. Surviving Trustor's Property Transferred to Survivor's Trust**

The Survivor's Trust shall consist of the Surviving Trustor's Contributive Share of the Remainder Property held by our Trustee.

**b. Deceased Trustor's Property Transferred to Survivor's Trust**

The Survivor's Trust shall also consist of the balance of the Deceased Trustor's Contributive Share of the Remainder Property not transferred to the Family Trust.

**c. Administration of Survivor's Trust**

The Survivor's Trust shall be held, administered and distributed according to the provisions of Article Eight of our Trust Agreement.

**d. Deceased Trustor's Property Transferred to Family Trust**

The Family Trust shall consist of the fractional share of the Deceased Trustor's Contributive Share of the Remainder Property that can be allocated to a trust that does not qualify for the federal estate tax Marital or Charitable Deduction to any extent, without producing any federal estate tax at the Deceased Trustor's death, after taking into account all factors relevant to this estate tax objective, including but not limited to:

1. All deductions claimed and allowed in determining the estate tax payable by reason of the Deceased Trustor's death;
2. The net value of all other property, whether or not it is given under our Trust Agreement and whether it passes at the time of the Deceased Trustor's death or has passed before the Deceased Trustor's death to or in trust for any person or entity, that is included in the Deceased Trustor's gross estate and does not qualify for the federal estate tax Marital Deduction;

3. All credits allowed for federal estate tax purposes other than any credit allowable under Code Section 2011, unless and to the extent that death tax would be payable to the state or states regardless of the federal credit, as long as no credit that results in disallowance of the Marital Deduction is taken into account in determining the size of the Survivor's Trust.

Notwithstanding the above, the Special Co-Trustee shall have the discretion to decrease the fractional share allocated to the Family Trust by such amount necessary to entirely eliminate (or reduce to the maximum extent possible) the combined federal and state estate tax at the Deceased Trustor's death.

**e. Administration of Family Trust**

The Family Trust shall be held, administered and distributed according to the provisions of Article Nine of our Trust Agreement.

## **Section 2. Allocation and Valuation of Assets**

In allocating assets between the Survivor's Trust and the Family Trust, our Trustee may allocate the trust assets between such trusts in cash or in kind, or partly in each. In effectuating the actual division of trust assets, our Trustee may allocate individual assets on a non-pro rata basis and in undivided interests; subject, however, to the following:

**a. Qualification for Marital Deduction**

It is our intention to have that portion of the Survivor's Trust consisting of the Deceased Trustor's Contributive Share, after any and all reductions due to the use of a disclaimer by the Surviving Trustor as described below, qualify for, and take full advantage of, the federal estate tax Marital Deduction under Code Sections 2056 and 2056A and the Treasury Regulations thereunder or any corresponding or substitute provisions applicable to our Trust Estate. Our Trustee is instructed to take all reasonable actions to qualify the Survivor's Trust property for the estate tax Marital Deduction, including assisting in or making any election regarding qualified terminable interest property and/or qualified domestic trust property, and in no event shall our Trustee take any action or have any power that will impair the Marital Deduction. All provisions regarding the Survivor's Trust shall be interpreted to conform to this primary objective. Notwithstanding anything herein contained to the contrary, even though the Trustors have stated their intent to qualify the Survivor's Trust for the Marital Deduction, we have a further objective to minimize taxes under our Trust. With that objective in mind, should circumstances dictate, our Trustee shall have the discretion to elect less than all of that portion of the Survivor's Trust consisting of the Deceased Trustor's Contributive Share for the Marital Deduction if such election will be in our best interest and will result in tax savings to the aggregate assets of both of us under our Trust Agreement.

**b. Valuation of Assets Allocated Between Survivor's and Family Trusts**

In establishing the fractional formula under Section 1 of this Article, values as finally determined for federal estate tax purposes shall be used, and the following shall be excluded from the numerator and denominator of this fraction and allocated only to the Family Trust:

1. Any assets that are not eligible for the federal estate tax Marital Deduction;
2. Any assets for which a credit for foreign death taxes is allowed under the federal estate tax law applicable to the Deceased Trustor's estate, unless there is insufficient other property to fully fund the Survivor's Trust.

**c. Income**

The Survivor's Trust and the Family Trust shall be entitled to a currently distributable pro rata share of the income earned on the Deceased Trustor's Contributive Share and probate estate from the date of the Deceased Trustor's death, including a share of income earned on assets used to discharge liabilities.

**Section 3. Deferral of Allocations**

Whenever our Trustee is directed to make a distribution of trust assets, or a division of trust assets into separate trusts or shares, either in this Article or under any other Article of our Trust Agreement, our Trustee may, in our Trustee's discretion, defer such distribution or division until practicable. When our Trustee so defers the distribution or division of the Trust Estate, the deferred distribution or division shall be made as if it had taken place at the time prescribed in our Trust Agreement in the absence of this Section, and all rights given to the beneficiaries of such Trust Estate under other provisions of our Trust shall be deemed to have accrued and vested as of such prescribed time. Notwithstanding the previous sentence, our Trustee shall act impartially in the allocations of all assets, including cash, so that such allocations shall be fairly representative of any appreciation and depreciation of such assets. Any deferral of distribution or division, with respect to property intended to fund the federal estate tax Marital Deduction, shall not go beyond the time which would permit that property to qualify for such Marital Deduction.

**Section 4. Disclaimer of Powers or Property**

Any power or any interest in any property or portion thereof that is disclaimed by the Surviving Trustor shall be held, administered or distributed according to the following terms:

**a. Powers or Property Disclaimed**

The Surviving Trustor may disclaim any power or any interest in any property held in trust or otherwise for, or to be distributed to or for the benefit of, the Surviving Trustor under our Trust Agreement.

**b. Time Limit**

The Surviving Trustor may disclaim within the time limits and under the conditions permitted by the laws regulating disclaimers.

**c. Delivery**

A disclaimer by the Surviving Trustor may be exercised by the delivery to our Trustee of an irrevocable and unconditional refusal to accept any power or any interest in any property passing to the Surviving Trustor.

**d. Disclaimer of Property Allocated to Survivor's Trust**

If the Surviving Trustor exercises a disclaimer with respect to any interest in any property set aside as part of the Survivor's Trust which is attributable to the Deceased Trustor's Contributive Share, any such disclaimed interest shall be added to a separate subtrust of the Family Trust and held, administered and distributed under the relevant terms of such Family Trust. Notwithstanding any other provisions of our Trust Agreement to the contrary, any such disclaimed interest and interest thereon shall not be subject to any power of appointment held by the Surviving Trustor other than a power of appointment limited by an ascertainable standard subject to health, education, maintenance or support.

**e. Disclaimer of Property Allocated to Family Trust**

If the Surviving Trustor exercises a disclaimer with respect to any interest in any property set aside as part of the Family Trust, such disclaimed interest shall be distributed under the relevant terms of the Family Trust.

## **Article Eight**

### **Survivor's Trust**

#### **Section 1. Surviving Trustor's Rights in Survivor's Trust**

During the lifetime of the Surviving Trustor, our Trustee shall hold, administer and distribute the assets of the Survivor's Trust as follows:

**a. Payment of Income**

Our Trustee shall pay to, or apply for the benefit of, the Surviving Trustor, so long as the Surviving Trustor lives, the entire net income of the Survivor's Trust in monthly or other convenient installments agreed upon by the Surviving Trustor and our Trustee, but not less often than annually.

**b. Right of Surviving Trustor to Withdraw Principal**

In addition to the net income to be distributed to the Surviving Trustor during his or her lifetime pursuant to the provisions above, our Trustee shall also distribute to the Surviving Trustor, for so long as such Trustor is competent, such portion or portions of the principal of the Survivor's Trust, up to the whole thereof, as the Surviving Trustor may, from time to time, demand in writing, delivered to our Trustee. So long as the Surviving Trustor is competent, no limitation shall be placed by our Trustee on the Surviving Trustor as to either the amount of or the reasons for such invasion or invasions of principal from the Survivor's Trust. Our Trustee shall comply with and shall have no responsibility to inquire into or to determine for what purpose any such withdrawals are being made.

**c. Discretionary Payment of Principal**

If the net income from the Survivor's Trust is insufficient to provide for the health, education, maintenance, and support of the Surviving Trustor in accordance with the standard of living to which he or she shall have been accustomed to during the life of the Deceased Trustor, our Trustee may (if the Surviving Trustor is unable or unwilling to exercise his or her invasion power set forth in Section 1.b. of this Article) from time to time, pay to, or for the benefit of, the Surviving Trustor, such additional amounts of the principal of the Survivor's Trust, up to and including the whole thereof. Our Trustee shall make liberal exercise of the discretionary power given by this paragraph and the rights of the remaindermen of this trust shall be considered secondary.

**d. Invasion of Income and Principal by Trustee for Needs of Trustors' Children and Other Beneficiaries**

Notwithstanding the provisions of Paragraph a. of this Section and subject to the following conditions hereinafter set forth in this paragraph, if the descendants of either of us, or if other individuals, provided such other individuals are or have been dependant upon us, are in need of funds for such person's proper health, education, maintenance or support, our Trustee may pay to, or apply for the benefit of, such person so much of the income and principal of the Survivor's Trust as our Trustee in his or her reasonable discretion deems proper or necessary for that purpose. For purposes of the above distributions, it shall be in our Trustee's discretion to determine who is a "dependent" individual for these purposes. No income or principal of the Survivor's Trust shall be paid to, or for the benefit of, such persons pursuant to the provisions of this paragraph unless and until our Trustee determines that the size of all trusts created under our Trust Agreement for the benefit of the Surviving Trustor and any other assets, income and/or sources of support available to the Surviving Trustor outside of these trusts which may be known to our Trustee will, in our Trustee's opinion, exceed the probable future needs of the Surviving Trustor during his or her lifetime. Finally, in making any distributions pursuant to this paragraph, our Trustee shall keep in mind the dispositive wishes of the Surviving Trustor as expressed later in our Trust Agreement.

**Section 2. Creation, Administration and Distribution of Administrative Survivor's Trust Upon and After Death of Surviving Trustor**

Upon the death of the Surviving Trustor, the Survivor's Trust, including any additions thereto by reason of the Surviving Trustor's death, shall thereafter be known as the "Administrative Survivor's Trust". Our Trustee shall:

- a. Pay all expenses, debts, claims and taxes (subject to any provisions of Article Five and Section 1 of Article Fifteen which may be applicable) which are attributable to the Administrative Survivor's Trust;
- b. Distribute that portion of the Administrative Survivor's Trust consisting of any property effectively appointed pursuant to the provisions of Section 3 below (the "Appointed Survivor's Property"); and
- c. Distribute the balance of the Administrative Survivor's Trust (the "Survivor's Balance") as provided under Section 4 below.

Our Trustee may distribute the Appointed Survivor's Property and the Survivor's Balance in a single distribution or in a series of partial distributions. If distribution is to be made to one or more trusts, then until full distribution has been made to any such trust, the Trustee of the Administrative Survivor's Trust may pay to any beneficiary of such trust such amounts of income and/or principal as are consistent with the terms of such trust. Such payments shall be in lieu of and thus credited toward the income and/or principal remaining to be distributed to such trust. No payment shall be made to any beneficiary of any trust which exceeds the amount of income and/or principal then remaining to be distributed to such trust as provided herein, nor shall any payment of income and/or principal be made to any beneficiary of any trust which exceeds the amount which might properly be distributed to such beneficiary at that time under the terms of such trust.

### **Section 3. Surviving Trustor's General Power of Appointment**

Subject to any payments for expenses, debts, claims and taxes as required under the Section immediately above, our Trustee shall distribute as much of the Survivor's Trust, up to the whole thereof, including any accrued and undistributed income, to any person or entity and upon any trust terms and conditions, or to or in favor of the estate of the Surviving Trustor, as the Surviving Trustor may appoint by the Surviving Trustor's Will or codicil, or by any other written instrument filed with our Trustee prior to the Surviving Trustor's death, and specifically referring to and exercising this power of appointment. This power of appointment shall be exercisable by the Surviving Trustor alone and in all events. Our Trustee may rely upon any instrument that our Trustee in good faith believes to comply with the provisions above in carrying out the terms of this power of appointment and shall not be liable for any good faith act in reliance upon that Will, codicil, or other written instrument even if for any reason it is later determined to be invalid with respect to its purported exercise of this power of appointment. If our Trustee receives no notice, within six (6) months after the death of the Surviving Trustor, of the existence of any Will or codicil of the Surviving Trustor that exercises this power of appointment, our Trustee may distribute the Survivor's Trust as though this power of appointment had not been exercised and shall be conclusively presumed to have acted in good faith even if a valid Will or codicil exercising this power is thereafter discovered.

### **Section 4. Distribution of Survivor's Balance**

Our Trustee shall distribute the Survivor's Balance as follows:

#### **a. Immediate Distribution of Specific Devises**

As soon as practicable after the death of the Surviving Trustor, our Trustee shall make certain distributions from the Survivor's Balance in the manner and amounts and to the persons specified in Article Six of our Trust Agreement. The

remainder of the Survivor's Balance, after all the foregoing distributions have been made and including any lapsed gifts (unless otherwise directed under Article Six), shall be held, administered and distributed as set forth below.

**b. Distribution of Remainder of Survivor's Balance**

Subject to Paragraphs 1. and 2. below, our Trustee shall distribute the remainder of the Survivor's Balance as provided in Article Eleven.

1. If the date of distribution value of the remainder of the Survivor's Balance is less than the amount of the Surviving Trustor's Unused GST Exemption, the Surviving Trustor's Executor (or the Trustee, if no Executor has been appointed for the Surviving Trustor's estate) is directed to allocate to the trusts established under Article Eleven that amount of the Surviving Trustor's Unused GST Exemption as is required to cause such trusts to be Exempt Trusts.
2. If the date of distribution value of the remainder of the Survivor's Balance is greater than the amount of the Surviving Trustor's Unused GST Exemption, two sets of trusts shall be established under Article Eleven. The Trustee shall distribute property having a value on the date of distribution equal to the amount of the Surviving Trustor's Unused GST Exemption to Exempt Trusts under Article Eleven, and the Surviving Trustor's Executor (or the Trustee, if no Executor has been appointed for the Surviving Trustor's estate) is directed to allocate to such trusts the Surviving Trustor's Unused GST Exemption. The Trustee shall distribute any amount of the Survivor's Balance not allocated to Exempt Trusts to Non-Exempt Trusts under Article Eleven.

**c. Termination of Administrative Survivor's Trust**

The Administrative Survivor's Trust shall be deemed to have terminated when all the assets of the Administrative Survivor's Trust have been used to pay expenses, debts, claims and taxes or distributed as provided above, except for a reasonable amount which is set aside for the payment of unascertained or contingent liabilities and expenses (excluding any claim by a beneficiary in his or her capacity as such).



## **Article Nine**

### **Family Trust**

#### **Section 1. Allocation of Deceased Trustor's Unused GST Exemption**

**a. Family Trust Estate Less Than Deceased Trustor's Remaining Unused GST Exemption**

If the date of distribution value of the Remainder Property which is to be allocated to the Family Trust does not exceed the amount of the Deceased Trustor's Unused GST Exemption, the Deceased Trustor's Executor (or the Trustee, if no Executor has been appointed for the Deceased Trustor's estate) is directed to allocate to the Family Trust that amount of the Deceased Trustor's Unused GST Exemption as would be required to cause the Family Trust to be an Exempt Trust.

**b. Family Trust Estate Greater Than Deceased Trustor's Remaining Unused GST Exemption**

If the date of distribution value of the Remainder Property which is to be allocated to the Family Trust does exceed the amount of the Deceased Trustor's Unused GST Exemption, our Trustee shall divide the Family Trust into two separate shares. The first share, known as the "Exempt Family Trust" shall have the Deceased Trustor's Unused GST Exemption allocated to it. The second share, known as the "Non-Exempt Family Trust", shall have the balance of the Remainder Property allocated to it.

**c. Administration of Exempt and Non-Exempt Family Trusts**

Our Trustee shall hold, administer, and distribute both the Exempt Family Trust and the Non-Exempt Family Trust as provided below. However, to the extent our Trustee makes discretionary payments of principal, or the Surviving Trustor exercises his or her right to withdraw principal, such payments or withdrawals shall be made first from the Non-Exempt Family Trust, until such trust is exhausted.

#### **Section 2. Surviving Trustor's Rights in Family Trust**

Our Trustee shall hold, administer and distribute the Trust Estate of the Family Trust as follows:

**a. Payment of Income**

Our Trustee shall pay to, or apply for the benefit of, the Surviving Trustor, so long as the Surviving Trustor lives, the entire net income of the Family Trust in monthly or other convenient installments as agreed upon by the Surviving Trustor and our Trustee, but not less often than annually.

**b. Discretionary Payment of Principal**

At any time or times during the Surviving Trustor's life, our Trustee shall pay to, or apply for the benefit of, the Surviving Trustor and the Deceased Trustor's descendants; so much of the principal of the Family Trust as our Trustee, in our Trustee's discretion, deems proper for their health, education, maintenance or support.

**c. Discretionary Guidelines**

In exercising discretion, our Trustee may make payments that benefit some beneficiaries more than others and may make payments to or for one or more beneficiaries to the exclusion of others. However, our Trustee shall, at all times, give primary consideration to the Surviving Trustor's needs and only thereafter to the Deceased Trustor's descendants. No amount paid or applied need thereafter be repaid to our Trustee or restored to our Trust. In exercising discretion, our Trustee shall give consideration to all other income and resources then known to be available to the beneficiaries. In exercising discretion, our Trustee may, but is not required to, consider any differences in income tax rates as to the Family Trust and permissible distributees of principal.

**d. Limitation on Discretionary Payment of Principal**

We recommend, but do not require, that our Trustee shall first exhaust the principal from the Survivor's Trust and the Marital Trust, if any, before making discretionary payments of principal to the Surviving Trustor from the Family Trust.

**e. Surviving Trustor's Right to Withdraw Principal**

If the Surviving Trustor is living immediately before the end of a calendar year, the Surviving Trustor shall have the power to withdraw from the Family Trust principal in an amount that shall not exceed the greater of five thousand dollars (\$5,000) or five percent (5%) of the assets of the Family Trust, valued as of the end of the preceding calendar year. The Surviving Trustor shall exercise this power by a written instrument, signed by the Surviving Trustor and delivered to our Trustee before the end of the calendar year. This power is non-cumulative and it shall lapse to the extent it is not timely exercised. The power is void in the

event the Surviving Trustor is not alive immediately before the end of the calendar year.

### **Section 3. Limited Power of Appointment**

The Surviving Trustor shall have a limited power of appointment, exercisable by the Surviving Trustor's Will or codicil, or by any other written instrument filed with our Trustee prior to the death of the Surviving Trustor and specifically referring to and exercising this power of appointment, to appoint to, or for the benefit of, the Deceased Trustor's descendants some or all of the principal of the Family Trust as it exists at the death of the Surviving Trustor. The Surviving Trustor may appoint trust assets under this limited testamentary power among the Deceased Trustor's descendants in equal or unequal amounts, either directly or in trust, as the Surviving Trustor directs. If our Trustee receives no notice, within six (6) months after the death of the Surviving Trustor, of the existence of a Will or codicil, of the Surviving Trustor that exercises this power of appointment, our Trustee may distribute the assets of the Family Trust as though this power of appointment had not been exercised and shall be conclusively presumed to have acted in good faith even if such Will or codicil is thereafter discovered. This limited testamentary power of appointment shall not be exercised in favor of the Surviving Trustor's estate, the creditors of the Surviving Trustor, the creditors of the Surviving Trustor's estate, or in any way that would result in any economic benefit to the Surviving Trustor.

### **Section 4. Administration and Distribution of Family Trust Upon and After Death of Surviving Trustor**

Upon and after the death of the Surviving Trustor, our Trustee shall hold, administer and distribute the Family Trust as follows:

#### **a. Creation, Administration and Distribution of Administrative Family Trust**

Upon the death of the Surviving Trustor, the Family Trust shall thereafter be known as the "Administrative Family Trust". Our Trustee shall:

1. Pay all expenses, debts, claims and taxes attributable to the Administrative Family Trust;
2. Distribute that portion of the Administrative Family Trust consisting of any property effectively appointed pursuant to the provisions of Section 3 of this Article (the "Appointed Family Property"); and
3. Distribute the balance of the Administrative Family Trust (the "Family Balance") as provided under Article Six, if applicable, and Article Eleven.

Our Trustee may distribute the Appointed Family Property and the Family Balance in a single distribution or in a series of partial distributions. If distribution is to be made to one or more trusts, then until full distribution has been made to any such trust, our Trustee may pay to any beneficiary of such trust such amounts of income and/or principal as are consistent with the terms of such trust. Such payments shall be in lieu of and thus credited toward the income and/or principal remaining to be distributed to such trust. No payment shall be made to any beneficiary of any trust which exceeds the amount then remaining to be distributed to such trust as provided herein nor shall any payment be made to any beneficiary of any such trust which exceeds the amount which might properly be distributed to such beneficiary at that time under the terms of such trust.

**b. Distribution of Family Balance**

The Family Balance shall be held, administered and distributed as provided under Article Eleven.

**Section 5. Termination of Administrative Family Trust**

The Administrative Family Trust shall be deemed terminated when all the assets of the Administrative Family Trust have been paid or distributed as provided in Subsection 4.a. above, except for a reasonable amount which is set aside for the payment of unascertained or contingent liabilities and expenses (excluding any claim by a beneficiary in his or her capacity as such).

**Section 6. Limitations Regarding Family Trust**

It is our intent that the balance of the Family Trust at the Surviving Trustor's death shall not be included in the gross estate of the Surviving Trustor for federal estate tax purposes. Neither the Surviving Trustor nor the Trustee shall take any action or shall have any power that will cause inclusion of the Family Trust in the Surviving Trustor's estate for federal estate tax purposes at the Surviving Trustor's death.

**Section 7. State Law Qualified Terminable Interest Property Election**

Notwithstanding the provisions of Section 6 of this Article, it is our intent that the Family Trust qualify in all respects for the Marital Deduction, for the purposes of any state inheritance, estate and/or death taxes, provided a Qualified Terminable Interest Property ("QTIP") election is made by the Special Co-Trustee appointed under Section 9 of Article Three for such purposes. Such election of QTIP treatment of our Family Trust for state tax purposes shall be limited to a fraction of the Family Trust no greater than necessary to avoid state inheritance, estate and/or death taxes at the death of the Deceased Trustor.

