

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Jean Hoefer Toal, Acting Circuit Court Judge

Appellate Case No. 2019-001632

In the matter of:

Lemuel Whitaker Boykin, II, deceased.

Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel

Whitaker Boykin, II Residuary Trusts A and B,.....Appellant-Respondent

v.

Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin,

Of whom Mary Deas Wortley and Alice B. Belger are Respondent-Appellants

And

Lemuel Whitaker Boykin, III, and May Cantey Boykin are..... Respondents.

RECORD ON APPEAL – VOLUME III

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1 two apart. So, I've just looked at them all as one
2 large asset, and I felt that the total assets was in
3 the neighborhood of Twenty-five (25) to Twenty-seven
4 (27) Million Dollars. You have to understand, one of
5 the reasons I viewed it that way is because,
6 basically, while they're -- the Marital Deduction
7 Trust is still in existence legally speaking, as I
8 understand it, those assets pour over immediately upon
9 death into the Residuary Trust. And so, that's why
10 I've sort of always looked at them as one. The only
11 difference between the two is before she died is that
12 a lot of the -- more of the property around Boykin
13 itself was kept in the Residuary Trust because, when
14 Whit died, I think Alice wanted to put that in the
15 Residuary Trust.

16 Q. Okay. Whit died in 1989, I believe?

17 A. Yes, he did.

18 Q. Was that shortly before Hugo?

19 A. No. Whit ---

20 Q. Hugo was ---

21 A. Whit died about two or -- I think Hugo was in
22 September or October. Whit died in December. Hugo
23 was very important because Hugo -- I mean, the
24 devastation in this area after Hugo was mind boggling.
25 In fact, the Boykin area was right slam in the middle

1 of what they sort of called the destruction path, the
2 highest percentage of destruction of timberland from
3 that storm. It was right in that cone of -- of the
4 highest destruction. I think I saw a -- a write-up of
5 this which said that Seventy Percent (70%) of all of
6 the pine in that cone was destroyed.

7 Q. And that brings up the next question. You said there
8 was about five hundred (500) acres in the farmland; is
9 that correct?

10 A. Somewhere in that neighborhood, yes.

11 Q. And about how many acres was in timberland?

12 A. In the neighborhood of six thousand (6,000).

13 Q. Were you -- were you aware personally of the damage
14 done by Hugo to the timberland owned by Whit?

15 A. Yes, because I came down during the months just prior
16 to or just after Hugo, and I recall vividly when you
17 would go down 521, you would see whole pine forests
18 that had been snapped off at, say, twenty (20) feet
19 high. It was sort of like a lawn mower had come along
20 just and -- and basically sheared the trees at
21 anywhere from fifteen (15) to twenty (20) feet up in
22 the air. I mean, it was astounding devastation.

23 Q. With your experience in forest products, what would
24 that do to the lumber market or timberland market?

25 A. What happened is, there was so much devastation that

1 even the salvage was hard to get a good price for
2 because the mills were overrun with -- with timber,
3 and a lot of the timber that could be sold for saw
4 timber or chipping saw they called it, wasn't able to
5 be sold for that. It could only be sold for pulpwood,
6 and pulpwood, the price for pulpwood, might be
7 anywhere from a third or so of the value of saw
8 timber. And so, while you -- you -- they were able to
9 salvage a good bit of it, you could only get a much,
10 much lower depressed price. Even the -- the pulpwood
11 prices were depressed. And it was even worse than
12 that because what happened is that it destroyed timber
13 planting cycles. It -- it caused -- it -- it caused
14 you to have to almost clear-cut in the salvage what
15 you could salvage instead of having land -- timber in
16 different age groups for the future.

17 Q. I'm not quite sure I understand that; you are talking
18 about planting cycles, rotation cycles?

19 A. You know, well, basically, for the people that
20 intensively manage timber, you want to have a certain
21 amount of -- of timber being available for clear-
22 cutting every year. And so -- but it takes thirty
23 (30) years for timber to fully mature. So, you plant
24 it, you have thinnings, you have a first thinning, you
25 could plan a second thinning.

1 Q. Would those be pulpwood thinnings?

2 A. Yeah.

3 Q. Okay.

4 A. And that cycle if you have -- if you have all these
5 different age groups of timber being destroyed by one
6 storm, it destroys the whole cycle and you've got to
7 start all over again. And -- and -- it's -- it's
8 very, very difficult to redevelop that cycle. And
9 Whit -- I -- I think Alice, after Whit died, I don't
10 know whether it was a lack of knowledge of what to do
11 or -- or what, but the -- the timber resources were
12 not put in another cycle for the longevity of the
13 resource to be able to produce timber efficiently. It
14 was sort of a -- the timberland was treated almost
15 like a hobby instead of a business. I'll give you an
16 example. Mulberry is a plantation right next to -- to
17 Boykin, between Camden and Boykin. They intensively
18 farm two thousand (2,000) acres of timber. And it's
19 a very intensive management program. You spray, you
20 burn, you do all of this stuff, a lot of which Alice
21 did not do. Mulberry, I am told by Katy Bruce or Katy
22 Ridgeway now, that Mulberry basically averages Four
23 Hundred Thousand Dollars (\$400,000.00) a year net off
24 of two thousand (2,000) acres of timber. Now, if you
25 look at -- and they -- and Mulberry was right slam in

1 the middle of this -- of Hugo also by the way. We
2 have roughly six thousand (6,000) acres of timber and,
3 basically, during Alice's lifetime, she averaged
4 probably maybe a Hundred Thousand Dollars
5 (\$100,000.00) of revenue per year for the last, say,
6 six or seven years of her life from timber. If -- if
7 you look at the Mulberry experience where they have
8 the proper rotation and the proper intensive farming
9 of timber, the comparable number for us should have
10 been maybe as much as three times -- say, a Million
11 Dollars a year of timber, say, of timber production
12 that could be for thinnings and everything. And --
13 and maybe the land is a little bit different. There's
14 all kinds of factors that can enter into it, but the
15 fact remains that the same type of timber management
16 practices were not implemented for the Trust that the
17 Mulberry implemented.

18 Q. Were those timberland management decisions in your
19 opinion or to your knowledge made by Alice right after
20 Hugo?

21 A. You've got to understand -- yeah, Alice made them,
22 sure, with the advice of Jimmy LaFrage, but Alice
23 didn't always follow Jimmy LaFrage's advice. Jimmy
24 LaFrage was a forester who was employed by Wesvaco.
25 Wesvaco in those days had a program where they would

1 have their forester assist people who regularly sold
2 timber to Wesvaco, would assist them in managing their
3 timber holdings. And that was Jimmy LaFrage's job
4 when I first knew Jimmy. Subsequently, Wesvaco and
5 all -- almost all the major paper companies decided to
6 get out of the timber business; they decided they
7 weren't getting the kinds of returns they wanted out
8 of it. The forest products companies for the most
9 part got out of the timber business because it was no
10 longer an attractive investment for them given the
11 returns that they felt their shareholders expected.
12 And so, Wesvaco sold most of their timber assets.
13 International Paper did. Bowater did.

14 Q. Boise Cascade?

15 A. Boise Cascade did.

16 Q. Did Catawba Timber sell theirs?

17 A. I have no idea. I -- I didn't -- I never dealt with
18 Catawba Paper.

19 Q. Okay. Now, did some of the management -- some of the
20 timberland management decisions made by Alice during
21 that period of time create some problems for the
22 Trustees -- for the Trustees in the managing the
23 timberland?

24 A. Well, it will create -- it -- it creates a lot of
25 problems because we don't have any uniformity of a

1 revenue stream and a -- a very little predictability
2 of it. Part of the problem was because Alice hated to
3 cut timber. I mean, there -- there is -- and this is
4 very common in South Carolina and other states in the
5 South, you have people that love to go around and see
6 the big old trees and everything else, and it's --
7 it's -- they enjoy the -- the -- the timber and
8 everything and they don't -- and they -- and they
9 don't want to cut it. And so, a lot of -- a lot of
10 timber that had matured had not been cut when it
11 should have been cut; the same problem to a lesser
12 degree on thinnings. And so, that made for a
13 difficult situation for us going forward. So, for
14 example, this year, if you cut everything -- first of
15 all, you -- you can't cut everything that you could
16 cut in year one because there might not be a big
17 enough market for it, both in terms of timber buyers
18 that have the crews to do it and in terms of what the
19 mills in the locale can accept. But, for example, and
20 Jimmy LaFrage did a fifteen (15) year projection; it's
21 a rough projection of what could be cut over the next
22 fifteen (15) years and what would be realized out of
23 it. In the year 2018, he projected we could cut One
24 point Two Million (\$1.2) roughly of timber. But there
25 are years later on where we have no revenues from

1 timber or very little revenues from timber because of
2 the rotation cycles all being off.

3 Q. How do you get the rotation cycle back in sync?

4 A. I am not an expert on that, but I think part of that
5 is timing when you cut and when you plant and making
6 sure that you do your management practices in a -- in
7 a succession. I think it took some people years to
8 get the rotation cycles back where they should be
9 after Hugo. A lot of that's also caused by selling
10 land that's out of cycle and buying land that is in
11 cycle.

12 Q. You mentioned that Jimmy LaFrage projected One point
13 Two Million Dollars (\$1.2) worth of timber for 2018.
14 Did that -- does that total income take into
15 consideration capital gains?

16 A. No.

17 Q. Do you have to pay capital gains on cutting timber?

18 A. Sure, you do. But you have to have capital gains to
19 take it. You've got to understand you've got a weird
20 situation here because you have the timberland that
21 was in the Residuary Trust, and the basis for that
22 timberland is whatever it was on the date Whit died
23 plus whatever money was expended since then. And then
24 you have the majority of the timberland, which was in
25 the Marital Deduction Trust, and the basis for that

1 land is stepped up to date of death which has -- and
2 -- and both -- so, basically, over the near term, you
3 will be paying capital gains on all of the land -- on
4 all of the timber that is cut -- that is -- that is
5 cut from the Residuary Trust land.

6 Q. Okay. Let me interrupt you there now. We're going to
7 take a break. I'm going to ask you this before we
8 take a break. You and Mary Deas and Little Alice
9 became Trustees of what we're going to call the
10 Residuary Trust; is that correct?

11 A. Yes.

12 Q. When you -- you all had the first initial meetings; is
13 that correct?

14 A. Well, I had activities on the Residuary Trust long
15 before Alice died. I mean, there were -- it was not
16 anything intense other than to make sure that
17 distributions were made of the net income when timber
18 in the Residuary Trust was cut. And we had a year,
19 for example, when there was -- I don't know --
20 something on the order of a Hundred Thousand Dollars
21 (\$100,000.00) of net income in the Residuary Trust,
22 and Alice wanted to keep it in the Trust, but I
23 insisted that it be distributed to the beneficiaries
24 because that's what the Trust Agreement said.

25 Q. At that time, you had some conversations with Mary

1 Deas and also with Little Alice, didn't you?

2 A. Little Alice wasn't a Trustee then.

3 Q. Did you have -- did you have some conversations with
4 Mary Deas during that period of time?

5 A. Sure.

6 Q. What -- did she express any understanding of how the
7 timber management was supposed to work or could work
8 to generate the most income for -- from the
9 timberland?

10 A. I think Mary Deas for the most part was consumed by
11 her own family issues and stuff like that. She wasn't
12 a timber expert or anything. She was absolutely aware
13 that Alice was not cutting stuff at the right time,
14 thinning at the right time. We had a lot of
15 discussions about that, but her position was there was
16 no way she was going to be able to talk Alice into
17 doing any of that.

18 Q. Okay.

19 A. And that may in large part be true.

20 Q. Okay.

21 MR. TETTERTON: About time to take a
22 break? It's 11:00 o'clock

23 VIDEOGRAPHER: Off the record, 10:54.

24 (OFF THE RECORD).

25 VIDEOGRAPHER: On the record, 11:05.

1 EXAMINATION BY MR. TETTERTON CONTINUED:

2 Q. Rigdon, before we took the break, I was asking you a
3 little bit about the management of the timberland in
4 the Residuary Trust, and then I think you indicated
5 that you had some conversations with Mary Deas about
6 that?

7 A. Yes.

8 Q. Okay. Now, after Alice died, it's my understanding
9 that you, Little Alice and Mary Deas became Trustees
10 of what we're going to call the Residuary Trust;
11 right?

12 A. Yes, at that point, Mary Deas and I had been Trustees
13 for years of it. Little Alice joined us because of
14 the appointment by her mother.

15 Q. Were you fully familiar at that time of the assets of
16 the Trust?

17 A. No.

18 Q. When did you first become -- when did you become aware
19 of all of the assets of the Residuary Trust?

20 A. Well, I knew what was in the Residuary Trust prior to
21 the time Alice died. What I did not know were what
22 all the assets were in the Marital Deduction Trust
23 which poured over into it, and it took at least
24 several weeks to become familiar with most of them.
25 I knew -- prior to Alice's death, I knew most of the

1 timber tracts because, at that time, I had been
2 helping Whit for a number of years do the hunting
3 leases on that land. His mother had given him the
4 right to the revenues from the hunting leases, and
5 Whit asked me to help him do those leases and I was
6 extremely active in doing that and which made me
7 become familiar with most of the timberlands.

8 Q. When Little Alice became a Trustee, did you, Mary Deas
9 and Little Alice discuss you all's duties as Trustees
10 of this Trust?

11 A. We had a meeting actually the day Alice died with
12 Karen Thomas in Columbia, and she talked mostly about
13 administrative matters. Starting with the second
14 meeting, we started talking about what the Trustees
15 ought to be doing and how to go forward with all of
16 these assets.

17 Q. At that time, were you the Trustee of any other
18 Trusts?

19 A. Yes. I had been a Trustee for many years of a Trust
20 in -- it was actually a New Jersey Trust that had been
21 set up for the benefit of the descendants of a fellow
22 by the name of Claflin. Those Trusts were set up in
23 1928, and I was appointed a Trustee initially of those
24 two Trusts. There's a whole series of Trusts, but
25 there were two Trusts in particular that Mrs. Waller

1 was a income beneficiary of, and she asked me to
2 become a Trustee probably about I would have to say
3 some time around 1980; I'm not sure of the exact date.
4 I was a Trustee of it for about four or five years.
5 Then she wanted to trade some land with the Trust --
6 of her land with the Trust and give the land that she
7 received from the Trust to the town of Bedford as a --
8 as a gift. And I had to resign from that Trust
9 because she was refusing to disclose that transaction
10 to all of the other beneficiaries and remainder people
11 of the Trust, and it ultimately forced her to make the
12 disclosure and the family agreed to let it happen. We
13 had an accounting afterwards just to clean up
14 everything, and a few years later, I -- she asked me
15 to come back and be a Trustee again. And I've been a
16 Trustee the second time around for probably, I don't
17 know, around eighteen (18) years.

18 Q. What's the size of that Trust?

19 A. It's somewhere over Forty Million Dollars.

20 Q. And are you familiar with the growth that Trust has
21 made?

22 A. That -- I don't know from year to year and I don't
23 really remember what it was when I started. All I
24 know is last year, the Trust grew; I mean, the corpus
25 of the Trust grew Five Million last year alone just

1 because we had this incredible market last year.

2 Q. Is that Trust diversified?

3 A. Yes, it is. Very much so. When I became a Trustee
4 the second time around, we had a substantial real
5 estate asset that we sold, and in order to sell it, we
6 had to take a mortgage and it was years before we got
7 out of that mortgage. It took us about two or three
8 years to get it paid out for a whole bunch of reasons.

9 Q. Does that Trust have real estate holdings now?

10 A. No. It has real estate holdings only from the
11 standpoint that it owns real estate stocks, and it
12 owns some funds that invest in real estate.

13 Q. Any real estate investment Trusts?

14 A. That's what it was. The -- Alex Brown had some real
15 estate investments that we have participated in, and
16 we have some real estate stocks that we have from time
17 to time participated in.

18 Q. What percentage of those assets in that Trust are
19 related to real estate?

20 A. I don't know what the current holding is. It's
21 probably on the order of Three Percent (3%) because we
22 made a decision a few years ago to -- to drastically
23 curtail our holdings of real estate stocks because of
24 our view of the companies in that space and because
25 the real estate sort of private equity type

1 investments we had made were marginal at best.

2 Q. How many Trustees are in that Trust?

3 A. Two.

4 Q. You and one other one?

5 A. Yes. The other person is an interested Trustee. He
6 is an income beneficiary of the Trust.

7 Q. When you and Mary Deas and Little Alice became
8 Trustees of this Trust, was there any diversification?

9 A. When Alice died, there was a stock position of about
10 Two Million Dollars or so. There was a life insurance
11 of about Two Million Dollars, and very little other --
12 other assets in terms of cash, other than those two
13 that I would call liquid assets. Everything else was
14 in timberland, commercial land and farmland.

15 Q. If I do my calculations correctly, it looks like about
16 Ninety Percent (90%) was in timberland and farmland?

17 A. It was probably less than that, but by the time we
18 started paying taxes, the Ninety Percent (90%) -- if
19 you -- if you will apply the -- when we paid One point
20 some odd Million of taxes already, we have about
21 another Two Million plus of taxes to pay ---

22 Q. Does the Trust still have the Two Million in stock?

23 A. No.

24 Q. What happened to it?

25 A. Some of that was used to pay taxes on the partial

1 payment that was made. Expenses, everything else. I
2 mean the -- the legal expenses alone for the Estate
3 have exceeded Two Hundred Thousand (\$200,000.00) now
4 I think.

5 Q. How about the Two Million in life insurance, is it
6 still there?

7 A. No. There's probably -- of that money, there's
8 probably a Million Three or something left. I'm not --
9 I don't have the exact numbers. I know totally in
10 terms of liquid assets right now in the two Trusts, we
11 have approximately Two and -- Two Million, maybe Two
12 or Three; it all depends on when we've just made a
13 distribution or whether we just got a check in for
14 timber proceeds.

15 Q. And what is the tax debt of the Trust?

16 A. It's about Two point -- I'm not sure what the exact
17 number is, but it's over Two Million Dollars. I think
18 it's Two point Seven (2.7), but I'm not sure.

19 Q. Okay. Now, when you first met with the other Co-
20 Trustees, did you all discuss the duties of the Trust?

21 A. Sure.

22 Q. Okay. And did -- at that time, did you have a pretty
23 clear understanding of Mr. Whit's Will and the Trusts
24 that they are in?

25 A. Yes, because I had a lot of conversations with Whit at

1 the time he did that Will. Whit was sort of a -- he
2 had a -- a view of -- of inheritance that was almost
3 medieval. He believed that the eldest son should
4 basically inherit almost everything and that it was
5 the responsibility of the eldest son to then in turn
6 take care of the siblings or what-have you. But it
7 was very much -- the eldest son would inherit
8 everything or most of everything to carry on the name
9 and all of that. At the time, Whit was doing this
10 Will, he realized that Whit's -- Little Whit's
11 handicaps were such that it would be very difficult
12 for him to inherit all of that and manage it in an
13 appropriate fashion, and that is why he set up the
14 Trust. There are -- I know in various depositions,
15 Alice and -- and Mary Deas have mentioned that he did
16 the Trust to preserve the land for posterity. That
17 really wasn't the case. What he was trying to do is
18 preserve as much of the core Boykin property to be
19 inherited by Whit's eldest son if Little Whit had a
20 son. And that's why the Will expresses the hope that
21 a lot of this land be kept, and that's why the Will
22 also has provisions in there that if there were to be
23 an eldest son of Little Whit, that that eldest son
24 should inherit certain specified properties if they
25 were still owned by the Trust. And he did not extend

1 this Trust beyond the life of the four children
2 because he didn't see a need to because either this
3 special land would go to Whit's eldest son or there
4 wasn't any and he didn't really care what happened.

5 Q. All right.

6 A. So, the Trust -- he could have done the Trust so that
7 it would have extended way past where it currently
8 extends. He understood that perfectly because the
9 Trust could have been for the term of the four
10 children's lives and for the life of Mary Deas'
11 children, who were in being at the time Whit made his
12 Will plus twenty-one (21) years, it's my
13 understanding.

14 Q. All right. Now, at the beginning of your management
15 of the Trust along with Mary Deas and Alice, you all
16 had meetings, did you?

17 A. Yes.

18 Q. And where would those meetings take place?

19 A. At Karen Thomas' office.

20 Q. Who is Karen Thomas?

21 A. Karen Thomas was a -- well, first of all, before Alice
22 died, a fellow by the name of George Bailey did a lot
23 of the work for Alice with respect to the Trust and
24 everything. George Bailey was with I think the Nelson
25 Mullins firm at that time. Before that, I'm not sure.

1 And he left the Nelson Mullins firm probably in the
2 2015 era, 2016 era, and joined Sojourner, Caughman and
3 Thomas and I don't know what the financial
4 arrangements were, but it -- it was clear that there
5 was sort of a turning over of his -- at least this
6 client of his to Karen Thomas to manage in that firm.

7 Q. So, did -- did you three Trustees have regular
8 scheduled meetings with Karen Thomas?

9 A. No, we didn't. We tried to several times; both she
10 and I tried to have regularly scheduled meetings,
11 like, every two weeks or every week or whatever, but
12 it never panned out for a whole bunch of different
13 reasons.

14 Q. Tell us, if you would, tell me what kind of problems
15 you had with scheduling meetings and problems you had
16 with Mary Deas or Little Alice in trying to get --
17 trying to manage this Trust.

18 A. Well, we have to back up for a second if -- if we're
19 going to go into that, and that is, I knew that there
20 was going to be a huge problem with respect to the
21 administration of the Trust because -- especially
22 because of the Mill Pond, Millway, downtown Boykin
23 assets which were not productive but a number of
24 people in the family wanted to be preserved. I think
25 all four income beneficiaries had a -- an affiliation

1 or an affection for downtown Boykin and -- and for the
2 pond and -- and all. But the problem was the ability
3 to make it productive was almost impossible,
4 especially with the expertise and everything of a --
5 of the beneficiaries involved.

6 Q. During that time, did you and the other Trustees come
7 to some agreements about how you all should sell some
8 properties?

9 A. Well, what I did when -- it was about the second or
10 third meeting we had, realizing the problem that we
11 had, I made a suggestion to Alice and Mary Deas that
12 I would be willing to try and have the Trust permit
13 them to buy Millway, the land around Millway, and the
14 pond and downtown Boykin, and in order to facilitate
15 that, I offered to have the -- or to try and get an
16 agreement to have the Trust finance up to One Million
17 and a Half for Mary Deas and One Million and a Half
18 for the property that they wanted to purchase for --
19 for Alice and -- and her family.

20 Q. Did the three Trustees come to an agreement about
21 selling some property to Mary Deas?

22 A. Well, let me finish the other question just one
23 second, if you don't mind, and that is the Trust. I
24 explained to them at that time that the Trust could
25 not just sell them that land; normally, -- especially

1 the Trustees. And that that was a -- a particularly
2 thorny problem, but with the consent of the
3 independent Trustee, which was me, and upon the
4 consent of all of the beneficiaries and remainder
5 persons, you could do it and you would probably also
6 have to get Court approval to truly insulate the
7 Trustees from liability by doing that. I also told
8 them that it would have to be at fair market value.
9 It -- it wasn't that -- you know, you couldn't give
10 them a preferential rate to sell it.

11 Q. Well, did you all -- I don't mean to cut you off --
12 but did you all come to an agreement that you all
13 would sell some treasured property to certain
14 Trustees?

15 A. Mary Deas and Alice expressed a high degree of
16 interest in buying on behalf of Mary Deas the pond and
17 perhaps some of downtown Boykin; on behalf of Alice,
18 Millway and land around Millway, and at that time,
19 everyone was real happy that that option was being
20 offered to them and there was an agreement reached at
21 those first few meetings to also offer for sale the
22 swamp tract, offer to sell -- to sell part of the
23 Millway property which was a hundred and forty (140)
24 acres on the west side of 261, to offer for sale the
25 land that was part of Broadview Plantation I think

1 it's named; we call it the Yellow House Tract. There
2 was a piece of land, about a little under seven acres,
3 on the north side of Cantey Lane that was sort of off
4 to the side of the rest of the tract, and to sell
5 Sumter Mountain and to sell other tracts in Sumter
6 County, particularly the tracts that had obvious
7 potential buyers such as the tract -- tracts that in
8 some cases surround or abut Tommy Laney.

9 Q. Did that agreement go through or what happened to it?

10 A. Which one?

11 Q. The one you all just -- you just mentioned of Mary
12 Deas buying the Mill Pond and Alice buying Millway.

13 A. No, it didn't. I think the -- the first real problem
14 we had is there was a fundamental misunderstanding
15 from Alice as to what was fair market value. I think
16 at that time Alice expressed an interest in buying the
17 Carter Hill tract, the Yellow House Tract, but
18 basically around two thousand (2,000) acres of the
19 land around in -- in Boykin, not two thousand (2,000).
20 It would have been less than that -- about eleven
21 hundred (1,100) or so acres. And she thought that
22 this -- that fair market value at that time was the
23 sort of a price that might be what the tax appraiser
24 said or -- or what-have you. I remember one meeting
25 where she particular focused on Thirteen Hundred

1 Dollars (\$1,300.00) an acre for the land, ---

2 Q. Did she ---

3 A. -- and at the time, she was real happy because she
4 thought between the money that the Trust would give
5 them to finance plus money that might be -- other
6 assets she or her husband had, they could buy all of
7 this land for a heck of a good price.

8 Q. And that agreement fell through when the appraisals
9 came in?

10 A. That agreement ultimately fell through when the
11 appraisals came in.

12 Q. At that time, did you invite Mary Deas and Alice to
13 give you an investment strategy for the Trust?

14 A. Actually, long before that happened, Karen and I were
15 both pushing very hard for a long-term investment
16 plan, long-term projections, all of that on how to
17 administer the Trust.

18 Q. Were you all asking for diversification at that time?

19 A. Well, actually, at the first few meetings, there was
20 an agreement to diversify. We were going to sell a
21 lot of these properties, including treasured
22 properties, and I think at that time, the goal was
23 tentatively set at Eighty-five Percent (85%) would be
24 in -- would -- would be liquid. And in fact, I recall
25 I think an e-mail early on from Karen that we're

1 making great progress towards creating some liquidity,
2 and she started pushing hard for work on doing that
3 and for Trustees to come up with a long-term plan.
4 However, at the end of -- basically, at the end of
5 October, it started to become clear that -- that fair
6 market value wasn't necessarily a -- a -- a really,
7 really good price for the assets, and Alice started
8 having second thoughts about selling a lot of
9 property. And at that point, starting in December,
10 especially accelerating into January, February, sort
11 of a crescendo, March, Karen started suggesting to us
12 that we would -- we should probably ask for a Court to
13 interpret the Will and -- and tell us whether we had
14 to follow the Prudent Investor Rule or whether we
15 should follow the precatory language in Whit's Will.

16 Q. Was the difference in the precatory language in the
17 Will and the Prudent Investment Rule explained to Mary
18 Deas and Little Alice?

19 A. I think both Karen and I tried to. I think they have
20 somehow come to the conclusion -- and I don't really
21 understand this -- that the precatory language is, in
22 essence, mandatory. I remember during Alice's
23 deposition, she said that the precatory language was
24 there because Whit couldn't say -- he couldn't make it
25 stronger than the precatory language that this land

1 should not be sold. He couldn't flat-out direct it as
2 a response to a question that you had when in -- when
3 in fact he could have.

4 Q. After you read the Will, was there anything that you
5 read in there that mandates retention of any of the
6 land?

7 A. In terms of an absolute mandate, no. It would -- he
8 hoped it would, but that hope -- you've got to put the
9 hope in context within which he did that Will, and
10 that was, he was hoping it would be maintained
11 primarily for the benefit of Whit's eldest son if he
12 had one.

13 Q. How would you characterize the ability of the
14 timberland that's being held in its -- when you
15 consider how it generates income compared to its
16 potential of it generating income; would a sale be the
17 best way to exercise or realize the greatest potential
18 of that asset?

19 A. Well, you have a -- you have a very fundamental
20 problem. You have about two -- two thousand (2,000)
21 acres or so in and around Boykin, and that land has a
22 market value today substantially in excess of the use
23 to which it's being put. To explain it in another
24 way, if you're looking for land to farm on, you would
25 rarely -- you -- you just wouldn't buy farmland

1 particularly today for much more than, say, Twenty-
2 five (2,500) to Thirty-five (3,500) Bucks an acre
3 because you would not make an adequate return off of
4 that farmland to be able to justify the expenditure
5 more than that. The problem we have is, there's -- we
6 have, for example, the land of the Yellow House Tract
7 which is probably worth I would say somewhere around
8 Six Thousand (\$6,000.00) to -- or a good bit of it's
9 worth between Six Thousand (\$6,000.00) and -- and
10 maybe Seven Thousand (\$7,000.00) or Eight Thousand
11 (\$8,000.00) an acre. So, the land -- you're -- you're
12 -- it's going to be impossible for the Trust to make
13 a return commensurate to the value of the land because
14 of the -- the high value that that land had. You just
15 couldn't make it by farming or timberland. Timberland
16 ---

17 Q. What would be the alternative?

18 A. You -- you either have to develop it for sale or sell
19 it. In fact, for quite some time, Alice even retained
20 a -- a company to provide -- to come up with a real
21 estate development for the Yellow House Tract where
22 they were going to get a -- Great Southern Homes or
23 someone else to come in and do a whole big subdivision
24 there, and a company was hired to come and look at it.
25 They didn't ultimately go through with it, but it --

1 she -- she obviously was looking at how to monetize
2 that differential in value.

3 Q. Have you -- are you familiar with the growth in the
4 Dow or the S&P as compared to growth in timber in the
5 last ten (10), say, fifteen (15) years?

6 A. I don't know -- well, I -- my guess is timber prices
7 have not grown tremendously over the last twenty (20),
8 thirty (30) years. I'd be surprised if they have. I
9 know at the time Whit died, the Dow was, I don't know,
10 (2,700) maybe. The S&P was 360 or 50.

11 Q. Do you know what it is twenty-eight (28) years later?

12 A. The Dow is 2,600 or 26,000 and something. The S&P is,
13 I don't know, 2,700 or so plus or minus. It -- it's
14 very volatile. It goes up and down ---

15 Q. Can you minimize ---

16 A. -- a percent or two so that the -- the -- while the
17 Trust, and according to Alice and Mary Deas, has
18 grown, has doubled in value, the -- the Dow and the
19 S&P have both gone up over eight times in value over
20 the same time frame, and that doesn't include the
21 dividends off of that, just like Alice was using some
22 of the earnings off the Trust over those years.

23 Q. Did you get any indication or any impression from
24 Alice or Mary Deas during the time that you all were
25 working on this Trust that they had any knowledge of

1 how to diversify in the stock market or any liquid
2 assets?

3 A. I think the -- I think they were both brought up in
4 the old school that land is always there and land is
5 always going to be the most secure investment you can
6 have. And they basically had no familiarity that I
7 could see with the stock market at all.

8 Q. Did you discern an attitude of both Mary Deas and
9 Alice during the administration of this Trust up to
10 the present that they are intent on holding this
11 property for Mary Deas' children and Alice's child?

12 A. Oh, I think there's no question about that. They --
13 I think they -- they initially were willing to sell
14 all of the commercial property. They have now
15 basically backed off of that. They will sell all of
16 the development property. By development property,
17 I'm talking about the Peckwoods and lots over there,
18 the raw land and lots. However, they have decided to
19 continue operating these assets in exactly the same
20 fashion as Big Alice did and, by that, collecting
21 rents and collecting -- and when you needed money,
22 sell some timber or sell a piece of land.

23 Q. Does the commercial properties include the Steak
24 House, the Broom Store, the Grits Mill, Ginny's
25 cottage and Rosa Lee's Cottage and the church?

1 A. It includes those properties and the Hawthorne
2 Pharmacy property, the Leo's Wings in Lugoff and the
3 Wateree Enterprises Liquor Store in Lugoff. 1
4 Commerce Alley in Camden, I think they still want to
5 sell that.

6 Q. What is the maintenance on the downtown Boykin
7 properties, the buildings down there?

8 A. Well, that's a hard question to answer because Alice
9 didn't believe in maintenance. I asked Mark Price,
10 for example, ---

11 Q. Who is he?

12 A. Mark Price leases the Steak House. How much had Alice
13 spent on that building maintaining it since he had
14 been leasing it, and he told me probably less than
15 Three or Four Thousand Bucks.

16 Q. So, it looks like, if I hear what you're saying, that
17 the Trustees have reached an impasse as to the future
18 investment strategy of the Trust?

19 A. I think there's no question about that, and ---

20 Q. Have you ---

21 A. -- Karen Thomas recognized that early on and said, "We
22 ought to get a Court to -- to figure this out."

23 Q. Have you ever been given a solid investment strategy
24 from Mary Deas and Alice?

25 A. No. We -- when -- when it became that there was a

1 difference on how the Trust should be administered, I
2 started in October of 2016, as well as Karen started
3 for that matter, asking them for what -- what their
4 plan was, what were their projections, how were they
5 were going to do this, how are you going to pay for
6 it, how are you going to generate the income required
7 for the beneficiaries, pay expenses and create an
8 increase over time in the Trust assets for the benefit
9 of the remainder people, and they -- up until -- up
10 until I guess this past November, I kept being
11 promised that one was forthcoming. In fact, we had a
12 huge discussion of this at the meeting I think was
13 about March 23rd, where I asked that that be the
14 primary thing on the Agenda and that they would come
15 forth with it and they said no, they weren't going to
16 discuss it.

17 Q. Would you provide the Trustees with an Agenda for some
18 meetings held in Karen Thomas' office?

19 A. Yeah. Initially, Karen would draft Agendas, and we
20 would suggest additions and what-have you. When we
21 stopped having meetings because they kept getting
22 cancelled or whatever, I started sending out suggested
23 Agendas and saying, "We need to have meetings. We
24 need to meet. We cannot discuss this," or just Karen
25 would send out a thing saying, "I need a vote on

1 this." And so, it's very difficult to vote on
2 something without knowing the -- each one's rationale
3 behind whatever opinion they had on the issue, and you
4 can't do that by sending out e-mails and asking for
5 votes.

6 Q. Without discussions?

7 A. I think it's very difficult.

8 Q. Was there some times or was it a concern that Mary
9 Deas and Alice would give their consent to do a
10 certain thing in the administration of the Trust and
11 then withdraw their consent?

12 A. There's -- I think that happened much -- I -- I don't
13 think Mary Deas withdrew her consent many times. I
14 think that was more an issue with Alice, and -- and
15 you've got to understand that, when we first started
16 having meetings, we didn't even memorialize what went
17 on at those meetings with any detailed notes or
18 anything. The reason why we started going to detailed
19 notes in all of the meetings is because it was clear
20 that both Mary Deas and Alice were not remembering
21 things that either or Karen had felt had been agreed
22 to. So, for example, early on, we had agreed to have
23 surveys and various things done, and they didn't
24 remember that they had done that and when that started
25 happening, Karen started doing meeting notes and --

1 and she basically made a rule starting in about I'd
2 say January or February that every vote had to be
3 recorded because we were upset that people's memory of
4 what had been agreed to or not agreed to was
5 evaporating.

6 Q. Would it be fair to characterize the administration of
7 this Trust by you three Trustees has been in sort of
8 chaos? I don't know if that's the right term or not,
9 but ---

10 A. I don't think it was chaos so much as Mary Deas and
11 Alice ultimately came to the conclusion that we were
12 not going to change the way any of these assets had
13 been managed from the way Alice had done it in the
14 past with the exception that we would -- they would
15 follow Jimmy LaFrage's recommendations on cutting and
16 thinning. And I think starting about March or so, it
17 was clear that Mary Deas and Alice had had a
18 discussion with Jimmy LaFrage and had basically
19 decided to drastically limit the amount of timberland
20 that would be sold based on whether the timberland was
21 productive or not, and so, after that meeting, which
22 I don't know whether it was a telephone call or
23 whatever, I -- I certainly did not attend -- attend
24 it; I just learned about it when Mary Deas or -- or in
25 particular, Alice would say, "Well, that's not on our

1 list to be -- to be sold. Jimmy LaFrage hadn't told us
2 that we should sell that." But it became clear that
3 they were going to go that way and any talk of -- I
4 mean, it was almost -- if you talked about
5 diversification, it was like you were doing something
6 illegal, that the Will mandated this and to do
7 anything different was -- was absolutely prohibited,
8 and that's when it became very clear to me at least
9 that Karen was right all along that we needed to have
10 a Court decide this. And Karen had told us all when
11 we started discussing this seriously in January,
12 February time frame that the Trust would pay the legal
13 expenses of presenting to the Court the different
14 interpretations of how this should be administered.

15 Q. Rigdon, I was copied on a letter to Mr. Becker dated
16 June 28, 2017 along with Karen Thomas, Mr. Bundy, Mary
17 Deas, Alice and David Siddons. I'm going to ask you
18 can you identify that document?

19 A. Yes. This is a letter in response to a letter that
20 James Becker had sent to Richard Rosen, which -- where
21 -- and that was caused by an e-mail of mine.

22 Q. Have you seen this letter before today?

23 A. Yes, I have.

24 Q. Okay.

25 MR. TETTERTON: I'm going to offer this.

1 Everybody has a copy, I think.

2 MR. BECKER: I don't have mine.

3 MR. BUNDY: We're reserving objections;
4 correct?

5 MR. TETTERTON: Right.

6 MR. BUNDY: Okay.

7 COPY OF LETTER ROSEN HAGOOD DATED 6/28/17
8 MARKED DEFENDANT'S EXHIBIT NUMBER ONE.

9 Q. Okay. Got it marked. I'm not going to go into that
10 letter -- it speaks for itself -- right now, but I
11 want to go over a couple things before I go into
12 something more serious. Not too serious. What --
13 what were the duties of the Trustees toward the income
14 beneficiaries? Just briefly.

15 A. There seems to be considerable dispute over that. My
16 belief is that, as a rule in a general sense, income
17 beneficiaries should receive a distribution each year
18 of a minimum of Three Percent (3%) of the Trust assets
19 or the value of the Trust assets. I think you can get
20 some guidance on that from Unitrust provisions or the
21 Codes in various states, and they seem to provide in
22 most states a distribution to income beneficiaries of
23 between Three Percent (3%) and up to Four point Five
24 Percent (4.5%) in most states. I don't know what the
25 exact number for Unitrust is in South Carolina, but I

1 think it's somewhere in that range as well.

2 Q. Would the position that Mary Deas and Alice have taken
3 about the administration of the Trust support that
4 distribution?

5 A. No. It's not even anywhere remotely close to that and
6 -- but they justify that by evidencing a belief that
7 the income beneficiaries should only get what they
8 needed to live on; so, for example, when I first told
9 Mary Deas and Alice -- in fact, it was at a meeting in
10 Mary Deas' cottage that the beneficiaries, including
11 Whit and May, should get, depending on the value of
12 the Trust, probably somewhere in the neighborhood of
13 a Hundred and Fifty Thousand (\$150,000.00) to Two
14 Hundred Thousand Dollars (\$200,000.00) a year, and
15 their reaction was, "Well, Whit and May aren't worth
16 that. They don't need that. They've never made that
17 much money in their life and they shouldn't get it."
18 I think it is a right, not a fundamental matter of
19 discretion, that they should get less or they should
20 only get -- in fact, they were asking for Whit and May
21 to give budgets as to what they needed to live on and
22 all of that kind of stuff. I -- I have not
23 experienced that before, but maybe that's something in
24 South Carolina that I did not know about.

25 Q. Did you notice any discord between, some problems

1 between Little Alice, Wayne and Little Whit during
2 this period of time?

3 A. Yeah. Can we back up one second because I haven't
4 finished that question?

5 Q. I'm sorry. I didn't mean to interrupt you.

6 A. When -- when they made their final or came out and
7 sort of Alice basically decided she wasn't going to
8 buy any land from the Trust and she would vote against
9 Mary Deas being able to buy the pond and she would
10 vote against May buying the fifteen (15) acres next to
11 her, when all of that happened, I started doing some
12 analysis -- actually, before then even, of where will
13 you get the income to do all of this, and it was very
14 clear to me that you couldn't come up with it. I
15 think -- I think at that time Jamie even wrote or at
16 a meeting or wrote a letter or something saying that
17 he thought the average income for the Trust would be
18 in the Four Hundred Thousand (\$400,000.00) range.
19 Actually, at the time, I didn't think he was that far
20 off if you take into account all the expenses and
21 everything else. However, it was very clear to me
22 that there was a fundamental misunderstanding by Alice
23 and May and -- as to what net income was. And that
24 was evidenced when Alice did an Affidavit for the
25 purpose of this litigation where she stated that, you

1 know, we've gotten -- and it was in their papers --
2 that we've had sales and income in the Trust for 2017
3 of approximately -- some amount over a Million
4 Dollars, and after you took off expenses, the net cash
5 in was roughly Eight Hundred Thousand (\$800,000.00).
6 Well, the problem with that analysis is that that was
7 not net income. That was primarily principal. A
8 Hundred Thousand (\$100,000.00) of it was for the sale
9 of the house. Six Hundred and some odd Thousand
10 (\$600,000) was for the sale of timber, and most of
11 that timber that was sold was timber that was in the
12 Marital Deduction Trust and had just poured over into
13 the Residuary Trust. And so, it had a basis, a step-
14 up in basis, but when you cut timber right after it
15 had poured over, it was all principal. It wasn't or
16 maybe Five Percent (5%) or less was -- was -- was
17 income, but the rest was all principal. And it was
18 clear that they didn't understand that for some
19 reason. I don't -- I don't know why. But there was
20 no way -- if you invaded principal every year to make
21 payments, make distributions, you were going to
22 gradually diminish the size of this Trust, and our --
23 our intention ought to be to increase the size of this
24 Trust every year on average for the benefit of the
25 remainder people, because our obligation isn't just to

1 all four income beneficiaries; it's for the benefit of
2 remainder persons, and the remainder persons currently
3 right now are Allie and Mary Deas' three children and
4 conceivably the -- Mary Deas' grandchildren.

5 Q. Well, during this -- during this time, did you notice
6 that there was some discord -- discord between Little
7 Alice and Little Whit and maybe Wayne Belger?

8 A. I don't think ---

9 Q. When it came to ---

10 A. I don't -- I -- I think to a degree, there was discord
11 with Alice. I always felt that that discord was
12 between Whit and Wayne, not so much as between Whit
13 and Alice. If it was between Whit and Alice, it was
14 more on the nature that Whit was tagging Alice with
15 his grievances against Wayne more than anything else.

16 Q. What were some of those grievances?

17 A. Well, I don't -- I don't -- I don't know what the
18 history of it is way back when. All -- the only thing
19 I know is that -- well, first of all, let's back up
20 for a second. Whit -- I started helping Whit with all
21 of his financial affairs and everything beginning
22 probably three years before Alice died. And a year or
23 so after I started helping Whit on all of that, he
24 brought me some letters from a finance company where
25 they were threatening all kinds of legal action

1 against Whit on account of a tractor and a sprayer
2 that apparently Whit owned. I didn't realize Whit
3 owned that at the time. I had -- this was sort of
4 out-of-the-blue for me. And I looked at it and it
5 turned out that Whit owed like over a Hundred Thousand
6 Bucks (\$100,000) or something for an -- and I asked
7 Whit about it, and he said it was a large tractor and
8 sprayer that Wayne wanted but that Wayne's credit was
9 not good enough for him to be able to buy and finance
10 it. So, he asked Whit to buy that, and I think there
11 may have been a tractor that was traded in on part of
12 the cost or something. I don't -- I don't recall the
13 exact details of that and I don't know whether the
14 tractor that was traded in was Alice's or whose it
15 was, Big Alice's, or whose is was, but in any event
16 according to what I was told by Whit at the time,
17 Wayne told Whit if he did that, he would make the
18 payments on the tractor and sprayer, and also, I think
19 there was some deal that involved Whit getting some
20 percentage of the profits off some crop or something.
21 I don't remember what -- whether that had anything to
22 do with the tractor and sprayer purchase that Whit did
23 for Wayne or not. But in any event, it was very clear
24 that -- that Whit was getting harassed by the finance
25 company to do this.

1 Q. Did you discuss that -- did you discuss that with Mary
2 Deas and Alice?

3 A. I discussed it with Mary Deas and told Mary Deas that
4 if this wasn't brought current, that I was going to
5 call the finance company and tell them to come pick it
6 up, come and take it, foreclose. I mean, I -- I mean,
7 it did not make sense ---

8 Q. Was Wayne using it for his farming operation?

9 A. I assume he was. I don't know exactly what he was
10 doing with it, but I assume he was.

11 Q. Was Whit farming at that time?

12 A. No. And I -- I -- so, I discussed it with Mary Deas.
13 Mary Deas apparently discussed it with Wayne and Big
14 Alice; apparently, Big Alice was pretty ticked,
15 irritated about it, and they had a meeting apparently
16 at Wayne's office. Wayne and his mother, who was
17 assisting him there, claimed that Wayne didn't have
18 any money to pay it, and what ultimately happened is,
19 Alice made a loan to Wayne for paying the equipment.
20 I think that loan originally was drawn up by William
21 Cox. I'm not sure.

22 Q. Okay. I'm not -- I'm not -- I'll cut you off there.
23 I'm not interested in that.

24 A. Okay.

25 Q. But anyway, Big Alice loaned Wayne the money to pay

1 off the Note that ---

2 A. Or whatever was owed ---

3 Q. -- Whit ----

4 A. -- on the thing from Whit. Yes.

5 Q. Do you think maybe that caused some problems between
6 Little Whit and -- and Little Alice?

7 A. It may well have. It certainly caused problems
8 between Whit and Wayne.

9 Q. Did -- now Little Alice was renting the store and the
10 Grill; is that correct?

11 A. Yeah. I'm -- I'm not sure if Little Alice was renting
12 it -- I'd have to look at the Lease -- but I sort of
13 thought it was some LLC or something that Little Alice
14 had that was renting it. I don't recall.

15 Q. Did she ever pay her rents on time and is she current
16 today?

17 A. I don't know if she's current today. I think she's
18 had a hard time of the store. And it's -- it has been
19 in the past delinquent.

20 Q. Okay. I'm going to ask you now about this Option
21 Agreement. Are you familiar with it?

22 A. Yes, I am.

23 Q. If you would, when would that Option Agreement -- I'm
24 going to call it an Option Agreement because that's
25 the way it's been represented to me.

1 MR. BECKER: And William, before we go, I
2 just want to put on the record that we're
3 sort of now entering into an area that I think
4 is covered by confidentiality. I just wanted
5 to put that on the record.

6 MR. TETTERTON: Let's go off the record a
7 minute and discuss that; okay?

8 VIDEOGRAPHER: Off the record, 12:09.

9 (OFF THE RECORD).

10 VIDEOGRAPHER: On the record, 1:33.

11 EXAMINATION BY MR. TETTERTON CONTINUED:

12 Q. Rigdon, before we broke for lunch and during the
13 course of your earlier testimony, I understood you to
14 say that at some point in time, the Trustees discussed
15 the possibility of Mary Deas buying some of the
16 treasured property as well as Alice buying some of the
17 treasured property?

18 A. Yes.

19 Q. Okay. And somehow another, that did not develop or
20 did not come to fruition?

21 A. Yes.

22 Q. Since that time or before then, have you tried to
23 reach out to find someone that may be interested in
24 buying some of the downtown Boykin property?

25 A. No, because I was hoping that they would come up with

1 a plan on how they were going to manage that, and I
2 never saw that.

3 Q. I guess what I'm -- what I'm leading up to is, I have
4 been given a Option to Purchase Real Property
5 Agreement, and when did -- is that -- that something
6 that you were working on?

7 A. Okay. Yes.

8 Q. Okay. And when did -- when did you -- when did you
9 start considering trying to find someone that would be
10 interested in buying what is described in the Option
11 Agreement?

12 A. Well, a number of times, I tried to find a solution to
13 the impasse that we have, and one solution was to
14 split the Trust into four Trusts. No one was
15 interested. One solution was to split the Trust into
16 two parts where Alice and Mary Deas would have most of
17 the treasured properties and Whit and May would live
18 off the income from the other side of the Trust. That
19 never went anywhere. So, I've been -- realizing that
20 we had a problem, but also realizing that I think
21 everyone pretty much -- the whole community wants
22 Boykin preserved, and so, I started trying to look at
23 a buyer for the Mill Pond and Boykin and, ultimately,
24 as far as I could see, the perfect buyer was someone
25 who would end up having this be in a conservation

1 organization. The real issue is whether you could
2 talk that entity into taking downtown Boykin as well
3 because downtown Boykin doesn't naturally come up with
4 that idea or lead you to that idea. The only part of
5 downtown Boykin that would be problematic for a
6 conservation entity is the Steak House, the Broom
7 Store and the Grits Mill because they are on the dam
8 or part of the side of the dam and all and downstream
9 of the pond. And so, a conservation entity might well
10 want those three buildings, but they wouldn't
11 necessarily want the store, Ginny's house, Rosa Lee's
12 Cottage, etcetera. So, that was the real problem I
13 had.

14 Q. All right. Did you go out and solicit invitations to
15 come look at that property?

16 A. I talked to some people and found an entity that was
17 interested.

18 Q. Just for the record, describe what properties are we
19 talking about.

20 A. Well, it's basically the property that Mary Deas
21 wanted and -- or that Mary Deas was intending to put
22 into a conservation entity if she bought it, and that
23 was the pond and the land around the pond, a buffer
24 and potentially the Steak House, Broom Store and the
25 Grits Mill that was adjacent to the pond. She was --

1 we -- we spent, great Lord, tens of hours discussing
2 how she might be able to do that. Her real problem
3 was she wanted to do it, but she wanted -- she could
4 not get the tax benefit that would come out of
5 donating it to a conservation entity because she
6 didn't make enough money to get it. And so, then the
7 idea that -- that -- that we worked out together was
8 that she might give it to her children and they, in
9 turn, would give it to a conservation entity and get
10 the tax benefits out of it because they were in a tax
11 bracket that could use it.

12 Q. Since you've been down living near Boykin, how often
13 have you seen her children in the area?

14 A. Well, her -- her children, to the extent they come, if
15 they come, it's for the Christmas parade and they
16 usually spend a day or two after they go and take a
17 vacation at the beach, and it's some kind of a
18 timeshare or something that Mary Deas has in a beach
19 house. I would imagine -- I mean, I think Deasy comes
20 down more than the rest, but I'd be surprised if -- if
21 -- if Teddy and his kids and Boykin and Alexander, his
22 son, come more than two days, three days a year. If
23 that.

24 Q. Do you ---

25 A. I don't think they were here this last year.

1 Q. Do you think ---

2 A. Maybe they were. I don't know.

3 Q. Do you think putting the Mill Pond into a conservation
4 entity would be the highest and best use for the mill
5 pond?

6 A. I don't think there's any question about that, but
7 even more important, it would -- it would eliminate
8 the deterioration that has been going on for years on
9 all of that property. For example, the notion that we
10 had to clear trees off the dam is not something that
11 just happened after the flood. DHEC has been telling
12 Alice that needed to be done years ago before that.

13 Q. Is that an -- is that an earthen dam?

14 A. Yes, it is.

15 Q. And I understand it now has some spillway problems
16 that need to be addressed?

17 A. No, there's a retaining wall below the large gates
18 that needs to be fixed.

19 Q. Okay. All right. So, tell me then -- of course, I'm
20 looking at the Option to Purchase Real Property which
21 has been provided to me. Tell me the genesis of this
22 and how it came to be.

23 A. Okay.

24 MR. TETTERTON: Excuse me. We all have
25 the same Option Agreement. I don't need to

1 put it in evidence, do we?

2 MR. BECKER: I don't have it with me.

3 MR. BOYKIN: I have copies that could be
4 marked.

5 MR. BUNDY: I think since there are two of
6 them, it would better to mark the one we're
7 talking about so there won't be any confusion.

8 MR. BOYKIN: Well, I think it makes more
9 sense to talk about the one that's in effect or
10 that's before the Court now rather than the old
11 one.

12 MR. BUNDY: That's what I'm trying to avoid
13 is confusion.

14 MR. BOYKIN: I agree.

15 MR. TETTERTON: So, I can mark this copy?

16 MR. BOYKIN: Yes. Absolutely.

17 MR. TETTERTON: Okay. All right. Let's
18 mark that and everybody will be on the same page,
19 Doris. While we're off the record. Is this the
20 same one that was introduced into Mary Deas' ---

21 MR. BECKER: Yeah.

22 MR. TETTERTON: Okay. Plaintiff's Number ---

23 MR. BUNDY: Do you need to get another copy
24 of this?

25 MR. BOYKIN: Thank you.

1 MR. TETTERTON: What is the Exhibit Number
2 going to be?

3 COURT REPORTER: Two.

4 COPY OF OPTION AGREEMENT MARKED DEFENDANT'S
5 EXHIBIT NUMBER TWO.

6 MR. TETTERTON: Everybody ready? Doris,
7 have you got it marked?

8 COURT REPORTER: Yes.

9 MR. BUNDY: I can't tell if the number is
10 Three or Two.

11 MR. TETTERTON: Two.

12 Q. All right. Rigdon, looking at Exhibit Number Two, if
13 you would, explain the background of that Option
14 Agreement and how it came to pass and the status of
15 it.

16 A. Okay.

17 Q. Well, first of all, I'm sorry. Let me do this. Did
18 you discuss with the Trustees back in October of 2017
19 the possibility of selling the Mill Pond and
20 surrounding area to a conservation entity?

21 A. I think -- I don't know when I first discussed it with
22 the Trustees, but I told them some time ago that I was
23 going to explore it. I think that was before the fall
24 that I said I was going to explore that.

25 Q. Did anyone ---

1 A. And then ---

2 Q. I'm sorry. Go ahead.

3 A. And some time around October, I told them that the
4 exploration had borne fruit and I did have an entity
5 that was interested in it, and I think I included a
6 term sheet of what the Option would look like at that
7 time. I should also mention, by the way, that Mary
8 Deas participated in some of the negotiations for this
9 Option Agreement. I don't mean she participated by
10 directly interfacing with the buyer, but I would call
11 her up and say, "The buyer wants this, would you agree
12 to it, they are interested in and feel it's important
13 to obtain your half interest in your house as well;
14 would you be interested in working out some
15 arrangement for them." and there was a lot of back and
16 forth over that and that ultimately led to Mary Deas
17 agreeing to have her house included in the Option in
18 exchange for she would get a life estate in the house,
19 could stay in the house; the Trust, I mean, the donor
20 would agree to maintain the house, pay the utilities
21 and agreed to give her up to Seventy Thousand Dollars
22 (\$70,000.00) in order for her to build an additional
23 bedroom and bathroom for the house and the -- she
24 would get to use the house rent free and all and
25 maintenance free for a period of her life plus three

1 years after she died.

2 Q. Were those discussions you had with Mary Deas?

3 A. Those were discussions we -- this was what ended up
4 out of a give and take with Mary Deas over the course
5 of probably a week in my negotiations with the donor.

6 Q. Was -- now, did you have anybody ---

7 A. Now, Mary Deas didn't know who the donor was; she just
8 knew there was one.

9 Q. Okay. Did you have any opposition from Mary -- or
10 from Alice or Mary Deas about pursuing what you just
11 discussed?

12 A. No.

13 Q. Alice was -- what -- how was -- what was Alice's
14 response to the possibility of selling the Mill Pond?

15 A. There wasn't any discussion of it really. This was --
16 this was a, you know, sort of a casual thing at -- at
17 a meeting where I said, you know, -- if -- if Mary
18 Deas isn't going to be permitted to buy this and give
19 it to an organization, maybe an organization might be
20 interested in it. I don't recall the exact words I
21 used or what-have you, and I don't recall the exact
22 date that was done.

23 Q. Did either of the other two Trustees tell you -- no,
24 don't go any further, we're not interested?

25 A. I think Alice did after the Option Agreement was --

1 the terms sheet and all was proposed, Alice was -- was
2 opposed to it, and Mary Deas basically said that it
3 was something that the Trust should explore.

4 Q. Did Alice tell you any particular opposition she had
5 to it at that time?

6 A. I think the opposition was, you know, -- this wasn't
7 Daddy -- Daddy didn't want us to sell any of this
8 property. It's that simple.

9 Q. Did I -- do I understand you to say that Mary Deas was
10 more amenable to the other Option?

11 A. Oh, absolutely. There wasn't any question about it.

12 Q. Okay. All right.

13 A. Because it was achieving her end goal which was to
14 preserve that property.

15 Q. All right.

16 A. At no cost.

17 Q. Okay.

18 A. In fact, a tremendous financial benefit for the Trust.

19 Q. Did you continue your negotiations with this entity to
20 end up with the Option Agreement that is now Exhibit
21 Two?

22 A. Yes.

23 Q. Tell us about that -- tell us the pros and cons of the
24 Option Agreement.

25 A. Well, the Option Agreement has -- has changed; as it

1 was first envisioned, it included an Option for Mary
2 Deas to sell her half interest in the Option, but when
3 it became clear that -- that she was no longer going
4 to consent to that, it was changed. I didn't know if
5 I could get it, but I finally got the donor to agree
6 that the -- her half interest in the house could be
7 omitted and, basically, they felt that they would just
8 let her use the house, and -- and whatever her Estate
9 did, then just let it use it and when it -- when they
10 wanted to get rid of it, they would be in a good
11 position to buy that from either interest.

12 Q. The Option to Purchase Real Property, which has been
13 marked as Exhibit Two, is that the last and final
14 negotiation -- negotiation between you and the donor?
15 There's nothing new that we don't know about; right?

16 A. Well, the only thing new is, when it became clear that
17 -- that Alice and Mary Deas wanted to know who the
18 conservation donor was, I went back to them and said,
19 you know, "What do you want to do, do you want to
20 withdraw the Option or do you want to continue,"
21 knowing full well that there was a -- a risk of
22 inadvertent disclosure, and they told me to go
23 forward; they weren't real happy about it, but they
24 agreed to ---

25 Q. What ---

1 A. Frankly, I thought they were going to walk.

2 Q. What would be the risk of public disclosure?

3 A. Well, you've got to back up to who the donor was. The
4 donor was going to be the Haile Gold Mine.

5 Q. But that's -- is that -- is that -- what kind of
6 entity is that?

7 A. The Haile Gold Mine is a -- a gold mine; it's the
8 largest gold mine east of the Mississippi. When it is
9 fully developed, it will be the largest gold mine in
10 the country. And when you develop entities like that,
11 they are -- they have mitigation requirements. It's
12 basically where you trade off with the government,
13 Federal and State, in exchange for the Permit. And
14 so, for example, when they got their original Permit,
15 they bought a bunch of land up around Kershaw and
16 above Kershaw including land that had a muscle called
17 a heel splitter muscle, which is a -- an endangered
18 species apparently, and they have spent all kinds of
19 money improving that muscle habitat and everything
20 else. And it occurred to me that I knew the Haile
21 Gold Mine people, first of all, because they
22 occasionally leased my barn and/or other facilities on
23 my property for employee retreats, what-have you,
24 because it was a big room there.

25 Q. Did you continue your negotiations with the Haile Gold

1 Mine people?

2 A. Well, what happened is that they told me that they
3 were going to be in the process soon of applying for
4 another Permit up there, which was not really as I
5 understand it -- was only going for the most part to
6 just allow them to go deeper, not more acreage or
7 something, but I don't know. And that they were going
8 to be expanding their mitigation stuff up there, and
9 I said, "Well, you know, so far on your mitigation
10 efforts, everyone's benefited except Kershaw County.
11 In fact, I had had discussions previously about that
12 with Julian Burns, who was head of County Council, and
13 said, "You know, you ought to be going after the Gold
14 Mine for -- more for this county because it's right --
15 just across the line in Kershaw County," and the last
16 mitigation go-round, what happened is they bought a
17 bunch of property in -- up above Kershaw and they
18 bought Good Will Plantation and they bought Cook's
19 Mountain as part of the mitigation plan. And I said,
20 you know, there is a pond here that has a rookery that
21 has endangered species nesting on it or at least I
22 think the wood stork was; I'm not sure if they are,
23 but that's what I have been told. And this would be
24 a good way to mitigate, and it would be helping the
25 county that's right next to your mine. And initially,

1 they were interested. They came down and some of
2 their people looked around the pond; they hired a
3 fellow from Canada to come down and do aerial
4 photography over the pond and -- and everything. The
5 guy spent a day here photographing it all, and I -- I
6 guess they talked within OceanaGold who owns them --
7 it's an Australian company -- and they came back and
8 said they would like to pursue it. Now, the problem
9 they have and why it had to be confidential is, first
10 of all, they're -- the number of people that give
11 properties to a conservation organization are
12 infinitesimal. They expect people to give an
13 easement, but they don't expect someone to buy the
14 property and give it to them. That's very rare. It
15 primarily only happens with organizations like this
16 kind of a situation where you're -- they're looking
17 for mitigation or organizations such as the Nature
18 Conservancy which has a lot of money. The other --
19 the problem they have, however, is -- they have two
20 problems; one is, if people know that they are
21 actively going out and looking at properties, the rest
22 of the value of the properties adjacent to that,
23 people start thinking that it's -- that they can hold
24 them up, that it's made out of gold, in essence. And
25 -- but -- and the other problem is, you have

1 politicians getting involved trying to get that put in
2 their county, in their area, and then on top of that,
3 you even have the conservation organizations getting
4 involved and saying, you know, -- this ought to be for
5 my organization, not this organization or that
6 organization and there's a huge free-for-all that goes
7 on on this. And the other thing that -- that you need
8 to know about this is, they don't -- basically, how
9 this works is, they acquire -- they -- they acquire an
10 Option usually on the land. Sometimes they just go
11 ahead and buy it. They bought a lot of land up in --
12 up above Kershaw, disjointed pieces and everything
13 else knowing that, eventually, they might work
14 something out, but they were doing it on the --
15 risking whether it would make sense or not just
16 because, if it were wet-lands, if -- they knew they
17 could bring it in under the umbrella somewhere, even
18 if it wasn't a long connected piece. So, in -- in
19 Kershaw, it's taken them years and they are still
20 trying to piece together pieces because a lot of organ
21 -- a lot of people were saying -- no, we don't want it
22 or we want three or four times what the going price is
23 ---
24 Q. Having ---
25 A. -- because it's a gold mine.

