

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

The Honorable Jean Hoefer Toal, Acting Circuit Court Judge

Appellate Case No. 2019-001632

RECEIVED

JUN 04 2021

SC Court of Appeals

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 II

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L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Business as In the Past Illustration
Projected Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2019

Combined Schedule of Projected Net Accounting Income for 2019:

	Combined 2019 Net Accounting Income	Combined 2019 Credits and Charges to Principal	Estimated FMV of Combined Principal of All Trusts, Net of 100% of Estate Tax
Balance: Combined Trust Principal at 1/1/2019 (approximate at FMV)			\$ 21,927,341.00
Marital Trust B	\$ 116,940.00	\$ 26,042.00	
Residuary Tr A, Including Marital Tr. A	92,045.00	(21,804.00)	
	208,985.00	4,238.00	
Less: Planned Trustee Commissions	(150,000.00)	(150,000.00)	
Combined Total 2019 Net Return/(Deficit)	58,985.00	(145,762.00)	
Less: Distributions @ \$180k/Benef.	(720,000.00)	0	
	(661,015.00)	(145,762.00)	
Less: Interest on 6166 Estate Tax	(57,500.00)	-	
Net Combined Decrease for 2019 After Deduction of Trustee Fees & Distributions to Beneficiaries	\$ (718,515.00)	\$ (145,762.00)	(145,762.00)
Transfer from Principal to Net Return under Power to Adjust	718,515.00		(718,515.00)
Balance at 12/31/19	\$ -		\$ 21,063,064.00

Disclaimer: These schedules were prepared from data and assumptions provided by Rigdon H. Boykin, Trustee, to Sheheen, Hancock & Godwin, LLP. We express no opinion on this work product or any conclusions therein, and accept no responsibility for its content.

L.W. BOYKIN MARITAL TRUST B - Business as in the Past Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2019

	<u>Trust Income</u>		<u>Trust Principal</u>	
	<u>Income Receipts</u>	<u>Disbursements & Costs of Sale</u>	<u>Principal Receipts</u>	<u>Disbursements & Costs of Sale</u>
Receipts:				
Dividends	\$ 3,024			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Commercial Real Property Rents	70,000			
Camden Commercial Real Property Rents	13,600			
Residential Rentals	18,000			
Hunting Lease Receipts	44,907			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts	1,500			
Net Profit on Timber Sales:				
Trust B Timber Sales			\$ 409,000	
Tr. B 80% Int. R.E. - Timber Sales			338,400	
Less: Cost Basis of Timber Sold (estlm. 80% of net)			(597,920)	
Reforestation Expense Reserve				\$ 2,000
Amortization of Reforestation Expense		\$ 286	286	
Disbursements:				
Maintenance of Commercial Properties	\$ 30,000			
Lugoff Commercial Rental Exp.	\$ 16,404			
Camden Commercial Real Property Exp.	10,306			
Residential Rental Expense	4,408			
Hunting Lease Property Expense	7,600			
Farm-related Expenses	15,314			
Real Property Tax Not Allocated - Rental	3,754			4,402
Real Property Tax Not Allocated - Non-Rental				
Legal Fees Regarding Leases	3,821			12,490
Accounting Fees	12,490			2,046
Insurance Not Otherwise Allocated	866			12,500
Miscellaneous Exp. - RHB estimate	12,500			41,854
Income tax expense of 28% on Timber Gain				
	\$ 186,257	\$ 117,749	\$ 149,766	\$ 75,292
Allocation of timber proceeds to net income: 9% of net gain, net of 28% CG/NI income tax	48,432		(48,432)	
Net for 2019 Before Tree Fees/Distrib		\$ 116,940		\$ 26,042

Disclaimer: These schedules were prepared from data and assumptions provided by Rigdon H. Boykin, Trustee, to Sheheen, Hancock & Godwin, LLP. We express no opinion on this work product or any conclusions therein, and accept no responsibility for its content.

L.W. BOYKIN TRUSTS A - Business as in the Past Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2019

	<u>Trust Income</u>		<u>Trust Principal</u>	
	<u>Income</u>	<u>Disbursements</u>	<u>Principal</u>	<u>Disbursements</u>
<u>Receipts:</u>			<u>Receipts</u>	<u>Disbursements</u>
Interest Income	\$ 4,475			
Improved Property Rental Receipts:				
Residential Rentals	25,200			
Commercial Rentals	72,000			
Hunting Lease Receipts	33,590			
Net Profit on Timber Sales:				
Mar. Tr A Timber Sales,			\$ 201,000	
Res. Tr A Timber Sales			\$ 84,600	
Res. Tr. A 20% Int. of Timber Sales			(160,800)	0
Less: Cost Basis of Timber Sold (Mar.A)				0
Less: Cost Basis of Timber Sold (Res.A)				
Reforestation Expense Reserve			0	
Amortization of Reforestation Expense		0		
<u>Disbursements:</u>				
Miscellaneous expenses - RHB estim.	\$ 12,500			12,500
Maintenance of Commercial Properties	\$ 30,000			
Commercial Real Property Expenses	\$ 6,937			
Residential Rental Expenses	14,989			
Hunting Lease Property Expenses	9,527			
Miscellaneous Expenses				\$ 36
Real Prop. Taxes Not Allocated-Non-rental				1,621
Accounting Fees		5,771		6,395
DHEC - Required Repairs to Dam				
Workers Comp. Insurance		886		
Insurance Not Otherwise Allocated				2,957
	\$ 135,265	\$ 80,610	\$ 124,800	\$ 23,510
* To adjust principal for value of timber/land sold and replaced with cash, but not deducted as cost basis or allocated to NAI.			\$ (50,760)	
**Marital A: Allocation of timber proceeds to net income: 9% of proceeds, net of 28% CG/NI income tax	13,025		(13,025)	
***Allocation of timber gain to NAI, net of tax	24,365		(24,365)	
Estim. '19 Income Tax Liability				34,944
Net for 2019 Before TteeFees/Distributions		\$ 92,045		\$ (21,804)

* To adjust principal for value of timber/land sold and replaced with cash, but not deducted as cost basis or allocated to NAI.

** For Marital Tr A, growth factor to allocate increases by 3 points per year.
9% x net proceeds for 2019.

***At the direction of Rigdon Boykin, 80% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 100% owned properties.

***At direction of Rigdon Boykin, 40% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 20% owned properties.

Disclaimer: These schedules were prepared from data and assumptions provided by Rigdon H. Boykin, Trustee, to Sheheen, Hancock & Godwin, LLP. We express no opinion on this work product or any conclusions therein, and accept no responsibility for its content.

L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Business as in the Past Illustration
Projected Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2020

Combined Schedule of Projected Net Accounting Income for 2020:

	Combined 2020 Net Accounting Income	Combined 2020 Credits and Charges to Principal	Estimated FMV of Combined Principal of All Trusts, Net of 100% of Estate
Balance: Combined Trust Principal at 1/1/2020 (approximate at FMV)			\$ 21,063,064.00
Marital Trust B	\$ 97,126.00	\$ (57,997.00)	
Residuary Tr A, including Marital Tr. A	251,984.00	(57,623.00)	
	349,110.00	(115,620.00)	
Less: Planned Trustee Commissions	(150,000.00)	(150,000.00)	
Combined Total 2020 Net Return / (Deficit)	199,110.00	(265,620.00)	
Less: Distributions @ \$180k/Benef.	(720,000.00)	0	
	(520,890.00)	(265,620.00)	
Less: Interest on 6166 Estate Tax	(60,000.00)	-	
Net Combined Decrease for 2020 After Deduction of Trustee Fees & Distributions to Beneficiaries	\$ (580,890.00)	\$ (265,620.00)	(265,620.00)
Transfer from Principal to Net Return under Power to Adjust	580,890.00		(580,890.00)
Balance at 12/31/20	\$ -		\$ 20,216,554.00

Disclaimer: These schedules were prepared from data and assumptions provided by Rigdon H. Boykin, Trustee, to Sheheen, Hancock & Godwin, LLP. We express no opinion on this work product or any conclusions therein, and accept no responsibility for its content.