In the event our Trustee elects such QTIP treatment of our Family Trust for state tax purposes, our Trustee shall divide the Family Trust into two shares.

The first share shall be known as the "State QTIP Trust". The State QTIP Trust shall consist of that fraction of the Family Trust over which our Trustee has elected QTIP treatment for state tax purposes. The State QTIP Trust shall remain a subtrust of the Family Trust, but shall pay all income, no less frequently than annually, to the Surviving Trustor. No principal distributions shall be made to any other than the Surviving Trustor. No principal distributions shall be made to anyone other than the Surviving Trustor. The Surviving Trustor shall have the right to demand that our Trustee make underproductive property in the State QTIP Trust productive, and all provisions of our Trust dealing with qualification for the Marital Deduction and electing QTIP status shall apply to the State QTIP Trust for state tax law purposes only.

The second share shall consist of the balance of the Family Trust and shall continue to be held, administered and distributed as provided under this Article.

## **Article Ten**

### **Marital Trust**

#### **Section 1. Creation of Marital Trust**

It is our intention that our Trustees not create a Marital Trust.

## **Article Eleven**

### **Distributions to Beneficiaries**

#### **Section 1. Division of Trust Property Into Shares**

Upon the death of the Surviving Trustor, our Trustee shall divide the Survivor's Balance, the Family Balance, and the Marital Balance, if any, (or any trusts into which such balances may have been divided) into separate and equal shares (and for purposes of determining such division and subsequent distributions shall take into account the exclusion of any descendant as may be directed in Article One) as follows:

| <u>Beneficiary Name</u>                                  | <u>Share</u> |
|----------------------------------------------------------|--------------|
| STEFAN JOHN COLUCCI                                      | 1/6          |
| KIM COLUCCI NIEMEYER                                     | 1/6          |
| CHILDREN AND THEIR DESCENDANTS (ONLY) OF WILLIAM COLUCCI | 1/6          |
| ROBERT JOHN COLUCCI                                      | 1/6          |
| JOHN MARTIN ANTONIO                                      | 1/6          |
| MICHAEL F. COLUCCI                                       | 1/6          |

In the event an individual beneficiary named immediately above should die while there are assets remaining in such individual beneficiary's trust share, our Trustee shall hold, administer, and distribute the share for such beneficiary as provided under the terms of such share. In the event a named individual beneficiary predeceases us leaving no descendants or the terms of such share lapse without further direction, then such lapsed share shall be reallocated among the remaining individual beneficiaries named in this Section (if any), in accordance with each such remaining individual beneficiary's respective percentage of the total interests of all such remaining individual beneficiaries. If there are no remaining individual beneficiaries, such share shall be reallocated among the other remaining beneficiaries in accordance with each remaining beneficiary's respective percentage of the total interests of all remaining beneficiaries. If any beneficiary named in this Section is a "class" of individuals or organizations, such class shall be treated as a single beneficiary for purposes of such reallocation. If there are no remaining beneficiaries under this Section, then such share shall be administered as provided in the Articles that follow.

In the event a charitable organization is named as a beneficiary and such organization is no longer in existence or no longer qualifies as a tax-exempt organization under Sections 170(c), 2055 and 2522 of the Code, our Trustee shall distribute the share for such charitable organization to such charitable organization or organizations as our Trustee, in our Trustee's discretion, determines most closely matches our charitable intent. If our Trustee fails to distribute this share due to the lack of a qualified tax-exempt beneficiary, this share shall lapse and be reallocated among the remaining beneficiaries as provided in the paragraph immediately above.

Each share shall constitute a separate and independent trust, and Exempt Trusts shall remain separate from Non-Exempt Trusts. The decisions of our Trustee as to the assets to constitute each such share or subshare shall be conclusive, subject only to the requirement that said shares or subshares shall be of the respective values.

The trust shares shall be held, administered and distributed as follows:

**a. Distribution and Administration of Trust Share for STEFAN JOHN COLUCCI**

**1. Distributions of Net Income**

Our Trustee shall pay to, or apply for the benefit of, STEFAN JOHN COLUCCI, the entire net income of his trust share, in monthly or other convenient installments agreed upon by him and our Trustee, but not less often than annually.

**2. Distributions of Principal**

Our Trustee, in our Trustee's discretion, shall pay to, or apply for the benefit of, STEFAN JOHN COLUCCI, so much of the principal from his trust share as our Trustee deems advisable for his health, education, maintenance and support.

When STEFAN JOHN COLUCCI reaches the age of 35 years, or, if on the creation of his trust share, he has already attained the age of 35, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him one half (1/2) of the balance of his trust share, as then constituted, outright and free of trust.

When STEFAN JOHN COLUCCI reaches the age of 65 years, or, if on the creation of his trust share, he has already attained the age of 65, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him all of his trust share, as then constituted, outright and free of trust.

If STEFAN JOHN COLUCCI fails to withdraw the portion of his individual trust share to which he is entitled as provided above, or if he withdraws only a part of said portion, our Trustee shall continue to hold and administer the undrawn portion or part of said portion in accordance with the provisions herein; provided, however, that STEFAN JOHN COLUCCI shall have the continuing right to effect withdrawals of such undrawn portion, in whole or in part, upon the terms and conditions set forth above.



### **3. Distribution on Death of Beneficiary**

If STEFAN JOHN COLUCCI dies before complete distribution of his trust share, his interest in his trust share shall lapse, and our Trustee shall distribute and deliver the remaining balance of his trust share to the children of STEFAN JOHN COLUCCI, if any, per stirpes. If he has no then living children or descendants of children, our Trustee shall distribute his trust share to his siblings, per stirpes. If he has no then living siblings or descendants of siblings, our Trustee shall distribute his trust share to our then living descendants, per stirpes. If we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Article Twelve of our Trust Agreement.

#### **b. Distribution and Administration of Trust Share for KIM COLUCCI NIEMEYER**

##### **1. Distributions of Net Income**

Our Trustee shall pay to, or apply for the benefit of, KIM COLUCCI NIEMEYER, the entire net income of her trust share, in monthly or other convenient installments agreed upon by her and our Trustee, but not less often than annually.

##### **2. Distributions of Principal**

Our Trustee, in our Trustee's discretion, shall pay to, or apply for the benefit of, KIM COLUCCI NIEMEYER, so much of the principal from her trust share as our Trustee deems advisable for her health, education, maintenance and support.

When KIM COLUCCI NIEMEYER reaches the age of 35 years, or, if on the creation of her trust share, she has already attained the age of 35, she may, by written instrument filed with our Trustee, require our Trustee to distribute to her one half (1/2) of the balance of her trust share, as then constituted, outright and free of trust.

When KIM COLUCCI NIEMEYER reaches the age of 65 years, or, if on the creation of her trust share, she has already attained the age of 65, she may, by written instrument filed with our Trustee, require our Trustee to distribute to her all of his trust share, as then constituted, outright and free of trust.

If KIM COLUCCI NIEMEYER fails to withdraw the portion of her individual trust share to which she is entitled as provided above, or if she withdraws only a part of said portion, our Trustee shall continue to hold and administer the undrawn portion or part of said portion in

accordance with the provisions herein; provided, however, that KIM COLUCCI NIEMEYER shall have the continuing right to effect withdrawals of such undrawn portion, in whole or in part, upon the terms and conditions set forth above.

**3. Distribution on Death of Beneficiary**

If KIM COLUCCI NIEMEYER dies before complete distribution of her trust share, her interest in her trust share shall lapse, and our Trustee shall distribute and deliver the remaining balance of her trust share to the children of KIM COLUCCI NIEMEYER, if any, per stirpes. If she has no then living children or descendants of children, our Trustee shall distribute her trust share to her siblings, per stirpes. If he has no then living siblings or descendants of siblings, our Trustee shall distribute her trust share to our then living descendants, per stirpes. If we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Article Twelve of our Trust Agreement.

**c. Distribution and Administration of Trust Share for WILLIAM COLUCCI'S CHILDREN**

**1. Distributions of Net Income**

Our Trustee shall pay to, or apply for the benefit of, WILLIAM COLUCCI'S CHILDREN, after each of his children reaches the age of thirty-five (35), the entire net income of said child's share, in monthly or other convenient installments agreed upon by her and our Trustee, but not less often than annually.

**2. Distributions of Principal**

Our Trustee, in our Trustee's discretion, shall pay to, or apply for the benefit of, WILLIAM COLUCCI'S CHILDREN, so much of the principal from its trust share as our Trustee deems advisable for its health, education, maintenance and support.

When each of WILLIAM COLUCCI'S CHILDREN reaches the age of 45 years, or, if on the creation of its trust share, said child has already attained the age of 45, said child may, by written instrument filed with our Trustee, require our Trustee to distribute to said child one third (1/3) of the balance of such child's trust share, as then constituted, outright and free of trust.

When each of WILLIAM COLUCCI'S CHILDREN reaches the age of 55 years, said child may, by written instrument filed with our Trustee, require our Trustee to distribute to said child one half

(1/2) of the balance of its trust share, as then constituted, free of trust; or, if on the creation of its trust share, said child has already attained the age of 55, said child may, by written instrument filed with our Trustee, require our Trustee to distribute to said child two thirds (2/3) of said child's trust share, as then constituted, outright and free of trust.

When each of WILLIAM COLUCCI'S CHILDREN reaches the age of 65 years, or, if on the creation of its trust share, said child has already attained the age of 65, said child may, by written instrument filed with our Trustee, require our Trustee to distribute to said child all of such child's trust share, as then constituted, outright and free of trust.

If WILLIAM COLUCCI'S CHILDREN fails to withdraw the portion of its individual trust share to which she is entitled as provided above, or if she withdraws only a part of said portion, our Trustee shall continue to hold and administer the undrawn portion or part of said portion in accordance with the provisions herein; provided, however, that WILLIAM COLUCCI'S CHILDREN shall have the continuing right to effect withdrawals of such undrawn portion, in whole or in part, upon the terms and conditions set forth above.

### **3. Distribution on Death of Beneficiary**

If one or more of WILLIAM COLUCCI'S CHILDREN dies before complete distribution of said child's trust share, said child's interest in its trust share shall lapse, and our Trustee shall distribute and deliver the remaining balance of its trust share to said child's children, if any, per stirpes. If such child has no then living children or descendants of children, our Trustee shall distribute its trust share to said child's siblings, per stirpes. If said child has no then living siblings or descendants of siblings, our Trustee shall distribute its trust share to our then living descendants, per stirpes. If we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Article Twelve of our Trust Agreement.

### **d. Distribution and Administration of Trust Share for ROBERT JOHN COLUCCI**

#### **1. Distributions of Net Income**

Our Trustee shall pay to, or apply for the benefit of, ROBERT JOHN COLUCCI, the entire net income of his trust share, in monthly or other convenient installments agreed upon by him and our Trustee, but not less often than annually.

## **2. Distributions of Principal**

Our Trustee, in our Trustee's discretion, shall pay to, or apply for the benefit of, ROBERT JOHN COLUCCI, so much of the principal from his trust share as our Trustee deems advisable for his health, education, maintenance and support.

When ROBERT JOHN COLUCCI reaches the age of 35 years, or, if on the creation of his trust share, he has already attained the age of 35, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him one half (1/2) of the balance of his trust share, as then constituted, outright and free of trust.

When ROBERT JOHN COLUCCI reaches the age of 65 years, or, if on the creation of his trust share, he has already attained the age of 65, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him all of his trust share, as then constituted, outright and free of trust.

If ROBERT JOHN COLUCCI fails to withdraw the portion of his individual trust share to which he is entitled as provided above, or if he withdraws only a part of said portion, our Trustee shall continue to hold and administer the undrawn portion or part of said portion in accordance with the provisions herein; provided, however, that ROBERT JOHN COLUCCI shall have the continuing right to effect withdrawals of such undrawn portion, in whole or in part, upon the terms and conditions set forth above.

## **3. Distribution on Death of Beneficiary**

If ROBERT JOHN COLUCCI dies before complete distribution of his trust share, his interest in his trust share shall lapse, and our Trustee shall distribute and deliver the remaining balance of his trust share to the children of ROBERT JOHN COLUCCI, if any, per stirpes. If he has no then living children or descendants of children, our Trustee shall distribute his trust share to his siblings, per stirpes. If he has no then living siblings or descendants of siblings, our Trustee shall distribute his trust share to our then living descendants, per stirpes. If we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Article Twelve of our Trust Agreement.

**e. Distribution and Administration of Trust Share for JOHN MARTIN ANTONIO**

**1. Distributions of Net Income**

Our Trustee shall pay to, or apply for the benefit of, JOHN MARTIN ANTONIO, the entire net income of his trust share, in monthly or other convenient installments agreed upon by him and our Trustee, but not less often than annually.

**2. Distributions of Principal**

Our Trustee, in our Trustee's discretion, shall pay to, or apply for the benefit of, JOHN MARTIN ANTONIO, so much of the principal from his trust share as our Trustee deems advisable for his health, education, maintenance and support.

When JOHN MARTIN ANTONIO reaches the age of 50 years, or, if on the creation of his trust share, he has already attained the age of 50, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him one half (1/2) of the balance of his trust share, as then constituted, outright and free of trust.

When JOHN MARTIN ANTONIO reaches the age of 65 years, or, if on the creation of his trust share, he has already attained the age of 65, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him all of his trust share, as then constituted, outright and free of trust.

If JOHN MARTIN ANTONIO fails to withdraw the portion of his individual trust share to which he is entitled as provided above, or if he withdraws only a part of said portion, our Trustee shall continue to hold and administer the undrawn portion or part of said portion in accordance with the provisions herein; provided, however, that JOHN MARTIN ANTONIO shall have the continuing right to effect withdrawals of such undrawn portion, in whole or in part, upon the terms and conditions set forth above.

**3. Distribution on Death of Beneficiary**

If JOHN MARTIN ANTONIO dies before complete distribution of his trust share, his interest in his trust share shall lapse, and our Trustee shall distribute and deliver the remaining balance of his trust share to the children of JOHN MARTIN ANTONIO, if any, per stirpes. If he has no then living children or descendants of children, our Trustee shall distribute his trust share to his siblings, per stirpes. If he has no then living siblings or descendants of

siblings, our Trustee shall distribute his trust share to our then living descendants, per stirpes. If we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Article Twelve of our Trust Agreement.

**f. Distribution and Administration of Trust Share for MICHAEL F. COLUCCI**

**1. Distributions of Net Income**

Our Trustee shall pay to, or apply for the benefit of, MICHAEL F. COLUCCI, the entire net income of his trust share, in monthly or other convenient installments agreed upon by him and our Trustee, but not less often than annually.

**2. Distributions of Principal**

Our Trustee, in our Trustee's discretion, shall pay to, or apply for the benefit of, MICHAEL F. COLUCCI, so much of the principal from his trust share as our Trustee deems advisable for his health, education, maintenance and support.

When MICHAEL F. COLUCCI reaches the age of 35 years, or, if on the creation of his trust share, he has already attained the age of 35, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him one half (1/2) of the balance of his trust share, as then constituted, outright and free of trust.

When MICHAEL F. COLUCCI reaches the age of 65 years, or, if on the creation of his trust share, he has already attained the age of 65, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him all of his trust share, as then constituted, outright and free of trust.

If MICHAEL F. COLUCCI fails to withdraw the portion of his individual trust share to which he is entitled as provided above, or if he withdraws only a part of said portion, our Trustee shall continue to hold and administer the undrawn portion or part of said portion in accordance with the provisions herein; provided, however, that MICHAEL F. COLUCCI shall have the continuing right to effect withdrawals of such undrawn portion, in whole or in part, upon the terms and conditions set forth above.

**3. Distribution on Death of Beneficiary**

If MICHAEL F. COLUCCI dies before complete distribution of his trust share, his interest in his trust share shall lapse, and our

Trustee shall distribute and deliver the remaining balance of his trust share to the children of MICHAEL F. COLUCCI, if any, per stirpes. If he has no then living children or descendants of children, our Trustee shall distribute his trust share to his siblings, per stirpes. If he has no then living siblings or descendants of siblings, our Trustee shall distribute his trust share to our then living descendants, per stirpes. If we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Article Twelve of our Trust Agreement.

## **Section 2. Postponement of Distribution by Trustee**

Notwithstanding any other provision of this Article, but subject to the provisions of Section 7 of Article Fifteen, if our Trustee determines that there is a compelling reason to postpone a distribution to a beneficiary, then our Trustee shall continue to hold and administer such beneficiary's share as follows:

### **a. Income Accumulated**

The entire net income of such beneficiary's share shall be accumulated and added to principal on an annual basis if not distributed under the provisions of the paragraph immediately following.

### **b. Discretionary Payment of Principal**

Our Trustee shall pay to, or apply for the benefit of, such beneficiary only as much of the principal and accumulated income of such beneficiary's share as our Trustee, in our Trustee's discretion, considers necessary for the proper health, education, maintenance and support of such beneficiary. Notwithstanding the preceding sentence, all discretionary distributions of principal and accumulated income to a Special Needs Beneficiary shall be governed by the provisions of paragraph c. immediately following.

### **c. Discretionary Payment of Principal for Special Needs Beneficiaries**

Our Trustee shall apply for the benefit of a Special Needs Beneficiary such amounts of principal and accumulated income of the Special Needs Beneficiary's share as provided for under Section 3 of Article Fifteen.

### **d. Guidelines for Trustee's Discretion in Making Distributions**

Our Trustee shall take into consideration, to the extent our Trustee considers it advisable, any other income or resources of such beneficiary known to the Trustee. When, in our Trustee's discretion, the compelling reason for the postponement of a distribution ceases to exist, our Trustee shall make available for withdrawal by such beneficiary the postponed distribution(s), which such

beneficiary shall request by written instrument filed with our Trustee. Notwithstanding the preceding sentence, the termination of the postponement of distributions to a Special Needs Beneficiary shall be governed by the provisions under Section 3 of Article Fifteen. Furthermore, if the sole reason for the postponement of such beneficiary's distribution was due to such beneficiary not yet attaining the age of 35, our Trustee shall make the required distribution upon the beneficiary attaining such age, unless our Trustee determines, in our Trustee's discretion, that there are other compelling reasons to continue to hold and administer such beneficiary's share under the provisions of this Section.

**e. Compelling Reason**

A compelling reason includes, but is not limited to, the following:

1. The beneficiary is a Special Needs Beneficiary as defined under Section 3 of Article Fifteen;
2. The beneficiary is under the age of 35;
3. The susceptibility of the beneficiary to undue influence or duress by an individual or a group;
4. Alcohol or substance abuse by the beneficiary;
5. A pending marital separation or dissolution of marriage or divorce of the beneficiary;
6. Potential financial difficulty or a proven inability of the beneficiary to manage money;
7. A serious tax disadvantage upon distribution to the beneficiary;
8. Minimization of income, gift, estate, generation-skipping or other transfer taxes of a beneficiary, the beneficiaries or the trust; and
9. Substituting income, gift, estate, generation-skipping or other transfer taxes of the beneficiary for another.

**f. Distributions Withheld**

Any distribution may be postponed, including distributions of income or principal, whether in complete or partial termination of the beneficiary's share, one or more of a series of payments, or otherwise.



**g. Evidence of a Compelling Reason**

In connection with the foregoing, and in furtherance thereof, our Trustee is authorized to require the beneficiary to submit to our Trustee for review appropriate evidence as to the existence or non-existence of the compelling reason for which the postponement of a distribution of income or principal has been made or is being considered. Upon the request of our Trustee, such evidence shall include the submission to blood tests or similar tests showing the absence of alcohol addiction or substance abuse, said tests to be conducted and administered by licensed physicians approved by our Trustee.

**h. Notice to Beneficiary; Request for Reconsideration**

If our Trustee decides to postpone a beneficiary's distribution, then our Trustee shall provide written notification to such beneficiary of such postponement decision. Upon notification by our Trustee of the intent to postpone a distribution, such beneficiary may request reconsideration of such decision and submit to our Trustee such reports, information or other evidence as such beneficiary deems appropriate. If a beneficiary seeks the advice, counsel or representation of an attorney with regard to postponed distributions, then such beneficiary shall be entitled to reimbursement of the legal fees and costs incurred for such representation. Such reimbursement shall be limited to no more than one-half of one percent (0.5%) of the value of such beneficiary's share at the beginning of the calendar year in which such reimbursement is requested. A request for such reimbursement of legal fees and costs shall be limited to once every two calendar years.

**Section 3. Beneficiary's Limited Power of Appointment**

Unless the provisions for a specific beneficiary under this Article provide otherwise, any beneficiary under this Article shall have a limited power of appointment, exercisable by such beneficiary's Will, or a codicil thereto, specifically referring to and exercising this power of appointment, to appoint to, or for the benefit of, our then living descendants, some or all of the principal of such beneficiary's separate share as it exists at the death of such beneficiary. Such beneficiary may appoint trust assets under this limited testamentary power among the descendants of the Trustors and such beneficiary. If our Trustee receives no notice, within six (6) months after the death of such beneficiary, of the existence of a Will or codicil of such beneficiary that exercises this power of appointment, our Trustee may distribute the assets of such beneficiary's trust share as though this power of appointment had not been exercised and shall be conclusively presumed to have acted in good faith even if such Will or codicil is thereafter discovered. This limited testamentary power of appointment shall not be exercised in favor of such beneficiary's estate, the creditors of such beneficiary, the creditors of such beneficiary's estate, or in any way that would result in any economic benefit to such beneficiary.

#### **Section 4. General Power of Appointment Over Non-Exempt Assets**

Should a beneficiary die prior to the creation of his or her separate share of our Trust Estate or die subsequent to the creation of such share but before complete distribution of such share, and as a result of said death a portion of our Trust Estate would be subject to GST Tax but for the provisions of this Section, the beneficiary may, pursuant to a general power of appointment exercised in his or her last Will (but not in a codicil) and specifically referring to this power of appointment, provide for such share to pass to the creditors of such beneficiary's estate, in accordance with the terms set forth below. The asset value subject to such general power of appointment shall be the maximum amount, if any, which, when added to the beneficiary's net taxable estate (computed prior to said power), will cause the federal estate tax marginal rate to increase until it equals the GST Tax marginal rate; but in no case shall such general power of appointment exceed the asset value of such beneficiary's share. To the extent the beneficiary does not effectively exercise the general power of appointment, the unappointed asset value shall be held, administered and distributed in accordance with the other provisions of our Trust Agreement.