1 Q. Having explained that, did you all end up negotiating
2 an Option price?

3 A. I ---

4 Q. And what is it?

5 A. Yes, we did. The Option price. if they buy -- well,
6 if they buy all of what they want or they think they
7 might want, is just under Four Million Dollars.

8 Q. Did you all arrive at a down -- I'll call it a down
9 payment -- but Option money for consideration for the
10 Option?

11 A. Yes. I told them that if they were going to do this,
12 I needed serious money, and I asked for a Three
13 Hundred Thousand dollar (\$300,000.00) Option payment.
14 You see, what they have to do is and why there is an
15 Option payment, they are probably Ninety-five Percent
16 (95%) or higher sure they are going to exercise the
17 Option, but they can't rule it -- rule out the -- the
18 facts that, in the doing of the baseline survey,
19 checking all the property, that there might be a
20 problem where that property did not fit within their
21 criteria for mitigation. And so, that's the whole
22 reason for the Option payment; it's basically to give
23 them a due diligence period, which is a long due
24 diligence period, because so much work has to be done.
25 Plus, the other thing we have here, and this is a

1 wrinkle that you wouldn't necessarily pick this up
2 reading the Option Agreement quickly is, on the -- in
3 downtown Boykin, there used to be a service station,
4 I think, actually, two service stations across the
5 street from each other. And I'm sure that there is
6 probably a -- may well be an underground storage tank
7 that may have issues coming out of that, and that was
8 a -- a matter that I disclosed to them early on and
9 worked out a deal with them where if the -- if there
10 is an environmental problem arising from those tanks,
11 they still have to go ahead and -- but the Option
12 money would not be returned from that. However, if
13 there was a -- a dump somewhere on the site -- because
14 it's a lot of acres -- that would require over Three
15 Hundred Thousand Dollars (\$300,000.00) to remediate,
16 they would have the ability to not go forward and
17 their Option money would be returned. And that is
18 only -- that -- but if there was -- if they did want
19 to go forward and it was under -- even if they -- they
20 could go forward even if it was over Three Hundred
21 Thousand (\$300,000.00), but if it were under Three
22 Hundred Thousand (\$300,000.00), they would have to pay
23 that money in addition to remediate that in addition
24 to the Option price.

25 Q. Is that ---

1 A. It's a really good deal from that standpoint.

2 Q. Is that one of the risks of the Trust holding onto
3 that piece of property and, eventually, in the
4 lifetime of my clients, May or Whit, having to sell
5 it?

6 A. There's no question, if the fuel tanks -- the fuel
7 tanks are probably the bigger risks -- because if the
8 fuel tanks were not properly remediated, that could be
9 a huge expense in the future because you would
10 probably have to dig them up; if there were soil
11 around it that was contaminated, you would have to get
12 that soil hauled off. I've been through this
13 experience. I've had -- I've removed -- in the other
14 Trust, I removed two tanks, and it -- there have been
15 -- fortunately, the leakage in the underground tank
16 wasn't that extensive; so, it only cost Seventy-five
17 Thousand (\$75,000.00) to get the tanks removed.

18 Q. Well, let's go -- let's go through as to what my
19 understanding of item by item was. The Option
20 property consists of about six hundred and thirty-
21 three (633) acres; is that correct?

22 A. Yes, sir.

23 Q. And did you bring a blowup of those today?

24 A. Yes, I did.

25 MR. TETTERTON: Liam, let me have

1 those.

2 Q. And while he's getting those, who prepared those?

3 A. Actually, the Haile Gold Mine people did.

4 Q. All right. Do these four ---

5 A. That was -- those were all prepared -- except for one,
6 one was prepared by Bill Lindler when he did the
7 survey work to delineate this property.

8 Q. Do these accurately reflect the property that is in
9 the -- in the easement, I mean, not the easement, the
10 Option?

11 A. I think so.

12 Q. Okay.

13 A. The -- I mean, there are three pictures that were done
14 from -- by -- with the drone. They show the pond from
15 two different aspects, two of them do, and the third
16 one shows the buildings in downtown Boykin. The
17 fourth slide is a county aerial map or whatever that
18 you can get from the county on which Bill Lindler
19 superimposed the boundary lines of what the Option
20 would be. And so, the six hundred (600) and whatever
21 acres, thirty-three (33) acres, is -- is approximate
22 because that was done by GIS, ---

23 Q. Okay.

24 A. -- and not by actual survey.

25 MR. TETTERTON; I'd like to mark those,

1 please. Can I mark those?

2 MR. DUFFY: Uh-huh (affirmative response).

3 MR. TETTERTON: Do you want to mark these
4 individually?

5 MR. DUFFY: Probably.

6 MR. BECKER: Yeah, let's mark them Three A,
7 B, C, I guess.

8 MR. TETTERTON: Actually, it will be A, B,
9 C, D; right?

10 MR. BECKER: Yeah, A, B, C and D.

11 COPIES OF PHOTOGRAPHS MARKED DEFENDANT'S
12 EXHIBIT THREE-A, THREE-B, THREE-C AND THREE-D.

13 MR. TETTERTON: While we're off the record,
14 how are we going to attach these to copies of the
15 deposition? Do you all have any objection ---

16 MR. BECKER: You all can just keep them.

17 MR. TETTERTON: Huh?

18 MR. BECKER: You all just keep them.

19 MR. TETTERTON: Instead of attaching them to
20 everybody's copy?

21 MR. BECKER: Yes.

22 MR. TETTERTON: Thank you.

23 (EXHIBIT THREE-A, THREE-B, THREE-C AND
24 THREE-D RETAINED BY MR. TETTERTON)

25 Q. Okay. Rigdon, I'm looking at Exhibit Three-A. What

1 does that Exhibit represent?

2 A. All right. Three-A is an aerial shot of the buildings
3 in downtown Boykin. It doesn't include up from
4 downtown, which would be Ginny's Cottage or Rosa Lee's
5 Cottage, but they did this picture because I had --
6 they were -- they were -- they were willing to
7 entertain the possibility of buying downtown Boykin,
8 even though downtown Boykin would not strictly fit
9 within the -- what is normal mitigation strategies,
10 they were willing to do that because they did
11 something similar to this in Kershaw where they bought
12 a depot, did stuff, and made a little museum and
13 stuff. And they told me they would be interested
14 potentially in buying the rest of this, donating that
15 to the conservation entity as part of the endowment
16 for the conservation entity, but if they did do it,
17 they would put in sort of like a little museum for
18 Boykin probably in Ginny's Cottage -- they weren't
19 really sure -- so that you would have -- and -- and
20 then they would bring all of those buildings up to
21 snuff, redo all the underpinnings, things like that if
22 they did do that as well as find people to operate the
23 church, what-have you. They -- I was extremely
24 interested in that at least because it would provide
25 the cash to fully restore all of this area ---

1 Q. At no expense to the Trust?

2 A. At no expense to the Trust. But more important, they
3 agreed that they would fund the -- the whole purchase
4 and everything with a big enough endowment to help
5 this all get done, plus, they would have professionals
6 who are competent and have the expertise and money to
7 operate the various facilities there. And to me, that
8 was a huge, huge win because it would preserve way
9 beyond when it would have ever been preserved by the
10 terms of Whit's Trust. The Boykin sort of community
11 there, a long time ago, the -- the store was a focal
12 point of the community; it hasn't been since a fellow
13 by the name of Gary or something like that ---

14 MR. BOYKIN: (To Ms. Belger) Do
15 you remember his name?

16 Q. If you don't know it, ---

17 A. Oh. I'm sorry. Anyway, there was ---

18 Q. Let me just ---

19 A. It -- when he was alive and running that store, almost
20 -- you got to see everyone in the community at least
21 once or twice a week because they would have lunch
22 there or dinner there on the weekends.

23 Q. Okay.

24 A. And this was an organization that would have the
25 ability to bring that back and have the funds and

1 expertise to do it.

2 Q. Okay. In the event they do not include that in their
3 purchase, ---

4 A. Yes.

5 Q. -- should it be approved?

6 A. Oh, absolutely.

7 Q. What is the responsibility of the Trust in maintaining
8 those buildings?

9 A. The Trust obviously has to maintain them even -- I
10 mean, you know, you have to make a decision at -- at
11 various points whether the -- the revenues could be
12 gained from maintaining them exceed the cost of -- of
13 -- of maintaining them, but you also have to worry
14 about -- there is some historical value, too. I mean,
15 it -- it's a very complex situation for the Trust here
16 obviously, -- I mean, for downtown Boykin, in my view;
17 there is no one presently associated with the Trust
18 that can operate this on a -- in a good basis. So,
19 the Trust would have to basically bring someone in and
20 try and have them put all of this together and -- and
21 make a rational plan for the development of this and
22 making money off of it. And I didn't think it was --
23 the Trust just doesn't have the assets or
24 beneficiaries with the skill to do it.

25 Q. Now, if I understand the Will and the obligations of

1 the Trust, the Trust is to be maintained for the
2 lifetime of my clients, May and Whit; is that correct?

3 A. And the lifetime of ---

4 Q. Mary ---

5 A. -- Alice and Mary Deas.

6 Q. So, that could be a long time?

7 A. No, I mean, they're all in fifties now. So, ---

8 Q. Thirty ---

9 A. -- my guess is that's in, you know, a reasonable time
10 or thirty (30) to forty (40) years.

11 Q. So, is it my understanding that the Trust will be
12 faced with the obligation to maintain those buildings
13 for about at least another thirty (30) years?

14 A. If they kept it, yes.

15 Q. If they -- if they keep it, ---

16 A. Sure. Sure. No question.

17 Q. Is it your opinion on the positions of Mary Deas and
18 Alice that they want to keep that as treasured
19 properties, to hold on to it?

20 A. It's my understanding Alice in particular believes
21 very strongly that she has to keep that property.

22 Q. And that's particularly the Grill that she's not
23 paying rent on?

24 A. She may be paying it now. I don't know.

25 Q. All right. All right. Did you do an analysis of how

1 putting that property into the Trust will benefit the
2 Trust -- benefit the Trust?

3 A. Yes, I did.

4 Q. I'm going to ask you to take a look at that document
5 now and tell me if that is an analysis that you made.

6 A. Yeah. As I have as the title, "Rough Analysis of
7 Benefit to the Trust of Selling the Mill Pond and
8 Related Buildings".

9 Q. And who ---

10 A. This is ---

11 Q. When did you do that?

12 A. Actually, I did -- I've done drafts of this over the
13 last few months.

14 Q. Have you have ---

15 A. This particular draft, I did this weekend.

16 Q. Did you have these discussions or did you have any
17 discussions with Mary Deas or Alice about the benefit
18 of selling this property to the Trust -- of this Trust
19 selling the property?

20 A. Sure.

21 Q. Okay.

22 MR. TETTERTON: I want to ask that be
23 marked. That's Number Four, is it?

24 COURT REPORTER: Yes.

25 COPY OF ANALYSIS OF BENEFIT TO THE

1 TRUST OF SELLING THE MILL POND AND RELATED
2 BUILDINGS MARKED DEFENDANT'S EXHIBIT NUMBER
3 FOUR.

4 Q. Just, if you would, explain to us or explain to me
5 what I'm looking at.

6 A. Okay. What I did is, on the top left-hand quadrant,
7 I put what I viewed were sort of the minimum
8 expenditures the Trust would have to make over the
9 next year or two to the various buildings associated
10 with downtown Boykin if we were going to fulfill our
11 responsibility as Trustees in keeping them in a
12 condition where it wouldn't continue to deteriorate.

13 Q. Now, is this a -- pretty much an immediate expense or
14 is this over the next thirty (30) years that my
15 clients are expected to live?

16 A. No, no. I think this is -- these are expenses that,
17 for the most part, they ought to be done in the next
18 year. For example, if you take the Steak House, the
19 Steak House is composed of three buildings that were
20 sort of put together. The Steak House needs a roof on
21 part of it. There are -- the window jambs, for
22 example, on some of the windows are completely rotted
23 out. I mean, you could stick your finger through it.
24 The sides, especially on the side next to the pond
25 side of the Steak House, has rotted boards and stuff.

1 In fact, it was getting so bad that when we had a --
2 a storm came through and destroyed some of the roof,
3 and I had -- we had to get it repaired. The person
4 running the Mill Pond Restaurant asked us if he could
5 use the old siding that was on the roof and put like
6 a skirt around the bottom of the building to hide some
7 of all of the -- the -- the deterioration. It also
8 has sills underneath that have serious termite damage.
9 The -- the porch where you enter the Mill Pond
10 Restaurant has -- it -- it came unhinged from the
11 building and dropped down, and we hired a fellow to
12 fix it. He said it would cost a lot to fix it because
13 where you would attach it to the building was too
14 rotten to attach it. So, basically, all we did, until
15 we could get under there and do a much better job down
16 the road, was we put cinder blocks up underneath there
17 to raise it to the level. The kitchen is not level,
18 the floor in the kitchen. There's in particular a
19 real bad sill; it's like a -- like a maybe a twenty
20 (20) inch by fourteen (14) inch beam or something
21 underneath there.

22 Q. Well, let me -- let me interrupt you now. Does Mary
23 Deas -- in your opinion, does Mary Deas and Alice
24 understand the need to correct these deficiencies?

25 A. I think they -- I think they ---

1 Q. Has it been discussed?

2 A. The fact that they need to -- to be cleaned up,
3 absolutely, it's been discussed. However, their view
4 of maintenance appears to be closer to the mother's
5 rather than mine; so, -- but, you know, if -- if -- at
6 the end of the day, if we want to continue to rent it,
7 we're going to have to make some of these repairs.

8 Q. Okay.

9 A. The real issue is how much. It could be anywhere from
10 Thirty Thousand (\$30,000.00) to -- to a Hundred
11 Thousand (\$100,000.00).

12 Q. All right.

13 A. I just put in what I thought was a reasonable minimum.

14 Q. On the right-hand side, is that the estimate of costs
15 that the donor, if this property is purchased by them,
16 would be ---

17 A. If the donor bought the property, my belief, and from
18 conversations with them, they would probably expend in
19 excess of this amount to fix it up. However, you
20 know, that would be part of their due diligence is
21 figuring out how much this would cost and everything
22 else. They haven't done any examination
23 architecturally or -- or otherwise of this.

24 Q. So, you come up with -- you come up with a negative,
25 I believe that's in the red after you consider the

1 rents that you all expect to receive from the property
2 if it is not ---

3 A. No. The -- the -- where it says Rents, what I did is
4 I -- the store right now is renting for a Thousand
5 Dollars (\$1,000.00) a month. The Mill Pond Steak
6 House is renting for Two Thousand Dollars (\$2,000.00)
7 a month. I figured we would be able to increase that
8 Five Hundred (\$500.00), maybe more. So, I put in
9 Thirty Thousand (\$30,000.00) rather than Twenty-four
10 Thousand (\$24,000.00) there. The Broom Store is
11 currently not paying any rent. I think that is a --
12 an issue. There is some value to having the Broom
13 Store there at no rent if you're going to adequately
14 develop the rest of downtown Boykin. If you aren't,
15 there is no value to the Trust for them doing that.

16 Q. Is it -- is it presently occupied?

17 A. Occupied by a woman who makes brooms. However, she is
18 not charged any rent for that.

19 Q. How about the Grits Mill, is it presently occupied?

20 A. The Grits Mill has not worked -- has not operated for
21 at least a couple of years. Even when it did operate,
22 it was, you know, it was one of these things where it
23 would operate for a month or two, and then it might be
24 a year before it operated again; it depended on what
25 the relationship at the time was with the person who

1 was running the mill, etcetera.

2 Q. Okay. Rigdon, I'm going to ask you, in your short
3 synopsis, what does this intend to show; the document,
4 what does it -- what are you intending to show by
5 this?

6 A. Well, basically, what I did -- I wanted to show what
7 we would have to spend for everything, I thought,
8 number one, if we kept it. Two, the fact that it was
9 making very, very little money for the Trust given the
10 value of the property. And so, we have Ninety-four
11 Thousand Dollars (\$94,000.00) in gross rents if
12 everything's leased up as -- and if you can rent Rosa
13 Lee's Cottage and the church together for Twenty-four
14 Thousand (\$24,000.00) a year, which is probably
15 reasonable, between Twenty-four (\$24,000.00) and
16 Thirty-six (\$36,000.00) if you fix it up. You would
17 have a -- a -- gross revenues of Ninety-four Thousand
18 (\$94,000.00). You would have taxes, expense and
19 ongoing maintenance. That's ongoing maintenance in
20 addition to the sort of what I call maintenance
21 catchup in the upper left-hand corner. So, you would
22 have cash at the end of the day from this of Sixty-
23 four Thousand Dollars (\$64,000.00). And that cash
24 return based on a value of the property as set in
25 essence by the Option Agreement of Three point Nine

1 Million and you have to add to that the repairs that
2 you're going to have to spend which would, you know,
3 yield a number of Four point Two Four Five Million
4 (\$2.245), dividing the cash that you receive into the
5 -- dividing the total asset size into the cash you
6 receive gives you a yield of a little over One point
7 Five Percent (1.5%) per year, which is considered
8 grossly inadequate. And so, what I did then is invest
9 -- is realize the sale, and if you realize the sale,
10 you've got to account for the capital gains tax on the
11 sale. You have to account for -- that's Federal and
12 State. And then there is this -- this -- this
13 Obamacare tax I think is the common phrase for it, but
14 it's an investment, some kind of investment, financial
15 investment tax or something of Three point Eight
16 Percent (3.8%) on top of it; so, it yields a -- a
17 projected amount of approximately Twenty-eight Percent
18 (28%) tax. And I took -- so, I deleted the tax off of
19 this amount and then invested it notionally in the
20 stock market and assumed a Six point five Percent
21 (6.5%) return on -- on average. And the reason I used
22 a Six point Five Percent (6.5%) return is, basically,
23 most Trusts expect to make somewhere between Six and
24 Eight percent I think if you talk to the Trust experts
25 and all of a total return a year of average. On the

1 Trust that I am a Trustee of, we have averaged I think
2 Seven point Three (7.3) or Seven point Four (7.4)
3 Percent returns over the life or over the last
4 seventeen (17) years. And the stock market went down
5 substantially in that period. In the year 2008, we
6 lost Twenty-eight Percent (28%) of the Trust value
7 related to our equity portfolio in that year. So, the
8 Seven point Three (7.3), Seven point Four Percent
9 (7.4%) that I mentioned is including those downturns.
10 That's what we've made on average for the whole
11 period. So, I thought I'd be a little conservative
12 here, and I put a Six point Five Percent (6.5%) return
13 and a Six point Five Percent (6.5%) return would yield
14 Two Hundred and Thirteen Thousand Dollars
15 (\$213,000.00) instead of the Sixty-four (\$64,000.00)
16 that if the Trust kept the properties. But most
17 important of all, even almost as much as the
18 additional money which is very significant for this
19 little part of the Trust assets, is the fact that it
20 would maintain the pond, and if they also included
21 downtown Boykin for years after this Trust would have
22 normally expired, and without any disagreement on how
23 you split it up when it does expire between the -- the
24 heirs, the remainder people, etcetera.
25 Q. Let me ask you. Has Alice indicated to you that under

1 no circumstances would she agree to the exercising or
2 signing onto this Option Agreement?

3 A. That has been her position so far. I am hopeful that
4 -- that the reality of where is the alternative to
5 generating the income that's needed for this Trust
6 will cause her at some point to change her mind,
7 because running the Trust in the way this -- these
8 assets were handled in the past have generated, you
9 know, on the order of a Couple Hundred Thousand Bucks
10 probably on average per year. And that doesn't
11 generate the roughly Seven to Eight Hundred Thousand
12 that's needed for all of the income beneficiaries, you
13 also have expenses, you have advisor fees, Trust fee
14 -- Trustee fees and you also, on top of all of that,
15 you have to generate some growth in the assets for the
16 future generations that are going to inherit this.

17 Q. Let me ask you ---

18 A. And that's a big responsibility we also have, and some
19 people seem to ignore that.

20 Q. Well, let me ask you this. With you as an individual
21 Trustee and the other Trustees, would there be future
22 in your opinion liability to my clients for not
23 prudently administering that Trust on a periodic
24 basis? What my Trustees -- what my clients are
25 looking for is for this Trust to grow and be risk --

1 somewhat risk free and generate growth. What --
2 what's the -- have you all discussed you all's
3 liability to my client if you all don't do the right
4 thing?

5 A. Not in those -- those terms. I think they've been
6 discussed more from a standpoint that holding Ninety
7 Percent (90%) or whatever of your assets in one
8 category is a very, very risky item. Another
9 Hurricane Hugo could wipe out Fifty Percent (50%) of
10 the value of this Trust in a skinny minute.

11 Q. But I, you know, I guess, my question is, ---

12 A. And then you have the problem of whether the dam has
13 a problem. There's liability there as well.

14 Q. I guess my question is, is there continuing liability
15 on behalf of the Trustees to my clients to prudently
16 manage this Trust? When I say the term, "liability,"
17 ---

18 A. I -- I -- I look at it as a continuing obligation
19 rather than a liability.

20 Q. Well, ---

21 A. I think our -- I think we have an absolute obligation
22 to diversify the assets, to invest those assets in a
23 prudent fashion, to provide for income, growth,
24 etcetera.

25 Q. Okay. Is it ---

1 A. And if we don't do it, sure, can we be sued? Of
2 course. Absolutely.

3 Q. By -- by the income beneficiaries?

4 A. And by the remainder people, too.

5 Q. I guess -- I guess what I -- what I'm gathering from
6 your -- your position is that you have one investment
7 strategy for the growth and minimizing of the risk and
8 Mary Deas and Alice have -- they have an other
9 investment strategy for the growth and minimizing of
10 the risk?

11 A. I ---

12 Q. Is that fair to say?

13 A. I have asked beginning in October of 2016 for a -- for
14 how this strategy would provide this money and, in
15 fact, I -- I really raised Cain about it in March, and
16 Mary Deas -- I had probably conversations with Mary
17 Deas at least once a week between that March meeting
18 and the next meeting, which wasn't until May, because
19 they kept getting cancelled. And she had told me that
20 she had instructed Jamie Becker to come up with a
21 plan, and the next time I would call her, she said,
22 "Oh, I've told Jamie to talk to you; he's going to
23 talk to you this weekend." The next time I would call
24 her, "Oh, Jamie hasn't called you yet? I'm going to
25 call him and ask him to call you and -- and explain

1 the plan and -- and work with you on it." To this
2 day, we do not have any forecast, any plans
3 whatsoever. And that is a huge source of frustration
4 for me because they may have and Jamie may have a
5 rabbit in the hat that he can pull out and make this
6 work, but I won't know until I see it.

7 Q. All right. Do you think it would be prudent for the
8 Trust to exercise this Option?

9 A. I do.

10 Q. Execute this Option?

11 A. Yes, I do.

12 Q. Tell me a little bit about the -- I'm about to finish
13 up -- about the total amount of the money. Is that --
14 what is that purchase price based on? But not -- I'm
15 not talking about parcels of property.

16 A. Okay.

17 Q. In general, what is it based on? Is it a fair market
18 value?

19 A. I think it is probably Twenty (20), Thirty Percent
20 (30%) above fair market value. We had two appraisals
21 done on it. One was done by Charleston Appraisal
22 Services, which actually has a lot of experience doing
23 this kind of appraisal in particular in conservation
24 type situations, and we hired them on the
25 recommendation of Karen Thomas who recommended them

1 along with a fellow by the name of Huffines, who
2 turned out was more a real estate broker instead of a
3 -- an appraiser. Apparently, -- and he was familiar
4 with this property. Apparently, he had talked to
5 Alice years ago about it and asked Alice what would
6 happen to it, and she said, "Oh, they'll sell it all
7 when I die but not until then."

8 Q. Have you ever had any discussions with Ansel -- Ansel
9 Bunch about what to do with this property or what
10 would be ---

11 A. Well, Ansel Bunch ---

12 Q. What would be prudent in diversifying the assets of
13 this property? Have you ever had any conversation
14 with Ansel Bunch?

15 A. I have met Ansel Bunch a couple of times at Millway
16 when he came over to discuss the Trust stocks with
17 Alice and Mary Deas and me. My impression of Ansel is
18 I -- he may be a comprehensive financial planner, but
19 I don't -- I did not get that impression. I thought
20 he was pretty much just a stockbroker.

21 Q. All right.

22 A. And so, wouldn't have the expertise to give us that
23 kind of advice here.

24 MR. TETTERTON: If we could take two,
25 three minutes and let me step outside. I

1 think I'm through.

2 VIDEOGRAPHER: Off the record, 2:36.

3 (OFF THE RECORD).

4 VIDEOGRAPHER: On the record, 2:43.

5 MR. TETTERTON: Rigdon, I have no further
6 questions of you at this time and I appreciate
7 your testimony.

8 MR. BUNDY: Do you want me to go next?

9 MR. TETTERTON: Do you want to sit here
10 or you want to -- you're okay right there?

11 MR. BUNDY: I can sit here. That's fine.
12 Is that all right with you, Jamie?

13 MR. BECKER: Yeah.

14 EXAMINATION BY MR. BUNDY:

15 Q. Rigdon, I represent Alice Belger as you know. If I
16 ask you a question and you don't understand, just tell
17 me you don't understand it and we'll figure it out.
18 Where are you licensed to practice law; what states
19 are you licensed to practice law in?

20 A. The state of New York.

21 Q. Okay. And do you have an active License in New York?

22 A. Yes.

23 Q. Okay. Have you ever been licensed in the state of
24 South Carolina?

25 A. No.

1 Q. Okay. So, you've never taken the Bar Exam?

2 A. No.

3 Q. Okay.

4 A. I went straight to New York right after I graduated.

5 Q. All right. When you -- when you went to New York
6 after graduation, how many other University of South
7 Carolina graduates were in that law firm?

8 A. None. None.

9 Q. None. Most of the graduates from where, Harvard,
10 Yale, Dartmouth, Princeton, that sort of thing?

11 A. Yes.

12 Q. Okay. Did you -- did you compete for that job or
13 apply for that job or were you offered the job?

14 A. I applied for the job.

15 Q. Okay. And do you know how many other applicants there
16 were?

17 A. I have no idea.

18 Q. Okay. Was there any -- Ms. Waller, did she have any
19 or her family have any relationship to that firm or
20 with -- with that firm?

21 A. No. Me -- just to short-circuit this, I had a friend,
22 his name was Tom Kacee, who at the time was the
23 president of Bessemer, and actually had another one
24 too.

25 Q. Okay.

1 A. I -- I think he at least got me the interview to begin
2 with up there because most of the other firms up there
3 wouldn't interview even a person from South Carolina.
4 Every interview I had in New York was through someone
5 who was a client of the firm.

6 Q. All right. So, South Carolina wasn't a sought after
7 law school in New York City?

8 A. No, not by a long shot.

9 Q. Probably still the case today?

10 A. Probably very much so.

11 Q. Okay. Are you a licensed real estate broker?

12 A. No, I am not.

13 Q. Do you hold any other Licenses?

14 A. Not that I can think of offhand.

15 Q. So, you're not a psychiatrist, psychologist, don't
16 have a medical degree, none of those things?

17 A. No.

18 Q. Okay. So, when you give opinions about the Boykin
19 children's mental acuity, etcetera, that's just your
20 opinion as a nonprofessional?

21 A. Exactly. Just based on the experience that I have had
22 with them over the years.

23 Q. And ---

24 A. And what Alice told me.

25 Q. Right. Are you familiar with the concept of Guardian

1 Ad Litem, I assume?

2 A. Yes, I am.

3 Q. And do you have an opinion as to whether or not Whit
4 should have a Guardian Ad Litem?

5 A. No, I don't -- I don't think so. I think the Guardian
6 Ad Litem are in particularly useful where a person
7 doesn't have the ability to make rational decisions.
8 I think Whit has the ability to make rational
9 decisions on a lot of stuff. He just doesn't
10 understand the relationships between what something
11 costs and what he makes.

12 Q. And that would be a decision that should initially be
13 made by his attorney, not you; is that correct?

14 A. What -- whether he needs a Guardian Ad Litem?

15 Q. Whether he -- whether he should have a Guardian Ad
16 Litem is a decision that should be made by Whit's
17 attorney, not you?

18 A. Oh, I don't think Whit's attorney comes up -- I mean,
19 in my experience, Guardian Ad Litem are appointed
20 where a member of the family thinks it's necessary or
21 there is a proceeding going on in a Court where the
22 Court feels that they are not adequately represented.
23 If you go into the Guardian Ad Litem concept, I think
24 if it is a -- a -- a lawyer that they pick or
25 something, a lawyer does not necessarily say -- oh, my

1 client needs a Guardian Ad Litem; it usually comes
2 from the family or a Court in my experience. But I'm
3 not tremendously experienced in this area.

4 Q. So, you don't have any opinion as a lawyer here today
5 whether or not a lawyer has a legal obligation in
6 representing his client to make a threshold
7 determination as to whether his client might need a
8 Guardian Ad Litem?

9 A. I've never been in that circumstance. Don't know.

10 Q. Do you know whether that has been looked into?

11 A. I have no idea. I mean, I haven't asked William or
12 anyone else.

13 Q. Have you ever represented to anyone that you were
14 May's attorney?

15 A. That was sort of interesting the other day because
16 Mary Deas or Alice, I'm not sure which, said I told
17 George Bailey I was May's attorney. I may have; I
18 don't recall it. They said it was at a meeting with
19 George Bailey on that particular subject of splitting
20 the Trust. I don't recall even having a meeting with
21 George Bailey on that subject. I just recall getting
22 the papers in the mail and asking them to do it. I
23 may have. I don't know whether I said I was
24 representing May or not in any particular proceeding.
25 If I did, May was a citizen in New York, and I was in

1 New York; so, there may have been. I just don't know.

2 I don't recall ever saying it.

3 Q. Okay. I'm not suggesting that you didn't have the
4 right to represent her. I'm just trying to understand
5 if you at any time have ever had an attorney/client
6 relationship with May.

7 A. Probably have.

8 Q. Okay. And when did that -- was that a written ---

9 A. I don't know.

10 Q. -- do you have a written fee agreement?

11 A. No, I don't know.

12 Q. And can you tell me when the relation -- when the
13 attorney/client relationship was created and when it
14 ended? If at all.

15 A. I don't know if I even had one. It certainly wasn't
16 a formal one, if I did. If I did have one, I don't
17 know, giving her advice, I mean, I know you gave Whit
18 advice for example; did you have an attorney/client
19 relationship with Whit? I don't know. But I don't
20 have any fee agreements representing any of the family
21 as far as I know.

22 Q. What is the difference in your mind between a formal
23 and an informal attorney/client relationship?

24 A. I don't think -- I'm not -- what I'm saying is, I may
25 have given -- I give Whit -- Whit, May, Alice, Big

1 Alice, Mary Deas advice all the time; I have over the
2 years. Is that -- is -- is that colored somewhat by
3 my legal education -- probably so. But I don't think
4 I had an attorney/client relationship as far as I know
5 with any of them.

6 Q. Okay. So, you've never had an attorney/client
7 relationship with Whit?

8 A. Not from the standpoint of representing him in any
9 proceedings. Whit asked me for advice. As I said
10 earlier, if that's colored by my legal experience, it
11 probably is, but I -- I have never represented Whit in
12 Court. I've never -- in fact, from what I understood,
13 ---

14 Q. Well, you and I can both agree, can we not, that you
15 can be somebody's lawyer and have an attorney/client
16 relationship without going into Court with them, being
17 involved in litigation and all the rest of it?

18 A. There's no question about that.

19 Q. And with that would come the -- the ethical
20 obligations of attorney alone with attorney/client
21 privilege and all the rest of it; correct?

22 A. Sure.

23 Q. Okay. That's the relationship I'm asking you about,
24 not a Court representation. But as a -- an attorney
25 licensed in the practice of New York, have you at any

1 time had an attorney/client relationship with May?

2 Let's do them one at a time.

3 A. The way you describe it, I don't think so.

4 Q. All right. How about Whit?

5 A. No.

6 Q. All right.

7 A. I don't think so.

8 Q. How about Alice?

9 A. I've given her advice just like them, but I don't
10 think it was in the context of what is regarded as an
11 attorney/client relationship.

12 Q. Okay.

13 A. I -- I could be missing some particular event that
14 happened where the advice went beyond that. I just
15 don't recall.

16 Q. Okay. That's fine. I assume you're past the age as
17 am I about having to take CLE's in New York. You
18 don't have to do that any more, do you?

19 A. Yes, I do.

20 Q. Oh, you still do?

21 A. Yes. If you want to be active in New York, ---

22 Q. No matter what -- no matter how old you are?

23 A. -- there's no expiration. You have to do it ---

24 Q. Okay.

25 A. -- regularly.

1 Q. All right. Are you still actively practicing law in
2 New York?

3 A. No, I get called to give advice to someone up there
4 from time to time.

5 Q. Do you have an attorney/client relationship with those
6 people when you give them advice?

7 A. It depends on who it is. I don't -- I don't -- I have
8 not practiced in New York probably -- well, I had a
9 client that I kept when I retired and did it still
10 under the umbrella of O'Melveny and Myers. It was a
11 joint venture in China where I had a special
12 relationship with the company that owned the U.S. side
13 of that joint venture, and I ---

14 Q. Have you received any income from legal fees in the
15 last ---

16 MR. DUFFY: Bill, if you'll just let
17 him -- just let him finish his answer.

18 Q. Oh, I'm sorry.

19 MR. DUFFY: Thank you.

20 A. From legal fees?

21 Q. Yes, sir.

22 A. Since when?

23 Q. Last year. Did you get any money ---

24 A. No.

25 Q. -- from legal fees last year?

1 A. No.

2 Q. Okay. When was the last time you got -- was paid for
3 legal fees do you think?

4 A. Probably when I worked in Alaska.

5 Q. Okay. What percentage of your income do you think is
6 based upon fees you receive from being a Trustee or an
7 administrator of an Estate?

8 A. It depends on the year. So, for example, for three
9 years, I was president and CEO of Kimbrell's, which is
10 a furniture company that has fifty (50) retail stores
11 in South Carolina and North Carolina. I ran that
12 company for three years, and they -- I ran it for
13 almost a year and a half for no pay, and then I
14 finally decided that was ridiculous and they paid me
15 for the last year and a half or so. And then I made
16 a lot of money working in Alaska, and in terms of last
17 year, probably most of my money that I earned from
18 actual work as opposed to investments or anything was
19 from the Trust in New York.

20 Q. Okay. And what percentage of your income would that
21 have been last year, the Trust in New York?

22 A. Would be the majority of it.

23 Q. Can you tell us what that number is, what's -- what's
24 your average income from the Trust in New York?

25 A. It ranges from between a Hundred -- between Ninety

1 Thousand (\$90,000.00) and a Hundred and Ten Thousand
2 (\$110,000.00), depending on the -- the size or the --
3 depending on the asset value of the Trust primarily,
4 plus, how much income was generated in the Trust. The
5 Trust income in large part went down because we
6 decided to -- that it was unwise to have so much of
7 our assets in Bonds because of the interest rate being
8 so low. So, we took a lot of money out of the Bond
9 market and put it into equities and other places,
10 other sort of -- I would call fixed income subsidies
11 and, consequently, the income made by the Trust
12 deteriorated substantially and, as a result, we
13 started using the Power to Adjust to make up for the
14 differential which was why the Power to Adjust began
15 to begin with. But that also had the consequence of
16 reducing the Trustee fees because Trustee fees are a
17 lot higher on income generated by a Trust than the
18 amount of principal in a Trust.

19 Q. All right. So, your fees then are based upon the
20 amount of principal; is that a fixed percentage in the
21 Will or the Trust Agreement or is it modified ---

22 A. No. And in -- in New York, -- well, actually, it's a
23 New Jersey Trust, but I also know the law in New York
24 as well. Up there, it's set by Statute.

25 Q. Okay.

1 A. And I understand it is not set by Statute here in
2 South Carolina.

3 Q. Correct. And then the percentage of Trustee payments
4 on the -- either the income or the principal, is that
5 also set by Statute or is it the same number; is it
6 the same percentage?

7 A. Oh, no. The percentage -- the percentage on income is
8 set by the Statute. The percentage for the fee is
9 also set by Statute.

10 Q. Okay.

11 A. I think it can be varied by the Will. But in New
12 York, for example, for -- I think I've only been
13 taking Trustee fees for the last ten (10), twelve (12)
14 years. Before that, I didn't take them.

15 Q. Okay. And your Co-Trustee's name is?

16 A. Nicholas Robinson.

17 Q. And is he -- he's an income beneficiary?

18 A. Yes, he is.

19 Q. And do -- do you have veto power over his vote because
20 he's an income beneficiary?

21 A. That isn't exactly the way the -- the law works as I
22 understand it. The -- there are certain things that --
23 that the -- a disinterested Trustee has in essence
24 almost a blocking vote on matters where an interested
25 Trustee stands to benefit from something. For

1 example, in New York, when we went to the Power to
2 Adjust, Nick Robinson is -- cannot vote on what that
3 percentage will be or what-have you and, in fact, has
4 nothing to do with it. Basically, I decide what it's
5 going to be. I send out a letter to the
6 beneficiaries. I do something a little different than
7 most of them up there. I don't know -- I really don't
8 know how everyone does this, but up there, I felt it
9 was very important for the income beneficiaries to
10 have some predictability in what they were getting and
11 how it was going to be distributed to them. When we
12 were -- before we used the Power to Adjust, they would
13 get a month where they would get maybe Ten Thousand
14 Bucks (\$10,000), and the next month, it might be
15 nothing. The next month, it might be Fifty Thousand
16 Bucks (50,000). Well, the next month, it might be a
17 Hundred Thousand Bucks (\$100,000). And there was no
18 predictability. So, when I went to the Power to
19 Adjust, one of the things I liked about it is, it gave
20 me the ability to tell them what they would get on a
21 monthly basis and they could take that to the bank.

22 Q. Approximately how many beneficiaries are you
23 distributing to?

24 A. Up there -- let's see, one, two -- I don't know. I
25 would say it's probably about ten.

1 Q. Okay.

2 A. But they don't all get the same thing.

3 Q. Right. Okay. And is this Power to Adjust your
4 ability to override or the fact that the other income
5 beneficiary Trustee can't decide that, is that a
6 matter of Statute?

7 A. I don't think it's a matter of Statute. I think it's
8 just a -- a matter of general Trust Law.

9 Q. Okay. And have you brought any actions in that regard
10 up there to -- to confirm that? Have you filed any
11 actions as Trustee against your Co-Trustee?

12 A. No.

13 Q. Okay.

14 A. We have a very peaceful relationship.

15 Q. Okay. All right. Now, you were also the -- I believe
16 the Executor of Mrs. Waller's Will; is that correct?
17 One of them?

18 A. Yes.

19 Q. Okay. And did you have a Co-Executor?

20 A. Yes, I did.

21 Q. Okay. Was it Mr. Wood?

22 A. Yes, it was.

23 Q. Okay. And has this Estate been closed; Ms. Waller's
24 Estate, has it been closed?

25 A. Yes.

1 Q. Okay. And did you receive statutory administrative
2 fees in that case as well, or that matter?

3 A. I don't -- I don't know whether we did because there
4 was a problem in the administration of that Estate,
5 because what happened was that the attorney
6 representing her when she did the Will screwed up the
7 Will, and he ---

8 Q. How so? How so?

9 A. There's a problem called a -- a treadmill problem in
10 Wills where you end up having to pay taxes on taxes,
11 and I'm not an expert on this but it was a huge
12 problem in Ms. Waller's Estate and cost the Estate
13 millions of dollars. And I know -- I don't know if
14 the -- I don't know whether we took fees or not. I
15 don't know if there was any money left for fees; I
16 just don't recall. That was in about 2005 or so.

17 Q. Okay. So, you don't recall what the value of her
18 Estate was at death?

19 A. Yes, I do recall that. It was I think somewhere
20 around Nineteen Million Bucks.

21 Q. Nineteen (19)?

22 A. Yeah. I just don't recall specifically, but I think
23 it was in that neighborhood probably.

24 Q. The -- the Will, however, did provide that you would
25 be -- you would be paid a fee, did it not, that you

1 would be paid for your services along with Mr. Wood?

2 A. Oh, I -- I -- I have no doubt it did. I just don't
3 know whether we took any or not. I just don't recall.
4 That was -- that was ---

5 Q. Did you take the bequest ---

6 A. -- twelve (12) years ago.

7 Q. Did you take the bequest of Fifty Thousand Dollars
8 (\$50,000.00)? Was that -- was that -- was -- did she
9 have the money to pay that?

10 A. Yes.

11 Q. Okay. All right.

12 A. Well, it's even more complex than that.

13 Q. Okay.

14 A. If you want to go into it, I can go into it all, but
15 I don't think it's ---

16 Q. No.

17 A. -- very relevant.

18 Q. Right. And then after she passed, essentially, that
19 is about the same time you moved to Boykin, roughly
20 that same time frame?

21 A. No, because I think I did a lot of that administration
22 while I was still up there; so, I think I moved down
23 here about a year later, but I don't recall exactly.

24 Q. All right. Let's talk about the Option Agreement for
25 a moment. I think you have it in front of you.

1 A. Sure.

2 Q. I think it's Exhibit Number Two?

3 A. Yes.

4 Q. All right. Do you understand this document, this
5 Option Agreement, to be a totally integrated
6 Agreement?

7 A. I don't know what you mean by "totally integrated
8 Agreement".

9 Q. By that, I mean, that all the conditions and
10 agreements as set forth in this proposed Option are
11 contained in the four corners of the document.

12 A. I think the -- the belief always was that they tried
13 to set down everything that had to do with the Option,
14 I think, and whether we did it well or not, I don't
15 know.

16 Q. Well, I'd sort of like to talk to you about some of
17 the things you said in your direct testimony regarding
18 understandings that you had ---

19 A. Yeah.

20 Q. -- and statements that apparently were made to you by
21 the individual with whom you negotiated this
22 Agreement, and I'm having a hard time finding some of
23 them in the -- in the written document. So, I'm
24 wondering whether or not, is there another written
25 document that is incorporated in this document or that

1 is part of this agreement that has not been provided?

2 A. Not that I know of, no.

3 Q. Okay. Are there any oral agreements between you and
4 the representative of Gold Mine, Haile Mine -- Haile
5 Gold Mine, that are not reflected in this document?

6 A. Not that I can recall.

7 Q. Okay. Who -- what is the name -- who is the
8 individual with whom you negotiated this agreement on
9 behalf of Haile?

10 A. A fellow by the name of David Thomas.

11 Q. David Thomas?

12 A. Uh-huh (affirmative response).

13 Q. Okay. And where does Mr. Thomas live?

14 A. He spends a lot of time here and a lot of time in
15 Texas.

16 Q. Okay.

17 A. I think most of his time is here, but I don't know.
18 It seems like he's all over the place.

19 Q. Do you know whether ---

20 A. He's head of -- he -- he -- I think he's sort of in
21 overall charge of all of Haile's or OceanaGold's
22 business in North America.

23 Q. Okay.

24 A. But I could be wrong on that. I don't ---

25 Q. Okay. Does he have a residence in South Carolina?

1 A. I think he has a house in South Carolina.

2 Q. Is this his primary residence or do you know?

3 A. I do not know.

4 Q. Okay. And how do you go about getting in touch with
5 him?

6 A. Call him.

7 Q. Do you have a mailing address for him?

8 A. No.

9 Q. Do you have any way of obtaining his address so I can
10 send him a Subpoena?

11 A. Sure.

12 Q. Can you get that -- do you mind getting that to your
13 lawyer and get it to me?

14 A. Okay.

15 Q. Thank you. All right. And who else have you dealt
16 with at Haile besides Mr. Thomas?

17 A. I ended up -- I was introduced to Mr. Thomas by a
18 consultant to Haile, which is Heather Matthews.

19 Q. Heather Matthews?

20 A. Yeah. She is part of a group at Nexsen Pruet that
21 provides consulting services to a number of companies,
22 and I think Haile is one of their clients and she
23 originally contacted me about letting Haile use my
24 barn several years ago.

25 Q. Her husband used to be the sheriff ---

1 A. Still is.

2 Q. -- or still is. He's just not going to run again;
3 that's my understanding?

4 A. Right.

5 Q. And they're moving to Charleston where she's going to
6 work for Nexsen Pruet down there?

7 A. I don't know what -- I don't think they're moving to
8 Charleston.

9 Q. Okay.

10 A. My understanding is, they're building a house in
11 McClellanville.

12 Q. Okay. I got you. All right. So, Ms. Matthews comes
13 to you to use your barn for Haile's purposes, and then
14 did you inquire of her about Haile's interest in
15 obtaining the Mill Pond; is that how that worked?

16 A. No.

17 Q. How did it work?

18 A. In fact, they did not -- I was prohibited from
19 discussing it with her because the topic was way too
20 sensitive for it to be spread around at Nexsen Pruet.
21 In fact, I don't know if anyone at Nexsen Pruet knows
22 about it today.

23 Q. Okay.

24 A. They used a -- a firm in - a fellow in Boston and a
25 fellow in a Boston office of a firm for this that

1 handles a lot of their Permitting work, and they did
2 that intentionally to try and avoid this becoming
3 public knowledge prematurely down here. It will
4 eventually become -- once they file their Permit plans
5 and all, it will all have to be in there that they've
6 taken an Option ---

7 Q. And Paul -- what is his ---

8 A. That's the real estate partner in Boston.

9 Q. Okay. So, Boykin Mill Pond Conservation, LLC, a
10 Delaware Limited Liability Company, is an entity
11 that's made up of who or whom or what? If you know.

12 A. I have no idea.

13 Q. Okay.

14 A. All I know -- I am told it is owned in some fashion by
15 OceanaGold.

16 Q. Do you have any idea how many liability companies
17 downstream you have to go before you get to
18 OceanaGold?

19 A. OceanaGold is the parent of this company, I believe;
20 I don't know.

21 Q. And who would know all -- who would know all those
22 answers? Who would have all of those answers?

23 A. I would assume the lawyers.

24 Q. The lawyers in Boston?

25 A. Yeah, and probably the general counsel in Australia.

1 Q. Okay. All right. Can you get me the name or ask your
2 lawyer to get me the name of the person I need to talk
3 to to get the structure of all of these -- this LLC to
4 find out what LLC's or what corporations are part of
5 it and then what the parents or the subparts of that
6 are?

7 A. Yeah, if you'll remind -- if you'll remind me to do
8 this; I -- my memory is like a sieve these days.

9 Q. I understand. Well, I can send a Request to Produce.
10 I'll do that.

11 A. Yeah.

12 Q. Okay.

13 A. But I believe -- I -- I do think or, at least my
14 understanding was this LLC is owned I think, and I
15 could be wrong, correctly -- by OceanaGold.

16 Q. Which is a -- an Australian firm?

17 A. It's -- I think its headquarters are in Australia. I
18 think it's listed in Australia and on the Canadian
19 Exchange.

20 Q. Okay.

21 A. May have some kind of listing here. I have no idea.

22 Q. Okay. All right. All right. You -- you said
23 something in your direct regarding the a Hundred and
24 Fifty Thousand Dollar (\$150,000.00) -- Three Hundred
25 Thousand Dollar (\$300,000.00) -- I don't quite

1 remember it -- related to the hazardous substances.

2 If you could turn to Page Two, please.

3 A. Yeah.

4 Q. Down at the bottom, it says, "In the event the
5 Purchaser discovers hazardous substances," etcetera,
6 and then down at the last part of that paragraph, it
7 says, "removal or remediation exceeds the value of the
8 Option consideration, materials, hazardous
9 conditions," and so, that would be Three Hundred
10 Thousand Dollars (\$300,000.00)? That's the number --
11 is that number that's referring to?

12 A. Yes, sir, I think so.

13 Q. All right. So, as I understand it then, the
14 Purchaser, which would be whatever entity this is,
15 could terminate the Agreement if the due diligence
16 determines that -- well, you explain it to me, if you
17 would.

18 A. Okay.

19 Q. Under what theory can they terminate this Agreement
20 based on hazardous substances?

21 A. All right. They were very concerned that there might
22 be, you know, a super fund site or something here on
23 this property, and ---

24 Q. Sure.

25 A. -- they didn't -- and they're buying this without any

1 investigation of that.

2 Q. Okay.

3 A. And so, they wanted to be able to get out of it if
4 something like that occurred. And I, on the other
5 hand, believe that there isn't such a problem on the
6 property other than perhaps the -- the gasoline tanks
7 from the service stations, and so, I negotiated --
8 basically, I negotiated a provision that said that if
9 there is, you know, if there's a couple barrels of oil
10 on the property or something that's diesel that's
11 spilled somewhere or whatever, that that wouldn't give
12 them an ability to terminate the Option Agreement and
13 get their Three Hundred Thousand Dollars (\$300,000.00)
14 back. But the only way they could get the Three
15 Hundred Thousand Dollars (\$300,000.00) back is if that
16 -- that problem that they found on the site would
17 exceed the cost of Three Hundred Thousand Dollars
18 (\$300,000.00) to remediate.

19 Q. Okay.

20 A. And they wouldn't expect us to remediate it if it were
21 under the Three Hundred Thousand (\$300,000.00), they
22 would do it, and they would not be able to get the
23 money back either.

24 Q. And they wouldn't be able to walk away. So, if they
25 went out there and found a Two Hundred and Ninety

1 Thousand Dollar (\$290,000.00) problem, they'd just
2 have to fix it?

3 A. If -- they would have to fix it if they wanted to
4 exercise the Option. I mean, they would fix it
5 because it would be their problem. They'd buy it.

6 Q. But -- but would they be able to walk away from the
7 Option?

8 A. Yes, but they would lose their Three Hundred Thousand
9 Dollars (\$300,000.00). I mean, the Option is an
10 Option. It's not a guarantee that they're going to
11 pay and -- and actually buy the property.

12 Q. Well, it says "Grant" -- on Page One, I'm -- it says,
13 "In consideration of Three Hundred Thousand Dollars
14 (\$300,000.00), which is nonrefundable if the Option is
15 exercised in the event that A) Seller is unwilling or
16 unable to deliver Title; or Buyer terminates the
17 agreement due to discovery of material hazardous
18 condition as defined in Paragraph Four below."

19 A. Yeah.

20 Q. So, what -- what is that material hazardous condition
21 that would allow them to terminate and get their money
22 back?

23 A. An environmental issue that was discovered that would
24 cost more than Three Hundred Thousand Bucks
25 (\$300,000)---

1 Q. Okay.

2 A. -- to fix.

3 Q. Okay. I got it. Okay. And the -- let's go back ---

4 A. I mean, I may have -- it may be an unartful way to try
5 and protect the Trust on it, but it was the best way
6 I could figure out.

7 Q. I'm not making any comment one way or the other; I'm
8 just trying to ---

9 A. Okay.

10 Q. -- understand it.

11 A. Yeah. That's fine.

12 Q. Your understanding of this document is the way it's
13 written and what was intended ---

14 A. That's right.

15 Q. -- is that if there is more than a Three Hundred
16 Thousand Dollar (\$300,000.00) environmental problem
17 out there and it doesn't relate to the underground
18 storage tank because that has been excluded?

19 A. Correct.

20 Q. That they have the Option to walk and they get their
21 Three Hundred Thousand Dollars (\$300,000.00) back?

22 A. Exactly.

23 Q. And if they discover that on the last day of March
24 31st, 2019 or disclose it on that day, they would have
25 tied up the property for a year to no benefit of the

1 Trust?

2 A. True.

3 Q. Okay. Let's talk about this UST, Underground Storage
4 Tanks. That's on top of Page Three.

5 A. Okay.

6 Q. "Purchaser may terminate the Agreement and demand
7 return of the Option consideration," that's the
8 previous thing, "such hazardous substances
9 specifically do not include an underground storage
10 tank of approximately a thousand (1,000) gallons.
11 Okay. If purchaser's due diligence determines that
12 this UST remains in place, Purchaser will have the
13 option to A) not include downtown Boykin in the
14 premises purchased; B) allow Seller to remediate
15 sufficiently obtained regulatory closure; or C)
16 negotiate a purchase price reduction to offset
17 purchaser's own remediation." Okay?

18 A. Yeah.

19 Q. All right. So, basically, if the storage tanks are
20 down there, they can say -- if they're there, we don't
21 want to buy downtown Boykin, we don't need to talk
22 about it any more?

23 A. Yeah.

24 Q. Is that the way it works?

25 A. Yeah.

1 Q. Okay. Or the other two alternatives?

2 A. Right.

3 Q. Okay.

4 MR. TETTERTON: I caution you to say
5 yes or no instead of yeah.

6 MR. BOYKIN: I'm sorry.

7 MR. TETTERTON: She may pick it up
8 as a no.

9 MR. BOYKIN: Okay.

10 A. Okay.

11 Q. Let's go back to Page One a second if we would, the
12 last sentence on Page One.

13 A. Page One?

14 Q. Yes, sir.

15 A. Yes.

16 Q. "Seller shall have the right after receiving
17 Purchaser's notice to elect to exclude the downtown
18 Boykin parcels from purchase by notifying Purchaser in
19 writing which must reflect the full authority of W.L.
20 Boykin, II Residuary A and Trust A and B within
21 fifteen (15) days of receipt of Purchaser's notice and
22 before closing." What was the thought behind that?

23 A. I think it's just a notice provision.

24 Q. Well, but it -- doesn't it allow the Seller after
25 receiving Purchaser's notice to elect to exclude it,

1 okay, from the purchase?

2 A. That ---

3 Q. The Seller has the right to after receiving purchase
4 notice to elect ---

5 A. Yes, I think -- I think the whole purpose of that
6 particular provision and I -- I could be wrong on
7 this, but my recollection is, the whole purpose of
8 that provision was Jamie had told me or put something
9 in writing or whatever that the -- that Mary Deas and
10 Alice had reservations about including downtown Boykin
11 ---

12 Q. Right.

13 A. -- in the Agreement.

14 Q. Right.

15 A. So that -- it was sort of what I would call a double
16 option. They would notify the Trust that they wanted
17 to buy downtown Boykin, ---

18 Q. Right.

19 A. -- and this provision would allow the Trust to say --
20 no, we have fifteen (15) days to tell you -- no, we
21 don't want for ---

22 Q. Sort of a safe harbor clause, ---

23 A. -- you to get downtown Boykin.

24 Q. -- a safe harbor clause for lack of a better word?

25 A. I don't -- I don't know; I'm not sure I would say

1 that. It's just a -- an outlet if the Trust at that
2 point in time decided they didn't want to sell
3 downtown Boykin.

4 Q. All right. Okay. But if -- if you are successful in
5 convincing the Court that you have the ultimate right
6 to make all decisions over -- overriding the other two
7 Trustees as it relates to the sale of land, they would
8 no longer be able to exercise that option, would they?

9 A. Well, I don't think that is the way it works, and I
10 never represented that. I think there are only
11 certainly limited items where my vote has a greater
12 significance from theirs. It doesn't apply to
13 everything. And since this land is being sold to
14 someone who isn't a beneficiary, i.e., the
15 conservation -- the Gold Mine people, I think their
16 vote on it is required unless the Court feels that
17 they aren't exercising the kind of diligence and
18 whatever the Trustee is supposed to act in this area.

19 Q. So, is your theory that -- is your theory that, since
20 they are income beneficiaries, that they can't veto a
21 land sale?

22 A. No, I think they absolutely ---

23 Q. Because you're the only disinterested Trustee?

24 A. No. No. I think you're mischaracterizing what I just
25 told you.

1 Q. No, I just want to understand it. I'm trying to
2 understand it.

3 A. I think they have every ability to countermand or --
4 or to vote, outvote me on the sale of any piece of
5 land unless they're personally interested in some
6 fashion by either buying it for them-self or their
7 child or their husband or what-have you.

8 Q. Okay.

9 A. Yes, I think their vote is -- is -- absolutely counts.

10 Q. Okay. Thank you for explaining it. So, your position
11 is not, simply because they are income beneficiaries,
12 that they have somehow lost the right to vote, and
13 that three votes are still required to sell a piece of
14 property?

15 A. As it currently exists, yes.

16 Q. Okay. Are you asking the Court to change that?

17 A. I am asking the Court that we follow the Prudent
18 Investor Rule and that we be required to diversify,
19 etcetera. I'm not asking the Court at this point in
20 time to change that requirement of the three votes.
21 That doesn't mean I couldn't necessarily. I think to
22 some degree, that's what Whit and May are asking; that
23 I think they're asking that those two Trustees be
24 removed.

25 Q. And do you have an opinion about that, whether they

1 should be removed?

2 A. I think -- I think this is a very difficult situation
3 because this is typical of a lot of families where
4 people are appointed to be a Trustee who do not have
5 the experience or background to do that particular
6 job, and in -- in a case like this where it's a
7 Twenty-two plus Million Dollar Estate, I think that
8 there are definitely issues as to whether they have
9 the ability to -- to act in an appropriate fashion.
10 I decided early on, I was going to try and live with
11 it and make it work.

12 Q. I think -- and, certainly, I appreciate your answer,
13 but my question was a yes or no question. If you could
14 give me a yes or no answer. As you sit here today, ---

15 A. Yes.

16 Q. -- are you asking the Court to remove ---

17 A. I'm not asking the Court to do anything on that today.

18 Q. All right. Do you believe, as you sit here today,
19 they should continue to be Trustees as of today?

20 A. I think that will depend on -- on whether they follow
21 and I follow whatever the Court orders.

22 Q. Okay. All right. So, you correct me if I'm wrong.
23 I don't want to mischaracterize you.

24 A. Uh-huh (affirmative response).

25 Q. I just want to understand what your position is; okay.

1 It's the Prudent Investor Rule that you believe
2 necessitates the signing of this Option?

3 A. I think it -- it makes it -- I don't think necessitate
4 is necessarily the right word. I think the right word
5 is, are there better options for that property than
6 selling it to these people, and I think we need to
7 consider that and it's one of the reasons why I would
8 like a plan because I don't know what they would do
9 with this land if they don't sell it. I don't know
10 what they plan on doing with downtown Boykin. I don't
11 know what they -- how they're planning on making the
12 timber produce the amount of money we need or the
13 commercial rents produce it. Until there's disclosure
14 of that, and more than just we're going to as we did
15 forever as Alice did, I won't know. That's why I
16 really would like to see budgets and sort of something
17 concrete that can give me an idea because they may
18 come up with something that really works, and if it
19 does, I've got no problem with it except I probably
20 still would have some problem if -- if that involved
21 keeping this much real estate because of the risk
22 problem. I mean, when we had that hurricane I guess
23 a couple months ago or whatever, I was worried about
24 whether this was -- could have been another Hugo.

25 Q. I'm just trying to understand.

1 A. Yeah.

2 Q. So, it's the Prudent Investor Rule that drives this
3 particular Option in your mind, not the fact that you
4 are the sole disinterested Trustee who can outvote
5 your other two Trustees in -- in this particular real
6 estate transaction?

7 A. I cannot outvote them in this particular transaction.

8 Q. Okay.

9 A. I -- I thought I made that very clear.

10 Q. So -- so -- okay. So -- so, we can all agree the Will
11 says you -- it has -- you have to have three -- three
12 Trustees sign ---

13 A. That's correct.

14 Q. -- to sell real estate?

15 A. That's correct.

16 Q. You wouldn't be able to transfer a clear Title without
17 three -- three?

18 A. That's correct.

19 Q. And nobody is going to go buy a piece of real estate
20 if three Trustees hasn't -- hasn't signed it?

21 A. Well, if they do their due diligence, I don't think
22 they would.

23 Q. Correct. Okay. So, what do we do if the Judge orders
24 or the Judge agrees with you that the Option ought to
25 be signed because of due diligence or -- or the

1 Prudent Investor Rule, what do we do the next time
2 they want -- you all can't agree on a piece of real
3 estate; have we got to file a lawsuit every time we
4 get a piece of real estate to sell?

5 A. No, I don't -- I don't think so because I think when
6 we -- when we started having all of these problems,
7 Karen came right away in November of '16 and said,
8 "You know, you all have very different views on how
9 this Estate should be administered. We probably need
10 to go to Court and get the Court to give guidance."
11 And she went on that big time in the February time
12 frame when it was clear we were going to have a big
13 problem on this, and that's when she also said, "And
14 by the way, the -- the Trust will pay your fees," and
15 that -- and I think that's one of the -- one of the
16 issues I have with where I don't think Alice and Mary
17 Deas understand that I am suing them in their
18 representative capacity as Trustee as opposed to
19 personally. There's a difference there at least in my
20 view. And the suit would not have happened the way it
21 did but for the fact that I was told that the Trust
22 would not pay my legal fees to get this interpretation
23 from a Court as to how the Trust should proceed. And
24 if we hadn't had the -- the refusal to pay my legal
25 fees to have this decided, we probably would have

1 avoided a heck of a lot of expenses and angst.

2 Q. Well, let me follow up on that. If the lawyer you
3 hired gave you the advice that led -- that led to this
4 lawsuit, what -- what difference would it have made?
5 If they -- if you had gone to Jim Harden and he
6 charged you Six Thousand Dollars (\$60,000.00) for an
7 Affidavit and then you presented it to Alice and Mary
8 Deas and they didn't agree with it, you would still
9 have to bring the lawsuit, wouldn't you?

10 A. I understand, but in my experience in New York on
11 this, not down here -- so, I don't know South Carolina
12 law -- Trusts always pay the legal fees to get the
13 differences on interpretation of a Trust instrument.
14 That is done routinely up there and I think pretty
15 much routinely here, and that's why, quite frankly, I
16 was sort of shocked.

17 Q. And you understand that the amount of legal fees that
18 you pay your lawyers and experts is unlimited, that
19 you all can spend as much as you want on anything?