L.W. BOYKIN MARITAL TRUST B - Business as in the Past Illustration
Projected Accounting Income Worksheet
January 1- December 31, 2020

	<u>Trust Income</u>		<u>Trust Principal</u>	
	<u>Income Receipts</u>	<u>Disbursements & Costs of Sale</u>	<u>Principal Receipts</u>	<u>Disbursements & Costs of Sale</u>
<u>Receipts:</u>				
Dividends	\$ 3,024			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Commercial Real Property Rents	70,000			
Camden Commercial Real Property Rents	13,600			
Residential Rentals	18,000			
Hunting Lease Receipts	44,907			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts	1,500			
Net Profit on Timber Sales:				
Trust B Timber Sales			\$ 233,000	
Tr. B 80% Int. R.E.- Timber Sales			143,200	
Less: Cost Basis of Timber Sold (estim. 80% of net)			(300,960)	
Reforestation Expense Reserve				\$ 52,400
Amortization of Reforestation Expense		\$ 4,172	4,172	
<u>Disbursements:</u>				
Maintenance of Commercial Properties	\$ 30,000			\$
Lugoff Commercial Rental Exp.	\$ 16,404			
Camden Commercial Real Property Exp.	10,306			
Residential Rental Expense	4,408			
Hunting Lease Property Expense	7,600			
Farm-related Expenses	15,314			
Real Property Tax Not Allocated - Rental	3,754			
Real Property Tax Not Allocated - Non-Rental				4,402
Legal Fees Regarding Leases	3,821			
Accounting Fees	12,490			12,490
Insurance Not Otherwise Allocated	866			2,046
Miscellaneous Exp. - RHB estimate	12,500			12,500
Income tax expense of 28% on Timber Gain				21,067
	\$ 186,257	\$ 121,635	\$ 79,412	\$ 104,905
Allocation of timber proceeds to net income: 12% of net proceeds, net of 28% CG/NI income tax	32,504		(32,504)	
Net for 2020 Before Tee Fees/Distrib		\$ 97,126		\$ (57,997)

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L.W. BOYKIN TRUSTS A - Business as in the Past Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2020

	<u>Trust Income</u>		<u>Trust Principal</u>	
	<u>Income</u>	<u>Disbursements</u>	<u>Principal</u>	<u>Disbursements</u>
<u>Receipts:</u>	<u>Receipts</u>	<u>Disbursements</u>	<u>Receipts</u>	<u>Disbursements</u>
Interest Income	\$ 4,475			
Improved Property Rental Receipts:				
Residential Rentals	25,200			
Commercial Rentals	72,000			
Hunting Lease Receipts	33,590			
Net Profit on Timber Sales:				
Mar. Tr A Timber Sales,			\$ 326,000	
Res. Tr A Timber Sales			35,800	
Res. Tr. A 20% Int. of Timber Sales				0
Less: Cost Basis of Timber Sold (Mar.A)				0
Less: Cost Basis of Timber Sold (Res.A)				10,600
Reforestation Expense Reserve		757		757
Amortization of Reforestation Expense				
<u>Disbursements:</u>				
Miscellaneous expenses - RHB estim.	\$ 12,500			12,500
Maintenance of commercial properties	\$ 30,000			
Commercial Real Property Expenses	\$ 6,937			
Residential Rental Expenses	14,989			
Hunting Lease Property Expenses	9,527			36
Miscellaneous Expenses				1,621
Real Prop. Taxes Not Allocated-Non-rental				6,396
Accounting Fees	5,771			
DHEC - Required Repairs to Dam		886		
Workers Comp. Insurance				2,957
Insurance Not Otherwise Allocated				
	\$ 135,265	\$ 81,367	\$ 362,557	\$ 34,110
 *To remove from principal of Res. Tr. A portion of sold timber net proceeds included in estim. trust FMV, but not otherwise deducted as cost basis or NAI.			\$ (86,680)	
 **Allocation of timber proceeds to net income: 12% of net gain, net of 28% CG/NI income tax				
***Allocation of timber gain to NAI, net of tax Estlm. '20 Income Tax Liability	198,086		(198,086)	101,304
Net for 2020 Before TteeFees/Distributions	\$ 251,984		\$ (57,623)	

* To adjust principal for value of timber sold and replaced with cash, but not deducted as cost basis or allocated to NAI.

** For Marital Tr A, growth factor to allocate increases by 3points per year.
12% x net proceeds for 2020.

***At the direction of Rigdon Boykin, 80% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 100% owned properties.

***At direction of Rigdon Boykin, 40% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 20% owned properties.

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L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Business as In the Past Illustration
Projected Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2021

Combined Schedule of Projected Net Accounting Income for 2021:

	Combined 2021 Net Accounting Income	Combined 2021 Credits and Charges to Principal	Estimated FMV of Combined Principal of All Trusts, Net of 100% of Estate Tax
Balance: Combined Trust Principal at 1/1/2021 (approximate at FMV)			\$ 20,216,554.00
Marital Trust B	\$ 84,774.00	\$ (91,559.00)	
Residuary Tr A, Including Marital Tr. A	75,194.00	(39,977.00)	
	159,968.00	(131,536.00)	
Less: Planned Trustee Commissions	(150,000.00)	(150,000.00)	
Combined Total 2021 Net Return/(Deficit)	9,968.00	(281,536.00)	
Less: Distributions @ \$180k/Benef.	(720,000.00)	0	
	(710,032.00)	(281,536.00)	
Less: Interest on 6166 Estate Tax	(62,500.00)		
Net Combined Decrease for 2021 After Deduction of Trustee Fees & Distributions to Beneficiaries	\$ (772,532.00)	\$ (281,536.00)	(281,536.00)
Transfer from Principal to Net Return under Power to Adjust	772,532.00		(772,532.00)
Balance at 12/31/21	\$ -		\$ 19,162,486.00

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L.W. BOYKIN MARITAL TRUST B - Business as in the Past Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2021

	<u>Trust Income</u>		<u>Trust Principal</u>	
	<u>Income Receipts</u>	<u>Disbursements & Costs of Sale</u>	<u>Principal Receipts</u>	<u>Disbursements & Costs of Sale</u>
<u>Receipts:</u>				
Dividends	\$ 3,024			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Commercial Real Property Rents	70,000			
Camden Commercial Real Property Rents	13,600			
Residential Rentals	18,000			
Hunting Lease Receipts	44,907			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts	1,500			
Net Profit on Timber Sales:				
Trust B Timber Sales			\$ 52,000	
Tr. B 80% Int. R.E. - Timber Sales			224,800	
Less: Cost Basis of Timber Sold (estim. 80% of net)			(221,440)	
Reforestation Expense Reserve				\$ 84,000
Amortization of Reforestation Expense		\$ 13,914	13,914	
<u>Disbursements:</u>				
Maintenance of Commercial Properties		\$ 30,000		
Lugoff Commercial Rental Exp.		\$ 16,404		
Camden Commercial Real Property Exp.		10,306		
Residential Rental Expense		4,408		
Hunting Lease Property Expense		7,600		
Farm-related Expenses		15,314		
Real Property Tax Not Allocated - Rental		3,754		
Real Property Tax Not Allocated - Non-Rental				6,402
Legal Fees Regarding Leases		3,821		
Accounting Fees		12,490		12,490
Insurance Not Otherwise Allocated		866		2,046
Miscellaneous Exp. - RHB estimate		12,500		12,500
Income tax expense of 28% on Timber Gain				15,501
	\$ 186,257	\$ 131,377	\$ 69,274	\$ 130,939
Allocation of timber proceeds : 15% of net proceeds, net of 28% CG/NI income tax	29,894		(29,894)	
Net for 2021 Before TteeFees/Distrib		\$ 84,774		\$ (91,559)