#### **Section 5. Failure to Exercise Limited Power of Appointment**

Subject to the exercise of such beneficiary's Limited Power of Appointment as described above, if any beneficiary whose trust share is being held in trust subject to the provisions of this Article dies prior to complete distribution of such beneficiary's share, the beneficiary's interest in such trust share shall lapse, and our Trustee shall distribute and deliver the remaining balance of said trust to the descendants of said beneficiary, if any, per stirpes. If such beneficiary has no then living descendants, our Trustee shall distribute such beneficiary's trust share to our then living descendants, per stirpes. If we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Article Twelve of our Trust Agreement.

## **Article Twelve**

### **Lack of Designated Beneficiaries**

#### **Section 1. Remainder by Intestate Succession**

If at any time there is no beneficiary entitled to receive all or any part of our Trust Estate under the preceding Articles, all of our remaining Trust Estate shall then be distributed, outright and free of trust, one-half to those persons who would be IVO F. COLUCCI's heirs at law and one-half to those persons who would be DORIS D. COLUCCI's heirs at law had we died intestate with each of us owning one-half of our Trust Estate.

# **Article Thirteen**

## **Trustee Provisions**

### **Section 1. Co-Trustees Voting Provisions**

#### **a. Co-Trustee May Not Act Independently**

All Co-Trustees acting under our Trust Agreement must act in concert with other Co-Trustees as provided in the other provisions of this Section.

#### **b. Unanimous Vote for Two Trustees**

Other than as provided in Section 1.a. of this Article, if only two Trustees are serving, they shall act unanimously in the exercise of all powers and discretion granted to them under our Trust Agreement.

#### **c. Majority Vote for More Than Two Trustees**

Other than as provided in Section 1.a. of this Article, if more than two Trustees are serving under our Trust Agreement, they shall act by majority vote and any exercise of a power or discretion by a majority of the Trustees shall have the same effect as an exercise by all of them.

#### **d. Special Co-Trustee Resolves Disputes**

Other than as provided in Section 1.a. of this Article, if the Trustees are not able to reach an agreement on any decision as set forth in this Section 1, they shall consult with the Special Co-Trustee as provided under Section 9 of Article Three of our Trust Agreement.

### **Section 2. Delegation of Trustee Powers and Discretion**

Notwithstanding any other provision of our Trust Agreement, any one or more of the Co-Trustees serving under our Trust Agreement may, from time to time, delegate to another Co-Trustee or Co-Trustees any or all of such Co-Trustee's powers and discretion by an instrument in writing delivered to the other Co-Trustees and may revoke such designation at will in the same manner; provided, however, the foregoing shall not apply to a "Special Co-Trustee" appointed under Section 9 of Article Three. For example, a Co-Trustee may authorize withdrawals of trust funds from any savings and/or checking account upon the signature of one of the others serving as Co-Trustee. Also, a Co-Trustee may authorize the opening and maintaining of bank accounts or safe deposit boxes, in the name of the Co-Trustee, with any bank, trust company or savings and loan association authorized and doing business in any state of the United States of America, and may authorize such bank, trust company or savings and

loan association to make distributions to or for the benefit of the beneficiaries hereunder. Additionally, if a corporation, bank or trust company and an individual serve as Co-Trustees, the individual Co-Trustee shall not be obligated (but may so act if he or she wishes) to sign or countersign checks for disbursements of trust funds held by the corporation, bank or trust company. The delegating Co-Trustee shall incur no liability to any beneficiary of any trust created hereunder with respect to the administration of such trust during the period of any such delegation. Whenever the Trustees are collectively acting as the "Trustee", they shall be treated as "Co-Trustees" for purposes of this Section.

### **Section 3. No Trustee Bond Required**

No Trustee specifically named under our Trust Agreement shall be required to post any bond for the faithful performance of such Trustee's responsibilities.

### **Section 4. Compensation of Trustee**

Other than when either of us is serving as Trustee, our Trustee shall be entitled to reasonable compensation for services rendered. Such compensation is payable without the need of a court order. In calculating the amount of compensation, customary charges for similar services, in the same geographic area, for the same time period shall be used as guidelines. Any corporate fiduciary shall be entitled to receive compensation for its services in accordance with its published fee schedule in effect from time to time and any trustee who is normally compensated on an hourly basis shall be so compensated.

Our Trustee shall also be entitled to reimbursement for reasonable costs and expenses incurred during the exercise of our Trustee's duties under our Trust Agreement.

### **Section 5. Change in Corporate Trustee**

Any corporate successor to the trust business of any corporate trustee named under our Trust Agreement, or acting hereunder, shall succeed to the capacity of its predecessor without reconveyance or transfer of trust property.

### **Section 6. Notice to Trustee**

Until our Trustee receives written notice of any death or other event which triggers the right to payments from any trust or trust shares created under our Trust Agreement, our Trustee shall incur no liability for distributions made in good faith to persons whose interests may have been affected by such event.

### **Section 7. Duty to Account**

Our Trustee shall render accounts, upon request, to the income beneficiaries under our Trust Agreement at least annually, at the termination of a trust created hereunder and upon a change in the Trustees in the manner required by law.

### **Section 8. No Court Supervision**

No trust or trust share created under our Trust Agreement shall require the active supervision of any state or federal court.

## **Article Fourteen**

### **Powers of Our Trustee**

#### **Section 1. Powers**

In addition to any power hereinafter specifically granted to our Trustee, it is our intention that our Trustee have all powers granted to a trustee under state law, as well as those powers respecting property in our Trust Estate that an absolute owner of such property would have. In accordance with such intention, any power our Trustee needs to administer our Trust Estate, which is not hereinafter listed, shall be considered as provided for herein. All powers shall be exercised only in a fiduciary capacity, and such powers may be exercised without the approval or supervision of any court. It is also our intention that the investment of Trust assets shall be governed by the Uniform Prudent Investor Act, as enacted under the statutes that govern our Trust. If the Uniform Prudent Investor Act has not been enacted by the state whose law governs this document, then the Uniform Prudent Investor Act itself shall apply.

##### **a. Retention of Property**

Our Trustee shall have the power to retain any ownership interest, partial or complete, in real property, farming and other family business enterprises, as well as other illiquid investments, such as restricted securities transferred, devised or bequeathed to our Trustee, regardless of any lack of diversification, risk, or nonproductivity and regardless of whether or not such property is of a character authorized by state law for the investment of trust funds. Our Trustee shall have the power to continue the operation of any such property or business enterprises at the risk of our Trust Estate as long as our Trustee believes that the retention of such property is in furtherance of our goals in creating our Trust and is in the best interest of our beneficiaries. Notwithstanding the above, the Surviving Trustor shall have the power to require underproductive property to be made reasonably productive. Our Trustee shall diversify the balance of our Trust Estate in accordance with the Uniform Prudent Investor Act, as enacted under the statutes that govern our Trust.

##### **b. Additions**

Our Trustee shall have the power to receive additions to the assets of the various trusts created under our Trust Agreement from any source.

##### **c. Business Participation**

Our Trustee shall have, notwithstanding any overall effect on the fair market value of the property held in any trust or trust share, the power to form, terminate, continue or participate in the operation of any business enterprise including a

corporation, a sole proprietorship, a general or limited partnership (as a general or limited partner) or a limited liability company (as a managing or nonmanaging member) and to effect any form of incorporation, dissolution, liquidation or reorganization, including, but not limited to, the recapitalization and reallocation of classes of shares or other changes in the form of the business enterprise or to lend money or make a capital contribution to any such business enterprise.

**d. Banking Powers**

Our Trustee shall have the following additional powers regarding financial transactions:

**1. Existing Accounts**

Our Trustee may continue, modify, and terminate an account or other prior banking arrangement.

**2. New Accounts**

Our Trustee may establish any type of account (including but not limited to checking, savings and certificates of deposit) or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, industrial loan company, brokerage firm, or other financial institution.

**3. Establishing, Entering and Closing Safe Deposit Boxes**

Our Trustee may open a new safe deposit box or space in a bank vault, access an existing safe deposit box or vault space containing trust property and withdraw or add to its contents, or close a safe deposit box or space in a bank vault.

**4. Contracting Services**

Our Trustee may contract to procure other services that our Trustee considers appropriate which are offered by banks or other financial institutions.

**5. Checks, Drafts, and Negotiable Paper; Withdrawals**

Our Trustee may make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of mine, or payable to me or to my order, and deposit or receive the cash or other proceeds of those transactions. Furthermore, our Trustee may withdraw by check, order, or otherwise my money or property deposited with or left in the custody of a financial institution.



**6. Receiving Negotiable or Nonnegotiable Instruments**

Our Trustee may receive for me and act upon a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument.

**7. Letters of Credit, Credit Cards, and Travelers Checks**

Our Trustee may apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution, and give an indemnity or other agreement in connection with letters of credit as our Trustee finds necessary for the proper maintenance of trust property and financial needs.

**8. Extensions to Pay**

Our Trustee may consent to extend the time of payment, due to or from me, with respect to any financial transaction with a bank or other financial institution.

**e. Make Investments**

Our Trustee shall have the power to invest in any type of investment that plays an appropriate role in achieving the investment goals as set forth in our Trust Agreement, which investment shall be considered as part of the total portfolio. No category or type of investment shall be prohibited. We specifically do not wish to limit the universe of trust investments in any way other than is dictated by our Trustee's exercise of reasonable care, skill and caution. In connection with our Trustee's investment and management decisions with respect to our Trust, our Trustee is specifically entitled to take into account general economic conditions, the possible effect of inflation or deflation, the expected tax consequences of investment decisions or strategies, the role that each investment or course of action may play within the overall trust portfolio that may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property; the expected total return from income and the appreciation of capital, and the asset's special relationship or special value, if any, to the purposes of our Trust or to one or more of the beneficiaries. Our Trustee shall not be limited to any one investment strategy or theory, including modern portfolio theory, the efficient markets theory or otherwise, but should be free to consider any appropriate investment strategy or theory under all circumstances.

Our Trustee may delegate investment and management functions that a prudent person of comparable skills would properly delegate under the circumstances. Should our Trustee delegate such function, our Trustee shall exercise reasonable care, skill and caution in selecting an Investment Advisor and shall establish, in writing, the scope and terms of the delegation consistent with the purposes and terms of our Trust. Such writing shall cover the terms of the Investment

Advisor's duties and describe the Trust assets to be managed by the Investment Advisor.

Notwithstanding the general powers of our Trustee, the following provisions shall apply to each trust from time to time held hereunder which is being managed by an Investment Advisor (subject to any limitations or modifications contained in the written agreement between our Trustee and such Investment Advisor or Advisors):

1. Our Trustee shall follow the directions of the Investment Advisor with respect to the retention, purchase, sale or encumbrance of our Trust assets subject to management by such Investment Advisor and the investment and reinvestment of any funds derived from those assets, and shall have no duty to make or participate in making any decision regarding the same. The sole authority and discretion regarding the management of such assets shall belong to the Investment Advisor.
2. So long as our Trustee follows the direction or advice of the Investment Advisor, our Trustee shall be under no duty to review the assets subject to such Investment Advisor's management or to make any recommendations with respect to the investment or reinvestment thereof or to determine whether any direction or advice received from the Investment Advisor is proper.
3. Our Trustee shall not be accountable for any loss or depreciation in value sustained by reason of any action: (I) taken with the direction or approval of the Investment Advisor, or (II) not taken by reason of direction, disapproval or inaction by the Investment Advisor pursuant to the preceding provisions of this Subsection 1.d. In addition, our Trustee may issue proxies to vote all securities included among the assets subject to management by the Investment Advisor, and our Trustee shall not thereafter be liable for the manner in which those securities are voted, for any direct or indirect result of that voting, or for any failure to vote such securities.
4. Except as modified by the provisions of this Subsection 1.d., the powers and duties of our Trustee with respect to the assets of our Trust Estate managed by an Investment Advisor shall be the same as those with respect to all other assets of our Trust Estate.

5. An Investment Advisor, by written notice to our Trustee, may resign at any time, or may, from time to time, waive any or all such Investment Advisor's rights, powers and duties. By accepting the delegation of the trust asset management function and acting as Investment Advisor, such Advisor submits to the jurisdiction of the courts of this state. An Investment Advisor shall be entitled to reasonable compensation, and such compensation shall be paid from the assets of our Trust and may be charged, in our Trustee's discretion, to income or principal, or partly to each. Our Trustee shall incur no personal liability for the payment of such fees. The rights and powers herein conferred to an Investment Advisor shall be exercisable only in a fiduciary capacity.

**f. Manage Securities**

Our Trustee shall have the power to buy, sell and trade in securities of any nature, including options, futures contracts, short sales, and for such purposes, may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by our Trustee with such brokers as security for loans and advances made to our Trustee. Our Trustee shall have all the rights, powers and privileges of any owner with respect to securities held in trust, including, but not limited to, the power to vote and give proxies and pay assessments or other charges, participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers and liquidations and, in connection therewith, to deposit securities with and transfer title to any protective or other committee under such terms as our Trustee may deem advisable, and do all other acts which persons of prudence, discretion and intelligence would do or take for their own account.

**g. Allocation of Principal and Income**

Except as otherwise specifically provided in our Trust Agreement, the determination of all matters with respect to what is principal and income of our Trust Estate (including the power of adjustment between principal and income under Section 104 of the Uniform Principal and Income Act of 1997, or similar provision under the law that governs this document), and the apportionment and allocation of receipts and expenses between these accounts shall be governed by the provisions of the Uniform Principal and Income Act of 1997 as from time to time enacted by the state statute which governs our Trust Agreement. Any such matter not provided for either in our Trust Agreement or under the Uniform Principal and Income Act of 1997 shall be determined by our Trustee in our Trustee's discretion.

Our Trustee's powers shall be subject to our Trustee's duty to treat income beneficiaries and remainder beneficiaries equitably, except as provided below:

1. A reasonable reserve for the depreciation of all income-producing, depreciable real and personal property, and capital improvements and extraordinary repairs on income-producing property, shall be charged to income from time to time;
2. A reasonable reserve for the depletion of all depletable natural resources, including, but not limited to, oil, gas and mineral and timber property, shall be charged to income from time to time;
3. Distributions by mutual funds and similar entities of gains from the sale or other disposition of property shall be credited to principal;
4. A reasonable reserve for the amortization of all intangible property having a limited economic life, including, but not limited to, patents and copyrights, shall be charged to income from time to time;
5. All premiums paid and all discounts received in connection with the purchase of any bond or other obligation shall be amortized by making an appropriate charge or credit to income as the case may be; provided, however, our Trustee shall not set aside out of income a reserve for the depreciation, depletion, obsolescence, repair, replacement, improvement or amortization of capital assets (tangible or intangible) contributed to our Trust during our lifetimes or by Will upon the death of one or both of us. Further provided, if our Trust is a partner in a partnership, our Trustee shall be entitled to accept, with respect to such partnership interest, any accounting methods used by the partnership, regardless of whether such methods include depreciation reserves, regardless of the assumptions on which any such reserve may be based, and regardless of whether such accounting methods are inconsistent with those methods used by our Trustee with respect to other property of our Trust Estate.

The income and principal of Retirement Assets and Annuities shall be governed by the provisions under Section I of Article Fifteen.

**h. Sell, Exchange and Repair**

Our Trustee shall have the power to manage, control, grant options on, sell (for cash or on deferred payments), convey, exchange, partition, divide, improve and repair Trust property.

**i. Lease**

Our Trustee shall have the power to lease Trust property for terms within or beyond the terms of the Trust and for any purpose, including exploration for and removal of gas, oil and other minerals; and to enter into community oil leases, pooling and unitization agreements.

**j. Permit Beneficiaries to Use or Reside Upon Trust Assets**

Unless in conflict with the provisions of Section 3.e. of Article Fifteen, our Trustee may permit any beneficiary to reside upon or occupy any real property in our Trust Estate or use any personal property in our Trust Estate, upon such terms, provisions and conditions as our Trustee determines. Notwithstanding the above, to the extent that Section 5 of Article Fifteen grants the Surviving Trustor the right to reside upon Trust Estate property, such other provision shall take precedence and its terms and conditions shall prevail.

**k. Borrow**

Our Trustee shall have the power to borrow money for any trust purpose upon terms and conditions as our Trustee may deem proper and to obligate our Trust Estate for repayment; to encumber our Trust Estate or any of its property by mortgage, deed of trust, pledge or otherwise, using such procedure or procedures to consummate the transaction or transactions as our Trustee may deem advisable (including securing or guaranteeing a loan to either or both of us in our individual capacities for a purpose not connected with our Trust). Our Trustee shall have the power to borrow money on behalf of one trust from any other trust provided for under our Trust Agreement, and to obligate the borrowing trust to repay such borrowed money, provided that such loan shall be adequately secured and shall bear interest at current bank rates. Notwithstanding the above, the assets of the Family Trust may not be used to secure or guarantee a loan for the Surviving Trustor in his or her individual capacity, should such loan or guarantee cause inclusion of such assets in the Surviving Trustor's estate. Furthermore, the assets of the Marital Trust, if any, may not be used to secure or guarantee a loan that would in any way endanger the federal estate Marital Deduction.

**l. Guarantees**

Our Trustee shall have the power to unconditionally or conditionally guarantee the payment of any and all indebtedness, advances, obligations and liabilities currently in existence or hereafter made, incurred or created by either or both of us, individually or jointly with others, or incurred or created by any person or any partnership (general or limited), or other legal entity, provided our Trustee holds an interest in such corporation, partnership or entity, and such guarantee benefits directly or indirectly our Trust Estate or its beneficiaries. Guarantees may be made to secure indebtedness, advances, obligations and liabilities to banks, savings and loans, real estate investment trusts, any and all institutional investors,

persons, corporations, partnerships and other legal entities. Notwithstanding the above, the assets of the Family Trust may not be used to secure or guarantee a loan for the Surviving Trustor in his or her individual capacity, should such loan or guarantee cause including of such assets in the Surviving Trustor's estate. Furthermore, the assets of the Marital Trust, if any, may not be used to secure or guarantee a loan that would in any way endanger the federal estate Marital Deduction.

**m. Make Loans**

Our Trustee shall have the power to lend Trust money to the Personal Representative, Executor or Administrator of either Trustor's estate or to any beneficiary under our Trust (including the Trustors) or to a trust for the benefit of any such beneficiary, as may be agreed upon between our Trustee and such parties, provided, however, that any such loan shall be adequately secured and shall bear a reasonable rate of interest. Our Trustee shall also have the power to loan or advance our Trustee's own funds to our Trust for any Trust purpose, with interest at current rates, and to receive security for such loans in the form of a mortgage, pledge, deed of trust, or other encumbrance of any assets of our Trust.

**n. Purchase Assets from Trustor's Estate**

Our Trustee may use Trust funds to purchase any securities or other property tendered to it by the Personal Representative or Executor of either of our estates or any Trustee of any trust established by us, at any time and from time to time at the then market value of such property. If there is any question as to the market value of such property, such value shall be determined by the Special Co-Trustee, as provided for under Section 9 of Article Three of our Trust Agreement.

**o. Deal With Other Trusts**

Our Trustee may advance cash or other assets to any other trust or estate of which our Trust is a beneficiary in an amount equal to all or any portion of any expense, debt and other charges, and estate, inheritance, succession, transfer and other death taxes which are attributable to our Trust's share of such other trust or estate.

**p. Insure**

Our Trustee shall have the power to carry, at the expense of our Trust, insurance of such kinds and in such amounts as our Trustee deems advisable to protect our Trust Estate and our Trustee against any hazard.

**q. Agents**

Our Trustee shall have the power to employ managers, agents, attorneys, accountants, auditors, depositories and proxies, with or without discretionary powers, and to rely on the advice given by such advisors.

**r. Litigation**

Subject to the provisions of Section 9 of Article Three, our Trustee shall have the power to commence or defend, at the expense of our Trust, such litigation with respect to our Trust or any property of our Trust as our Trustee may deem advisable, and to compromise or otherwise adjust any claims or litigation against or in favor of our Trust.

**s. Accept Gifts**

Our Trustee shall be authorized to accept gifts from any individual who desires to contribute to the principal of the respective trusts created hereunder. Such acceptance of any additional gift shall be in the discretion of our Trustee.

**t. Pay Gift Taxes**

If at any time any gift tax becomes due from either of us, by reason of our Trust Estate or any interest therein being includible for such tax purposes, such gift tax, together with interest, penalties, costs, Trustee's compensation and attorneys' fees, in the discretion of our Trustee, may be paid by our Trustee from our Trust Estate, unless other adequate provision shall have been made therefore. Any such payments shall be charged to the principal of the share of our Trust Estate or any interest therein so included for such tax purposes.

**u. Payment of Expenses**

Our Trustee shall have the power to pay any taxes, assessments, reasonable compensation of our Trustee and other expenses incurred in the collection, management, care, protection and conservation of our Trust Estate.

**v. Corporate Fiduciary**

If any stock of a corporate entity that is our Trustee, or of any affiliate or successor of such Trustee, shall be included in the assets of our Trust, our Trustee shall have full authority, in our Trustee's discretion, and notwithstanding any regulation or rule of law to the contrary, to retain the stock and any increases resulting from stock dividends and stock splits and from the exercise of purchase rights and the purchase of fractional shares needed to round out fractional share holdings that may arise concerning the stock. Our Trustee shall vote such stock either directly or by proxy. However, to the extent our Trustee is prohibited by law from voting such stock, our Trustee shall vote in accordance with the written instructions of the Special Co-Trustee appointed under Section 9 of Article Three.

**w. Investment Transactions**

With regard to record keeping for investment transactions, our Trustee need not provide copies of confirmations or similar notifications each time a trade or

investment transaction occurs, but investment transactions shall be set forth in our Trustee's periodic accounting.

**x. Farm or Ranch Property**

With respect to farm or ranch property, our Trustee shall have all necessary powers to participate in and operate any farming (including tree farming) or ranch operation, personally or with hired labor, tenants or sharecroppers; to lease any farm for cash or a share of crops under a lease that permits or precludes the material participation of our Trustee to fertilize and improve the soil; to employ conservation practices; to participate in government programs; and to perform any other acts deemed by our Trustee as necessary or desirable to operate the property. In making a decision whether to materially participate in farming or ranch operations, our Trustee shall consider whether an election should be made or has been made under Sections 2032A and/or 2057 of the Code to qualify for special farm-use valuation or the qualified family owned business interest deduction, or both.