20 A. No, I don't think so.

21 Q. Do you think you got your money's worth for a Sixty
22 Thousand (\$60,000.00) Affidavit?

23 A. I think he did a lot more than the Affidavit.

24 Q. Okay. Do you think you got your money's worth, Sixty
25 Thousand Dollars (\$60,000.00) worth of work out of

1 him?

2 A. With -- with Harden?

3 Q. Uh-huh (affirmative response).

4 A. Absolutely. That's one of the smartest people I've
5 ever met.

6 Q. Okay.

7 A. His almost encyclopedic recall is considered one of
8 the top experts, not just in South Carolina, but in
9 the entire country.

10 Q. Okay. And it took all of that just to present the
11 position that in fact the Prudent Investor Rule and
12 what you've gone through here today would -- would
13 militate towards signing this Option?

14 A. This -- the amount I spent on my attorneys is for a
15 whole bunch of different things, and I don't -- I
16 don't know to what degree I would waive the
17 attorney/client privilege if I went more into what
18 advice I sought and received.

19 Q. Well, I guess we'll deal with that when you apply for
20 the attorney's fees because then I think you will
21 waive it at that point, but we can wait until that
22 point.

23 A. I think -- I think, normally, the way it's handled --
24 I don't know about down here, but you get interim
25 fees, and then at the end of the conclusion of the

1 litigation ---

2 Q. Right.

3 A. -- where the waiving of the privilege, it might not
4 matter, you might have the ability to object; I don't
5 know how it's handled down here.

6 Q. Do you know if you've been charged any fees unrelated
7 to your duties as a Trustee?

8 A. Not that I know of.

9 Q. Okay. All right. When Ms. Boykin -- after Ms. Boykin
10 passed away, were the Trustees the ones who were
11 responsible for access by the general public to the
12 Mill Pond?

13 A. Yes.

14 Q. So, the only people who could grant someone the right
15 to go out on the Mill Pond, fish, do whatever they
16 wanted to do would be the three Trustees?

17 A. I would think so.

18 Q. And under the Trust document, that would require how
19 many Trustees to approve?

20 A. I don't know what it -- what it would require under
21 the Trust document. I think we made a decision early
22 on that if someone asked Alice or Mary Deas or me for
23 -- for permission to enter the pond, it could be
24 granted. I did not consider me having the ability to
25 grant that because I wasn't a family member; so, as

1 far as I was concerned, Mary Deas and Alice could let
2 whoever they wanted ---

3 Q. Okay.

4 A. -- to use the pond, within reason.

5 Q. Okay. But you personally haven't granted anyone
6 permission to use the pond?

7 A. No. I don't think so.

8 Q. All right. The reason I ask you is because we have a
9 -- a Release -- typically, do you know how the
10 permission was granted to use the pond in terms of the
11 writings and the paper that was required?

12 A. I think there was a practice a long time ago where
13 anyone who used the pond was supposed to sign a
14 Release. I think that, over time, became no longer
15 enforced. But I think that was the original intent.
16 It was like a lot of things like that where people
17 have these Releases and they'd all end up getting one.

18 Q. What -- what leads you to believe that that was --
19 that it was not enforced and, to your knowledge, when
20 was the enforcement no longer acquired?

21 A. I have no idea. I just got the general impression
22 that, you know, the Release was -- was -- was not
23 strictly enforced.

24 Q. Well, you were aware that Ms. Boykin had a sheet of
25 Releases in her kitchen, and when you -- and when she

1 allowed someone to go fishing or hunting or bird
2 watching, unless she was going to be with them, they
3 -- they typically had to sign a Release. Were you
4 aware of that?

5 A. No.

6 Q. Okay. But you do know that you've never granted
7 anybody permission?

8 A. Not that I can recall.

9 Q. Okay. Do you know who granted Mr. Tetterton's wife a
10 two year Release to go to the pond starting in '17 and
11 ending in '19?

12 A. No.

13 Q. Okay.

14 A. I know that William wanted to use the pond or go and
15 see the birds. I called Mary Deas and told him to
16 speak to Mary Deas and maybe Alice as well. I'm not
17 sure.

18 Q. Are you -- are you aware of the fact that -- that
19 nobody else has been granted a two year access to that
20 pond?

21 A. I didn't know they were granted one. I have no idea
22 what they were granted.

23 Q. Do you have any idea what a two year access would be
24 worth to a photographer to have unfettered access to
25 that pond for two years?

1 A. No.

2 Q. It would have a value, would it not?

3 A. Don't know whether it was de minimus or significant.

4 I have no idea.

5 Q. But we would have to put it out for bids, wouldn't we?

6 A. Well, no, I -- I -- I think if you did, that would be
7 very contrary to the relationship that William has had
8 with respect to the pond, especially from the
9 standpoint of the book he produced arising out of his
10 photography on the pond. Have you seen it? It's
11 quite spectacular.

12 Q. And it -- and -- but, also, wouldn't the selling of
13 the Mill Pond be quite contrary to what Ms. Boykin
14 wanted to do before she died?

15 A. No, I don't think so at all because it was going to a
16 conservation entity eventually, and she and Mary Deas
17 at one point were -- had even hired George Bailey to
18 look into the possibility of the Trust doing a
19 conservation transfer.

20 Q. Do you have -- do you dispute the right that Mary Deas
21 or Alice has a right to rescind that permission?

22 A. Absolutely.

23 Q. They do; correct?

24 A. Sure.

25 Q. Okay. Do you know whether or not Ms. Boykin was paid

1 any royalties regarding the book?

2 A. I think this book was a private publication. I would
3 highly doubt that they made any money off of it.

4 Q. Do you know if they got Ms. Boykin's permission to
5 make a book?

6 A. I would imagine they did because she was very proud of
7 it.

8 Q. Okay. But you don't really know whether she did or
9 not?

10 A. I have no idea. I had nothing to do with it. Wasn't
11 here when that was done or, if I was, I didn't know
12 about it.

13 Q. Okay. Let's talk a minute about Mary Deas' one-half
14 interest in the May's Cottage. Is that -- is that
15 what it's called, May's Cottage?

16 A. Yeah, that cottage was owned by May Boykin who was a
17 -- I don't think she was actually our aunt. She was
18 called by everyone Aunt May, but she was a spinster,
19 was a first grade teacher here in Camden. Very
20 strict, very tough, independent-minded woman. And she
21 lived in a house there that burned down and the house
22 that is there now was rebuilt by Whit and a few other
23 people I think donated the money to rebuild that house
24 for her. Whether it's the exact same outlines of the
25 house, I have no idea.

1 Q. Okay. But the Title to the house when she passed went
2 to Alice and Whit; is that correct?

3 A. Yes, it was my understanding that she gave the Title
4 of the house to Alice and Whit. It's my understanding
5 that there was some kind of an agreement with -- with
6 them that, eventually, that house would be held for
7 her name sake, May, Whit's daughter and Alice's
8 daughter, by their second marriage.

9 Q. That's not what happened, is it?

10 A. No. Did not happen.

11 Q. The legal Title of that house is half owned by Mary
12 Deas?

13 A. Correct.

14 Q. And you don't dispute her ownership?

15 A. No. Why would I?

16 Q. All right. Now, with regard to that half interest, I
17 believe the first Option was rescinded because Mary
18 Deas no longer wanted to sell her one-half interest in
19 that parcel; is that correct?

20 A. Yes, I was informed by Jamie Becker. I was sort of
21 surprised Mary Deas never called me to tell me
22 herself. But I was told by Jamie Becker that Mary
23 Deas no longer wanted to sell the house.

24 Q. And you said in your earlier testimony you were
25 surprised that the Gold Mine was still interested in

1 purchasing the property if they could only buy a half
2 interest in Ms. May's house. Can you tell me why you
3 were surprised?

4 A. Yes, because I didn't know -- and, normally, in
5 conservation donations such as this, you have to have
6 like a buffer area around the entire critical habitat
7 area, and I thought that the conservation recipient
8 might object if they did not have the part that Mary
9 Deas owns half interest in because that abuts the pond
10 and that might be considered a defect in the buffer
11 area that is normally required. But apparently, the
12 Gold Mine people think it is a -- an issue that they
13 can work around.

14 Q. All right.

15 A. So much so that they were still willing to do an
16 Option ---

17 Q. What -- what in this Option ---

18 A. -- and pay the Three Hundred Thousand Dollars
19 (\$300,000.00) for it.

20 Q. What -- what in this Option prevents the Gold Mine
21 people, should they decide to buy this property, from
22 bringing a partition suit as it relates to Mary Deas'
23 one-half interest in Ms. May's Cottage?

24 A. I am not sure. I know they have no intention of it,
25 but I do think that they -- there is a provision or

1 something in there that says that she has the right to
2 live in it without paying any rent for the Gold Mine
3 share of it, etcetera. If that -- if there is any
4 doubt about that provision, I'd be certainly happy to
5 go back and ask them to make it clear that they will
6 not bring a partition suit against her.

7 Q. In perpetuity?

8 A. Well, she isn't going to live forever.

9 Q. But she wants to ---

10 A. So, if her children sell the house to someone else,
11 absolutely, they will -- they -- they may say that
12 they want to buy that interest.

13 Q. So, and we'll -- and we'll go through the -- the
14 details of it in just a second. I just wanted to --
15 we can both agree there's nothing in this document as
16 it presently is written and if it is in fact the full
17 Agreement, then there are no other Agreements, that
18 the buyer or the buyers' assigns, subsidiaries or
19 whoever else is within the tale of that definition,
20 could in fact force a sale of Mary Deas' interest in
21 Ms. May's Cottage by bringing a partition suit?

22 A. I would have to look at that again, but I think -- and
23 I was -- the document says what it says. I don't know
24 what it says, and I don't recall right now.

25 MR. TETTERTON: Why don't you let him

1 read the document, Paragraph Two, and see
2 what it says. That way we'll have ---

3 MR. BUNDY: If you don't mind, I'll ask
4 him. If he doesn't know, that's fine. If
5 you want to read the document, read the
6 document.

7 MR. TETTERTON: Okay.

8 MR. BOYKIN: All right.

9 MR. TETTERTON: You're asking him about
10 something in the document; so, he has the right
11 to look at it. Paragraph -- Page Number Eleven,
12 Paragraph Two.

13 A. Well, Paragraph Two does not have anything ---

14 MR. DUFFY: On Page -- Page Eleven,
15 Paragraph Two of Exhibit Three.

16 A. Okay. Sorry.

17 MR. DUFFY: Under Rights of Seller.

18 A. Okay. "Mary Deas Wortley and her children will retain
19 the use of Ms. May's Cottage and three point oh seven
20 (3.07) acres around it so long as it is used by them,
21 i.e., cannot be rented or used by others, and such
22 right of usage extinguishes upon the sale of the one-
23 half interest of Mary Deas Wortley or her heirs in the
24 cottage to Purchaser or the signee Land Plan
25 Management Organizations. Cottage shall be named --

1 the cottage shall be named Ms. May's Cottage on any
2 signage used by the Purchaser or Land Management
3 Organization. Mary Deas Wortley and/or her children
4 shall be responsible for costs related to continued
5 use of Ms. May's Cottage including insurance,
6 maintenance and utility service during their terms of
7 use." All right. What's the question?

8 Q. My question is this. Let me ask -- let me preface it
9 with this question. Do you know what a partition suit
10 is?

11 A. Yes, I do.

12 Q. Would you explain it to me, please, your
13 understanding?

14 A. I'm not -- I'm not a -- a lawyer down here; so, I'm
15 sure you know what it is in South Carolina, but in
16 other states, the way I understand it, is if you have
17 a piece of property where there are undivided
18 interests held by different people, someone can force
19 a sale of that so that an interested person, including
20 the people that already own the pieces, can buy that
21 piece or the whole -- the whole ---

22 Q. The piece goes up for option?

23 A. Correct.

24 Q. For -- for auction?

25 A. Auction.

- 1 Q. It goes up for auction. All right. This document
2 says, "Cannot be rented or used by others and such
3 right of usage shall extinguish upon the sale of one-
4 half interest of Mary Deas Wortley or heirs or
5 assignees." This would not prevent the -- the
6 optionor or its assignees from bringing a partition
7 suit to force the sale, and at the time they force the
8 sale, okay, she would lose her interest and they would
9 bid against her or a third party would buy it out from
10 under her. But there's nothing here that prevents the
11 option -- the -- the putative purchaser from
12 immediately con -- con -- commencing once they sign
13 the Option or after they've signed the Deeds to bring
14 a partition sale and push Mary Deas out, is there?
- 15 A. I'm not sure. I don't -- I don't believe that would
16 permit that.
- 17 Q. Okay.
- 18 A. I believe that it -- that so long as Mary Deas is
19 using it and -- and wants to, they have basically
20 given consent to that.
- 21 Q. Okay.
- 22 A. And if there is an issue there, which there clearly is
23 if you're upset about it, ---
- 24 Q. Right.
- 25 A. -- but I am sure that we can get the Option amended to

1 correct that problem. And it certainly -- if there is
2 a problem there, it was certainly not intentional.

3 Q. Okay. All right. Let's go back up to -- but -- but
4 can you -- you and I both agree it doesn't say that;
5 it doesn't say anything about there will be no
6 partitions commenced or nothing like that. I mean, a
7 lawyer is going to be able to walk through this if he
8 wants to and bring it?

9 A. I doubt that myself personally, but I'm not licensed
10 down here but now that you've raised the issue, just
11 like you raised the issue about the claims after the
12 parade last time, ---

13 Q. Yeah.

14 A. -- and I got that disclosed, ---

15 Q. And the issue was not raised in the first place and
16 all that, yeah. All right.

17 A. I can get this issue ---

18 Q. Yeah.

19 A. -- cleared up.

20 Q. Sure. Okay. That's fine. Page Eleven, ---

21 A. And I appreciate the advice.

22 Q. Sure. Page Eleven. Rights of Purchaser. See that on
23 Page Eleven?

24 A. Rights of Purchaser. Yeah.

25 Q. Okay. I just want to direct your attention to this

1 sentence and ask you if you can give me your
2 understanding of what it means. "If Purchaser
3 ultimately purchases the Boykin Mill Pond, it shall
4 transfer possession of any or all related parcels and
5 any related endowment to a Conservation Organization
6 to hold and manage the property." My question is,
7 what distinction is -- is being made here in your mind
8 between "any" and "all"?

9 A. Don't know.

10 Q. Okay. The way this reads, you wouldn't necessarily
11 have to put the Mill Pond in the Conservation
12 Organization, would you, if it says "any" or "all"?

13 A. I don't -- I certainly know that was not the intent.
14 Whether that is the implication of this, ---

15 Q. Well, can we both agree it's ambiguous?

16 A. I don't think so, but if it is, I will get it
17 corrected for you. I appreciate that comment as well.

18 Q. Sure.

19 A. Can I get a -- get a copy that I can mark on?

20 Q. But to gather ---

21 A. I want to mark these areas that need to be cleared up
22 for Mr. Bundy. Just one second, I just want to mark
23 these ---

24 Q. Sure.

25 A. -- down so that I have a record.

1 MR. TETTERTON: Let me make sure I
2 understand. You're asking about the first
3 paragraph there?

4 MR. BUNDY: I'm asking about that right
5 there.

6 MR. TETTERTON: Well, I understand. So,
7 I would ask that he be allowed to read the
8 last paragraph, too.

9 MR. BUNDY: Well, when you get your
10 turn, you can certainly clear it up.

11 MR. TETTERTON: All right.

12 A. I'm sorry. What paragraph were we first starting with
13 here?

14 MR. DUFFY: It was Page Eleven.

15 A. No, no. No, this was the transfer to the Conservation
16 Organization. That was the one he had. Okay. That
17 was the -- I just want to make sure -- I have a note
18 because I'll forget to get these right changes made.
19 Okay.

20 Q. All right. Now, let's continue.

21 A. Thank you.

22 Q. Under the last para -- the paragraph before Rights of
23 Seller, ---

24 A. Uh-huh (affirmative response).

25 Q. -- the -- the last roughly sentence, third line up

1 says, "Such Land Management Organization shall have
2 the right to impose reasonable limits on the use of
3 Ms. May's Cottage property only to the extent
4 necessary to protect the habitat of sensitive species
5 during the nesting season." Now, putting aside for a
6 moment what reasonable limits may or may not
7 encompass, that would be -- whatever those reasonable
8 limits are, assuming they're reasonable, they would
9 impose or restrict the otherwise unrestricted use of
10 her real estate, would they not?

11 A. No, I don't think it's unrestricted to begin with
12 because the Trust owns the other half; so, it isn't
13 unrestricted and never was.

14 Q. "As it relates to reasonable limits on the use of her
15 cottage," what restrictions has the Trust placed on
16 that at this point?

17 A. The Trust hasn't done anything, but the Trust would
18 have the right if it is necessary for a particular
19 reason to -- to restrict it, and this particular case
20 as I understand it, they are letting her use the
21 cottage rent free for their half interest. And I
22 think -- frankly, I think this -- Mary Deas -- if Mary
23 Deas has an issue with this, I'm sure we can get it
24 squared away,

25 MR. BOYKIN: And Jamie, I would

1 ask you to let me know if there's a
2 problem.

3 A. But I think any reasonable restrictions to protect the
4 birds would be something Mary Deas would be extremely
5 in favor of because her whole outlook on this, her
6 whole reason why she wanted to buy this property and
7 offered to buy it was because she wants to protect the
8 birds.

9 Q. All right. Let's go to the last page. On Page
10 Twelve.

11 A. Okay.

12 Q. "The Purchaser agrees to fund dam remediation work
13 required by the South Carolina Department of Health --
14 up to Two Hundred and Fifty Thousand Dollars
15 (\$250,000.00.)"

16 A. Yes.

17 Q. Now, this -- this is in addition to the purchase
18 price; correct?

19 A. Correct.

20 Q. Okay. Where did that Two Hundred and Fifty Thousand
21 Dollars (\$250,000.00) come from?

22 A. Well, all the estimates that we have heard so far for
23 dam remediation and work, most of the estimates have
24 been under, at least my understanding of the ones
25 we've received so far, in the probably less than a

1 Hundred Thousand Dollars (\$100,000.00). So, I wanted
2 to -- I wanted to give him an idea of what it might
3 cost. I basically took one and a half -- doubled it
4 and added some more and put a Two Hundred and Fifty
5 Thousand Dollars (\$250,000.00) -- just -- it was a
6 notice type provision so he would know how much he
7 might be signing up for.

8 Q. But ---

9 A. But they had told me actually that they will probably
10 spend a great deal in excess of this because they
11 believe that the Conservation Organization that
12 ultimately gets this would like a lot of extra work
13 done on the dam.

14 Q. And do you believe that if you sign this Option and
15 they buy it and they don't do it, you would have a
16 legal right to sue them and make them spend that extra
17 fantasy money they told you they planned on spending
18 or would it need to be in a document that you could
19 enforce in Court?

20 A. This was more just a notice ---

21 Q. No, no, I'm talking about ---

22 A. -- than anything else. I would have to -- whatever
23 they do on the dam once we transfer it, that's between
24 them and DHEC and the conservation recipient.

25 Q. That's not the point I was trying to make. The point

1 I'm trying to make is, whatever they may have told you
2 they might do in the future, spend a Million Dollars
3 on this dam, is completely unenforceable. You could
4 never be able to make them do that; okay?

5 A. That's right.

6 Q. So, it's completely irrelevant to the terms of this
7 document?

8 A. That may be. I don't know. I don't think so because
9 I think it -- it just shows that I was trying to let
10 them know -- it's sort of like letting them know about
11 the suit that could be -- come up from the parade.
12 It's no different.

13 Q. You and I are talking about ---

14 A. From my view.

15 Q. You and I are talking about two different things.

16 A. Okay.

17 Q. I went -- I've established -- I believe we've
18 established that your number of Two Fifty
19 (\$250,000.00) has no relationship to the actual
20 numbers that you have knowledge of regarding fixing
21 that dam?

22 A. No, it does. It ---

23 Q. Two and a half times?

24 A. It's basically two and a half times what I think the
25 likely number will come in at.

1 Q. But the issue I'm talking about is the statement that
2 you made that they told you they were going to spend
3 a lot more money than the Two Hundred and Fifty
4 Thousand Dollars (\$250,000.00), and all I'm trying to
5 get you to agree with me, if you will, is there's no
6 way to enforce that; there's no way to make them ---

7 A. Absolutely not.

8 Q. -- live up to things they tell you like that?

9 A. Absolutely not.

10 Q. So, that's completely irrelevant in terms of trying to
11 assess this document or it should be?

12 A. Oh, no, I don't -- I think their statements and plans
13 about what they were going to do with this project is
14 relevant.

15 Q. Okay.

16 A. For example, they -- they would very much like to, if
17 they can persuade the relevant people that -- that it
18 should be done, they would very much like to have this
19 be a show place in Kershaw County with a history
20 museum, a -- a shop that would have bird -- birding
21 stuff and everything else. They've told me all of
22 that.

23 Q. Sure.

24 A. Is it relevant -- sure it's -- it's relevant. Is it
25 relevant from the standpoint of the Trust making a

1 decision on this document -- no, I don't think so.

2 Q. And are you familiar with any of the promises the Gold
3 Mine made to Lancaster County before they shut it down
4 this past time, what they were going to do ten (10) or
5 fifteen (15) years ago, telling all those people they
6 were going to do all these things that none of which
7 they did; have you got any recollection of that?

8 A. No, don't know anything about what happened up there.
9 All I know is everyone seems to be extremely happy
10 with what's happening with this company which is a
11 different company.

12 Q. Sure.

13 A. There are plenty of -- of -- of projects that have
14 been done by people that are -- that don't live up to
15 their commitments. As far as I know, unless you know
16 something that I don't know, they've lived up to their
17 commitments up there.

18 Q. But that's a risk we're taking if we sell them this
19 property?

20 A. No, I don't think so actually because the -- the
21 commitment to give it to a Conservation Organization
22 is -- is absolute and the commitment to give -- the
23 commitment to give it to a Conservation Organization
24 A) gives us some comfort as to what will eventually
25 happen to this, and B) they're not buying a

1 Conservation Easement; they're buying with fee simple.

2 Q. And that takes me back to the language of any -- that
3 we were discussing before that needs to be cleared up
4 regarding their -- their -- whether they actually are
5 required to do it or not.

6 A. I appreciate your comment on that, and I will
7 certainly deal with it. In fact, any comments that
8 you have like that I very much welcome.

9 Q. Okay.

10 A. I mean, I think it makes a better deal and -- and as
11 I said, this did not have the benefit of someone that
12 is in -- in South Carolina to -- to do it. I always
13 figured that if there were any of these defects in
14 there, you would point them out and we would get them
15 corrected.

16 Q. All right. Let's go to Page Twelve briefly, if we
17 could.

18 A. Sure.

19 Q. Item number two under Additional Obligation of the
20 Purchaser. "If Purchaser elects to purchase ten point
21 four (10.4) acres of downtown Boykin along with the
22 approximate six two three point four (623.4) acres
23 that comprise Boykin Mill Pond." Let me stop right
24 there. If they make that election, ---

25 A. Yes.

1 Q. -- it still can be refused based on the first page of
2 the document; correct?

3 A. With -- with respect to the ten point oh four (10.04)
4 acres?

5 Q. Yes, sir.

6 A. Yes.

7 Q. Okay. So, they can elect to do it within fifteen (15)
8 days and it would -- I assume -- would it take three
9 Trustees to refuse to sell it or would -- how would
10 that work?

11 A. I think that would probably take only one Trustee. I
12 would have to -- I'm -- a Court would probably have to
13 tell me, but that would be my ---

14 Q. Okay.

15 A. -- off the cuff ---

16 Q. Okay.

17 A. -- belief.

18 Q. Because you wouldn't have -- basically, it's a chance
19 to re-vote on the ten point four (10.4) acres?

20 A. Yes.

21 Q. To sell it. So, you would be re-voting to sell it --
22 to -- you've now got a right to ---

23 A. You might have something that made a lot more sense at
24 that point in time for the ten point ---

25 Q. Correct.

1 A. -- whatever acres.

2 Q. Or maybe no sense. Maybe, but -- but the way the
3 document is reading, one Trustee within fifteen (15)
4 days of the Option to Purchase downtown Boykin could
5 say -- no, we're not going to do it, and at least for
6 them, that would take care of it; you would -- they
7 wouldn't be -- you wouldn't be able to give them Title
8 to the ten point ---

9 A. I would have to have some lawyer tell me what to the
10 actual -- what it really means. I don't -- I have not
11 ---

12 Q. That's right.

13 A. -- this is the first I've -- time I've had to consider
14 that issue.

15 Q. I understand. And if it -- and if you couldn't get
16 some lawyer to tell you an answer that you either
17 didn't agree with or didn't like or whatever, we'd be
18 right back in litigation fighting over the ten point
19 three (10.3); right?

20 A. It's certainly a possibility. Yes.

21 Q. And then, when we went to sell another piece of
22 property, if we couldn't get all three and you figured
23 it was the Prudent Investment Rule that we needed to
24 sell one and these other two ladies said no, we're
25 right back in Court again?

1 A. I don't think so because I think this is a -- a
2 special circumstance because it is dealing with a
3 piece of property that there is a lot of emotion
4 surrounding it. I think that once a Court tells us --
5 hey, you've got to absolutely follow the precatory
6 language right down the -- the thing, then most of
7 these other -- other issues go away. If the Court, on
8 the other hand, says that you have an absolute
9 obligation to diversify and act as a prudent investor
10 with this, the changed circumstances with this Estate
11 isn't as big as it was when Whit did his Will, then I
12 think -- I would hope we all listen to that and act in
13 a reasonable fashion to accomplish what the Court says
14 should be done.

15 Q. And that reasonable fashion would be to do what, what
16 you want to do?

17 A. No. I -- I don't have the ability to unilateral nor
18 have I ever suggested I have the ability to unilateral
19 say what should be done in terms of the administration
20 of this Trust, and that is why -- I have a different
21 opinion as to how to do it; they have a different
22 opinion from me. That's why you have the avenue of
23 going and asking the Court for guidance. This is done
24 many times I understand in South Carolina.

25 Q. So -- so -- so, just correct me, ---

1 A. And was suggested by Karen Thomas.

2 Q. Sure.

3 A. The attorney for the Estate.

4 Q. Yeah, I know who she is. So, just correct me, you
5 have never in a meeting with the Trustees stated that
6 you had the ultimate authority and your vote was the
7 only that counted on certain issues; you never said
8 that?

9 A. Oh, absolutely, I did. Certain issues. You -- you
10 didn't qualify that ---

11 Q. Okay. What -- what ---

12 A. Certain issues involved matters where like the
13 purchase of -- of land from the Trust by one of them,
14 the converting this to a unitrust; there's -- there's
15 a whole bunch of sort of rule subsets, but, in
16 general, I don't have the absolute right to do much of
17 anything.

18 Q. Okay. All right. Fair enough. All right. Let's --
19 let's keep going on with Paragraph Two on Page Twelve.
20 "Purchaser" -- this is -- this is -- "The Purchaser
21 elects to Purchase the ten point four (10.4) acres,
22 ---

23 A. Uh-huh (affirmative response).

24 Q. -- assuming that he does not -- the Purchaser doesn't
25 receive the fifteen (15) day opt out, then Purchaser

1 shall set up an endowment to provide funds toward
2 restoring structures in downtown Boykin to be used for
3 their intended purposes." All right. How much is
4 that endowment? Where do I look in this document to
5 tell me how much that -- what that number is?

6 A. Normally, endowments for things like this are set up
7 by the organization that's receiving this property;
8 so, for example, when the Congaree Land Trust received
9 the land that Ms. Lloyd gave them here in Camden, the
10 -- I'm not sure if it was her or Clemson, but one of
11 -- who was administering it for them, required a Two
12 Million Dollar endowment ---

13 Q. Right.

14 A. -- to be able to fund doing this. If Land
15 Organizations just took land and didn't get money to
16 be able to act in a responsible fashion with respect
17 to that land, it would be dead. So, this is a -- this
18 is an absolute must for any Conservation Organization.

19 Q. All right. So -- so, in your opinion, what should
20 that endowment number be?

21 A. I don't know because I don't -- I don't -- I know --
22 I was -- I started the Westchester Land Trust in New
23 York and I was its first chairman. And in that case,
24 when we set endowments that we would -- we would try
25 and get for critical land that we wanted, we would try

1 and figure out what it would cost us per year to lease
2 the endowment and to do whatever it would be needed to
3 have that work for us, and then we would capitalize
4 that over the period of years so that it would be sort
5 of a -- an endowment that wouldn't last just for a
6 year or two, it would last for quite a while. I don't
7 know what the cost would be for doing this. I'm not --
8 I've never experienced one of this relative size. My
9 guess is, if I had to -- if -- it would be an absolute
10 guess, but I would be surprised if it's under Three or
11 Four Million Bucks, but I have no idea.

12 Q. Okay. So, the way -- and you're, I mean, you're a
13 lawyer; I mean, you've been practicing law a long
14 time. The way this is written ---

15 A. I'm not specially in that area, ---

16 Q. Yeah, but ---

17 A. -- and I do know that a Conservational Organization
18 will not take it without that.

19 Q. I apologize. I will rephrase my question. By my
20 reference to a lawyer was simply to direct your
21 attention to basic Contract principles; okay?

22 A. Yeah.

23 Q. And basic Contract principles, if you were going to
24 try to enforce this provision in a Court, Federal or
25 State Court, which says you shall set up an endowment

1 to provide funds toward restoring structures in
2 downtown Boykin to be used for their intended
3 purposes, okay, is an invitation to litigation, is it
4 not, because there's no number for the endowment.
5 They could provide -- the -- just an endowment is just
6 simply creating a -- a document; okay. It doesn't
7 talk about how much money, it doesn't talk about what
8 the intended purposes are, it doesn't talk about the
9 quality of restoration, and so, this is a -- a -- this
10 is not a definitive requirement to do anything, is it,
11 other than set up an endowment?

12 A. Okay. I think we're starting from two different
13 starting points. You're looking at this like we're
14 giving a conservation easement or something of that
15 type. I look at this from the standpoint that we're
16 selling fee simple to some property and as gravy on
17 the side, they're going to do all of these other
18 things, that those things aren't necessarily in my
19 view the consideration. It's because they want to do
20 this to a Conservation Organization, I also am told
21 that the Conservation Organizations will require it.
22 They won't be able -- they won't even accept it
23 without doing it. I personally would be happy with
24 this and maybe -- maybe I need to consult with a
25 sharpshooter like you to find out what should be done

1 here in South Carolina, but that's -- that's what
2 you're doing, you're -- you're sharpshooting it and
3 that's fine. And I appreciate all the advice I can
4 get.

5 Q. Well, all I'm trying to point out is, is this is
6 basically an illusory benefit. You can't enforce it.
7 It's just simply a -- a promise in the air and a
8 benefit that may or may not ever transpire because
9 once you sign this Option, the Purchase Agreement and
10 the transfer of Title is not going to require them do
11 any of this with any degree of specificity?

12 A. They have to give it to a Conservation Organization.
13 You agree with that?

14 Q. Yeah. Well, I don't know. Based on the clause that
15 we read, I don't know what that means, "any/or." I
16 mean, I don't know what that means, Rigdon. Assuming
17 you can figure that out, yes. But then you go to the
18 conservation people and all these good intentions are
19 not enforceable.

20 A. Well, I disagree, but that's ---

21 Q. Okay. All right. I got you.

22 A. -- I think they'll be enforced by the Regulatory
23 authority ---

24 Q. All right.

25 A. -- and the conservation entity that receives this.

1 Q. What Regulatory authorities are going to enforce an
2 endowment?

3 A. They won't enforce the endowment. They will -- they --
4 DHEC will look through this. I'm sure DNR will be
5 involved or some other organizations in terms of the
6 Permitting that they get. I have -- I do not know who
7 all will eventually pass on this before it gets done,
8 but I am fairly comfortable -- put it this way, if it
9 were ---

10 Q. Okay. And your two Trustees may or may not agree, Co-
11 Trustees?

12 A. That's right. And if they have a problem, let's try
13 and correct the problem.

14 Q. Sure. And in terms of Regulatory people, is it -- is
15 it not the case that the -- that no building
16 officials, no public officials, DHEC or anybody has
17 required any work to be done on any structures in
18 Boykin?

19 A. Are you including the dam?

20 Q. No, not including the dam. I'm talking about the town
21 of Boykin.

22 A. To my knowledge, I have not seen any.

23 Q. So, none of those structures are in violation of any
24 Building Codes, any DHEC Regulations that you're aware
25 of and can testify to here today under oath?

1 A. Yeah.

2 Q. Okay. All right. Now, let's look at your chart a
3 minute, this rough analysis. Now, as I understand it,
4 the ultimate remain -- the remaindermen are the
5 ultimate beneficiaries of this Trust if there's
6 anything left; is that correct?

7 A. The ---

8 Q. Remaindermen. The three -- Mary Deas' three children
9 and Little Allie.

10 A. And what about them?

11 Q. They are the ultimate beneficiaries of the Trust when
12 the Trust is ended. Okay. When the Trust is ended,
13 if there's anything left in the Trust, it will be
14 disbursed to those four -- those four individuals?

15 A. That's my understanding on a per stirpes basis.

16 Q. And it would be reasonable here today, based on the
17 age of the income beneficiaries and their current
18 status, to believe that it will be either be those
19 four individuals or their children should their parent
20 predecease them?

21 A. That would be my belief.

22 Q. Okay. And do you feel as a Trustee that you have any
23 obligation to those four individuals?

24 A. Absolutely. Much more of an obligation actually than
25 either Alice or Mary Deas have because it's --

1 basically, they've both said that -- that my kids
2 don't really care how much they get, but it doesn't
3 stop at their kids. It goes to their kid's kids also.

4 Q. Who are under the age of majority?

5 A. And -- and I think it is extremely important for us as
6 Trustees to act in a prudent manner because they are
7 in essence just as much our clients ---

8 Q. Sure.

9 A. -- as the income beneficiaries are.

10 Q. Right. And if all four of those individuals and all
11 of their children, none of them wanted to sign this
12 Option, does that influence you at all?

13 A. No.

14 Q. Okay. Now, because you know what's best for them?

15 A. No.

16 Q. Okay.

17 A. I'm not saying that.

18 Q. Okay.

19 A. I -- it doesn't influence me because I think that's
20 based on a -- a belief that the precatory language
21 controls, and that is more important than diversifying
22 the Trust assets and investing this in a prudent
23 fashion so that the Trust is -- does grow and does
24 provide for the benefit of their children and/or
25 grandchildren, whoever it might be at the time this

1 happens.

2 Q. The gravamen of our dispute?

3 A. True.

4 Q. The cruces of our dispute?

5 A. True.

6 Q. All right. Is it correct -- you've got down here that
7 if this Option goes through and there's a purchase,
8 there will be approximately Nine Hundred and Sixty-
9 eight Thousand Dollars (\$968,000.00) in capital gains
10 and Obama taxes?

11 A. Yes.

12 Q. Okay. Now, if this property -- this property is in
13 the Residuary Trust; is that correct?

14 A. Yes, it is.

15 Q. And -- and it -- its basis would be the stepped-up
16 basis if it's later transferred to these children, and
17 therefore, this -- and this capital gains tax would
18 not -- would not happen, right, if it goes straight to
19 them?

20 A. I do not know what the law is on that.

21 Q. Okay. Well, let's just assume for -- for purposes
22 that there will be no capital gains tax if this
23 property is transferred directly to the remaindermen?

24 A. I have no idea.

25 Q. You have no idea. Okay. Have you even considered

1 that in your analysis?

2 A. It wouldn't matter to my analysis because, in my view,
3 the ability -- first of all, we're getting paid a heck
4 of a lot more than the property is worth, number one.
5 Number two, that will be reinvested, and it will make
6 more than I believe just keeping this property as it
7 is in the Trust. Quite a bit more.

8 Q. Well, you -- you're already Twenty Percent (20%)
9 behind by paying capital gains taxes and -- and Obama
10 taxes when you start; right? So, you've got to make
11 that up immediately, right, with your investments?

12 A. Well, I think we are because that's the premium we're
13 getting paid.

14 Q. Okay. Okay. So, you think that's the premium you're
15 getting paid, Twenty Percent (20%)?

16 A. I think it's probably over that.

17 Q. You think it's over that?

18 A. Yeah.

19 Q. And you think it's in the best interest of the Trust
20 not to try to find somebody who will pay even more if
21 they need ---

22 A. All the real estate brokers -- I've talked to
23 Huffines, who's an expert in this area, the Charleston
24 Appraisal people, they've told us it's not a chance.

25 Q. Okay.

1 A. If you can find someone, though, I would -- I would
2 love it. That would be fabulous for the Trust. So,
3 I would encourage you to do so.

4 Q. All right.

5 A. Maybe you can buy it. That would make the thing
6 simple.

7 Q. Is -- is the sale in your opinion of the -- the Mill
8 Pond in Boykin going to improve the value of real
9 estate throughout the Boykin area?

10 A. Only from the standpoint it makes it a more attractive
11 place if someone is cleaning up downtown Boykin, make
12 -- putting, you know, and -- and cleaning up the
13 Cottage and all of that, there is probably some
14 benefit to that. What kind of benefit, I have no
15 idea.

16 Q. In addition to being a Trustee and a lawyer, you're
17 also a real estate developer; right?

18 A. I would not call myself a real estate developer. I
19 know you love that term for me, but the fact of the
20 matter is, I bought -- actually, I bought eight
21 hundred (800) and some odd acres originally, and I
22 bought that much primarily because there was a two
23 hundred and fifty (250) acre tract that was owned by
24 the same people across the street from me, and I --
25 Alice very much wanted me to buy that tract because it

1 was at the head of the pond. And so, the Capehart's
2 wouldn't sell it to Alice. Apparently, they did not
3 get along. And she -- so, she wanted me to include it
4 in my purchase and buy it and then flip it at the same
5 price to her. I told the Capehart's that if I bought
6 it, that's what I would do with it, and they said they
7 didn't care if I did, they just weren't going to do
8 it. And so, after I bought the property, I sold that
9 two hundred and fifty (250) acres to Alice. Does that
10 makes me a real estate developer -- I don't know. It
11 all depends on your definition. I also bought a piece
12 that I didn't really want at the time. It was a
13 hundred and forty (140) acres near it and the hundred
14 and forty (140) acres we decided right as we bought it
15 that we would sell that property either as a whole or
16 split up into six lots. The six lots -- we split it
17 up into six lots that way and transferred it to an LLC
18 because it was a tax efficient way of getting capital
19 gains treatment, in essence. It's a long, convoluted
20 thing, but we would get -- we wouldn't be subject --
21 we -- we would get the effect of capital gains where,
22 if you were a real estate developer selling lots in
23 the normal course, it would be treated as an ordinary
24 income rather than capital gains. And so, we split
25 that into six lots. We put in a road. We put in

1 underground electricity and water and a gate, and
2 right at the time we finished all of that, the 2008
3 debacle hit and it was basically non-saleable for a
4 long time. I had it -- recently put it back on the
5 market as a whole and about two weeks ago, after not
6 receiving any inquiries for the whole piece, mostly,
7 just people asking about buying a piece of it, I put
8 it back on the market in pieces in the six lots. And
9 the reason I did it in six lots, the six lots range in
10 size from I think either fifteen (15) or twenty (20)
11 acres being the smallest and the largest is forty-
12 three (43) acres, I think. And if that makes me a
13 real estate developer, sure.

14 Q. Well, at least you are subdividing it anyway; can we
15 call it that way?

16 A. Well, I have my house on the market, too.

17 Q. Did you ---

18 A. I have my house ---

19 Q. Let me ask you if you're familiar with this document.

20 A. Yes, that's a ---

21 Q. Can you tell me what that is?

22 A. That is a book that I prepared ---

23 MR. TETTERTON: Just a minute. If he's
24 going to question about a document, he has to
25 provide us copies of it.

1 A. I don't have a copy.

2 MR. BUNDY: I don't have another copy.

3 MR. TETTERTON: I think the Rules say you
4 have to give me a copy if you're going to ask him
5 questions about it.

6 MR. BUNDY: Well, why don't you bring a
7 Contempt Order ---

8 MR. TETTERTON: No, I'm not going to bring
9 a Contempt Order ---

10 MR. BUNDY: -- and we'll deal with it at the
11 Courthouse.

12 MR. TETTERTON: Just give me a chance to
13 read it and so ---

14 MR. BUNDY: You're absolutely entitled to
15 read it. Why don't we take a break and you can
16 call the Judge if you need to.

17 MR. TETTERTON: Well, she's in the --
18 she's right -- the Rules say when you question
19 him, you have to give us a copy of what you're
20 going to question him about. You know the Rules.

21 VIDEOGRAPHER: Off the record 4:24.

22 (OFF THE RECORD).

23 VIDEOGRAPHER: On the record 4:33.

24 EXAMINATION BY MR. BUNDY CONTINUED:

25 Q. Mr. Boykin, when we left the record, I had asked you

1 to identify this book I put in front of you. Can you
2 just identify it for the record, please?

3 A. This is a book that I put together several years ago
4 when I initially determined that our house was too big
5 for us and we needed to downsize, and I put this book
6 together to put this on the market. In fact, I think
7 this may be the book that I gave you because you had
8 a friend in Charleston who was interested in the
9 property.

10 Q. Well, I brought her up and she looked at it.

11 A. She did and, actually, I -- she acted like she was
12 going to buy it for a while.

13 Q. She was. You never called her back.

14 A. No, I called her.

15 Q. All right. And at that -- how long did you -- were
16 you in the house before you realized it was too big
17 for you?

18 A. Probably a year, two years. We realized it wasn't --
19 that it was just too big for us. The other problem
20 was A) we realized Richard wasn't going to have any
21 kids. We realized Arthur was only going to have the
22 one child because his wife had preeclampsia and they
23 didn't want to risk another pregnancy, and, you know,
24 parents have this fake sense of what's going to happen
25 in the future. They think their kids are going to

1 come see them all the time and do this and do that.
2 What we didn't realize is that neither one of our kids
3 were brought up in South Carolina, and so, there's no
4 real reason for them to come to South Carolina. Their
5 friends aren't there, and also, doctors usually end up
6 staying wherever they become a doctor and they live
7 there forever. It's like Teddy will probably die in
8 Indiana because that's where he started and got his
9 practice going. So, when we realized that and we
10 realized that neither son had any interest in the
11 property, we were like two BB's in a box car. We were
12 rattling around that house, and we said, "Geez, we
13 need to build a house that is a quarter of the size of
14 this one," and the plan is to sell all of my property
15 except in an ideal world keep about seventy (70) to a
16 hundred (100) acres behind the nursery and build a
17 house on that. There's a place where I can build
18 another pond and we can build a small house and live
19 there. But selling the house is not that easy a
20 proposition, especially when real estate people don't
21 seem to work any more.

22 Q. How -- how is the -- how has your offering price
23 changed, if at all, over the years for that property?

24 A. I hate to tell you; it's been so damn long. I can't
25 remember what it originally was. I think it -- it has

1 come down, clearly. I think, you know, we're ready to
2 move on with our lives.

3 Q. Right.

4 A. And I think the price today is substantially below
5 what it started at.

6 Q. Do you think it's less than half?

7 A. Oh, no. I don't think so. The -- the -- part of the
8 problem is, you get different advice from different
9 real estate people. They say, "List it all as a
10 whole," ---

11 Q. Right.

12 A. -- and then the next one comes along and says, "What
13 is the smallest amount of property you're willing to
14 sell with the house and list it that way." I think
15 the current listing is the house and fifty (50) acres
16 or something. I'm not sure.

17 Q. Well, if you don't mind, I'm going to show you
18 something out of the Tax Maps. I don't have the ---

19 A. Sure.

20 Q. -- paper copies of these, but I think -- will you look
21 at those three maps and tell me if that -- if that's
22 the -- that's the current offering prices and the way
23 you've got it divided up?

24 A. No.

25 Q. Okay.

1 A. That's not how it's divided up.

2 Q. Okay.

3 A. And I don't see prices on here. Is there prices on
4 here?

5 Q. I think that they're on some of them. What I'm
6 interested in, I guess, is the -- is the -- the Acorn
7 Hill tract.

8 A. That's a totally separate parcel.

9 Q. Right. Right. Right. Right. Right. All right.
10 Well, I have to ask it that way. Let me ask you this.
11 On the Acorn Hill tract, ---

12 A. Acorn Farm.

13 Q. Is it Acorn Farm -- okay. Acorn Farm.

14 A. I think it's Acorn Farm.

15 Q. Acorn Farm.

16 A. LLC.

17 Q. What is the per acre price of that land; do you know?

18 A. I think -- I don't really know to tell you the truth.
19 It changes because we have a price per acre in general
20 on it, ---

21 Q. Right.

22 A. -- and then an adder if the lot includes the -- a pond
23 on it.

24 Q. Right.

25 A. Another pond. So, I think the -- I -- I just don't

1 recall, but I think it's somewhere in the range of Ten
2 Thousand (\$10,000.00) an acre. And then if it's a
3 pond, it might be another Hundred Thousand
4 (\$100,000.00) or whatever.

5 Q. Okay. You -- I think you sold or transferred a tract
6 ---

7 A. I sold -- what I did on that is, I wanted to get some
8 money to a Conservation Entity, and so, I gave five
9 acres of the land to that entity. Actually, it wasn't
10 Conservation; it was a big Cat Rescue Center that was
11 a 501C3 organization. And so, I gave them five acres
12 and sold fifteen (15) myself to Rob Gates, and they
13 sold their five acres to make it twenty (20) acres to
14 Rob Gates. We sold it to Rob Gates for I believe it
15 was Eleven Thousand (\$11,000.00) an acre, and that was
16 before any improvements had been made to that property
17 for the most part. And Rob agreed that he would be --
18 pay his allocate share for those improvements, plus he
19 built a pond on the site. He started preliminary
20 construction; he put a pad in there for a barn/shed or
21 something, not too far from your line and then put a
22 pad in next to the pond where he was going to build a
23 guest house. And then I think he got way overextended
24 in real estate and had to sell it, basically. And I
25 had put a bunch of Restrictions on that property,

1 Covenants.

2 Q. And by that, you mean the whole piece?

3 A. Yeah.

4 Q. Just -- just the whole piece?

5 A. The whole piece. And when he came to me and told me
6 he was going to sell it, I asked him if I could buy it
7 back because I did not want the Covenants on one of
8 the smaller lots wagging the whole dog of the bigger
9 lots, and he sold it back to me for what he had in it,
10 ---

11 Q. Do you recall what that was?

12 A. -- basically. It was sort of complex because he owed
13 me some money, too for the improvements, but it was
14 somewhere on the order of Seventeen Thousand
15 (\$17,000.00) an acre or something. I just don't
16 remember.

17 Q. I got you. I got you. Okay. All right. So, as it
18 stands right now, you own the whole thing still in fee
19 simple or Acorn Farm on fee simple?

20 A. No. Acorn Farm, LLC owns all except for that one lot.

21 Q. Okay.

22 A. When we bought it back in, Pat and I bought it
23 individually, ---

24 Q. Okay.

25 A. -- because we didn't want to go through all the crap

1 of finding money for Acorn Farm to do it and
2 everything else.

3 Q. Okay. I'm going to read you from Page Two of your
4 Pleading. And it's just before the Background and
5 Parties. It basically says, "Petitioner," that's you,
6 "is entitled to preeminent authority among the three
7 Co-Trustees of the Residuary Trust including the
8 authority to appoint Trust counsel or otherwise be
9 appointed as a special fiduciary under SC Code 62-7-
10 1001(b)(5). Is that the -- is that the same thing we
11 were discussing earlier? Is that -- is this
12 consistent with what you previously said you were
13 looking for in this -- in this lawsuit?

14 A. I don't know. All I know is that was Hardin's belief
15 that -- that this was a situation where I ought to,
16 absent the Will, have powers that I didn't fully
17 understand and still don't for that matter. I'm just
18 not an expert in this area.

19 Q. Well, is it fair to say that sounds a little bit
20 broader; the relief requested in the Pleading sounds
21 a little bit broader than what you had discussed you
22 were looking for?

23 A. Yes, I would say so. I don't -- I don't ---

24 Q. Could ---

25 A. Not understanding exactly what all that means, I

1 cannot tell you.

2 Q. Okay. But just -- just to finish this issue up. In
3 the -- in Paragraph Fifty-nine, you ask for a
4 Declaratory Judgement declaring that among other
5 things, "As sole disinterested non-beneficiary Co-
6 Trustee of the Residuary Trust, Petitioner is entitled
7 to exercise preeminent authority among the three Co-
8 Trustees of the Residuary Trust including the
9 authority to appoint Trust counsel or otherwise be
10 appointed as a special fiduciary under SC Code 67-7-
11 1001(b)5." I guess I would just like to focus right
12 now on your understanding of what preeminent authority
13 would be. What -- what would that impose?

14 A. Don't know.

15 Q. You don't know?

16 A. No.

17 Q. Okay. But you -- as you sit here today, you're not
18 asking for the authority to sell real estate without
19 the three Trustees' signature?

20 A. Or a Court direction.

21 Q. And are you looking for a Court direction that, going
22 forward, any real estate can be sold as long as you
23 agree to sell it; it doesn't matter ---

24 A. No.

25 Q. -- if the other two Trustees ---

1 A. No, I'm not looking for that at all.

2 Q. All you ---

3 A. I've never said I was.

4 Q. Okay. I'm just trying to understand.

5 A. Yeah.

6 Q. So, all you're looking for is just as it relates to
7 this particular Option?

8 A. No. I'm looking for a couple things. The Option,
9 when we filed suit, the Option wasn't even in
10 existence. It wasn't even a figment of my
11 imagination. At the time we started this case, what
12 I was looking for is direction from the Court as to
13 whether, because of the changed circumstances, the
14 Prudent Investor Rule, whatever, should we be using
15 the prudent investor criteria or should we be blindly
16 just going willy-nilly down the road of the precatory
17 language, and I was told by Karen that a Court could
18 decide that and she was actually also suggesting that
19 we ask the Court to dispense with the two appraisals.
20 She also -- these are all in e-mails and stuff.

21 Q. Sure.

22 A. That we ask the Court to not require three -- the
23 consent of three Trustees because she was starting to
24 believe we would never get the consent of three
25 Trustees.

1 Q. To sell real estate?

2 A. To sell real estate except in rare instances, because
3 where we did have agreement to sell real estate,
4 usually, those agreements were at prices that would be
5 very difficult to achieve because the only agreements
6 we could come up with in these meetings, and you were
7 there for a lot of them, I think, or at least in the
8 last half year or nine months or whatever, the only
9 agreements we could come up with were agreements to --
10 at what listing price to sell a property and not what
11 the actual price would be that we would take when we
12 sold the property. So, for example, with the Tommy
13 Laney property, Tommy Laney came and said he would pay
14 Three Hundred and Eighty Thousand Bucks (\$380,000) for
15 the property. We decided, myself included, that we
16 would go back to Tommy and ask for more, Thirty-five
17 Hundred (\$3,500.00) or Four Thousand (\$4,000.00). I
18 don't remember the exact number we did, and we -- and
19 -- and he basically told us -- no way, that he was
20 going -- he was going to stick with his opening price.
21 Also, at the time, actually, I don't think any of us
22 had a real good idea of what timberland was selling
23 for out in the Sumter County area at that time. And
24 I think, subsequently, we learned a lot; at least I
25 did. I learned a heck of a lot about what the going

1 rate was for timberland, farmland, what-have you as
2 timberland or farmland, and I thought we had an
3 agreement at one point to sell it for the Three Eighty
4 (\$380,000.00). Apparently, we did not, and Alice I
5 guess about six months ago or so, maybe longer, nine
6 months ago -- no. I think Alice in November said that
7 she would only agree to sell it then for Four Hundred
8 Thousand (\$400,000.00) instead of Three Eighty
9 (\$380,000.00).

10 MR. BOYKIN: (To Mr. Becker) In
11 fact, that was at the second meeting
12 at your office, Jamie, that was -- that
13 was said.

14 MR. BECKER: Yeah.

15 A. And so, that property has remained unsold ever since.

16 Q. Is Mr. Laney a developer?

17 A. No. I would not call Mr. Laney a developer. Mr.
18 Laney is a timber broker, but he owns a large amount
19 of timber in Sumter County. He has actually some of
20 the most beautiful property around. He has -- I -- I
21 would -- if I had to guess, I would say he owns
22 thousands of acres of -- of timber.

23 Q. Do you have any idea what he planned on doing with the
24 property he proposed to buy?

25 A. Sit on it.

1 Q. Now, the Yellow house, ---

2 A. And grow timber.

3 Q. Okay. The Yellow House, do you have any ideas about
4 developing or selling that property to a developer,
5 whether it's developable property, should be
6 developed, anything in that area?

7 A. I don't think -- first of all, I don't think any
8 developers are interested in a piece of property that
9 far out of a town. If it is sold, I think it would
10 have to be sold in a sort of mini farms, i.e, fifty
11 (50) acres, a hundred (100) acres. The kind of thing
12 where the people just down the road on Tombfield Road
13 paid One point Eight Seven Five Million (\$1.875) for
14 forty-three (43) acres and a barn. Now, the barn was
15 like quite a nice barn, but, basically, they bought
16 that land for Twenty-three Thousand Bucks (\$23,000) an
17 acre; I think that's pretty much what most people will
18 tell you. And just down the road on -- actually, on
19 Cantey Lane, a piece was purchased within the last
20 year and a half or so for -- twenty-eight (28) acres
21 was purchased for Twenty Thousand (\$20,000.00) an
22 acre.

23 Q. Do you think the development of Yellow House as a
24 small farms or whatever would increase the likelihood
25 you could sell Acorn?

1 A. I don't think it'll have anything to do with it. Too
2 far. Different neighborhood. Different type of
3 property. Everything is so different.

4 Q. Who else have you talked to about selling property to?

5 A. A large number of people. We -- at the time we -- we
6 were -- started the Trust and there was very big
7 interest in buying the Mill Pond -- I mean, the Mill
8 Pond by Mary Deas and the land around Millway by
9 Alice, it was pretty much was try and sell whatever we
10 can sell at that first part of the time, and so, we
11 showed, at Mary Deas' suggestion, -- actually, on this
12 one, apparently, she had been contacted by some of the
13 Mulberry owners and I was asked to show John Daniels
14 -- I think it's John Daniels -- I'm not sure -- who is
15 the sort of titular head of that corporation or
16 whatever it is right now -- and Katie Bruce a number
17 of pieces of property.

18 MR. BOYKIN: (To Ms. Belger) Were
19 you with us, Alice, when we did that?

20 I'm not sure.

21 MS. BELGER: No.

22 MR. BOYKIN: No.

23 A. And we showed them Sumter Mountain, the Swamp Tract;
24 I think they may have looked at the Capehart tract.
25 They may have looked at part of -- over by the Yellow

1 House, the timber part of it, ---

2 Q. Let me ask you this. What is your objection to or
3 what is the basis of your objection to -- let's assume
4 that there is a number that in your opinion ought to
5 be thrown off by these assets every year -- what is
6 that number?

7 A. My view -- probably -- first of all, we have -- I
8 guess there is some disagreement as to what the assets
9 are worth. However, it sounds like from Mary Deas'
10 deposition the other day that her estimate and my
11 estimate are pretty close now.

12 Q. Which is?

13 A. Twenty-five Million.

14 Q. All right. So ---

15 A. And if it's worth Twenty-five Million, you can sort of
16 work backwards a little bit. The Twenty-five Million
17 ought to generate at least in the neighborhood of Five
18 to Seven Percent return over time. And if it's Five
19 Percent (5%), five times Twenty-five (25) is what --
20 I'm not smart enough to do that in my head.

21 Q. It would be One point ---

22 MR. DUFFY: Yeah, One Million Two
23 Fifty (\$1,250,0000.00).

24 Q. It's a Million Two Fifty (\$1,250,000.00).

25 A. Okay.

1 Q. So ---

2 A. I think -- I think that's a good number.

3 Q. All right. So, and out of that, you've got to pay
4 expenses, taxes and all the rest of it; right?

5 A. Correct.

6 Q. Well, what would be the net -- what would be the net
7 you would be dividing up?

8 A. Well, it -- it isn't that simple because let's suppose
9 -- let's suppose you did the Million Two. You would
10 probably distribute to the beneficiaries depending on
11 what percentage you agreed upon, ---

12 Q. Right.

13 A. -- at least a Hundred and Eighty Thousand
14 (\$180,000.00) or so.

15 Q. Well, this year, ---

16 A. And you would then pay probably Three Hundred Thousand
17 (\$300,000.00) in various expenses and stuff, and the
18 rest would go to increasing the size of the Trust
19 Corpus.

20 Q. If a -- if a situation exists where you could
21 distribute every year what you considered to be a fair
22 amount of money to May and Whit and to the extent
23 there were shortfalls or not enough money, Mary Deas
24 and Alice would be willing to forego their share in
25 order to fund May and Whit's shares, what would be

1 wrong with that?

2 A. A lot of things.

3 Q. Okay.

4 A. First of all, you've got to understand my
5 responsibility isn't to Whit and May. My
6 responsibility is to all four of them: Whit, May, Mary
7 Deas and Alice.

8 Q. Right.

9 A. And to the remainder people, whoever they exist.

10 Q. Right.

11 A. And that means that you absolutely have to diversify
12 the assets in this Trust in my view and especially
13 since Whit doesn't have a male heir, and even if he
14 did have a male heir, Whit, Big Whit only said you
15 really ought to try and keep these three properties I
16 think it was for the benefit of that male heir for the
17 ultimate distribution to that male heir. But I
18 believe that A) that would violate the roughly equal
19 provisions of the Will in terms of what they would
20 get. I believe it would not -- it would -- could only
21 be done if there was the proper diversification, and
22 I don't think if there was the proper -- if there was
23 the proper diversification, I believe we would have
24 the assets to do all of that or you'd have the income.
25 Q. All right.

1 A. A return, not necessarily income.

2 Q. If -- if Allie were Allen instead of Allie, ---

3 A. Yeah.

4 Q. -- if she were a boy, would that satisfy any
5 requirements of the Will ---

6 A. No.

7 Q. -- or did the son have to be born of the son?

8 A. When he died -- I mean, were you alive -- were you
9 around when Whit was alive -- I think you were here.
10 Whit believed in fee payable. He believed that the
11 elder son should get it, and if it wasn't -- if -- if
12 it wasn't a Boykin, it didn't matter. So, that's why
13 he wouldn't have put -- he didn't put in actuality --
14 in fact, I argued with him about this, that the --
15 that a -- that a child of one of his other children
16 couldn't take it. He -- it had to be a Boykin child
17 as far as he was concerned, and the only person who
18 would carry on that would be Whit.

19 Q. So, you're actually asking the Court to enforce
20 primogeniture in a way?

21 A. No, I'm not at all. I'm asking the Court to -- to
22 hold that -- since this language is precatory that --
23 and -- and precatory language was twenty (20) some odd
24 years ago, things changed between the time Whit made
25 the Will and he died, and things have changed since

1 then that the precatory language should certainly not
2 control in this instance and that we diversify the
3 assets.

4 Q. You don't contend that the Will is not valid, do you?

5 A. No.

6 Q. Okay. And the fact that things changed between the
7 time he wrote the Will and the time he died, he had
8 the ability to change it during that period if he
9 wanted to?

10 A. He was pretty sick for a lot of that period. And the
11 real problem did not occur until Hurricane Hugo
12 occurred. If Hurricane Hugo had not occurred, Whit's
13 Estate could have been as much as Ten Million Dollars
14 more and there would have been even a heck of a lot
15 bigger today and there could be a lot more room for
16 diversification and everything else. I think that is
17 a -- a very different circumstance. I think the other
18 circumstance that changed drastically is the fact that
19 the land around Boykin appreciated disproportionately
20 to the rest of the land that he had. And so, the land
21 around Boykin became more valuable than the use to
22 which it was being put. When Whit died, the land
23 wasn't worth more than farmland anywhere. But by the
24 time Alice died, that land was worth Three or Four
25 Thousand Bucks more than anyone would buy for

1 farmland.

2 Q. Okay. One more -- one more question. The -- the
3 putative Optionee or Optionor, Purchase Optionee,
4 Purchaser was made aware of this lawsuit; right?

5 A. Absolutely.

6 Q. Have you discussed it with him?

7 A. I think -- the fact of the existence of the lawsuit,
8 yes.

9 Q. Okay. Has there been any discussion regarding the
10 fact that if the Lower Court orders the signing of
11 this Option, that an appeal will stay that Option
12 until the Higher Court rules?

13 A. He is perfectly aware of what happens in lawsuits.

14 Q. Okay. So, he's -- they're aware of the fact that
15 there's -- there's going to be a long period of time
16 between that, the end of that appeal and -- and any
17 Order?

18 A. I -- I -- I have not discussed appeals or anything
19 with him.

20 Q. Well, ---

21 A. But I'm sure he -- he's very aware of the lawsuit,
22 very aware of the division.

23 Q. Well, just if I might be so bold as to suggest, you
24 might want to discuss it with him because they may
25 come to the conclusion that, even if we get this

1 Option signed, it's going to be two to three years
2 before this -- before the Option can be enforced; we
3 may not be willing to tie up -- we may not be willing
4 to do this for that period of time, and that will --
5 that's probably something we all ought to know.

6 A. What? I think -- I think everyone knows that any
7 lawsuit can and often is appealed.

8 Q. Yeah, but he's going to have Three Hundred Thousand
9 Dollars (\$300,000.00) at risk is my -- is my point.
10 And he, you know, I don't know if there's an
11 appreciation for that.

12 A. You're talking about a company that has hundreds of
13 millions of dollars maybe, billions, I don't know, in
14 assets. I think he's probably fairly well advised.

15 Q. Okay. Perfect.

16 MR. BUNDY: That's all I have. Thanks.

17 MR. BECKER: I'm probably going to have
18 forty-five (45) minutes worth of questions.
19 Do we want to do that later when we do Whit's
20 or do it now?