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L.W. BOYKIN TRUSTS A - Business as in the Past Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2021

	<u>Trust Income</u>		<u>Trust Principal</u>	
	<u>Receipts</u>	<u>Disbursements</u>	<u>Principal Receipts</u>	<u>Disbursements</u>
<u>Receipts:</u>				
Interest Income	\$ 4,475			
Improved Property Rental Receipts:				
Residential Rentals	25,200			
Commercial Rentals	72,000			
Hunting Lease Receipts	33,590			
Net Profit on Timber Sales:				
Mar. Tr A Timber Sales,			\$ 62,000	
Res. Tr A Timber Sales			\$ 56,200	
Res. Tr. A 20% Int. of Timber Sales			(49,600)	0
Less: Cost Basis of Timber Sold (Mar.A)				0
Less: Cost Basis of Timber Sold (Res.A)				11,600
Reforestation Expense Reserve		2343	2343	
Amortization of Reforestation Expense				
<u>Disbursements:</u>				
Miscellaneous expenses - RHB estim.	\$ 12,500			12,500
Maintenance of Commercial Property	\$ 30,000			
Commercial Real Property Expenses	\$ 6,937			
Residential Rental Expenses	14,989			
Hunting Lease Property Expenses	9,527			36
Miscellaneous Expenses				1,621
Real Prop. Taxes Not Allocated-Non-rental				6,396
Accounting Fees	5,771			
Workers Comp. Insurance	886			2,957
Insurance Not Otherwise Allocated				
	\$ 135,265	\$ 82,953	\$ 70,943	\$ 35,440
 *To remove from principal of Res. Tr. A portion of sold timber net proceeds included in estim. trust FMV, but not otherwise deducted as cost basis or NAI.			\$ (33,720)	
 **Allocation of timber proceeds to net income: 15% of net gain, net of 28% CG/NI Income tax	6,696		(6,696)	
***Allocation of timber gain to NAI, net of tax Estim. '21 Income Tax Liability	16,186		(16,186)	
				19,208
Net for 2021 Before TteeFees/Distributions	\$ 75,194		\$ (39,977)	

* To adjust principal for value of timber sold and replaced with cash, but not deducted as cost basis or allocated to NAI.

** For Marital Tr A, growth factor to allocate Increases by 3points per year.
15% x net proceeds for 2021.

***At the direction of Rigdon Boykin, 80% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 100% owned properties.

***At direction of Rigdon Boykin, 40% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 20% owned properties.

Disclaimer: These schedules were prepared from data and assumptions provided by Rigdon H. Boykin, Trustee, to Sheheen, Hancock & Godwin, LLP. We express no opinion on this work product or any conclusions therein, and accept no responsibility for its content.

SHEHEEN, HANCOCK & GODWIN, LLP

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April 2, 2018

Trustees of the L.W. Boykin II Marital & Residuary Trusts A & B
Ms. Mary Deas Wortley, Ms. Alice Boykin Belger and Mr. Rigdon H. Boykin
P. O. Box 632
Camden, South Carolina 29021

RE: Prospective Illustrations of Trust Accounting Income and Principal

Dear Trustees:

We have been engaged to assist you in the formatting and clear presentation of projections of the accounting net income, and the principal increase or decrease, of the combined trusts above, given certain hypothetical assumptions. We undertook this project at the request of the trustees and their counsel. The resulting schedules were prepared from data and assumptions provided to Sheheen Hancock & Godwin, LLP, by Rigdon H. Boykin.

We have not compiled, reviewed or audited these prospective accountings or the data included therein. We express no opinion on this work product or on any conclusions therein, and accept no responsibility for its content.

Respectfully submitted,



Jane M. Peacock, Partner, for Sheheen Hancock & Godwin, LLP

L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Land Sale Option Illustration
Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2017

Combined Schedule of Net Accounting Income for 2017:

	Combined 2017 Net Accounting Income	Combined 2017 Credits and Charges to Principal	Estimated FMV of Combined Principal of All Trusts, Net of 100% of Estate Tax
Beginning Combined Trust Principal (approximate at FMV)			\$ 24,000,000.00
Marital Trust B	\$ 128,613.00	\$ 28,094.00	
Residuary Tr A, Including Marital Tr. A	72,775.00	(12,041.00)	
	201,388.00	16,053.00	
Less: Reserve for Trustee Commissions	(150,000.00)	(150,000.00)	
Combined Total 2017 Net Return/ (Deficit)	51,388.00	(133,947.00)	
Less: Actual Distributions	(400,000.00)	0	
	(348,612.00)	(133,947.00)	
Less: Reserve for Beneficiary Catch-up Distribution (at \$180k/benef./annum)	(447,124.00)		
Net Combined Decrease for 2017 Only After Ttee Fee Reserve & Actual plus Catch-up Reserve for Distributions to Beneficiaries	\$ (795,736.00)	\$ (133,947.00)	(133,947.00)
Transfer from Principal to Net Return under Power to Adjust	795,736.00		(795,736.00)
Balance at 12/31/17	0		\$ 23,070,317.00

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L.W. BOYKIN MARITAL TRUST B
Accounting Income Worksheet - Historical Base Year
January 1, 2017 - December 31, 2017

	<u>Trust Income</u>		<u>Trust Principal</u>	
	<u>Income Receipts</u>	<u>Disbursements & Costs of Sale</u>	<u>Principal Receipts</u>	<u>Disbursements & Costs of Sale</u>
<u>Receipts:</u>				
Dividends	\$ 3,024			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Commercial Real Property Rents	75,800			
Camden Commercial Real Property Rents	13,600			
Residential Rentals Receipts	15,050			
Hunting Lease Receipts	44,907			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts (2 years)	14,969			
Pinestraw Sale Receipts	1,000			
Net Profit on Sale of Timber and Land:				
Rabbit Pen Tract - timber			\$ 564,674	540,000
80% Int. Yellow House Tr thinning			29,120	24,743
80% Int. Dr. Irvin's Tr thinning			10,601	3,833
80% Int. Sale of 6.77ac Cante Lane			80,586	21,074
<u>Disbursements:</u>				
Lugoff Commercial Rental Exp.		\$ 16,404		
Camden Commercial Real Property Exp.		10,306		
Residential Rental Expense		4,408		
Hunting Lease Property Expense		7,600		
Farm-related Expenses		15,314		
				3,000
State Income Tax Paid In 2017				
Real Property Tax Not Allocated - Rental		3,754		
Real Property Tax Not Allocated - Non-Rental				4,402
Legal Fees Regarding Leases		3,821		
Accounting Fees		12,490		
Appraisals				12,490
Insurance Not Otherwise Allocated		866		
Miscellaneous Expenses				15,200
				2,046
				811
	\$ 203,576	\$ 74,963	\$ 684,981	\$ 627,599
Net for 2017 Before Ttee Fees & Distributions		\$ 128,613		
2017 Income Tax Liability Remaining				29,288
Net 2017 Increase Remaining at 12/31/17		0		\$ 28,094

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L.W. BOYKIN TRUSTS A
Accounting Income Worksheet - Historical Base Year
January 1 - December 31, 2017