**y. Power to Divide or Combine Trusts**

Our Trustee shall have the power to divide a single trust or share thereof into separate divisions, each to be administered in accordance with the terms and conditions of the single trust from which they were created (or in accordance with such terms and conditions as they may be affected by our Trustee's power to comply with "S" Corporation requirements) when our Trustee, in our Trustee's discretion, determines that division is desirable or advisable in view of tax considerations, including considerations related to income tax, gift tax, inheritance tax or generation skipping transfer tax or other objectives of the trusts and their beneficiaries.

Our Trustee shall not be required to make a physical segregation or division of the various trust subdivisions created under our Trust Agreement except as segregation or division may be required by reason of the termination and distribution of any of the trust subdivisions, but our Trustee shall keep separate accounts and records for different undivided interests.

Our Trustee, in our Trustee's discretion, shall have the further power to combine two or more trusts or trust subdivisions having substantially the same terms into a single trust for purposes of administration when tax or other factors indicate that such combination would be desirable or advisable.

In deciding whether to combine trusts or trust subdivisions, our Trustee shall consider the generation skipping "inclusion ratio" of the trusts or trust subdivisions to be combined. Trusts or trust subdivisions having the same inclusion ratios may be combined. Trusts or trust subdivisions having different inclusion ratios should generally not be combined unless their inclusion ratios are maintained unchanged through substantially separate and independent shares of



different beneficiaries within the meaning of Section 2654(b) of the Code and the applicable regulations thereunder.

Specifically, unless there is a Personal Representative, our Trustee has the authority to allocate any portion of our exemptions under Section 2631(a) of the Code to property as to which We are both the respective transferors, including any property transferred by either of us during our lifetime as to which we did not make an allocation prior to our death. Our Trustee also has the authority to make the special election under Section 2652(a)(3) of the Code. If Sections 2631(a) or 2652(a)(3) of the Code are not interpreted to allow a Trustee to exercise such election, then a Personal Representative shall be appointed and is authorized to allocate our exemption and to exercise the said special election.

**z. Termination of Small Trust**

If at any time after the death of either or both of us the costs of administration of our Trust (or any share thereof) are of such an amount in relation to the then principal and undistributed income of our Trust (or any share thereof) that our Trustee, in our Trustee's discretion, determines that our purposes in establishing our Trust (or any share thereof) would no longer be served, and if our Trustee deems it advisable to distribute the then principal and undistributed income of our Trust (or any share thereof) to the then living beneficiary or beneficiaries and thereby cause the termination of such trust or share, our Trustee (other than either of us and any then current beneficiary of our Trust) may do so without responsibility on the part of our Trustee. If no such Trustee is then serving, the Special Co-Trustee appointed under Section 9 of Article Three shall serve for the purpose of determining the advisability of termination and administering the termination process.

**aa. Power to Subject Trust Property to Probate**

It is our intention to avoid probate through the use of our Trust. If, however, our Trustee and Personal Representative mutually determine that it shall be in the best interests of the beneficiaries of our Trust, and the beneficial interests of the beneficiaries are not thereby altered, our Trustee may subject any asset to probate to accomplish a result unavailable without probate. This power shall be strictly construed and shall only be used to secure any tax or other benefit otherwise unavailable to our Trust. Accordingly, other than a distribution that would cause a Marital or Charitable Deduction to fail, our Trustee, in our Trustee's discretion, may accomplish this objective by distributing such property to a Deceased Trustor's estate.

**bb. Power to Change Situs**

Our Trustee shall have the power, exercisable by written instrument signed and acknowledged by our Trustee, to change the situs of any trust or trust share held by our Trustee; and, in conjunction with any such change and without any need to

obtain the approval of any court, to elect that such trust or trust share shall be subject to the jurisdiction of the new situs. In addition, our Trustee may move the assets of such trust or trust share to the location of the new situs. In no event, however, may this power be exercised in a manner that would cause the denial of Marital Deduction qualification for any portion of our Trust Estate, or that would prevent a trust or trust share from qualifying as a permitted shareholder of "S" corporation stock for federal income tax purposes.

**cc. Release of Trustee Powers**

Each Trustee who determines it to be in the best interest of any beneficiary may, at any time, by instrument executed with all the formalities of a deed and delivered personally or sent by certified mail to another then acting Trustee, if any, or to some beneficiary of the affected trust or trusts, release and relinquish or disclaim upon any terms, either in whole or in part, temporarily or permanently, revocably or irrevocably, with or without binding successors, any one or more of the powers, rights, authorities, and discretions conferred upon such Trustee by any provision or provisions of our Trust Agreement or generally pursuant to law, which release and relinquishment or disclaimer shall be binding on all affected beneficiaries. If the release and relinquishment or disclaimer of a power, right, authority, or discretion is made by less than all of the Trustees upon whom it is conferred, such power, right, authority, or discretion shall continue to be exercisable in full by the Trustee or Trustees (other than any Successor Trustees on whom it is, by its terms, binding) who have not thus released and relinquished or disclaimed it.

**dd. Pay Death and Generation-skipping Transfer Taxes of Beneficiaries**

Upon the death of any beneficiary other than us, any estate, inheritance, succession, or other death taxes (including any generation-skipping transfer taxes), duties, charges, or assessments, together with interest, penalties, costs, Trustee's compensation and attorneys' fees, which shall become due by reason of our Trust Estate or any interest therein being includible for such tax purposes, may be paid by our Trustee from our Trust Estate (other than the Marital Trust), unless other adequate provision shall have been made therefore. Any such payments shall be charged to the principal of the share of our Trust Estate or the separate trust so included.

If our Trustee considers that any distribution from a trust hereunder, other than pursuant to a power to withdraw or appoint, is a taxable distribution subject to a generation-skipping transfer tax payable by the distributee, our Trustee shall augment the distribution by an amount which our Trustee estimates to be sufficient to pay the tax and shall charge the same against the trust to which the tax relates. If our Trustee considers that any termination of any interest in or power over trust property hereunder is a taxable termination subject to a generation-skipping transfer tax, our Trustee shall pay the tax from the trust property to which the tax relates, without any adjustment of the relative interests

of the beneficiaries. If the tax is imposed in part by reason of trust property hereunder and in part by reason of other property, our Trustee shall pay that portion thereof which the value of the trust property bears to the total property taxed, taking into consideration deductions, exemptions and other factors which our Trustee deems pertinent. Our Trustee may make any such payments directly, or to a Personal Representative or other fiduciary, and our Trustee may rely upon a written statement of such fiduciary as to the amount and propriety of such taxes, interest, penalties and other costs, and shall be under no duty to see to the application of any funds so paid.

## **Section 2. Gifts by Trustee**

### **a. General Gift Authority**

Our Trustee is authorized to make gifts, grants, or other transfers without consideration, either outright or in trust, for any legitimate estate planning purpose, to or for our benefit, our descendants, or charitable organizations (including, without limitation, any Private Charitable Foundation, Charitable Remainder Trust, or Charitable Lead Trust established by us, as well as any public charity). Such gifts may include the forgiveness of indebtedness, the completion of any charitable pledges we have made, and the direct payment of tuition and medical care for the benefit of any such persons pursuant to the provisions of Section 2503(c) of the Code. Such gifts may be made in cash, in kind, or partly in each on a pro rata or non-pro rata basis. If any gifts are made to any individuals, then such gifts shall be made equally to all descendants of the same generation. For example, if a gift is made to our child or grandchild, as the case may be, then a similar gift or gifts of the same amount must be made to each of our then living children or grandchildren, as the case may be.

### **b. Deathbed Gifts**

#### **1. Circumstances for Making and Amount of Deathbed Gifts**

Without limiting our Trustee's authority to make gifts under Paragraph a. immediately preceding, if our Trustee determines that (I) either or both of us are terminally ill and it is unlikely that one or both will live, and (II) our estates are or may be subject to death taxes, then our Trustee, in our Trustee's sole discretion, may make gifts up to the full amount of the federal gift tax annual exclusion amount under Section 2503(b) of the Code or successor statute, taking into account, if we are married, the amount that may be given by either of us from our separate property, if any, if the spouse of the donor is willing and able to sign a consent to split the

gift pursuant to Section 2513 of the Code (hereinafter referred to as "deathbed gifts").

## **2. Permissible Donees**

Our Trustee is authorized to make deathbed gifts to the following individuals: (I) First, to our then living children; provided, however, that if sufficient funds or suitable assets are not available to make the full amount of such gifts to all of our said children, then the funds or assets that are available shall be apportioned equally among said children; (II) Second, if there are sufficient funds or suitable assets remaining after making the foregoing gifts to our then living children, then out of the remaining funds or assets, gifts shall be made to the then living children of our children (i.e., our grandchildren), in equal shares, per capita and not by right of representation; provided, however, that if sufficient funds or suitable assets are not available to make the full amount of such gifts to all such grandchildren, then the funds or assets that are available shall be apportioned equally among said grandchildren.

## **3. Completion of Deathbed Gifts Prior to Trustor's Death**

We request that our Trustee take all action reasonably necessary to insure that the deathbed gifts authorized hereunder are completed for federal gift tax purposes prior to either or both of our deaths, including making gifts by wire transfer, electronic funds transfer, or other method that is reasonably calculated to complete such gifts prior to such death(s). If one or both of us is in an irreversible coma or vegetative state and the life of either or both of us is being prolonged solely by artificial means under circumstances where the timing of death may be subject to the control of our Health Care Agent, the Conservator of our persons, or other legal representative, then we request that our Trustee hereunder confer with such Health Care Agent, Conservator, or legal representative concerning the timing of such gifts in relation to the timing of either or both of our deaths.

## **4. Effect on Testamentary Plan**

It is our desire that our Trustee make such deathbed gifts in order to save Death Taxes even if doing so is inconsistent with our testamentary plan. For example, if our Wills or our Trust Agreement provides for the distribution of our estate to our children in equal shares upon our death, it is nevertheless our desire that our Trustee include our grandchildren in such deathbed gifts if Death Taxes could thereby be reduced, even if the effect

would be to reduce the amounts passing to our children at our death or shift the total amount passing to each line of descent.

**c. Limitation on Gifts to Trustee**

Notwithstanding the provisions of Subsections a. and b. above, any gifts our Trustee is authorized to make to himself or herself, or for his or her benefit, either directly or indirectly, including the discharge of his or her legal obligations, shall be limited to the greater of (I) five thousand dollars (\$5,000), or (II) five percent (5%) of the donor Trustor's Contributive Share during any calendar year, which power shall be non-cumulative and shall lapse at the end of each calendar year; provided, however, that gifts to the Trustee may exceed such limitation if any one of the following conditions is met: (I) the Special Co-Trustee provided for under Article Three of our Trust Agreement consents in writing to the gift to such Trustee, (II) our then living adult children (other than the Trustee) unanimously consent in writing to the gift to such Trustee, or (III) court approval of the gift to the Trustee is obtained on petition by the Trustee or any other interested person pursuant to state law.

**d. Income Tax Effects**

In making gifts hereunder, our Trustee may, but shall not be required to, consider the income tax effects of making a gift of any asset, the income tax basis of which differs from the fair market value, including the possibility of a step-up in basis at our deaths pursuant to Section 1014 of the Code. In that regard, our Trustee shall have the sole discretion to determine whether the estate tax savings of making such gifts outweighs the income tax consequences.

**e. Gifts are Discretionary**

Our Trustee shall have the sole discretion to determine whether and to what extent to make gifts hereunder; provided, however, that, except as otherwise provided above in Subsection b., it is our desire that the donees of each generation be treated equally. Nothing stated herein shall be construed to require our Trustee to make any such gifts and our Trustee shall not be liable to any person for failing to make any gifts authorized hereunder, or for the manner in which such gifts are made, except for his or her bad faith, willful misconduct, or gross negligence, including without limitation the death tax or income tax consequences to our estates, beneficiaries, or heirs at law. Our Trustee shall be held free and harmless from any such liability, loss, cost, or expense, including reasonable attorneys' fees, arising from our Trustee's acts or omissions in connection with making any gifts under the provisions of our Trust Agreement.

**f. Payments to or for Benefit of Minors**

If a gift is made hereunder to any person who is under the age of twenty-one (21), and if no trust is established for such person, such person's gift may, in the

discretion of our Trustee, be distributed to an adult member of such person's family (to be selected by the Trustee) as custodian until such age as our Trustee determines (but not to exceed the age of 21), under the Uniform Transfers to Minors Act or the Uniform Gifts to Minors Act.

**g. Consent to Split Gifts**

Our Trustee is authorized to consent to split gifts made by either of us (if we are married at such time) under Section 2513 of the Code or successor statute, and similar provisions of any state or local gift tax.

**Section 3. Trustee Environmental Powers**

**a. Trustee Authorized to Inspect Property Prior to Acceptance**

**1. Actions at Expense of Trust Estate**

Prior to acceptance of the position of Trustee by any proposed or designated Trustee (and prior to acceptance of any asset by any proposed, designated, or acting Trustee), such Trustee or proposed or designated Trustee shall have the right to take the following actions at the expense of our Trust Estate:

**A. Enter Property**

To enter and inspect any existing or proposed asset of our Trust (or of any partnership, limited liability company, or corporation in which our Trust holds an interest) for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance; and

**B. Review Records**

To review our records and those of the currently acting Trustee (or of any partnership, limited liability company, or corporation in which our Trust holds an interest) for the purpose of determining compliance with environmental laws and regulations, including those records relating to permits, licenses, notices, reporting requirements, and governmental monitoring of hazardous waste.

**C. Rights Equivalent to Partner, Member, or Shareholder**

The right of the proposed, designated, or acting Trustee to enter and inspect assets and records of a partnership, limited liability company, or corporation under this provision is equivalent to the right under state law of a partner, member, or shareholder to inspect assets and records under similar circumstances.

**D. Right to Still Refuse Acceptance of Trusteeship**

Acts performed by the proposed or designated Trustee under this provision shall not constitute acceptance of our Trust.

**E. Right to Accept Trusteeship Over Other Assets Only**

If an asset of our Trust is discovered, upon environmental audit by the acting Trustee or any proposed or designated Trustee, to be contaminated with hazardous waste or otherwise not in compliance with environmental law or regulation, our Trustee may decline to act as Trustee solely as to such asset, and accept the Trusteeship as to all other assets of the trust. Our Trustee, in his or her discretion, may petition a court to appoint a receiver or Special Trustee to hold and manage the rejected asset, pending its final disposition.

**F. Right to Reject Asset**

Any currently acting Trustee shall have the right to reject any asset proposed to be transferred to such Trustee.

**b. Termination, Bifurcation or Modification of Trust Due to Environmental Liability**

**1. Trustee's Powers over Hazardous Waste Property**

If our Trust Estate holds one or more assets, the nature, condition, or operation of which is likely to give rise to liability under, or is an actual or threatened violation of, any federal, state, or local

environmental law or regulation, our Trustee may take one or more of the following actions, if our Trustee, in our Trustee's discretion, determines that such action is in the best interest of our Trust and its beneficiaries:

**A. Modify Trust**

Modification of trust provisions, upon court approval, granting our Trustee such additional powers as are required to protect our Trust and its beneficiaries from liability or damage relating to the actual or threatened violation of any federal, state, or local environmental law or regulations, with it being the Trustors' desire that our Trustee keep in mind the Trustors' dispositive wishes expressed elsewhere in our Trust and that our Trustee consider and weigh any potentially negative federal and state income, gift, estate, or inheritance tax consequences to our Trustee, our Trust and its beneficiaries;

**B. Bifurcate Trust**

Bifurcation of our Trust to separate said asset from other assets of our Trust Estate;

**C. Appoint a Special Trustee**

Appointment of a Special Trustee to administer said asset; and/or

**D. Abandon Property**

Abandonment of such asset.

**2. Termination of Trust or Distribution of Other Assets**

With court approval, our Trustee may terminate our Trust or partially or totally distribute our Trust Estate to our beneficiaries.

**3. Broad Discretion**

It is our intent that our Trustee shall have the widest discretion in the identification of, and response to, administration problems connected with potential environmental law liability to our Trust Estate and our Trustee, in order to protect the interests of our Trust, our Trustee and the beneficiaries of our Trust.



#### **4. Trustee's Powers Relating to Environmental Laws**

Our Trustee shall have the power to take, on behalf of our Trust, any action necessary to prevent, abate, avoid, or otherwise remedy any actual or threatened violation of any federal, state, or local environmental law or regulation, or any condition which may reasonably give rise to liability under any federal, state, or local environmental law or regulation, including, but not limited to, investigations, audits, and actions falling within the definition of "response" as defined in 42 U.S.C. § 9601(25), or any successor statute, relating to any asset that is or has been held by our Trustee as part of our Trust Estate.

#### **c. Indemnification of Trustee from Trust Assets for Environmental Expenses**

##### **1. Indemnification and Reimbursement for Good Faith Actions**

Our Trustee shall be indemnified and reimbursed from our Trust Estate for any liabilities, losses, damages, penalties, costs, or expenses arising out of, or relating to, federal, state, or local environmental laws or regulations (hereinafter "environmental expenses"), except those resulting from our Trustee's intentional wrongdoing, bad faith, or reckless disregard of his or her fiduciary obligation.

##### **A. Environmental Expenses Defined**

Environmental expenses shall include, but are not limited to: (I) Costs of investigation, removal, remediation, response, or other clean-up costs of contamination by hazardous substances, as defined under any environmental law or regulation; (II) Legal fees and costs arising from any judicial, investigative, or administrative proceeding relating to any environmental law or regulation; (III) Civil or criminal fees, fines, or penalties incurred under any environmental law or regulation; and (IV) Fees and costs payable to environmental consultants, engineers, or other experts, including legal counsel, relating to any environmental law or regulation.

##### **2. Properties and Businesses Covered**

This right to indemnification or reimbursement shall extend to environmental expenses relating to: (I) Any real property or

business enterprise that is or has been at any time owned or operated by our Trustee as part of our Trust Estate; and (II) Any real property or business enterprise that is or has been at any time owned or operated by a corporation, limited liability company, or partnership, in which our Trustee holds or has held, at any time, an ownership or management interest as part of our Trust Estate.

**3. Right to Pay Expenses Directly from Trust**

Our Trustee shall have the right to reimbursement for incurred environmental expenses without the prior requirement of expenditure of our Trustee's own funds in payment of such environmental expenses, and the right to pay environmental expenses directly from Trust assets.

**4. Right to Lien Trust Assets**

Our Trustee shall have a primary lien against assets of our Trust for the reimbursement of environmental expenses, which are not paid directly from Trust assets.

**5. Exoneration of Trustee for Good Faith Acts Relating to Environmental Law**

Our Trustee shall not be liable to any beneficiary of our Trust or to any other party for any good faith action or inaction relating to any environmental law or regulation, or for the payment of any environmental expense (as defined above); provided, however, that our Trustee shall be liable for any such action, inaction, or payment which is a breach of trust and is committed in bad faith or with reckless or intentional disregard of his or her fiduciary obligations.

**6. Allocation of Environmental Expenses and Receipts Between Principal and Income**

Our Trustee may, in our Trustee's discretion, allocate between the income and principal of our Trust Estate environmental expenses (as defined above) and reimbursements or other funds received from third parties relating to environmental expenses. In making such allocation, our Trustee shall consider the effect of such allocation upon income available for distribution, the value of Trust principal, and the income tax treatment of such expenses and receipts. Our Trustee may, in our Trustee's discretion, create a reserve for the payment of anticipated environmental expenses.



# **Article Fifteen**

## **Other Trust Provisions**

### **Section 1. Provisions Respecting Retirement Assets**

#### **a. Explanation of Section**

It is our intent, and the sole purpose of the following provisions, to insure that the beneficiaries of our Trust who are subject to the Minimum Required Distribution Rules be identifiable individuals and that they be treated as Designated Beneficiaries under such rules, so that the life expectancies of such beneficiaries may be used to calculate the Minimum Required Distributions mandated by the Code. This Section shall be interpreted with this intent and purpose being paramount to any other direction in it.

#### **b. Definitions**

As used in our Trust Agreement, the following terms, whether or not capitalized, have the following meanings, unless the context very clearly indicates otherwise.

##### **1. Retirement Plan and Retirement Plan Proceeds**

The term "Retirement Plan" means an annuity, employee pension plan, a qualified or nonqualified plan of deferred compensation, an individual retirement account or individual retirement annuity ("IRA"), or similar arrangement. The term includes any plan or arrangement described in Sections 401(a), 403, or 408(a), (b) or (k) of the Code. The term "Retirement Plan Proceeds" means proceeds receivable by any beneficiary (including a fiduciary) under a Retirement Plan upon or following the death of the participant.

##### **2. Eligible Retirement Plan**

The term "Eligible Retirement Plan" has the meaning given under Section 402(c)(8)(B) of the Code, and generally means any Retirement Plan that is eligible to receive a tax-free rollover.

##### **3. Participant, Employee and Employee's Benefit**

The term "Participant", as used in this Section, includes any individual who has contributed to, directly or indirectly (through contribution by an employer on the employee's behalf), any Retirement Plan as defined above, including the owner of an IRA

or Roth IRA. The term "Employee" shall have the same meaning as the term "Participant" and the term "Employee's Benefit" shall include benefits under any Retirement Plan, including an IRA or Roth IRA.

#### **4. Required Beginning Date**

The term "Required Beginning Date" (or "RBD") will have the meaning given by Section 401(a)(9) of the Code and the Treasury Regulations thereunder. The RBD generally refers to April 1<sup>st</sup> following the calendar year in which the Participant attains age 70½, except that with regard to a qualified plan, if the participant is not a 5-percent owner (as defined in Section 416 of the Code) the RBD may be April 1<sup>st</sup> following the calendar year in which the Participant retires, if later.

#### **5. Applicable Date**

The term "Applicable Date", as used in this Section, means December 31<sup>st</sup> of the year after the Participant's death.

#### **6. Minimum Required Distribution Rules**

The "Minimum Required Distribution Rules" (or "MRD Rules") are the rules described in Section 401(a)(9) and Sections 408(a)(6) or (b)(3) of the Code (or anywhere else Section 401(a)(9) of the Code is made applicable by cross-reference), as the case may be.

#### **7. Designated Beneficiary**

A "Designated Beneficiary" means an identifiable individual who is entitled to any portion of Retirement Plan Proceeds, contingent on the Participant's death or another specified event, but in any case is to be given the meaning used in the Treasury Regulations under Section 401(a)(9) of the Code, as then in effect. To the extent members of a class of beneficiaries capable of expansion or contraction can be treated as being identifiable under the Proposed Treasury Regulations because of the possibility at the Applicable Date of identifying the class member with the shortest life expectancy, such class of beneficiaries shall be treated as a Designated Beneficiary, even though members of the class may be unborn at that time.