21 MR. DUFFY: I'd prefer to do it now. I
22 mean, if it's only forty-five (45) minutes. I
23 was hoping for 6:00 o'clock. That gives you
24 about fifty (50) minutes. I mean, I need -- I
25 don't want to go to 6:30. I mean, I -- I'm

1 ready to get it done today.

2 MR. BECKER: Okay.

3 MR. DUFFY: That would be my preference.

4 MR. BECKER: All right.

5 MR. DUFFY: Are you doing all right?

6 MR. BOYKIN: Yeah.

7 MR. BECKER: Can we open that door because
8 it's getting hot in here.

9 MR. TETTERTON: I better check with our host
10 to see where my ---

11 MR. BECKER: Let's take a five minute break.

12 VIDEOGRAPHER: Off the record, 5:04.

13 (OFF THE RECORD).

14 VIDEOGRAPHER: On the record, 5:10.

15 EXAMINATION BY MR. BECKER:

16 Q. Mr. Boykin, after Mr. Whit Boykin, II, passed away,
17 there was a Marital Trust and a Residuary Trust at
18 that time?

19 A. Yes, sir.

20 Q. And you were one of the three Trustees at the time of
21 the Residuary Trust?

22 A. Correct.

23 Q. What -- just generally, tell me what properties were
24 in the Residuary Trust at the time of Mr. Whit Boykin,
25 II's death.

1 A. Some of the land around Millway. I think the Swamp
2 Tract may have been in it and the Yellow House Tract
3 also. There's confusion on it all because at some --
4 at a later point in time, George Bailey came up with
5 some kind of tax gimmick where you would have each
6 Trust own a different percentage of the same property,
7 and by doing that, you could tell the IRS that you
8 should discount the value of the property because the
9 same entity didn't own all of the property. So, we
10 would transfer Twenty Percent (20%) of the property to
11 the Residuary Trust or vice a versa, and so, I'm
12 unclear exactly what all went on but I believe
13 originally, it was the -- the property in the
14 immediate vicinity of Boykin.

15 Q. Okay. So, it included -- the Residuary Trust had the
16 Mill Pond and the downtown?

17 A. Yes, I believe so. And downtown Boykin, I believe.

18 Q. And Millway?

19 A. I think so. I'm not sure if it had all of Millway.

20 Q. Okay. Did the Residuary -- did you have Trust
21 meetings of the Residuary Trust while Alice ---

22 A. Only from the standpoint of meeting or -- or phone
23 conversations about when the Residuary Trust would
24 have money that should be distributed to the income
25 beneficiaries. I think the whole point of setting up

1 the properties in the Residuary Trust was that those
2 were properties that almost nothing was done with
3 respect to those properties. And Alice determined
4 that, to the extent Boykin downtown would be fixed up,
5 she did that out of her own assets rather than the
6 Trust assets and, initially, there was quite a bit --
7 she spent a lot of money doing that. She gets a
8 tremendous amount of credit for that. The idea was
9 right; we just didn't have the funds to do it all
10 right at the end of the day.

11 Q. Uh-huh (affirmative response). But during Alice
12 Boykin's life, meetings of the Trustees for the
13 Residuary Trust were -- only occurred a couple times
14 a year and usually by phone?

15 A. They didn't even occur a couple times a year. And
16 when we -- when we had any discussions relative to the
17 Trust, it was basically about distributions.

18 Q. Okay.

19 A. Or she would say she wanted to cut this or that.
20 There was almost no -- nothing done because -- I mean,
21 what are you going to do with the pond, you know, that
22 kind of thing.

23 Q. Yeah. Okay.

24 A. And the house, for the most part -- she did most of
25 the -- most of the expenditures with respect to all of

1 that property; I think she did pretty much all of it
2 out of her own pocket or out of income she received
3 from the Marital Deduction Trust. So, there weren't
4 burdens on the -- on the Trust itself.

5 Q. You've spoken about Hurricane Hugo and the impact that
6 it had on Mr. Boykin's timber holdings at the time.
7 And then later, you said that, if it had not occurred,
8 then his Estate would have been worth about Ten
9 Million more than it was. Do you recall that?

10 A. Yes.

11 Q. What is -- on what basis do you make that ---

12 A. That -- that claim ---

13 Q. -- estimate?

14 A. -- is based on anecdotal information from Big Alice
15 and from comments made by Jimmy LaFrage and even --
16 even -- everyone, at that time, it was sort of like
17 the community knowledge kind of thing. This was not
18 an estimate made by an expert that I know or anything.
19 I was just told at the time, actually, not by just
20 Alice but by Whit that it had destroyed that much
21 value in this Estate.

22 Q. All right. What is your investment strategy and plan
23 for the Trust?

24 A. You have me at somewhat of a disadvantage because I
25 gave very detailed summaries of this in the past to

1 people, but in a -- in a nutshell, my strategy -- I
2 had hoped originally that Alice and Mary Deas would
3 buy the properties that we had talked about and that,
4 if they had done that, then the Trust could have
5 probably kept legitimately another Fifteen Percent
6 (15%) or so of the timberland for the benefit of the
7 -- the Trust; the remainder of the property I thought
8 should be liquidated. It would take in my view a
9 number of years to do that because you could not dump
10 that much property on the market at one point, but you
11 would have to do it judiciously so that you weren't
12 doing it at a fire sale like price. We would keep
13 somewhere in the neighborhood of Fifteen Percent (15%)
14 of the property. In fact, there were some discussions
15 as to what that number should be originally in the
16 October time frame where it was discussed that perhaps
17 it would be Eighty-five Percent (85%) of it liquid and
18 the rest in -- in land. My view is, we do not have --
19 it would -- we should sell as soon as we can on a
20 reasonable basis all of the commercial property
21 because we're not set up to take care of it. You
22 would have to hire a Property Manager or something.
23 All of the commercial property is, with the exception
24 of Hawthorne, which is brand new, and -- by
25 commercial property, I'm referring to non-downtown

1 Boykin property. I'm talking about the Lugoff
2 property, 1 Commerce Alley, that kind of stuff, that
3 we would sell all of that because none of it was
4 earning a return commensurate with its value either
5 because, unfortunately, for some reason, Alice -- I
6 think virtually all of Alice's Leases -- there might
7 be a few exceptions -- were for ten years or five
8 years with the right to renew for another ten years or
9 another couple five year terms with no escalation at
10 all in rent, and so, for example, you have that
11 problem I think with both Leo's and the liquor store.
12 The rent has been the same for a number of years and
13 will have to stay the same as long as they're within
14 their renewal rights. So, I thought we should sell
15 that as soon as we could and the Peckwoods property
16 are going to be very difficult to sell because, right
17 now, I think they're overpriced. In fact, interesting
18 side note, they -- those properties were appraised at
19 a higher value in Whit's Estate than we're trying to
20 sell them for today. And I think -- we've had no
21 activity at all with respect to any of that land. No
22 interest at all. I think then we should have a mix of
23 stocks and fixed income. The normal type of
24 diversification that you would see in Trusts like this
25 -- I would be against putting any into hedge funds or

1 -- or ---

2 MR. TETTERTON: Rigdon, could you take
3 your hand down?

4 MR. BOYKIN: I'm sorry.

5 MR. TETTERTON: I'm having trouble hearing
6 you.

7 MR. BOYKIN: I'm sorry.

8 MR. TETTERTON: Thank you.

9 A. I think that's sort of a summation of -- of how I
10 would do it. There are lots of peculiarities to it,
11 but ---

12 Q. Well, ---

13 A. I have -- and I have discussed that and discussed the
14 numbers that would be produced. In fact, I think in
15 the letter from Richard Rosen to you, it has some of
16 that in it.

17 Q. Well, -- so, basically, then your plan and your
18 strategy is to hold -- to sell real estate until and
19 invest the money in financial assets such as stocks,
20 bonds, ---

21 A. And etcetera.

22 Q. -- until the ratio of real estate assets to financial
23 assets is Fifteen Percent (15%) to Eighty-five Percent
24 (85%) or Eighty-five Percent (85%) to Fifteen Percent
25 (15%)?

1 A. Pretty much in that -- in that range. Some -- if we
2 did that, we would not be able to have much of
3 anything in real estate stocks, but sort of the rule
4 of thumb with the various Trust experts that I have
5 worked with, and certainly over the years, that seems
6 to be a number that they feel is the limit of what a
7 responsible Trust should hold.

8 Q. How long do you think that it would take to make that
9 conversion without selling the Trust's current real
10 estate assets below their fair market value?

11 A. That's all in the eye of the beholder because I mean,
12 what Alice feels is fair market value to sell it may
13 be light years different from what she thinks is fair
14 market value for her to buy it. The -- basically, to
15 sell it at the appraised value that we have -- and I'm
16 not talking about Millikin's appraised value because
17 I look at that as sort of a tax dodge more than
18 anything else, and so. it's more than the Millikin's
19 appraised value -- I will hope and trust for that.

20 Q. Uh-huh (affirmative response).

21 A. But to a real appraised value, I think a good --
22 certainly, my guess would be probably Thirty (30),
23 Forty Percent (40%) could be sold within a year of the
24 value. The real problem is going to be figuring out
25 what fair market value is for things like Peckwoods,

1 but Peckwoods and all those lots could be, you know --
2 you know, over -- way over a Million Bucks worth of
3 assets, and I haven't the foggiest idea what's that
4 worth or how long it would take you to sell it at fair
5 market value. You're probably going to have to find
6 a developer or you're probably going to have to
7 basically pull in a spec developer who will build a
8 house and you don't get the money for the lot until he
9 sells the house. That's being done a lot these days.
10 I have talked to a few people about doing that with
11 respect to some of the Peckwoods lots and, actually,
12 that is a realistic possibility. It's outside the
13 norm for what Mary Deas or Little Alice might be used
14 to, but I think it is possible. The places like the
15 Swamp Tract, the -- unfortunately, you -- you have a
16 problem here because the land that -- that has a value
17 in excess of what we're using it for is precisely the
18 land that Alice wants to keep. The land that we could
19 sell probably fairly quickly at a reasonable price is
20 the land that is in Sumter County or Lee County or
21 Fairfield County or Lancaster County; so, that creates
22 somewhat of a conflict right there with all of those
23 places in those other counties, we could probably sell
24 within a couple of years my guess would be. The land
25 in Kershaw County, you have to wait until the right

1 person comes along. It's just like -- what's the
2 Yellow House Tract worth? We sold six point seven
3 seven (6.77) acres of the Yellow House Tract for
4 Fifteen Thousand (\$15,000.00) an acre. We had an
5 appraisal done on a larger piece in the Yellow House
6 Tract for May to buy, and that appraisal came in at
7 Nine Thousand (\$9,000.00) an acre. And May was
8 willing to pay Nine Thousand (\$9,000.00) an acre at
9 the time for it. Larger pieces are worth less. I
10 don't know -- I think the first thing we would have to
11 do is -- is reach some kind of a consensus on what
12 would be reasonable to sell the entire Yellow House
13 Tract for or what would be reasonable in terms of
14 subdividing it into a hundred acre tract or whatever
15 or put it on the market and whatever the buyer wanted
16 of it would be how you would go. I -- I don't -- I
17 don't -- I haven't bothered to do all of that
18 homework, given the fact that, starting about January
19 of 2017, there was no longer an interest in selling
20 that property.

21 Q. Have you created any long-term projections about what
22 income might be realized in -- in any given year going
23 five, ten years out in the future?

24 A. It's -- yes, I have worked on some of that, some of it
25 rougher than -- than not. Part of the -- part of the

1 problem was -- is until Alice submitted her Affidavit
2 to the Court, I hadn't focused on the fact that --
3 that -- that she and Mary Deas thought all timber
4 sales were income, and I realized that, intuitively,
5 that couldn't possibly be true. Otherwise, you could
6 sell a pile of timber and have the Trust go down by a
7 -- a third in value almost overnight. So, when she
8 came out with that or -- or her attorneys did or
9 whoever it is that produced that, it was clear to me
10 that that was a little misleading because it included
11 in essence as income the Hundred Thousand Dollars
12 (\$100,000.00) that was received in the sale of the six
13 point seven seven (6.77) acres or whatever it was to
14 Sue Ziemke, a Hundred Thousand plus and when that
15 should have been credited to principal rather than
16 income, and the more I looked at the timber side of it
17 and this is a very big problem ongoing, because I
18 don't think my other two Co-Trustees understand just
19 how much of the timber sales that will be realized
20 over the next few years, how small an amount of those
21 sales will be income as opposed to principal. For
22 example, in the 2017 analysis that Jane prepared and
23 Jane -- Jane acknowledged on it that wasn't done to
24 figure out what net income was, that was just to tell
25 you cash in, cash out kind of analysis.

1 Q. That's what was attached to Alice Belger's Affidavit;
2 right?

3 A. Correct.

4 Q. Correct.

5 A. Correct. And as you may recall, we had a meeting at
6 Jane Peacock's office to try and explain for the
7 benefit of everyone what the rules were on that and of
8 the Six Hundred Thousand (\$600,000.00) or whatever it
9 was that was sold in that year, the great majority of
10 that was going to be principal, not income. It -- to
11 do a rough rule of thumb, if the timberland was in the
12 Marital Deduction Trust, very little of that will be
13 income if it's sold in the next year, two years, three
14 years. If it's -- but you won't have to pay any
15 capital gains tax because you've got the step-up in
16 basis. On the other hand, if it, the timber sales,
17 came out of the Residual Trust, a substantial
18 percentage of that would be income and not principal.
19 And that would vary by -- by the terms of when it came
20 into the Trust, too. For example, on the 20/80
21 Percent, probably has a different starting point on
22 that Twenty Percent (20%) if it came from the Marital
23 Trust into the Residuary Trust. I'm not that
24 knowledgeable about that, but it's something that will
25 have to be analyzed. But for the year 2018, which is

1 the year we're in right now, a -- most or the -- the
2 lion's share of the timber sales that will be achieved
3 in this year will accrue to principal rather than
4 income, because most of that is from Marital Deduction
5 property.

6 Q. On an Estate value of Twenty-five Million, ---

7 A. Yes.

8 Q. -- Thirty-five Percent (35%) of that would equal Eight
9 Million, Seven Hundred and Fifty Thousand Dollars
10 (\$8,750,000.00). Do you believe that that much real
11 estate could be sold within twelve (12) months?

12 A. Well, we've got a potential buyer right now with the
13 Option if they exercise it for Four Million right
14 there. That's half of the amount. I think -- I think
15 it's -- there -- there is a lot of interest in Sumter
16 Mountain. There is a lot of interest in St. James.
17 There's a lot of interest in about five or six tracts
18 that -- that Dennis ---

19 MR. BOYKIN: (To MR. Duffy) What's
20 Dennis' first name? I've forgot now.

21 MR. DUFFY: James.

22 A. James. James Dennis. Because it adjoins his land or
23 encircles his land. There is a fair amount of
24 interest in Yates. There is -- there will always be
25 interest in the Yellow House just because that seems

1 to be the magic corridor right now where all of the
2 land in between Cantey Lane and Tombfield are adjacent
3 to it. It seems to be where a lot of the Charlotte
4 people are buying big tracts of land or trying to get
5 them. That could change with the potential bankruptcy
6 of the women that own Far and Away Farm or whatever it
7 is. I don't know. But I -- I believe, yes, at
8 appraised value, we can -- and -- and even a little
9 above appraised value, you can sell quite a bit of
10 real estate right now. I'm told, for example, that --
11 and we have authority, I think, it's not the price
12 necessarily, to sell Molly Creek and to sell the Heath
13 Springs property, maybe not at the price we've asked
14 for, but I think if I can spend more time on it, I can
15 probably locate a buyer for those.

16 Q. Earlier, you said that you were asking the Court to
17 determine whether the Trust could or should follow the
18 Prudent Investor Rule. By that, do you mean the South
19 Carolina Prudent Investor Act?

20 A. I don't know ---

21 Q. Uniform Prudent Investor Act?

22 A. I don't know what the ins and outs of the South
23 Carolina were -- are. I know to a fairly decent
24 degree what the Uniform Code is in this area because
25 New York has -- I mean, most of the states have passed

1 some kind of variant of it. The exact variants South
2 Carolina has, I don't know. But I do believe they all
3 in a nutshell require a Trustee to invest assets as a
4 prudent investor would, which, actually, it's -- it
5 sort of places a duty on Trustees for an excess of
6 what the duties seem to have been, you know, a hundred
7 years ago or something. People now have to take being
8 a Trustee seriously. They have to do a good job on
9 it.

10 Q. South Carolina does have a Uniform Prudent Investor
11 Act. It's Section 62-7-933 of the South Carolina
12 Code.

13 A. I know we have one. I just don't know whether there
14 are any sort of little variants that South Carolina
15 has from other states. Every state seems to have some
16 little variant from what the Uniform Code was that was
17 or uniform -- there's an entity in the Trust -- that
18 did a uniform thing that was suggested for most states
19 as I understand it. But not all states follow that;
20 there were variants on it is -- is my understanding.

21 Q. Well, would you agree, that if the Court were to agree
22 with your general premise, that this Trust should
23 follow the Prudent Investor Rule as it would apply in
24 South Carolina, that the Court would look to the
25 Uniform Prudent Investor Act, Section 62-7-933 ---

1 A. I don't know the Section, and ---

2 Q. -- of the South Carolina Code?

3 A. -- so, I can't tell you.

4 Q. Yes. Well, it's entitled ---

5 A. I mean, I can take your -- your -- I mean, you can
6 represent that, but I don't know ---

7 Q. All right.

8 A. -- what it is or what it says or whether there are
9 five or six provisions that affect all of this. I
10 just don't know.

11 Q. Okay. But you would -- you would -- would you agree
12 that, if this Court is to decide that certain language
13 in the Will can be disregarded in favor of the Prudent
14 Investor Act as it applies in South Carolina, then we
15 would be looking to the provisions of the South
16 Carolina Code that deal with the subject of prudent
17 investment?

18 A. You're -- you're asking me to speculate on something
19 I know. I -- I don't know the provisions. All I am
20 looking for is -- is, hopefully, we'll get is a Court
21 decision that says we need to act as a prudent
22 investor with respect to this property. We need to
23 diversify the assets and we need to have a -- a plan.
24 Part of my frustration on this whole thing is that
25 this is a business; this isn't a hobby. And any

1 business that I've been affiliated with, you have
2 business plans, you have budgets, you have ways to do
3 all of this or ways to look at it. I -- I have an
4 idea about it. I've told them in a -- in a -- in a
5 general sense what I have, but no one wants to
6 consider that. They say they want to do something
7 else, but I haven't been able to see anything that
8 demonstrates any ability to do that or any ability to
9 generate the income we need, and maybe as I said
10 before, maybe there's a rabbit in that hat somewhere,
11 but doggone, I haven't seen -- I don't even get to see
12 the hat much less the rabbit that might be in it.

13 Q. Have you proposed a budget?

14 A. I have -- I have -- cannot propose a budget, because
15 right now, I'm in limbo because I don't have a Court
16 decision. I don't even know what we will have. I've
17 been trying to avoid spending any money on commercial
18 property, for example, because I think we ought to be
19 getting rid of it. Plus, I don't think there's a
20 chance in hell we will get a return commensurate with
21 the money that we will spend. You take 1 Commerce
22 Alley, shoot, that roof is leaking like a sieve. It's
23 got all kinds of problems. That property -- my guess
24 is, is that if someone buys that property, they'll
25 bulldoze it. They're buying it just for the land, not

1 the property -- the structure that's on it.

2 Q. Okay. But the answer to my question is, you have not
3 proposed a budget for the Trust for any particular
4 year in the future; is that right?

5 A. That is absolutely correct because I do not know what
6 property we will hold and we don't have the money to
7 spend on this budget.

8 Q. And just so we all know, your investment strategy can
9 basically be boiled down to sell real estate assets
10 until you have about Eighty-five Percent (85%) of the
11 total Trust value invested in financial assets such as
12 stocks and bonds?

13 A. Well, it's a little more complex than that because,
14 for example, in an ideal world, which this isn't, you
15 would only keep real estate that was productive and
16 could give you a return commensurate with its value.
17 However, I am willing to give some on that because of
18 the emotions involved and everything else. Even
19 though -- but I don't want to give so much on that
20 notion that I'm being -- going across the line of
21 being really imprudent.

22 Q. Okay.

23 A. I think the primary thing that needs to be done is
24 diversification.

25 Q. Okay.

1 A. Absolutely, and doing it in a way that you know will
2 generate the funds. Nothing is guaranteed in life.
3 I understand that. All I can go is on percentages and
4 what's happened in the -- basically, in asset classes
5 and everything else. It's like ---

6 Q. All right. Are you agreeable to Ducks Unlimited as
7 the -- if -- if the Option were to be exercised, are
8 you agreeable to insisting on Ducks Unlimited as the
9 Land ---

10 A. No.

11 Q. -- Management Organization?

12 A. And I'll tell you why.

13 Q. Okay.

14 A. Ducks Unlimited is the conservation recipient that a
15 lot of people like because -- especially, in almost
16 all cases, they like it because they're only giving a
17 conservation easement and not the fee, and the reason
18 why so many people like Ducks Unlimited is that they
19 are -- are -- are very forgiving in terms of policing
20 the land in terms of the conditions that they impose
21 on the land and everything else. For the most part,
22 Ducks Unlimited is dedicated to preserving land from
23 development more than a lot of the conservation goals
24 of a lot of other organizations. And I would be
25 pretty confident that Ducks Unlimited would not

1 qualify as a mitigation recipient.

2 Q. For the Haile Gold Mine?

3 A. Yeah.

4 Q. Okay.

5 A. I mean, it's got to be a real -- a real conservation
6 organization. I mean, I think if you look at the ones
7 on that list, I think they have a very different
8 character from Ducks Unlimited.

9 Q. Okay.

10 A. And -- and actually, I'm sure Ducks Unlimited may get
11 some outright gifts, but I think most of their
12 holdings are easements.

13 Q. Yeah. Did -- did you serve as an Executor or Trustee
14 for an Estate that arose out of Broadview Plantation?

15 A. You have to be more particular than that. I don't
16 even know what Broadview Plantation is.

17 MS. BELGER: You've got it wrong?

18 MR. BECKER: Huh? What's the name?

19 MS. BELGER: Beechwood.

20 Q. Beechwood Plantation.

21 A. Oh. Beechwood was a house here in Camden; it's a
22 beautiful house. It was owned by McKee Boykin. McKee
23 Boykin is a distant cousin. Rip Rose was the attorney
24 for -- for McKee when he wrote his Will. However, at
25 the time McKee died, Rip was working I think for the

1 IRS in Washington and, therefore, was -- could not act
2 as Executor, and I had to do that. So, I was the
3 Executor for the Estate. I was supposed to be the
4 Trustee in turn. I handled the Estate and told them
5 that I was unwilling to serve as Trustee, and they
6 needed -- because of the land and everything else
7 involved, they needed a professional to do that, and
8 that was Bill Canty in Columbia; they agreed, and he
9 was appointed as Trustee for that. I handled the --
10 the settlement of the Estate. It was a miserable job
11 because everyone was fighting. They were, like here,
12 children by two different marriages, and I served as
13 Trustee, -- I mean, as Executor for that.

14 Q. Were -- were you the sole Personal Representative for
15 that?

16 A. I think I was.

17 Q. Yeah. Okay.

18 A. There might have been another -- no, I'm pretty sure
19 I was.

20 Q. What was the name of the -- the person who died that
21 gave rise to the Estate?

22 A. McKee Boykin.

23 Q. Okay.

24 A. It was -- I can't remember the whole name. Everyone
25 called him McKee, but it is -- there's like four names

1 there.

2 Q. All right.

3 A. That was just the name that -- that we all called him.

4 Q. Okay. With respect to Whit and May, are they entitled
5 to anything from the Trust other than money, in your
6 view?

7 A. I have to tell you, I was so -- sort of persuaded by
8 Justice Toal when -- when she said that they have no
9 interest in the Residual, if I were them, I would ask
10 for some principal, etcetera. I didn't think of that
11 beforehand, but after thinking about it, it would be
12 sort of nice for them to have some principal to -- in
13 other words, build a house or -- or -- or buy land to
14 build a house on because they are in a very different
15 situation and have no long-term expectations for
16 family or whatever. I didn't realize you could; I
17 hadn't focused on that, and when she brought up the
18 fact that this language in the Will for their comfort
19 and all, I said, -- you know, that makes a lot of
20 sense. I just hadn't focused on it. Didn't -- didn't
21 have the experience to know that that was possible.

22 Q. What I'm -- what I'm getting at is, do they have a
23 right to dictate certain investment decisions?

24 A. I don't -- they are -- I think they would have the
25 right to go to Court and complain if they thought we

1 as Trustees were acting inappropriately. They would
2 have the right to seek to have us surcharged. They
3 would have the right to seek to have us removed. I
4 don't necessarily -- I mean, I think they could give
5 us -- they could say, -- you know, you all really
6 ought to look at doing this. I don't -- I think that
7 would be in the way of advice as opposed to a dictate.
8 Dictate is pretty strong language.

9 Q. Well, or demand. Demand that certain investments,
10 particular investment decisions, be made. For -- for
11 example, if they were receiving what you consider to
12 be an appropriate annual distribution of money equal
13 to a certain percentage of the Trust's assets, would
14 they have any basis to complain if -- if ---

15 A. Depends on the circumstances. I couldn't tell you
16 that. I think that brings up a very fundamental
17 disconnect, though, between my view of what should
18 happen for beneficiaries and what appears to be May
19 and, -- I mean, Alice and Mary Deas' view. They seem
20 to start from the point that Whit and May should get
21 what they've had to live on all their life up until
22 the time Alice died or maybe a little bit more,
23 whereas I start from the -- the proposition that
24 they're entitled, whether there's any need whatsoever,
25 at least a minimum amount, and that minimum amount in

1 my view, absent extraneous, you know, some exigent
2 circumstance, should be at least Three Percent (3%).
3 And probably since they do not have any children or
4 anything, I -- and I think they -- it isn't just their
5 entitlement; it's all four of them are entitled to it,
6 whether they need it or not. If Mary Deas was married
7 to you know, the -- to Bill Gates, she would still be
8 entitled to that percentage of income. That's my view
9 of my responsibilities as a Trustee. It has nothing
10 to do with need. Need comes in where you want to
11 invade principal or -- or something like that
12 probably, but I don't think and -- and, you know,
13 what's the fair number -- the fair number might be
14 Three and a Half Percent (3 1/2%), could be Four
15 Percent (4%). It all depends on, you know, what's
16 going on -- what's going on in the Trust, how are you
17 doing, and I think it's very important that the Trust
18 grow in size, and I didn't realize just how important
19 that was until I've looked back over the years at how
20 the distributions have grown in the Trust that I
21 manage. For example, in 2016 -- for 2017, we
22 increased the distributions Fourteen Percent (14%) for
23 the beneficiaries, income beneficiaries, and for this
24 2018, we increased it another Fourteen Percent (14%).
25 So, that's compounded now. And that's because of

1 growth in the corpus of the Trust. And so, the growth
2 affects existing income beneficiaries as well as the
3 remaindermen.

4 Q. All right.

5 MR. BECKER: I don't think I have any
6 further questions.

7 MR. TETTERTON: Larry, how are we doing
8 on the ---

9 MR. WHITE: If you can do it in fifteen (15)
10 minutes, we'll be fine.

11 MR. DUFFY: I think we can do that.

12 MR. WHITE Okay.

13 MR. DUFFY: All right.

14 EXAMINATION BY MR. DUFFY:

15 Q. Rigdon, between approximately April and October 2017,
16 how many times did you and Alice and Mary Deas meet as
17 Co-Trustees?

18 A. Between April of when?

19 Q. Excuse me. Approximately March 2017 ---

20 A. March?

21 Q. -- into October?

22 A. And -- well, we met once between -- in May. May -- I
23 can't remember the exact date -- and then we didn't
24 meet again until November 9th or something in 2017.

25 Q. What was your understanding about why you all weren't

1 able to meet as Co-Trustees?

2 A. I kept asking for meetings. I think for the first
3 couple of months, the reason between March and the May
4 meeting, I had hoped it was because that time was
5 being taken up by them doing a plan, which Mary Deas
6 continually assured me they were doing, and so, I
7 didn't get too upset about that. I didn't get real
8 upset until we had the meeting in May and there was no
9 plan at that meeting. I thought I was going to get
10 the plan and there was no plan.

11 Q. And to this day, have you seen such a plan?

12 A. No.

13 Q. Have you continued to ask for it?

14 A. Yes.

15 Q. In January I think of 2018, you wrote a letter or an
16 e-mail to the Trustees saying you still had not yet
17 seen a plan?

18 A. Yes. I -- I wrote -- I -- I'd have to look, but my
19 guess is there are at least -- at least six, seven,
20 eight e-mails or letters asking for a plan, asking for
21 -- and -- and frankly, I thought I was going to get
22 it. It wasn't until Jamie told us in November there
23 wasn't going to be a plan; I didn't realize that was
24 going to be ---

25 Q. And do you consider Jimmy LaFrage's fifteen (15) year

1 timber management projection to be a viable or
2 sufficient plan for managing the Trust?

3 A. No.

4 Q. Why not?

5 A. Because it only deals with the timber assets, number
6 one. It assumes a -- that you're not going to manage
7 the assets in an intensive timber management. It
8 assumes managing the timber assets in the same way
9 Alice had managed it except that we were going to cut
10 and thin on time, but we weren't going to do -- didn't
11 include in it the intensive practices people have
12 today such as the spraying, the burning, all of that
13 that people that are real serious about that timber
14 business do.

15 Q. And that's all of stuff you talked about earlier with
16 Mr. Tetterton that was related to Mulberry?

17 A. That's what Mulberry does.

18 Q. Right.

19 A. Yeah. Mulberry is real serious about it. They sort
20 of have to be because it's in a corporation, and a
21 corporation doesn't have the money to pay everything.
22 A couple of them have to pony up to the table and
23 supplement it. There's a lot of pressure to -- to
24 make ends meet.

25 Q. And going back to the fall of 2016, you talked about

1 the fact that at some point there was at least an
2 agreement maybe in principle to sell part of Millway
3 maybe west of 261, part of the swamp or the Swamp
4 Tract, the Yellow House Tract, Sumter Mountain?

5 A. I don't think there was an agreement on the Yellow
6 House Tract other than we were going -- there was
7 agreement to sell part of it -- not -- not a majority
8 by any stretch. But there was agreement to sell Swamp
9 -- a hundred and forty (140) acres to the west of 261,
10 Sumter Mountain, and some other land, too, because I
11 remember showing more pieces to Mulberry. I will
12 contact Mulberry and ask them exactly what were they
13 shown in total.

14 Q. And those tracts were quote, unquote, "treasured
15 tracts"; correct?

16 A. No, the only tracts that were treasured tracts out of
17 that or part of treasured tracts was the hundred and
18 forty (140) acres I believe on the west side of 261
19 and the Swamp Tract. The treasured tracts actually
20 are less land than most people think. They're the
21 most valuable pieces of land, but I think Alice has
22 taken the position very strongly that she does not
23 want to just keep the treasured tracts; she wants to
24 keep all the land that is basically in -- in Kershaw
25 County south of -- of Camden.

1 Q. Okay. Well, in other words, those tracts that you
2 mentioned, you all agreed to sell at least some
3 portion of those tracts that ---

4 A. Treasured ---

5 Q. -- were -- were treasured tracts, ---

6 A. Yes.

7 Q. -- and Mary Deas and Alice had agreed to sell them?

8 A. At that point in time, yes.

9 Q. Do you believe that's inconsistent with their -- your
10 understanding of their current position in this
11 lawsuit?

12 A. I don't think there's any question about that.

13 Q. And Rigdon, do you -- let me ask you this. Is your
14 recommendation or strategy or plan for this Trust
15 inconsistent in your view of Mr. Boykin, of Big Whit
16 Boykin's intent as expressed in his Will or anywhere
17 else?

18 A. I think Whit was -- was advised at the time he
19 prepared that Will by both me and others that Trust
20 Law would permit him to tie up this land way beyond
21 the death of Alice, Whit, Mary Deas and May because he
22 could have tied it up for the lives of Mary Deas'
23 children plus twenty-one (21) years, and that would've
24 probably extended this Trust for at least another
25 seventy (70), eighty (80) years.

1 Q. But my question ---

2 A. So, he didn't do that. That's because he didn't care
3 what happened if there was not a male heir from Whit
4 who could carry on this in the Boykin name. And I'm
5 not -- I'm not defending that decision on his part.
6 I disagreed with him in fact. But Whit was very, very
7 adamant about that.

8 Q. Okay. You talked a little bit earlier about serving
9 I think as the Executor of Ms. Waller's Estate, and
10 you mentioned a concern at one point that she did not
11 -- or perhaps it was the Trust in New York that there
12 was a concern that she would not disclose a self-
13 interested transaction; do you remember that testimony?

14 A. Yes.

15 Q. And you said at that time that you -- did you resign
16 as Trustee?

17 A. Yeah. The only way I could force the disclosure to
18 the beneficiaries of that transaction was to resign
19 and that way she was forced to disclose it. And they
20 agreed with the transaction. I -- I didn't resign in
21 order to try and stop the transaction; I resigned
22 because that was my duty as a Trustee if I couldn't
23 get her to do it.

24 Q. And that was my next question. Is that something you
25 did because you were -- you were fearful or conscious

1 of your obligations as ---

2 A. That was my obligation. I -- I couldn't fulfill it
3 without resigning and forcing that disclosure because
4 she had to explain why I resigned.

5 Q. And turning now to this litigation, were you ever or
6 are you now concerned about either you, yourself or
7 your Co-Trustees potentially breaching your duties as
8 -- as a Trustee?

9 A. I don't -- I don't do stuff based on fear of that. I
10 do stuff because I think it's the right thing. I
11 really think it's the best thing for the family and
12 the remainder people. You've got to understand that,
13 in large part, they are, even though I was not a child
14 of Whit or Alice's, I was as close to those children
15 as probably most brothers and sisters in the early
16 days. That grew apart as we grew older and I had less
17 contact with them, and also, I moved to New York. I
18 had a career to do.

19 Q. I think -- have you heard Mary Deas' testimony that it
20 was unfair to give up her inheritance by buying the
21 Mill Pond?

22 A. I think -- I think that's a basic misunderstanding
23 that Mary Deas has. She seems to -- she doesn't seem
24 to realize that when she -- if she bought the Mill
25 Pond, she was in essence injecting whatever it would

1 cost, the One point Five Million (\$1.5) or whatever
2 into the Trust and the Trust would earn money on that,
3 accrete, and that would be to her benefit; her kids
4 would get, not only the land that she had bought, she
5 would get whatever was done with the money she paid
6 for the land. I think -- I don't know -- that's the
7 only way I can interpret her remark.

8 Q. Mr Becker asked you earlier about your plan or your
9 strategy for investment of the Trust assets; is that
10 something you've got to reduce to writing?

11 A. Only from the standpoint of looking and seeing what
12 would be produced, what the income would be, likely,
13 and that kind of thing. Did I go and pick out
14 individual stocks, no. I did consult with Morgan
15 Stanley and get an idea of what they would do and
16 their advice; they are the advisers to the stock and
17 bond -- or they look -- financial assets we hold in
18 the Columbia River Trust.

19 Q. Okay. And if I could get you to look at I think it's
20 Exhibit Two; that's the Option Agreement.
21 Specifically, if you'll turn to Page Eleven.

22 A. Okay. Page Eleven. All right.

23 Q. Mr. Bundy was asking you earlier about the language
24 under the Rights of Purchaser, the section where it
25 said, "Any or all related parcels".

1 A. Okay.

2 Q. Do you recall that?

3 A. Yes.

4 Q. And he mentioned a concern that perhaps the Boykin
5 Mill Pond itself would not have to be donated to the
6 Land Management Organization; do you recall that?

7 A. Yes.

8 Q. If you go below the list of Land Management
9 Organizations to the next paragraph where it starts,
10 "If a Land Management Organization" -- do you see that
11 sentence?

12 A. Yes.

13 Q. Can you read that, please?

14 A. "If a Land Management Organization holding and
15 managing the Boykin Mill Pond" -- actually, there's a
16 typo there -- "and any" -- oh, no, it isn't a typo.
17 "And any related endowment ceases to operate as a
18 conservation entity, the purchased property and any
19 related endowment will be transferred to a similar
20 entity with the organizational structure to manage the
21 Boykin Mill Pond."

22 Q. Okay. Does that sentence provide any clarity for you
23 as to whether the Boykin Mill Pond will in fact be
24 donated a Land Management Organization under this
25 Option Agreement?

1 A. I'm not a real estate lawyer, but I thought it did it
2 already anyway.

3 Q. Okay.

4 A. So, if -- if there is something imprecise there and we
5 can clear it up, I'm all in favor of that. So, I
6 thank Mr. Bundy for that.

7 Q. And Rigdon, do you believe that you have an obligation
8 or a duty as a Trustee to bring the matter of this
9 Option Agreement before the Court?

10 A. Absolutely.

11 Q. And why is that?

12 A. Because I think it is -- it is allowing us to monetize
13 what is potentially an albatross for the Trust in a
14 way that achieves most of the goals a large number of
15 the family past and present would have for this
16 property. I.e., keeping the town and making it
17 relevant and keeping the Mill Pond so it -- and all of
18 that stays in its existence for the foreseeable
19 future.

20 Q. And Rigdon, in probably about two minutes, that are
21 left on the tape, is there anything else that you have
22 not testified to today that you would like to add with
23 respect to this case?

24 A. Yeah, there's one thing I would like to clear up
25 because Mary Deas -- Mary Deas brought up in her

1 deposition a -- a call that I had with her where I was
2 really, really ticked with her. I was really
3 irritated because she had consented to having Becker,
4 who wrote it on her behalf, a letter to me accusing me
5 of doing things, making expenditures that weren't
6 authorized when, as far as I was concerned, were
7 authorized, and just because we didn't have a piece of
8 writing -- that's why Karen went to writing because we
9 -- we started getting all of these things that
10 expenditures weren't authorized, and I -- and -- and
11 what really offended me in that letter was -- was like
12 I was some crook or something and -- and -- and I
13 asked her about it. And she said, "Well, I didn't
14 agree with that language, but Little Alice made me put
15 it in there." And when you don't have the -- when you
16 do things like that, to me, it was without honor, and
17 I was really irritated and expressed that to her at
18 the time. I've -- that was a fit of peak at the time,
19 and I think our relationship has been perfectly fine
20 since then. But I was really, really hot under the
21 collar at that -- especially when she told me she
22 didn't want it in there, but Alice made her do it.

23 Q. Okay.

24 MR. DUFFY: No more questions from me.

25 MR. TETTERTON: Did we make it?

1 VIDEOGRAPHER: Off the record or
2 deposition is concluded at 6:12.
3 (THERE BEING NO FURTHER QUESTIONS, THE DEPOSITION WAS
4 CONCLUDED AT 6:12 P.M.)
5

1

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

COURT OF COMMON PLEAS
2018-CP-28-00831

RIGDON H. BOYKIN, AS SOLE
DISINTERESTED CO-TRUSTEE OF
THE LEMUEL WHITAKER BOYKIN,
II, RESIDUARY TRUSTS A AND B,
PLAINTIFF,

vs.

TRANSCRIPT OF RECORD

MARY DEAS WORTLEY,
INDIVIDUALLY, AS CO-TRUSTEE
OF THE LEMUEL WHITAKER BOYKIN,
II, RESIDUARY TRUSTS A AND B,
CO-TRUSTEE OF THE LEMUEL
WHITAKER BOYKIN MARITAL
DEDUCTION TRUSTS A AND B, AND
AS CO-PERSONAL REPRESENTATIVE
OF THE ESTATE OF ALICE S.
BOYKIN; ALICE B. BELGER,
INDIVIDUALLY, AS CO-TRUSTEE
OF THE LEMUEL WHITAKER BOYKIN,
II, RESIDUARY TRUSTS A AND B,
AND AS CO-PERSONAL
REPRESENTATIVE OF THE ESTATE
OF ALICE S. BOYKIN; LEMUEL
WHITAKER BOYKIN, III; MAY
CANTEY BOYKIN; AND THEODORE T.)
WAGNER, B. BOYKIN WAGNER, MARY)
DEAS HEIMBACH, ALLIE BOYKIN
BELGER, AS BENEFICIARIES OF
THE LEMUEL WHITAKER BOYKIN,
II, RESIDUARY TRUSTS A AND B,
DEFENDANTS.

July 9, 2018
Camden, South Carolina

B E F O R E:

THE HONORABLE JEAN H. TOAL, JUDGE.

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Circuit Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

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P R O C E E D I N G S

THE COURT: Good morning, ladies and gentlemen.

This is in the matter of L. Whitaker Boykin, II, deceased, Rigdon Boykin, Trustee, against -- Petitioner, against Mary Deas Wortley, individually, and as co-trustee of the Boykin Trusts, and representative of the estate of Alice S. Boykin; Alice B. Belger, individually, and as co-trustee of the L. Whitaker Boykin trust, and co-personal representative of the estate of Alice Boykin; and individually L. Whitaker Boykin, III, and May Cantey Boykin.

And I mispronounced Ms. Boykin's name. It's Mary Deas.

This is a matter in probate court, which has been transferred to circuit court.

Although the court reporter has individually gotten your appearances, I'd like to start before we begin by having each of you recite your appearances as attorneys for the record so that our court reporter will have that when she transcribes this record.

Mr. Becker.

MR. BECKER: Your Honor, James Becker appearing for Respondents Mary Deas Wortley, Alice Belger, and the interveners, Deasy Heimbach, Boykin Wagner, Theodore Wagner, and Allie Belger.

1 Also with me is my partner, Mr. Rob Reibold, and our
2 colleague, Mary Cothonneau Eldridge.

3 THE COURT: Thank you Mr. Becker.

4 And it would be helpful -- I had forgotten that in
5 the caption, we, also, have the interveners. At a certain
6 point in time, supply our court reporter with a heading of
7 the case that, also, includes the interveners, please.

8 MR. BECKER: Certainly, Your Honor.

9 THE COURT: Thank you.

10 And, now, I turn to you, Mr. Rosen and Mr. Duffy.
11 And if you could recite your appearances.

12 Mr. Duffy.

13 MR. DUFFY: Your Honor, Liam Duffy for the
14 Petitioner.

15 THE COURT: And you are joined by Mr. Rosen?

16 MR. DUFFY: Yes, ma'am, Richard Rosen as well.

17 THE COURT: All right. And Mr. Tetterton.

18 MR. TETTERTON: Your Honor, I represent Lemuel
19 Whitaker Boykin, III, and May Cantey Boykin, the
20 Respondents.

21 THE COURT: Very good.

22 MR. TETTERTON: On the cross claim.

23 THE COURT: Ladies and gentlemen, you may proceed.
24 The Petitioners, of course, will begin the case.

25 Mr. Duffy.

1 MR. REIBOLD: Your Honor --

2 THE COURT: Yes, sir.

3 PRE-TRIAL MOTIONS

4 MR. REIBOLD: We -- I hate to interrupt. We did file
5 one last motion in limine yesterday afternoon that I would
6 like to take up before we start.

7 THE COURT: Well, hand it up to me then.

8 MR. REIBOLD: Thank you, Your Honor.

9 THE COURT: Is this completely addressed in the
10 testimony of Mr. Hardin?

11 MR. REIBOLD: It address two issues, Your Honor,
12 Mr. Hardin and -- and that's because of some new
13 information we obtained in witness lists and responses.

14 And it, also, addresses use of deposition transcripts
15 at trial, which is a separate matter.

16 THE COURT: It's kind of unsatisfactory to get that
17 so late and to have a huge multi-page document. You know,
18 I'm a speed reader, but I don't read that quickly. And I
19 don't want to interrupt this trial by spending a long time
20 on this.

21 But if you've got two issues, tell me what they are
22 briefly.

23 MR. REIBOLD: All right. With Mr. Hardin, Your
24 Honor, we have discovered in subpoena responses that what
25 we understood to be his role in the case and what we went

1 through at the motion hearing a couple weeks ago was that
2 he was supposed to have been counsel to Mr. Boykin in his
3 capacity as co-trustee of the case of other trusts to
4 provide advice on trust administration. And that was the
5 basis of your ruling that he could be a fact witness in
6 this case.

7 But what we've discovered is that he was never in
8 that role. In fact --

9 THE COURT: He was never what?

10 MR. REIBOLD: He was never in that role. The e-mails
11 that we have, the memos that he has written all indicate
12 that he has been almost exclusively mitigation counsel.
13 He's ghost written and done most of the research for what
14 you've received from the Petitioner --

15 THE COURT: All right. I understand that argument.
16 And, you know, we went over -- this is not new
17 information. All right. You all understood and had this
18 information well before we had the hearings last week.

19 His role -- I have ruled and he will be allowed to
20 testify in his role, attorney-client privilege having been
21 waived, as an attorney for Mr. Rigdon Boykin, one of the
22 trustees. And he will testify not about an expert
23 opinion.

24 I indicated that he is not going to be used as an
25 expert witness or qualified by me in that regard. But he

1 may testify as an attorney for Mr. Boykin. And your
2 construction of the fact that he's done a whole lot of
3 research and that helps the litigation proceed is
4 something that's been around since the case began and he
5 began his participation.

6 I will not grant a motion in limine to prevent his
7 testimony, having previously ruled as I have about that.
8 You've made your record for appeal on that matter. But
9 I'm not going to grant it.

10 What else have you got?

11 MR. REIBOLD: The second issue of Mr. Hardin's
12 testimony, Your Honor, is that in the pre-trial witness
13 disclosure, they indicated that he was going to testify
14 about his review of the materials and a comparison of the
15 complaints [phonetic].

16 Now, we feel that he doesn't have the right or
17 competency to do that. He doesn't have a particular
18 background in timber farming, investments, diversity of
19 asset portfolios. We don't believe he is qualified to
20 give expert testimony on those issues.

21 And, additionally, those weren't disclosed -- those
22 opinions weren't disclosed in the initial disclosure.

23 THE COURT: Well, again, I view it differently. He
24 is an attorney for the trustee. And he will give
25 testimony about the advice he has given Mr. Rigdon Boykin

1 as a trustee. And that advice will include his review of
2 timber matters and all the other financial matters you
3 just mentioned.

4 And, quite frankly, if someone of his experience, and
5 background, and years of practice at -- in the trust field
6 does not qualify him to examine financial information,
7 including timber matters and the like and advise a client
8 about that, I don't know who could ever be qualified.

9 Again, he is not being qualified as an expert
10 witness. So your argument about his ability as an expert
11 and his need to have some experience he doesn't have is
12 not a valid argument, in my opinion.

13 But beyond all that, if I were qualifying him as an
14 expert, I can't imagine anybody that would be more expert
15 at looking at financial matters than someone with the
16 experience that Mr. Hardin has had. You may fully explore
17 with him your feelings and your contentions about the
18 advice he has given on cross-examination, of course.

19 And I say this not to -- again, to complain with you
20 or criticize you at all. But the ruling I made embraced
21 the issues that you're talking about. And, therefore, I
22 will not grant the motion in limine with respect to
23 Mr. Hardin's testimony.

24 You, of course, have very properly made your record
25 for appeal, if a -- if such a day comes.

1 I, quite frankly, think that the expense both parties
2 have endured about this matter makes me still hopeful that
3 this matter may be resolved here. Because the matters
4 before me have to do with the capability and confidence of
5 the trustees and the plan each has for the furtherance of
6 the trust, and its objectives, and its financial
7 stability.

8 And those objectives are much wasted by continued
9 litigation among the parties and the expense that creates.
10 I am hopeful that after we've explored the positions that
11 some resolution may be had, rather than to spend years and
12 years in continued litigation.

13 MR. REIBOLD: I'll move on to the next point, Your
14 Honor.

15 THE COURT: All right, sir.

16 MR. REIBOLD: And that deals with deposition
17 transcripts and excerpts. We don't challenge the use of
18 the parties depositions. We don't challenge the use of
19 David Thomas' deposition, because that was agreed to by
20 the parties to be a de bene esse deposition.

21 But the Petitioner's have identified excerpts from
22 several other witnesses --

23 THE COURT: Which ones?

24 MR. REIBOLD: Peacock, Jimmy LaFrage. And who was
25 the third? Ansel Bunch.

1 THE COURT: All right.

2 MR. REIBOLD: And those people are within a hundred
3 miles of the courthouse. They're all alive. There's been
4 no showing that they're under a disability or that there's
5 been an inability to procure their attendance to trial.
6 Under Rule 302, we don't believe it's proper to use those
7 depositions here at trial.

8 THE COURT: Well, that's a bridge that will have to
9 be crossed when we reach it. I don't know what is
10 proposed to be offered. I don't know what will happen
11 with respect to live testimony from these three witnesses.

12 I am going to attempt with all of you to control how
13 much repetitive testimony is offered both live and by
14 deposition in this matter. This is a non-jury matter. I
15 am sitting as the judge of the law and the facts in this
16 matter.

17 I am very capable of taking written material. And
18 there's been a great volume of it already that I've tried
19 to absorb as best I can. And I am, certainly, capable of
20 taking these depositions and examining them for what
21 additional information they may give me.

22 So I don't -- I hold in abeyance any ruling about
23 this. But the concept that we would not look at any of
24 this deposition testimony does not line up with my desire
25 to move this case along and get factual information

1 wherever I can.

2 MR. REIBOLD: I understand, Your Honor.

3 THE COURT: All right. You may proceed.

4 MR. DUFFY: Your Honor, if I may. Just briefly
5 before we -- we present our first witness. One of the
6 things we tried to do in an effort to build on Your
7 Honor's note about moving this case along quickly is on, I
8 believe, Friday of last week, we supplied the Respondents
9 with a proposed exhibit list for the Petitioner.

10 Now, all the exhibits on here is about 175, for --
11 for the most part, either documents exchanged during
12 discovery. They are matters of public record or they are
13 meeting minutes and meeting -- transcripts of trustee
14 meetings.

15 And, perhaps, it's something we could take up at a
16 break. But we would, certainly, like to be able to move
17 those exhibits into evidence without having to go through
18 them one by one and --

19 THE COURT: I would much prefer that. I mean, I
20 cannot imagine that these matters having argued in
21 exchange is -- there's going to be any objection from
22 opposing Counsel. I want to very freely receive all these
23 pieces of factual information from both sides.

24 So I turn to you first, Mr. Reibold, are we going to
25 have a problem with that?

1 Or Mr. Becker?

2 MR. BECKER: Your Honor, I don't believe so. There
3 may be one or two. We -- as --

4 THE COURT: I don't want one or two. I want to be
5 able to solve this now. And I want to be able to admit
6 these documents now.

7 I hope they're sequentially numbered so that as they
8 go to the court reporter, she may very easily mark them
9 and put them in.

10 So I don't want to have to spend a whole lot of time
11 on these kind of technicalities when you know I'm going to
12 admit these things and ought to because they're factual
13 materials that are going to benefit you, as well as
14 opposing Counsel.

15 MR. BECKER: Very well, Your Honor. Then we -- we
16 have no objection.

17 THE COURT: Very good.

18 MR. DUFFY: And, Your Honor, we have an exhibit list
19 here that -- that has all of them in sequential order.

20 THE COURT: Excellent. And I expect that you will
21 give the same treatment to Mr. Becker when his exhibit
22 list is offered.

23 MR. DUFFY: Absolutely, Your Honor.

24 THE COURT: Very good.

25 MR. DUFFY: Your Honor, the Court needs no

1 orientation with respect to this case. Unless Your Honor
2 feels differently, we'll -- we'll dispense with an opening
3 statement given that there's no jury here today and call
4 our first witness.

5 THE COURT: I think that would be well.

6 MR. DUFFY: Well, Your Honor, not to be
7 anticlimactic, but our first witness is going to be
8 appearing by video deposition.

9 We call Alice Belger by video deposition. And these
10 are excerpts from her deposition, which was taken, I
11 believe, on February 26th of this year. And this includes
12 both Petitioner's and Respondents designations for her
13 deposition.

14 I will add that the -- both parties have agreed to
15 admit into evidence the entire depositions of Ms. Belger
16 and Ms. Wortley. But for the benefit of the Court, we, of
17 course, are not going to play the entirety by video. This
18 is merely -- certainly more than a sound bite. But that's
19 the idea, Your Honor.

20 THE COURT: All right. Let me be sure in a record
21 sense that I understand that Ms. Belger and Ms. Wortley's
22 depositions, in addition to being videoed, have been
23 reduced to a typed format and will be available to me to
24 read. So they are admitted.

25 And I think I may have them here, do I not?

1 MR. DUFFY: You -- you should, Your Honor.

2 THE COURT: Okay. Let's get that out of the way
3 right now. I have Alice Belger.

4 Madam Court Reporter, this will be Petitioner's
5 Exhibit No. 1. And I have Mary Deas Wortley. And this
6 will be Petitioner's Exhibit No. 2.

7 MR. DUFFY: Your Honor, if I may, just for the sake
8 of keeping exhibits clean, is there any way that we might
9 admit those as Exhibits No. 1-A and 1-B, given that we've
10 already got an Exhibit No. 1?

11 THE COURT: Sure.

12 1- A and 1-B, if you will, Madam Court Reporter.

13 (WHEREUPON, Plaintiff's Exhibit Nos. 1-A and 1-B were
14 marked for identification and admitted into evidence.)

15 THE COURT: And let me just ask one further
16 clarifying question. The excerpts from Ms. Belger's
17 deposition, understand that both sides have designated
18 material from her. I will not exclude Respondent from the
19 ability to call her live, if that becomes desirable. I
20 won't say that it's necessary. And if it's repetitive, I
21 would hope it wouldn't be done.

22 But I am not going to preclude Respondent from
23 calling either Ms. Alice Belger or Ms. Mary Deas Wortley
24 by live testimony, if it becomes necessary.

25 MR. DUFFY: That's fine, Your Honor. Yes.

1 THE COURT: All right. You may proceed.

2 MR. DUFFY: Just a moment, Your Honor.

3 (Pause.)

4 THE COURT: Hit the maximize button to make it
5 bigger. But, also, what's the matter with the audio?

6 UNIDENTIFIED MALE: The audio had some issues we were
7 testing last night and is not working right now.

8 May I have a few minutes to try to work with it? Or
9 the Wortley deposition is, also, prepared and ready to go.
10 Or I can switch it to the backup computer and it will
11 play, but without the closed captioning.

12 THE COURT: How long is it going to take you?

13 UNIDENTIFIED MALE: To try the backup computer --

14 THE COURT: No. I'm not talking about the backup.
15 How long is it going to take you to get this thing
16 working? That's exactly why I wanted y'all here early
17 this morning.

18 UNIDENTIFIED MALE: I understand. One moment while I
19 do a test.

20 MR. DUFFY: Thank you, Your Honor.

21 UNIDENTIFIED MALE: Thank you for your patience.

22 Also, I did test the Mary Deas Wortley this morning.
23 And the audio was working fine, if we need to switch to
24 that.

25 THE COURT: All right. That might be well. But

1 let's see if we can -- I'll give you one more chance on
2 the Belger.

3 UNIDENTIFIED MALE: Thank you.

4 (Pause.)

5 THE COURT: Madam Court Reporter, while our
6 technician is working with the video deposition, let me,
7 also, place upon the record the following: Ms. Tina
8 Cundari is present. She has been appointed as the
9 attorney for the trust.

10 And the parties are well aware of her role in this
11 matter. She is not involved in presenting in the
12 litigation. But she's an attorney for the trust. And if
13 there comes a point in time when she feels the need to
14 participate, the parties understand that I will allow her
15 to do so.

16 All right. At the end of the proceedings, if she has
17 not had a chance to participate and feels it would be
18 helpful to the Court to issue any kind of report, then I
19 may invite her to do so. And, of course, the parties will
20 receive it and have a chance to react to it.

21 So thank you, Ms. Cundari.

22 (Pause.)

23 THE COURT: No good?

24 UNIDENTIFIED MALE: No good. But the Wortley one is
25 prepared.

1 THE COURT: All right. Let's -- we'll proceed to the
2 video deposition of Mary Deas Wortley.

3 (WHEREUPON the following excerpts from the video
4 deposition of Mary Deas Wortley were played in open
5 court.)

6 *Q. And Jane -- Jane Peacock, when did you talk to*
7 *her?*

8 *A. Well, it's hard to recall. Mostly, I guess I*
9 *e-mail Jane. We've talked a couple of times*
10 *because -- it was mostly always over Trust*
11 *matters. And I had some confusion over -- the last*
12 *trust meeting we had in her office, I found I had*
13 *a lot of questions after that about how you decide*
14 *which part of a sale goes to principal and which*
15 *part goes to income, net. And -- and IRS Rules*
16 *about -- the IRS Rules about calculating the*
17 *growth rate of trees in the accounting period, I*
18 *needed some clarification on that.*

19 *Q. Was she able to provide clarification for you*
20 *to --*

21 *A. Right away, I started working as a school*
22 *teacher for Georgetown Day School in Washington*
23 *D.C.*

24 *Q. How long were you a school teacher?*

25 *A. Oh, my gosh. I can't remember. Until -- I would*

1 say about five years, but I'm just -- I'd have to
2 go back. I'm not, you know -- I can't remember
3 exactly when I quit. It was when I married Teddy
4 and moved away from D.C.

5 Q. Okay.

6 A. I just don't ---

7 Q. After you worked as a school teacher, did you
8 work anywhere else?

9 A. Yes.

10 Q. Where?

11 A. I worked for Butler County Children Services
12 as a Social Worker for abused and neglected
13 children.

14 Q. How long?

15 A. Beg your pardon?

16 Q. How long did you do that?

17 A. Fifteen (15) years.

18 Q. And after you worked for fifteen (15) years as
19 a Social Worker, what did you do after that?

20 A. I retired.

21 Q. Now, I'm going to ask you some personal
22 questions. Do you own any stocks?

23 A. Yes.

24 Q. Are they just in your name?

25 A. Well, I had them invested with Ansel Bunch at

1 *Ameriprise Financial; so, they're not in my name.*

2 *Q. Is he your -- is he your financial advisor?*

3 *A. Yes, he is.*

4 *Q. How long has he been your financial advisor?*

5 *A. I can't remember. Before my financial advisor,*
6 *he advised my mother and I on the Marital*
7 *Trustee, and I can't remember what year we*
8 *started investing with him.*

9 *Q. And I don't know Ansel -- Bunch is it?*

10 *A. Yeah. Bunch.*

11 *Q. Where -- where is he located?*

12 *A. Columbia.*

13 *Q. Can you tell me the size of your stock*
14 *portfolio or your investment portfolio?*

15 *A. It's not very big. It's about Ninety Thousand*
16 *(\$90,000.00).*

17 *Q. Can you tell me about how long you've had that*
18 *portfolio, that investment with Ansel Bunch?*

19 *A. Well, I'll just have to say approximately*
20 *because I can't remember what year we started,*
21 *but I would say maybe approximately ten years.*

22 *Q. Prior to that -- prior to that, did you have*
23 *any investments other than in land?*

24 *A. Well, once when I was a school teacher, I*
25 *talked to someone who worked for Northwest Orient*

1 Airlines who talked it up big and I put some of
2 my hard earned school teacher salary into that,
3 and I don't know if you're familiar with what
4 happened to them but it was a big mistake.

5 Q. Do you have any other investments other than
6 your portfolio with Mr. Bunch?

7 A. No.

8 Q. And did I understand you to say you have only
9 had that for ---

10 A. I have to -- I have an IRA that's invested
11 with an investor here. A small IRA.

12 Q. And who is your investor there?

13 A. Tim Brown. He works with Smith Barney.

14 Q. And the size of that investment?

15 A. I don't think it's -- I don't -- I don't --
16 it's probably up to Ten Thousand (\$10,000.00)
17 now. I can't remember. Maybe Twenty (\$20,000.00).

18 Q. Do you rely on Mr. Bunch and Mr. Brown to make
19 decisions about your investments?

20 A. Yes.

21 Q. Do you rely on anyone else to advise you about
22 your investment decisions?

23 A. No.

24 Q. Was this the first time you had ever served as
25 a Trustee of a Trust?

1 A. Yes.

2 Q. Did you have any prior experience whatsoever
3 administering a Trust?

4 A. No.

5 Q. Has anyone ever explained to you the duties of
6 a Trustee?

7 A. Yes.

8 Q. Other than your lawyer, who would that be?

9 A. Rigdon Boykin.

10 Q. Tell me a little bit about what you know about
11 Rigdon's background in business.

12 A. I know he's a lawyer specializing in energy
13 law.

14 Q. Okay. Anything else?

15 A. Well, I know of a business venture he had in
16 Russia that he hired my son, and it did not pan
17 out. He went broke.

18 Q. Okay. All right.

19 A. And closed that business down.

20 Q. Sorry? I'm having a hard time hearing you.

21 A. He -- he -- he invested a lot of money in that
22 business and it didn't work out, and he closed it
23 down after several years.

24 Q. But was that his business?

25 A. It was Rigdon's business ---

1 Q. Okay.

2 A. -- in Russia.

3 Q. All right. When he was -- when he was Trustee
4 involved in your mother's Trust, did you rely on
5 him for advice?

6 A. Yes. When it involved the assets in Residuary
7 And, sometimes otherwise, too, especially at
8 first.

9 Q. Have you ever read the South Carolina Uniform
10 Prudent Investment Act?

11 A. Yes, I have. Rigdon had me read it years
12 before my mother died.

13 Q. Okay. And what was your understanding of the
14 Uniform -- South Carolina Uniform Prudent
15 Investment Act?

16 A. It concerns the duty to diversify.

17 Q. And ---

18 A. And it points out circumstances where that
19 duty is -- can be waived, such as a closely held
20 family business or language as such, and so, I
21 think we have a duty to diversify that -- those
22 conditions.

23 Q. All right. Are you fully familiar with the
24 Uniform Prudent Investment Act; do you think you
25 fully understand it?