	<u>Trust Income</u>		<u>Trust Principal</u>	
	<u>Income Receipts</u>	<u>Disbursements</u>	<u>Principal Receipts</u>	<u>Disbursements</u>
Receipts:				
Interest Income	\$ 4,475			
Improved Property Rental Receipts:				
Residential Rentals	16,800			
Commercial Rentals	35,350			
Hunting Lease Receipts	33,590			
Net Profit on Sale of Timber and Land:				
20% Yellow House Tr thinning			\$ 7,913	633
20% Dr. Irvin's Tr thinning			3,132	2,481
GunClub/Laney Tr - thinning			20,208	7,438
20% of 6.77ac Cantey Lane			20,310	922
Disbursements:				
Commercial Real Property Expenses		\$ 6,937		
Residential Rental Expenses		14,989		
Hunting Lease Property Expenses		9,527		
Miscellaneous Expenses				\$ 36
Real Prop. Taxes Not Allocated-Non-rental				1,621
Accounting Fees		5,771		6,396
DHEC - Required Repairs to Dam				8,172
Workers Comp. Insurance		886		2,957
Insurance Not Otherwise Allocated				2,000
Federal Income Tax Paid				600
2016 S.C. Income Tax Paid				
	\$ 90,215	\$ 38,110	\$ 51,563	\$ 16,782
*To remove from principal of Res. Tr. A portion of sold timber/land net proceeds included in estim. trust FMV, but not otherwise deducted as cost basis or NAI.				
			\$ (19,419)	
**Allocation of timber gain to NAI, net of estim. income tax of \$8038	20,670		(20,670)	6,733
***Estim. '17 Income Tax Liability Remaining				
Net for 2017 Before Ttee Fees & Distributions		\$ 72,775		\$ (12,041)
Net 2017 Decrease at 12/31/17		<u>0</u>		

* To adjust principal for value of timber/land sold and replaced with cash, but not deducted as cost basis or allocated to NAI.

**At the direction of Rigdon Boykin, 100% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income.

***Carryover credit for income taxes totalled \$750

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L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Land Sale Option Illustration
Projected Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2018

Combined Schedule of Projected Net Accounting Income for 2018:

	Combined 2018 Net Accounting Income	Combined 2018 Credits and Charges to Principal	Estimated FMV of Combined Principal of All Trusts, Net of 100% of Estate
Balance: Combined Trust Principal at 1/1/2018 (approximate at FMV)			\$ 23,070,317.00
Marital Trust B	\$ 150,402.00	\$ 44,812.00	
Residuary Tr A, Including Marital Tr. A	<u>116,625.00</u>	<u>(38,327.00)</u>	
	267,027.00	6,485.00	
Less: Planned Trustee Commissions	<u>(150,000.00)</u>	<u>(150,000.00)</u>	
Combined Total 2017 Net Return (Deficit)	117,027.00	(143,515.00)	
Less: Distributions @ \$180k/Benef.	<u>(720,000.00)</u>	0	
	(602,973.00)	(143,515.00)	
Less: Int. on 6166 Estate Tax thru Nov. '18	(83,750.00)	-	
Net Combined Decrease for 2018 After Deduction of Trustee Fees & Distributions to Beneficiaries	\$ (686,723.00)	\$ (143,515.00)	(143,515.00)
Transfer from Principal to Net Return under Power to Adjust	<u>686,723.00</u>		<u>(686,723.00)</u>
Balance at 12/31/18	<u>\$ -</u>		<u>\$ 22,240,079.00</u>

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L.W. BOYKIN MARITAL TRUST B - Land Sale Option Illustration
Projected Accounting Income Worksheet
January 1, 2018 - December 31, 2018

	Trust Income		Trust Principal	
	Income Receipts	Disbursements & Costs of Sale	Principal Receipts	Disbursements & Costs of Sale
Receipts:				
6% return on inv in Stock Mkt.- 3mos.x55%	\$ 66,545			
1st Palmetto Dividends	\$ 3,024			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Comm. Real Prop. Rents - 6 mos	35,000			
Camden Comm. Real Prop. Rents - 6 mos	6,800			
Residential Rentals Receipts	15,050			
Hunting Lease Receipts - 80% of 2017	35,926			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts	1,500			
Net Profit on Timber Sales:				
Trust B Timber Sales			\$ 650,400	
Tr. B 80% of Timber Sales			(520,320)	
Less: Cost Basis of Timber Sold (estim. 80% of net)				\$ 1,000
Reforestation Expense Reserve			4,790,000	
Sales of Land & Options to Purchase Land- net of CG tax			(4,790,000)	
Less: Cost Basis of Land Sold				
Disbursements:				
Misc Repairs to Comm. Properties - 50%	\$ 10,000			
Lugoff Commercial Rental Exp.	\$ 12,303			
Camden Commercial Real Property Exp.	7,730			
Residential Rental Expense	4,408			
Hunting Lease Property Exp. - 80% of previous	6,080			
Farm-related Expenses	15,314			
Real Property Tax Not Allocated - Rental	3,754			
Real Property Tax Not Allocated - Non-Rental				4,402
Legal Fees Regarding Leases	3,821			17,490
Accounting Fees	12,490			2,046
Insurance Not Otherwise Allocated	866			811
Miscellaneous Expenses				36,422
Income tax expense of 28% on Timber Gain				
	\$ 199,071	\$ 76,766	\$ 130,080	\$ 57,174
Allocation of timber gain to : 6% of net proceeds, net of 28% CG/NI Income tax	28,097		(28,097)	
Net for 2018 Before TteeFees/Distrib		\$ 150,402		\$ 44,812

36422 TIMBER

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- * To adjust principal for value of timber/land sold and replaced with cash, but not deducted as cost basis or allocated to NAI.
- * For Marital Tr. A, growth factor to allocate increases by 3 points per year.
6% x net proceeds for 2018.
- * Res. Tr. A: At the direction of Rigdon Boykin, 80% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 100% owned properties.
- * Res. Tr. A: At direction of Rigdon Boykin, 40% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 20% owned properties.

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L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Land Sale Option Illustration
Projected Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2019

Combined Schedule of Projected Net Accounting Income for 2019:

	Combined 2019 Net Accounting Income	Combined 2019 Credits and Charges to Principal	Estimated FMV of Combined Principal of All Trusts, Net of 100% of Estate Tax
Balance: Combined Trust Principal at 1/1/2019 (approximate at FMV)			\$ 22,240,079.00
Marital Trust B	\$ 496,954.00	\$ (25,543.00)	
Residuary Tr A, Including Marital Tr. A	401,689.00	(26,500.00)	
	898,643.00	(52,043.00)	
Less: Planned Trustee Commlssions	(150,000.00)	(150,000.00)	
Combined Total 2019 Net Return/(Defict)	748,643.00	(202,043.00)	
Less: Distributions @ \$180k/Benef.	(720,000.00)	0	
	28,643.00	(202,043.00)	
Less: Interest on 6166 Estate Tax	-	-	
Net Combined Increase/(Decrease) for 2019 After Deduction of Trustee Fees & Distributions to Beneficiaries	\$ 28,643.00	\$ (202,043.00)	(202,043.00)
Transfer to Principal from Net Return under Power to Adjust	(28,643.00)		28,643.00
Balance at 12/31/19	\$ -		\$ 22,066,679.00

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L.W. BOYKIN MARITAL TRUST B - Land Sale Option Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2019

	Trust Income		Trust Principal	
	Income Receipts	Disbursements & Costs of Sale	Principal Receipts	Disbursements & Costs of Sale
Receipts:				
6% return on inv in Stock Mkt.-x55%	\$ 480,678			
Dividends	\$ 3,024			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Commercial Real Property Rents	-			
Camden Commercial Real Property Rents	-			
Resld. Rentals Receipts	-			
Hunting Lease Receipts at 60% of 2017	26,944			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts	1,500			
Net Profit on Timber Sales:				
Trust B Timber Sales			\$ 71,200	
Tr. B 80% Int. R.E.- Timber Sales			(56,960)	
Less: Cost Basis of Timber Sold (estim. 80% of net)				\$
Reforestation Expense Reserve		\$ 256	256	
Amortization of Reforestation Expense			3,800,000	
Sales of Land & Options to Purchase Land- net of CG tax			(3,800,000)	
Less: Cost Basis of Land Sold				\$
Disbursements:				
Maintenance of Commercial Properties		\$		\$
Lugoff Commercial Rental Exp.		\$		
Camden Commercial Real Property Exp.		-		
Residential Rental Expense		-		
Hunting Lease Property Expense - 60%		7,560		
Farm-related Expenses		15,314		
Real Property Tax Not Allocated - Rental		3,754		4,402
Real Property Tax Not Allocated - Non-Rental		2,292		
Legal Fees Regarding Leases - 60%		12,490		12,490
Accounting Fees		866		2,046
Insurance Not Otherwise Allocated		12500		12,500
Miscellaneous Exp. - RHB estimate				3,987
Income tax expense of 28% on Timber Gain				
	\$ 547,372	\$ 55,032	\$ 14,496	\$ 35,425
Allocation of timber proceeds to net income: 9%				
of net gain, net of 28% CG/NI income tax	4,614		(4,614)	
Net for 2019 Before TteeFees/Distrib		\$ 496,954		\$ (25,543)