#### **8. Contingent Beneficiary**

A "Contingent Beneficiary", for purposes of this Section only, is a Designated Beneficiary who is entitled to any portion of

Retirement Plan Proceeds, contingent on a specified event, other than the Participant's death (e.g., death of another beneficiary).

**9. Retirement Account Trustee**

The term "Retirement Account Trustee", as used in a beneficiary designation form or other document designating the beneficiary of Retirement Plan Proceeds, shall be interpreted to mean the then acting Trustee of our Trust Agreement.

**c. Trustee May Be Named As Death Beneficiary of Retirement Plan**

Our Trustee may be named as a Designated Beneficiary of Retirement Plan Proceeds. If so, our Trustee will be treated as owning the right to receive distributions from the Retirement Plan as fully as any other person or individual who was named as a Designated Beneficiary, except that such ownership shall be in a fiduciary capacity. Such interest (i.e., the right to receive distributions from the Retirement Plan) will be treated as an asset of our Trust, and will be subject, generally, to the same provisions applicable to other trust assets. The death of a beneficiary of our Trust will not terminate the interest that our Trust has in a Retirement Plan.

**d. Agreement to Provide Copies of All Amendments to Trust**

In the case where, prior to the death of the Participant, we are required under the Treasury Regulations for Section 401(a)(9) of the Code to provide a copy of our Trust Agreement to the plan administrator, plan trustee, or IRA sponsor, trustee, or custodian, as the case may be, we agree that if our Trust Agreement is amended at any time in the future (but before the death of the Participant), we will, within a reasonable time, provide to such plan trustee, plan administrator, or IRA sponsor, custodian, or trustee, as the case may be, a copy of each such amendment.

**e. Method of Distribution under Retirement Plans**

To the extent our Trustee has an interest in a Retirement Plan, our Trustee shall have the power to determine the form and manner of distribution from such Retirement Plan, provided, however, that the Trustee of the Marital Trust must elect a form, time and manner of payment that assures that the Surviving Trustor will have a qualifying income interest for life in the Marital Trust, or the Retirement Plan, or both, with respect to such interest.

**f. Rollovers and Transfers**

Our Trustee will have the unrestricted power to transfer or rollover any interest in a Retirement Plan to any other Eligible Retirement Plan or Plans, in order to effectuate the requirements of this Section, or as our Trustee may otherwise determine to be in the best interest of the beneficiaries, provided that in such case

our Trustee shall continue as the holder of the interest, to the same extent as before.

**g. Coordination with Minimum Required Distribution Rules**

If our Trustee is named as the beneficiary of Retirement Plan Proceeds that are subject to the MRD Rules, and if, under the circumstances existing on the Applicable Date, the Retirement Plan Proceeds or the right to receive the Retirement Plan Proceeds are or may be payable to our Trustee, then the beneficiaries of our Trust are intended to be Designated Beneficiaries under the MRD Rules, and the following provisions shall apply:

**1. Use of Retirement Plan Proceeds**

Except as otherwise specifically provided to the contrary in the paragraph immediately below, but notwithstanding anything else herein to the contrary, Retirement Plan Proceeds shall be used entirely and exclusively for the benefit of the Designated Beneficiaries who are living at the Applicable Date.

**2. Unborn Beneficiaries**

Notwithstanding the immediately preceding paragraph, in the event that all of the primary Designated Beneficiaries of a particular trust who were living at the Applicable Date have died, our Trustee shall make distributions to those beneficiaries who would otherwise benefit under such trust, but only in the manner and to the extent consistent with our intent and the purpose for this Section as set forth in Paragraph a. of this Section.

**3. Trustee Required to Distribute During Life Expectancy of Beneficiary**

Unless the law applicable to MRDs from qualified plans and IRAs, interpreted in accordance with our intent and the purpose for this Section as set forth in Subsection a. above, clearly allows for a less rapid distribution from our Trust, all Retirement Plan Proceeds received by our Trust must be distributed to one or more Designated Beneficiaries of our Trust before the expiration of the life expectancy of the youngest Designated Beneficiary of our Trust to which this rule is applied, unless such beneficiary dies prior to the expiration of such life expectancy, taking into account only those beneficiaries alive as of the Applicable Date.

**h. Use of Retirement Plan Proceeds to Pay Debts or Expenses**

Use of Retirement Plan Proceeds for the payment of debts and expenses directly attributable and proportionate to the estate tax value of such Retirement Plan

Proceeds is limited to those payments that can actually be made prior to the Applicable Date or would otherwise not cause our Trust to fail to be a qualified beneficiary. Notwithstanding the rules otherwise applicable to apportionment, abatement and the payment of debts and expenses, Retirement Plan Proceeds shall not be used to pay any of our debts or expenses still outstanding as of the Applicable Date and thereafter, or would otherwise cause our Trust not to be a qualified beneficiary.

**i. Use of Retirement Plan Proceeds to Pay Death Taxes**

Use of Retirement Plan Proceeds for the payment of Death Taxes directly attributable and proportionate to the estate tax value of such Retirement Plan Proceeds is limited to those payments that can actually be made prior to the Applicable Date, or would otherwise not cause our Trust to fail to be a qualified beneficiary. Notwithstanding the rules otherwise applicable to apportionment, abatement and the payment of Death Taxes, Retirement Plan Proceeds shall not be used to pay any Death Taxes still outstanding as of the Applicable Date and thereafter. However, in that case, the Death Taxes attributable and proportionate to such Retirement Plan Proceeds, to the extent otherwise apportionable under this instrument, shall, in our Trustee's discretion, be paid from funds provided by such beneficiary or charged against other property or trust distribution receivable by the beneficiary as a result of our death (provided that such other property is not otherwise eligible for the Marital Deduction).

**j. Allocation of Retirement Plan Proceeds**

**1. Explanation of Subsection**

Using the provisions of Article Seven of our Trust Agreement, it is our desire to allocate the greatest amount possible of the Deceased Trustor's Contributive Share to the Family Trust; while at the same time avoiding or minimizing the acceleration of income tax on any Retirement Plan Proceeds which are under the control of our Trustee.

**2. Order of Allocation Between Non-Retirement and Retirement Proceeds**

In furtherance of such purpose, after the death of the first of us, our Trustee, using the provisions of Article Seven, shall allocate to the Family Trust all assets of the Deceased Trustor's Contributive Share as provided under Section 2 of this article.

**3. Exceptions to Above Allocation Instructions**

Notwithstanding the above, in the case where any Retirement Plan Proceeds come under the control of our Trustee, of which the beneficiary designation specifically requires allocation to the



Marital Trust of our Trust, our Trustee shall disregard the allocation instructions under Section 2 of this Article and allocate such Retirement Plan Proceeds by fractional formula, first allocating the smallest fractional share of such Retirement Plan Proceeds to the Family Trust that are necessary to fully fund such trust with any remaining Retirement Plan Proceeds being allocated to the Marital Trust. Furthermore, should our Trustee determine, after seeking competent legal and tax advice at the time any Retirement Plan Proceeds come under his or her control, that the allocation of such assets as instructed under Section 2 of this Article will hinder our intent as expressed in Subsection a. above, then such allocation instructions shall be disregarded.

**k. Special Provisions Regarding Allocation of Community Property**

Notwithstanding the foregoing, the Surviving Trustor shall have the right, in a fiduciary capacity, to direct and compel the allocation of any property in our Trust or in the Deceased Trustor's Probate Estate, in which the Surviving Trustor has an interest, directly to himself or herself, as part of an equal non-pro rata division of the community property estate (see P.L.Rs. 199912040 and 199925033). The Surviving Trustor has the right to receive, outright and free of trust, all retirement benefits so allocated.

**l. No Power of Appointment Over Retirement Plan Proceeds**

Except as provided below in this Section, but notwithstanding anything else to the contrary, no one (other than the Deceased Trustor with respect to his or her share of our Trust) will have any power of appointment over any Retirement Plan Proceeds held in trust, except that the Surviving Trustor shall have all such demand rights over income that are otherwise provided herein, in cases where the Surviving Trustor has a qualifying income interest for life in a trust or in a Retirement Plan. Any power of appointment that would otherwise have been applicable but for this paragraph will be treated as if it existed but was unexercised.

**m. Separate Account and Special Distribution Requirements**

Our Trustee will separately account for all Retirement Plan Proceeds, using subtrusts if necessary, and will see to it that those benefits are only distributed to Designated Beneficiaries (as defined above) who are identifiable on the Applicable Date, as long as any Designated Beneficiary of such trust (or subtrust, as the case may be) is alive. Further, our Trustee will actually distribute those benefits to those beneficiaries within such time as is required under applicable tax law, or under Treasury Regulations (whether proposed, temporary, or final) in order to carry out the purpose of this Section as provided under Subsection a. above.

**n. Application of Rules to Subtrusts**

We realize that a subtrust may be the beneficiary of Retirement Plan Proceeds. In that case, the rules of this Section are to be applied within the particular subtrust involved, and are not meant to give the beneficiaries of other subtrusts an interest they would not otherwise have had.

**o. Incorporation by Reference of Terms of Beneficiary Designation**

If the terms of any beneficiary designation signed by us would otherwise fail because such terms are not a part of our Wills (or Trust), we incorporate such terms, as a part of our Wills (and Trust), by reference, as if fully set out in this document and vice versa.

**p. Principal and Income Allocations of Payments from Retirement Plans**

Our Trustee shall allocate to income that portion of each "Payment" (up to the whole thereof) that equals (I) the amount of "Inside Income" that our Trustee reasonably determines has occurred since the right to receive Payments became subject to trust; reduced by (II) the amount of prior Payments from the same contractual, custodial, or trust arrangement that was allocated to trust income. Our Trustee shall allocate the balance of the Payment, if any, to principal.

The term "Payment" refers to an amount that is received or withdrawn pursuant to a contractual, custodial, or trust arrangement under a Retirement Plan. The term "Inside Income" with respect to each contractual, custodial, or trust arrangement, refers to that portion of Payments that are characterized by the payor as interest, dividends, or a dividend equivalent. To the extent any portion of a Payment is not so characterized by the payor, Inside Income shall consist of any amounts that would be allocable to income under applicable state law governing the allocation of principal and income for trusts, if said statutes were applied to a trust holding the assets that fund all Payments to which our Trust is entitled under such arrangements. If our Trustee cannot identify the character, amount, or nature of said assets, the Trustee may reasonably estimate the character, amount and nature of such assets.

**q. Provisions Respecting Marital Deduction**

Notwithstanding the following, or anything else in our Trust Agreement to the contrary, a trust in which the Surviving Trustor has a qualifying income interest for life may not be funded with property that does not constitute property eligible for the Marital Deduction if there is any other alternative available to our Trustee. Subject to this rule, we recognize that there may be situations in which the Surviving Trustor has a qualifying income interest for life in a Retirement Plan, or in which the estate of the Marital Trust has an interest in a Retirement Plan. In such event, the interest will be held, invested, reinvested and maintained, and income attributable to the interest will be determined, in a manner that guarantees that the Surviving Trustor has a qualifying income interest for life with respect to

such interest. The rule that the Surviving Trustor is guaranteed a qualifying income interest for life in such circumstances is overriding and will govern in case of conflict with the following rules, which we nevertheless believe to be consistent with it.

**1. Determination of Fiduciary Accounting Income for Surviving Trustor**

Subject to the overriding rule that the Surviving Trustor is guaranteed a qualifying income interest for life in any Retirement Plan in which the Marital Trust has an interest, income from an interest in a Retirement Plan will be determined by reference to the provisions of Subsection p. above.

Income is an accounting notion representing a value, and not representing particular assets. Therefore, whether or not all of the income from a Retirement Plan (in which the Marital Trust has an interest) is distributed by the plan in a given year, an amount representing the income will nevertheless be credited to the income account and will be distributable by our Trust in the manner otherwise provided under the terms of our Trust. If the other assets available for distribution from the Marital Trust are insufficient for that purpose, then our Trustee shall compel a distribution from the Retirement Plan of such an amount as is necessary to satisfy the obligation to the Surviving Trustor.

**2. Additional Demand Rights Granted to Surviving Trustor**

In addition to the above, and notwithstanding anything else herein to the contrary, the Surviving Trustor, at any and all times, will have the unfettered and non-lapsing right to demand an immediate distribution from each Retirement Plan in which the Trustee of the Marital Trust has an interest, of all (or any part of) the income from such plan (determined as if the plan were itself a trust in which the Surviving Trustor had a qualifying income interest for life), and such Trustee will facilitate and comply with such demand and take whatever steps are needed to insure that the income is received by the Surviving Trustor. (Any distribution under this paragraph will be credited against any rights the Surviving Trustor would otherwise have had to an amount representing such income.) This right will survive and continue with respect to any assets, including their proceeds, distributed from the Retirement Plan to the Trustee of the Marital Trust, so that there will be no question but that the Surviving Trustor at all times has a non-lapsing qualifying income interest for life in such Retirement Plan (and its proceeds) that will continue under all events and contingencies.

**3. Explicit Provisions Regarding Distributions and Acceleration of Installment Distributions**

For so long as the Marital Trust has any interest in a Retirement Plan, our Trustee will take whatever steps are required to assure that such interest, to the extent not previously distributed, is (and will at all times remain) immediately distributable on demand to our Trust. Accordingly, our Trustee will retain the unrestricted power to accelerate any installment distributions elected under the MRD Rules or otherwise. If the right to accelerate cannot be assured, our Trustee will not make an installment distribution election. If the Marital Trust has an interest in a Retirement Plan, no distribution of all or any part of such interest may be made to anyone other than the Surviving Trustor (or to our Trustee) during the Surviving Trustor's lifetime.

**Section 2. Provisions Relating to Income in Respect of a Decedent**

**a. Allocation of Income in Respect of a Decedent**

After the death of the first of us, our Trustee, using the provisions of Article Seven, shall allocate to the Family Trust all assets of the Deceased Trustor's Contributive Share which are not properly characterized as Income in Respect of a Decedent ("IRD Assets"), until such trust is fully funded. To the extent the Family Trust is not fully funded using only assets of the Deceased Trustor that are not characterized as IRD Assets, our Trustee shall next allocate to the Family Trust the smallest fractional share of any IRD Assets which are under the control of our Trustee necessary to fully fund the Family Trust (which fraction, depending on the circumstances, may result in some, all or no IRD Assets being allocated to the Family Trust). To the extent any Retirement Plan Proceeds not needed to fully fund the Family Trust, any subject to the provisions of Paragraph j.3 of Section 1 of this article, our Trustee shall distribute such Retirement Plan proceeds to the Surviving Trustor, outright and free of trust. If the Surviving Trustor disclaims this outright distribution, any Retirement Plan Proceeds so disclaimed shall be allocated to the Marital Trust, if any, otherwise to the Survivor's Trust.

**b. Power to Disclaim Income In Respect of a Decedent ("IRD")**

Upon the death of the first Trustor, and if our Trustee (other than the Surviving Trustor) determines, in our Trustee's discretion, that it is in the best interest of any beneficiary of our Trust or any subtrust thereof, our Trustee may disclaim all or any right to receive any IRD assets. If our Trustee so disclaims, such disclaimed Retirement Plan Proceeds or other IRD assets shall pass outright to the Surviving Trustor. If the Surviving Trustor is the only Trustee at the relevant time, the Special Co-Trustee provided for under Section 9 of Article Three shall act as

Trustee for this purpose.

### **Section 3. Special Needs Provisions**

#### **a. Definition of "Special Needs Beneficiary"**

For purposes of our Trust Agreement, the term "Special Needs Beneficiary" refers to a beneficiary who is entitled to receive any form of need-based government or private support or benefit, including, but not limited to, such programs as Medicaid, Supplemental Security Income ("SSI"), In-Home Supportive Services, Medicare and Aid for Dependent Children.

#### **b. Definition of "Special Needs"**

For purposes of our Trust Agreement, the term "Special Needs" refers to supplemental, non-support expenditures from our Trust assets that, pursuant to the other provisions of this Section, our Trustee is authorized to disburse, in our Trustee's sole and absolute discretion. Special Needs, subject to the general supplemental, non-support limitation, include, but are not limited to, medical, dental, diagnostic or therapeutic treatment, or nursing or home care services for which the Special Needs Beneficiary is not receiving government or private benefits, and is not eligible to receive such benefits. Special Needs also includes the differential between any treatment, service or care that the Special Needs Beneficiary is receiving from any government or private source and the level of treatment, service or care our Trustee deems appropriate for the beneficiary. Disbursements for education, travel (including travel by those our Trustee believes the companionship of which will benefit the Special Needs Beneficiary), entertainment devices or events and electronic devices are also to be considered Special Needs.

#### **c. Overall Limitation on Distribution**

It is our intention that distributions from our Trust Estate supplement, but not supplant, impair or diminish, any forms of government or private support or benefit which a beneficiary of our Trust is then receiving or becomes eligible to receive. For purposes of this Section, the term "support" refers to food, clothing or shelter. The terms of our Trust Agreement shall be read and interpreted to prevent any action by our Trustee which would supplant, impair, diminish or otherwise interfere with, limit or reduce the Special Needs Beneficiary's receipt of, or eligibility for, any form of government or private benefits. Any power of distribution (whether or not exercised), granted to our Trustee pursuant to the terms of our Trust Agreement that would result in the loss, diminishment or ineligibility for government or private benefits is hereby revoked; and, only such powers as will not result in ineligibility for such benefits, or loss, diminishment or impairment, thereof, shall remain exercisable by our Trustee.

**d. Discretionary Distribution of Accumulated Income and Principal**

Our Trustee may pay for the benefit of a Special Needs Beneficiary such accumulated income and principal of such beneficiary's share, up to the whole thereof, as our Trustee, in his or her discretion, shall determine from time to time, for the Special Needs of the Special Needs Beneficiary. Our Trustee, in exercising discretion under this paragraph, shall consider all income or resources available to the Special Needs Beneficiary. The Special Needs Beneficiary has no rights to any distributions under our Trust.

**e. Treatment of Any Residence Held by Trust**

Notwithstanding the provisions of Section 1.i of Article Fourteen, our Trustee may charge the Special Needs Beneficiary rent on any residence owned, in whole or in part, by the Special Needs Beneficiary's share. Our Trustee must charge rent if the failure to do so would cause ineligibility for any government or private benefits.

**f. Rights of Creditors and Others**

Our Trust assets are not intended to be used for the support of the Special Needs Beneficiary, but are only intended to supplement resources, income or government or private assistance available to the Special Needs Beneficiary. No part of our Trust Estate, neither principal nor income, shall be subject to anticipation or assignment by the Special Needs Beneficiary, nor be subject to attachment by any creditor of the Special Needs Beneficiary, governmental agencies or any other individual or entity, including any who may have provided goods or services to the Special Needs Beneficiary.

**g. Power to Terminate Beneficiary's Share of Trust**

If our Trustee determines that the existence of our Trust renders the Special Needs Beneficiary ineligible for governmental or private benefits that, in the discretion of our Trustee, substantially outweigh the benefits our Trust can bestow upon such beneficiary, or our Trustee determines that, notwithstanding the spendthrift provisions of our Trust, a substantial portion or all of the principal and accumulated income of the Special Needs Beneficiary's share is subject to invasion, garnishment, attachment, execution or other similar action by a creditor or a government agency, our Trustee may terminate such share and distribute the principal and accrued income in accordance with the paragraph that follows. Furthermore, in the event a court of competent jurisdiction determines the provisions of this Section are contrary to law or public policy, then subject to any right of appeal, the Special Needs Beneficiary's share of our Trust shall be deemed unavailable for purposes of qualifying for or maintaining any public or private support benefits or services, regardless of whether the beneficiary is actually entitled to such benefits or services, and if this is not sufficient to cure any deficiency then the Special Needs Beneficiary's share shall be deemed to

have failed and our Trustee shall distribute the principal and accrued income of such share in accordance with the paragraph that follows.

**h. Payment and Distributions on Termination of Discretionary Trust**

In the event a share for a Special Needs Beneficiary is terminated subject to the paragraph immediately above, our Trustee shall distribute the remaining principal and accrued income of such share to the Special Needs Beneficiary's siblings, per stirpes. If the Special Needs Beneficiary has no then living siblings but has living descendants who are of the age of majority, our Trustee shall distribute the remaining principal and accrued income of such share to such descendants of the Special Needs Beneficiary, per stirpes. If the Special Needs Beneficiary has no living descendants who are of the age of majority, our Trustee shall distribute the remaining principal and accrued income of such beneficiary's share to our then living descendants, per stirpes. If we have no then living descendants, our Trustee shall distribute the balance of the Special Needs Beneficiary's share of our Trust as provided in the paragraph that follows. It is our hope, wish and desire that any beneficiary under this paragraph will use any distribution received hereunder to provide for the supplemental needs, as defined above, of the Special Needs Beneficiary.

**i. Payment and Distributions on Death of Beneficiary**

Unless terminated under the paragraphs immediately above, or by the exhaustion of the corpus, the Special Needs Beneficiary's share of our Trust shall terminate upon such beneficiary's death. Our Trustee may pay the expenses of such beneficiary's last illness and funeral, and all administrative expenses relating to such beneficiary's share, including reasonable attorney's and accountant's fees, if, in our Trustee's discretion, other satisfactory provisions have not been made for the payment of such expenses. Our Trustee shall divide and distribute, free of trust, the balance of the Special Needs Beneficiary's share into as many shares of equal value as there are then surviving children of the beneficiary, if any, plus one share for each deceased child of such beneficiary leaving descendants then surviving, each of said descendant's interests to be determined per stirpes. Should there be no children or descendants of the beneficiary then surviving, our Trustee shall divide and distribute, free of trust, the balance of the beneficiary's share into as many shares of equal value as we have then surviving children, if any, plus one share for each of our deceased children leaving descendants then surviving, each of said descendant's interests to be determined per stirpes. Should we have no children or descendants then surviving, the Special Needs Beneficiary's share shall terminate and our Trustee shall distribute the balance of the beneficiary's share according to the provisions of Article Twelve of our Trust.