1 A. I think I fully understand it more or less. I
2 mean, I'm not a lawyer; so, I understand I think
3 how it applies to our situation, yes.

4 Q. Well, what is your understanding of a duty --
5 of the duties of a Trustee in a Trust as large as
6 this one of your dad's?

7 A. Well, I think our duty is to manage the Trust
8 as reasonably and prudently as we possibly can
9 while still following the wishes of my father.
10 And I think that we have to weigh the benefits of
11 the income beneficiaries as well as the
12 remaindermen, and we have to be fair to everyone.
13 And I think we have to consider the duty to
14 diversify, but we have to balance that with the
15 wishes of my father as clearly expressed in his
16 Will.

17 Q. You fully understand or do you fully
18 understand the terms of your father's Will?

19 A. I think I do.

20 Q. Okay. And what are the terms of your father's
21 Will as it pertains to you, Alice, Whit and May?

22 A. We are the income beneficiaries, and we are
23 entitled to share the net profits of the Trust.

24 Q. Anything about the principal being
25 distributed?

1 A. Yes. We're entitled to distribute principal at
2 our discretion when we feel there's a need.

3 Q. Do you think that there are any terms of your
4 1 father's Will that may conflict with the Uniform
5 Prudent Investment Act?

6 A. I think the terms of my father's Trust
7 document override the Prudent Investor Act. That
8 does not mean we shouldn't consider it.

9 Q. And which parts of your father's Will do you
10 say are in conflict with the Uniform Prudent
11 Investment Act?

12 A. His desire to keep the treasured tracts in the
13 family, his desire to leave them as a legacy to
14 his grandchildren. You -- you knew my father,
15 didn't you? He was -- he was generally admired by
16 everybody. I can't tell you how many people spoke
17 to me about what a wonderful father I had.

18 Q. So, if ---

19 A. And everybody knew he loved his children and
20 he loved his land and he wanted very much to pass
21 that legacy to his grandchildren and keep it in
22 the family as long as he could, and I think
23 everybody understood that who knew him.

24 Q. Okay. So, is it your -- is it your position as
25 the Trustee of that Trust to hold on to all the

1 land as long as you can for the benefit of your
2 children and Alice's child?

3 A. Well, you said "All of the land." No. I do not
4 feel we have to hold on to all of the land.

5 Q. Which land do you think you've got to hold on
6 to for the benefit of your children and Alice's
7 children?

8 A. The treasured tracts.

9 Q. If you would, tell me what you consider the
10 treasured tracts.

11 A. The land around Millway. The yellow house if
12 it's spelled out in the Will. The Gilley's tract,
13 the Laney tract, the Mill Pond. Those tracts held
14 out in the Will as treasured tracts. Broadway
15 Plantation.

16 Q. Is there any circumstance under which you
17 think the Trust should dispose of those tracts
18 you just mentioned?

19 A. If we were broke. If we were going bust or if
20 there was some horrible catastrophe, but I can't
21 see that we have any of those conditions now.

22 Q. What are the -- what are the assets of the
23 Trust as we speak?

24 A. Well, it's my understanding we have about
25 Twenty-two Million and -- we have about

1 *Twenty-two Million in land, about Three Million*
2 *in cash and about Two Million in commercial*
3 *properties.*

4 *Q. Have you in your mind developed an investment*
5 *strategy of how to administer this Trust?*

6 *A. Yes, it's a sort of a -- I wouldn't say it's a*
7 *thorough complete investment strategy but, yes, I*
8 *have an idea of how we would manage it.*

9 *Q. Okay. What is your -- what is your suggestion*
10 *for a plan or investment strategy to administer*
11 *this Trust? As we ---*

12 *A. I believe ---*

13 *Q. As we sit here today -- as of today. First of*
14 *all, have you developed in your mind an*
15 *investment strategy for the Trust?*

16 *A. General - a general investment strategy.*

17 *Q. And what ---*

18 *A. I can't say I ---*

19 *Q. I'm sorry. And what is that?*

20 *A. I think we do need to diversify further. I*
21 *think we do need to protect. I think we do need*
22 *to protect the treasured tracts. I think we need*
23 *to sell some of our assets then and invest them*
24 *in the stock market. But I think we have to do it*
25 *carefully and prudently. We cannot rush into*

1 *dumping a whole lot of land on the market. It*
2 *would -- it would ruin the costs and drive*
3 *everything down. I think we need the luxury of*
4 *time to manage our timber resources and sell what*
5 *we can and see how it goes.*

6 *Q. Have you suggested or you have developed in*
7 *your mind a percentage of assets that should be*
8 *put into a diversif -- diversification strategy?*

9 *A. No, because I think percentages vary according*
10 *to a lot of variables, and I would not be able to*
11 *give you a percentage now. I do -- I will admit*
12 *that Ninety Percent (90%) in timberland and*
13 *farmland is too much. I think we need more*
14 *diversity than that. I -- I'm not prepared to say*
15 *what percentage.*

16 *Q. So, I understand your testimony is, you have*
17 *no idea at this point what percentage you think*
18 *should be held in real estate and what percentage*
19 *should be used for diversification; is that*
20 *correct?*

21 *A. I don't think it's possible to tell that at*
22 *this time given the nature of our timber*
23 *business.*

24 *Q. And what is the nature of the timber business?*

25 *A. I think the timber business is a very*

1 *profitable business. And I think that,*
2 *considering that we have a very profitable family*
3 *business that my father built up, he earned Two*
4 *Million dollars (\$2,000,000.00) starting out with*
5 *very little, and I'm still learning and enjoying*
6 *the proceeds of this business. I think that it's*
7 *a very fine business and we should try to remain*
8 *in it as much as possible and that perhaps we*
9 *shouldn't be in the stock market half and half; I*
10 *do not know. But I do believe that we have to*
11 *balance stock market and timber business.*

12 *Q. So, as I understand your testimony, you would*
13 *agree that the Trustees have a duty to divest --*
14 *to divest -- to diversify the assets of the*
15 *Trust; is that correct?*

16 *A. That's correct.*

17 *Q. Are there any special circumstances that would*
18 *cause you and the Trustees to vote not to*
19 *diversify?*

20 *A. I can't say. I don't know what the*
21 *circumstances would be. I can't answer that.*

22 *Q. As a Trustee, what is the -- what are the*
23 *reasons to diversify the assets of a Trust this*
24 *large?*

25 *A. It reduces risks.*

1 Q. Okay. Have you considered ---

2 A. Diversify to reduce risks.

3 Q. Any other reason to diversify other than to
4 reduce risks?

5 A. Well, I would think -- I don't want to say
6 under productive assets because my father
7 particularly said in his Will that we should
8 not -- we should hold on to the treasured tracts
9 even if they were under productive assets. But
10 perhaps other under-productive assets we should
11 sell.

12 Q. Would you also agree that one of the reasons
13 to diversify other than risks would be to create
14 growth in the assets?

15 A. Yes, but I think holding on to the land
16 creates growth, too. I know the property around
17 Millway was about -- valued at about Three
18 Hundred and Fifty Thousand (\$350,000.00) when my
19 father died, and now it's valued over a Million.
20 So, I think you have growth in the land as well
21 as growth in the stock market.

22 Q. Have you considered any other investment
23 strategies other than the stock market?

24 A. You mean financial or what?

25 Q. Financial.

1 A. What -- no.

2 Q. So, the only future remaindermen would be your
3 children and Alice's child; is that correct?

4 A. Correct.

5 Q. Do you consider whether or not Whit or May
6 would have some expectations of getting some land
7 during the administration of this Trust?

8 A. I don't think they have expectations of
9 getting land.

10 Q. Well, you ---

11 A. They have expectations of getting money. Well,
12 that's for reasons to protect Whit. He has a
13 house we -- we built for him, and it is in the
14 Trust on purpose to protect Whit so that he won't
15 lose it. But it is his house. Everybody
16 understands that. It was built for him.

17 Q. Who owns that house?

18 A. The Trust.

19 Q. Is that the house he's presently living in?

20 A. Yes.

21 Q. Okay. Tell me -- tell me what distributions
22 you as a Trustee intend to make to my clients,
23 Whit and May, in ---

24 A. Well, I intend to distribute the net income of
25 the Trust to them; that's what they're entitled

1 to receive. If they would want to somehow do a
2 deal for the land, I don't see why we couldn't
3 work that out. As far as I know, so far, they're
4 only asking for money.

5 Q. How would you -- how would you suggest as a
6 Trustee to generate monetary net income for Whit
7 and May?

8 A. I think we can diversify -- well, this year we
9 had a net income of probably Eight Hundred and
10 Fifty some Thousand Dollars (\$850,000) using
11 timber and rentals and one sale of land.

12 Q. Was that net or ---

13 A. And ---

14 Q. I'm sorry. Was that net or gross?

15 A. That's net. The gross -- I'm trying to think
16 what the gross was. The gross was One Million
17 Twenty-four Thousand (\$1,024,000) or so. And then
18 of that, you know, the large portion, about Six
19 Hundred Thousand (\$600,000.00) or so or more was
20 in timber and then close to Three Hundred
21 Thousand (\$300,000.00) was in rents.

22 Q. What do you -- what do you consider a
23 reasonable income distribution to my clients,
24 Whit and May, on an annual basis?

25 A. Well, they have been receiving a Hundred

1 Thousand (\$100,000.00) a year which I thought was
2 very reasonable. We have offered them more which,
3 as you know, was turned down. We offered a
4 Hundred and Forty (\$140,000.00). I think that's
5 more than reasonable. I think that's more than
6 most people make. I never made it in my lifetime,
7 that much. I think it's not only reasonable, it's
8 generous.

9 Q. But wouldn't you agree that most people don't
10 have an interest in a Twenty-two Million Dollar
11 (\$22,000,000) Trust?

12 A. But they don't have an interest in it; they
13 are income beneficiaries of it. And they are left
14 the net. I am all in favor of giving them more
15 than the net income, but I'm not in favor of
16 giving them so much more that it affects the
17 rights of the others. Alice and I have -- it
18 affects the rights of the others. Alice and I
19 have -- we -- well, we will forego some of our
20 income in the years when there's not enough for,
21 say, a Hundred and Forty Thousand (\$140,000.00)
22 for all of us. We will forego some of our income.
23 And I have talked that over with Karen, and she
24 said in the years where we're short of income,
25 that we can distribute some from principal

1 without any harmful tax problems for the Trust.

2 So, if we want to give up our income from -- some
3 of it if it's necessary to meet the guarantee
4 that we have offered them, yes.

5 Q. What are the risks of holding the timberland?

6 A. I think it's a very safe investment.

7 Q. What is it safe from? What -- what could
8 possibly ---

9 A. Say, for instance, you remember about three
10 weeks ago, the stock market lost a thousand
11 points. During that time, the timber didn't budge
12 one inch, not one iota.

13 Q. Do you keep up with the stock market on a
14 daily basis?

15 A. No. I wish I did, but I don't.

16 Q. Do you know what the stock market has done
17 since you became the Trustee, the first time you
18 became the Trustee?

19 A. No, I don't.

20 Q. So, do I understand you to say you have no
21 idea the gains that the stock market has made in
22 the last three or four years; is that correct?

23 A. I would -- I would say in some cases, I know
24 that Ansel Bunch did very well with our -- my
25 portfolio, and I would say Six Percent (6%);

1 sometimes in the last little bit when the stock
2 market has been on a boom, probably more than
3 that.

4 Q. So, my question was, what are the risks of
5 holding timberland?

6 A. I don't see that there are many risks. I guess
7 Hugo was a risk.

8 Q. In fact, in Hugo, the majority of your
9 father's holdings were destroyed; is that
10 correct?

11 A. No, that's not correct. We salvaged every
12 single tract, and we made a lot of money from
13 that salvage. I remember that Jimmy LaFrage
14 worked on it, and we had to get a -- another
15 forester from North Carolina to help there was
16 such demand for logging then. But my father had
17 such respect among the community that he was able
18 to get the loggers ahead of a lot of people and
19 we established every single tract, and we made a
20 lot of money -- not probably as much as we
21 should -- would have made without Hugo. I mean,
22 some of the stuff that was to be soft timber
23 ended up pulpwood, but not all of it, and I think
24 we made over Six Hundred Thousand Dollars
25 (\$600,000.00) after Hugo from different

1 *properties as I recall. A long time ago. But as I*
2 *recall, we made a lot of money.*

3 *Q. Wouldn't weather be a considerable risk with*
4 *holding most of your assets in timberland?*

5 *A. I'm sure that it's less risky to diversify,*
6 *and I think we should aim at more diversity. I*
7 *agree with you -- if that's what the point you're*
8 *trying to make -- a wonderful business. Timber is*
9 *a wonderful business. My father built up this*
10 *whole Estate in the timber business. And Alice,*
11 *Big Alice, and I, more than doubled it in the*
12 *timber business. I don't think that's a bad*
13 *record.*

14 *Q. Well, when do you think would be the proper*
15 *time for you to consider diversifying?*

16 *A. I think we have to diversify as we go along. I*
17 *think whatever profits we make, we invest in the*
18 *stock market.*

19 *Q. And what ---*

20 *A. I think we can sell certain lands. We have --*
21 *we have Four Million Dollars worth of land for*
22 *sale now if I recall.*

23 *Q. So, you're projecting ---*

24 *A. And timber -- we have timber to cut of One*
25 *point Three Million (\$1.3), and we have*

1 *properties listed for sale at about Four Million*
2 *but we can't say if they're going to all sell in*
3 *2018, the properties.*

4 *Q. Which properties ---*

5 *A. So ---*

6 *Q. Which properties do you have ---*

7 *A. These are ---*

8 *Q. I'm sorry. Which properties do you have listed*
9 *for sale?*

10 *A. There's a list of properties -- I'm sure you*
11 *have them -- which we have on track but there are*
12 *certain commercial properties and there are a*
13 *bunch of Peckwoods properties and there are six*
14 *or eight timber farmland properties. Would you*
15 *like me to read them to you? I have the list*
16 *here. They're part of my sister's Exhibit A, I*
17 *think.*

18 *Q. What -- are there any Trust assets that you*
19 *consider unsuitable to hang on to that you*
20 *should ---*

21 *A. Yeah.*

22 *Q. Which ones are those?*

23 *A. Well, I mean, my father's old buildings*
24 *downtown. I think -- I understand that they are*
25 *going to make a green space in the space that*

1 used to be the farmer's market behind the old big
2 building that my father had there, 1 Commerce
3 Alley. And so, that might help the sale of it,
4 but I think the downtown is so dead, it's going
5 to be -- I think we need to get -- we need to
6 sell it. I really do. And maybe that green space
7 will help us.

8 Q. Okay. My question again was, which of the
9 Trust assets do you think are unsuitable to hang
10 on to, and you were looking at Exhibit C attached
11 to your sister's Affidavit?

12 A. That's right.

13 Q. And tell me which ones of those you think
14 should be sold right away.

15 A. All of them.

16 Q. Have ---

17 A. Provided -- sorry.

18 Q. Ma'am?

19 A. All of them.

20 Q. Okay.

21 A. At a fair price. Fair price.

22 Q. Let me make sure I understand your testimony.
23 You're telling us that everything on Exhibit C to
24 your sister's Affidavit, which was dated January
25 24th of 2018, should be sold as -- should be sold

1 *as soon as possible?*

2 *A. Yes. For a reasonable price.*

3 *Q. And what -- what part of that would you be*
4 *willing to distribute to them? All of it -- I*
5 *mean, a fourth of it or ---*

6 *A. No, it depends on each year; say, we guarantee*
7 *them a Hundred and Forty Thousand (\$140,000.00).*
8 *If we come up short, then we deliver the rest*
9 *from principal.*

10 *Q. Are you willing to ---*

11 *A. It would depend on how much net we have to*
12 *offer first to distribute.*

13 *Q. Are you -- are you and Alice as Trustees*
14 *agreeable to guaranteeing Whit and May a Hundred*
15 *And Forty Thousand Dollars (\$140,000.00) a year?*

16 *A. Yes, we've made that offer.*

17 *Q. Okay. That's only as income and no*
18 *distribution of land; is that correct?*

19 *A. I have no idea because I didn't know land even*
20 *came into it.*

21 *Q. But -- but would you be willing to give them*
22 *some land if they had a particular piece of land*
23 *they wanted at fair market value?*

24 *A. Yes, my sister wanted -- May wanted fifteen*
25 *(15) acres, and we offered to give her a life*

1 *interest in it instead of selling it to her. But*
2 *for some reason, that was judged not -- she*
3 *didn't want it. Or Rigdon judged -- someone said*
4 *we should have rejected that, that she wanted to*
5 *actually buy it.*

6 *Q. So, in light of you offering to give May some*
7 *land in addition to net income, I understand you*
8 *to say you also are willing to give May and Whit*
9 *some additional land holdings; is that correct?*

10 *A. Well, maybe it should be weighed into their*
11 *distributions. I mean, we've already given May*
12 *fifty two (52) acres.*

13 *Q. Are you ---*

14 *A. Fifty-two (52) acres all in her own name, not*
15 *half interest, but full interest in fifty-two*
16 *(52) acres, prime acres ---*

17 *Q. Did she buy ---*

18 *A. -- on May's Hill.*

19 *Q. Did she buy that or give it to her -- you all*
20 *gave it to her?*

21 *A. Given to her.*

22 *Q. Are you ---*

23 *A. Gifted.*

24 *Q. Are you -- that was from the Trust assets?*

25 *A. Well, we had to swap. Would you like to hear*

1 the story of how that was done?

2 Q. No, ma'am. I just want to know -- answer my
3 question. Was that from the Trust assets?

4 A. That was from Alice Boykin assets.

5 Q. And Whit is paying a Thousand Dollars
6 (\$1,000.00) a month for a small house and Alice
7 is paying a Thousand Dollars (\$1,000.00) for
8 Millway?

9 A. I'm not sure. I mean, I think Whit's paying a
10 Thousand (\$1,000.00), but we don't want him to
11 have to pay any rent. I don't know -- even
12 understand why he's paying a Thousand
13 (\$1,000.00). We offered to have him have that
14 house free, but for some reason, Rigdon objected
15 to that.

16 Q. Well, isn't it the duty of the Trustees to
17 collect rent on the Trust assets?

18 A. Yes, but we have the right to our sole
19 discretion to provide care and comfort where we
20 judge it's needed, and we judge Whit needs a
21 house; we can provide it.

22 Q. But if Whit decides he would like some land,
23 at least equivalent to what you gave May, would
24 you as a Trustee be willing to vote to give Whit
25 that land to build him a house?

1 A. Well, I'd be willing to discuss it, yes.

2 Q. That wasn't my question. Would you be willing
3 to give Whit land?

4 A. I'd need to know, how much land are you
5 talking about?

6 Q. At least fifty-two (52) acres that you gave
7 May.

8 A. Well, Alice gave May that fifty-two (52)
9 acres; the Trust didn't. Alice Boykin gave May
10 that fifty-two (52) acres out of her Estate.

11 Q. I'm sorry ---

12 A. We had to -- we had to swap it out of the
13 Trust ---

14 Q. Okay.

15 A. -- in order to give it to May.

16 Q. Does there ---

17 A. So, we paid ---

18 Q. Okay. How much land would you be willing to
19 give Whit to build a house on as a Trustee?

20 A. I can't answer that at this time.

21 Q. Are you willing to give him land to build a
22 house on?

23 A. Yes, I'm willing -- yes, but I don't know how
24 much or where.

25 Q. What would influence you to make that

1 *decision?*

2 *A. I want to be fair to Whit and fair to May and*
3 *also fair to the remaindermen. Now, I am -- if*
4 *Whit -- if Whit is going to get a Hundred and*
5 *Forty Thousand Dollars (\$140,000.00) a year as*
6 *income from the Trust guaranteed, no matter of*
7 *fat years or thin years, then maybe some of*
8 *that -- maybe we could give him life rights or*
9 *life estate in his land so that it would go back*
10 *into the Trust. There are other ways to figure it*
11 *out. Perhaps we could give him wholly life rights*
12 *forever. But I thought Alice ---*

13 *Q. I'm sorry. Go ahead.*

14 *A. Alice had it in her mind to be very fair to*
15 *her children. So, when she built the house for*
16 *Whit, she felt that she should give May those*
17 *fifty-two (52) acres. She thought that balanced*
18 *out. She gave May also the income off the yellow*
19 *house. She was trying very hard to be fair. I*
20 *think we want to be fair and even generous to*
21 *Whit and May, but we have to do that without*
22 *hurting the legacy that my father wished to leave*
23 *the remaindermen. So, we have to balance it out,*
24 *and I think we can give Whit and May a fair and*
25 *generous amount of money and still protect the*

1 *legacy my father wished to leave to future*
2 *generations, and not just my children and*
3 *grandchildren and so on. He wanted it kept in the*
4 *family. So, I think we can do both as long as*
5 *nobody wants an exorbitant amount to drain the*
6 *assets of the Trust.*

7 *Q. Have you seen the offer that I suggested to*
8 *Mr. Becker that -- that Whit and May made?*

9 *A. I don't know; which one?*

10 *Q. The last ---*

11 *A. Which one?*

12 *Q. The one made in the last couple weeks.*

13 *A. Yes. You mean where they wanted Four Hundred*
14 *Thousand Dollars (\$400,000.00) each to build a*
15 *house and they wanted a Hundred and Eighty*
16 *Thousand dollars (\$180,000.00)?*

17 *Q. What do you think was unfair about that offer?*

18 *A. I think that's too much money.*

19 *Q. In what way?*

20 *A. I think that's way -- I think that's too much*
21 *money. I don't think that they should have a*
22 *right to that much money considering the terms of*
23 *my father's Will, and I think they have a right*
24 *to even more than the net income, but not that*
25 *much.*

1 Q. Did I understand you to say it would be unfair
2 to your children and to Alice's child?

3 A. The remaindermen, yes. And unfair to the --
4 and not following the dictates of my father's
5 Will who said after all -- net income. They are
6 entitled to net income, and we're willing to give
7 them more than that. But how much more is the
8 question, and I think a Hundred and Eighty
9 Thousand (\$180,000.00) is too much more.

10 Q. And what would be fair?

11 A. A Hundred and Forty (\$140,000.00).

12 Q. Nothing more, nothing less?

13 A. That might be too much. I think that might be
14 too much even. I'll have to think about that.

15 Q. Okay. Has all of those properties been
16 appraised at least once?

17 A. To my knowledge, they have, and some of them
18 are already listed.

19 Q. Listed with realtors; is that correct?

20 A. That's correct.

21 Q. Have ---

22 A. Not -- but not all of them.

23 Q. And have you sold -- have you sold any of the
24 property or have you had any offers to purchase
25 any of the properties listed on Exhibit C?

1 A. Yes.

2 Q. Which one is that?

3 A. We had a listing -- one come on a listing at 1
4 Commerce Alley. And we have had an offer from
5 Tommy Laney on three pieces of forty (40) acres
6 each forested land in Sumter County.

7 Q. I want to digress just a minute. Are there
8 some taxes still owed by the Estate; is that
9 correct?

10 A. Yes. Yes, there is.

11 Q. How -- how much is owed to the IRS?

12 A. We owe Two Million Seven Hundred and Seventy
13 Thousand (\$2,770,000) something.

14 Q. How does the Trust intend to pay that?

15 A. We have got a tax deferment through the 6166
16 Election. We have fifteen (15) years to pay it,
17 and we have to pay interest payments in the
18 interim due -- due in May, I think; Two Thousand
19 (\$2,000) -- I mean, Ten Percent (10%) of that due
20 in May.

21 Q. And what ---

22 A. And ---

23 Q. I'm sorry. Go ahead.

24 A. Well, I think that what we plan to do is, we
25 will use -- we can use the IRS money -- say, it's

1 *just around Three Percent (3%), and we can*
2 *hopefully earn more money by putting things we*
3 *sell in the stock market, by selling timber; we*
4 *can make a better percentage on our assets than*
5 *the cost of borrowing that money from the IRS.*

6 *Q. And what is ---*

7 *A. And then we have -- that gives us the luxury*
8 *of time to sell our properties at a decent price*
9 *instead of being forced to sell right away.*

10 *Q. What is the interest rate the IRS is charging*
11 *you?*

12 *A. It's right around Three Percent (3%). I think*
13 *it's a little under. Right around Three Percent*
14 *(3%).*

15 *Q. Is it my understanding that the Trust would*
16 *have to earn at least Three Percent (3%) to*
17 *offset that cost?*

18 *A. Yes. Obviously, yes.*

19 *Q. You and Trustee Rigdon and Trustee Alice have*
20 *been meeting with Karen Thomas on different dates*
21 *since you became Trustee; is that correct?*

22 *A. Yes. Some of my meetings have been by*
23 *telephone.*

24 *Q. Or by e-mail?*

25 *A. Yes.*

1 Q. And was there an Agenda put forth by Rigdon
2 for you all to consider at those meetings?

3 A. Yes.

4 Q. At one point in time, I understand that there
5 was an agreement between the Trustees to sell
6 some of the treasured properties to you and also
7 to Alice; do I understand that correctly?

8 A. Yes. Yes, you do.

9 Q. How many times a year do your children come
10 down?

11 A. They come down usually about twice a year. My
12 children, when they were younger, came down a lot
13 more frequently. These are my grandchildren and
14 children now and that they're grown and have
15 lives of their own, don't come down as much. But
16 they love it, they treasure it, they wish to keep
17 it, and you will have letters to that effect. And
18 when they're -- they're totally in sync with my
19 father's Will and our love for the Mill Pond.

20 Q. Okay. Was the -- so, you did agree to purchase
21 the Mill Pond?

22 A. I said I would. I believe she said she'd think
23 about it. Rigdon's idea was that he didn't have
24 to pay me anything, didn't have to pay Alice
25 anything and there would be much -- the Trust

1 would not have to generate as much money in order
2 to satisfy Whit and May.

3 Q. Do you recall in those Trustee meetings
4 that -- whether or not she agreed to buy Millway
5 As well as some additional acreage surrounding
6 Millway?

7 A. I think additional acreage surrounding Millway
8 was part of the deal.

9 Q. Isn't it true, though, Mary Deas, that she did
10 agree to buy Millway and some additional acreage
11 for a price, and then when she got the appraised
12 value, she 7 backed out and withdrew her
13 agreement?

14 MR. BUNDY: Object to the form of the question.

15 A. Yeah, but she'll have to speak for herself.

16 Q. And are you still agreeable to buy it today?

17 A. If it becomes necessary. I don't think it's
18 really fair to me, but if we don't have enough
19 money for Whit and May, that would let them use
20 my -- my share. But as I explained to you, it
21 doesn't seem really fair to me, but I would do it
22 if it was necessary. Doesn't seem fair to me
23 because my children are due to inherit that
24 anyway. It's just a way of using my share of the
25 distribution not having to distribute it. What --

1 *what am I supposed to be willing to put on the*
2 *market?*

3 *Q. Mill Pond. The piece of property that you*
4 *agreed to purchase.*

5 *A. I wasn't going to put that on the market.*

6 *Q. Beg your pardon? The -- I'm sorry. Let me back*
7 *up.*

8 *A. Oh. So, I -- I'm going to qualify that. I am*
9 *going to agree to buy the Mill Pond if it's*
10 *necessary in order to have enough money for Whit*
11 *and May. I do not know -- I would agree to sell*
12 *Millway to May -- I mean, shoot, to Alice. But I*
13 *don't know if she wants to buy it.*

14 *Q. Have you discussed with her whether or not she*
15 *wants to buy it? And to keep the ---*

16 *A. Not lately.*

17 *Q. I'm sorry. To keep the treasured property in*
18 *the family?*

19 *A. I think -- well, Alice can speak for herself*
20 *on this, but I think that she is of the opinion*
21 *that we are not allowed to sell it to anyone, not*
22 *even ourselves, according to the Will. But you'll*
23 *have to ask Alice about it; I don't want to speak*
24 *for her -- "I went to my office this morning and*
25 *went back and checked my notes again from our*

1 *call. My notes reflect the three Trustees agreed*
2 *to sell all but the Tommy -- all but the Tommy*
3 *Laney issue during that meeting and that you were*
4 *going to get back with Rigdon that day on Tommy*
5 *Laney."*

6 *Q. Okay. Now, is that statement ---*

7 *A. Right.*

8 *Q. -- is that statement true that all Trustees*
9 *agreed to sell all but the Tommy Laney issue?*

10 *A. Mr. Tetterton, if I recall -- I -- I don't*
11 *remember. This was a long time ago. But I assume*
12 *it's right if Karen said it was.*

13 *Q. It also goes further to say "Mary Deas and*
14 *Rigdon agreed as I understand it to sell to Tommy*
15 *Laney." Is that right?*

16 *A. That's correct. But I understand there was a*
17 *change of price. If I recall, we agreed to Three*
18 *Thousand -- Three Thousand, Nine Hundred Dollars*
19 *(\$3,900.00) an acre or I forget what we agreed*
20 *to, but Rigdon had a written offer in his hand,*
21 *and the next meeting, he came back and said that*
22 *was wrong; it was less. Wait a minute. I think he*
23 *offered Thirty-nine Hundred (\$3,900.00), and then*
24 *he came back and said that it was Three Thousand*
25 *and Eight Hundred (\$3,800.00). If I recall. And*

1 Alice did not feel she should sell it for Three
2 Thousand Eight Hundred (\$3,800.00). We had agreed
3 to sell for Three Thousand Nine Hundred
4 (\$3,900.00).

5 Q. Are you willing to sell that property to Tommy
6 Laney today?

7 A. Yes.

8 Q. At what price?

9 A. Well, I think a good compromise would maybe be
10 in the middle.

11 Q. And what price is that?

12 A. Well, that would be Three Thousand Eighty-five
13 (\$3,085.00) instead of Three Thousand Ninety
14 (\$3,090).

15 Q. Three Thousand ---

16 A. Maybe we could ---

17 Q. I'm sorry; you're breaking up on me. Did you
18 say Three Thousand Eighty-five Dollars
19 (\$3,085.00)?

20 A. Yeah.

21 Q. Okay. Thank you. Back when your mother was
22 naming Trustees, and I believe she named you and
23 was suggesting naming Alice; is that correct?

24 A. I didn't hear the second part. She named me
25 and what?

1 Q. And Alice?

2 A. Yes.

3 Q. Did you have some conversation with your
4 mother at that time about -- about not appointing
5 Alice?

6 A. I didn't.

7 Q. Who did?

8 MR. BUNDY: Object to the form of the question.

9 A. My husband.

10 Q. Beg your pardon?

11 A. Tommy.

12 Q. Tommy, your husband?

13 A. Yes.

14 Q. And what was his -- what was his opinion about
15 appointing Alice as Trustee?

16 A. He thought it would put undue pressure on her,
17 that the other two would resent it that they
18 weren't appointed and would put Alice in a
19 terrible position with respect to her brother and
20 sister. It turned out he was right.

21 Q. What is the biggest problem between you three
22 Trustees as -- to administer this Trust?

23 A. I think the biggest problem is we have
24 entirely -- Rigdon has an entirely different
25 interpretation of my father's Will and he -- than

1 we do; we feel that we need to respect the wishes
2 of our father's Will as clearly stated, and
3 Rigdon feels that, in order to make more money,
4 we cannot pay any attention to my father's Will
5 more or less, we have to diversify into stocks
6 and bonds and sell almost -- you know, I don't
7 know what percentage of the property. He thinks
8 that management for financial gain is the purpose,
9 is his purpose, is his plan, and we think that we
10 need to follow my father's wishes and still
11 diversify, and within the powers he gave us,
12 distribute enough money to everybody to be fair
13 to the income beneficiaries and the remaindermen
14 also. But we also have to be fair to my father
15 and respect the legacy he wished to leave which
16 I don't think Rigdon thinks is important.

17 Q. Wasn't it ---

18 A. He thinks maximizing the assets is more
19 important, not keeping those that don't earn a
20 proper return on investment. That's what he said
21 from the beginning. And, of course, the treasured
22 lands don't earn a significant return on
23 investment, but our father in his Will directed
24 us to ignore that.

25 Q. Looking at your father's Will, was it his

1 intention that Little Whit would -- would inherit
2 if he had a son?

3 A. Yes, it was. Well, certain properties ---

4 Q. Beg your pardon?

5 A. Certain -- certain of the treasured property,
6 yes.

7 Q. Which ones are those; do you remember? I can
8 look at the Will. That's okay. I can look at the
9 Will and find out.

10 A. I mean -- it was the yellow house. I forget.
11 There were three or four of them of the treasured
12 properties. He was all about keeping it in the
13 family and also wanted to -- someone with the
14 last name of Boykin, you know, to be there. And
15 he was -- and that's why I think Whit's son --
16 the old English tradition -- would want to farm
17 the property.

18 Q. Prior to becoming Trustee, did you ever have
19 any timberland experience, managing timberland?

20 A. Well, only what I learned from my father. I
21 mean, I wouldn't say I was in charge of anything,
22 but I was around the business and knew Jimmy and
23 so forth and so on.

24 Q. But he ---

25 A. It's not ---

1 Q. But he died in 1989; is that correct?

2 A. December, 1989.

3 Q. Your father. Your father?

4 A. Yes.

5 Q. So, would it be fair to say you did not have
6 any of your own timberland experience since that
7 time, managing timberland?

8 A. Yes. I've been involved in the management of
9 our timberland since my father died with Alice. I
10 was a Co-Trustee of Marital Trust B, where most
11 of our timber is.

12 Q. So, is that the only experience you've had
13 with managing timberland and none of your own; is
14 that correct?

15 A. Twenty-six (26) years of managing timberland
16 with Jimmy LeFrage and Alice.

17 Q. Can you ---

18 A. Big Alice.

19 Q. Have you sat down and devised a projection of
20 income from the timberland for the next fifteen
21 (15) years yourself, not relying on Jimmy
22 LeFrage.

23 A. No, I have not.

24 Q. Okay. Are you relying solely on Jimmy
25 LeFrage's projections to advise you as to income

1 to be derived from timberland?

2 A. Yes.

3 Q. I heard the name Bunch, Allen Bunch, I believe
4 it was. Have you provided him with a list of the
5 assets of this Trust?

6 A. It's Ansel Bunch.

7 Q. Ansel, I'm sorry.

8 A. And no, I -- no, I have not.

9 Q. Have you sought the advice of anyone else
10 about devising an investment strategy for this
11 Trust other than Jane Peacock and ---

12 A. And Karen ---

13 Q. And Karen Thomas?

14 A. Karen Thomas. Well, I have talked with Ansel
15 about it, but only in terms of investing what we
16 give him, not in terms of what should we do with
17 our timberland, no.

18 A. Can I get this Option Agreement?

19 Q. Sure.

20 A. I've got it here.

21 Q. I would ask you to, yes.

22 A. And it's important in this Option Agreement,
23 it's not what I had agreed to at all. And first
24 of all, concerning Aunt May's cottage, I -- they
25 would be the co-owners if they bought -- whoever

1 *this unknown person is, and one of my terms was I*
2 *would have to know who it is. But they would be*
3 *the co-owner of Aunt May's cottage, and it's my*
4 *understanding that they would be able to, as a*
5 *co-owner, force me to sell -- force a public*
6 *auction sale whereby they could outbid me and --*
7 *and force me, you know, to take my half -- for me*
8 *to sell my half. I could lose it that way, in*
9 *other words. I could lose my half interest. They*
10 *have the right to do that.*

11 *Q. Okay. But under ---*

12 *A. I do not want that. I -- they have taken out*
13 *my half of Aunt May's, but they have inserted a*
14 *condition such that I could be forced to sell it*
15 *at an -- at a public auction, my half if they --*
16 *if they sell their half. And there's another*
17 *thing I don't like. They've inserted another*
18 *thing where they could tell me I can't use it if*
19 *they decide it interferes with the wildlife. So,*
20 *the nesting season is all summer long. I mean,*
21 *why in the world -- I mean, one day, we might*
22 *live there. What -- am I supposed to move out*
23 *when the nesting season comes? They reserve the*
24 *right to restrict the use.*

25 *Q. So, ---*

1 A. If they -- if they feel that I shouldn't be
2 there when the wildlife or that would interfere
3 with the wildlife, whatever use of it.

4 Q. It's your concern there that it would -- doing
5 the Option would conflict with your father's --
6 the terms of your father's Will?

7 A. Exactly. He says to sell that property last.

8 Q. Okay. So, if I understand your objection to
9 the Option Agreement -- how about the price, are
10 you satisfied with the price?

11 A. Well, sure, great, but the price has nothing
12 to do -- to do with it because that Mill Pond is
13 worth more than money to me. But the price is
14 fair. I would never -- if I didn't -- I would
15 never object to the price. It's -- it's probably
16 more than any appraised price.

17 Q. If the Option does not -- if you all do not
18 execute the Option, what is your intention of
19 keeping the properties listed in the Option
20 Agreement; what are you going to do with them?

21 A. What, Downtown Boykin you're talking about?

22 Q. Yeah, all ---

23 A. Or are you talking about the Mill Pond and
24 everything?

25 Q. No, ma'am. All the properties listed in the

1 Option Agreement, what are -- what is your
2 opinion or what is your position as a Trustee as
3 to those properties?

4 A. We should keep them.

5 Q. For how long?

6 A. Forever.

7 Q. Okay. Let's talk about the rookery. How long
8 Has that -- well, first off, what is your
9 understanding of the rookery?

10 A. I've seen your take on it. I know what you
11 think of it, too. I think it's fabulous.

12 Q. And Mary Deas, in that light, what is the
13 condition of the dam and the water level?

14 A. Oh, you're worried about that water level you
15 wrote about -- you wrote us an e-mail about. We
16 had that water level down in order to hopefully
17 complete the two support concrete walls that are
18 required for the dam. And we were having trouble
19 getting the bids on them. I -- I e-mailed you
20 about that. And we put the water back up. I don't
21 think it has disturbed the birds that much
22 because I checked with other ponds in the area;
23 they didn't have their birds yet either back
24 then. Now, they're beginning to come; so, I don't
25 think we had it so low as to stop the birds. What

1 they do is go back further in the pond when it's
2 that low, they go back further where we can't get
3 to them to spy on them so well. But I think
4 they're on their way back in and we have put the
5 water back on the dam, but hopefully, we're going
6 to get those two concrete walls done. We have
7 bids on them now and we're -- I'm thinking Rigdon
8 met with somebody yesterday or today and Wayne,
9 and I don't know if Alice was there because we
10 contracted with Steve Bush to get the bids and
11 get it done. But for some reason, because of the
12 size of the job he thinks maybe, he hasn't been
13 able to get a lot of bids. Apparently, there's
14 one now though and we -- we're hoping to proceed
15 with it.

16 Q. And as I understand your position, it is to
17 preserve the Trust assets, Ninety Percent (90%)
18 of which is land for the benefit of your children
19 and Alice's child?

20 A. I don't -- no. No. I don't agree with the
21 Ninety Percent (90%) of which is land.

22 Q. Okay. Take Ninety Percent (90%) out. It's your
23 position that you are -- it's your position you
24 should do everything possible as a Trustee to
25 maintain the landholdings of the Trust for the

1 *benefit of your children and Alice's child?*

2 *A. No. It is my understanding that I hold on to*
3 *the treasured tracts for the family legacy that*
4 *my father asked us not to sell. But the other*
5 *properties, it's up to us how to sell and invest.*

6 *Q. Okay.*

7 *A. Or keep or be in the timber business or be in*
8 *the stock market. I would hope we would diversify.*

9 *Q. Do any of your children have farming*
10 *experience?*

11 *A. No.*

12 *Q. Do any of your children have timberland*
13 *management skills?*

14 *A. No. Neither did I until I got involved. My*
15 *children I hope are up to snuff and will learn*
16 *what they need to learn and use the A team that*
17 *we have or whoever, whatever other good advisors*
18 *would follow.*

19 *Q. So, it is your position that the treasured*
20 *tracts should be preserved forever?*

21 *A. Yes. Well, as long as possible. Actually, I*
22 *understand that on the death of my children --*
23 *no, on the death of -- when my children inherit,*
24 *the Trust ends. Then it's up to them to protect*
25 *and preserve the land or not.*

1 Q. Is there anything in the Will that would
2 prevent either one, two or three of your children
3 from selling Broadway Plantation?

4 A. No, the Trusts will end when they inherit.

5 Q. Is there anything in your dad's Will that
6 prevent any one of the remaindermen from selling
7 the swamp tract?

8 A. No, it's the same. I -- I don't think that my
9 father's Will applies after our death, after the
10 Trust expires.

11 Q. So, when the Trust expires and should this
12 property remain in the Trust, then there will be
13 four owners of the treasured property if I count
14 correctly; is that correct?

15 A. That's correct.

16 Q. And so, there will be four owners, three of
17 which you are involved with and one that Alice is
18 involved with; is that correct?

19 A. That's right. The treasured properties and
20 whatever else, the principal, whatever else we --
21 we inherit.

22 Q. And there is nothing to preserve the legacy of
23 your daddy if they decide, any of those four,
24 decide to dispose of that property?

25 A. No, it will be their choice at that time. My

1 *father's wishes cannot be imposed past the Trust.*

2 *If I'm correct. I mean, my father wanted to tie*
3 *it up as long as he possibly could. And that was*
4 *as far as he could he was told. And he was hoping*
5 *that the next generation would do the same.*

6 *Q. Are there any other timberland properties*
7 *other than the treasured properties that you*
8 *consider you all need to sell soon?*

9 *A. I -- I don't agree with the word "soon".*

10 *Q. Well, are there any other timberland of any ---*

11 *A. We might -- we might sell; no -- we might --*
12 *we might not. At this point, I think we need to*
13 *hold all the timberland. Timber is a fabulous*
14 *business. It -- it -- I think it might do as well*
15 *as the stock market on some of our properties.*
16 *Maybe not. We'll have to see as we go. We want to*
17 *diversify. We want to sell some of it, but we*
18 *don't want to sell our cash cow.*

19 *Q. But you are agreeable to selling other*
20 *timberland not listed on Exhibit C if necessary?*

21 *A. I might be. I will not rule it out. I think we*
22 *probably will have to sell some in order to*
23 *diversify more, yes.*

24 *Q. But under no ---*

25 *A. But I ---*

1 Q. Go ahead.

2 A. I wouldn't say what or when.

3 Q. But under no circumstances are you willing to
4 sell Broadway and other tracts that are considered
5 treasured tracts?

6 A. No, I don't think it's our right as to --
7 unless we were in dire straits. I think that's
8 the clear intent of my father's Will, and I think
9 as Trustees, we are responsible to that.

10 Q. I believe you testified earlier that your --
11 the net income from the Trust in 2017 was
12 approximately Eight Hundred and Fifty Thousand
13 Dollars (\$850,000.00); is that -- was that what
14 your testimony was?

15 A. Yes, Eight Hundred and Fifty-two (\$852)
16 something, I think.

17 Q. And that was approximately Six Hundred
18 Thousand Dollars (\$600,000.00) from timber sales
19 and maybe roughly Three Hundred Thousand
20 (\$300,000.00) or something below that for rents?

21 A. We had about Two Hundred and Eighty-eight
22 Thousand (\$288,000.00) for rents. We had one
23 property sale for a Hundred Thousand
24 (\$100,000.00).

25 Q. Okay. And of that roughly Eight Hundred and

1 Fifty-two Thousand (\$852,000.00) income, do you
2 know what portion of that was allocated to net
3 income as opposed to principal of the Trust?

4 A. No. Actually, after that meeting we had with
5 our accountant, Jane Peacock, actually, I came
6 away with more questions than answers. And I
7 understand a formula by the IRS, cut timber, how
8 much goes to principal and how much goes to
9 income, and it depends on the accounting period
10 and a rate of growth.

11 Q. My question is, do you believe it's prudent --
12 let me ask you this. You would agree that the --
13 the -- it's the responsibility of the Trustees to
14 insure reasonable growth in the Trust on an annual
15 basis, wouldn't you?

16 A. I agree.

17 Q. And some of those tracts that they were looking
18 at purchasing were treasured tracts though?

19 A. No, I thought they were Sumter Mountain tracts.

20 Q. Is that the only ---

21 A. Maybe I'm wrong. It was my understanding that
22 it was not treasured tracts at all. It was the
23 timberland tracts on Sumter Mountain, but now, I
24 may be wrong.

25 Q. Okay. But ---

1 A. That's my thought.

2 Q. But the tracts that he had been showing to the
3 Mulberry folks, those are ones that you had agreed
4 that ought to be shown for possible sale; correct?
5 Was that a yes?

6 A. I believe it was the Sumter Mountain tracts
7 which are not treasured tracts. But I'm not sure
8 of that. I'm not aware he showed them any
9 treasured tracts. But he might have.

10 Q. Well, would you have objected at that time?

11 A. Yes.

12 Q. So, is it your testimony that he had -- if he
13 had shown treasured tracts, it was without your
14 knowledge?

15 A. I was under the impression that he was showing
16 Sumter Mountain tracts -- timber tracts. I -- at
17 one point, we offered the swamp tract to cousins
18 of ours, and that's one of the treasured tracts.
19 So, but it's one of the ones first on the list to
20 be sold if we have to sell things.

21 Q. Okay.

22 A. So, he might -- I know he showed that to Rip
23 Rose. I don't remember what tracts the Mulberry
24 people looked at.

25 Q. Okay. But ---

1 A. I do not believe they were treasured tracts. I
2 don't. But they might have been.

3 Q. So, at one point though, you were interested
4 in selling the swamp tract?

5 A. We might have been -- yeah. I mean, yeah.
6 Rigdon wanted -- he thought the Roses would pay
7 Eight Thousand (\$8,000.00) an acre for it because
8 of the recreation value and because it was
9 bordering on all of their property. But I was
10 told by Rip that they were not interested,
11 especially not at that price.

12 Q. Would you be interested today in selling that
13 property for that price?

14 A. To the Roses. They're first cousins. As far as
15 I was concerned, it would be keeping it in the
16 family. If I recall, Alice had -- I don't
17 remember -- I can't speak for Alice, but she had
18 some reservations, but I thought if we needed the
19 money, why not sell it to my father's sister's
20 family; that's still in the family.

21 A. And I'm not sure that we need the money now
22 because back then, I was not aware of the amount
23 of income that we make every year, the -- the
24 projections, how great they were.

25 Q. And if I understand your testimony, it was that

1 there's been at least one appraisal done on each
2 of those properties?

3 A. Yes, but I haven't seen any appraisal, but we
4 do have a listing price which I assume is based
5 on the appraisal or somewhere, you know, around
6 that. We have a listing price, but I do not have
7 an appraisal; I do have on the timberlands the
8 price per acre and the listing price.

9 Q. When you had previously agreed to purchase the
10 Mill Pond back when those negotiations were going
11 on, do you remember what the purchase price was?

12 A. No, I don't.

13 Q. Approximately?

14 A. I don't remember. I was going to have a
15 mortgage, it was going to be taken from my
16 distributions. I don't remember. I would say
17 between Seven Hundred Thousand (\$700,000.00) and
18 a Million. I don't remember. It's only after the
19 death of the last one.

20 Q. And why is it that -- why do you think that
21 purchasing the Mill Pond property was not fair to
22 you?

23 A. Because I would be essentially giving up my
24 inheritance and what I would get for it would be
25 the Mill Pond, and in order to leave it -- protect

1 it and leave it in the family with my children and
2 they are due to inherit it anyway according to the
3 terms of the Will. So, I saw it as just a way to
4 utilize a mortgage to me as a way not to have to
5 give me my distributions. I would get the Mill
6 Pond instead of money, but my children are
7 supposed to inherit it anyway. So, it was sort of
8 counter-intuitive, wasn't it? But I was willing to
9 do it if it became necessary and we did not have
10 enough money for Whit and May. I was willing to
11 do it. Although Whit and May never expressed any
12 appreciation for it, but I don't even know if
13 they were aware of it.

14 Q. Do you think that the Trust includes a mandate
15 that the Mill Pond should never be sold during
16 the lifetime of the Trust?

17 A. Yes. Unless -- unless we're in dire straits,
18 and if we are in dire straits, it should be the
19 last property of all of them to be sold.

20 Q. And tell me what you mean exactly by
21 "dire straits."

22 A. Bankruptcy.

23 Q. So, only if the Trust is ---

24 A. Or ---

25 Q. Excuse me. Go ahead.

1 A. Our father said, "If you must." So, you have to
2 interpret the word "must." When must we go against
3 his wishes and destroy the legacy he wished to
4 leave to his grandchildren? I would say we only
5 must if we are -- don't have enough money to
6 support the income beneficiaries, and I think we
7 have more than enough. He left Ten Million
8 Dollars. Now we have Twenty-five Million Dollars.
9 I do not see why we cannot follow his wishes and
10 give a fair and even generous amount to the
11 income beneficiaries and preserve the legacy he
12 wanted to leave.

13 Q. Ms. Wortley, have you or has anybody at your
14 direction ever prepared a written investment plan
15 or strategy for managing the -- the Residuary
16 Trust?

17 A. The Residuary Trust, which A or B?

18 Q. Well, how -- how about this, has -- have you
19 or anybody at your direction prepared a written
20 investment plan or strategy for managing either
21 of those Trusts?

22 A. Well, not to my knowledge. No. You said
23 written. It hasn't been written.

24 Q. And you're saying that the fair market value
25 you would agree ---

1 A. Well, I -- I would -- the Milliken appraisal --
2 I think -- yeah, we have to have two appraisals.
3 We would look at that and then we would be able
4 to sell it to Alice. I'd be all for it, if she
5 wanted to buy it.

6 A. Right. It would a mortgage to the Trust and
7 then the Trust would not have to pay me my
8 distribution; it would be used as payment.

9 A. Well, the basis for that is that I believe
10 that they will only say what he tells them to say
11 and they don't speak to us any more, and Rigdon
12 told me over the telephone, quote, "Whit and May
13 think you are lower than dirt." End of quote. And
14 they have never told me that. And I have written
15 letters and made phone calls they don't answer.
16 Rigdon also told me I'm not allowed to set foot
17 on his property; even if he should die, I can't
18 even come to his funeral. I -- I just think he is
19 very angry, and he has influenced them to be
20 angry, too. And maybe that's just my opinion, but
21 they have never acted this way before. We have
22 always been affectionate with each other and
23 communications are very cut off now.

24 Q. So, the basis ---

25 A. And that's since our mother died.

1 Q. And what is the basis for your allegation that
2 Mr. Boykin has exerted undue influence over May?

3 A. Same thing I just told you. And also, May
4 always stays with him. When her mother was old
5 and sick, she stayed with Rigdon. She would be
6 there two or three days before she'd even come by
7 and see her. And I -- I just think that he has not
8 fostered a close relationship between May and her
9 mother. I don't know. I know there was anger
10 between Rigdon and my mother, and I just think
11 it's spilled onto May and Whit. Maybe they're
12 angry anyway. I'm not a psychiatrist. It's been
13 very distressing, all this anger.

14 Q. I understand. I'm just trying to figure out
15 what evidence you intend to present that he's
16 exerted undue influence over them. Is it -- are
17 you saying that allowing ---

18 A. I would say it's their lack of communication
19 and attitude.

20 Q. Do you have any evidence that the lack of
21 communication from them hasn't been their own
22 decision?

23 A. No, I don't. I don't have any evidence.

24 Q. Do you have any evidence that their lack of
25 communication or rather that their attitude has

1 *not been of their own volition?*

2 *A. No, I have no evidence. I just -- it just*
3 *seems logical -- a logical conclusion to the*
4 *circumstances.*

5 *Q. That's just your speculation?*

6 *A. Yes. It's my speculation.*

7 *Q. Do you have an opinion as to whether the*
8 *Co-Trustees are entitled to Trustee fees?*

9 *A. Well, I -- I understand under the law they are.*
10 *However, my sister and I are not asking for one.*

11 *Q. So, you -- you will be willing to agree that*
12 *you will not receive a Trustee fee for the*
13 *management of this Trust?*

14 *A. I -- I have never asked for a Trustee fee.*
15 *However, I understand that legally Rigdon is*
16 *entitled to one.*

17 *Q. I just wanted to make sure I'm clear on -- on*
18 *your testimony. Are you saying you would not --*
19 *you agree to not take a Trustee fee for this year*
20 *or going forward?*

21 *A. I never even considered asking for a Trustee*
22 *fee.*

23 *Q. Do you have any opinion about the reasonable*
24 *distribution to the income beneficiaries as a*
25 *percentage of the overall Trust value?*

1 A. Well, let me think a minute. I know that
2 Rigdon says the rule of thumb is Three Percent
3 (3%), but it's not a law in South Carolina. And I
4 don't know. I think maybe we could approach Three
5 Percent (3%). I think we could finagle that. And
6 I think that they are probably entitled to more
7 money than the net income because, as you have
8 been pointing out, the net income is not
9 necessarily the proceeds from the sale of our
10 timber. All of that has to be from the IRS point
11 of view attributed to principal. So, we are
12 willing to give them out of the net income more
13 than what would ever be net income. Around Three
14 Percent (3%) or Two and a Half Percent (2 1/2%),
15 whatever, yes, I would be -- I think they're
16 entitled to that. I'm not sure exactly how much,
17 but certainly not a Hundred and Eighty Thousand
18 Dollars (\$180,000.00) a year.

19 Q. Well, do you -- would you like to pay them more
20 than Three Percent (3%)?

21 A. No.

22 Q. So, you think Three Percent (3%) is all they
23 should get?

24 A. I think it's the maximum.

25 Q. And that is based on what?

1 Q. What -- what difference does it make to you
2 who purchases the Mill Pond?

3 A. Well, it makes a big difference because I think
4 that they're going to own the Mill Pond for quite
5 a time. We don't know how long. They're supposed
6 to do, you know, remediation on the dam. I would
7 just like to have an evaluation of their
8 character and their purposes and their intent,
9 and are we dealing with an honorable person. I
10 don't think we should be required to sell our
11 treasured tract to some unknown entity who could
12 be a Mafia boss, not that it is, but really. I
13 mean, how -- who in the world is this and what
14 a -- you know, I understand they want to put a
15 conservation easement on it. But what I don't
16 understand is why it has to be such a mystery who
17 they are. Why can't we talk to them and -- and --
18 and assure ourselves that their motives are good.

19 Q. Do you believe that my client, Mr. Boykin, has
20 acted in good faith as a Trustee?

21 A. I believe he believes he has and I believe he
22 has acted in good faith to his own view of how
23 things should be done, but I do not believe he
24 has acted in good faith to my father's wishes.

25 Q. Do you believe that the efforts and the steps

1 that he has taken as Co-Trustee have benefited
2 the Trust?

3 A. I think he has -- I think there's been a
4 stalemate because of difference of opinions. So,
5 no, I can't say that anybody's benefited the
6 Trust.

7 Q. All right. Okay. What I would like to do is
8 ask you some questions and I would like to start
9 with Whit, your brother; okay?

10 A. Okay.

11 Q. How old was Whit when your mother -- when your
12 father passed away?

13 A. Oh, Lord. 1989, Daddy passed away and what's
14 Whit, fifty-six (56) now? Wait a minute. Let me
15 think. I'm going to have to add that up.

16 Q. Okay.

17 A. Whit's fifty-five (55). So, how old would he
18 have been in 1989. It's 2018. Wait a minute.

19 Don't ask. I'm a little flustered. I'm going to
20 use my computer, calculator. All right.

21 Twenty-six (26).

22 Q. All right. He was twenty--six (26) years old.
23 And what was his educational experience at that
24 point; do you know whether -- did he graduate
25 from high school?

1 A. No, he did not.

2 Q. Okay. And he didn't go to college?

3 A. No, he did not.

4 Q. All right. And he lived in Boykin all of his
5 life?

6 A. That's correct.

7 Q. All right. And at the time he was twenty-six
8 (26), where was he living; do you know?

9 A. Well, I believe he might have been living in
10 Aunt May's cottage.

11 Q. Okay. And how was he employed? How was he --
12 how was he gainfully or was he gainfully employed?

13 A. Well, now, you know, I'm thinking back quite a
14 while; so, I'm not sure at that time if he was
15 gainfully employed. I know we furnished him a
16 tractor.

17 Q. We being?

18 A. The Trust.

19 Q. The Trust?

20 A. And a bulldozer.

21 Q. Okay.

22 A. I'm not sure what years we did that. And he
23 earned money with that bulldozer, and he used the
24 tractor for farming. For two years, he farmed
25 with Alice. He and Alice co-farmed the place.

1 Q. Okay. And -- and you've known -- I call him
2 Whittle, but Whit, how -- how long have you known
3 him? You've known him all of your life; right?

4 A. Since he was born.

5 Q. That's right. And can you just tell me what
6 your description of his work ethic would be?

7 A. He doesn't have much of a work ethic. He is
8 not reliable to finish a job or stay on it. He
9 does love to drive his bulldozer, and he likes to
10 be on wheels driving somewhere; so, if -- if you
11 give him somewhere to go in his pickup truck, he's
12 happy to go do it, but I think you can't rely on
13 him to be there. He's not a diligent worker.

14 Q. And I don't want to be hard on him, but since
15 he has sued you and your sister and alleged some
16 pretty -- pretty strong things against you all,
17 which we'll go over in a minute, what is your
18 opinion of his truth and veracity? I mean, do you
19 have any experience with Whittle not telling the
20 truth?

21 A. Yes.

22 Q. And ---

23 A. I do.

24 Q. Okay. And he's got ---

25 A. I believe ---

1 *Q. He's not a truthful person, is he? He's not a*
2 *bad person ---*

3 *Q. Okay. But he's not a mean person by any stretch*
4 *of imagination?*

5 *A. No, no. No, he's good-hearted. He's good-hearted*
6 *and sweet-natured, but he's unreliable.*

7 *Q. All right. So, part of what -- is it fair to*
8 *say that part of what your job as Co-Trustee and*
9 *your mother's job as Co-Trustee as it related to*
10 *Whittle, twenty-six (26) years old, was to*
11 *basically take care of him because he was unable*
12 *to take care of himself?*

13 *A. Exactly. We tried to provide him with an*
14 *income. We tried to -- well, the bulldozer was the*
15 *main thing. We tried to -- we gave him -- I think*
16 *she paid him Four Hundred and Fifty Dollars*
17 *(\$450.00) a week for quite a while until he*
18 *misused her credit card a few times and they fell*
19 *out over that. But she built him his house. And*
20 *she started the whole sporting -- sporting --*
21 *Boykin Sporting Clays Club for him and built a*
22 *big cooler over there and had him run it, and it*
23 *was to be for his benefit. I mean, we did what --*
24 *a lot for Whit, what we could.*

25 *Q. Is it -- is it correct that he was essentially*

1 unemployable in the work place? If he had to go
2 out into the work place, not have his mother and
3 his sister looking out for him, he would not have
4 been able to find a job other than pretty much a
5 minimum wage job? Is that correct?

6 A. I think that's correct. He -- he's good at
7 operating machinery, but he's not very good at
8 reading and writing.

9 Q. Right. And he's not very good at taking care
10 of machinery either, is he?

11 A. No. He's not got a good history with taking
12 care of machinery.

13 Q. And that leads me -- and that leads me to my
14 next area of inquiry. Do you have an opinion as
15 to whether or not Whittle is easily influenced by
16 others and swayed by others' opinions and actions?

17 A. Yes.

18 Q. Isn't it true that one person can sway Whit on
19 Thursday and turn him 180 degrees the next day if
20 they've got a different argument?

21 A. That's right. He's very naive.

22 Q. He's very gullible?

23 A. Right.

24 Q. All right. Now, did there come a time in the
25 early '90's where Rigdon started showing up and

1 *coming to Boykin from New York? Do you recall*
2 *that?*

3 *A. Yeah, he -- yes. I recall when he retired to*
4 *Boykin.*

5 *Q. Okay. And Ms. Alice was still alive; right?*

6 *A. Oh, yes.*

7 *Q. Okay. And Ms. Alice and Rigdon got along really*
8 *well, right, in the '90's?*

9 *A. She welcomed him home. They had a lot of fun*
10 *together at first.*

11 *Q. And they in fact set up a sporting clays*
12 *course?*

13 *A. Right, and Rigdon bought those big tall towers*
14 *to shoot from and so forth and so on.*

15 *Q. Brought a bunch of ---*

16 *A. Yeah.*

17 *Q. Brought a bunch of rich ---*

18 *A. They had a ---*

19 *Q. Brought a bunch of rich people down from New*
20 *York to shoot sporting clays?*

21 *A. Right.*

22 *Q. Okay. And ---*

23 *A. Brought some experts.*

24 *Q. Right. And they put Whittle up -- they'd put*
25 *Whittle on a plane and fly him up to New York and*

1 let him go to expensive New York hunting clubs
2 and all of that; remember all of that?

3 A. He went to Africa a couple times; remember?

4 Q. Oh, yeah, I took him one time myself.

5 A. I had forgotten.

6 Q. He set his backpack on fire in the airport
7 before we had to leave. Now, did there come a time
8 in your experience where Whittle fell out with
9 Rigdon? Did they ever fall out during that period?
10 If you recall.

11 A. No, I'm sorry. I don't recall that.

12 Q. You don't recall that. Okay. Do you believe,
13 based upon your fifty-six (56) year experience
14 with your brother, and your knowledge of Rigdon,
15 that Rigdon in fact has the ability to influence
16 and direct the actions of Whittle?

17 A. Yes, I do.

18 Q. Do you have any doubt in your mind that that's
19 the case?

20 A. No. He has to have someone and that someone is
21 Rigdon. He cannot reason things out for himself.

22 Q. Okay.

23 A. So, he has to listen to someone.

24 Q. Has Rigdon or Whittle ever represented to you
25 or in your presence that Rigdon was in fact

1 Whittle's lawyer or representative?

2 A. I know he was May -- he represented himself as
3 May's lawyer several times with George Bailey.

4 Q. Okay. The meeting you had was in South
5 Carolina, was it not? Or the George Bailey
6 meeting where he represented -- that he -- that
7 he was May's lawyer; correct?

8 A. Right.

9 Q. Okay.

10 A. But he -- he represented that he was May's
11 lawyer, and it was a meeting over the I believe
12 80/20 splits in the land in order to take
13 advantage of the 2012 One time GST Five Million
14 exemption of George Bush.