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L.W. BOYKIN TRUSTS A - Land Sale Option Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2019

	<u>Trust Income</u>		<u>Trust Principal</u>	
	<u>Receipts</u>	<u>Disbursements</u>	<u>Receipts</u>	<u>Disbursements</u>
<u>Receipts:</u>				
Interest Income	\$ -			
6% return on Inv In Stock Mkt.-x45%	\$ 393,282			
Improved Property Rental Receipts:				
Residential Rentals- ABB only	12,000			
Commercial Rentals	-			
Hunting Lease Receipts - 60% of '17	20,154			
Net Profit on Timber Sales:				
Mar. Tr A Timber Sales,			\$ -	
Res. Tr A Timber Sales			\$ -	
Res. Tr. A 20% Int. of Timber Sales			17,800	
Less: Cost Basis of Timber Sold (Mar.A)				0
Less: Cost Basis of Timber Sold (Res.A)				0
Reforestation Expense Reserve				0
Amortization of Reforestation Expense		0		0
Sales of Land & Options to Purchase Land- net of CG tax			2,700,000	
Less: Cost Basis of Land Sold			(295,000)	
<u>Disbursements:</u>				
Miscellaneous expenses - RHB estim.		\$ 12,500		12,500
Maintenance of Commercial Properties		\$ -		
Commercial Real Property Expenses		\$ -		
Residential Rental Expenses		4,000		
Hunting Lease Property Exp at 60% of '17		5,716		
Miscellaneous Expenses				36
Real Prop. Taxes Not Allocated-Non-rental				3,621
Accounting Fees		5,771		6,396
DHEC - Required Repairs to Dam				
Workers Comp. Insurance		886		
Insurance Not Otherwise Allocated				2,957
	\$ 425,436	\$ 28,873	\$ 2,422,800	\$ 23,510
			\$ (2,415,680)	
			(5,126)	
				4,984
Net for 2019 Before TteeFees/Distributions		\$ 401,689		\$ (26,500)

* To adjust principal for value of timber/land sold and replaced with cash, but not deducted as cost basis or allocated to NAI.

** Marital A: Allocation of timber proceeds to net income: 9% of proceeds, net of 28% CG/NI income tax

*** Allocation of timber gain to NAI, net of tax Estlm. '19 Income Tax Liability - Timber

* To adjust principal for value of timber/land sold and replaced with cash, but not deducted as cost basis or allocated to NAI.

** For Marital Tr A, growth factor to allocate increases by 3 points per year.
9% x net proceeds for 2019.

*** At the direction of Rigdon Boykin, 80% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 100% owned properties.

*** At direction of Rigdon Boykin, 40% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 20% owned properties.

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L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Land Sale Option Illustration
Projected Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2020

Combined Schedule of Projected Net Accounting Income for 2020:

	<u>Combined 2020 Net Accounting Income</u>	<u>Combined 2020 Credits and Charges to Principal</u>	<u>Estimated FMV of Combined Principal of All Trusts, Net of 100% of Estate</u>
Balance: Combined Trust Principal at 1/1/2020 (approximate at FMV)			\$ 22,066,679.00
Marital Trust B	\$ 619,716.00	\$ (55,094.00)	
Residuary Tr A, Including Marital Tr. A	<u>501,149.00</u>	<u>(30,567.00)</u>	
	1,120,865.00	(85,661.00)	
Less: Planned Trustee Commissions	<u>(150,000.00)</u>	<u>(150,000.00)</u>	
Combined Total 2020 Net Return/(Deficit)	970,865.00	(235,661.00)	
Less: Distributions @ \$180k/Benef.	<u>(720,000.00)</u>	0	
	250,865.00	(235,661.00)	
Less: Interest on 6166 Estate Tax		-	
Net Combined Increase/ (Decrease) for 2020 After Deduction of Trustee Fees & Distributions to Beneficiaries	\$ 250,865.00	\$ (235,661.00)	(235,661.00)
Transfer to Principal from Net Return under Power to Adjust	<u>(250,865.00)</u>		<u>250,865.00</u>
Balance at 12/31/20	<u>\$ -</u>		<u>\$ 22,081,883.00</u>

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L.W. BOYKIN MARITAL TRUST B - Land Sale Option Illustration
Projected Accounting Income Worksheet
January 1- December 31, 2020

	<u>Trust Income</u>		<u>Trust Principal</u>	
	<u>Income Receipts</u>	<u>Disbursements & Costs of Sale</u>	<u>Principal Receipts</u>	<u>Disbursements & Costs of Sale</u>
<u>Receipts:</u>				
Dividends	\$ 3,024			
6% return on Inv in Stock Mkt.-x55%	\$ 615,978			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Commercial Real Property Rents	-			
Camden Commercial Real Property Rents	-			
Residential Rentals Receipts	-			
Hunting Lease Receipts - 30% of 2017	13,472			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts	-			
Net Profit on Timber Sales:				
Trust B Timber Sales			\$ 21,600	
Tr. B 80% Int. R.E.- Timber Sales			(17,280)	
Less: Cost Basis of Timber Sold (estim. 80% of net)				\$ 26,400
Reforestation Expense Reserve			1,500	
Amortization of Reforestation Expense	\$ 1,500		3,400,000	
Sales of Land & Options to Purchase Land- net of CG tax			(3,400,000)	
Less: Cost Basis of Land Sold				
<u>Disbursements:</u>				
Maintenance of Commercial Properties	\$ -			
Lugoff Commercial Rental Exp.	\$ -			
Camden Commercial Real Property Exp.	-			
Residential Rental Expense	-			
Hunting Lease Property Exp at 30% of '17	2,280			
Farm-related Expenses	15,314			
Real Property Tax Not Allocated - Rental	3,754			
Real Property Tax Not Allocated - Non-Rental				4,402
Legal Fees Regarding Leases at 30%	1,146			
Accounting Fees	12,490			12,490
Insurance Not Otherwise Allocated	866			2,046
Miscellaneous Exp. - RHB estimate	12,500			12,500
Income tax expense of 28% on Timber Gain				1,210
	\$ 667,700	\$ 49,850	\$ 5,820	\$ 59,048
Allocation of timber proceeds to net income: 12% of net proceeds, net of 28% CG/NI Income tax	1,866		(1,866)	
Net for 2020 Before TeeFees/Distrib		\$ 619,716		\$ (55,094)

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- To adjust principal for value of timber sold and replaced with cash, but not deducted as cost basis or allocated to NAI.
- For Marital Tr A, growth factor to allocate increases by 3 points per year.
12% x net proceeds for 2020.
- ***At the direction of Rigdon Boykin, 80% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 100% owned properties.
- ***At direction of Rigdon Boykin, 40% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 20% owned properties.