#### **Section 4. Life Insurance**

Notwithstanding anything to the contrary contained in our Trust Agreement, with respect to any policy of life insurance owned by either of us as our separate property (or held as part of the Contributing Trustor's Separate Estate), the Trustor owning such policies or holding them in our Trust shall retain, during his or her lifetime, all incidents of ownership with respect to such policies (including, but not limited to, all rights and powers to sell, transfer, assign or hypothecate such policies or any of them, to change the beneficiary of any policy, to borrow any sum from the insurer or from any other person and to assign any policy to such lender, and to receive all payments, dividends, surrender values, benefits or privileges of any kind which may accrue on account of said policies). Any other person on whose life such policies are held ("Insured") shall have no incidents of ownership with respect to such policies only by reason of being an Insured with respect to such policies and shall not act as the Trustee of such policies. The above provisions shall not prohibit or restrict us from owning any policies as Community Property. Such policies shall be governed as follows:

##### **a. Trust as Owner**

Our Trustee shall not be required to pay premiums, assessments, or other charges on any life insurance policy of which our Trust is the owner, which are required to keep it a binding insurance contract, nor shall our Trustee be responsible for determining whether such payments have been made. However, our Trustee may pay, from income or from principal of the Separate Estate of the Contributing Trustor with respect to Separate Property policies and the Community Estate with respect to Community Property policies, any and all premiums, assessments, or other charges with respect to such insurance policies that may be required in order to preserve them as binding contracts, and our Trustee may exercise any nonforfeitures or dividend options under the policies. In the event that our Trustee receives any notice requiring the payment of a premium, or whenever our Trustee intends to cancel, convert or substantially modify any insurance policy, our Trustee shall give the Contributing Trustor with respect to Separate Property policies and both of us with respect to Community Property policies, written notice of the event.

##### **b. Death of Trustor**

Upon the death of either Trustor having an ownership interest in a policy of life insurance, whether as Separate Property or as Community Property, and being survived by the Insured:

1. Our Trustee shall allocate the entire policy (including the Surviving Trustor's Community Property interest therein) to the Family Trust and our Trustee shall designate the Family Trust as the primary beneficiary of such policy. In the event that any of the Surviving Trustor's Community Property is allocated to the Family Trust, an offsetting



amount of the Deceased Trustor's Community Property shall be allocated to the Survivor's Trust.

2. In the event the Family Trust is the owner of any policies insuring the life of an Insured who is also a Trustee, such Trustee shall not be deemed to own said policy in his or her individual capacity, nor shall he or she have the power to exercise any "incidents of ownership" (as the term is defined by Section 2042 of the Code) over any such policy or policies. Such incidents of ownership shall be deemed to be owned and shall be exercised, if at all, only by the Special Co-Trustee in accordance with the provisions of Section 9 of Article Three. The foregoing limitations on the power of our Trustee relating to life insurance policies shall not apply to insurance policies that a Trustee owns or holds in his or her individual, rather than fiduciary, capacity.
3. Our Trustee may pay any net amount of premium, assessment or other charge, after deducting any dividend or other credit against the charge, on any life insurance policy of which the Family Trust is the owner, that is required to keep it a binding insurance contract, such amounts to be charged against the income of the Family Trust or, if the income thereof shall be insufficient, to the principal thereof. In the event that our Trustee intends not to pay any premium, assessment or other charge with respect to any policy held by our Trustee, or otherwise intends to cancel, convert or substantially modify any such policy, our Trustee shall first give the Insured, or the fiduciary of the person of an Insured under disability, at least fifteen (15) days advance written notice of our Trustee's intention to take such action.

**c. Trust as Beneficiary**

With respect to any policy of life insurance which designates our Trust as a primary or contingent beneficiary in any manner:

1. Except as provided in Paragraphs 4.a and 4.b of this Article, our Trustee shall have no responsibility, with respect to any policy, for the payment of premiums, notification of premiums due, or for any action required to keep any policy in force.
2. On receipt of proof of death of any Insured and on obtaining possession of an insurance policy, our Trustee

shall use reasonable efforts to collect all sums payable under policy terms. All sums received shall be principal of our Trust Estate, except for interest paid by the insurer, which shall be income. Subject to any contrary provision in the beneficiary designation of any policy, all sums payable under any policy shall be allocated to the trusts created hereunder based on the ownership of the policy immediately before the Insured's death.

3. Our Trustee shall have full power to compromise, arbitrate or otherwise adjust any claim, dispute or controversy arising under any policy, and shall have authority to initiate, defend, settle and compromise any legal proceeding necessary, in our Trustee's opinion, to collect the proceeds of any policy. Our Trustee shall not be obligated to engage in litigation to enforce the payment of any policy unless our Trustee is indemnified to its satisfaction against any resulting expenses and liability.
4. Our Trustee's receipt of payment for policy proceeds to any insurer shall be considered to be full discharge, and the insurer shall not be under any duty to inquire concerning the application of policy proceeds by our Trustee.

**d. Simultaneous Death**

Notwithstanding anything in our Trust Agreement to the contrary:

1. Where the Insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died other than simultaneously, the proceeds of the policy shall be distributed as if the Insured had survived the beneficiary; and
2. Where the owner and the Insured in a policy of life or accident insurance have died and there is no sufficient evidence that they have died other than simultaneously, the policy shall be distributed as if the Insured had survived the owner.

**e. Purchase of Additional Insurance**

Our Trustee may apply for and receive life insurance on the life of any beneficiary under our Trust.

## **Section 5. Use of Family Residence and Vacation Residence by Surviving Trustor**

Notwithstanding anything to the contrary hereinabove, from and after the death of the Deceased Trustor, the Surviving Trustor, at the Surviving Trustor's election, shall have the right to possess and occupy, during his or her life, the real property in our Trust Estate that we were using for our principal residence and/or vacation residence at the time of the death of the Deceased Trustor, without any obligation upon the Surviving Trustor to pay rent. While the Surviving Trustor shall possess and occupy said residence, the Surviving Trustor shall manage, care for and protect it.

Our Trustee shall pay a portion (set forth below) of any mortgage or trust deed payments (both principal and interest), any property taxes, assessments, insurance, maintenance and repairs on all such residential property, or any rent or lease payments, out of principal and/or income of the Family Trust and the Marital Trust, if any such share exists. The portion of such payments and expenses paid by our Trustee shall be an amount that is or was proportionate to the respective interests in such residential property held by the Family Trust and the Marital Trust. The remaining portion of such payments and expenses shall be paid by the Surviving Trustor personally or, pursuant to his or her instruction, shall be paid from the Survivor's Trust.

Our Trustee may exchange such residential property for other residential property, or sell such residential property, only with the consent of the Surviving Trustor, if competent to give such consent, or if the Surviving Trustor is not competent to give such consent, with the consent of the Surviving Trustor's Attorney-in-Fact. Our Trustee may also use our Trust Estate to purchase, rent or lease other residential property selected by the Surviving Trustor or the Surviving Trustor's Attorney-in-Fact, as the case may be. Any sale or purchase may be solely for cash or partly for cash and partly on credit, and at such price and upon such terms as shall be mutually agreed upon by our Trustee and the Surviving Trustor. The purchase price for the replacement residential property, or the value of the other residential property which is rented or leased, however, shall not exceed the selling price, less selling expenses, of the property sold, unless the Surviving Trustor shall contribute the amount of such excess, as determined by our Trustee, either by paying or agreeing to exonerate or indemnify the Trust Estate against any liability for the amount of such excess. The Surviving Trustor shall not be obligated to give security for his or her liability under such agreement of exoneration or indemnification. In the event that our Trustee sells any residential property and the Surviving Trustor does not request the purchase, rental or lease of a replacement residence, our Trustee shall invest and reinvest the proceeds of any such sale or distribute the same in accordance with the other provisions of our Trust Agreement. The right, title and interest of the Surviving Trustor and of our Trustee in any other residential property acquired under the provisions of this Section shall be proportionate to their respective contributions to the purchase price. The right, title and interest of our Trust Estate in any other residential property received in exchange or by purchase, shall be subject to all the terms and conditions of this Section, including the provisions hereof relating to the possession and occupancy, sale or exchange, and the acquisition of other residential property in place thereof. If any residential property possessed or occupied by the Surviving Trustor is located on realty used for commercial or farming purposes, this Section shall apply only with respect to the residential structures thereon, along with the land on which they stand and the land reasonably necessary for the exercise of the right of ingress thereto and egress therefrom, and our Trustee, in

our Trustee's discretion, may continue to use the balance of the real property for commercial or farming purposes.

If the Surviving Trustor is acting as Trustee hereof at the time our Trustee is called upon to exercise any of his or her powers, duties, or discretionary authority set forth above in this Section, then such powers, duties and discretionary authority may be limited as set forth in Section 9 of Article Three. This Section shall also apply to our principal residence, in the event we are living but neither of us is acting as Trustee, in which case either, or both, of us residing on the premises shall be treated as the "Surviving Trustor" for purposes of the foregoing and references to the Survivor's Trust, Family Trust and Marital Trust shall be irrelevant.

## **Section 6. "S" Corporation Stock**

Notwithstanding any other provisions of our Trust Agreement, our Trustee shall not allocate any Subchapter "S" Corporation Stock (as defined by Section 1361 et. seq. of the Code) held in our Trust Estate at the death of the Deceased Trustor, to the extent possible, to any trust or trust share created under our Trust Agreement which would have the effect of causing the "S" Corporation status to be terminated because the trust or the trust share was not a qualified Subchapter "S" shareholder, or was not a Qualified Subchapter "S" Corporation Trust ("QSST"), as defined at Section 1361 of the Code, as amended. In furtherance of the above, it is our intention that our Trustee shall have the right, in our Trustee's sole discretion (but keeping in mind our dispositive wishes as set forth elsewhere in our Trust Agreement), to bifurcate any and all trusts created hereunder, at any time or from time to time after the death of one or both of us, to create trusts which hold "S" Corporation stock and shall at all times be classified as QSSTs within the meaning of Section 1361 of the Code and the corresponding provisions of state law. The above provisions may be limited as set forth in Section 9 of Article Three of our Trust Agreement.

- a. To that end, all such QSSTs shall be subject to the following rules:
  1. During the life of the current income beneficiary there shall be only one (1) income beneficiary of a QSST;
  2. Any principal distributed during the life of the current income beneficiary may be distributed only to such beneficiary;
  3. The income interest of the current income beneficiary in the QSST shall terminate on the earlier of such beneficiary's death or the termination of the QSST;
  4. Upon termination of the QSST during the life of the current income beneficiary, the QSST shall distribute all of its assets to such beneficiary; and
  5. All of the income (within the meaning of Section 643 (b) of the Code) shall be distributed (or shall be required to be

distributed) currently to one (1) individual who is a citizen or resident of the United States.

- b. Our Trustee shall also, to the extent possible, administer, hold, and/or dispose of any "S" Corporation Stock held in the Survivor's Trust at the death of the Surviving Trustor so as not to jeopardize the continuity of the "S" Corporation election of such stock, if any.

Our Trustee, in his or her discretion, may, in the alternative, attempt to exchange, sell, or convey such stock to such persons or entities who would not cause the "S" Corporation election to be revoked or terminated for any reason attributable to that person's or entity's ownership of such stock and the proceeds or property received from such exchange, sale, or conveyance shall then be applied in accordance with the provisions of our Trust Agreement. It is further provided that, notwithstanding this paragraph, our Trustee shall hold, administer, and dispose of any and all of our Trust Estate such that the continuation of the "S" Corporation election shall be of secondary consideration in deference to our primary intent that the total value of our Trust Estate distributed under the terms of our Trust Agreement be maximized to the extent possible, considering all income tax, estate tax, and any other taxes or expenses that could potentially diminish the value of such Trust Estate.

## **Section 7. The Rule Against Perpetuities**

Notwithstanding any other provision of our Trust Agreement, unless sooner terminated or vested in accordance with other provisions of our Trust Agreement, all interests in a Contributive Share not otherwise vested, including, but not limited to, all trusts and powers of appointment created hereunder, shall terminate: (I) one day prior to twenty-one (21) years after the death of the last survivor of the group composed of us, those beneficiaries described herein and each Trustor's descendants living on the date of death of the contributing Trustor, or (II) if longer, such period as may be authorized under the laws of the state identified in the Governing State Law Section of this Article. At that time, distribution of all principal and all accrued, accumulated and undistributed income of such Contributive Share shall be made to the persons (or their representatives as authorized herein) then entitled to distributions of income or principal and in the manner and proportions herein stated, irrespective of their then attained ages.

## **Section 8. Spendthrift Protection**

To the fullest extent permissible by law, no interest in the principal or income of any trust created hereunder shall be anticipated, assigned, encumbered or subject to any creditor's claim or to legal process prior to its actual receipt by the beneficiary. Notwithstanding any provision herein to the contrary, this Section shall not apply to Qualified Disclaimers (as defined in Section 2518 of the Code) made by any beneficiary as to his or her interest in our Trust. Except as herein otherwise expressly provided, all income or principal to be paid to any beneficiary shall be paid by our Trustee directly and only to such beneficiary, to the personal representative or guardian of such beneficiary, or, where authorized, applied for the benefit of such beneficiary. If any creditor or other claimant attempts, by any means, to subject to the satisfaction of the claim

of such creditor or claimant the interest of any beneficiary to receive income or periodic payments from principal or income, or both, then notwithstanding any other provisions herein, and in the absolute discretion of our Trustee, our Trustee may suspend such beneficiary's payments from our Trust. To the extent that the provisions of this Section would exclude any portion of our Trust Estate from qualifying for the Marital Deduction, it shall be null and void.

## **Section 9. Incapacity and Competency**

A person shall be considered incapacitated in the event such person has been determined to be so by a court of competent jurisdiction; has been certified by two licensed physicians to be unable to properly handle his or her own affairs by reason of physical illness or mental illness; is unavailable for a period of not less than six months when his or her whereabouts are unknown and it is not known whether he or she is dead or alive; or, in the case of a trustee, such trustee is prevented by state law from exercising a power or powers granted to such trustee under our Trust Agreement. To the extent a trustee is prevented by state law from exercising a power or powers granted to such trustee under our Trust Agreement, the Successor Trustee shall have the power to exercise such power or powers, provided such power is not a general power of appointment if held by a Successor Trustee. If a Successor Trustee is prevented from exercising a power or powers because such power or powers would constitute a general power of appointment, the Special Co-Trustee appointed under the provisions of Section 9 of Article Three shall exercise such denied power or powers. A person shall be considered to have regained capacity, as applicable, upon such a determination by a court of competent jurisdiction; upon certification by two licensed physicians that the person is able to properly handle his or her own affairs; upon his or her renewed availability; or if any state law proscription as to the exercise of a power or powers is removed. The term "incapacity" is intended to be interchangeable with the terms "disability" and "incompetency". The term "competent" in our Trust Agreement refers to a person who is not incapacitated.

## **Section 10. Income and Principal Payments**

Other than as directed in the Special Needs Provisions of this Article, all payments of income or principal shall be made in such of the following ways as our Trustee determines appropriate:

- a. To each respective beneficiary in person upon his or her personal receipt;
- b. Deposited in any bank to the credit of such beneficiary in any account carried in his or her name or jointly with another or others;
- c. To the parent or legal representative of the beneficiary;
- d. To a Custodian under a Uniform Transfers to Minors Act or Uniform Gifts to Minors Act selected by our Trustee for such period of time under applicable law as our Trustee determines appropriate;
- e. To some near relative, friend or institution having primary responsibility for the care and custody of the beneficiary;

- f. By our Trustee using such payment directly for the benefit of such beneficiary; or
- g. To the Trustee of any revocable trust of which the beneficiary is the Trustor.

### **Section 11. Limit on Trustee's Discretion**

Notwithstanding any other provision in our Trust Agreement except for the general power of appointment specifically provided under the Section entitled "General Power of Appointment Over Non-Exempt Assets" in Article Eleven, no individual Trustee, other than a Trustor with respect to the Trustor's own Contributive Share and a Surviving Trustor with respect to the Survivor's Trust, who is also a beneficiary hereunder ("Trustee-beneficiary") shall have any right, power, duty or discretion concerning our Trust Estate if such right, power, duty or discretion conferred upon such Trustee-beneficiary under our Trust Agreement would constitute a general power of appointment under Code Sections 2041 or 2514 that would cause any assets of our Trust Estate to be included in the estate of such Trustee-beneficiary. Any such right, power, duty or discretion with such effect shall be null and void with respect to such Trustee-beneficiary. No Trustee who is under a legal obligation to any beneficiary of our Trust Agreement or other person shall under any circumstances partake in any decisions relating to any discretionary distributions of income or principal of our Trust Estate that can be used to discharge any such legal obligation of such Trustee.

If, however, such powers may be possessed without violating the restrictions imposed by our Trustee acting jointly with the Special Co-Trustee appointed under the provisions of Section 9 of Article Three, then our Trustee may possess those powers and authorities without violating this Section. Such Special Co-Trustee shall act jointly with our Trustee whenever the joint possession of a power or authority would not violate the restrictions imposed by this Section. Such Special Co-Trustee shall act alone whenever only sole possession of a power or authority would not violate the restrictions imposed by this Section.

### **Section 12. Disclaimer by Beneficiary**

Any beneficiary under our Trust Agreement shall be entitled to disclaim all or any portion of such beneficiary's interest in our Trust.

### **Section 13. Captions**

The captions of Articles, Sections and Paragraphs used in our Trust Agreement are for convenience of reference only and shall have no significance in the construction or interpretation of our Trust Agreement.

## **Section 14. Severability**

Should any of the provisions of our Trust Agreement be, for any reason, declared invalid, such invalidity shall not affect any of the other provisions of our Trust Agreement, and all invalid provisions shall be wholly disregarded in interpreting our Trust Agreement.

## **Section 15. Statutory References**

Unless the context clearly requires another construction, each statutory reference in our Trust Agreement shall be construed to refer to the statutory section mentioned, related successor sections, and corresponding provisions of any subsequent law, including all amendments.

## **Section 16. Survivorship**

### **a. Simultaneous Deaths**

For purposes of our Trust Agreement, if we die under circumstances in which the order of our deaths cannot be established, the Trustor with the smaller Taxable Estate shall be deemed to have survived the Trustor with the larger Taxable Estate. If both of our Taxable Estates are equal, the Husband Trustor shall be deemed the survivor.

If any beneficiary under our Trust Agreement and either or both Trustors die under circumstances in which the order of deaths cannot be established, the Trustor or Trustors shall be deemed to have survived the beneficiary, and our Trust Agreement shall be construed accordingly.

### **b. Generation-skipping Transfer Tax Matters**

A person (the "Non-Skip Person") shall not be deemed to have been alive on the date of the death of any person upon whose death a transfer is deemed to occur for generation-skipping transfer tax purposes or the date of any distribution from, or any termination of, any interest in any trust or share under our Trust Agreement for which the date of the Non-Skip Person's death is relevant (the "Transfer Date") if: (I) the Non-Skip Person is actually alive on the Transfer Date; (II) the Non-Skip Person is not actually alive on the date ninety (90) days following the Transfer Date; and (III) the existence of such a condition of survivorship causes another person who would otherwise be assigned to a generation below that of the Non-Skip Person to be assigned to the generation of the Non-Skip Person for generation-skipping transfer tax purposes.



## **Section 17. Gender and Number**

In our Trust Agreement, where appropriate, except where the context otherwise requires, the singular includes the plural and vice versa, and words of any gender shall not be limited to that gender.

## **Section 18. Governing State Law**

Our Trust Agreement and the trusts created under it shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

## **Section 19. Reliance on Affidavit or Certificate of Trust**

Any person may act in reliance upon a properly issued Affidavit or Certificate of Trust reflecting the relevant terms of our Trust Agreement without risk or incurring any liability to the Trustors, our Trustees or the beneficiaries of our Trust.

## **Section 20. Definitions**

The following terms as used in our Trust Agreement are defined as indicated:

### **a. Beneficiary Designation**

The term "Beneficiary Designation" means any document executed by a Trustor that affects the manner of payment of amounts held in a plan (of whatever type) subject to the distribution rules of Section 401(a)(9) of the Code, any commercial annuity or any similar deferred payment arrangement, or life insurance contract.

### **b. Business Judgment**

The term "Business Judgment" means that the fiduciary acted on an informed basis, in good faith, and with the honest belief that his or her actions are in the best interest of our Trust and its beneficiaries.

### **c. Child, Children and Descendants**

The terms "child" or "children" mean lawful blood descendants in the first degree of the parent designated; and "descendants" means the lawful blood issue, in any degree, of the ancestor designated; provided, however, that if a person has been adopted, that person shall be considered a child of such adopting parent or parents, and such adopted child and his or her issue shall be considered issue of the adopting parent or parents and of anyone who is, by blood or adoption, an ancestor of the adopting parent or either of the adopting parents. The terms "child," "children," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant, in

the appropriate degree, of the ancestor designated even though such descendant is born after the death of a parent. Notwithstanding the preceding provisions of this Section 20.c., the terms of Article One may exclude certain descendants from being treated as such hereunder by restricting the availability of Trust benefits.

**d. Code**

The term "Code" means the Internal Revenue Code of 1986, as amended from time to time. The terms "Income in Respect of a Decedent", "Gross Estate", "Taxable Estate", "State Death Tax Credit", "Marital Deduction", "Exclusion", "Disclaimer" and any other terms that, from the context in which they are used, refer to the Code, shall have the same meaning as such terms have for the purposes of applying the Code to our Trust Agreement.

**e. Contributive Share**

Contributive Share shall refer to property transferred to our Trust Estate by a Trustor during life or at death.

**f. Deceased Trustor**

The term "Deceased Trustor" means a Trustor who has died.

**g. Death Taxes**

The term "Death Taxes" means all inheritance, estate, succession and other similar taxes that are payable by any person on account of that person's interest in the estate of the decedent or by reason of the decedent's death, including penalties and interest, but excluding the following:

1. Any additional tax that may be assessed under Sections 2032A and 2057 of the Code; and
2. Any federal or state tax imposed on a generation-skipping transfer, as that term is defined in the federal tax laws, unless that generation-skipping transfer tax is payable directly out of the assets of a trust created by our Trust Agreement.

**h. Education**

The term "education" shall be given broad interpretation and may include but not be limited to:

**1. High School**

Education at public or private elementary, middle, junior high or high schools, including boarding schools.

## **2. College**

Undergraduate and graduate study in any and all fields whatsoever, whether of a professional character in colleges or other institutions of higher learning.

## **3. Specialized Training**

Specialized formal or informal training in music, the stage, handicrafts, the arts, or vocational or trade schools, whether by private instruction or otherwise.

## **4. Other Educational Activities**

Any other activity including foreign or domestic travel that shall tend to develop fully the talents and potentialities of each beneficiary regardless of age.