15 Q. Okay. And that was -- that was when your GST
16 was -- Generating -- Generating Skipping Trust;
17 is that ---

18 A. Yes.

19 Q. -- what it is?

20 A. Right.

21 Q. Okay. And was your mother still alive then?

22 A. Yes, she was.

23 Q. Okay. Do you know whether he still represents
24 her?

25 A. No, I think he -- he decided he had better hire

1 *Mr. Tetterton for that purpose.*

2 *Q. Okay. And did that change? Has that changed*
3 *any as between your feelings toward him ---*

4 *A. Yes.*

5 *Q. -- or your beliefs about his personality and*
6 *intent?*

7 *A. I was very hurt when he said I was lower than*
8 *dirt and not allowed on his property. In fact, I*
9 *was shocked. I didn't know he was so angry, and I*
10 *have to only assume, since I've never raised my*
11 *voice to him, it was because I disagreed with him*
12 *over the basics of managing the Trust.*

13 *Q. Do you -- have you seen any pattern in his*
14 *behavior as it relates to any meetings you may*
15 *have had of your experience with him about his*
16 *personality and the way he is when you agree with*
17 *him and how that may change somewhat drastically*
18 *when you do disagree with him?*

19 *A. Well, I mean, that's a good example and he can*
20 *get very angry when you don't agree with him, and*
21 *he can say some angry things in some of the Trust*
22 *meetings. I can't quote you what he said. Then he*
23 *can turn around and be friendly. But I don't*
24 *think he reacts well when you don't agree with*
25 *him.*

1 Q. Do you have any opinion as to whether or not
2 or did you ever feel like you or Alice, my
3 client, were bullied by him at Trustee meetings?

4 A. Yes.

5 Q. Okay. Explain that to me. Would you give me an
6 example, explain to me why -- why that is?

7 A. No, I -- I can't give you an example, but it's
8 just that he disapproves of anything that doesn't
9 go along with his plan for how the Trust should
10 be managed. I don't think he's willing to
11 consider any compromise. I haven't seen any sign
12 of it.

13 Q. Okay.

14 A. And I think it's his way or the highway.

15 Q. Okay. Did the relationship -- I believe you
16 said earlier your mother had a congenial and fond
17 relationship with Rigdon while she was alive up
18 to a point; correct?

19 A. Correct.

20 Q. Okay. And -- and did that change before she
21 passed away?

22 A. Yes, it did. They -- I think they -- I don't
23 know what started it. I can't remember where it
24 started to go bad. She very much resented when he
25 invested in Lilfred's. She thought that was a

1 *threat to the Boykin Grill or the Steakhouse. She*
2 *said he, as a Trustee, shouldn't be investing in*
3 *the competition. And ---*

4 *Q. Explain to the Judge what Lilfred's is in case*
5 *she hasn't been there.*

6 *A. Lilfred's is a restaurant, and it's about,*
7 *what, five miles ---*

8 *Q. Yeah, or less.*

9 *A. -- down the road.*

10 *Q. Yeah.*

11 *A. Yes. And it's been there a long time. And she*
12 *felt it was a conflict of interest for him to*
13 *invest in that, and he said, "Oh, no, the more*
14 *restaurants in the area is fine." But anyway,*
15 *it -- it made her furious. And I'm trying to*
16 *think what else -- where it really started to go*
17 *wrong.*

18 *Q. Did it have anything to do with Whittle and --*
19 *and maintain -- and paying -- and keep --*
20 *keeping -- giving Whittle a job and then not*
21 *employing him to do all the work that Rigdon*
22 *wanted to do on all that land?*

23 *A. That's true. That's true. When Rigdon came*
24 *down, he had a lot of bulldozer work to do, and*
25 *he did not hire Whit to do it. You're right. I*

1 *remember that now. He did not hire Whit, and she*
2 *was furious about that. But he felt that Whit was*
3 *not capable of doing that work.*

4 *Q. Okay. Let's talk about that a minute.*

5 *Ultimately, Rigdon moves to Boykin; right? Moved*
6 *here ---*

7 *A. Right.*

8 *Q. Okay. And that was roughly in 2004 or '06; is*
9 *that about right? Somewhere in that area?*

10 *A. About right.*

11 *Q. Okay.*

12 *A. Yeah. I guess.*

13 *Q. Okay. And as I recollect, he bought 800 or 900*
14 *acres of land; right? Something like that?*

15 *A. Right.*

16 *Q. And he bought it -- who did he buy it from?*
17 *Was it the Capehart's?*

18 *A. The Capehart's and the tract next to the one*
19 *we bought was the Capehart tract.*

20 *Q. Right.*

21 *A. And all of that was Capehart land, wasn't it?*

22 *Q. Yes, ma'am. And so, then isn't it true that he*
23 *then either clear-cut or otherwise cleaned up*
24 *that property and now he has it for sale, part of*
25 *it as a subdivision; correct?*

1 A. That's correct.

2 Q. So, he's in ---

3 A. As Acorn Acres or something.

4 Q. Yeah, something like that. And he's had it for
5 sale for quite some time, has he not?

6 A. Yes, he has and he put a very good
7 infrastructure in there, fancy plannings and a
8 gate and so forth and so on, and I don't think
9 he's sold a single lot.

10 Q. Okay. So, if he can as a Trustee sell off the
11 Boykin land and subdivide the entire area, that
12 potentially has a benefit to him financially
13 outside of his role as a Trustee; correct?

14 A. It would increase the value of all the land
15 around it I would assume.

16 Q. Okay. Before your mother passed, what was your
17 relationship with Whit and May? Did you all have
18 a -- a good relationship?

19 A. I think we had a good relationship. In fact, I
20 was the one that convinced Alice to let Whit turn
21 his affairs over to Rigdon. He -- he begged me to
22 do that, and I tried to mediate the great
23 argument when his house was built because he
24 wanted -- he came with an "Architectural Digest"
25 and plans of a mansion; Alice refused to build

1 it. Whit said he was going to leave home and go
2 up and work at King Ranch in Texas, and they went
3 on like that for a year. Whit would come to me
4 and want me to intercede in his behalf, and
5 finally, we convinced him, you know, to accept
6 the house that she was willing to build, a very
7 fine house, but not the mansion from
8 "Architectural Digest." So, no, Whit came to me a
9 lot in the old days to intercede for him, and I
10 was the one that convinced Alice to turn over the
11 lease of the hunting properties which Whit was
12 getting income from to Rigdon. That's what he
13 wanted. He wanted Rigdon to manage it, and Rigdon
14 did and did a good job.

15 Q. And the money went to Whit?

16 A. Yeah. That was part of -- we interpreted that
17 as farm income which my father said to let Whit
18 get income from the farm. So, we -- instead of
19 splitting that with the -- May or whatever, we
20 gave that to Whit because -- in fact, because he
21 needed it and because of that statement in the
22 Will, language in the Will.

23 Q. All right. You mentioned earlier there was a --
24 an issue related to a credit card with Whit. A
25 gas card?

1 A. Well, Whit would -- she would say, "Okay, you
2 can fill up your truck." We bought him his truck,
3 too. She said, "You, okay, you can fill up your
4 truck," but he would charge everything on the
5 planet. All his groceries for weeks, whatever,
6 when she got horrendous bills on that credit card
7 and they would fight, like fight. I would try to
8 keep the peace, and Whit would behave for a
9 while, you know, then would do it again. And then
10 oh, my gosh, she'd be furious. I mean, she was
11 trying to make him be responsible about money,
12 and that was tough.

13 Q. You were asked about your knowledge of farming.
14 Can you tell me how many acres Mr. Boykin farms?
15 Rigdon Boykin, how many acres does he farm?

16 A. I don't think he farms any.

17 Q. Oh, okay.

18 A. Well, he has sunflower seeds for the doves.

19 Q. Okay. I got you. Okay. And ---

20 A. He has a tree farm. I don't know if you'd call
21 that farming. He has his tree farm.

22 Q. Yeah. Well, did -- was that -- was that his
23 attitude and demeanor at all the Trustee meetings
24 that it -- you know, I'm the one in charge here?

25 A. Well, that was what he tried to do, yeah.

1 Well, he didn't -- at first, I don't think he --
2 well, really, there weren't as many arguments.
3 But later, he didn't like when the two of us
4 voted against him. But when -- at first, when it
5 came to serious matters, he just said he outvoted
6 us because he was the independent Trustee.

7 Q. And Jane -- Jane Peacock, when did you talk to
8 her?

9 A. Well, it's hard to recall. Mostly, I guess I
10 e-mail Jane. We've talked a couple of times
11 because -- it was mostly always over Trust
12 matters. And I had some confusion over -- the
13 last Trust meeting we had in her office, I found
14 I had a lot of questions after that about how you
15 decide which part of a sale goes to principal and
16 which part goes to income, net. And -- and IRS
17 Rules about -- the IRS Rules about calculating
18 the growth rate of trees in the accounting
19 period, I needed some clarification on that.

20 Q. Was she able to provide clarification for you
21 to your satisfaction?

22 A. Well, I think so. I mean, I -- as far as I'm
23 capable of understanding it, I understand it
24 better now, thanks to Jane.

25 Q. And you talked to Jim LaFrage in preparation

1 *for this deposition; is that correct?*

2 *A. Yes, I talked to him in preparation for this*
3 *deposition.*

4 *Q. And when was that?*

5 *A. I've talked to him a lot. I've talked to him*
6 *in the last few weeks maybe four or five times.*

7 *Q. And what was the nature of those conversations?*

8 *A. Well, it's hard for me to remember. I'm being*
9 *accused of, along with my mother, of mismanaging*
10 *the assets of the Estate since my father died.*
11 *So, I had to ask him about various percentages*
12 *and how much we've been -- how much we've planted,*
13 *where we clear-cut, what we did, things like that.*

14 MR. DUFFY: Your Honor.

15 THE COURT: Yes.

16 MR. DUFFY: The next witness we've got is Alice
17 Belger, also, by video. I think the one we just watched
18 was about an hour and a half. Ms. Belger by video, I
19 think, is about 50 minutes or so.

20 THE COURT: Well, we're going to take a break.

21 MR. DUFFY: Okay.

22 THE COURT: We've got a court reporter to think
23 about.

24 MR. DUFFY: Absolutely.

25 THE COURT: Let's see here. It's 10:35. Yes, that

1 was about an hour and a half. So we'll take a break. And
2 let's be back at quarter of for the resumption of the
3 video deposition of Ms. Belger.

4 And let me just get straight. All right.
5 Technically speaking, we're able to go now with that?

6 UNIDENTIFIED MALE: Yes.

7 THE COURT: Very well.

8 All right. Court will be at ease.

9 (WHEREUPON, a break was taken.)

10 THE COURT: All right. Are the parties prepared to
11 proceed?

12 MR. DUFFY: Yes, Your Honor.

13 MR. BECKER: Yes, Your Honor.

14 THE COURT: Very well. We'll now play the
15 deposition -- excerpts from the deposition of Ms. Alice
16 Belger.

17 And let me, Counsel, explain to you that I consulted
18 with the court reporter. And what we will do for our
19 transcript -- normally, the court reporter simply says
20 whereupon such and such was played. You want a transcript
21 that has exactly what we heard for appellate purposes, if
22 any there be.

23 So Hollie will take a CD from y'all if you can
24 produce one that has the excerpts just as they were
25 played. And then she'll produce that in the transcript.

1 And then we'll have one thing that flows that you'll have
2 the whole thing in a reasonable fashion for everyone to
3 see and have for their records.

4 Thank you.

5 You may proceed, sir.

6 (WHEREUPON the following excerpts from the video
7 deposition of Alice B. Belger were played in open
8 court.)

9 *Q. You testified that you had reviewed your*
10 *Father's Last Will and Testament before you came*
11 *here today; correct?*

12 *A. Yes, sir.*

13 *Q. Are you fully familiar with the terms and*
14 *conditions and the purposes of that Will?*

15 *A. I always have to go back to look at the Will.*
16 *I don't rely on anything by memory.*

17 *Q. And so, you would have to refresh your*
18 *memory -- if I asked you a question, you would*
19 *want to refresh your memory about the terms and*
20 *conditions of the Will; is that correct?*

21 *A. Always. I always have to go back to it, and*
22 *sometimes, I have to go and look up words and get*
23 *things like that.*

24 *Q. And in looking at part of the Last Will and*
25 *Testament, are you telling me that sometimes you*

1 do not understand some of the words in that Will?

2 A. Yes.

3 Q. And in order to help you understand the words
4 in that Will, you would go to outside resources?

5 A. Like the Internet.

6 Q. Sorry?

7 A. The Internet and look for the law.

8 Q. Have you done some independent research on the
9 Internet for legal principles or law?

10 A. I know that "child" means -- it should be --
11 it is directed to -- to be executed.

12 Q. Okay. What terms under that Will gave you the
13 most problems to understand? Any particular terms
14 of your father's Last Will and Testament gave you
15 some particular problem that would lead you to
16 the Internet to research, other than the word
17 "child"?

18 A. Well, to try to understand "corpus".

19 Q. Corpus?

20 A. Yes.

21 Q. The word "corpus"?

22 A. And I -- sometimes, I have to find out -- I
23 have to look it up.

24 Q. Okay.

25 A. Times the time.

1 Q. Okay. Do you think you have a full
2 understanding as we sit here today of the term
3 "corpus"?

4 A. I'd have to look it up and review my notes.

5 Q. During the course of your role and
6 responsibility of a Co-Trustee, did you keep
7 notes?

8 A. I keep some notes.

9 Q. And in what fashion do you keep those notes?
10 How would you keep notes -- in a notebook or
11 handwritten notes or ---

12 A. Handwritten notes. I'm not sure; it might be
13 just maybe a word or two. But ---

14 Q. Would you keep a diary of any sort?

15 A. I have jot down things.

16 Q. And where are those notes today? They are in
17 your possession, of course; right?

18 A. Yes.

19 Q. And would they be available to me if I would
20 ask for them?

21 A. It's just notes; there won't -- it's not full
22 sentences.

23 Q. I'm sorry?

24 A. It's not full sentences.

25 Q. That's okay. But it would be notes that you

1 *kept during the course of your role as Co-Trustee;*
2 *is that correct?*

3 *A. Yes.*

4 *Q. Okay. And another document that may come --*
5 *come up today is your Affidavit. Are you familiar*
6 *with what you wrote in your Affidavit and*
7 *signed ---*

8 *A. I did not review my Affidavit.*

9 *Q. Prior to marrying Wayne, did you have any*
10 *farming experience?*

11 *A. No.*

12 *Q. When you married Wayne, did you have any*
13 *business investments or any kind of other*
14 *investments, monetary investments?*

15 *A. No.*

16 *Q. Did you have a checking account?*

17 *A. Yes.*

18 *Q. Did you have a savings account?*

19 *A. Yes.*

20 *Q. Did you have any -- did you own any stocks or*
21 *bonds when you married Wayne?*

22 *A. Yes.*

23 *Q. And if you would, tell us what stocks and*
24 *bonds you had.*

25 *A. I had International Edison.*

1 Q. Okay.

2 A. I think I've got it right.

3 Q. That's okay. As best as you can remember.

4 A. Edison International.

5 Q. Okay. Did you have a portfolio or more than
6 one stock interest, stock ownership?

7 A. That's the only one I had.

8 Q. And was that a gift to you or did you purchase
9 it?

10 A. It was a gift.

11 Q. From who?

12 A. My great-aunt.

13 Q. Okay. Did you have someone managing that
14 investment for you?

15 A. No.

16 Q. Did you manage it yourself?

17 A. I did not -- it just -- I still have it.

18 Q. Okay. Have you bought any additional stocks
19 since that time?

20 A. No, I have not.

21 Q. Is it fair to say that is the only stock
22 investment you have today?

23 A. Yes.

24 Q. Okay. Did you consult with or rely on any
25 particular person to help you understand that

1 *stock investment and whether or not to keep it or*
2 *sell it?*

3 *A. I was -- no.*

4 *Q. You just put it aside for a rainy day; is that*
5 *fair to say?*

6 *A. Yeah. Well, the problem was it went down in*
7 *value.*

8 *Q. Okay. And you held on to it?*

9 *A. Yes. And their stock went ---*

10 *Q. Did you and Wayne accumulate any investments*
11 *after you married?*

12 *A. Yeah. We have some land.*

13 *Q. Other than land, do you have any other -- I*
14 *call them liquid assets; like, stocks, bonds?*

15 *A. He has something -- his own stuff; I'm not*
16 *sure how much or whatever.*

17 *Q. Are you aware of Wayne's investments?*

18 *A. I know that he has investments.*

19 *Q. You know he has investments, but you are*
20 *telling me you don't know what they are?*

21 *A. It's ---*

22 *Q. Beg your pardon?*

23 *A. It's -- well, I just know that he has them.*

24 *Q. Okay. To make sure I understand -- let me make*
25 *sure I understand you. When your father passed*

1 away, it was your understanding that he had about
2 Four Million Dollars in stocks?

3 A. The majority of his stocks that was in his
4 business was the primary of his stocks.

5 Q. Okay.

6 A. But he did -- did have stocks in ---

7 Q. When your father passed away, he had stock
8 ownership in some stocks?

9 A. He had his own shares.

10 Q. Or his business had some ownership in stocks;
11 is that correct?

12 A. Yeah. His business had stocks.

13 Q. And his business was what?

14 A. His timber.

15 Q. Timber. And when I say "stocks," I'm talking
16 about investments with a ---

17 A. Oh. Investments.

18 Q. Investments or stocks?

19 A. I could not tell you how many -- how many
20 shares he had or what stocks he had.

21 Q. Did he own some stocks?

22 A. Yes, he did.

23 Q. And you and I understand that stocks are what
24 I would call liquid investments that you can buy
25 and sell at any time; is that correct?

1 A. He had stocks, public trading stocks.

2 Q. Okay.

3 A. But the majority of what I know, just -- I'm
4 not -- I'm just guessing.

5 Q. Did you have any experience prior to becoming
6 Co-Trustee of managing a Trust?

7 A. No.

8 Q. Did you have any experience in managing any
9 investments?

10 A. No, but I helped my mother with those.

11 Q. What is your position individually as a
12 Co-Trustee of taking ready assets in the form of
13 liquid assets to reduce the IRS debt or pay the
14 IRS debt as opposed to doing a deferred payment
15 plan?

16 A. I think I have to have a better understanding
17 from the accountants and the Trust counsel.

18 Q. Before making a decision?

19 A. Yes.

20 Q. Have you relied on Jane -- I'm sorry -- have
21 you relied on Karen Thomas' advice in making
22 decisions and managing this Trust?

23 A. Yes.

24 Q. Do you think she is a reliable source in
25 helping you to make decisions on managing the

1 *Trust?*

2 *A. Yes. And I also have to listen to my*
3 *Co-Trustees too.*

4 *Q. Okay. How about Jane Peacock, do you think she*
5 *is a reliable source to help you make informed*
6 *decisions about managing the Trust?*

7 *A. I know she knows some laws about more -- some*
8 *benefits to pay up front or some things that's*
9 *not to pay up front.*

10 *A. Ansel Bunch.*

11 *Q. I'm sorry. I didn't hear you.*

12 *A. Ansel Bunch.*

13 *Q. B-U-N-C-H? B-U-N ---*

14 *A. I think that's how he spells it.*

15 *Q. Who is he?*

16 *A. He's a financial advisor.*

17 *Q. Is he in Columbia?*

18 *A. Yes.*

19 *Q. Has he -- prior to today, has he given you*
20 *advice, professional advice, on how to manage this*
21 *Trust, the assets of this Trust?*

22 *A. No, not yet.*

23 *Q. Have you consulted with Mr. Bush in any manner*
24 *whatsoever?*

25 *A. Bunch.*

1 Q. Bunch, I mean. I'm sorry. Have you consulted
2 with him prior to today about managing the assets
3 of this Trust?

4 A. No, not yet. Well, the Marital Trust was to
5 benefit my mother.

6 Q. I'm sorry?

7 A. To benefit my mother.

8 Q. Okay. Anybody else?

9 A. That's as far as I know on that Trust. The
10 Residuary Trust that Mary Deas and we didn't --
11 my mother made up. Trust A was supposed to be a
12 skipping Trust -- general -- that we would be
13 benefited but the victory goes to the
14 remaindermen.

15 Q. Okay. Now, we are back to Paragraph -- Item
16 VIII, Paragraph (1), now, if I read that as you
17 read it, it is my understanding that for the --
18 you and your siblings, including Mary Deas, then
19 you would have lifetime benefits under this
20 provision of the Will; is that correct?

21 A. That's right.

22 Q. That would be lifetime benefits including
23 medical care, comfortable maintenance, welfare
24 and education; is that correct?

25 A. Well, in some -- in his -- you know, in his

1 *hope that we will be respectful and -- and*
2 *mindful of the intentions of the situation and do*
3 *everything to do -- to -- that we will be mindful*
4 *of my -- my father's intentions.*

5 *Q. Okay. Now, looking at that paragraph, Ms.*
6 *Belger, where is the money coming from to provide*
7 *for the medical care, comfortable maintenance,*
8 *welfare and education of your four children?*

9 *A. It is to come out of timber sales; if we have*
10 *to sell land.*

11 *Q. What do you consider your role as a Trustee or*
12 *a Co-Trustee rather in managing the Trusts of*
13 *your father, that your father set up; what do you*
14 *think your role is?*

15 *A. My role?*

16 *Q. Uh-huh (affirmative response). Yes, ma'am.*

17 *A. My role is to make sure the Trust -- the*
18 *beneficiaries get the net income, pay the taxes,*
19 *help diversify and, for like now, we have timber.*
20 *So, that's our crop. And that's where our -- the*
21 *bulk of our income could be.*

22 *Q. Do you agree with me that's it's one of the*
23 *roles or duties of the Co-Trustee to diversify*
24 *the assets of the Trust?*

25 *A. In this -- in this document, it does -- it*

1 *shows that I can be -- say that again, please.*

2 *Q. Do you consider one of your duties -- one of*
3 *your duties as a Co-Trustee -- to diversify the*
4 *assets of the Trust?*

5 *A. Yes. In a way.*

6 *Q. Have you done that?*

7 *A. We have land for sale; we have timber for*
8 *sale. We -- probably, we need to get proceeds*
9 *sold to go -- to go to stocks.*

10 *Q. Is it your position that you should seek*
11 *outside advice from professional people to advise*
12 *you on how to diversify Trust assets?*

13 *A. (Witness pauses).*

14 *Q. Do you want me to repeat the question?*

15 *A. I just -- give me time.*

16 *Q. Beg your pardon?*

17 *A. I'm just -- give me time, please. I'm just ---*

18 *Q. I'm sorry. Take all the time you need but I*
19 *just want to make sure you understood my*
20 *question. My question was, do you think it is*
21 *advisable to seek professional advice from*
22 *professional people to tell you how to diversify*
23 *the assets of the Trust?*

24 *A. Right now, we have -- we have a large -- our*
25 *income -- our large asset is timber, and what we*

1 *need to do -- well, what the Trustees have to do*
2 *is to decide what -- how much land we're going to*
3 *keep, how much land we're going to sell to put*
4 *into -- into the stock market. And we have not*
5 *came to that decision.*

6 *Q. But you think it needs to be done?*

7 *A. Yes, in a reasonable time and not right now --*
8 *not in a rush. I think we could make big mistakes*
9 *if we rush.*

10 *Q. You are saying that it is advisable to do*
11 *that, but you just don't know what amount to*
12 *diversify?*

13 *A. Yes.*

14 *Q. Do you have any experience or skills or*
15 *knowledge in deciding that issue about how to*
16 *diversify or what percentage to diversify?*

17 *A. I also have to go by the Will and what my*
18 *father's desires are and what he wants to go with*
19 *the Will.*

20 *Q. All right.*

21 *A. Too, that it is also that it has to benefit*
22 *the remaindermen and has to benefit the immediate*
23 *income beneficiaries.*

24 *Q. Okay.*

25 *A. And you -- we have not -- I want to -- we want*

1 to -- to honor our father's wishes with respect
2 for his wishes to do this and -- and give -- and
3 give all four of us the -- the net income in
4 equally shares, responsible.

5 Q. Well, the appraisals were done to appraise --
6 to determine the fair market value of the land at
7 the date of death of your mother; is that correct?

8 A. That's right.

9 Q. No, no. From the date of your mother's death.
10 The appraisal was done August -- I mean, the
11 appraisal was done in 2016, the latter part of
12 2016?

13 A. Yeah.

14 Q. And I think y'all didn't get them until the
15 fall of 2017?

16 A. Yes.

17 Q. Okay. Is Whit current on his rent?

18 A. Yes, I think he is.

19 Q. Is Mary Deas current on her rent?

20 A. I think she is.

21 Q. And are you current on your rent?

22 A. No, I'm not.

23 Q. And how far behind are you in your rent?

24 A. On the house, one month.

25 Q. Have you gotten behind more than one month

1 *since you started renting the house?*

2 *A. As long as I pay in -- I have before.*

3 *Q. So, is it fair to say that all of the income*
4 *generated under the Trust would be from real*
5 *estate or connected to real estate?*

6 *A. Yes.*

7 *Q. Is it my understanding from your testimony*
8 *earlier this morning that you are planning on*
9 *doing a management plan that would generate*
10 *income from stocks and bonds or liquid assets?*

11 *A. I'd have -- like to generate money with timber.*

12 *Q. Okay. We know that it is ---*

13 *A. Rent.*

14 *Q. Okay.*

15 *A. Increase the portfolio, stock report --*
16 *portfolio.*

17 *Q. Is it my understanding from your testimony*
18 *earlier this morning that you are planning on*
19 *doing a management plan that would generate*
20 *income from stocks and bonds or liquid assets?*

21 *A. I'd have -- like to generate money with timber.*

22 *Q. Okay. We know that it is ---*

23 *A. Rent.*

24 *Q. Okay.*

25 *A. Increase the portfolio, stock report --*

1 *portfolio.*

2 *Q. Okay. What would you expect as a prudent*
3 *investor?*

4 *A. I would have to rely on somebody else's*
5 *professional ---*

6 *Q. Have you and Mary Deas discussed an investment*
7 *strategy you would like to bring to the table to*
8 *present to the Trustees?*

9 *A. Like -- no, but I think that should happen.*

10 *Q. You think an investment strategy should be*
11 *produced by you and Mary Deas?*

12 *A. Well, I think -- I have to go by the Will too.*

13 *Q. Okay.*

14 *A. And I respect my father's wishes.*

15 *Q. Is it your testimony that the only way you*
16 *could preserve that property and pay the taxes*
17 *was for you all to buy it? Is that -- I'm trying*
18 *to understand what you are trying to tell me.*

19 *A. I thought at first, and then I started reading*
20 *the Will and didn't felt like I had to ---*

21 *Q. Okay.*

22 *A. -- after that.*

23 *Q. Do you have any knowledge of whether or not*
24 *she would still like to buy the Boykin Mill Pond?*

25 *A. If this goes to the skip -- skip -- for the*

1 remaindermen.

2 Q. Which means if she bought it, it would go to
3 her children?

4 A. Well, it would just go -- she was going to buy
5 it and put it in an easement.

6 Q. Okay. And would you agree to let her do that?

7 A. At first, I was not educated with the --
8 familiar with what was in the Will and what was
9 already -- I had to be educated; I educated
10 myself. I'm still learning every day about what
11 that Will reads.

12 A. Well, it might be -- it might be a Hundred and
13 Fifty (\$150,000.00). It depends on who's doing it.

14 Q. Okay. Are you of the opinion that the Trust is
15 going to have to repair the dam?

16 A. It needs to be repaired.

17 Q. Beg your pardon?

18 A. It -- it was being repaired.

19 Q. And it will continue to be repaired; is that
20 Correct?

21 A. Uh-huh (affirmative response).

22 Q. How about the buildings in what we call
23 downtown Boykin, the restaurant and the broom
24 factory, the grits mill, the grill, what state of
25 repair are they in?

1 A. The church is fairly good. The cottage needs
2 some repairs.

3 Q. Okay. Now, we're talking about Swift Creek
4 Church?

5 A. Yeah.

6 Q. The old Swift Creek?

7 A. Swift Creek. Sorry.

8 Q. Beg your pardon?

9 A. Swift Creek. I'm sorry. I didn't ---

10 Q. I just want for the record to make sure we
11 know which church we're talking about.

12 A. It's been painted.

13 Q. Okay.

14 A. And it's been -- we had somebody that was
15 retired did -- did some wall -- plastered some of
16 the walls. It's pretty good right now.

17 Q. How about the restaurant, it needs repairs,
18 doesn't it?

19 A. The restaurant probably needs a new roof soon
20 on the dining room. Probably needs more updated
21 repairs on the entrance. Need to fix a footing
22 back of the kitchen which was the old Post
23 Office.

24 Q. Are the beams beneath it rotting?

25 A. There are some old -- old damage of termites in

1 *it.*

2 *Q. Needs to be repaired though?*

3 *A. It could be braced up or -- or repaired.*

4 *Probably get somebody to go and look at it.*

5 *Q. Are you relying -- in your judgment, it's*
6 *better to rent it rather than sell it and let*
7 *somebody else do the maintenance on it?*

8 *A. Well, right now, we got one property for sale*
9 *and that's downtown. We did have some damage on --*
10 *on the roof.*

11 *Q. Which property is that?*

12 *A. That's Commerce Alley.*

13 *Q. Commerce Alley?*

14 *A. One or whatever.*

15 *Q. Yeah, it's the old -- the old Camden Food Shop*
16 *building?*

17 *A. Yeah. And that needs to be repaired, but I*
18 *didn't realize -- we did a claim on it and I*
19 *think we got money from it, but we didn't repair*
20 *it.*

21 *Q. Has the Trust sold any property since you*
22 *became a Co-Trustee?*

23 *A. To Sue Ziemke.*

24 *Q. Seven acres, was it a little over seven acres?*

25 *A. It was six point seven-seven (6.77).*

1 Q. Okay. And do you recall what that went for?

2 A. I know it's over a Hundred.

3 Q. But if I understand, you've only sold -- the
4 Trust has only sold one piece of property since
5 the three Trustees got together? It was -- yes,
6 but we -- we're in the process of letting Jo
7 Montgomery has eleven (11) -- eleven (11) lots at
8 Peckwoods. We put that in the listing. We have --
9 I think we have one, maybe one or two -- one
10 person looked at some acreage.

11 Q. Would that income be used to diversify the
12 assets of the Trust?

13 A. Well, it has to see about the Tax Code to see
14 if it is -- whether it's net income or -- or --
15 or principal.

16 Q. Do you know the difference?

17 A. I'm learning.

18 Q. As we speak here, you don't know the difference
19 between net income opportunities?

20 A. Net is just cash sales, but you can have cash
21 and it be net. And I don't think that -- that's
22 something for an accountant to tell me about the
23 Tax Code.

24 Q. What do you know now that you didn't know back
25 then?

1 A. Well, back then, I didn't know about the tax --
2 what was the tax -- what the amount of the Estate
3 was worth, didn't know what ---

4 Q. You know that now?

5 A. Yes.

6 Q. And what is it worth?

7 A. Give or take with all -- all -- all Trust A and
8 Trust B, Twenty (20) to Twenty-two (22).

9 Q. How about of the principal?

10 A. Principal -- right now, what I understand, we
11 don't need to bother the principal.

12 Q. Okay. Does your brother, Whit, own his own
13 home?

14 A. No.

15 Q. Do you think that he might be entitled to
16 owning his own home during this lifetime of the
17 Trust?

18 A. I think Whit is -- needs somebody to help him.

19 Q. Do you think he ---

20 A. And I -- I'm not the person to help Whit.

21 Q. You can go ahead and answer my question. My
22 question being again, as we sit here today, if the
23 Trust were to write you a check for One point Four
24 Million Dollars, would you relinquish your rights
25 in the Trust?

1 A. It depends on ---

2 Q. I beg your pardon?

3 A. I don't know. It's not -- it's not -- not -- I
4 don't know. It's -- whatever he wants.

5 Q. That's the offer you made to Whit, right, to
6 take One point Four Million Dollars (\$1.4) and
7 walk away?

8 A. That's what -- what he offered.

9 Q. Beg your pardon?

10 A. What -- I think if he doesn't want it and he
11 wants to be a part of the Trust, that's fine. I
12 don't think that Whit has -- has explained or
13 asked what he wants to me or Mary Deas. And I
14 don't think that one Trustee controls one person.

15 Q. I understand that, but ---

16 A. And I don't think if Whit doesn't come up to
17 me and tell me what he wants, I don't know.

18 Q. Since you've become -- became Trustee or
19 Co-Trustee of this Trust, have you discussed any
20 assets of the Trust with your brother, Whit, or
21 your sister, May?

22 A. No.

23 Q. Have you discussed ---

24 A. Because I was told not to. I was -- because
25 Rigdon Boykin said he represents May and Whit at

1 the time and anything that goes about Whit or the
2 Trust or anything would through him.

3 Q. So, the answer to my question is no, you have
4 not discussed any of the assets of the Trust with
5 May or Whit since you became co-Trustee?

6 A. No, I was told not to.

7 Q. Have you ever discussed your idea of an
8 investment strategy with your brother and sister,
9 May and Whit?

10 A. I was told not to discuss anything about the
11 Trust to Whit or May. I -- and they have since
12 then have cut ties.

13 Q. Would you be willing to discuss your investment
14 strategy with your brother, Whit, or your sister,
15 May?

16 A. If they want to.

17 Q. Okay. Is there -- do you -- do you attach some
18 significance to providing for the preservation of
19 the wildlife in the Boykin Mill Pond; do you put
20 some significance on the importance of doing
21 that?

22 A. If it benefit all, yes.

23 Q. All of who?

24 A. Remaindermen and beneficiaries.

25 Q. Can you give me an example of how it would not

1 *benefit everybody including the remaindermen?*

2 *A. The remaindermen love the pond.*

3 *Q. The remaindermen being the children of Mary*
4 *Deas and your daughter?*

5 *A. Yes.*

6 *Q. Okay.*

7 *A. And even their children love the pond.*

8 *Q. Okay. So, you're saying that's a benefit they*
9 *would realize from maintaining the pond?*

10 *A. It's a benefit of their -- their benefit.*

11 *Q. Okay.*

12 *A. It benefits Whit. It benefits May. Benefits*
13 *me. Benefits Mary Deas. And the grandchildren.*

14 *Q. Do you know the difference between an option*
15 *to purchase -- an option to purchase and an*
16 *absolute sale?*

17 *A. It's an option to buy -- buy it, but I don't*
18 *think my sister will sign this at all.*

19 *Q. Have you discussed it with your sister, Mary*
20 *Deas?*

21 *A. Yes.*

22 *Q. When did you discuss it with her?*

23 *A. A couple weeks -- a couple days ago.*

24 *Q. It was your -- was it your position in late*
25 *19 -- I mean, 2017 that, under no circumstances,*

1 would you consider selling the Mill Pond to a
2 third person?

3 A. No. Well, yes.

4 Q. Okay.

5 A. I did not ---

6 Q. That would be your position that, under no
7 circumstances, would you consider selling it to a
8 third person?

9 A. Not with those options.

10 Q. Was it your position in late 2017 that you
11 were not going to consider selling downtown
12 Boykin as described in that option to a third
13 person?

14 A. Correct.

15 A. This is a chop-up, and I know that my sister
16 would not sign it now, this Option.

17 Q. And she represented that to you as late as two
18 days ago?

19 A. Yeah. Probably last -- last night. The night
20 before.

21 Q. Okay. What, if anything, does Rigdon Boykin
22 stand to gain as being a Trustee of the Trust?

23 A. I believe he has land that's for sale that --
24 that -- that has -- bordered us.

25 Q. Is he an income beneficiary of the Trust?

1 A. No.

2 Q. Is he going to inherit any land from the Trust?

3 A. No.

4 Q. Is he going to get anything under the Last
5 Will and Testament of your dad?

6 A. No.

7 Q. Why is he not a Disinterested Trustee? Go
8 ahead and answer it.

9 A. Why -- he has influenced my brother and my
10 sister to not talk to us.

11 Q. Would you like to talk to them?

12 A. Yeah.

13 Q. Is that a no?

14 A. I said yes.

15 Q. Oh, I'm sorry. I've got to where I have a hard
16 time hearing.

17 A. Sorry.

18 Q. Would you like to talk to May?

19 A. Yes.

20 Q. About your investment strategy for the Trust?

21 A. I'd like to -- I'd like to know why she wants
22 to sell everything.

23 Q. Okay. Would you be interested in talking to
24 Whit about your plan for the Trust?

25 A. Well, I think he made up his mind a long time

1 ago.

2 *Q. Would you be interested in talking to him*
3 *about ---*

4 *A. Yes.*

5 *Q. -- your plan?*

6 *A. You know, in -- in a Trust meeting.*

7 *Q. Sorry?*

8 *A. If he wants to come to a Trust meeting, we'll*
9 *set up a time.*

10 *Q. Would he -- would you be willing to invite*
11 *Whit to a Trust meeting, Trustee meeting?*

12 *A. If he wants to come.*

13 *Q. So, the answer is yes?*

14 *A. Yes.*

15 *Q. Would you be willing to invite May to a Trustee*
16 *meeting?*

17 *A. Yes, if they want to come.*

18 *Q. Paragraph -- I'm sorry, let's go to Page Four*
19 *again, Paragraph Twenty. You're alleging that*
20 *Rigdon Boykin has acquired and exercises undue*
21 *influence over my clients, Whit and May. What*
22 *undue influence are you referring to there?*

23 *A. At one family meeting we had, I believe it was*
24 *the Congaree Trust, he came walking in with my*
25 *sister and said he was her -- this was her lawyer.*

1 Q. Okay. But what undue influence did he
2 influence her to do?

3 A. He knew -- I know that he supported her in her
4 shooting and let her stay at his -- his guest
5 house, had parties for her and everything else,
6 and I think my brother was there --- I think that
7 family jealousy has come upon this and there was
8 upset that -- that -- that the -- I know that my
9 brother was -- every time I had went to see him
10 on doing a project, he was very bitter to me or
11 yelling at me and saying, "What are you doing
12 here"?

13 Q. Is it fair to say that, as a co-Trustee, you
14 and Mr. Boykin have differences of opinion that
15 would influence the management of this Trust?

16 A. He wants to liquidate the whole Trust and
17 disperse it by -- within five years.

18 Q. Look at Paragraph Twenty-four on Page Five. As
19 I read that, you're telling -- you're denying that
20 you must follow the provisions of the South
21 Carolina Uniform Prudent Investment Act?

22 A. According to the Will, ---

23 Q. No, my question is, are you denying that you
24 must follow the provisions of the South Carolina
25 Uniform Prudent Investment Act? And then I'll ask

1 you why. You already denied that you must follow
2 the Guidelines of the Uniform Prudent Investment
3 Act; is that correct?

4 A. (Witness pauses).

5 Q. Ms. Belger, you have denied that you have to
6 follow the provisions. Now, my question is, why
7 do you think you have to not follow the
8 provisions of the South Carolina Prudent
9 Investment Act?

10 A. (Witness pauses). On -- in this response --
11 no, his -- his ---

12 Q. I'll go to something else. Ms. Belger, do you
13 think that the Trustees have reached an impasse
14 on the prudent management of this Trust?

15 A. I think we are still working on -- on this.
16 It's an ongoing thing.

17 A. Yes.

18 Q. Okay. What is your opinion of a -- an
19 appropriate income distribution to Whit on an
20 annual basis?

21 A. We have not established that.

22 Q. Do you not have an opinion at this time?

23 A. This -- not at this time, and we established
24 the one before and that was based on a temporary
25 basis.

1 Q. Did you all ever try to determine if it should
2 be tied to the value of the Trust, it being
3 Twenty-two Million Dollars (\$22,000,000.00)?

4 A. We -- that valued the crop which is the timber.

5 Q. Okay.

6 A. And if we had to, which it may be.

7 Q. Was there a five month gap in there in 2017
8 when you did not have any Trustee meetings?

9 A. We had -- all we had e-mails On-line.

10 Q. But no Trustee meetings?

11 A. I think that counsel, Rigdon and Trustees had
12 other -- other -- other clients to deal with.

13 Q. In analyzing the results of those Trustee
14 meetings, would it be fair for me to discern that
15 there's not a whole lot you all agreed upon?

16 A. Well, I think we agreed a lot.

17 Q. On what? Y'all agreed on paying Bill Lindler.
18 Y'all agreed on paying some costs. Have y'all
19 agreed on selling any of the property since --
20 since you've been a co-Trustee, other than to Sue
21 Ziemke.

22 A. We've agreed -- the weakest point -- the
23 weakest timber -- timber tracts.

24 Q. Have you all ---

25 A. We agreed on some commercial land to sell. We

1 *agreed to sell all Peckwoods.*

2 *Q. But did -- but then there were some*
3 *disagreements as to what you all would be willing*
4 *to sell it for; is that correct? It would be fair*
5 *to say ---*

6 *A. Yes.*

7 *Q. Okay. Considering the disagreements you and*
8 *Mr. Boykin -- consider resigning and letting some*
9 *independent person be appointed?*

10 *A. No, I think it would be a big mistake.*

11 *Q. Okay. Why?*

12 *A. Because I think Mr. Boykin always creating*
13 *problems, he has made chaos, and then he turns*
14 *around and say, "I got the solution, you have to*
15 *do it my way, only my way."*

16 *Q. You're asking that he be removed a the*
17 *Co-Trustee?*

18 *A. Yes.*

19 *Q. Why?*

20 *A. Because he's poisoned my brother, my sister*
21 *that they -- well, I feel that he promised a whole*
22 *bunch of stuff which goes against Trustees,*
23 *promised that this Will is no good. He's telling*
24 *them this Will is no good, told them my vote is*
25 *no good.*

1 Q. Told you what?

2 A. Told -- told them my vote is no good.

3 Q. Let me rephrase that. You have -- you have put
4 forth an investment strategy; right? I think we
5 heard that today.

6 A. The strategy is use the -- the assets we have.

7 Q. And you -- do you consider that to be a
8 prudent management of this Estate, of this Trust?

9 A. For -- for right now.

10 Q. My question about Item Ten relates to the very
11 first sentence where it says, "It is my desire,
12 but I do not direct that certain parcels, tracts
13 or parcels of real property" and then you go
14 down, it says, "shall to the fullest -- fullest
15 extent possible be preserved." Can you tell me
16 what that means to you, "It is my desire, but I
17 do not direct"?

18 A. You can't say no in a Will and you can't say
19 never in a Will.

20 Q. So, would you ---

21 A. So, that's the strongest word -- probably the
22 strongest that he could put in -- in the Will.

23 Q. Ms. Belger, are you currently leasing the
24 Boykin Store in downtown Boykin?

25 A. Yes.

1 Q. And you pay rent on that?

2 A. Yes.

3 Q. And is that -- are those rent payments current?

4 A. No, it's not.

5 Q. And how far in arrears are they?

6 A. I have -- probably six months.

7 Q. And what's the monthly rent?

8 A. A Thousand (\$1,000.00).

9 Q. Do you believe that the One Hundred Thousand
10 Dollar (\$100,000.00) annual distribution to the
11 income beneficiaries is a fair amount?

12 A. That was only temporary.

13 Q. Do you believe that it was a fair amount?

14 A. It's more than what I make or my sister and my
15 brother -- my brother and my sisters will make in
16 a lifetime in one year. That's my belief.

17 Q. So, was it fair or not?

18 A. I thought it was fair.

19 Q. And did you use any of that money to pay the
20 rent at the Boykin Store?

21 A. Yes. And pay lawyers, too. I was forced to hire
22 lawyers.

23 MR. DUFFY: Your Honor, the next witnesses, plural,
24 that we have are by deposition. So this may be a good -- a
25 point in time where we can discuss, you know, Mr. Becker has

1 filed a motion to exclude these -- the deposition testimony.

2 Our view was that in order to streamline things for
3 trial given the constraints on time that we've got in
4 court today that we would designate as we filed on
5 Wednesday of last week by page and line number
6 designations for Ansel Bunch, Jimmy LaFrage, Jane Peacock,
7 and then Mr. David Thomas as well, which I don't believe
8 is an issue because everybody has agreed to the use of his
9 deposition, as I understand it. But --

10 THE COURT: Now, wait a minute. You're talking about
11 Bunch, LaFrage, Thomas. And who else?

12 MR. DUFFY: Jane Peacock. She's the accountant for
13 the trust.

14 THE COURT: Right. And with respect to these four
15 witnesses, what are you saying?

16 MR. DUFFY: Your Honor, we have filed on Wednesday a
17 notice of our intention to use -- to present their
18 testimony through their -- their deposition testimony.

19 THE COURT: Right. You're not going to call them as
20 live witnesses?

21 MR. DUFFY: That's correct, Your Honor.

22 THE COURT: And have you agreed -- have the two sides
23 agreed on what's going to be put before me?

24 MR. DUFFY: Your Honor, we -- again, we --

25 THE COURT: I thought we got this worked out. All

1 right. That was the purpose of the pre-trial is not to
2 get into this again, but rather to move in an orderly way
3 through the presentation of testimony.

4 I was not aware that the Court would not be given any
5 kind of chance to explore with any of these -- I mean,
6 these are the heart and soul of the technical witnesses
7 about the financial affairs of this trust, how it has been
8 handled, and what is recommended on an ongoing basis. And
9 you're going to present all of them by deposition.

10 Who are you going to present as live witnesses?

11 MR. DUFFY: Your Honor, we've got Mr. Rigdon Boykin
12 and Jim Hardin as live witnesses. And I think that will
13 likely take the majority of today, if not --

14 THE COURT: And how are you going to present Bunch,
15 LaFrage, Thomas, and Peacock?

16 MR. DUFFY: Your Honor, we have their deposition.

17 THE COURT: And you're just going to put them in
18 evidence. And then I've got to read them --

19 MR. DUFFY: We're happy to read them --

20 THE COURT: No, sir.

21 MR. DUFFY: Again, Your Honor, our purpose was to try
22 to streamline things.

23 THE COURT: Well, all right.

24 MR. DUFFY: And --

25 THE COURT: If that's the way you want to proceed,

1 that's fine with me. Let me see.

2 Is opposing Counsel in agreement?

3 MR. DUFFY: Apparently not, Your Honor. Because they
4 filed --

5 THE COURT: Well, then let's get to that.

6 Mr. Becker.

7 MR. BECKER: Your Honor, I -- I don't object to their
8 reading in --

9 THE COURT: I don't want to read something if -- all
10 right. I can shorten this thing by simply reading it
11 myself at night or whenever, which I'm perfectly capable
12 of doing. So that's not a problem for me. I just want to
13 understand exactly how you're proceeding.

14 MR. BECKER: As long as we retain the right to call
15 these witnesses in our case in chief, I don't have an
16 objection to them putting up what they want to put in
17 through the depositions.

18 THE COURT: All right. We'll see how that goes.
19 What I don't want to do is have them to put in material in
20 their case and then have us run through the whole thing
21 book, chapter, and verse again in your case.

22 MR. BECKER: I don't want to do that either. But --
23 and the reason that I'm standing here saying this, I
24 purposely did not cross-examine those witnesses in their
25 depositions because they live in Camden, basically. And I

1 intended to call them at trial.

2 THE COURT: Yes.

3 MR. BECKER: So whatever's in that deposition
4 transcript contains virtually none of the questions that I
5 would ask them at a trial of this case.

6 THE COURT: Well, you can't have it both ways,
7 Mr. Becker. And what I'm simply saying is this. I -- if
8 you're going to want to put them up as hostile witnesses,
9 I don't know how you're going to consider them. I
10 consider them people that know a lot about this trust and
11 have worked with it for years.

12 All right. If you're going to put them up, what I
13 don't want to have is a complete rehash of their
14 testimony. I will have read it. I will assure you, four
15 depositions are something I can read in the evening with
16 no problem.

17 All right. So I want you to understand that I'm
18 going to exceed to their wishes. I like the fact that
19 we'll be able to move on to the live testimony. But
20 understand that after I've read them, I don't want to have
21 us repeat a lot of things.

22 MR. BECKER: That would be the last thing I would
23 want to put you through, Your Honor.

24 THE COURT: Very good.

25 MR. BECKER: I assure you of that.

1 THE COURT: Okay. I understand how we're going to
2 proceed.

3 Mr. Tetterton.

4 MR. TETTERTON: Your Honor, I have the same
5 situation. What I have done is I've taken -- and under
6 the rule, I have provided him excerpts, line and page
7 number. And I didn't have any objections from him. And
8 we reached out to him last week, do you have any
9 objections to what --

10 THE COURT: He -- he's agreeing with you completely
11 about that. What he's saying is that there are things he
12 didn't cover.

13 MR. TETTERTON: I understand.

14 THE COURT: All right. That he wants to cover. And
15 I'm going to allow him to do that.

16 MR. TETTERTON: Mr. Thomas is the de bene esse. So
17 it's coming in --

18 THE COURT: Well, Mr. Thomas -- he's not going to be
19 able to call Mr. Thomas live.

20 MR. TETTERTON: I have Bunch, LaFrage, and Peacock --

21 THE COURT: And I -- I will tell you one thing I'm
22 not going to allow to happen again.

23 I don't know what the reason was, Mr. Duffy, for
24 y'all to decide to put five minutes of a witness doing the
25 best she could to go through some papers to answer a

1 question and then cut off her answer. But I'm not going
2 to allow that to happen to any other witness again.

3 If that was an attempt to simply embarrass
4 Ms. Belger, I don't approve of that. We are non-jury
5 here. We haven't got to do that kind of thing. So I'm
6 not going to allow that to happen again, I can tell you
7 that. So just be warned.

8 All right. Let's put these -- I think I understand
9 your position, Mr. Tetterton.

10 All right. Hand up -- the depositions are up here
11 and I'm going to put them in evidence now.

12 MR. DUFFY: They are, Your Honor. And I've got a
13 notebook here that has the excerpts put into it for Your
14 Honor and a copy for your clerk.

15 THE COURT: Excellent, excellent.

16 MR. DUFFY: So if I may.

17 THE COURT: What I'll do is the excerpts will help
18 me. But I'll take them all -- I will assure you this
19 evening, I'll take them all home, along with your
20 excerpts.

21 MR. DUFFY: Absolutely.

22 THE COURT: But for the court reporter's purposes,
23 coming in now -- and you can mark them appropriately,
24 Madam Court Reporter, are the excerpts of depositions of
25 Ansel Bunch, Jimmy LaFrage, Mr. David --

1 MR. DUFFY: David Thomas.

2 THE COURT: David Thomas and Jane Peacock.

3 MR. DUFFY: That's correct, Your Honor.

4 THE COURT: All right. Hand them up and let's get
5 them marked now.

6 MR. DUFFY: Your Honor --

7 THE COURT: Be patient one moment.

8 Okay. What I've got up here before me is Ansel
9 Bunch, Jimmy LaFrage, Peacock. And I don't have Thomas.
10 Now, where's Thomas?

11 MR. BECKER: We've already had that, Your Honor. It
12 was forwarded to you. The entire transcript was made part
13 of our motion to --

14 THE COURT: Hang on.

15 MR. BECKER: -- vacate the confidentiality order.
16 We --

17 THE COURT: You don't need to give me a whole lot of
18 explanation. I just want to know where it is.

19 MR. BECKER: Okay. We can give you another copy
20 right now.

21 THE COURT: What I want you to do is give me another
22 copy right now. I've seen it. And I read it because it
23 was part -- it was an attachment to your motion.

24 MR. BECKER: Yes, ma'am.

25 THE COURT: And it's probably just somewhere that I

1 can't put my finger on it right now. So hand that up to
2 me.

3 MR. BECKER: We will. And we have not yet received a
4 sealed original from the court reporter. So once we have
5 that, we will --

6 THE COURT: You can substitute it.

7 MR. BECKER: -- substitute it.

8 THE COURT: That will be fine.

9 All right. Those -- do you have those marked
10 appropriately?

11 THE COURT REPORTER: Yes, ma'am.

12 THE COURT: And if you'll hand them up here to me.

13 THE COURT REPORTER: Yes, ma'am.

14 MR. REIBOLD: And, Your Honor, the rule requires that
15 we give our counter designations at this time. So we have
16 them to submit to you as well.

17 THE COURT: Very good. Although, what should have
18 been done is those should have been merged, of course.
19 That's why we do that. But if you've got counter
20 designations, have you shown them to them?

21 MR. REIBOLD: I don't believe we have, Your Honor.

22 THE COURT: That's not how it's supposed to be done,
23 Mr. Reibold, as you well know. But hand them up. And
24 we'll merge them as best we can, if these are counter
25 designations. Take them up to the court reporter.

1 Now, have you got a copy for the other side?

2 (WHEREUPON, there was no response.)

3 THE COURT: Have you got a copy of these for
4 Mr. Tetterton and --

5 MR. REIBOLD: I'm trying to ascertain that -- we
6 don't have their copy right now, no. We will e-mail it to
7 them or print it.

8 THE COURT: Well, I want that e-mailed to them as
9 soon as you can. They need to have that in the ongoing
10 procedure of this trial.

11 MR. REIBOLD: Yes, Your Honor.

12 THE COURT: All right. Very good.

13 MR. TETTERTON: Your Honor, could I suggest that we
14 put all the deposition -- the whole deposition in? That
15 will solve --

16 THE COURT: I am not going to do that to this record.
17 Y'all have decided to designate. And that is how we're
18 going to do it. I'm just trying to protect you by being
19 sure that the excerpts from them are marked.

20 The court reporter is going to do a good job of
21 merging these things when she makes the transcript. And I
22 cannot think -- make intelligent use of it.

23 MR. TETTERTON: I'd like to hand mine up at this
24 time, Your Honor, because --

25 THE COURT: But I have the depositions, which are,

1 also, exhibits. They're not going to have to be printed
2 as part of the transcript. That's what I'm trying to
3 avoid.

4 MR. TETTERTON: Yes, ma'am. With the Court's
5 permission, as soon as I get their designations, I'll then
6 do mine and hand them back up.

7 THE COURT: I'm not going to do it that way, no, sir,
8 no, sir. I'm not going to have y'all going back and
9 forth, and back and forth. You've got enough in here.
10 And they've got enough in there for me to make sense of
11 what your position is. And I have the whole transcript.

12 MR. TETTERTON: And the only thing I'd want to do is
13 I -- in my designations, I've put the whole page in, but
14 designated pages and lines. So what I'm going to do is go
15 back and highlight the lines so you don't have to read the
16 top part of the page.

17 THE COURT: Mr. Tetterton, let's not get into the
18 technicalities of this right now.

19 MR. TETTERTON: Okay.

20 THE COURT: But I can tell you, I don't want a bunch
21 of duplication material where you send me a whole
22 deposition with highlights in it, no. We're going to have
23 something that is intelligible for our court reporter to
24 work with.

25 MR. TETTERTON: She'll have an index of my

1 designations.

2 THE COURT: Yeah. But I don't want her to have to
3 fiddle through your big deposition to, actually, put those
4 in this record. So I don't like that.

5 MR. TETTERTON: Okay.

6 THE COURT: What I want is something that's the
7 excerpts.

8 MR. TETTERTON: Okay. I'll do it over lunch.

9 THE COURT: Very good.

10 (WHEREUPON, Plaintiff's Exhibit Nos. 1-C and 1-D were
11 marked for identification and admitted into evidence.)

12 THE COURT: Are we good?

13 THE COURT REPORTER: Yes, ma'am.

14 THE COURT: Very good. You may call your next
15 witness.

16 MR. DUFFY: Your Honor, our next witness is Rigdon
17 Boykin, which I wondered whether the Court would prefer
18 that we break for lunch now.

19 THE COURT: Well, that's a good thought. It is
20 almost noon. And it probably does make sense not to break
21 Mr. Boykin's examination.

22 About how long do you think you will have him on the
23 stand on direct?

24 MR. DUFFY: Your Honor, we're going to do our very
25 best to keep it under, you know, an hour and a half, two

1 hours.

2 THE COURT: Well, I would appreciate that. I know
3 that your -- his knowledge and your preparation is very
4 focused. So I would hope you'd be able to do that.

5 And Mr. Becker and Mr. Tetterton will each have an
6 opportunity to cross-examine, of course. But I would
7 expect that we would have time for other witnesses besides
8 just Mr. Boykin this afternoon.

9 MR. DUFFY: I think that's -- we do expect, Your
10 Honor, to call Mr. Hardin this afternoon as well.

11 THE COURT: That's what I'm getting at. I want to be
12 sure that we are able to do both of those things, if
13 possible.

14 MR. DUFFY: Yes. We, certainly, don't intent to take
15 a -- more than a day of his time.

16 THE COURT: Very good. Excellent.

17 MR. BECKER: Your Honor, I expect my
18 cross-examination of Mr. Boykin could -- could be long.

19 THE COURT: Yes. Well, we're going to try to hem you
20 in. You know, this has not got to be a contest about the
21 feelings people have. And I know those feelings are very
22 strong feelings. And I appreciate that. And my heart
23 breaks for this family.

24 I -- as I've explained to y'all in pre-trial, along
25 with two of my cousins, I managed the family business and

1 trust for 30 years before we, finally, were able to
2 reconstruct the business, make it income producing,
3 educate all the grandchildren, and then distribute the
4 assets of the trust. And there were 14 of us. And we
5 never had a cross word. And I just wish that for other
6 families.

7 We were mighty lucky. And our siblings and our
8 cousins trusted each other. And we tried as best we could
9 to do what our parents had directed us to do, which was
10 not always the most investment prudent thing, but it ended
11 up working out.

12 So what I'm going to try to do is keep y'all from
13 having a whole lot of conversation about opinions about
14 people and their motives, and stick, rather, to what I've
15 got to decide, which is how is the trust being managed
16 now, and how must it be managed on a going-forward basis
17 in light of preserving the assets of the trust, as well as
18 making them income producing. So what helps me to find
19 that is what I want. And, frankly, other matters are less
20 important.

21 MR. BECKER: Understood, Your Honor.

22 THE COURT: All right. Very good. We're now at
23 12:00. And -- all right. Can y'all be back in an hour an
24 15 minutes?

25 MR. DUFFY: Absolutely, Your Honor.

1 THE COURT: Very good. We'll see each other at 1:15.

2 (WHEREUPON, a lunch break was taken.)

3 THE COURT: All right. Mr. Duffy, you may proceed.

4 MR. DUFFY: Your Honor, before we call Mr. Boykin to
5 the stand, I do want to make one point. We have here, as
6 I mentioned, a number of exhibits that have all been
7 pre-marked.

8 THE COURT: Yes.

9 MR. DUFFY: It is about 175 exhibits. And we have a
10 list here that's been provided to all Counsel in advance.

11 THE COURT: Excellent.

12 MR. DUFFY: I've given it to the court reporter.
13 Instead of going through each exhibit, you know, with the
14 witness to get them admitted, we'd like to move them into
15 evidence at this time.

16 THE COURT: They're admitted pursuant to my previous
17 ruling and Mr. Becker's assent thereto. That doesn't mean
18 he agrees with everything that's in them by any means.
19 But it is a way of facilitating these matters. And we
20 will accord him the same treatment when he puts forward
21 his exhibits.

22 And what will be helpful for me is for you to give me
23 a copy of the list.

24 MR. DUFFY: I have it right here, Your Honor.

25 THE COURT: And then I'll know where everything is as

1 you go forward.

2 MR. DUFFY: Sure. And, Your Honor, we'd also -- as
3 we discuss exhibits, we'll have -- we'll do our best to
4 have them on the screen for -- for the Court to see.

5 THE COURT: Excellent, excellent.

6 (WHEREUPON, Plaintiff's Exhibit Nos. 1, 2, 3, 4, 5, 6,
7 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,
8 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34,
9 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48,
10 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62,
11 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76,
12 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90,
13 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103,
14 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114,
15 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125,
16 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136,
17 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147,
18 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158,
19 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169,
20 170, 171, 172, 173, 174, and 175 were marked for
21 identification and admitted into evidence.)

22 MR. DUFFY: Your Honor, at this time, we'd call
23 Mr. Rigdon Boykin to the stand.

24 THE COURT: Come forward, Mr. Boykin.

25 Let's see. Do we have someone to administer the

1 oath?

2 MR. DUFFY: Your Honor, may I bring you a copy of
3 this exhibit list?

4 THE COURT: Yes.

5 I will do a little all-purpose work here. There you
6 go.

7 Thank you.

8 All right. Mr. Boykin, raise your right hand if you
9 would, please, sir.

10 WHEREUPON,

11 RIGDON HIETT BOYKIN,
12 after first having been duly sworn, testified as follows:

13 THE COURT: Very good. You may be seated in the
14 witness box.

15 DIRECT EXAMINATION

16 BY MR. DUFFY:

17 Q Rigdon, good afternoon. If you would, please, state
18 your name for the record.

19 A Rigdon Hiett Boykin.

20 Q And are you the Petitioner in this case?

21 A Yes, I am.

22 Q And are you here today seeking guidance and a way
23 forward?

24 A In particular, yes.

25 Q And, Mr. Boykin, just to kind of give us an idea of

1 where everything fits in place in the picture, would you
2 describe your relationship with the decedent in this case?

3 A Okay. Big Whit -- I'll use that, if it's okay.

4 Q Certainly.

5 A Big Whit was my first cousin. My father was his
6 uncle. And my father died when I was fairly young. And I
7 lived with cousins and other people most of the time from
8 the age of 10 on.

9 And I lived a good bit of the time down at Millway.
10 I did summer jobs there, even though I went to school
11 elsewhere. And I, basically, grew up with May, Whit, and
12 Alice when they were little kids at Millway.

13 Q And how would you describe your relationship with
14 Mr. Boykin, Big Whit?

15 A Big Whit -- Big Whit was very good to me. I mean, we
16 were close. He helped me. One time we were 500 bucks
17 short on paying school expenses. He ponied it up, things
18 like that.