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L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Land Sale Option Illustration
Projected Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2021

Combined Schedule of Projected Net Accounting Income for 2021:

	Combined 2021 Net Accounting Income	Combined 2021 Credits and Charges to Principal	Estimated FMV of Combined Principal of All Trusts, Net of 100% of Estate Tax
Balance: Combined Trust Principal at 1/1/2021 (approximate at FMV)			\$ 22,081,883.00
Marital Trust B	\$ 711,817.00	\$ (50,608.00)	
Residuary Tr A, including Marital Tr. A	576,659.00	(35,809.00)	
	1,288,476.00	(86,417.00)	
Less: Trustee Commissions, as Reduced	(75,000.00)	(75,000.00)	
Combined Total 2021 Net Return/(Deficit)	1,213,476.00	(161,417.00)	
Less: Distributions @ \$180k/Benef.	(720,000.00)	0	
	493,476.00	(161,417.00)	
Less: Interest on 6166 Estate Tax	-	-	
Net Combined Increase/(Decrease) for 2021 After Deduction of Trustee Fees & Distributions to Beneficiaries	\$ 493,476.00	\$ (161,417.00)	(161,417.00)
Transfer to Principal from Net Return under Power to Adjust	(493,476.00)		493,476.00
Balance at 12/31/21	\$ -		\$ 22,413,942.00

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L.W. BOYKIN MARITAL TRUST B - Land Sale Option Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2021

	<u>Trust Income</u>		<u>Trust Principal</u>	
	<u>Income Receipts</u>	<u>Disbursements & Costs of Sale</u>	<u>Principal Receipts</u>	<u>Disbursements & Costs of Sale</u>
<u>Receipts:</u>				
Dividends	\$ 3,024			
6% return on inv in Stock Mkt.-x55%	\$ 698,478			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Commercial Real Property Rents	-			
Camden Commercial Real Property Rents	-			
Residential Rentals Receipts	-			
Hunting Lease Receipts	13,472			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts	-			
Net Profit on Timber Sales:				
Trust B Timber Sales			\$ 147,200	
Tr. B 80% Int. R.E.- Timber Sales			(117,760)	
Less: Cost Basis of Timber Sold (estim. 80% of net)				\$ 30,400
Reforestation Expense Reserve			5,931	
Amortization of Reforestation Expense		\$ 5,931	2,500,000	
Sales of Land & Options to Purchase Land- net of CG tax			(2,500,000)	
Less: Cost Basis of Land Sold				
<u>Disbursements:</u>				
Maintenance of Commercial Properties		\$ -		
Lugoff Commercial Rental Exp.		\$ -		
Camden Commercial Real Property Exp.		-		
Residential Rental Expense		-		
Hunting Lease Property Expense		2,280		
Farm-related Expenses		15,314		
Real Property Tax Not Allocated - Rental		3,754		
Real Property Tax Not Allocated - Non-Rental				4,402
Legal Fees Regarding Leases		1,146		
Accounting Fees		12,490		12,490
Insurance Not Otherwise Allocated		866		2,046
Miscellaneous Exp. - RHB estimate		12,500		12,500
Income tax expense of 28% on Timber Gain				8,243
	\$ 750,200	\$ 54,281	\$ 35,371	\$ 70,081
Allocation of timber proceeds : 15% of net proceeds, net of 28% CG/NI income tax	15,898		(15,898)	
Net for 2021 Before TteeFees/Distrib		\$ 711,817		\$ (50,608)

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L.W. BOYKIN TRUSTS A - Land Sale Option Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2021

	<u>Trust Income</u>		<u>Trust Principal</u>	
	<u>Receipts</u>	<u>Disbursements</u>	<u>Receipts</u>	<u>Disbursements</u>
<u>Receipts:</u>				
Interest Income	\$ -			
6% return on Inv In Stock Mkt.-x45%	\$ 571,482			
Improved Property Rental Receipts:				
Residential Rentals	12,000			
Commercial Rentals	-			
Hunting Lease Receipts	10,077			
Net Profit on Timber Sales:				
Mar. Tr A Timber Sales,			\$ -	
Res. Tr A Timber Sales			\$ -	
Res. Tr. A 20% Int. of Timber Sales			36,800	
Less: Cost Basis of Timber Sold (Mar.A)				0
Less: Cost Basis of Timber Sold (Res.A)				0
Reforestation Expense Reserve				7,600
Sales of Land & Options to Purchase Land- net of CG tax				
Less: Cost Basis of Land Sold				
Amortization of Reforestation Expense		1483	1483	
<u>Disbursements:</u>				
Miscellaneous expenses - RHB estim.	\$ 12,500			12,500
Maintenance of Commercial Property	\$ -			
Commercial Real Property Expenses	\$ -			
Residential Rental Expenses	4,000			
Hunting Lease Property Expenses	2,858			
Miscellaneous Expenses				36
Real Prop. Taxes Not Allocated-Non-rental				1,621
Accounting Fees	5,771			6,396
Workers Comp. Insurance	886			
Insurance Not Otherwise Allocated				2,957
	\$ 593,559	\$ 27,498	\$ 38,283	\$ 31,110
*To remove from principal of Res. Tr. A portion of sold timber net proceeds included in estim. trust FMV, but not otherwise deducted as cost basis or NAI.			\$ (22,080)	
**Allocation of timber proceeds to net income: 15% of net gain, net of 28% CG/NI Income tax				
***Allocation of timber gain to NAI, net of tax Estim. '21 Income Tax Liability	10,598		(10,598)	10,304
Net for 2021 Before TteeFees/Distributions	\$ 576,659		\$ (35,809)	

* To adjust principal for value of timber sold and replaced with cash, but not deducted as cost basis or allocated to NAI.

** For Marital Tr A, growth factor to allocate Increases by 3points per year.

15% x net proceeds for 2021.

***At the direction of Rigdon Boykin, 80% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 100% owned properties.

***At direction of Rigdon Boykin, 40% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 20% owned properties.

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Sales of Land in Year One*

Option	\$ 3,276,000
T Laney	340,000
James Dennis	500,000
Hawthorne, Leo's, Whisky store	800,000
Saint James	280,000
Yates	300,000
Lancaster Co.	120,000
Molly Creek	400,000
Warehouse	85,000
Commerce Ally	165,000
Peckwoods	600,000
Rabbit Pen	700,000
Misc.	500,000

\$8,066,000

Invested in the Stock Market at 6% return \$ 483,960 per Year

At 7.3% \$ 596,884 per Year

*I have deducted estimated Capital Gains taxes on each sale

Sales of Land in Year Two*

Sumter Mountain	\$2,500,000
Swamp	2,000,000
Whitaker	1,000,000
Misc.	1,000,000
	<u>\$6,500,000</u>
Year One Sales	8,066,000
Total at end of Year Two	<u>\$14,566,000</u>
Invested in the Stock Market at a 6% Return	\$873,960
At 7.3%	\$1,063,000

Sales of Land in Year Three*

Sumter County	\$ 500,000
Peckwoods remainder	100,000
Dr Boykin and other Misc	3,500,000
	\$4,100,000
Total at the end of Year Three	<u>\$18,666,000</u>
Invested in the Stock Market at a 6% Return	\$1,119,960
At 7.3%	\$1,362,618

*I have deducted estimated Capital Gains taxes on each sale

Sales of Land in Year Four

Misc.	\$2,500,000
Total at the end of Year Four	<u>\$21,166,000</u>
Invested in the Stock Market at 6% Return	\$1,269,960
At 7.3%	\$1,545,118
Retained Land	\$2,500,000

SHEHEEN, HANCOCK & GODWIN, LLP

CERTIFIED PUBLIC ACCOUNTANTS

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April 2, 2018

Trustees of the L.W. Boykin II Marital & Residuary Trusts A & B
Ms. Mary Deas Wortley, Ms. Alice Boykin Belger and Mr. Rigdon H. Boykin
P. O. Box 632
Camden, South Carolina 29021

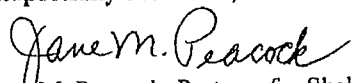
RE: Prospective Illustrations of Trust Accounting Income and Principal

Dear Trustees:

We have been engaged to assist you in the formatting and clear presentation of projections of the accounting net income, and the principal increase or decrease, of the combined trusts above, given certain hypothetical assumptions. We undertook this project at the request of the trustees and their counsel. The resulting schedules were prepared from data and assumptions provided to Sheheen Hancock & Godwin, LLP, by Rigdon H. Boykin.