### **i. For Cause**

The term "for cause" means and includes any material act or omission to act by a trustee or other fiduciary constituting ordinary negligence, gross negligence, self-dealing, or intentional fraud. The term "material" identifies a significant monetary damage to our Trust or to any beneficiary of our Trust as the result of the act or omission to act by a trustee or other fiduciary constituting ordinary negligence, gross negligence, self-dealing or intentional fraud. The term "material" does not include incidental or insignificant monetary damage to our Trust or a trust beneficiary; monetary damages realized by someone who is not a beneficiary of our Trust; nor an intangible loss or damage that cannot be valued under the fair market valuation standards of the tax laws of the United States.

### **j. Heirs at Law**

References to "heirs at law" mean individuals who are living at the time when property is directed to be distributed to them. Those individuals' identities and the shares of the distributable property that they each receive shall be determined under the intestacy laws of the State of South Carolina which then govern the distribution of the personal property of a resident dying at such time, without creditors, and owning only the distributable assets.

### **k. Personal Representative**

The term "Personal Representative" means trustee, executor, executrix, administrator, administratrix, conservator, guardian, custodian or any other type of personal representation.

**l. Per Stirpes**

In every case in which a disposition of an interest is to be made to the descendants of a person "per stirpes," it is intended that such disposition shall be made in accordance with the principle of representation. This principle, in relation to our Trust Agreement, means that whenever property is to be distributed to the descendants of a person, such property shall be divided into as many shares as there are, at the time of disposition, then living descendants in the nearest degree of kinship to such person and then deceased descendants in the same degree who left descendants who are then living; each then living descendant in the nearest degree receiving one share, and one share for each then deceased descendant in the same degree, being further subdivided among his or her descendants in the same manner.

**m. Surviving Trustor**

The term "Surviving Trustor" means a Trustor who survives a Deceased Trustor.

**n. Trust Estate**

The term "Trust Estate" means all of the property, real and personal, intangible and tangible, which has been transferred to our Trustee, whether or not listed on any Schedules.

**o. Trustee's Discretion**

The term "discretion" with regard to a Trustee means such Trustee's sole but reasonable judgment. In exercising any discretionary power with respect to our Trust, our Trustee shall, at all times, act in accordance with fiduciary principles and shall act reasonably under the circumstances and not in bad faith or in disregard of the purposes of our Trust.

**p. Trustor**

The term "Trustor" shall be interchangeable with the terms "settlor", "grantor", "donor" or other similar terms.

**q. Unused Generation-skipping Transfer Tax Exemption Amount**

The term "unused generation-skipping transfer tax exemption amount" means the generation-skipping transfer tax exemption provided in Section 2631 of the Code in effect at the time of death of a Trustor, reduced by the aggregate of (I) the amount, if any, of such exemption allocated by such Trustor or by operation of law to such Trustor's lifetime transfers and (II) the amount, if any, such Trustor or such Trustor's Personal Representative or Trustee has specifically allocated to property, other than property to which such exemption is directed to be allocated by any applicable provision of our Trust Agreement.

For purposes of our Trust Agreement, if at the time of death of a Trustor such Trustor has made lifetime transfers of property to which an inclusion ratio of greater than zero would be applicable and for which the gift tax return due date has not expired (including extensions) and a return has not yet been filed, it shall be deemed that the generation-skipping transfer tax exemption has been allocated to such transfers to the extent necessary and possible to exempt such transfers from generation-skipping transfer tax.

## **Section 21. No Contest Clause**

Notwithstanding the "Resolution of Disputes" provisions under Section 9 of Article Three of our Trust, if any devisee, legatee, or beneficiary under our Trust, or any amendment thereto, no matter how remote or contingent such beneficiary's interest appears, or any of our legal heirs, or any person claiming under any of them, directly or indirectly, does any of the following, then in that event both of us specifically disinherit such person or persons, and all such legacies, bequests, devises and interests given to such person or persons under our Trust, or any amendment thereto, or any other Trust document created by us at any time, shall be forfeited and shall be distributed as provided elsewhere herein as though such person or persons had predeceased us without issue:

- a. Unsuccessfully challenges the appointment of any person named as a trustee in our Trust Agreement, or any amendment thereto, or unsuccessfully seeks the removal of any person acting as a trustee;
- b. Objects in any manner to any action taken or proposed to be taken in good faith by our Trustee under our Trust Agreement, or any amendment thereto, whether our Trustee is acting under court order, notice of proposed action or otherwise, and said action or proposed action is later adjudicated by a court of competent jurisdiction to have been taken in good faith;
- c. Objects to any construction or interpretation of our Trust Agreement, or to any amendment thereto, or the provisions of either, that is adopted or proposed in good faith by our Trustee, and said objection is later adjudicated by a court of competent jurisdiction to be an invalid objection;
- d. Claims entitlement to (or an interest in) any asset alleged by our Trustee to belong to the Probate or Trust Estate, whether such claim is based upon a community or separate property right, Marvin rights, a contract or other right or device, and said claim is later adjudicated by a court of competent jurisdiction to be invalid;
- e. Files a creditor's claim against the assets of the Probate or Trust Estate and such claim is later adjudicated by a court of competent jurisdiction to be invalid;

- f. Anyone, other than us, attacks or seeks to impair or invalidate (whether or not any such attack or attempt is successful) any designation of beneficiaries for any insurance policy on our lives or any designation of beneficiaries for any pension plan, Keogh, SEP, or IRA;
- g. In any other manner contests our Trust Agreement, or any amendment thereto, executed by us, or in any other manner, attacks or seeks to impair or invalidate any of our Trust's provisions;
- h. Conspires with or voluntarily assists anyone attempting to do any of the above acts.

Expenses to resist any above contest or other attack of any nature upon any provision of our Trust Agreement, or any amendment thereto, shall be paid from the trusts created hereunder as expenses of administration.

In the event that any provision of this Section is held to be invalid, void, or illegal, the same shall be deemed severable from the remainder of the provisions in this Section and shall in no way affect, impair, or invalidate any other provision in this Section. If such provision is deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

The authority of the Special Co-Trustee appointed under Section 9 of Article Three to resolve disputes between Co-Trustees, beneficiary and Trustee, and among beneficiaries in no way nullifies the provisions of this Section.

The provisions of this Section shall not apply to any disclaimer by any person of any benefit under our Trust Agreement or any amendment thereto.

## Execution

We have executed our Trust Agreement on the date set forth on the first page of our Trust Agreement.

We certify that we understand our Trust Agreement and that it correctly states the terms and conditions under which our Trust Estate is to be held, managed and disposed of by our Trustees. We approve this revocable living trust in all particulars and request our Trustees to execute it.

Trustors:

\_\_\_\_\_  
IVO F. COLUCCI

\_\_\_\_\_  
DORIS D. COLUCCI

Trustees:

\_\_\_\_\_  
IVO F. COLUCCI

\_\_\_\_\_  
DORIS D. COLUCCI

\_\_\_\_\_  
SIGNATURE OF FIRST WITNESS

\_\_\_\_\_  
SIGNATURE OF SECOND WITNESS

\_\_\_\_\_  
NAME OF FIRST WITNESS

\_\_\_\_\_  
NAME OF SECOND WITNESS

\_\_\_\_\_  
STREET ADDRESS

\_\_\_\_\_  
STREET ADDRESS

\_\_\_\_\_  
CITY, STATE, ZIP

\_\_\_\_\_  
CITY, STATE, ZIP

STATE OF SOUTH CAROLINA

)

COUNTY OF CHARLESTON

)

SS

PERSONALLY appeared the undersigned witness and made oath that he/she saw the within named IVO F. COLUCCI and DORIS D. COLUCCI, Trustors and Trustees, sign, seal and as their act and deed deliver the within instrument and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

\_\_\_\_\_  
WITNESS

Sworn to before me this February 24, 2005 by IVO F. COLUCCI and DORIS D. COLUCCI, , and the above named witness.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

Prepared by:  
John R. Kuhn  
Kuhn and Kuhn, LLC  
38 Broad Street, 2nd Floor  
Charleston, South Carolina 29401  
(843) 577-3700



## **Schedule A**

**Tenancy in Common Property, Community Property  
and Quasi Community Property**

**Signed:**

\_\_\_\_\_  
**IVO F. COLUCCI**

\_\_\_\_\_  
**DORIS D. COLUCCI**

**Trustees accept the above listed property as the Joint Property of the Trustees.**

## **Schedule B**

### **Separate Property of Husband**

Signed:

\_\_\_\_\_  
IVO F. COLUCCI

\_\_\_\_\_  
DORIS D. COLUCCI

Trustees accept the above listed property as the Separate Property of the Husband Trustor.

\_\_\_\_\_

## **Schedule C**

### **Separate Property**

**Signed:**

\_\_\_\_\_  
**DORIS D. COLUCCI**

\_\_\_\_\_  
**IVO F. COLUCCI**

**Trustees accept the above listed property as the Separate Property of the Wife Trustor.**

## Assignment of Personal Property

IVO F. COLUCCI and DORIS D. COLUCCI hereby transfer and assign, without consideration, all right, title and interest which they now have in those Personal Property Items listed below, to IVO F. COLUCCI and DORIS D. COLUCCI, Trustees, or their successors in trust, under the COLUCCI LIVING TRUST, dated February 24, 2005 and any amendments thereto.

### Personal Property Assigned

Personal Effects  
Furniture, Furnishings and Appliances  
Jewelry

This assignment was executed on February 24, 2005.

\_\_\_\_\_  
IVO F. COLUCCI

\_\_\_\_\_  
DORIS D. COLUCCI

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

SS

PERSONALLY appeared the undersigned witness and made oath that he/she saw the within named IVO F. COLUCCI and DORIS D. COLUCCI, Trustors, sign, seal and as their act and deed deliver the within instrument and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

\_\_\_\_\_  
WITNESS

Sworn to before me this February 24, 2005 by IVO F. COLUCCI and DORIS D. COLUCCI, , and the above named witness.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

Trustees accept the above listed property as the Separate Property of the Wife Trustor.

\_\_\_\_\_

This  
AMENDMENT

prepared for

IVO F. COLUCCI

and

DORIS D. COLUCCI

Kuhn and Kuhn, LLC  
39 Broad Street, Suite 301  
Charleston, South Carolina 29401  
(843) 577-3700  
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**First Amendment**  
**of the**  
**COLUCCI LIVING TRUST**

**Article One**  
**Amendment Creation**

**Section 1. Parties to Our Trust Amendment**

This First Amendment, dated June 18, 2013, of our Living Trust, is made between IVO F. COLUCCI, the Husband Trustor, also known as IVO FRANK COLUCCI, and DORIS D. COLUCCI, the Wife Trustor, also known as DORIS DUANE COLUCCI, (collectively referred to as "Trustors"), and the following Initial Trustees: IVO F. COLUCCI and DORIS D. COLUCCI

**Section 2. Trust Recitals**

Trustors and Trustees entered into a Trust Agreement dated February 24, 2005 ("Trust Agreement"). Under Section 3 of Article Four of that Trust Agreement, Trustors reserved the right to amend or revoke the Trust Agreement in whole or in part. By this Amendment, we desire to amend the existing Trust Agreement and Trustees agree to accept the changes set forth in this Amendment.

**Section 3. Amendment Provisions**

a. We hereby amend our Trust Agreement as follows:

1. We hereby revoke SECTION 4 of ARTICLE ONE of our Trust Agreement and substitute the following:

**Section 4. Family Members**

Unless specifically provided otherwise in subsequent provisions of our Trust Agreement, and in expansion of the definition provisions of Section 20.c. of Article Fifteen, all references to "our children", subject to the exclusion of any child under any subsequent provision of this Section, are to all of the children so identified in this Section (including Joint,

Husband's, Wife's and Deceased children) but only to those children and any children born to or adopted by us subsequent to the execution of our Trust Agreement.

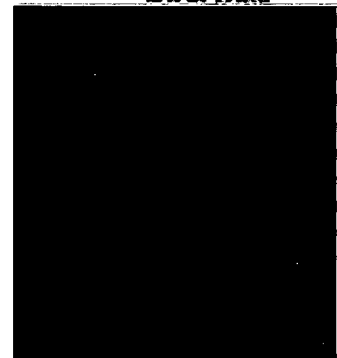
a. Children

The names and birth dates of our children are as follows:

Name

Birth Date

STEFAN JOHN COLUCCI  
ALICE COLUCCI NORTON  
KIM COLUCCI LIZZI  
WILLIAM COLUCCI  
ROBERT JOHN COLUCCI  
JOHN MARTIN ANTONIO  
MICHAEL F. COLUCCI



b. Deceased Children

We have no deceased children.

c. Exclusion of Certain Descendants

We hereby acknowledge the existence of ALICE COLUCCI NORTON and intentionally, with full knowledge, have chosen to exclude her and her descendants under the terms of our Trust Agreement, except to the extent that we leave a gift of one-hundred dollars (\$100.00) to her under our Specific Distributions in Article Six of this Trust.

We hereby acknowledge the existence of KIM COLUCCI LIZZI and intentionally, with full knowledge, have chosen to exclude her, but her only (and not her descendants, none of whom have been excluded), under the terms of our Trust Agreement, except that we leave a gift of one-hundred dollars (\$100.00) to her under our Specific Distributions in Article Six of this Trust.

We hereby acknowledge the existence of WILLIAM COLUCCI and intentionally, with full knowledge, have chosen to exclude him, but him only (and not his descendants, none of whom have been excluded), under the terms of our Trust Agreement.

2. We hereby revoke SECTION 4 of ARTICLE THREE of our Trust Agreement and substitute the following:

#### **Section 4. Appointment of Trustees**

We shall serve as the Initial Trustees. If for any reason either of us is unwilling or unable to serve as Trustee while both of us are living, the other Trustor shall become sole Trustee. If for any reason both of us are unwilling or unable to serve as Trustee, then MICHAEL FOX, CPA shall serve as Successor Trustee. If for any reason MICHAEL FOX, CPA were unwilling or unable to serve as Trustee, then HENRY BURKES shall serve as Trustee. If for any reason HENRY BURKES were unwilling or unable to serve as Trustee, then RICHARD M. HYMAN, JR. shall serve as Trustee. Unless otherwise specified, if Co-Trustees are serving as Successor Trustee, the next following Successor Trustee shall serve only after all the Co-Trustees are unwilling or unable to serve as Successor Trustee. If for any reason all of the above named Successor Trustees are unwilling or unable to serve, then a Successor Trustee shall be appointed as provided in Section 6 of this Article.

3. We hereby revoke SECTION 4 of ARTICLE SIX of our Trust Agreement and substitute the following:

#### **Section 4. Specific Gifts**

Upon the death of the designated Trustor(s), our Trustee shall make the following specific distributions of trust property. If the designated Trustor is the first of the Trustors to die, except where the distributions under this Section would otherwise qualify for the federal estate tax Marital or Charitable Deduction, the specific distribution of trust property shall be made from the Contributive Share of the designated Trustor, which would otherwise have been allocated to the Family Trust.

a. **Specific Distribution of Cash to ALICE COLUCCI NORTON**

Upon the death of IVO F. COLUCCI and DORIS D. COLUCCI, our Trustee shall distribute one-hundred dollars (\$100.00) to ALICE COLUCCI NORTON, free of trust. THIS IS OUR ONLY GIFT OR DISTRIBUTION TO OUR DAUGHTER, ALICE COLUCCI NORTON, AND HER FAMILY. If such beneficiary should die prior to the time that this distribution is directed to be made, this gift shall lapse and our Trustee shall administer this specific distribution in accordance with the Articles that follow. This specific distribution shall be free and clear of all expenses, claims, liens, encumbrances and taxes relative to this specific distribution.



In addition to other exonerations of this specific distribution, if any, this specific distribution shall bear no Death Taxes.

**b. Specific Distribution of Cash to KIM COLUCCI LIZZI**

Upon the death of IVO F. COLUCCI and DORIS D. COLUCCI, our Trustee shall distribute one-hundred dollars (\$100.00) to KIM COLUCCI LIZZI, free of trust. THIS IS OUR ONLY GIFT OR DISTRIBUTION TO OUR DAUGHTER, KIM COLUCCI LIZZI. If such beneficiary should die prior to the time that this distribution is directed to be made, this gift shall lapse and our Trustee shall administer this specific distribution in accordance with the Articles that follow. This specific distribution shall be free and clear of all expenses, claims, liens, encumbrances and taxes relative to this specific distribution. In addition to other exonerations of this specific distribution, if any, this specific distribution shall bear no Death Taxes.

**c. Specific Distribution of Real Estate to JOHN MARTIN ANTONIO**

Upon the death of IVO F. COLUCCI and DORIS D. COLUCCI, our Trustee shall distribute 120 Duane Lane, Summerville, South Carolina and one acre of land surrounding the house to JOHN MARTIN ANTONIO, free of trust. If such beneficiary should die prior to the time that this distribution is directed to be made, this gift shall lapse and our Trustee shall administer this specific distribution in accordance with the Articles that follow. This specific distribution shall be free and clear of all expenses, claims, liens, encumbrances and taxes relative to this specific distribution. In addition to other exonerations of this specific distribution, if any, this specific distribution shall bear no Death Taxes.

4. We hereby revoke SECTION 1 of ARTICLE ELEVEN of our Trust Agreement and substitute the following:

**Section 1. Division of Trust Property Into Shares**

Upon the death of the Surviving Trustor, our Trustee shall divide the Survivor's Balance, the Family Balance, and the Marital Balance, if any, (or any trusts into which such balances may have been divided) into separate and equal shares (and for purposes of determining such division and subsequent distributions shall take into account the exclusion of any descendant as may be directed in Article One) as follows:

| <u>Beneficiary Name</u>                                    | <u>Share</u> |
|------------------------------------------------------------|--------------|
| STEFAN JOHN COLUCCI                                        | 1/6          |
| CHILDREN AND THEIR DESCENDANTS (ONLY) OF KIM COLUCCI LIZZI | 1/6          |
| CHILDREN AND THEIR DESCENDANTS (ONLY) OF WILLIAM COLUCCI   | 1/6          |
| JOHN MARTIN ANTONIO                                        | 1/6          |
| ROBERT JOHN COLUCCI                                        | 1/12         |
| ROBERT AVERY COLUCCI                                       | 1/24         |
| ASHTON EVO COLUCCI                                         | 1/24         |
| MICHAEL F. COLUCCI                                         | 1/12         |
| PROVIDENCE MILAN COLUCCI                                   | 1/12         |

In the event an individual beneficiary named immediately above should die while there are assets remaining in such individual beneficiary's trust share, our Trustee shall hold, administer, and distribute the share for such beneficiary as provided under the terms of such share. In the event a named individual beneficiary predeceases us leaving no descendants or the terms of such share lapse without further direction, then such lapsed share shall be reallocated among the remaining individual beneficiaries named in this Section (if any), in accordance with each such remaining individual beneficiary's respective percentage of the total interests of all such remaining individual beneficiaries. If there are no remaining individual beneficiaries, such share shall be reallocated among the other remaining beneficiaries in accordance with each remaining beneficiary's respective percentage of the total interests of all remaining beneficiaries. If any beneficiary named in this Section is a "class" of individuals or organizations, such class shall be treated as a single beneficiary for purposes of such reallocation. If there are no remaining beneficiaries under this Section, then such share shall be administered as provided in the Articles that follow.

In the event a charitable organization is named as a beneficiary and such organization is no longer in existence or no longer qualifies as a tax-exempt organization under Sections 170(c), 2055 and 2522 of the Code, our Trustee shall distribute the share for such charitable organization to such charitable organization or organizations as our Trustee, in our Trustee's discretion, determines most closely matches our charitable intent. If our Trustee fails to distribute this share due to the lack of a qualified tax-exempt beneficiary, this share shall lapse and be reallocated

among the remaining beneficiaries as provided in the paragraph immediately above.

Each share shall constitute a separate and independent trust, and Exempt Trusts shall remain separate from Non-Exempt Trusts. The decisions of our Trustee as to the assets to constitute each such share or subshare shall be conclusive, subject only to the requirement that said shares or subshares shall be of the respective values.

The trust shares shall be held, administered and distributed as follows:

a. **Distribution and Administration of Trust Share for STEFAN JOHN COLUCCI**

1. **Distributions of Net Income**

Our Trustee shall pay to, or apply for the benefit of, STEFAN JOHN COLUCCI, the entire net income of his trust share, in monthly or other convenient installments agreed upon by him and our Trustee, but not less often than annually.

2. **Distributions of Principal**

Our Trustee, in our Trustee's discretion, shall pay to, or apply for the benefit of, STEFAN JOHN COLUCCI, so much of the principal from his trust share as our Trustee deems advisable for his health, education, maintenance and support.

When STEFAN JOHN COLUCCI reaches the age of 35 years, or, if on the creation of his trust share, he has already attained the age of 35, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him one half (1/2) of the balance of his trust share, as then constituted, outright and free of trust.

When STEFAN JOHN COLUCCI reaches the age of 65 years, or, if on the creation of his trust share, he has already attained the age of 65, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him all of his trust share, as then constituted, outright and free of trust.

If STEFAN JOHN COLUCCI fails to withdraw the portion of his individual trust share to which he is entitled as provided above, or if he withdraws only a part of said portion, our Trustee shall continue to hold and administer the undrawn portion or part of said portion in accordance with the provisions herein; provided, however, that STEFAN JOHN COLUCCI shall have the continuing right to effect

withdrawals of such undrawn portion, in whole or in part, upon the terms and conditions set forth above.

**3. Distribution on Death of Beneficiary**

If STEFAN JOHN COLUCCI dies before complete distribution of his trust share, his interest in his trust share shall lapse, and our Trustee shall distribute and deliver the remaining balance of his trust share to the children of STEFAN JOHN COLUCCI, if any, per stirpes. If he has no then living children or descendants of children, our Trustee shall distribute his trust share to his siblings, per stirpes. If he has no then living siblings or descendants of siblings, our Trustee shall distribute his trust share to our then living descendants, per stirpes. If we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Article Twelve of our Trust Agreement.

**b. Distribution and Administration of Trust Shares for KIM COLUCCI LIZZI'S CHILDREN AND THEIR DESCENDANTS**

**1. Distributions of Net Income**

Our Trustee shall pay to, or apply for the benefit of, KIM COLUCCI LIZZI'S CHILDREN AND THEIR DESCENDANTS, after each of her children and their descendants reaches the age of thirty-five (35), the entire net income of said beneficiary's share, in monthly or other convenient installments agreed upon by such beneficiary and our Trustee, but not less often than annually.