19 I mean, he -- I lived in his house for -- at least,
20 during a lot of the summer vacations. I worked for Whit
21 for, I think, two years. And I worked two years, I think,
22 for Bainard [phonetic] Boykin, who was leasing Whit's
23 farmland at the time as well.

24 Q And what time period are you talking about?

25 A This would have been in the 60s, late 60s, in

1 particular, starting about I would say '63 or so, '64,
2 '65, all through that timeframe. I -- go ahead.

3 Q You were in college at the time?

4 A No. I went to -- started college in 1964. I had one
5 year at Kenyon in Ohio. And then I couldn't afford to
6 stay there, so I switched to Carolina. In fact, that was
7 the \$500 Whit paid. It was to my final bills at Kenyon.
8 And he paid that amount so I could be square with the
9 college when I left. And I went through college in three
10 years, and then started law school in '68.

11 Q And what was your relationship with Alice Boykin?

12 A Alice was a good friend of my father's when he was
13 still alive. And Alice was -- when I started courting
14 with -- or visa versa, they were all the time at our house
15 a good bit of a time. And Alice was a delightful, a
16 delightful person. She could charm the birds out of the
17 trees. She was very, very engaging, sparkle, everything.

18 Q And how about your relationship with Whit and Alice's
19 children?

20 A Well, there were two sets -- well, three sets of
21 children. There -- you have Mary Deas, who was Whit's
22 child by his first marriage, Betty Carrison. And then
23 there was Jenny and Cliffy, who were Alice's children by
24 her first marriage. And then there was Whit -- or Alice,
25 Whit, and May in that order that Alice and Whit had. And

1 I have a good relationship with all of them as far as I
2 know.

3 Q And did you see them frequently?

4 A Well, when I was in college, Alice, Whit, and May
5 were going through a program to try and help them with
6 their learning disabilities. And Whit and -- I mean, the
7 program was incredibly rigorous, you know. It was like a
8 four-hour program every day.

9 And Whit and Alice needed a break on that. And very
10 often, I was the person who would come over and stay with
11 the employees they had there to help them go through the
12 program and take care of them while Whit and Alice got a
13 break.

14 Q And at some point, Whit named you as a trustee under
15 his will; is that correct?

16 A Sure, yeah.

17 Q And did he tell you at the time he was going to do
18 that?

19 A Sure. Yes, he did. In fact, we had a lot of
20 discussions about his will. Because Whit was -- he was
21 like an old English aristocracy. Everything should go to
22 the eldest son. And I disagreed with him on that because
23 that's not the way things are done today. But I couldn't
24 get very far on that. But we had lots of discussions
25 about what his will would have.

1 Q Okay. And going -- you touched on this a little bit,
2 but going back to your experience. Tell me, did you --
3 you said you had -- you went to college and law school?

4 A Yeah. I went to -- I started law school in '68.
5 In -- the end of '68, they changed the draft law. And so
6 law students no longer got an exemption. It was the year
7 before the lottery.

8 So my draft board told me I was 1-A. So I had to
9 enlist in a delayed enlistment program to be able to
10 finish my first year of law school. So I enlisted. I
11 went to OCS, combat engineers, OCS. And then I spent my
12 two additional years after OCS in the Army, and got out,
13 and started a second year of law school.

14 Q And what'd you do after you graduated?

15 A Law school?

16 Q Yes.

17 A I -- I got a job in New York working for a media --
18 well, in those days, it was sort of a small firm called
19 Dunnington Bartholow & Miller.

20 Q And what did you do there?

21 A I, initially, started as a litigation associate. In
22 those days, Dunnington represented the Bessemer
23 Securities, which was a Phipps family holding company at
24 the time. And they were being sued by various
25 beneficiaries. Every few years, they'd get a suit by

1 various beneficiaries seeking to remove them as trustees,
2 et cetera. I worked on that for a couple of years. And
3 then I did 10b-5 litigation for the next four or five
4 years.

5 Q And how about after Dunnington? Would you describe
6 your professional career briefly to the Court?

7 A Well, just before -- a couple years before I left
8 Dunnington, I decided I did not want to be a litigator and
9 started looking for another area of the law to be a
10 specialist in. And I was lucky enough to be able to
11 represent the American Paper Industry.

12 And at that -- in 1979, the National Energy Act was
13 passed. And that National Energy Act had -- was a
14 compendium of five bills, the power plant and industrial
15 fuel use act, the natural gas policy act, the public
16 utility regulatory policies act, a couple of others. And
17 the paper industry, at that point in time, was the
18 third -- I think it was the third most energy intensive
19 industry in the country.

20 So this act was of tremendous importance to them.
21 And I represented the paper institute in the
22 implementation of those various bills and the federal
23 energy regulatory -- federal energy regulatory policies,
24 the FERC, and in the Department of Energy. And that gave
25 me -- basically, they paid for my education in the energy

1 area.

2 Q And so how long of a career do you have practicing
3 energy law?

4 A Until I retired -- well, a couple years before I
5 retired until then. At the end of my career, I was
6 primarily working on you bet your company types of issues.
7 Because in a lot of -- in the process of becoming very
8 dominant in the energy law sector, you would get very
9 close to a lot of the CEO's and end up working with a lot
10 of them in terms of even AES, for example, which was the
11 largest independent power company in the -- in the world
12 at one point. I was, basically, acting almost as part of
13 their executive committee in their management group.

14 Q And so I'm not sure I got -- when did you retire
15 from --

16 A 2005.

17 Q Okay. And did you do -- did you ever work after you
18 retired?

19 A I didn't plan to. I was going to have a tree nursery
20 and do all kinds of stuff. And I -- basically, what
21 happened is I took two years to build our house. And then
22 I got pulled into other matters. I ended up getting
23 pulled into Kimbrell's Furniture Company. My wife's
24 family had a position in that company, a small one. But
25 the company was hoarding cash. It was keeping -- it had a

1 hundred million bucks in the bank earning about a quarter
2 of a percent. And we had a proxy fight over that. And I
3 thought they would settle. They didn't settle.

4 So I was like the dog that bought the car. All the
5 sudden, I win the proxy fight at the annual meeting. And
6 I have to become CEO and chairman of Kimbrell's, which was
7 a -- 50 retail stores. And I was chairman and, basically,
8 CEO of Kimbrell's for three years after that. That was in
9 2010 to 2013.

10 And then after that, I had worked on a project
11 earlier in Alaska trying to get a gas pipeline built
12 alongside the oil line and -- with no success because the
13 oil companies didn't want it. And about 2015 or so -- or,
14 actually, 2016, the election maybe it was, a friend who
15 had worked on it with me, Bill Walker, became governor of
16 Alabama. And he asked me to come up and negotiate on
17 behalf of the state of Alaska with Exxon, BP, and
18 ConocoPhillips to build a \$60 billion pipeline and
19 liquidification facility and sell LNG to the -- Asia.

20 I worked there until my contract expired. It was
21 about seven months. And that project, basically, imploded
22 because the price of oil would no longer support this gas
23 LNG project. Because LNG in those day, in particular, was
24 tied to the price of oil.

25 Q Okay. So in addition to -- and that brings us pretty

1 much up to the present day, or just a few years ago?

2 A Sure.

3 Q Have you ever served as a trustee before the
4 residuary trust that we're talking about today?

5 A Yeah. I became a trustee -- gosh, of a -- of a
6 trust -- two -- two trusts known as the Columbia River
7 Trust number one and Columbia River Trust number two.
8 They were put in place in 1928.

9 Q And where are those trusts located?

10 A The actual law that it was under was New Jersey law,
11 although we, basically, ran it out of New York. And I was
12 appointed a trustee of that trust probably on the order of
13 1972 or 1973. And I served as trustee for about three --
14 no, for about four years.

15 And then I had a disagreement with the other trust --
16 one of the other trustees, who was an interested trustee.
17 She was the primary beneficiary of that trust. And she
18 wanted to do a -- basically, buy land from the trust and
19 donate it to the town of Bedford. And I had no problem
20 with her doing that, as long as it was fully disclosed to
21 all of the income -- other beneficiaries and the remainder
22 persons of the trust. And she refused to do that.

23 So I resigned. And the resignation, basically, in
24 essence, forced the disclosure. And --

25 Q So that takes you up to 1976. Is that the last time

1 you --

2 A Well, I don't know whether it was '76, '78, when it
3 was. She appointed me back as a trustee about four or
4 five years later after she had gotten over having to
5 disclose this to the -- the remainder persons who had
6 consented to the transaction. I mean, they were all in
7 favor. It was just a procedural step she did not want to
8 do. I don't know exactly why.

9 Q And have you been serving as a trustee of that trust
10 since your reappointment?

11 A Yes, I have.

12 Q So how long would that be approximately? 25 years?

13 A You know, I don't -- I don't know exactly. It's -- I
14 was probably reappointed about 1983 or 1984, something
15 like that.

16 Q And what are -- what's the size and nature of that
17 trust?

18 A At the time, it's -- well, it's -- it's -- it's
19 probably 50 percent, 70 percent larger than this one,
20 depending on whose asset evaluation you use.

21 Q And what kind of assets are in that trust?

22 A In -- when I first became a trustee of it, it was
23 almost entirely in bonds because she wanted a lot of
24 income. And bonds were paying a lot of income in those
25 days.

1 Over a period of time, I got her to diversify that
2 into stocks, as well as bonds. Plus, we had one large
3 real estate investment in that trust. And we, ultimately,
4 sold that position, took back a mortgage. And between the
5 mortgage and the period we held that real estate block, it
6 was probably six years or so, seven years.

7 Q So you would say that trust is diversified?

8 A That trust is extremely diversified today.

9 Q And do you know what the average return has been over
10 the last 10 or 15 years on that trust?

11 A I called -- Morgan Stanley administers this for us.
12 Although a lot of the investment decisions we used
13 ourselves -- we did ourselves for some of the trust. We
14 have had in the -- I think it's 19 years or so that we've
15 been with Morgan Stanley because I couldn't get the
16 records from before then. I asked them what it -- the
17 gross return was --

18 MR. BECKER: Objection, Your Honor. The -- he's
19 going to be testifying about hearsay.

20 THE COURT: Overruled.

21 THE WITNESS: We have averaged for that 18, 19-year
22 period 7.3 percent gross return on the trust. That's
23 before payment of expenses and everything else. And that
24 is including losing 28 percent in 2008. We had a disaster
25 in 2008. But, of course, most people did, too.

1 BY MR. DUFFY:

2 Q And what kind of -- do you have any idea what kind of
3 distributions are made on an annual basis?

4 A Well, when the dividends started becoming more sparse
5 and interest rates went down and bond rates -- the return
6 you were getting on your bonds went down very low, we
7 switched out of a lot of fixed income of the traditional
8 types of fixed income. And, consequently, to be able to
9 continue to make distributions to the income
10 beneficiaries, we started using the power to adjust.

11 And the power to adjust -- and -- and this may not be
12 the legal definition of it, but just the way I envision it
13 is the courts and legislatures started allowing you to
14 look at total return, rather than just income in terms of
15 distributing to beneficiaries. Because you were having to
16 put more of your trust assets in equities and other types
17 of instruments like that that did not generate a lot of
18 income, but might have a substantial return.

19 And the courts and legislatures, as I understand it,
20 let you use the power to adjust to make up that
21 differential. And up in -- up in the northeast, it's
22 fairly recognized. Courts have discussed it a lot.

23 Q So -- and what -- I guess you're getting to it. But
24 do you know what the distributions are on that trust on an
25 annual basis?

1 A Well, we've done extremely well with that trust. And
2 so I'm the only disinterested trustee of that trust. And
3 practice [phonetic] influences me in my -- what I say down
4 here. But in New York and New Jersey, the only person who
5 can vote on what that distribution should be when you use
6 the power to adjust is the disinterested trustee.

7 In fact, my other trustee up there is an interested
8 trustee. He's an income beneficiary. And he cannot have
9 any say over that whatsoever. Basically, I decided to --
10 this is -- this is a very volatile market that we've had
11 for a long time in my view. And so I decided a long time
12 ago to be fairly cautious and use three percent as the
13 distribution percentage. And that's what I do is three
14 percent of the previous years year end evaluation of the
15 trust. And I distribute that.

16 And because the trust is growing that three percent
17 that it grows every year -- for example, in 2016, we
18 increased the distributions to the income beneficiaries by
19 13 percent. We increased the distributions for 2018 by
20 another 13 percent -- no, it was more than 13 percent. I
21 think it was 16 -- it was more than 13.

22 Q And has -- your experience as a trustee of the
23 Columbia River Trust, has that had any impact on you in
24 this matter?

25 A No. It's probably not the answer you wanted. But it

1 didn't. Because up there, I'm dealing with people that --
2 that know the score. They understand what the rules of
3 the game are. They -- the beneficiaries are highly
4 sophisticated in many cases.

5 And I was totally unprepared for coming down here
6 and -- first of all, I thought the -- my other trustees
7 would know more.

8 Second, when they didn't know more, I thought they
9 might go and get advice that would explain more to them
10 and we might be on the same page. But we've never been on
11 the same page, unfortunately.

12 Q Okay. And let's talk about this trust, being the
13 residuary trust of L. Whitaker Boykin. When did you
14 become a trustee of that trust?

15 A When Whit died, Big Whit died.

16 Q That would have been in what year?

17 A 1989, December of '89.

18 Q Okay. And what was in the residuary trust at that
19 time?

20 A Very little. Because at that point in time, you only
21 put into the residuary trust what you could get for your
22 tax deduction, your automatic tax deduction, which was
23 600,000 bucks then. And so \$600,000 of real estate, in
24 essence, went into the residuary trust. A big portion of
25 that was the -- I think the Millpond and the land around

1 that.

2 Q Okay. And you were appointed under the will of
3 Mr. Boykin; is that right?

4 A Correct.

5 Q Have you studied the will?

6 A Sure. I mean, I've read the will several times.

7 Q Okay. And what is your view of -- of the will?

8 A I mean, the will is -- is fairly -- I mean, for me,
9 it was pretty much what I studied when I was -- took
10 trusts and estates from Coleman Carriage at Carolina. And
11 it was a standard marital deduction trust, residuary
12 trust. A lot of the same kind of provisions that I had
13 seen in law school.

14 It had precatory language in it where he wanted to
15 keep certain properties, if it were possible. And those
16 properties he wanted to keep in case he had a grandson
17 named Boykin who could inherit those properties. He was
18 very much sort of a fetale [phonetic] person.

19 Q And does he have any grandsons with the last name
20 Boykin?

21 A No. And -- and it's sort of interesting because the
22 will is only a one generation trust, which was very
23 unusual, at least, in my experience at that time. And I
24 said, you know, Why is it only for one generation? Why
25 aren't you tying this up longer?

1 He said, Well, if Little Whit doesn't have a Boykin,
2 a son, I don't care.

3 So it's only one generation. And because that
4 will -- any -- if -- any of my issue will not be a Boykin
5 in his mind. It was -- it was bizarre. But that's the
6 way he looked at it.

7 Q And did you discuss that topic with him at the time?

8 A Oh, sure, sure. Because I thought it was -- I
9 thought it was medieval.

10 Q And that would have been when the will was drafted in
11 1989?

12 A Oh, no. This was a -- this was a discussion I had
13 with Whit for years. This was not the first iteration of
14 the will.

15 Q And were you involved in that will drafting process?

16 A This particular will, I do not think so.

17 Q Do you think the will expresses a mandate or
18 directive to tie up the land for as long as possible?

19 A No. I think it expresses a -- precatory language in
20 my view. I don't mean to be a lawyer on this. But
21 it's -- it's -- a person expressing a wish, but he -- but
22 not a mandate that you have to do something.

23 And you've got to remember when Whit died, it was a
24 few months after Hugo. And Hugo probably destroyed a
25 substantial percentage of his net worth. And if Hugo

1 hadn't happened, you would have millions of dollars being
2 generated today. And you might be able to go ahead and do
3 some of this -- and follow some of this precatory
4 language. But you don't have the assets in the trust to
5 do it today. Plus, the most valuable land in the whole
6 estate -- the whole trust is these treasured tracts, all
7 the little tracts around Boykin.

8 And when he died, those tracts were priced -- the
9 value of them was, basically, a fair value for using it
10 for timberland and farmland. But what's happened is over
11 the intervening years Boykin's become a real hot place to
12 own land. So much so that in the recent reappraisal that
13 the tax assessor did for Kershaw County, they assigned a
14 value for most of the land around there of \$5,000 an acre,
15 which is -- frankly, if I had known that, I would have --
16 in my evaluation for the Court, I would have assigned a
17 higher value to this trust. But I was more conservative
18 than the tax assessor.

19 Q So given all that, when Alice Boykin died -- when was
20 that?

21 A She died on August 8th of 2016.

22 Q And at that point, did you all begin -- you being the
23 trustees of the residuary trust, did you all begin having
24 meetings?

25 A Sure. We had a -- we had a meeting on the 9th, the

1 day after, with Karen Thomas. That was to, basically,
2 do -- her to explain to us a lot of -- and especially to
3 the personal representatives of Alice, which was Mary Deas
4 and -- and Little Alice what -- the various things that
5 they would have to do to get qualified and do all the
6 administrative things that had to be done. So that
7 meeting was primarily taken up with that.

8 We had another meeting maybe a couple days later.
9 And another meeting probably a few days after that.

10 Q And at these meetings in August of 2016, did you set
11 forth your vision or plan for the residuary trust?

12 A I think it was probably the third meeting or so.
13 Mary Deas and I had talked quite a bit before Alice died.
14 And we discussed the precatory language in the will.

15 She was -- and -- and, basically, I was telling her
16 we were going to have to liquidate a good bit of this land
17 and make it more productive -- make the asset more
18 productive. And I -- we both knew there would be a
19 substantial issue with Little Alice of doing that. So
20 there had been a considerable amount of discussion before
21 Alice died about this.

22 When Alice died, I wrestled with how to handle this
23 particular problem. And I came up with an idea that if I
24 could create a way for Little Alice and Mary Deas to
25 preserve the land they most liked by selling it to them

1 and I would -- to the extent they needed income to pay
2 that, they could use their distributions to pay for that
3 land.

4 And so I told them probably at one of those meetings
5 in August that I would be willing to have -- or vote in
6 favor of the trust selling Mary Deas the Millpond and
7 however much land she wanted around it, including some or
8 all of downtown Boykin. And I would let Little Alice buy
9 Millway and as much land as she wanted to buy around
10 Millway.

11 But I explained to them that there were a number of
12 issues in doing that. First of all, it was an interested
13 party transaction, number one.

14 Number two, the other beneficiaries would have to
15 consent to it.

16 Number three, we would probably as an exercise of
17 prudence get a court to bless that particular transaction.
18 But I, also, explained that it had to be at fair market
19 value. And it turned out that there was a huge disconnect
20 between what Alice felt fair market value was and what I
21 think a court would determine was fair market value.

22 Q And we'll get into that in just a minute. But so as
23 I understand it, in August, you said you were meeting with
24 Karen Thomas?

25 A Yes.

1 Q And you all discussed liquidity. Did you ever at
2 that time or at any time advocate wholesale liquidation of
3 all of the trust property?

4 A No. I told -- I told them that -- let's go back just
5 one second for the sale of these two pieces of property.
6 Because they were very excited about that in the
7 beginning. And they really wanted it. And I thought it
8 was great. Because if I sold that, it was -- it was
9 taking an albatross and making it -- and giving us cash
10 that would be very productive.

11 And I could then keep another 15 percent or so,
12 20 percent of the treasured tracts. Because it wouldn't
13 be such a big concentration. They -- they would end up
14 buying, say, 10 percent, you keep another 15. That's -- a
15 quarter of the estate would be kept in terms of the
16 treasured tracts that they liked.

17 Q And do you think that would have been unfair to Mary
18 Deas to have her buy the Millpond?

19 A I think Mary -- Mary Deas was very excited to do it
20 when we first brought this up. In fact, she was pretty
21 much in -- very much wanted to buy the Millpond.

22 Mary Deas issue was she wanted to give a conservation
23 easement on the Millpond to some kind of conservation
24 group that would take care of and make sure that the
25 rookery and all was preserved. We had a lot of

1 discussions about that. And the problem was Mary Deas
2 didn't have the financial income where she could benefit
3 from the tax deduction that giving an easement would
4 generate.

5 So we came up with the idea that she would get the
6 property and she would gift it to her children, who she
7 felt were in the income category where they could make use
8 of the tax benefits. And, in fact, in some discussions,
9 we even discussed them giving the whole piece of property
10 outright to a conservation entity, rather than just an
11 easement.

12 Q Okay. So did these conversations continue past
13 August of 2016 about -- tell me what the conversations
14 were in that time period after August at the trustee
15 meetings.

16 A Well, I thought -- I thought I had found the -- you
17 know, the -- the silver bullet. Everything was going to
18 be great, you know. There was an agreement to liquidate
19 over time a bunch of property.

20 Part of the selling property is you don't know which
21 one is going to sell first. It's not something you sort
22 of go down a list and say I'm going to sell this one
23 today, and next year I'm going to sell this one, and next
24 year I'm going to sell this one. You've got to sell to
25 some degree what the market wants at that particular time.

1 And a lot of this property has value for recreation
2 value, as opposed to timber or farming. And the
3 recreation buyer -- when a recreation buyer comes around,
4 you've got to jump on it real quick or you're going to
5 lose that particular buyer. They aren't -- so you,
6 basically, have -- it's -- it's an opportunistic type of
7 thing you have to do when you're liquidating land for a
8 value, other than the actual monetary return that you can
9 get off of it.

10 So, for example, for timberland, timber investors,
11 they don't want to pay much more than 800 to, say, \$1,400
12 an acre for the dirt. And then they will value whatever
13 the timber is. And they add the two together. And that's
14 all they're going to pay. Because -- and -- and whether
15 they pay 800 or 1,400 will depend on their hurdle rate.
16 How much -- what is their expectation of profit?
17 Different companies have different hurdle rates.

18 It's the return that they expect for any investment
19 they make. And some companies expect a higher return than
20 others.

21 Q And in 2016, did you, also, talk about the need for
22 diversification?

23 A Oh, absolutely. Because, I mean, I remember there
24 was -- last year, there was a hurricane that looked like
25 it was going to come up here. And I -- I mean, heck, I

1 was, like, staying awake at night saying, Lord, don't let
2 that hurricane come here.

3 When Hugo came, we were in the 70 percent timber
4 destruction cone, which timberland was. And -- and, you
5 know, sure, that was an unusual event. But unusual events
6 have a happen -- have a -- you know, they happen to happen
7 every now and then. And when you have 90 percent plus of
8 your assets tied up in timber -- and, actually, in a
9 fairly narrow geographic area, you have tremendous
10 exposure to weather, whether it be drought, flooding, or a
11 hurricane.

12 And then you've got the pine -- southern pine timber
13 beetle, whatever it is, pine beetle that eats the pine
14 trees. I read an article recently where the last time we
15 had an infestation in South Carolina, it destroyed over a
16 billion dollars worth of timber.

17 Q So then is it your view that this trust needs to
18 diversify to do what, mitigate risks?

19 A No, not just mitigate risks. You have a problem.
20 The trust primarily has land in three counties. There's a
21 little bit in Lancaster County and a little bit in
22 Fairfield. But it's primarily concentrated. You have
23 about 2,300 -- 2,500 acres or so in -- just in the -- a
24 one mile -- one and a half mile radius of Boykin.

25 You have another -- I don't know -- 2,000 acres or so

1 in the Sumter Mountain area of Sumter County. And then
2 you have another -- I don't know -- 800 maybe total in Lee
3 County, something in that order.

4 But that -- it's all fairly concentrated in that
5 area. And the problem we have is the land in Sumter
6 County, Lee County has a value that's commiserate with its
7 use as timberland. It may have -- maybe there is a \$500
8 or a thousand dollar premium for recreation value for the
9 largest tract, which is Sumter Mountain. Because that's
10 over a thousand acres of continuous land just inside of
11 fort rose. It's a beautiful, beautiful piece of property.
12 So there's -- there's probably anywhere from 500 to a
13 thousand dollars premium on that land.

14 Q Is the Sumter Mountain property in the will?

15 A It's -- it's -- it's not one of the treasured tracts
16 in the will. No, it is not.

17 But the treasured tracts, on the other hand, had a
18 value substantially in excess of what you would keep to
19 grow timber on or farm. I mean, the -- the tracts that --
20 that they want to keep, basically, are 50 percent or more
21 of the asset value of the entire trust. And a lot of that
22 land has a value two or three times what someone would
23 spend for farmland for timberland.

24 And this is a phenomenon that's grown up over the
25 last -- I would say probably 15 years or so. I don't know

1 how fast it grew because I wasn't here before 2005. And I
2 wasn't watching it as much. But I do know when I bought
3 my property in Boykin in 2005 and I paid 4,000 an acre,
4 that was like a thousand dollars more than anyone had ever
5 paid around there before then. But that was my perception
6 of what -- how the values had come up just in the couple
7 years before I bought my property. And they've gone way
8 up since then.

9 Q So, again, going back to -- and I think we've got a
10 timeline we can flash up here. But sort of going back to
11 the timeline of events. In early 2016, it sounds to me
12 like you're saying -- are you saying that there was an
13 agreement to purchase some of the properties listed in the
14 will?

15 A There was an agreement pending -- well, let me put it
16 this way. I think the -- Mary Deas -- I don't think there
17 was any question. Mary Deas even went so far as to say
18 that she was going to kick in the cash that she might get
19 for selling the Greenleaf Inn, which was an inn that's
20 worth maybe 350,000 or so that she had been left by Alice
21 as a direct -- from Alice's estate, not from the trust.
22 And she would kick that in if she needed to to be able to
23 buy this land.

24 I think -- one of the things that I didn't learn
25 until later is Mary Deas seemed to think that she was

1 giving up something by buying this. It was almost like
2 she was paying for something and would never get anything
3 in return for that. But what I don't think she realized
4 is, sure, she was paying a million, a million and a half
5 for this. But the trust and her children would,
6 ultimately, get that million and a half and whatever
7 appreciation there was on that million and a half.

8 So it wasn't like she was just throwing the money
9 away to put an easement on the pond. She -- I mean --
10 and, frankly, Whit and May -- and I talked to them about
11 this. They were absolutely willing for Alice and Mary
12 Deas to -- to buy these pieces of land from the trust.
13 Because they -- they have an interest in the Millpond
14 being preserved for posterity. It's -- it's part of their
15 heritage, too.

16 Q And other than the Millpond and Millway, which you've
17 talked about, were there other tracts that are listed in
18 the will that there was a discussion about selling?

19 A Well, when we started discussing what they wanted to
20 buy, Alice wanted the appraisers to appraise much more
21 than just Millway. There's a big sort of field across
22 from Millway called the racetrack field. It's about
23 190 acres. It's got timber and a field there.

24 And she thought that she would be interested in
25 buying on around from there all the way to the yellow

1 house tract. And I think that was -- and I would say,
2 Alice, you're not going to have enough money to do that.
3 And -- and, you know, this is going to be way past what a
4 million and a half is.

5 And so when we -- we agreed to bring in the
6 appraisers. We brought in at the suggestion of Karen
7 Thomas, she told us to contact a fellow by the name of
8 Huffines who worked with -- who worked with the Charleston
9 Appraisal Group on a lot of lands that ended up in
10 conservation type situations. And they came up and we
11 asked them to value certain tracts. Because none of us
12 knew what their evaluation was going to be at that time.
13 And we wanted to have a menu so that -- that would fit the
14 budget of the two perspective buyers.

15 And so we asked them to value the Millpond with a
16 buffer area around it. That was about 400 and some odd
17 acres. We asked them to value the pond -- the land behind
18 the fire house just on the other side of 261, which was
19 the drainage area for the outlet of the pond. And we
20 asked them to value downtown Boykin, in essence.

21 Then we asked them to value Millway, which was about
22 a 200 and -- 350 acres -- no. I can't remember the exact
23 acreage of it. And to value the big tract, the race
24 tract -- the race tract timberland and field across the
25 road from Millway as a separate entity.

1 And at the time -- and I recall this very vividly.
2 Alice had fixed in her mind that she could buy most of
3 this land for \$1,300 an acre. And I kept saying, you
4 know, fair market value is more than 1,300 bucks an acre.
5 She'd say, oh, it's not fair, it's not fair. And I urged
6 her -- and Karen Thomas, actually, urged her as well to
7 get her own counsel who could advise her as to what fair
8 market value means. And as it began to be clear that fair
9 market value was going to be substantially more than 1,300
10 bucks an acre, I think -- we started having problems.

11 The -- the -- at the beginning, you know, we could
12 sell the roses, the swamp tract, which was one of the
13 treasured lands. We could sell the 90 acres that
14 butted -- and Dupont Shirley to her, which was another
15 part of a treasured tract. Mary Deas had talked to, I
16 guess, Marty Daniels and someone else. And it turned out
17 there was some interest from Mulberry in expanding their
18 timber holdings.

19 Q And who's Mulberry?

20 A Mulberry is an adjacent plantation that's owned by
21 the heirs of the Williams family primarily.

22 Q And what tracts did you show them?

23 A We showed them the swamp tract, Whitaker tract,
24 yellow house tract, the Sumter Mountain, and I think
25 rabbit pen.

1 Q And if you look at Exhibit No. 131, I think that's
2 a -- let's see, an e-mail. Is that an e-mail that you
3 received?

4 MR. DUFFY: If I may, Your Honor.

5 THE COURT: Yes.

6 BY MR. DUFFY:

7 Q Have you seen that e-mail before?

8 A Yes.

9 Q Okay. And it appears it's dated November 3rd?

10 A Yes.

11 Q 2016. And about halfway down in the middle of the
12 page, it says, Rigdon will do his magic and use his
13 connections to offer the following properties for sale.
14 Do you see that?

15 A Yes.

16 Q So -- so tell me what was happening. It sounds like
17 there -- at this time, there was not disagreement?

18 A This was probably the -- the end of peace.

19 Q You said "the end of peace"?

20 A Yeah. Everyone was in agreement to try and sell a
21 bunch of properties. And the way I approached this is the
22 trust should, first, try and sell properties to abutters.

23 Because they were logical purchasers of the property.
24 And abutters very often would have a reason to pay above
25 normal market circumstances because they own land right

1 next to it. So they would have other tangible reasons to
2 buy that land that was next to their land.

3 And the other reason why I wanted to do that was to
4 avoid real estate commissions. Because, heck, I know all
5 the abutters. I can go talk to them.

6 Q So help me understand. The tracts that are listed in
7 the middle of the e-mail there, it looks like Sumter
8 Mountain, swamp tract, I believe it's cut off Whitaker
9 tract, and at one point, it looks like 1.5 acres and seven
10 acres to Sue Mullen creek. Are any of those tracts
11 delineated in Mr. Boykin's will?

12 A Sure.

13 Q Which ones?

14 A The swamp tract, Whit -- not the Whitaker tract, just
15 the swamp tract. The seven acres that are exactly 6.77
16 acres to Sue Zienke. There's 1.5 acres to Ann. Actually,
17 we had agreed before that to offer the entire piece to
18 Ann, which was about -- at the time, we thought it was 90
19 acres. It turned out to be 140. But let's see.
20 That's -- those are the only ones that are part of the
21 treasured tracts.

22 Q Okay. And Karen Thomas' e-mail says that you'll use
23 your magic -- do your magic and use your connections to
24 offer the following properties for sale. Is that
25 something that the trustees all agreed on?

1 A Oh, I think absolutely at that point in time, yes.

2 Q Do you think that from this point in time, which is
3 November 3rd, 2016, to today the -- that Ms. Wortley and
4 Ms. Belger's view of whether you could sell those
5 properties has changed?

6 A There -- it probably would help if I separate this
7 into timeframes. Because it changed over timeframes.
8 Let's take the timeframe from the beginning of the trust
9 until -- I mean, the beginning of the heavy duty lifting
10 after Alice died to, say, the middle of November or so.

11 There was -- everything was peaches and cream. I
12 mean, everyone was agreeing to do things. It was, I
13 think, fairly peaceful. In fact, Karen wasn't even
14 sending out meeting notes afterwards because there was
15 such agreement.

16 Beginning sometime around November, you know, she
17 realized, plus, I realized that you've got to start
18 documenting what's happening at these meetings. Because
19 memory started getting very faulty. And peoples
20 recollections of what had been agreed to started changing.

21 Q Were you still meeting regularly at this time as
22 trustees?

23 A We were meeting regularly at this time. But as fair
24 market value became a bigger and bigger topic, Alice, in
25 particular, started deciding to change her votes on what

1 would be acceptable to sell. And the -- one of the real
2 problems of the will is that it requires three trustees
3 unanimous vote to sell anything of real estate.

4 And it was clear to Karen and -- and me, I think it
5 was clear to all of us that we were going to start having
6 a very, very difficult time getting three votes for
7 anything. And, in fact, Karen started talking -- saying,
8 you know, this is unworkable. We're probably going to
9 have to seek advice from a court at some point as to how
10 to make this workable.

11 And I think the other thing that happened during that
12 period of -- earlier than that period of time, actually,
13 is I explained to Mary Deas, and Alice, and Karen and I
14 discussed the fact that there was not going to be enough
15 net income to provide any real distribution to the income
16 beneficiaries.

17 And that was somewhat of a -- of a problem for, at
18 least, Whit. Because Whit had been living off of the
19 hunting lease money that he would get each year. But when
20 Alice died, he had already received 27,000 or so in
21 hunting lease money for the 2016-17 timeframe. And I told
22 Whit he would have to pay the trust back that money
23 because the actual hunting lease year hadn't begun yet
24 when she died. And so Whit was going to need other income
25 for this.

1 And so I told them that the only way to really
2 resolve this was to -- in my view, to utilize the power to
3 adjust, which I was told at the time by Karen was an
4 accepted practice in South Carolina. And she confirmed
5 what I thought already, and that was as a disinterested
6 trustee, I could move that forward.

7 And at the time, we had no idea what the trust was
8 worth. So I decided that on a temporary basis, I would
9 propose that we use \$100,000 per year for each of the four
10 income beneficiaries. And that was accepted and put in
11 place.

12 Q You said a moment ago there was -- there wasn't going
13 to be any net income. What do you mean by that?

14 A Well, you've got to understand when -- when Alice --
15 Alice, basically, only cut timber when she had to, i.e. a
16 tax bill was coming due, or -- or what have you. So Alice
17 did not have the trust set up in such a fashion where it
18 would generate a lot of income.

19 Q When you say "Alice," you mean --

20 A Big Alice.

21 Q Alice Boykin?

22 A I'm sorry. Yes, Big Alice.

23 And the other problem is you have something called
24 the -- I think it's Principal and Income Act, or something
25 like that here in South Carolina where you have sort of

1 a -- a way of determining when you sold timber how much of
2 that sale was really principal that you were replacing
3 with cash and how much of it was, actually, income.

4 And because most of the timber properties that were
5 being cut were in the marital deduction trust and they had
6 just poured over into the residuary trust, that starts the
7 date from how you would measure what was income and
8 principal. What was poured over there as of her date of
9 death is principal. And to the extent there is growth
10 from that period to when you sell the timber, that's
11 income.

12 And it was clear there was a huge disconnect on this.
13 Because right away, they said, oh, we're -- we're selling,
14 you know, a million bucks worth of timber or 800,000
15 bucks -- 800,000 of timber and, you know, so we've got
16 more than enough money to do whatever we want. We've got
17 to distribute all that. That's net income. And I'm
18 saying, no, it's not net income. Only a very small part
19 of that's net income.

20 So the only real net income that was being generated
21 was the income from rents, hunting leases, the commercial
22 property rents, and the residential rents, and a little
23 bit of money on the stock portfolio. And that was pretty
24 much it.

25 Q Did you ever try to have -- did you ever reach out to

1 anyone about putting -- reducing that issue to paper and
2 presenting an analysis?

3 A I wasted more time doing analyses like that than you
4 would ever imagine. Because I'm not sure anyone ever
5 looked at them, to tell you the truth. I put together
6 scenarios, here's what we would make from this. Here's
7 what the net income would be. And here's the deficit.

8 Right away, I knew there was a problem. And -- and I
9 kept trying to -- that's why I wanted to -- to sell the
10 land. I even -- Karen Thomas, actually, came up with the
11 idea just to -- probably in November, maybe we should
12 split the trust into four trusts. And that way, everyone
13 can have what they want.

14 I have probably, at least, five or six times offered
15 to split the trust into two, one trust that would keep all
16 of the treasured properties, in fact, keep more than the
17 ones. Because there's -- there are only -- there -- I
18 don't know, six pieces or whatever, depending on how you
19 count it of treasured tracts. Then there are the pieces
20 that abut it.

21 And in their discussions, it's clear to me with Helms
22 they've put most of the pieces, with the exception of two
23 pieces that abut Bill Bundy, as treasured legacy property
24 that the trust should keep. And I would be willing to put
25 all of them in a trust for them. And I -- last time I

1 brought it up, the response -- I think it, actually, was
2 from Mary Deas and I think it's in the taped
3 depositions -- or taped meeting transcripts we have said,
4 no, we can't do that because we -- we don't have any money
5 to bear the burden of keeping all this and everything. We
6 need to keep it altogether.

7 Q Okay.

8 A And, frankly, my view was if you want all that
9 property, then you -- you better step up to the plate and
10 pay the consequences. You're getting the psychic
11 enjoyment of it, or whatever, and maybe that's worth to
12 you what the income is. But I -- I -- I still think that
13 the best solution would be splitting the trust. There's
14 no interest.

15 Q So in your view, those properties are not income
16 bearing?

17 A No. They're income bearing. But the income --
18 basically, you have -- if the property were worth 2,500
19 bucks like Sumter County -- like a lot of the Sumter
20 County property, 3,000, sure. You could generate timber
21 that would, at least, come close to what it should be to
22 provide an adequate return.

23 But when the property is worth, you know, 6,000 an
24 acre, you can't do it. Because, you know, the return is
25 measured off the value of the asset that's generating that

1 return. So if you have a thousand dollar asset, and
2 you're generating a hundred dollars of return off that
3 asset, you're making a 10 percent return in sort of crude
4 terms.

5 But if that asset is, say, \$4,000, you're generating,
6 what, one and a half percent return. And the problem is
7 you're not meshing those two. And that's -- that's a huge
8 issue. And, in fact, the land that they may be willing in
9 the future to sell, some of the outlying timber tracts,
10 are, actually, land that it makes economic sense to keep,
11 whereas this land does not make economic sense to keep.

12 Q Okay. And just to get back sort of to the timeline.
13 If I could show you what's marked as Exhibit --
14 Petitioner's Exhibit No. 140.

15 MR. DUFFY: Judge, if I may, we've got copies for you
16 and your clerk.

17 THE COURT: Yes.

18 BY MR. DUFFY:

19 Q Do you recognize that e-mail, Rigdon?

20 A Yep.

21 Q Okay. So this is into March of 2017?

22 A No. This is March 7th.

23 Q 2017?

24 A Yeah.

25 Q And you look at number three down there.

1 A Right.

2 THE COURT: I've got two copies up here, if you need
3 another one, Mr. Duffy.

4 MR. DUFFY: We've got extra. You can give one to
5 your clerk.

6 BY MR. DUFFY:

7 Q The swamp tract and Whitaker tract offered to Rip
8 Rose. Who's Rip Rose?

9 A Rip Rose is -- he is the son of Big Whit's sister.

10 Q He's not a beneficiary to the trust, is he?

11 A No, he is not.

12 Q Okay. So swamp tract and Whitaker tract offered to
13 Rip Rose. Would those have been sales outside of --
14 outside of the trust?

15 A Yes.

16 Q Per Alice, Rip is not interested so she is
17 withdrawing her consent to sell at this time. What was
18 your understanding of why she withdrew her consent at that
19 point?

20 A Well, I think -- I think she felt that by that time,
21 we had and were receiving the various evaluations that had
22 been commissioned of Charleston Appraisals of the land
23 that she wanted to buy. And it was probably becoming
24 fairly clear that they weren't going to -- she wasn't
25 willing to pay that.

1 And it was, also, about that time maybe a little bit
2 earlier where her husband had told us that he wasn't
3 interested in buying the farmland that earlier he had told
4 us he wanted to buy.

5 Q Which property is that?

6 A Well, he wanted -- he was interested in buying the
7 yellow house tract, in particular, but, also, perhaps,
8 some of the other farmland.

9 Q Does that tract appear in item 10 of Mr. Boykin's
10 will?

11 A Yes, it does. It's one of the treasured tracts.

12 Q Is it referred to as the "yellow house tract"?

13 A No. It's -- yellow house tract -- there's sort of
14 three tracts right together there. One is
15 Broadview Plantation, one is the Cantey tract, and one is
16 the Gillis tract. And they're all sort of together there.
17 And most of them make up what we sort of call the yellow
18 house tract, because of the yellow house sitting on that
19 tract.

20 Q But it looks like even -- in going back to the
21 timeline, even into March, you guys are meeting regularly
22 as trustees?

23 A Yeah. That was probably the last regular meeting.

24 Q And in a meeting on March 23rd, was that the last
25 meeting before the summer?

1 A No.

2 Q Did you have a meeting in April?

3 A No. The meeting -- there was going to be a meeting
4 in April, but it was cancelled primarily to give Mary Deas
5 time to come up with a plan. Because she had finally said
6 towards the end of March that she was going to have her
7 attorney, Mr. Becker, work on a plan. And that plan would
8 show how that they were going to generate the income to do
9 everything that needed to be done.

10 Q Okay. And I'll hand you what's been marked as
11 Exhibit No. 142. This looks to be a summary of that
12 meeting on March 23rd?

13 A Isn't that the same one you just gave me?

14 Q I believe the one we were looking at before was a
15 summary of a --

16 A Oh, okay, okay.

17 Q -- March 3rd meeting.

18 A Okay. Yeah.

19 Q And, in particular, number four, is that more of the
20 same that they were just discussing?

21 A This was the summary of the meeting of March 23rd.

22 Q Right.

23 A Yeah.

24 Q Okay. And it says, Alice is not in favor of selling
25 any property to family members. Alice believes her

1 parents wanted the properties listed in the will preserved
2 for the next generation, such as swamp tract, Broadview,
3 Cantey, Gillis, and Millway. Are those the same tracts
4 that previously had been agreed to -- to be offered for
5 sale?

6 A The swamp tract, the Broadview, i.e. yellow house,
7 Cantey tract, Gillis tract, those were all tracts that --
8 well, Wayne was looking at potentially buying the yellow
9 house tract. That's Wayne being Alice's husband, Little
10 Alice's husband.

11 And we had shown the swamp tract to Rip Rose. We
12 showed it to the Mulberry people. And I, actually, also,
13 in the period of time when it was still for sale showed it
14 to a group from Columbia that was looking at buying it for
15 recreation property.

16 The Millway tract was -- was never -- only one person
17 was interested in that right at the beginning. And that
18 was Alice was very interested at the beginning of -- to
19 buy that particular tract.

20 Q Okay. And so going back to the timeline. March 23rd
21 appears to be the last meeting before the summer; is that
22 fair to say?

23 A No. We had a meeting in May.

24 Q Okay.

25 A May 12th, I think.

1 Q And that's on there as well. And what happened at
2 that meeting?

3 A Well, there was -- first of all, there was supposed
4 to be a meeting in April. And that meeting was cancelled.
5 And it came -- the cancellation came about because Karen
6 sent out an agenda for the meeting. And she left off that
7 agenda the plan, how they were going to do all of this.
8 And it -- it -- and, basically, I said, how can I decide
9 on a lot of these issues that we were looking at for the
10 rest of the agenda if I don't know what the plan is? And
11 it didn't make sense to have the meeting until we got a
12 plan.

13 So we postponed that meeting. And the plan was
14 supposed to be done -- in fact, I had calls from Mary
15 Deas. And I called Mary Deas myself several times saying,
16 where's the plan?

17 And she said, Didn't my lawyer call you? I'm going
18 to tell him to call you. And no plan.

19 Q So is it your testimony that there was no -- they did
20 not present a plan that you were expecting at the May
21 12th, 2017 meeting?

22 A No. What was presented at the May 12th meeting was
23 sort of what I would call trust 101 for laypersons, how
24 you ought to have a plan, which was -- I mean, it was --
25 it was a good presentation as far as that went. It was

1 done by Bill Bundy's son. And I thought it was -- for
2 what it was, it was a very good presentation.

3 But the problem was, it wasn't a plan. It was just
4 how you might go about to get a plan. And out of that
5 meeting, it was decided that Karen would do an RFP to hire
6 someone to develop a plan.

7 And -- and she was getting set to go to Europe, I
8 think. And she said, If I don't have time to finish it, I
9 think Jamie Becker had agreed to do the RFP. But no RFP
10 ever came out. And, basically, I could not get a trustee
11 meeting no matter how many intrigues I made until after I
12 filed suit. I mean, it was just awful.

13 Q And during that time in the summer of 2017, were you
14 asking the trustees to meet?

15 A Absolutely.

16 Q And what did you feel -- did you feel you all have a
17 duty to meet?

18 A There's no question about that. It was -- actually,
19 I was -- I got really concerned long before then. At
20 that -- in March, it was clear to me that the only way we
21 were going to get these issues resolved was to have a
22 court give us guidance on whether the precatory language
23 was absolute and countermanded any duty to be approved
24 [inaudible].

25 And I asked -- or Karen had told us -- Karen -- Karen

1 saw this coming long before I did. And Karen said, you
2 know, in -- in January and February, she was telling us,
3 the Court's going to probably have to decide these. The
4 Court will -- I mean, the trust will pay your attorneys
5 fees for each side. And, you know, we ought to get
6 this -- this show on the road.

7 I asked the trustees to pay for an attorney for me.
8 They refused. I think Bill Bundy said, We're not going to
9 pay you to sue us. The trust pay you to -- to sue us,
10 that's ridiculous.

11 So in any event, we had an impasse on that. And I'm
12 sitting there saying, holy crud, I've got to do something
13 about the impasse that we have.

14 And at that time, I called Alan Medlin to get some
15 advice on this. Because I -- you know, I have a fair idea
16 of what the law is in New York. But I've got -- you know,
17 I went to law school here 30 years before -- over 30 years
18 before that. And I don't know to what degree the law has
19 developed on this down here.

20 So I had several conversations with Alan Medlin about
21 this. And then when I went and hired Richard Rosen's firm
22 to represent me on bringing this to a court proceeding,
23 Alan Medlin called me and said he had a conflict and could
24 not continue in a role of giving me advice because Richard
25 Rosen's firm was on the other side of some case with him,

1 and his clients would not like that. And so that's when I
2 went and hired Mr. Hardin.

3 Q Rigdon, do you think as a trustee you have a duty to
4 seek out advice and consultation?

5 A Oh, sure. I mean, you know, it's -- the trust -- we
6 have in New York -- we have Belknap Patterson & Webb
7 advises us. We have Morgan Stanley advises us. We have
8 the assets diversified in probably 30, 40 different types
9 of vehicles. We -- we spend probably about .5 percent --
10 no, actually, probably almost one percent of the trust
11 asset value on advisors every year up there. And it's
12 money well spent for us.

13 THE COURT: All right. Mr. Duffy, we're now at a
14 quarter until 3:00. And you've still got a lot to go on
15 this timeframe. So now, the suit's been filed. Let's
16 kind of move forward.

17 MR. DUFFY: Absolutely, Your Honor.

18 BY MR. DUFFY:

19 Q Rigdon, why don't we talk about -- give me just a
20 second. Why don't we -- do you believe there is -- you
21 talked about it previously. But do you believe there's a
22 real estate bubble in the Boykin area?

23 A Well, I was sort of surprised when I had to pay 4,000
24 an acre for my land. And by the way, at the same time, I
25 bought another 250 acres from that same seller, which is

1 today called the Capehart tract. And I sold that to
2 Alice -- Big Alice because the Capeharts refused to sell
3 it to her. And she very much wanted that tract.

4 So I included it in my purchase and then flipped it
5 to her at the same price. I didn't make a nickel off of
6 it. Go ahead. I'm sorry.

7 Q I -- so -- well, the answer to my question about
8 whether there's a bubble --

9 A Oh, yeah. I mean, I came down and paid 4,000 in 2005
10 for land there. And then all the sudden, you see these
11 incredible purchases. There's a hundred acres about a
12 mile from some of the Boykin trust land that sold to a
13 fellow by the name of Taylor from Columbia for \$8,000 an
14 acre. I mean, it knocked everyone off their chairs.

15 And we knew a lot about that. Because before we
16 bought our land, we tried to buy that land ourselves. We
17 had offered 5,000 an acre and they wouldn't take it.

18 Q Rigdon, let me hand you what's been marked as
19 Petitioner's Exhibit No. 170. And you, also, see we've
20 got this map up on the board here. If you would, tell the
21 Court -- what does this depict? And it's my understanding
22 that 170 is an index for this map?

23 A It's -- this, basically, shows all the properties
24 that are in the general vicinity of the trust land at the
25 bottom of Kershaw County. It doesn't depict the trust

1 land in Sumter County or Lee County. And these are the
2 sales that have taken place over the last 15 years.

3 Now, I know real estate appraisers don't look at
4 sales that are over three years in many cases. So I'm
5 very aware of that. However, I included the other ones in
6 here because it's very seldom large tracts of land are
7 sold in this area. That's why maybe they command a
8 premium.

9 Probably my purchase was the largest sale. My guess
10 is it's probably the largest sale during this whole period
11 when I bought about 800 acres for 4,000 an acre.

12 Q And just in looking at this map, it -- walk me
13 through -- the area in green is what?

14 A The area in green --

15 Q With the blue stickers.

16 A -- are the lands owned by the trust.

17 Q And the area in yellow with the red stickers are
18 what?

19 A Those are parcels of land that I've sold in the last
20 15 years.

21 And this list, Your Honor, was a -- we put it in date
22 order, the date of sale with the latest at the top.
23 Because we did realize that real estate appraisers
24 wouldn't probably use anything -- because they're so bound
25 in after the -- the financial crisis of 2008. They're

1 incredibly careful and have all kinds of rules they have
2 to follow now in appraising land. So we put all of them
3 at the top. I think that goes down through number 17.

4 Now, these are not all just sales. There are some
5 appraisals on here as well where we had access to an
6 actual appraisal, for example, for a mortgage or what have
7 you. We had -- when we were able to get a copy of that
8 appraisal, we -- we put that in as well. And I think
9 the -- all the appraisals and every -- or sales that are
10 reflected on this sheet are contained in an exhibit
11 somewhere, aren't they?

12 Q Yes. So I'll represent to you that this Exhibit
13 No. 170 is a summary of Exhibit Nos. 26-73 and 175.

14 So tell me, where did this information come from.

15 A This information came from some of the values we had
16 to get from real estate brokers. Some of it came from
17 actual purchase and sale contracts that I knew about.
18 Some of it came from people that gave us copies of
19 appraisals on their property. And the rest came from
20 county tax records, and what have you.

21 Q And, Rigdon, if you would just to round out the --
22 explain how this relates to your view of the management of
23 the residuary trust. What is the impact and significance
24 of Exhibit No. 170 in connection with this chart?

25 A Well, what this shows is that the trust pieces of

1 land have values that are substantially in excess of the
2 values that are being placed on it by Mr. Helms, for
3 example, or others. And, in fact, if I had to do this
4 over again today, I would assign higher values than I did
5 when I came up with the figure for the Court as to what I
6 thought the net asset value was.

7 Because at that time, I did not realize that the
8 county tax assessor was assessing a lot of this land now
9 at 5,000 an acre because of this bubble, or whatever it
10 is.

11 MR. BECKER: Your Honor, may I just protect the
12 record with an objection that this is hearsay upon
13 hearsay? I'm just protecting the record.

14 THE COURT: Your objection is noted and overruled. I
15 regard this as an exhibit he has prepared from various
16 sources. And it's his contention as a litigant about the
17 value of the land that's in question.

18 And kind of like condemnations, litigants in matters
19 involving land can express their opinions. And I'm sure
20 your clients will as well about the land values.

21 So I'm looking at this as a document that is not so
22 much the product of others ideas as it is what his idea is
23 of land values.

24 You may proceed.

25 MR. DUFFY: Thank you, Your Honor.

1 THE COURT: The objection is overruled.

2 MR. DUFFY: Thank you.

3 BY MR. DUFFY:

4 Q And, Rigdon, while I'm at it, why don't I hand you
5 what's been marked -- let's see here -- as Exhibit
6 No. 172. And I've got a printout of Page 4, which is --
7 well, you tell me what this is.

8 A This is a blowup of some of the papers that are in
9 Exhibit No. 172. And this was my attempt to --

10 MR. BECKER: Your Honor, just to protect the record,
11 same objection. He's not qualified. And this is hearsay.

12 THE COURT: What I'm looking at now is Exhibit
13 No. 172, which is the Petitioner's Investment Plan. Just
14 like you all have got an investment plan, he's got an
15 investment plan. This is his long-standing plan for the
16 management of the residuary trusts.

17 And this is a document in words for three pages. And
18 then attached to it is a chart that reflects Mr. Boykin's
19 contentions about the investment plan, and what he thinks
20 the values are, and the investment plan. And that's been
21 blown up now because it was so small that I'd have to use
22 a magnifying glass to see it. But it's blown up now so I
23 can see it.

24 This, again, is titled Petitioner's Evaluation of
25 Real Estate Assets and Trust. He is now testifying

1 about -- as one trustee what he thinks the land is worth,
2 as opposed to what your two trustee clients think the land
3 is worth.

4 And on that basis, I will admit the documents. And
5 the objection is overruled.

6 BY MR. DUFFY:

7 Q All right. So, Rigdon, if you would, just take us
8 through this document and what it -- what it depicts
9 and --

10 THE COURT: I don't think we need to be laborious
11 about every page of it. I think -- all right. It would
12 be helpful to me to have --

13 EXAMINATION

14 BY THE COURT:

15 Q Mr. Boykin, I would like to have you look with me at
16 this chart that's, also, on the screen. It has three
17 columns, as I see it. One is a column that starts off
18 Charleston Appraisal Service. The second is a column that
19 is Option. And I take it that's the Haile option?

20 A Yes, ma'am.

21 Q And the third is Helms. And Helms is the evaluation
22 advisor that the other two trustees used?

23 A Yes, ma'am.

24 Q Your Charleston Appraisal Service is the evaluation
25 service you used?

1 A Actually, the whole trust used.

2 Q The whole trust used at one time?

3 A At one point.

4 Q At one point?

5 A Yes, ma'am.

6 Q All right. And this is what the three columns
7 represent on that first page. And then on the second
8 page, you go tract by tract by tract with appraisals,
9 trustee evaluations, sales, and Helms; right?

10 A Yes, ma'am.

11 Q All right. I think I have got -- I'm not precluding
12 you from testifying. But I just wanted to be sure I'm
13 understanding what I'm looking at.

14 A I think it might be worthwhile for me to just
15 discuss this top part.

16 Q Certainly. I agree.

17 A And I call that the super tract.

18 Q Right.

19 A And the reason I did that is because there's a
20 mismatch between what Helms valued and what the Charleston
21 Appraisals valued. The last evaluation we got from
22 Charleston Appraisals was for the purpose of the Haile
23 option and to make sure we were getting a fair price for
24 that.

25 And, actually, we ended up getting two appraisals for

1 that, not just the Charleston Appraisals one. We got one
2 from Jimmy Carter or Mr. Lofton. I'm not sure which one.
3 But we do have another one.

4 So this was my intent to try and interpolate between
5 the three appraisals that we have here. And so what I
6 did, the super tract is all the tracts that are impacted
7 by the option agreement.

8 Q Right. And the Charleston Appraisal Service numbers
9 total up to \$7,208,534; right?

10 A No, ma'am. Because there is some interpolation on
11 that 7 million.

12 Q Well, there's some interpolation, but this -- the
13 super tract as you see it given the lands that are
14 listed --

15 A Yes, ma'am.

16 Q -- from both the source of Charleston Appraisal and
17 other sources --

18 A Yes, ma'am.

19 Q -- comes up with a value of 7,208,534?

20 A Yes, ma'am.

21 Q Which was the figure we were trying to arrive at in
22 order to decide what Haile offered and how it compared
23 with the super tract?

24 A Yes, ma'am.

25 Q And then the second column is Haile's offer?

1 A Yeah. Haile offered the 4.6 million that's above the
2 line in the first box.

3 Q Right.

4 A And then the other tracts that are part of the rest
5 of the tracts that compose -- that are left over after you
6 look at what Haile's buying is the bottom number of
7 another 4 million.

8 Q Right. So the comparison is between the
9 \$3,179,384 that is the value of Charleston Appraisal and
10 other sources of what Haile was buying, as opposed to
11 Haile's option offer of 4,642,558; correct?

12 A Yes, ma'am.

13 Q And so the contention you're making is that the
14 option represents one -- about \$1.5 million, plus more
15 than what Charleston Appraisals --

16 A Yes, ma'am.

17 Q -- evaluation of the directly saleable --

18 A Yes, ma'am.

19 Q -- under the option of the tracts. Then you've got
20 some tracts that are affected by --

21 A Right.

22 Q -- the sale of the -- to Haile --

23 A Yes, ma'am.

24 Q -- of the tracts we just mentioned?

25 A Yes, ma'am.

1 Q And those tracts come up to just about the same thing
2 both ways; right?

3 A Yes, ma'am.

4 Q All right. And so, basically, what you're talking
5 about is a differential between the option offering and
6 the Charleston Appraisal of \$1.5 million?

7 A Yes, ma'am.

8 Q Plus maybe --

9 A Right.

10 Q -- and then Helms -- you've got Helms' evaluation.
11 And it's about \$1.8 million?

12 A Well --

13 Q For the whole thing, as opposed to the 4.6 that the
14 option offers or the 3.1 that the Charleston Appraisal
15 values; right?

16 A It's even less because the -- that number does not --
17 that number does not include -- well, actually, it does.
18 I think it does. It does not -- it doesn't include
19 20 acres of Millway.

20 Q Yeah. But that's kind of --

21 A It's peanuts.

22 Q That's peanuts.

23 A Yes.

24 Q Then on the bottom part for the Helms evaluation,
25 Helms has got a total evaluation that includes the

1 Capehart tract. Is that valued in the -- yeah, it is
2 valued. Why is the evaluation -- let's see here. Oh,
3 okay. I see now. The evaluation on the Helms value, the
4 4.4, is all of it; right?

5 A Yes, ma'am.

6 Q Both columns. Okay. I understand now.

7 A And I need to make one other clarification. At the
8 time I did this, I thought they would be using Helms'
9 retail value as the value of the trust. But I believe
10 instead, they are now using Helms' wholesale value, which
11 it would be another million plus less than --

12 Q Than what you're -- you're using Helms' retail value?

13 A Yes, ma'am.

14 Q All right.

15 A Giving them the benefit of the doubt.

16 Q Okay. I understand what I'm looking at now.

17 A Thank you.

18 CONTINUED DIRECT EXAMINATION

19 BY MR. DUFFY:

20 Q Rigdon, is there anything else noteworthy that hasn't
21 been covered in Exhibit No. 172 that you feel the Court
22 needs to know?

23 A I think the only -- the only thing that's important
24 is to note that the -- Helms has -- in my view has sort of
25 valued the other treasured properties and what he calls

1 legacy properties, also, which is more, almost as
2 timberland or farmland where I've valued them for their
3 highest and best use.

4 Q Okay. And would you explain, just for the record,
5 what the -- what the Haile Gold Mine has to do with it --
6 all this?

7 A Haile Gold Mine is in the process of seeking a
8 permit, as I understand it, to go deeper into the ground.
9 I'm not sure if they're expanding the geographic width
10 horizontally. It's mostly going deeper, I think. But I'm
11 not an expert. And to that, they need to get an amended
12 permit, or a new permit, or whatever to be able to do that.

13 That means they have to have a way to mitigate
14 whatever the Corps of Engineers, U.S. Fish and Wildlife,
15 and DHEC consider appropriate to be able to get this
16 permit. And so they have to -- what they do is they --
17 there -- there are a number of different ways you can
18 mitigate. But the way that they believe is the best way
19 for them to mitigate is to buy parcels of land within
20 watersheds.

21 They call it landscape mitigation, as opposed to
22 going to a mitigation bank and buying credits for a little
23 piece here, a little piece there, a little piece
24 everywhere, all over -- all over the place. They think it
25 is much preferable. And they tell me that the regulatory

1 authorities are now starting to agree with them to buy up
2 substantial portions of watersheds and protect the whole
3 watershed.

4 And that's what they did, apparently, in the flat
5 creek area north of Kershaw. And they, also, bought
6 Cook's Mountain. And they bought a substantial portion of
7 Goodwill Plantation, which is adjacent to Cook's Mountain.

8 Q And what does that have to do with the residuary
9 trust?

10 A They believe that the Millpond and the Swift Creek
11 Watershed offers a -- a tremendous opportunity for them to
12 protect a -- a resource out into the future. And they --
13 they -- the way these mitigation things work is you -- you
14 pick out a -- and then again, I'm not an expert.

15 My understanding is you pick out the property and all
16 that you want to use for mitigation, and you put in a plan
17 for preserving that property in its original sort of
18 habitat. You, also, have to put forth a very substantial
19 endowment to make sure that that property is kept that way
20 for posterity.

21 And they thought that this -- the Swift Creek sort of
22 watershed would be very good for them. And, in
23 particular, because when they did the previous mitigation,
24 Kershaw County got nothing. And they wanted to do
25 something for Kershaw County, in particular.

1 Q So what was the genesis of their involvement with --
2 or interest in the Millpond?

3 A It's a long story, but to cut it down. I have had
4 previous discussions with the Haile Gold Mine. Because
5 they needed a place where they could have events and a
6 place where they could have an executive retreat. And I
7 leased them my property to do that on several occasions.
8 And out of that group, there were discussions about the
9 Millpond.

10 Q And did you tell your co-trustees about the
11 discussions?

12 A No, not until we had a term sheet worked out with
13 them. The -- I did not disclose the -- the name. I
14 disclosed to them that I was trying to work out something
15 in the environmental area.