We have not compiled, reviewed or audited these prospective accountings or the data included therein. We express no opinion on this work product or on any conclusions therein, and accept no responsibility for its content.

Respectfully submitted,


Jane M. Peacock, Partner, for Sheheen Hancock & Godwin, LLP

L.W. BOYKIN II MARITAL AND RESIDUARY TRUSTS

Summary of Prospective Illustrations of Trust Activity - Business as in the Past vs. Land Sale Option

<u>Summary Totals - Business as in the Past</u>		<u>5-year Total</u> <u>Column</u>	<u>Summary Totals - Land Sale Option</u>		<u>5-year Total</u> <u>Column</u>
	<u>By Year</u>			<u>By Year</u>	
2017 Combined Total Net Return or (Deficit)	\$ 201,388		2017 Combined Total Net Return or (Deficit)	\$ 201,388	
Less: Reserve for Trustee Commissions	(150,000)		Less: Reserve for Trustee Commissions	(150,000)	
Less: Beneficiary Distributions (Actual)	(400,000)		Less: Beneficiary Distributions (Actual)	(400,000)	
Less: Catch up Distributions (assuming \$180,000 per beneficiary per annum)	(447,124)		Less: Catch up Distributions (assuming \$180,000 per beneficiary per annum)	(447,124)	
Net Deficit, Before Principal Net Change	(795,736)		Net Deficit, Before Principal Net Change	(795,736)	
Principal Net Increase/Decrease	(133,947)		Principal Net Increase/Decrease	(133,947)	
Transfer from Principal to Cover Deficit	(795,736)		Transfer from Principal to Cover Deficit	(795,736)	
Total Reduction in Principal 2017	(929,683)	\$ (929,683)	Total Reduction in Principal 2017	(929,683)	\$ (929,683)
2018 Combined Total Net Return or (Deficit)	\$ 228,614		2018 Combined Total Net Return or (Deficit)	\$ 267,027	
Less: Planned Trustee Commissions	(150,000)		Less: Planned Trustee Commissions	(150,000)	
Less: Beneficiary Distributions (assuming \$180,000 per beneficiary per annum)	(720,000)		Less: Beneficiary Distributions (assuming \$180,000 per beneficiary per annum)	(720,000)	
Less: Interest on 6166 Estate Tax Deferral	(55,000)		Less: Interest on 6166 Estate Tax Deferral (May & Final Pmt. in Nov.)	(83,750)	
Net Deficit, Before Principal Net Change	(696,386)		Net Deficit, Before Principal Net Change	(686,723)	
Principal Net Increase/Decrease	(446,590)		Principal Net Increase/Decrease	(143,515)	
Transfer from Principal to Cover Deficit	(696,386)		Transfer from Principal to Cover Deficit	(686,723)	
Total Reduction in Principal 2018	(1,142,976)	(1,142,976)	Total Reduction in Principal 2018	(830,238)	(830,238)

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L.W. BOYKIN II MARITAL AND RESIDUARY TRUSTS

Summary of Prospective Illustrations of Trust Activity - Business as in the Past vs. Land Sale Option

Summary Totals - Business as in the Past

2019 Combined Total Net Return or (Deficit)	\$ 208,985	
Less: Planned Trustee Commissions	(150,000)	
Less: Beneficiary Distributions (assuming \$180,000 per beneficiary per annum)	(720,000)	
Less: Interest on 6166 Estate Tax Deferral	(57,500)	
Net Deficit, Before Principal Net Change	(718,515)	
Principal Net Increase/Decrease	(145,762)	
Transfer from Principal to Cover Deficit	(718,515)	
Total Reduction in Principal 2019	(864,277)	(864,277)

Summary Totals - Land Sale Option

2019 Combined Total Net Return or (Deficit)	\$ 898,643	
Less: Planned Trustee Commissions	(150,000)	
Less: Beneficiary Distributions (assuming \$180,000 per beneficiary per annum)	(720,000)	
Less: Interest on 6166 Estate Tax Deferral	-	
Net Increase, Before Principal Net Change	28,643	
Principal Net Increase/Decrease	(202,043)	
Transfer to Principal from Net Return	28,643	
Total Reduction in Principal 2019	(173,400)	(173,400)

2020 Combined Total Net Return or (Deficit)	\$ 349,110	
Less: Planned Trustee Commissions	(150,000)	
Less: Beneficiary Distributions (assuming \$180,000 per beneficiary per annum)	(720,000)	
Less: Interest on 6166 Estate Tax Deferral	(60,000)	
Net Deficit, Before Principal Net Change	(580,890)	
Principal Net Increase/Decrease	(265,620)	
Transfer from Principal to Cover Deficit	(580,890)	
Total Reduction in Principal 2020	(846,510)	(846,510)

2020 Combined Total Net Return or (Deficit)	\$ 1,120,865	
Less: Planned Trustee Commissions	(150,000)	
Less: Beneficiary Distributions (assuming \$180,000 per beneficiary per annum)	(720,000)	
Less: Interest on 6166 Estate Tax Deferral	-	
Net Increase, Before Principal Net Change	250,865	
Principal Net Increase/Decrease	(235,661)	
Transfer to Principal from Net Return	250,865	
Total Increase in Principal 2020	15,204	15,204

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L.W. BOYKIN II MARITAL AND RESIDUARY TRUSTS

Summary of Prospective Illustrations of Trust Activity - Business as in the Past vs. Land Sale Option

Summary Totals - Business as in the Past

	By Year	
2021 Combined Total Net Return or (Deficit)	\$ 159,968	
Less: Planned Trustee Commissions	(150,000)	
Less: Beneficiary Distributions (assuming \$180,000 per beneficiary per annum)	(720,000)	
Less: Interest on 6166 Estate Tax Deferral	(62,500)	
Net Deficit, Before Principal Net Change	(772,532)	
Principal Net Increase/Decrease	(281,536)	
Transfer from Principal to Cover Deficit	(772,532)	
Total Reduction in Principal 2021	(1,054,068)	(1,054,068)

Business as in the Past - Cumulative 5-year Reduction in Principal

\$ (4,837,514)

Summary Totals - Land Sale Option

	By Year	
2021 Combined Total Net Return or (Deficit)	\$ 1,288,476	
Less: Planned Trustee Commissions	(75,000)	
Less: Beneficiary Distributions (assuming \$180,000 per beneficiary per annum)	(720,000)	
Less: Interest on 6166 Estate Tax Deferral	-	
Net Increase, Before Principal Net Change	493,476	
Principal Net Increase/Decrease	(161,417)	
Transfer to Principal from Net Return	493,476	
Total Increase in Principal 2021	332,059	332,059

Land Sale Option - Cumulative 5-year Reduction in Principal

\$ (1,586,058)

Disclaimer: Schedules were prepared from data and assumptions provided by Rigdon H. Boykin, Trustee, to Sheheen, Hancock & Godwin, LLP. We express no opinion on this work product or any conclusions therein, and accept no responsibility for its content.