**2. Distributions of Principal**

Our Trustee, in our Trustee's discretion, shall pay to, or apply for the benefit of, KIM COLUCCI LIZZI'S CHILDREN AND THEIR DESCENDANTS, so much of the principal from its trust share as our Trustee deems advisable for its health, education, maintenance and support.

When each of KIM COLUCCI LIZZI'S CHILDREN AND THEIR DESCENDANTS reaches the age of 45 years, or, if on the creation of its trust share, said beneficiary has already attained the age of 45, said beneficiary may, by written instrument filed with our Trustee, require our Trustee to distribute to said beneficiary one third (1/3) of the balance of such beneficiary's trust share, as then constituted, outright and free of trust.

When each of KIM COLUCCI LIZZI'S CHILDREN AND THEIR DESCENDANTS reaches the age of 55 years, said beneficiary may,

by written instrument filed with our Trustee, require our Trustee to distribute to said beneficiary one half (1/2) of the balance of its trust share, as then constituted, free of trust; or, if on the creation of its trust share, said has already attained the age of 55, said beneficiary may, by written instrument filed with our Trustee, require our Trustee to distribute to said beneficiary two thirds (2/3) of said beneficiary's trust share, as then constituted, outright and free of trust.

When each of KIM COLUCCI LIZZI'S CHILDREN AND THEIR DESCENDANTS reaches the age of 65 years, or, if on the creation of its trust share, said beneficiary has already attained the age of 65, said beneficiary may, by written instrument filed with our Trustee, require our Trustee to distribute to said beneficiary all of such beneficiary's trust share, as then constituted, outright and free of trust.

If KIM COLUCCI LIZZI'S CHILDREN AND THEIR DESCENDANTS fails to withdraw the portion of its individual trust share to which such beneficiary is entitled as provided above, or if she withdraws only a part of said portion, our Trustee shall continue to hold and administer the undrawn portion or part of said portion in accordance with the provisions herein; provided, however, that KIM COLUCCI LIZZI'S CHILDREN AND THEIR DESCENDANTS shall have the continuing right to effect withdrawals of such undrawn portion, in whole or in part, upon the terms and conditions set forth above.

### 3. Distribution on Death of Beneficiary

If one or more of KIM COLUCCI LIZZI'S CHILDREN AND THEIR DESCENDANTS dies before complete distribution of said beneficiary's trust share, said beneficiary's interest in its trust share shall lapse, and our Trustee shall distribute and deliver the remaining balance of its trust share to said beneficiary's children, if any, per stirpes. If such beneficiary has no then living children or descendants of children, our Trustee shall distribute its trust share to said beneficiary's siblings, per stirpes. If said beneficiary has no then living siblings or descendants of siblings, our Trustee shall distribute its trust share to our then living descendants, per stirpes. If we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Article Twelve of our Trust Agreement.

c. **Distribution and Administration of Trust Shares for WILLIAM COLUCCI'S CHILDREN AND THEIR DESCENDANTS**

1. **Distributions of Net Income**

Our Trustee shall pay to, or apply for the benefit of, WILLIAM COLUCCI'S CHILDREN AND THEIR DESCENDANTS, after each of his children and their descendants reaches the age of thirty-five (35), the entire net income of said beneficiary's share, in monthly or other convenient installments agreed upon by such beneficiary and our Trustee, but not less often than annually.

2. **Distributions of Principal**

Our Trustee, in our Trustee's discretion, shall pay to, or apply for the benefit of, WILLIAM COLUCCI'S CHILDREN AND THEIR DESCENDANTS, so much of the principal from its trust share as our Trustee deems advisable for its health, education, maintenance and support.

When each of WILLIAM COLUCCI'S CHILDREN AND THEIR DESCENDANTS reaches the age of 45 years, or, if on the creation of its trust share, said beneficiary has already attained the age of 45, said beneficiary may, by written instrument filed with our Trustee, require our Trustee to distribute to said beneficiary one third (1/3) of the balance of such beneficiary's trust share, as then constituted, outright and free of trust.

When each of WILLIAM COLUCCI'S CHILDREN AND THEIR DESCENDANTS reaches the age of 55 years, said beneficiary may, by written instrument filed with our Trustee, require our Trustee to distribute to said beneficiary one half (1/2) of the balance of its trust share, as then constituted, free of trust; or, if on the creation of its trust share, said beneficiary has already attained the age of 55, said beneficiary may, by written instrument filed with our Trustee, require our Trustee to distribute to said beneficiary two thirds (2/3) of said beneficiary's trust share, as then constituted, outright and free of trust.

When each of WILLIAM COLUCCI'S CHILDREN AND THEIR DESCENDANTS reaches the age of 65 years, or, if on the creation of its trust share, said beneficiary has already attained the age of 65, said beneficiary may, by written instrument filed with our Trustee,

require our Trustee to distribute to said beneficiary all of such beneficiary's trust share, as then constituted, outright and free of trust.

If WILLIAM COLUCCIS CHILDREN AND THEIR DESCENDANTS fails to withdraw the portion of its individual trust share to which such beneficiary is entitled as provided above, or if such beneficiary withdraws only a part of said portion, our Trustee shall continue to hold and administer the undrawn portion or part of said portion in accordance with the provisions herein; provided, however, that WILLIAM COLUCCIS CHILDREN AND THEIR DESCENDANTS shall have the continuing right to effect withdrawals of such undrawn portion, in whole or in part, upon the terms and conditions set forth above.

### **3. Distribution on Death of Beneficiary**

If one or more of WILLIAM COLUCCIS CHILDREN AND THEIR DESCENDANTS dies before complete distribution of said child's trust share, said beneficiary's interest in its trust share shall lapse, and our Trustee shall distribute and deliver the remaining balance of its trust share to said beneficiary's children, if any, per stirpes. If such beneficiary has no then living children or descendants of children, our Trustee shall distribute its trust share to said beneficiary's siblings, per stirpes. If said beneficiary has no then living siblings or descendants of siblings, our Trustee shall distribute its trust share to our then living descendants, per stirpes. If we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Article Twelve of our Trust Agreement.

### **d. Distribution and Administration of Trust Share for JOHN MARTIN ANTONIO**

#### **1. Distributions of Net Income**

Our Trustee shall pay to, or apply for the benefit of, JOHN MARTIN ANTONIO, the entire net income of his trust share, in monthly or other convenient installments agreed upon by him and our Trustee, but not less often than annually.

#### **2. Distributions of Principal**

Our Trustee, in our Trustee's discretion, shall pay to, or apply for the benefit of, JOHN MARTIN ANTONIO, so much of the principal from his trust share as our Trustee deems advisable for his health, education, maintenance and support.

When JOHN MARTIN ANTONIO reaches the age of 50 years, or, if on the creation of his trust share, he has already attained the age of 50, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him one half (1/2) of the balance of his trust share, as then constituted, outright and free of trust.

When JOHN MARTIN ANTONIO reaches the age of 65 years, or, if on the creation of his trust share, he has already attained the age of 65, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him all of his trust share, as then constituted, outright and free of trust.

If JOHN MARTIN ANTONIO fails to withdraw the portion of his individual trust share to which he is entitled as provided above, or if he withdraws only a part of said portion, our Trustee shall continue to hold and administer the undrawn portion or part of said portion in accordance with the provisions herein; provided, however, that JOHN MARTIN ANTONIO shall have the continuing right to effect withdrawals of such undrawn portion, in whole or in part, upon the terms and conditions set forth above.

### **3. Distribution on Death of Beneficiary**

If JOHN MARTIN ANTONIO dies before complete distribution of his trust share, his interest in his trust share shall lapse, and our Trustee shall distribute and deliver the remaining balance of his trust share to the children of JOHN MARTIN ANTONIO, if any, per stirpes. If he has no then living children or descendants of children, our Trustee shall distribute his trust share to his siblings, per stirpes. If he has no then living siblings or descendants of siblings, our Trustee shall distribute his trust share to our then living descendants, per stirpes. If we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Article Twelve of our Trust Agreement.

## **e. Distribution and Administration of Trust Share for ROBERT JOHN COLUCCI**

### **1. Distributions of Net Income**

Our Trustee shall pay to, or apply for the benefit of, ROBERT JOHN COLUCCI, the entire net income of his trust share, in monthly or other convenient installments agreed upon by him and our Trustee, but not less often than annually.



## **2. Distributions of Principal**

Our Trustee, in our Trustee's discretion, shall pay to, or apply for the benefit of, ROBERT JOHN COLUCCI, so much of the principal from his trust share as our Trustee deems advisable for his health, education, maintenance and support.

When ROBERT JOHN COLUCCI reaches the age of 35 years, or, if on the creation of his trust share, he has already attained the age of 35, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him one half (1/2) of the balance of his trust share, as then constituted, outright and free of trust.

When ROBERT JOHN COLUCCI reaches the age of 65 years, or, if on the creation of his trust share, he has already attained the age of 65, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him all of his trust share, as then constituted, outright and free of trust.

If ROBERT JOHN COLUCCI fails to withdraw the portion of his individual trust share to which he is entitled as provided above, or if he withdraws only a part of said portion, our Trustee shall continue to hold and administer the undrawn portion or part of said portion in accordance with the provisions herein; provided, however, that ROBERT JOHN COLUCCI shall have the continuing right to effect withdrawals of such undrawn portion, in whole or in part, upon the terms and conditions set forth above.

## **3. Distribution on Death of Beneficiary**

If ROBERT JOHN COLUCCI dies before complete distribution of his trust share, his interest in his trust share shall lapse, and our Trustee shall distribute and deliver the remaining balance of his trust share to the children of ROBERT JOHN COLUCCI, if any, per stirpes. If he has no then living children or descendants of children, our Trustee shall distribute his trust share to his siblings, per stirpes. If he has no then living siblings or descendants of siblings, our Trustee shall distribute his trust share to our then living descendants, per stirpes. If we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Article Twelve of our Trust Agreement.

## **f. Distribution and Administration of Trust Share for ROBERT AVERY COLUCCI**

**1. Distributions of Net Income**

Our Trustee shall pay to, or apply for the benefit of, ROBERT AVERY COLUCCI, after he reaches the age of thirty-five (35), the entire net income of his trust share, in monthly or other convenient installments agreed upon by him and our Trustee, but not less often than annually.

**2. Distributions of Principal**

Our Trustee, in our Trustee's discretion, shall pay to, or apply for the benefit of, ROBERT AVERY COLUCCI, so much of the principal from his trust share as our Trustee deems advisable for his health, education, maintenance and support.

When ROBERT AVERY COLUCCI reaches the age of 45 years, or, if on the creation of his trust share, he has already attained the age of 45, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him one third ( $1/3$ ) of the balance of his trust share, as then constituted, outright and free of trust.

When ROBERT AVERY COLUCCI reaches the age of 55 years, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him one half ( $1/2$ ) of the balance of his trust share, as then constituted, free of trust; or, if on the creation of his trust share, he has already attained the age of 55, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him two thirds ( $2/3$ ) of his trust share, as then constituted, outright and free of trust.

When ROBERT AVERY COLUCCI reaches the age of 65 years, or, if on the creation of his trust share, he has already attained the age of 65, he may, by written instrument filed with our Trustee, require our Trustee to distribute him all of his trust share, as then constituted, outright and free of trust.

If ROBERT AVERY COLUCCI fails to withdraw the portion of his individual trust share to which he is entitled as provided above, or if he withdraws only a part of said portion, our Trustee shall continue to hold and administer the undrawn portion or part of said portion in accordance with the provisions herein; provided, however, that ROBERT AVERY COLUCCI shall have the continuing right to effect withdrawals of such undrawn portion, in whole or in part, upon the terms and conditions set forth above.

### **3. Distribution on Death of Beneficiary**

If ROBERT AVERY COLUCCI dies before complete distribution of his trust share, his interest in his trust share shall lapse and our Trustee shall distribute and deliver the remaining balance of his trust share to ROBERT AVERY COLUCCI's children, if any, per stirpes. If ROBERT AVERY COLUCCI has no then living children or descendants of children, our Trustee shall distribute his trust share to ROBERT AVERY COLUCCI's siblings, per stirpes. If ROBERT AVERY COLUCCI has no then living siblings or descendants of siblings, our Trustee shall distribute his trust share to our then living descendants, per stirpes. If we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Article Twelve of our Trust Agreement.

### **g. Distribution and Administration of Trust Share for ASHTON EVO COLUCCI**

#### **1. Distributions of Net Income**

Our Trustee shall pay to, or apply for the benefit of, ASHTON EVO COLUCCI, after he reaches the age of thirty-five (35), the entire net income of his trust share, in monthly or other convenient installments agreed upon by him and our Trustee, but not less often than annually.

#### **2. Distributions of Principal**

Our Trustee, in our Trustee's discretion, shall pay to, or apply for the benefit of, ASHTON EVO COLUCCI, so much of the principal from his trust share as our Trustee deems advisable for his health, education, maintenance and support.

When ASHTON EVO COLUCCI reaches the age of 45 years, or, if on the creation of his trust share, he has already attained the age of 45, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him one third (1/3) of the balance of his trust share, as then constituted, outright and free of trust.

When ASHTON EVO COLUCCI reaches the age of 55 years, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him one half (1/2) of the balance of his trust share, as then constituted, free of trust; or, if on the creation of his trust share, he has already attained the age of 55, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him two thirds (2/3) of his trust share, as then constituted, outright and free of trust.

When ASHTON EVO COLUCCI reaches the age of 65 years, or, if on the creation of his trust share, he has already attained the age of 65, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him all of his trust share, as then constituted, outright and free of trust.

If ASHTON EVO COLUCCI fails to withdraw the portion of his individual trust share to which he is entitled as provided above, or if he withdraws only a part of said portion, our Trustee shall continue to hold and administer the undrawn portion or part of said portion in accordance with the provisions herein; provided, however, that ASHTON EVO COLUCCI shall have the continuing right to effect withdrawals of such undrawn portion, in whole or in part, upon the terms and conditions set forth above.

### 3. Distribution on Death of Beneficiary

If ASHTON EVO COLUCCI dies before complete distribution of his trust share, his interest in his trust share shall lapse and our Trustee shall distribute and deliver the remaining balance of his trust share to ASHTON EVO COLUCCI's children, if any, per stirpes. If ASHTON EVO COLUCCI has no then living children or descendants of children, our Trustee shall distribute his trust share to ASHTON EVO COLUCCI's siblings, per stirpes. If ASHTON EVO COLUCCI has no then living siblings or descendants of siblings, our Trustee shall distribute his trust share to our then living descendants, per stirpes. If we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Article Twelve of our Trust Agreement.

### h. Distribution and Administration of Trust Share for MICHAEL F. COLUCCI

#### 1. Distributions of Net Income

Our Trustee shall pay to, or apply for the benefit of, MICHAEL F. COLUCCI, the entire net income of his trust share, in monthly or other convenient installments agreed upon by him and our Trustee, but not less often than annually.

#### 2. Distributions of Principal

Our Trustee, in our Trustee's discretion, shall pay to, or apply for

the benefit of, MICHAEL F. COLUCCI, so much of the principal from his trust share as our Trustee deems advisable for his health, education, maintenance and support.

When MICHAEL F. COLUCCI reaches the age of 35 years, or, if on the creation of his trust share, he has already attained the age of 35, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him one half (1/2) of the balance of his trust share, as then constituted, outright and free of trust.

When MICHAEL F. COLUCCI reaches the age of 65 years, or, if on the creation of his trust share, he has already attained the age of 65, he may, by written instrument filed with our Trustee, require our Trustee to distribute to him all of his trust share, as then constituted, outright and free of trust.

If MICHAEL F. COLUCCI fails to withdraw the portion of his individual trust share to which he is entitled as provided above, or if he withdraws only a part of said portion, our Trustee shall continue to hold and administer the undrawn portion or part of said portion in accordance with the provisions herein; provided, however, that MICHAEL F. COLUCCI shall have the continuing right to effect withdrawals of such undrawn portion, in whole or in part, upon the terms and conditions set forth above.

### 3. Distribution on Death of Beneficiary

If MICHAEL F. COLUCCI dies before complete distribution of his trust share, his interest in his trust share shall lapse and our Trustee shall distribute and deliver the remaining balance of his trust share to the children of MICHAEL F. COLUCCI, if any, per stirpes. If he has no then living children or descendants of children, our Trustee shall distribute his trust share to his siblings, per stirpes. If he has no then living siblings or descendants of siblings, our Trustee shall distribute his trust share to our then living descendants, per stirpes. If we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Article Twelve of our Trust Agreement.

### i. Distribution and Administration of Trust Share for PROVIDENCE MILAN COLUCCI

#### 1. Distributions of Net Income

Our Trustee shall pay to, or apply for the benefit of, PROVIDENCE MILAN COLUCCI, after she reaches the age of thirty-five (35), the entire net income of her trust share, in monthly or other convenient

installments agreed upon by her and our Trustee, but not less often than annually.

## **2. Distributions of Principal**

Our Trustee, in our Trustee's discretion, shall pay to, or apply for the benefit of, PROVIDENCE MILAN COLUCCI, so much of the principal from her trust share as our Trustee deems advisable for her health, education, maintenance and support.

When PROVIDENCE MILAN COLUCCI reaches the age of 45 years, or, if on the creation of her trust share, she has already attained the age of 45, she may, by written instrument filed with our Trustee, require our Trustee to distribute to her one third ( $1/3$ ) of the balance of her trust share, as then constituted, outright and free of trust.

When PROVIDENCE MILAN COLUCCI reaches the age of 55 years, she may, by written instrument filed with our Trustee, require our Trustee to distribute to her one half ( $1/2$ ) of the balance of her trust share, as then constituted, free of trust; or, if on the creation of her trust share, she has already attained the age of 55, she may, by written instrument filed with our Trustee, require our Trustee to distribute to her two thirds ( $2/3$ ) of her trust share, as then constituted, outright and free of trust.

When PROVIDENCE MILAN COLUCCI reaches the age of 65 years, or, if on the creation of her trust share, she has already attained the age of 65, she may, by written instrument filed with our Trustee, require our Trustee to distribute her all of her trust share, as then constituted, outright and free of trust.

If PROVIDENCE MILAN COLUCCI fails to withdraw the portion of her individual trust share to which she is entitled as provided above, or if she withdraws only a part of said portion, our Trustee shall continue to hold and administer the undrawn portion or part of said portion in accordance with the provisions herein; provided, however, that PROVIDENCE MILAN COLUCCI shall have the continuing right to effect withdrawals of such undrawn portion, in whole or in part, upon the terms and conditions set forth above.

## **3. Distribution on Death of Beneficiary**

If PROVIDENCE MILAN COLUCCI dies before complete distribution of her trust share, her interest in her trust share shall lapse and our Trustee shall distribute and deliver the remaining balance of her trust share to PROVIDENCE MILAN COLUCCI's children, if any, per

stirpes. If PROVIDENCE MILAN COLUCCI has no then living children or descendants of children, our Trustee shall distribute his trust share to PROVIDENCE MILAN COLUCCI's siblings, per stirpes. If PROVIDENCE MILAN COLUCCI has no then living siblings or descendants of siblings, our Trustee shall distribute her trust share to our then living descendants, per stirpes. If we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Article Twelve of our Trust Agreement.

5. We hereby revoke SECTION 1 of ARTICLE THIRTEEN of our Trust Agreement and substitute the following:

**Section 1. Co-Trustees Voting Provisions**

**a. Specific Co-Trustee May Act Independently**

Notwithstanding any other provisions of our Trust Agreement, if any of the following is serving as a Co-Trustee of any Trust under our Trust Agreement, such Co-Trustee may make decisions and bind our Trust Agreement in the exercise of all powers and discretion granted to our Trustees without the consent of any other Trustee:

IVO F. COLUCCI  
DORIS D. COLUCCI

6. We hereby ratify and reaffirm all other provisions of our Trust Agreement.

**ACCEPTANCE BY SUCCESSOR TRUSTEE OF THE TRUSTEESHIP OF THE  
COLUCCI LIVING TRUST DATED FEBRUARY 24, 2005, AND AMENDED  
JUNE 18, 2013**

*Pursuant to SC Code §62-7-701*

**WHEREAS**, Doris Duane Colucci and Ivo Frank Colucci, as Grantors, and Doris Duane Colucci and Ivo Frank Colucci, as Trustees, created the "Colucci Living Trust, dated February 24, 2005," (formally known as the *IVO F. COLLUCI and DORIS D. COLUCCI, Trustees, or their successors in trust, under the COLUCCI LIVING TRUST, dated February 24, 2005, and any amendments thereto*) (hereinafter, the "Trust"), and therein named Michael C. Fox as Successor Trustee of said Trust to serve if, for any reason, both Doris Duane Colucci and Ivo Frank Colucci are unwilling or unable to serve as Trustee; and

**WHEREAS**, Doris Duane Colucci and Ivo Frank Colucci, as Trustees, thereafter executed a First Amendment of the Colucci Living Trust, dated June 18, 2013, and therein named Michael C. Fox as Successor Trustee of said Trust to serve if, for any reason, both Doris Duane Colucci and Ivo Frank Colucci are unwilling or unable to serve as Trustee; and

**WHEREAS**, said Doris Duane Colucci died on April 14, 2017, and Ivo Frank Colucci was appointed a Conservator on or after April 14, 2017 in Dorchester County Therapeutic Court, Case No. 2017-GC18-0004.

**NOW THEREFORE**, the undersigned Michael C. Fox hereby accepts the position of Successor Trustee of the Trust in place of Doris Duane Colucci and Ivo Frank Colucci and hereby agrees to serve as Successor Trustee upon the terms and conditions set forth in the Trust.

This 27th day of October, 2017, North Charleston, South Carolina

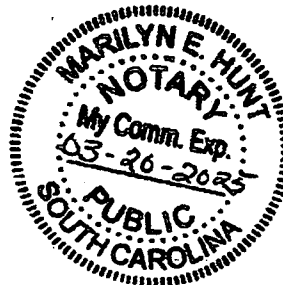
Michael C. Fox  
Michael C. Fox  
Successor Trustee, Colucci Family Trust  
dated February 24, 2005

Gordon H. Hunt  
WITNESS 1

Marilyn E. Hunt  
WITNESS 2

Sworn and Subscribed to before me this,  
27th day of October, 2017

Marilyn E. Hunt  
Notary Public for South Carolina, Charleston County  
My Commission Expires: 03-20-2025



CHERYL GRAY  
CLERK OF COURT  
DORCHESTER COUNTY

2018 NOV 26 PM 3:09

2019 JAN -4 PM 3:31

FILED-RECORDED

PROBATE JUDGE  
DORCHESTER COUNTY

**EXHIBIT F**