16 The term sheet, Mary Deas participated in those
17 negotiations, not direct, but through me. Because
18 integral to this was the fact that she had a half interest
19 of a house right on the pond. And, consequently, I didn't
20 want to -- I wanted to make sure that whatever was in the
21 term sheet reflecting that was something that she felt she
22 could live with.

23 And so we had several discussions back and forth.
24 She'd say, Well, I need this.

25 And I'd go over to David Thomas and say, Would you

1 give us this?

2 And he'd say, No, but I'll give that you.

3 And I'd go back to Mary Deas and I'd say, Does that
4 work?

5 And as part of that process -- that's why in the
6 original option, there was \$70,000 for her to build a
7 bedroom -- another bedroom and a bathroom on that cottage.
8 And at the end of the day, at that time, at least, she
9 told me it was something that she could live with.

10 The reason for the confidentiality was what -- David
11 Thomas told me right up-front that he normally likes to
12 deal directly. And I told him that in this case with
13 three trustees and a bunch of different lawyers, the odds
14 of that remaining confidential was very small.

15 And he said, Well, I would like to keep it
16 confidential, at least, until I have been able to talk to
17 all the relevant stakeholders. By stakeholders, he meant
18 the politicians that would be involved. He meant the Fish
19 and Wildlife, all of them. And -- and get it sort of set
20 in concrete so that if he did decide to go forward and
21 have an option and offer an option that it would be set
22 well enough so that opportunists wouldn't come in and be
23 able to lobby those stakeholders and say, no, we've got a
24 better place for you to preserve than this. I mean, this
25 is really wrong.

1 Q And did they, ultimately -- did the Haile Gold Mine,
2 ultimately, make an offer?

3 A Yes, they did.

4 Q And was that an option agreement?

5 A That was -- there was, first, a term sheet, which I
6 discussed at a meeting in -- I believe it was November of
7 '17. And then they gave us a signed option agreement
8 still with no disclosure. And -- and I -- I -- perhaps, I
9 did the wrong thing. I don't know. I still think
10 there -- I still think there's absolute a hundred percent
11 certainty that it would have been all over the place if
12 that many people had known about it. And it potentially
13 could have -- well have killed their interest in giving us
14 the option. So that's why I felt very strongly about
15 that.

16 I, also, felt strongly because there were two pieces
17 of information that the trustees are being given. One is
18 that they're going to donate it to a conservation entity,
19 number one.

20 Number two, they were going to pay for fee simple.
21 They weren't just paying for an easement.

22 Number three, they were going to endow that
23 conservation entity such that there would be money there
24 to take care of it to please it, everything else. They
25 were offering, in addition, to fix the dam and bring it up

1 to probably a lot higher standards than the trust will.

2 They were offering to -- to, basically, put all of
3 the buildings in downtown Boykin in first class order.
4 They were offering -- and -- and to pay for that. And
5 they were offering to put an endowment to maintaining
6 downtown Boykin. And they were offering to put on the
7 Boykin Christmas parade every year.

8 So, to me, this was -- this was like manna from
9 heaven. I mean, heck, Whit, and May, and Mary Deas, and
10 everyone wants to keep this pond and the downtown Boykin
11 for posterity there.

12 Q And you --

13 A And, frankly, I think if the trust continued on it,
14 there's no way we would do a fraction of what they would
15 do, and Boykin would continue to deteriorate.

16 Q So you believed that it was -- the option was in the
17 best interest of the trust?

18 A Without question.

19 Q And that was, ultimately, rejected by the
20 co-trustees?

21 A Yes, sir.

22 Q Rigdon, is there anything else that you have not
23 testified to or -- or not reflected in some of the
24 exhibits we've gone over that would encapsulate what your
25 view or your plan is for management of the residuary

1 trust? Anything else you'd like to say?

2 A I think the thing that has been taken out of context
3 all along in the noise factor about all of this is that
4 somehow it's been put forth that I wanted to go and have a
5 fire sale right away and sell everything. Well, that was
6 never the case.

7 I knew it would take years to sell some of this
8 property. Some of it wouldn't take years. Of course, if
9 I went and -- and put a price on it that Helms has put on
10 it, even in his retail value, we could probably sell it
11 all in a year. But I think that isn't responsible. I
12 think we need to get more than what Helms says.

13 And I think it will take -- we would probably be able
14 to liquidate maybe 10 million of it within two, two and a
15 half years. It would take more than that now that we've
16 rejected the option. But with the option, we would have
17 liquidated 10 million easily in -- in two years. And we'd
18 probably liquidate another 10 million in another two years
19 and we would keep some land.

20 I -- I don't have a problem with keeping some land.
21 The problem is how much land we keep. The problem is
22 we've gotten into a posture where they don't want to just
23 keep the -- the treasured property. They want to keep
24 almost all the timberland, too.

25 I mean, the bottom line is we've been trying to sell

1 some property for two years now. In a month, it will be
2 two years. And we've only sold two pieces of property.
3 And every time there's a piece of property that comes up,
4 there's always some problem. Well, I don't want to pay
5 for a survey on it. I don't want this, or we set a price
6 that's too high.

7 And I don't mind setting a price that's too high.
8 But I want the negotiating room to come down to a sale, if
9 it makes sense.

10 Q And what's the total purchase price of those two
11 properties that have been sold?

12 A About 133,000. That's the gross price.

13 Q Out of a trust that's in the ballpark of 23 million?

14 A I think that -- well, after seeing that tax
15 assessor's value, it's probably worth closer to 30
16 million.

17 MR. DUFFY: Mr. Boykin, I have no further questions
18 for you.

19 Thank you.

20 THE COURT: All right. It's a quarter after 3:00.

21 Cross-examination, Mr. Becker.

22 We'll take a 10-minute break before we have
23 cross-examination.

24 (WHEREUPON, a break was taken.)

25 THE COURT: We will resume with the cross-examination

1 of Mr. Rigdon Boykin.

2 Mr. Becker.

3 MR. BECKER: Your Honor, I have no questions of this
4 witness.

5 THE COURT: Very good.

6 You may step down, Mr. Boykin.

7 THE WITNESS: Thank you.

8 THE COURT: All right. Call your next witness,
9 Mr. Duffy.

10 MR. ROSEN: Your Honor, we'd call Jim Hardin.

11 THE COURT: Mr. Hardin, come around, sir.

12 Raise your right hand.

13 WHEREUPON,

14 JAMES C. HARDIN, III,

15 after first having been duly sworn, testified as follows:

16 THE CLERK: Very good. You may be seated.

17 THE WITNESS: Do you mind if I get a cup of water,
18 Your Honor?

19 THE COURT: Not a bit.

20 THE WITNESS: Thank you.

21 MR. ROSEN: Your Honor, may I proceed?

22 THE COURT: You certainly may, Mr. Rosen. You may
23 proceed.

24 MR. REIBOLD: Your Honor, just for the record, I want
25 to preserve my continuing objections.

1 THE COURT: You know that's not necessary. And
2 you're -- I don't know what objections you're talking
3 about. But if they're the objections to making a motion
4 in limine --

5 MR. REIBOLD: Yes, Your Honor.

6 THE COURT: -- then they are preserved.

7 MR. REIBOLD: Thank you.

8 DIRECT EXAMINATION

9 BY MR. ROSEN:

10 Q State your full name, please.

11 A James C. Hardin, III.

12 Q And, Mr. Hardin, what is your profession and
13 occupation?

14 A I'm an attorney at law.

15 Q And how long have you been an attorney at law?

16 A 44 years.

17 Q And where did you do your training in law?

18 A Duke University School of Law.

19 Q Did you graduate there?

20 A I got my law degree there, yes.

21 Q Okay. And where do you practice today?

22 A I practice in Rock Hill, South Carolina.

23 Q You're a member of the South Carolina Bar?

24 A Yes.

25 Q And any other bars?

1 A North Carolina Bar.

2 Q Do you have any experience as a trustee?

3 A Yes. I either am serving or have served on
4 approximately 15 occasions as a trustee of various trusts.

5 Q All right. And have you authored any articles or
6 publications in the field of law or trusts?

7 A Professor Allan Medlin and I co-authored a book
8 called The South Carolina Trust Code. And its second
9 edition is now soon to be released in a month or so.
10 I've, also, been a co-author on estate planning in South
11 Carolina with a number of other South Carolina attorneys.
12 I wrote a particular chapter, as many of them did as well.

13 Q Okay. And what is the chapter you wrote?

14 A Mapping the Estate Plan.

15 Q All right. What was the book that you co-authored
16 with Allan?

17 A It was called The South Carolina Trust Code.

18 Q Have you reviewed any documents in this case?

19 A Yes, I have.

20 Q Can you tell us which ones you've reviewed?

21 A Yes. And it may be -- it may not cover every single
22 one, but, of course, the will of the late L.W. Boykin, II,
23 the order of the Court here in Kershaw County in 1991 that
24 effectuated a split of the marital trust and the residuary
25 trust into a marital trust A and B and a residuary trust A

1 and B mainly -- or solely for the purpose of preserving
2 the maximum available generation skipping tax exemption.
3 That was applicable in the year of the death of Mr. Boykin
4 in 1989.

5 I, also, reviewed the will of Alice Boykin. I
6 reviewed a 1990 irrevocable trust, which Alice Boykin
7 established a year after her husband's death naming Mary
8 Deas Wortley and Ricky [phonetic] as co-trustees of that
9 trust. The purpose of which was to purchase and own the
10 trust that is to own a, I believe, \$2 million policy of
11 life insurance on Alice Boykin's life, which upon her
12 death would be paid to the residuary trustees of her late
13 husband's plan.

14 And the primary purpose, typically, would be to help
15 defray the estate taxes.

16 THE COURT: Mr. Hardin --

17 THE WITNESS: Yes, ma'am.

18 THE COURT: -- I'm going to ask you to sit up closer
19 to the microphone.

20 THE WITNESS: Sure.

21 THE COURT: Pull it down a little bit and closer to
22 you. You have a gentle voice and a way of dropping your
23 voice as you finish your sentence.

24 THE WITNESS: Okay.

25 THE COURT: And we want you to be heard by everyone

1 here --

2 THE WITNESS: Okay.

3 THE COURT: -- and by this deaf old Judge who's
4 hearing aid is pretty good, but I'm losing a few things.
5 So speak into the microphone if you will.

6 THE WITNESS: I will.

7 THE COURT: Thank you.

8 THE WITNESS: I'll do my best.

9 Thank you.

10 BY MR. ROSEN:

11 Q Mr. Hardin, let me ask you this. Did you review a
12 letter that I wrote to James Becker in June of 2017?

13 A Yes, I did. June 28th of 2017 it was, indeed.

14 Q Okay. And have you listened to any audiotapes in
15 this case?

16 A I've listened to a number of audiotapes of trustee
17 meetings. And I've, also, read the written transcripts of
18 a number of other trustee meetings.

19 Q Okay. At my request, did you attempt to sit in on a
20 trustee meeting?

21 A Yes, I did. That was the trustee meeting scheduled
22 for and which did, in fact, occur on October 13 of 2017.

23 Q And were you able to attend that meeting?

24 A I was not. I was joined -- planning to join
25 telephonically. But I was only on the line about three

1 minutes.

2 Q And you were asked to leave?

3 A I was, yes.

4 Q All right. Now, let me ask you this. Do you recall
5 meeting Rigdon Boykin?

6 A Yes, I do.

7 Q And about when was that?

8 A That was in the middle of July of 2017.

9 Q And had Mr. Hardin [sic] called you to make an
10 appointment?

11 A Mr. Boykin.

12 Q Excuse me.

13 A Yes, he did.

14 Q Did you meet with him?

15 A I did.

16 Q And have you met with him on more than one occasion?

17 A No, just the one occasion in person. But we've
18 talked by phone enumerable times.

19 Q Okay. To get this straight. You met with Mr. Boykin
20 as, perhaps, his attorney?

21 A Yes, I would say so. The initial discussion didn't
22 really center on the role that I would have. But as he
23 put it to me, he had been reasonably familiar -- or very
24 familiar with New York and New Jersey trust law. But he
25 did not know much about our state's trust and estate law.

1 And so the purpose of our meeting was for me to
2 provide him with instructions concerning what the -- and
3 advice about the applicable laws of South Carolina as they
4 reflected -- or applied to the estate of L.W. Boykin and
5 his trust.

6 Q Could you give us some examples of things that you
7 and Rigdon Boykin discussed?

8 A Yes. We talked, first of all, in regard to Rigdon
9 Boykin's duties as a co-trustee with Mrs. Wortley and
10 Mrs. Belger. I indicated to him, which I don't think he
11 was surprised about, the fact that as a co-trustee, even
12 notwithstanding his frustration with some of their
13 actions, and decisions, or failures to act that he had an
14 affirmative duty, I felt, to seek to either prevent them
15 from engaging in a breach of trust or to address any
16 breach of trust that they might have already engaged in.
17 And the same would be true with them to him.

18 And I would cite for that Section 62-7-703 of the
19 South Carolina Trust Code entitled Co-Trustees.

20 Q All right. Did he seek any advice on what we all
21 call treasured tracts in this case?

22 A He did, yes.

23 Q What was your view on that?

24 A Well, his principal question, again, not a surprise
25 to him, was the extent to which I felt that the language

1 of Mr. Boykin's will mandated a retention of the treasured
2 tracts. And, again, you know, it's -- I'm not --
3 certainly, nothing other than a draft person who's been
4 drafting these documents for 40 years.

5 But I've always thought by request, not direct, to be
6 reasonably self-evident that these were requests
7 notwithstanding the fact that in numerous places in the
8 will the requests were stated in fairly strong language.
9 But they still were always begun with a request, not
10 direct.

11 Q All right. So -- and your interpretation of that for
12 Mr. Boykin was what?

13 A That the trustees acting properly pursuant to the
14 voting that was required of them could dispose of
15 treasured tracts, as well as other tracts, if they felt
16 that to do so would comport with their duties as prudent
17 investors duties, which the decedent, Mr. Boykin, had
18 applied to them under the terms of the power provision of
19 the will, a series of powers, one of which was to act as
20 prudent persons would.

21 Q All right. So if I understand you correctly, you
22 told Mr. Boykin that he could feel in certain language
23 free to make an estate plan to dispose of property,
24 regardless of the language in the will that said that the
25 testator hoped or was his desire that certain tracts not

1 be sold; is that correct?

2 A Yes.

3 Q All right. And did Mr. Boykin seem to appreciate
4 that advice that you gave him?

5 A I think that he did, yes.

6 Q All right. And was that an issue that, apparently,
7 bothered him for which he was seeking advice?

8 A I think he needed reaffirmation of something that he
9 probably felt was appropriate as it was.

10 Q Did you and Mr. Boykin talk about annual
11 distributions of money?

12 A We did. We talked in considerable length about that.

13 Q All right. Tell us what you talked about.

14 A Well, the principal issue there was what was my view
15 of the words of the will as it related to the issue of
16 income distributions. Because, as we know, under item
17 eight of the will, which creates the residuary trust,
18 there's a paragraph concerning income distributions
19 followed by a paragraph concerning principal
20 distributions.

21 And I indicated to Mr. Boykin that I felt that the
22 income distribution provision was mandatory, such that the
23 testator, L.W. Boykin, was requiring that all the net
24 income earned by the trust in each year be distributed to
25 these four individuals. And the only reason that a health

1 education supported maintenance standard was included in
2 that income paragraph was simply to the extent that
3 notwithstanding Mr. Boykin's request that these
4 distributions of income be substantially equal between the
5 four, notwithstanding that, perhaps, if one particular
6 beneficiary had a terrible year medically, then that would
7 justify the trustees in distributing to him or her,
8 perhaps, greater than one fourth of the net income.

9 Q All right. But, otherwise, it was your advice that
10 the trustees were obligated to distribute all of the cash
11 netting?

12 A It was that. And we talked about, what does the term
13 income mean? And I explored with him four ways under --
14 four modern South Carolina laws where the term income in
15 its true traditional sense of trust accounting income
16 could be changed and, perhaps, enhanced.

17 Q Okay. What is the standard of prudent investment?

18 A The standard of prudent investment in its current
19 status in South Carolina is embodied in the Prudent
20 Investor Act that currently is codified as Section
21 62-7-933, but was, initially, codified in a different
22 place in the trust code. And, actually, that was
23 enacted -- that statute, the Principal Income Act in 2001,
24 which predates the 2006 effective date of the trust code.

25 It was, actually, embraced within what has always

1 been in our South Carolina probate code entitled Article
2 7. Because we had an Article 7 from the outset of the
3 probate code in 1986 that was called trusts.

4 So what occurred in the -- with the enactment of the
5 trust code was it went in and supplanted the entirety of
6 the relatively skimpy trust law provisions in Article 7.
7 And at that time in 2006, the Principal Income Act was
8 inshrined within Article 7 of the trust code.

9 Q All right. Did you discuss that with Rigdon Boykin?

10 A I did.

11 Q All right. And did you discuss the prudent
12 investment standard with Rigdon Boykin?

13 A I did. And, again, that as well as the Principal
14 Income Act, separate statutes, were both enacted in 2001
15 and predated the trust code.

16 Q Were you aware that some trustees allegedly have said
17 that the prudent investor standard does not apply in this
18 case?

19 A Yes, I was.

20 Q All right. And what's your response to that?

21 A Well, I believe that it does. However, to the extent
22 that arguably it does not, it's not as though prior to the
23 enactment of our principal and income and prudent investor
24 act in 2001, we had no law of prudence. We had a
25 preexisting section in the South Carolina trust code in

1 that Article 7 which did impose a standard prudence on
2 trustees. It just wasn't as extensive as was the prudent
3 investor act.

4 Q How long has the prudent investor standard been in
5 existence?

6 A Well, here in South Carolina, I believe there's a
7 case dating back to, like, 1906. But it was first -- the
8 most common language for the standard of prudence or a
9 prudent man was -- was handed down by a Massachusetts
10 court at Harvard College v. Amory in 1820, which dealt
11 with the fact that a prudent man wouldn't invest trust
12 assets as he would with his own property, not towards
13 speculation, but towards a careful analysis of the assets
14 that he had to invest.

15 Q Did you and Rigdon Boykin have a conversation about
16 the prudent investment standard?

17 A We did.

18 Q And his obligations under that?

19 A We did.

20 Q All right. Was Mr. Boykin, actually, seeking your
21 instruction and guidance on how to handle his duties as
22 trustee?

23 A He was. In many respects, it was what I thought he
24 should do going forward.

25 Q All right. And do you have some examples of things

1 that you and he might have discussed in which he was
2 advising you on how to handle his job as trustee?

3 A Well, certainly, one was he found himself in that
4 summer of 2017 in a situation where there'd been no
5 trustee meetings for, at least, six or eight weeks. And
6 as it turned out, there wouldn't be another one until
7 October, notwithstanding his admonitions to his
8 co-trustees that meetings were needed.

9 I indicated to him that really one -- one innovation
10 with the South Carolina trust code is not that it hasn't
11 been long -- it's one of the four duties of the trustee,
12 besides, loyalty and impartiality, and the duty of prudent
13 investment is the duty to administer the trust. Many
14 family trustees I've found in my years of advising trusts
15 really just don't do very much. They -- they don't
16 understand they've got an affirmative duty to do
17 something. Skipping trustee meetings does not fulfill
18 that duty.

19 So I was advising Rigdon that he -- he should
20 admonish them about the potentiality that they were
21 breaching their duty by calling off meetings at the last
22 minute and by delaying meetings.

23 Q Have you now mentioned all the duties of the trustee?

24 A I think I mentioned the main four, yes, sir.

25 Q All right. What about the duty to diversify? Is

1 that considered a duty?

2 A It's a duty that's founded in the prudent person
3 standard, not only in our current Prudent Investor Act,
4 but, also, in the preexisting prudent investor rule. And
5 it goes back, again, decades to centuries.

6 Q So this is sort of a common law that's been passed
7 down for decades and decades?

8 A Yes, and recognized repeatedly in South Carolina.

9 Q It wasn't just invented yesterday for this case?

10 A No.

11 Q Did you, also, discuss the duty to grow the trust?

12 A Yes. That's, certainly, an aspect of a trustee's
13 duty. It's been observed that a trustee must do what he
14 can to grow the trust to enhance the purchasing power,
15 which the beneficiary should have. If you're doing
16 nothing but keeping the income at the same standard for a
17 period of years or decades, then you're not enhancing
18 their purchasing power from the trust.

19 Q Did you advise Mr. Boykin about what to do about the
20 fact that the other trustees were not having trustee
21 meetings?

22 A All I -- I told him all I thought he could do was
23 make sure he communicated his strong desires in writing
24 and repeatedly. And he was doing those things. He wrote
25 a very effective e-mail in the early part of October,

1 which immediately did postdate his initiation of this
2 legal action in August.

3 And in that, he said it's been nearly four months
4 since we've had a meeting. We have an urgent need to
5 meet. And I'm ready to have the meeting at Bill
6 Tetterton's office. He's agreed to have it. What about a
7 couple days hence at 9:00 in the morning?

8 So he did -- he did effectively get that meeting
9 going.

10 Q Are you familiar with the issue about what I think is
11 called the 6166 option?

12 A Yes.

13 Q Do I have that right? Can you tell us what that is?

14 A Right. The duty there fell principally on Mary Deas
15 Wortley and Alice Belger. They were the co-personal
16 representatives of the estate of Alice Boykin. And as
17 such, they had the important responsibility of paying the
18 federal estate tax within nine months after the death of
19 Alice Boykin. And that date fell sometime in May of 2017.

20 Karen Thomas understandably, it seems to me, sought a
21 six-month extension to file the return. So she didn't,
22 actually, file it until November of 2017. But the due
23 date of the tax was May of 2017. So she paid a portion of
24 it at that -- at that time.

25 However, she elected -- and I shouldn't just say

1 "she." The executors, her clients, elected to defer
2 approximately \$2.7 million of the estate tax liability
3 under Code Section -- Internal Revenue Code Section 6166.
4 And that section allows as it has for decades or longer,
5 throughout my career for an installment series of payments
6 of the federal estate tax, interest only, for the first
7 four years and then principal interest for the next 10.

8 Q Okay. Did Rigdon Boykin voice any concerns to you
9 about the nature of that transaction with the federal
10 government?

11 A He did. Rigdon having been a co-trustee with Mary
12 Deas of the income -- of the insurance trust of the late
13 Alice Boykin was quite familiar with the fact that this
14 \$2 million had been received. He probably helped collect
15 the money at her death. He went into this insurance trust
16 and then over to the residuary trust. And one of its
17 purposes was to provide that liquidity.

18 And he and Karen Thomas, as I understand it,
19 initially, agreed that, perhaps, a 6166 would not be
20 appropriate, maybe not the best judgment call. And, of
21 course, bearing in mind that he was not a personal
22 representative.

23 So it was the call of the two PR's, not his. But he
24 still had every reason to weigh in because the -- because
25 of the 6166 election that was, in fact, made without his

1 ultimate knowledge that it was -- was made and that a
2 portion was put on an installment basis. That effected
3 and really restricted the trustees of the residuary trust
4 going forward not only in the financial plans that were
5 made upon them in terms of interest and principal
6 payments, but, also, on such things as the fact that they
7 would probably be having to offer surety bonds to the
8 Internal Revenue Service, mortgages for the real estate
9 for theses estate taxes.

10 I observed to Rigdon that 6166 had been a real --
11 demandsome [phonetic] until about the year 2001. In that
12 year when the tax -- it came in, some of the great
13 benefits of it were taken away or substantially restricted
14 by the Republicans. One of which was that the interest
15 that would have paid the federal government on installment
16 used to itself be estate tax deductible.

17 So that was sort of a double benefit. You didn't
18 have to pay all your taxes up-front. Not only that, you
19 were going to get to deduct the interest that you paid the
20 government. That was taken away. And as well, agents
21 were admonished to be much more strict about demanding or
22 seeking mortgages of real estate and trust or estate
23 surety bonds.

24 So it really has been less attractive over the last
25 20 years.

1 Q Was one of the concerns about that that the real
2 estate would be tied up for some period of time and the
3 trustees couldn't deal with it -- or sell it?

4 A To an extent, yes. Because let's say a buyer came
5 along. Well, to the extent there's a mortgage in favor of
6 the Internal Revenue Service, that would be one aspect of
7 the negotiation for sale. The -- the IRS would be a party
8 to an extent to that transaction. It wouldn't necessarily
9 prevent a sale, but it would be an additional nuisance.

10 Q You're aware that there was a period of time -- and I
11 think it's on one of these charts.

12 MR. ROSEN: I'm not sure the Judge can see.

13 THE COURT: I've got the blow up -- oh, you're
14 talking about the timeline?

15 MR. ROSEN: We have a timeline here. It looks
16 like --

17 THE COURT: Put -- can you put that up?

18 MR. ROSEN: Let's see.

19 THE COURT: I think you can just lean it up against
20 that one, Richard. Put it up on the jury --

21 MR. ROSEN: Let's see.

22 THE COURT: Yes. Just put it there.

23 MR. ROSEN: Can you just hold it there?

24 THE BAILIFF: Sure.

25 MR. ROSEN: Do y'all mind?

1 THE BAILIFF: No.

2 BY MR. ROSEN:

3 Q It looked like there were no trustee meetings from
4 the period of June of 2017 through September of 2017?

5 A That's my understanding.

6 Q Would that worry you as someone's attorney?

7 A It would, yes, particularly if I were representing a
8 trustee -- a co-trustee or a trustee that was not having
9 meetings, if there were more than one trustee.

10 MR. ROSEN: Okay. You can put it down.

11 THE BAILIFF: Okay.

12 MR. ROSEN: Thank you, sir.

13 BY MR. ROSEN:

14 Q And would you be concerned about your liability if
15 you were to not have a trustee meeting for three or four
16 months?

17 A I would be.

18 Q Okay. And what's the reason for that?

19 A Again, getting back somewhat to this notion that
20 you've got a duty to do something. Even almost if it's
21 the wrong thing, you've got a duty to do something. And
22 that is to continue to examine the assets of the trust and
23 what your duties are with respect to enhancing the best
24 interest of the beneficiaries.

25 Q It sounds to me like you have some concern that

1 trustees should be consulting with each other on a regular
2 basis?

3 A Yes.

4 Q And their failure to do so, do you think it could
5 lead to some allegation, for example, of breach of trust?

6 A It might, yes, sir.

7 Q Okay. And have you seen that happen in your career?

8 A Yes, I have.

9 Q Have you talked to us today about the standard of
10 prudent investment?

11 A We -- we did.

12 Q Okay. How about duties of trustees?

13 A Okay. We mentioned the principal duties that are
14 made out in the trust code. And, of course, this just
15 carries forward, as the trust code says, pre-trust code
16 common law, the duties of loyalty. And that means
17 undivided loyalty to the beneficiaries such that, for
18 example, Mary Deas Wortley, who we heard this morning in
19 her deposition, she's got just as much of a duty to Whit
20 Boykin as she does to one of her children. So that would
21 be an example of the duty of undivided loyalty.

22 And the -- of course, the other duties are
23 partiality, at least, except to the extent that the
24 governing instrument requires partiality. Some testators
25 do that. I guess we heard that this morning concerning

1 the oldest son of Whit the fifth. If there had been such
2 that -- that was a clear example, I suppose, of the
3 decedent indicating a level of partiality, which,
4 ultimately, did not -- was not relevant here.

5 But -- but lacking that, I think there was no
6 indication of partiality shown by the decedent with
7 respect to these four children.

8 Q It looks like Mr. Boykin talked with you more than
9 once, I think. And then at some point, he wanted to
10 initiate an action in the probate court?

11 A Yes.

12 Q Are you familiar with that?

13 A That's right.

14 Q And did you consult with him and us about that
15 action?

16 A I did.

17 Q And what was the nature of that action in probate
18 court?

19 A The central dilemma that he was facing at that point
20 in the summer of 2017 was he had been informed I believe
21 by the attorneys for Mary Deas and Alice that they were
22 not going to apply trust assets to defray his legal fees.
23 And so he felt that he needed to take action. He felt
24 that he needed to proceed with securing instructions from
25 the Court.

1 And the central -- one of the most important things
2 was how was he going to finance that. So he did ask the
3 Court for a payment -- for an order requiring the two
4 trustees with whom he was serving to take action to allow
5 for the payment of reasonable attorney fees from the trust
6 assets.

7 Q How is that normally handled when you've got a
8 trustee who wants to seek guidance? How does that
9 normally happen?

10 A Well, the nature of the guidance sometimes is the
11 issue. I guess as I've always viewed it, a trustee,
12 certainly, has not only the power, but probably the
13 responsibility. And Mr. Boykin, our decedent, certainly,
14 made that clear when he gave the trustees the ability to
15 hire attorneys, and accountants, and advisors, et cetera,
16 and to pay them from the trust assets.

17 A trustee does have that duty. And so trust assets
18 can appropriately be paid. However, that may be an
19 oversimplification here because of the fact that there
20 were three trustees and they were at odds.

21 I would say in a circumstance like that that my best
22 counsel to him was to seek an attorney for the trust who
23 was impartial. And while I have great respect for Karen
24 Thomas, tremendous respect for her, and, indeed, I think
25 she was zeroing in on many of the issues that I've

1 highlighted here today, I wasn't sure that after the
2 trustees reached this impasse that she could continue to
3 serve impartially.

4 I believe there was, actually, confirmation in
5 e-mails that she and Rigdon had officially parted ways
6 sometime, like, in May of 2017. So that she was really
7 representing -- if she was trust counsel for anyone, it
8 was for Mary Deas and Alice. And so Rigdon did not feel
9 himself as having trust counsel.

10 Am I suggesting he could go out and exorbitantly hire
11 anyone he wanted and spend any amount? Absolutely not. I
12 think within reasonable bounds and subject to court
13 approval, the trust assets could well have been applied to
14 assist him in securing instructions.

15 Now, if he were accused of stealing or something as a
16 trustee, he'd have to get his own counsel and pay for
17 that --

18 Q Right.

19 A -- quite obviously. But this -- that's not the
20 nature of the dispute here.

21 Q Did you and Mr. Boykin discuss whether or not the
22 other co-trustees were operating in breach of their
23 duties, their fiduciary duties as trustees?

24 A We did, yes.

25 Q And did you and Mr. Boykin develop any plans on how

1 to deal with that?

2 A Well, I think the -- the principal one, initially,
3 which led to the initiation of the action in August of
4 2017 was to seek to do two things, have a trust counsel
5 appointed by the Court, and, also, to have Rigdon Boykin
6 declared -- and I believe there was a declaratory judgment
7 cause of action there as the -- the pre-imminence trustee.
8 Because he was the only disinterested one.

9 And I gave him a number of statutory citations, which
10 under South Carolina trust law and that general
11 application around the country does allow the authority
12 and flexibility of -- or elevate the authority and
13 flexibility of the disinterested trustee over trustees who
14 are themselves beneficiaries.

15 Q Okay. Does the other -- the other trustees have a
16 duty to prevent a co-trustee from seriously breaching the
17 trust?

18 A Yes, sir.

19 MR. REIBOLD: Your Honor, I've -- I've allowed him to
20 go quite some time. But it goes way beyond what he told
21 Mr. Boykin he was --

22 THE COURT: Overruled. He's giving opinions about
23 what he told Mr. Boykin --

24 MR. REIBOLD: Thank you, Your Honor.

25 THE COURT: -- as I understand the testimony that's

1 been given.

2 Go ahead, Mr. Rosen.

3 MR. ROSEN: Thank you, Your Honor.

4 BY MR. ROSEN:

5 Q Mr. Hardin, you're familiar with the gold mine
6 negotiation and issues?

7 A Yes, sir.

8 Q All right. And do you know how Mr. Boykin dealt with
9 that?

10 A I have general familiarity with that. I did not
11 follow that throughout the process. I just know that he
12 did, as I recall it, looking at transcripts of the trustee
13 meetings or listening to tapes broach the fact that he had
14 an option and possibility that would have resulted in
15 quite a favorable outcome with respect to the Millpond and
16 downtown Boykin. And I -- I didn't see an indication that
17 he had not brought that forward as soon as he could.

18 Q So did you -- did you see any evidence that Rigdon
19 Boykin committed a breach of his trustee duties by seeking
20 to negotiate that transaction with the Millpond?

21 A I didn't think so, particularly in light of the
22 background here of the three trustees. The way things
23 began, as I observed them, in the summer of 2016 after
24 Alice Boykin died was Rigdon became sort of the workhorse.
25 He was the one who was delegated by his co-trustees to go

1 out and do this, or check that, or, as Karen Thomas put
2 it, work his miracles.

3 So he was, I think, with their permission expressed
4 or tacit going out and doing things like seeking these
5 deals that would have benefited the trust and the
6 beneficiaries.

7 MR. ROSEN: Okay. Bear with me one second.

8 (Pause.)

9 MR. ROSEN: Mr. Hardin, that's all the questions I
10 have.

11 THE COURT: Cross-examination.

12 MR. REIBOLD: Thank you, Your Honor.

13 THE COURT: Mr. Reibold.

14 CROSS-EXAMINATION

15 BY MR. REIBOLD:

16 Q Good afternoon.

17 A Good afternoon.

18 Q Mr. Hardin, you heard my objection moments ago. Do
19 you understand that you're here in the capacity as a fact
20 witness?

21 A Yes.

22 Q And if I remember correctly, you were first contacted
23 by Mr. Boykin in July of 2017?

24 A That's correct.

25 Q That was your first exposure to anything about this

1 trust, any of the trustees, et cetera?

2 A That's right.

3 Q So you don't have any personal knowledge of anything
4 happening before you were contacted by Mr. Boykin?

5 A No.

6 Q And have you ever talked to Mary Deas Wortley?

7 A No.

8 Q Have you ever talked to Alice Belger?

9 A No.

10 Q Have you ever talked to any of the remaining
11 beneficiaries?

12 A Yes. I've had just casual conversations with Whit
13 Boykin, nothing substantive as he has brought
14 documentation to my office that Rigdon wanted me to
15 review.

16 Q But you've never sought to ascertain their wishes
17 about what should happen with the trust?

18 A No.

19 Q Now, you say that you have listened to several audio
20 recordings; is that correct, of the trustee transcripts?

21 A I guess three to five meetings, as well as
22 transcripts of another three to five, something in that
23 order.

24 Q Well, would it surprise you to learn that between
25 Alice Boykin's death and today's date there have been more

1 than 24 trustee meetings?

2 A No, it wouldn't.

3 Q And would it surprise you to learn that in addition
4 to those 24 trustee meetings, there have been numerous
5 telephone calls and e-mail exchanges between trustees?

6 A No, it would not.

7 Q In fact, you have knowledge, you've seen some of
8 those communications, haven't you?

9 A I have, yes.

10 Q And there's -- there's been some talk about a gap in
11 which -- a gap of time in which there were no trustee
12 meetings?

13 A Yes.

14 Q That's -- that's the summer months, isn't it?

15 A Yes, it is.

16 Q And you understand that there were initial e-mails
17 and telephone communications that occurred during that
18 time between trustees about trust business; is that
19 correct?

20 A Well, certainly, if they were involving persons other
21 than Rigdon Boykin, I would have no knowledge of those.
22 Because Rigdon was forwarding e-mails that he received to
23 me.

24 Q You've read the will; right?

25 A Yes.

1 Q And the will establishes a marital trust and then a
2 residuary trust; is that correct?

3 A Yes.

4 Q And the marital trust would have terminated upon
5 Alice Boykin's death in August of 2016?

6 A Yes.

7 Q Alice Boykin was the only beneficiary of the marital
8 trust; isn't that correct?

9 A That's correct.

10 Q No one else had a right to proceeds of the marital
11 trust?

12 A No one else.

13 Q And I think you mentioned in your review of the will
14 that you noticed language in which L.W. Boykin indicated
15 he desired to preserve certain tracts of property?

16 A Yes.

17 Q And I -- I think you even said that it was fairly
18 strong language to that effect?

19 A That's right.

20 Q And that was apparent to you when you read that will;
21 correct?

22 A Yes, it was.

23 Q And that would have been apparent to anybody -- any
24 reasonable person that would have read that will?

25 A Yes.

1 MR. REIBOLD: I think that's all I have.

2 Thank you.

3 THE WITNESS: Thank you, sir.

4 THE COURT: One moment, Mr. Hardin.

5 (Pause.)

6 THE COURT: All right, sir. Anything further,

7 Mr. Rosen?

8 MR. ROSEN: Nothing further.

9 THE COURT: Very good. You may step down.

10 THE WITNESS: Thank you, ma'am.

11 THE COURT: Call your next witness.

12 MR. ROSEN: Your Honor, I think we're out of
13 witnesses.

14 THE COURT: Do you rest?

15 MR. ROSEN: We rest.

16 THE COURT: Very good. Mr. Becker, you may begin.

17 MR. BECKER: Your Honor, we would normally move for a
18 directed verdict at this time. We -- there will be
19 significant overlap in the directed verdict motion at the
20 close of the Petitioner's case and the close of the Cross
21 Claimants case.

22 So we would like to suggest that the Cross Claimants
23 proceed. And we can argue -- Mr. Reibold will argue the
24 directed verdict motion on both at the same time. I think
25 that will be more efficient to save time, if that's okay

1 with you.

2 THE COURT: All right. Mr. Tetterton, are you
3 prepared to proceed --

4 Are you talking about Mr. Tetterton's cross claim?

5 MR. BECKER: Yes.

6 THE COURT: All right. Mr. Tetterton, are you ready
7 to proceed on the cross claim?

8 MR. TETTERTON: Yes, ma'am.

9 THE COURT: Very good. You may proceed.

10 MR. TETTERTON: We call Alice Belger.

11 THE COURT: Good afternoon, Ms. Belger.

12 MS. ALICE BELGER: Good afternoon.

13 THE COURT: Place your left hand on the Bible and
14 raise your right hand.

15 WHEREUPON,

16 ALICE B. BELGER

17 after first having been duly sworn, testified as follows:

18 THE COURT: Very good. You may be seated.

19 MR. TETTERTON: Your Honor, before we start, can I go
20 ahead and hand up my deposition excerpts now?

21 THE COURT: All right. Yes, you may.

22 MR. TETTERTON: And I have them nice and neat.

23 THE COURT: Very good. That will be Exhibit No. 1 in
24 the cross claim?

25 MR. TETTERTON: Yes, ma'am.

1 THE COURT: All right. Hand that to the court
2 reporter.

3 And Exhibit No. 1 in the cross claim are the Cross
4 Claimants Whit and May Boykin -- Whit Boykin and May
5 Cantey Boykin's designated excerpts from the deposition of
6 Alice Belger; correct?

7 MR. TETTERTON: Alice Belger, Ansel Bunch, James
8 LaFrage, Jane Peacock, and David Thomas, of course, the de
9 bene esse.

10 THE COURT: Very good. Excellent.

11 MR. TETTERTON: And Mary Deas.

12 THE COURT: Very good.

13 All right. Thank you, sir.

14 THE COURT REPORTER: What do you want me to put on
15 your exhibit?

16 MR. TETTERTON: Respondents Whit Boykin and May
17 Boykin. They're Respondents.

18 THE COURT: This is Respondent L.W. Boykin, III, and
19 May Cantey Boykin's designated excerpts of the depositions
20 as just recited by Mr. Tetterton in connection with their
21 cross claim.

22 (WHEREUPON, Respondents L. W. Boykin, III, and May
23 Cantey Boykin's Exhibit No. 1 was marked for
24 identification and admitted into evidence.)

25 THE COURT: You may proceed, Mr. Tetterton.

DIRECT EXAMINATION

BY MR. TETTERTON:

Q Hi, Ms. Boykin [sic]. How are you doing?

A I'm doing fine.

Q Do you mind if I call you "Alice"? I feel like I've known you all my life. Is that okay?

A I guess.

Q Alice, I understand that your background has, basically, been in photography; is that correct?

A Yes, sir.

Q And I believe when you finished your high school or boarding school education that you pursued a career in photography?

A Yes, sir.

Q And how long did you do that?

A Several years.

Q Is that the only educational background you have is in photography?

A Yes.

THE COURT: Mr. Tetterton, you have a gentle voice and you talk in a very rapid fashion.

MR. TETTERTON: Okay.

THE COURT: If you would slow it down a little bit and speak into the microphone, that would be good.

MR. TETTERTON: I don't have a microphone, Your

1 Honor. But I'll speak up.

2 THE COURT: But just speak up. The microphone here
3 is trying to pick you up.

4 BY MR. TETTERTON:

5 Q Alice, so is it my understanding that you pursued a
6 career in photography; is that correct?

7 A Yes, sir, I did.

8 Q And you did that until your mother died?

9 A I -- I did it a little bit after my father's death.

10 Q After your father's death?

11 A Yes.

12 Q Okay. And then what were you doing just before your
13 mother died? What were you doing?

14 A I was working for my husband -- I am working for my
15 husband. I do billing for him.

16 Q Your husband is a farmer?

17 A Yes, sir.

18 Q And when did you marry Wayne Belger?

19 A September the 10th, 1997.

20 Q '97?

21 A No, 1994.

22 Q '94?

23 A Yeah.

24 Q Okay. And he was a farmer at the time?

25 A Yes.

1 Q And after your father died, where did you live?

2 A I just came back home. And I was working at Nelson
3 Wood Photographers in Camden.

4 Q Did you move -- when did you move in with your mother
5 at Millway?

6 A Pretty much --

7 Q I'm sorry?

8 A I went to college -- no, after I went to boarding
9 school, then I went to college. Then I moved back to the
10 house.

11 Q Were you living with your mother when you married
12 Wayne Belger?

13 A Yes, I was.

14 Q And you and Wayne Belger have been living in the
15 Millway house ever since; is that correct?

16 A No.

17 Q Was there a time when you did not live in the Millway
18 house?

19 A When we first got married, we lived down in the
20 downtown area, which some people call Jenny's cottage now.

21 Q About how long have you lived in the Millway house
22 with your husband?

23 A I -- we started living there when my mother started
24 having health problems.

25 Q So how long have you been living there at that

1 Millway house?

2 A I'm not sure, but --

3 Q Five years? 10 years?

4 A I'd say close to 10 years.

5 Q About 10 years?

6 A I'm guessing.

7 Q That's okay. But you've been living there about 10
8 years with your mother. And then she passed away, and you
9 continued living there; is that correct?

10 A Yes.

11 Q And you became a co-trustee in August of 2016 when
12 your mother passed away?

13 A Yes.

14 Q Is that correct?

15 A Yes.

16 Q And I believe when I spoke to you earlier, you said
17 you understood that one of your duties as a trustee was to
18 diversify?

19 A Yes.

20 Q Didn't you all have a conversation with Karen Thomas
21 prior to this lawsuit being filed about your duty to
22 diversify as a co-trustee?

23 A We never -- we had lots of meetings. You'd have to
24 show me something, you know. We had many meetings. I
25 can't recall when --

1 Q Well, my question then would be, when did you first
2 realize that you, as a co-trustee, had to cooperate with
3 the other co-trustees in diversifying the assets of the
4 trust?

5 A Well, the first thing we had to do was establish
6 the -- our -- our gross worth so we would know what the
7 taxes was. And -- and we didn't -- knew the date of death
8 taxes until -- the date of death appraisals until almost
9 the time we took -- took the returns back into -- that
10 were the extension deadline.

11 Q Prior to getting the appraised value on the net worth
12 of the estate, did you understand it to be one of the
13 duties to diversify?

14 A Yes.

15 Q So you knew before you knew the net worth of the
16 estate that you had to diversify?

17 A Well, yes.

18 Q And was it your position at that time that you did
19 not want to diversify, but that you wanted to hold on to
20 all the timberland?

21 A Well, I had -- the first thing that my father put in
22 the will and what I've always been told by my father was,
23 y'all -- y'all have timber to cut. And use that asset to
24 pay the taxes, get stocks back -- get the stocks back
25 where -- you had to liquidate.

1 Q And was it your intentions at that time to hold on to
2 all the timberland, to do just what your father wanted you
3 to do?

4 A Well, I know we had to sell some land. And there was
5 some land that we was supposed to sell first, which is the
6 outland properties that were -- are not really productive
7 in timber.

8 Q Did you know that, though, before you got the net
9 value of the trust assets? Or at that time, were you
10 determined to hang on to all the properties?

11 A Well, first, when we was talking about selling land,
12 we did not have any idea what the worth of these
13 properties were. We -- we looked -- that -- we -- I was
14 always told to go cut the timber first and sell the land
15 second.

16 Q So that was your strategy at the time that you got
17 the appraisal was to cut timber first and then to --

18 A Well, we had the timber appraisals before we had the
19 death appraisals, long before. They were stopped
20 somewhere before May -- before that year --

21 Q Did you --

22 A -- and --

23 Q Go ahead.

24 A (There was no response.)

25 Q Did you have one to -- did you have someone to give

1 you a timber value of the timberlands in the trust?

2 A Yes --

3 Q And --

4 A -- Jimmy LaFrage.

5 Q Beg your pardon?

6 A Jimmy LaFrage.

7 Q Jimmy LaFrage did that?

8 A Yes.

9 Q And I believe Jimmy LaFrage was a consultant with
10 your father on his timberland?

11 A Yes, and, also, with my mother.

12 Q And your mother?

13 A Yes.

14 Q All right. Prior to you becoming a co-trustee of the
15 residuary trust, was Rigdon Boykin and Mary Deas
16 co-trustees of your mother's estate?

17 A Only Mary Deas was -- was a co -- a co-trustee with
18 medical [phonetic].

19 Q And at that time, were you living at home at Millway
20 property?

21 A No. Because I was married in '94. So we moved down
22 to the house we lived in for a while. And my mother
23 wanted us to renovate the house. And at that time, she
24 became -- had some illness and some health problems. We
25 moved back -- we moved in for the renovations of the

1 house. At the time, we was -- when they were finished,
2 she did not want us to leave.

3 Q But you -- you rely on Jim LaFrage -- or James
4 LaFrage to -- for advice on timber cuttings now and in the
5 future?

6 A Yes.

7 Q Do you rely on anyone other than Jim LaFrage to
8 advise you about timber cuttings?

9 A Now, John Helms.

10 Q But Mr. LaFrage did some projections for you, did he
11 not? And he did what we call a civil cultural report?

12 A Yes. I insisted on the -- on a plan. Because Rigdon
13 has stopped -- tried to stop that. He said that was a
14 joke and it was a waste of money. And I showed -- the
15 plan showed when to cut it and made the estimate -- the
16 estimated value of it at that time of my mother's death --
17 well, since my mother's death. And trees don't stop
18 growing after -- they keep --

19 Q Mr. LaFrage did a civil cultural report for you; is
20 that correct?

21 A Yes.

22 Q And when was that?

23 A You'd have to look.

24 Q Was it shortly after your mother died?

25 A It was in -- I think it was in the early part of '17.

1 Q Is it fair to say it was early in 2017?

2 A Yes. I'm not looking at the report.

3 Q Was it around February or March, if you recall?

4 A I think so.

5 Q At that time, what did you consider the expenses of
6 the trust to be when you got Mr. LaFrage's report?

7 A We have an accountant, Ms. Jane Peacock, that works
8 for -- for -- she worked for Hancock and Godwin. She
9 handles the books and all billing that goes through there.

10 Q She's a bookkeeper?

11 A Yes.

12 Q An accountant?

13 A An accountant.

14 Q All right. My question was, though, at the time you
15 had -- or at the time you received Mr. LaFrage's civil
16 cultural report with these projections, what did you
17 consider the expenses of the trust to be?

18 A I can't remember. I can't recall.

19 Q Would you consider one of the expenses of the trust
20 to be trustee fees?

21 A It didn't even talk about trustee fees.

22 Q Did you think one of the expenses of the trust to be
23 income -- distributions to the four income beneficiaries?

24 A Well, that -- the income of the trees would be part
25 of the income of the beneficiaries, too -- the income

1 beneficiaries. I'm kind of lost.

2 Q Okay. Let me rephrase that. When you took over
3 as -- I'm sorry. When you got the projections from
4 Mr. LaFrage, at that time, did you determine what the
5 expenses of the trust would be?

6 A We -- Mr. Boykin -- Rigdon did not want to cut any
7 trees. We did cut some trees. But he didn't really want
8 to cut all the trees, because he wanted to sell -- sold
9 some tracts with the trees.

10 Q Alice, did Rigdon Boykin tell you at the time you got
11 Mr. LaFrage's projections of revenue that one of the
12 expenses of the trust would be distributions to the income
13 beneficiaries?

14 A Well, right. When Mr. Boykin -- when we first --
15 everything was -- my mother passed away. The insurance
16 policies -- there were two policies in place, life
17 insurance was put in a bank. Rigdon and Mary Deas were
18 trustees of that policy.

19 They -- Rigdon says, we'll use the insurance funds
20 to -- to use as a temporary basis for the four
21 beneficiaries for income.

22 Q Were the proceeds from the insurance policy
23 designated or earmarked to pay the estate taxes?

24 A Yes.

25 Q And about what were the estate taxes at that time?

1 A We had no idea when -- when we cashed the -- cashed
2 the insurance.

3 Q Did you, eventually, understand the tax debt would be
4 around \$4 million?

5 A We had no idea what to think when -- we didn't even
6 got a gross amount of the estate -- the gross net worth
7 was -- until -- until the date the death appraisals came.

8 Q When did you first learn what the IRS debt was on
9 your mother's estate?

10 A I did not know what was the -- one -- when the
11 deadline came, we used the -- liquidated account for
12 the -- that -- and we made a payment. And -- and Karen
13 Thomas had an extension. Because all the -- they -- the
14 appraisals were not in. So we could not determine the --
15 the worth -- the net worth of the estate.

16 Q Did you hear your co-trustee, Mary Deas, say this
17 morning that the trust had \$22 million in land, \$3 million
18 in cash, and \$2 million in commercial property totalling
19 \$27 million?

20 A Well, we estimated in a -- in a meeting -- in a
21 trustee meeting it would have been more than 20 million by
22 Rigdon Boykin. Because we did not include the -- the
23 trust. So two tracts were not put in the estimates of the
24 taxes.

25 Q Haven't you taken the position throughout this case,

1 particularly in your deposition, that the value of the
2 trust was between \$20 million and \$22 million?

3 A I think that's -- I think we said that we estimated
4 that much.

5 Q And what is your opinion of the value -- gross value
6 of the trust today as we stand here?

7 A Well, we have to take all the liability off and get
8 true net asset -- net -- net asset value.

9 Q And what would that value be?

10 A The last -- the report we had received was 14.4.

11 Q That -- is that Mr. Helms report that says that the
12 value of the trust is \$14.4 million?

13 A Yes.

14 Q Okay.

15 A That's the net.

16 Q Beg your pardon?

17 A That's not counting -- I think that's it.

18 Q Okay. Going back to the time you got Jim LaFrage's
19 projection creating revenue for the trust, were y'all,
20 also, receiving revenue from other sources?

21 A Rent.

22 Q Farm rent?

23 A Farm rent, hunting rights.

24 Q Hunting leases?

25 A Hunting leases.

1 Q Okay. Do you know how much the hunting leases
2 generated in the year 2017 for the trust?

3 A I -- I'm not sure. I -- because I really don't have
4 the figures in front of me.

5 Q Okay. Do you know how much the -- the residential
6 and commercial rents generated for the year 2017?

7 A '17. Well, we all started paying rent -- house rent.
8 I paid \$12,000 on my house, Millway. I think Whit paid
9 12,000 on his house. I think May through Rigdon said he
10 paid about three or \$400 -- thousand dollars on rent of
11 Jenny's house, but she did not move in.

12 Q And you had some commercial rents, too, particularly
13 on Highway 1 --

14 A Yes.

15 Q -- West?

16 A Yes.

17 Q That would have been Leo's?

18 A The liquor store, Hawthorne Pharmacy in Lugoff,
19 Lugoff Loan.

20 Q I'm sorry?

21 A Lugoff Loan.

22 Q Lugoff Loan?

23 A Yes.

24 Q Were you renting -- when you became co-trustee, were
25 y'all receiving rent from Commerce Alley?

1 A Yeah. We had -- had three or four -- we had, at
2 least, three renters. Now, we're down to one.

3 Q Someone's renting Commerce Alley now?

4 A We have one renter in the corner office. And the two
5 other ones left because the -- the -- we placed the
6 property up for sale.

7 Q The larger part of Commerce Alley is not being
8 rented; is that correct?

9 A That's right.

10 Q And that's the old Pontiac place?

11 A Yes.

12 Q And the only thing I understand you say -- understand
13 to be rented is the small office up front on the corner?

14 A Yes.

15 Q I think a law firm rented it one time?

16 A That was a long time ago.

17 Q Okay. Who's renting it now?

18 A Leonards [phonetic] Loans.

19 Q Who?

20 A Leonards Loans.

21 Q Leonards Loans?

22 A Yes.

23 Q Okay. But wouldn't you agree with me that the larger
24 part of the property is in pretty desperate repair -- need
25 for repair?

1 A Yes.

2 Q In fact, it needs a new roof on it, doesn't it?

3 A Yes. We received -- I think we made a claim. And I
4 think we did -- got insurance proceeds. But Rigdon said
5 we needed to sell it and not use it. But we do have -- we
6 do have insurance on it.

7 Q In fact, Alice, y'all made a claim on your insurance
8 policy, got the money, and spent it; is that correct?

9 A That's -- I think we did. I --

10 Q It wasn't used for repairs?

11 A It did not got used for repairs.

12 Q And have you had any offers on that property?

13 A Yes, below the appraisal price.

14 Q I'm sorry?

15 A Below the appraisal price.

16 Q Okay. Logan's -- are you saying Logan's?

17 A No.

18 Q But Logan's is a --

19 THE COURT: No. She's saying "globe."

20 MR. TETTERTON: I'm sorry. Globe. I'm sorry.

21 BY MR. TETTERTON:

22 Q The reason I asked --

23 THE WITNESS: Could I have some water, please?

24 BY MR. TETTERTON:

25 Q The reason I asked you about Logan's is because it's

1 right around the corner. It's an appliance...

2 THE COURT: I understand what she's saying now. She
3 said "below the appraisal price."

4 MR. TETTERTON: Oh, okay.

5 THE COURT: Is that what you said?

6 THE WITNESS: Yes.

7 MR. TETTERTON: I'm sorry. I misunderstood. The
8 reason I said Logan's is because I knew it's right around
9 the corner.

10 THE WITNESS: Thank you.

11 BY MR. TETTERTON:

12 Q My question was, have you all had some offers on that
13 property?

14 A Yes. We had -- we had people looked at Logan's --
15 the whole block, that -- that particular -- that
16 particular site. The -- I have -- you know, I went in
17 with the appraisers, unlocked the doors, and let them go
18 in with their clients.

19 Q What -- what was the highest offer you've had on that
20 piece of property?

21 A 160.

22 Q 160,000?

23 A Yes.

24 Q And how long ago was that?

25 A A couple months. I'm not sure how long --

1 Q Within the last several months?

2 A Yes.

3 Q And why -- why are you not selling it for \$160,000?

4 A Because it was appraised higher.

5 Q How -- what was it appraised for?

6 A I -- it's --

7 Q Have -- have you looked into what a new roof would
8 cost on that property?

9 A Rigdon suggests we should just sell it.

10 Q Okay. Do you know what a new roof would cost?

11 A No.

12 Q And it's your position y'all should hang on to that
13 piece of property until you get a higher offer. Is that
14 what I hear you saying?

15 A Well, maybe we'll have to have another appraisal. We
16 just only had a death appraisal on that. We only have it
17 for sale on a death appraisal.

18 Q Is it your position that you all should sell the
19 commercial property as soon as possible?

20 A Only the ones -- the weakest ones, which is downtown
21 Camden.

22 Q Is that the only commercial -- I mean, I'm sorry,
23 Commerce Alley; right?

24 A Commerce Alley.

25 Q Now, Leo's is a building that has a chicken wing

1 place and a liquor store?

2 A Yes.

3 Q And y'all have received some offers on it; right,
4 from the person that owns Leo's?

5 A That's per what Rigdon said.

6 Q Have y'all received an offer on it?

7 A Not a written offer.

8 Q Have you received a verbal offer on it?

9 A Through Rigdon, yes.

10 Q I'm sorry?

11 A Through Rigdon.

12 Q And did Rigdon make you aware of the fact that they
13 were interested in buying that property?

14 A Yes.

15 Q Did he -- did he e-mail you on June 21st, 2018, and
16 tell you that they had gotten -- he had gotten an updated
17 appraisal from Carter -- from Carter Commercial Appraisals
18 for that piece of property?

19 A Yes.

20 Q And did you look at that appraisal?

21 A I scanned over it.

22 Q Beg your pardon?

23 A I scanned over it and sent it to Jimmy -- Jimmy
24 Helms -- no, John Helms to look over it.

25 Q All right. And was the -- was the offer that Mr. --

1 that Rigdon told you he had on the property, was it in
2 line with the appraised value?

3 A There's several things that -- other aspects of that
4 property. He wanted -- he wanted it cut up into lots.
5 And that's a whole -- whole -- it's -- that whole complex
6 is several buildings on it and a vacant lot. And he had
7 it drawn up in -- in a plan with -- created lots.

8 Q Now, I'm going to have to ask you who "he" is?

9 A Rigdon.

10 Q Okay. He had it drawn up into lots?

11 A He had it in -- he had Bill Lindler, which is a local
12 surveyor, to draw up -- make it into lots.

13 Q But you do remember getting an e-mail from him on
14 June 21st attaching an appraisal; is that correct?

15 A Yes. And I sent --

16 Q And I believe you e-mailed him back and said, I will
17 review and get back with you on my vote. Do you remember
18 that?

19 A Uh-huh.

20 Q And to this day, you have not gotten back with him,
21 have you.

22 A I did not have all -- all my facts.

23 Q You do not have all your facts?

24 A I had John Helms look at it.

25 Q And what facts would you need in order to get back

1 with Rigdon about whether or not the offer that was made
2 to him is fair?

3 A Well, the other thing -- the other thing is the lots
4 that he had drawn up was not even approved by the county.

5 Q But that doesn't include the Leo building and the
6 liquor store, does it?

7 A That -- he came to us and said he had lot B, which
8 is -- I'm guessing because I don't have it in front of
9 me -- the liquor store and the -- and the -- Leo's and the
10 lot beside him, which I'm not sure, and the lot behind it
11 of -- behind -- behind Haw --

12 Q Hawthorne?

13 A Yes.

14 Q And while we're talking about Hawthorne, Hawthorne
15 was not in existence when your daddy passed away?

16 A No. It was -- it was a -- it was a of lot for mobile
17 homes.

18 Q A vacant lot leased for trailer -- to a trailer
19 dealer?

20 A Yes.

21 Q Okay. And then y'all sold some property to
22 Hawthorne?

23 A No. We had a contract to build a building so they
24 could rent to us.

25 Q Is the Hawthorne property a rent to own?

1 A No.

2 Q It's just a lease -- a monthly lease?

3 A Yes.

4 Q Okay.

5 A That was done by my mother before she passed away.

6 Q Okay. So Ms. -- I'm going to call her Ms. Alice.

7 Okay. Ms. Alice developed that piece of property?

8 A She wanted to develop that property to -- to have
9 income for the family.

10 Q Have you all had an offer from the owner of
11 Hawthorne's to purchase that piece of property?

12 A Not to my knowledge.

13 Q No one's made an offer?

14 A Not for Hawthorne.

15 Q Okay. Has anyone made an offer for any more of the
16 commercial property on U.S. 1?

17 A The only thing I know is what I heard from Rigdon
18 that the owner of Leo's wanted to buy -- buy his -- his
19 building because Rigdon told him he had to buy it.

20 Q What have you done as a co-trustee to go out and get
21 offers on the commercial properties on U.S. Highway 1?

22 A Highway 1 is probably our most better place to have
23 to rent. Because everywhere else we don't have rent.

24 Q But what -- what have -- so is it your position that
25 you want to keep those properties for rent and not sell

1 them to -- or not sell them at all?

2 A Well, the last meeting we had with that is there was
3 one -- the plat was not sanctioned or approved by the
4 county to -- to cut up like that.

5 Q Is it Mary Deas' position, if you know it, that all
6 of the commercial property on U.S. 1 and Commerce Alley
7 should be sold?

8 A In due time.

9 Q So if I understand what you --

10 A But yes. She wanted it to be sold. I think -- I
11 told her I think that would be the last commercial
12 property that needs to be sold before --

13 Q And is it Rigdon's position that you all need to sell
14 the commercial properties, including Commerce Alley?

15 A Yeah. But it's taking all the income property away
16 from -- from the producing property to keep up monthly
17 bills, and stuff like that, and in between cutting timbers
18 or selling land.

19 Q Could you -- or would you agree to sell that property
20 and take the proceeds and invest it in the stock market,
21 or other assets?

22 A Yes, if the price is right.

23 Q Would you agree to sell it for the appraised value?

24 A I -- not -- I have to look -- relook at it.
25 Because -- and -- and refer back to Jim -- John Helms.

1 Because he -- he ran the numbers.

2 Q Are you relying on John Helms to give you what he
3 thinks you should accept for an offer on those properties?

4 A Yeah. I think we, also, have to run it by -- we,
5 also, have to run these numbers by our accountant, too, to
6 see if we're going to have any tax -- any taxes, too.

7 Q Hasn't that been a sticking point between you and
8 Rigdon Boykin about selling the property, the sticking
9 point being that you would not want to sell properties for
10 the appraised value?

11 A The problem is we didn't have any -- or we put prices
12 on property that didn't have any idea of the value of it.
13 We were -- he was telling us we were relying on his -- his
14 view and his -- his expert. He said they are -- what his
15 friend said or what he -- what he believed it was.

16 Q Are you willing in the future to sell the commercial
17 properties at the appraised value?

18 A Well, I think we should have a little bit of both,
19 the appraised value --

20 Q I'm sorry?

21 A I think the appraisal is the estimate. And you have
22 to have two estimates -- two appraisals to sell any of my
23 father 's property.

24 Q Would you sell the commercial property at the highest
25 of the two appraisals?