Exhibit 6
(Boykin Dep. pp. 43-44, 117, 213)

Page 38 1 Q. Let me interrupt for a minute; let me make sure I understand. The Marital Deductible Trust named two Trustees? 2 A. The Marital Deduction Trust had two Trustees, Mary Deas, who is married to Tommy Wortley. Or, actually, she was Mary Deas Wagner, which was her first husband, and became Mary Deas Wortley. 3 Q. Who is the second Trustee of that Trust? 4 A. Alice. 5 Q. Little Alice? 6 A. Big Alice. 7 Q. Oh, Big Alice? 8 A. Yes. 9 Q. So, that was set up in Whit's Trust, Big Whit? 10 A. That was what was set up by Whit's Will. 11 Q. Okay. All right. And after Big Alice died, was -- was -- did Mary Deas have another Trustee that was a successor Trustee? 12 A. Mary Deas, myself and Big Alice were the Trustees of the Residuary Trust. 13 Q. Okay. 14 A. And Alice had the right by Will to appoint her successor as Trustee for the Residuary Trust. 15 Q. Okay. Who did she appoint? 16 A. She appointed Alice Belger.	Page 40 1 I don't think she has any. I think, you know, her -- the extent of her financial experience was basically trying to make sure Alice's bills got paid and trying to search them out because Alice kept all of her mail in a big pile most of the time on her kitchen table, and bills got mislaid and everything else. I think Mary Deas tried very hard to bring some organization from the standpoint of getting bills paid and stuff like that just before Alice died. 2 Q. Did she ever discuss with you any investments in the stock market? 3 A. No. 4 Q. Did she ever discuss with you any of her land holdings? 5 A. I don't -- if Mary Deas had any land other than maybe her house, I don't know of it. 6 Q. Did she ever seek your advice on investments during this time? 7 A. No. 8 Q. Did Little Alice ever seek your advice before -- before Alice, Big Alice died about investments? 9 A. No. 10 Q. About the stock market? 11 A. No. 12 Q. About farming?
Page 39 1 Q. Okay. And tell me at that time, were you familiar with any experience that Little Alice had in managing a Trust? 2 A. As far as I know, she had no experience. 3 Q. To your knowledge, what experience has Mary Deas had in handling a Trust prior to being named Trustee at this time? 4 A. I don't know if she had been involved with any Trust. As far as I know, there may be something involving Teddy's family or Teddy's, the man -- her first husband's grandparents or something, or maybe Tommy Wortley. I have no idea is she -- as far as I know, she has no experience, but there may be something that I don't know about. 5 Q. Let's -- let me ask you to establish this for me. As of 2016, what was your interaction with Mary Deas? I mean, how -- how often did you all interact? 6 A. Okay. When Mary Deas -- first of all, I knew Mary Deas as a kid and from the time I was at Millway. However, during that period of time, Mary Deas was off at college and -- and a lot of the time and doing other things, and then she married Teddy Wagner in the I'd say '78, '79, '80 time frame; I'm not sure exactly when. 7 Q. And where did they live?	Page 41 1 A. No. 2 Q. About managing timberland? 3 A. No. 4 Q. Do you have any knowledge of whether or not, prior to Big Alice's death, that Little Alice had any experience in liquid investments such as stock market, Bonds, Certificates of Deposit? 5 A. I don't think she has any, but --- 6 Q. Did she ever discuss any with you? 7 A. No. 8 Q. Has Wayne ever discussed any financial business with you? 9 A. Wayne would talk a lot about various stock investments that he had. He's apparently -- he told me on several occasions of the various stocks that he had. How big his stock portfolio might or might not be, I have no idea. But he would discuss that from time to time before Alice died. 10 Q. Okay. Now, after Alice died, there were three Trustees of the Residuary Trust; right? 11 A. Yes, sir. 12 Q. And what were the assets of the Trust at that time, of the Residuary Trust? 13 A. I am not sure what the value of the assets were in the Residuary Trust at that time. I've never split the
Page 40 1 A. They lived in Pennsylvania I think initially and then Ohio. So, I didn't see Mary Deas a lot. And in fact, didn't have a lot of interaction from her and with her until Teddy Wagner and she got a divorce. And at that point in time, Mary Deas had a very difficult time because there was very little money to live on and -- because I don't think Whit was supporting her a lot because Whit believed that Mary Deas should be supported for the most part in those days by her mother or what she inherited from her mother, which was a large part of Whit's Estate at the time, and so, Mary Deas didn't have a lot of funds. My interaction with her at that point is, I think I invited Mary Deas a couple times to Cape Cod to spend a week or so with us at the beach there for summer vacations. I know we invited -- we took our whole family to Steamboat skiing for a week with us, you know, just trying to help out and pay things. I also helped financially with some educational expenses for her children at that time. 2 Q. During the time you were doing this with Mary Deas, were you ever aware of any financial -- substantial financial experience she had in investments? 3 A. I don't think Mary Deas, at least if she has any financial experience at all, she's never evidenced it.	Page 42 1 two apart. So, I've just looked at them all as one large asset, and I felt that the total assets was in the neighborhood of Twenty-five (25) to Twenty-seven (27) Million Dollars. You have to understand, one of the reasons I viewed it that way is because, basically, while they're -- the Marital Deduction Trust is still in existence legally speaking, as I understand it, those assets pour over immediately upon death into the Residuary Trust. And so, that's why I've sort of always looked at them as one. The only difference between the two is before she died is that a lot of the -- more of the property around Boykin itself was kept in the Residuary Trust because, when Whit died, I think Alice wanted to put that in the Residuary Trust. 2 Q. Okay. Whit died in 1989, I believe? 3 A. Yes, he did. 4 Q. Was that shortly before Hugo? 5 A. No. Whit --- 6 Q. Hugo was --- 7 A. Whit died about two or -- I think Hugo was in September or October. Whit died in December. Hugo was very important because Hugo -- I mean, the devastation in this area after Hugo was mind boggling. In fact, the Boykin area was right slam in the middle

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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

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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.

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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

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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

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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

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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

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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 --

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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 ---

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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

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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

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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

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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.

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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

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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

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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

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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

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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.

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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

Exhibit 7
(6/5/17 Letter re: Belger and Wortley Plan)

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

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June 5, 2017

VIA EMAIL ONLY

Richard S. Rosen, Esq.
Rosen, Rosen & Hagood, LLC
P.O. Box 893
Charleston, SC 29402
rsrosen@rrhlawfirm.com

Re: Estate of Lemuel Whitaker Boykin, II
HSB File No. 39944.0001

Dear Richard:

Mary Deas Wortley and Alice Belger have asked me to send this letter to you, as the attorney for Rigdon Boykin, in his capacity as a trustee of certain trusts created by the Last Will and Testament of Lemuel Whitaker Boykin, II ("Will"). Rigdon has previously represented to us that he has engaged you to represent him in this matter. As you may know, this firm represents Mary Deas Wortley and Bill Bundy represents Alice Belger. Specifically, this is to respond to Rigdon's email of May 24, 2017 to David Siddons and Bill Bundy regarding invoices from Lindler Surveying of approximately \$34,000 and the retainer fee invoice of \$20,000 from your law firm. I have attached a copy of the email to this letter.

Attorney's Fees. Mary Deas and Alice regret that the Trustees have been forced to retain separate counsel because of Rigdon's insistence that many, if not most, of the Trust's major real property assets should be sold and the proceeds reinvested in the stock market. Mr. Boykin's Will clearly and unambiguously expresses a different intent, and neither state or federal law nor current economic circumstances and conditions warrant a departure from the estate planning expressed in the Will. Periodic sales of the abundant timber on the Estate property, the leasing of land for agricultural and hunting and fishing rights, and the sale of extraneous real property parcels should easily generate between \$400,000 and \$600,000 per year on average for the income beneficiaries of the Trust. Mary Deas and Alice are prepared to adjust their percentage shares of the trust income to favor May and Whit. Rigdon's lack of cooperation with his co-trustees on this central and critical issue is substantially impairing the administration of the trust and forcing it to incur unnecessary and significant expenses. For this reason, Mary Deas and Alice are prepared to pay their own attorneys'

DM: 4985522 v.1

ELECTRONICALLY FILED - 2018 Jun 18 8:17 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

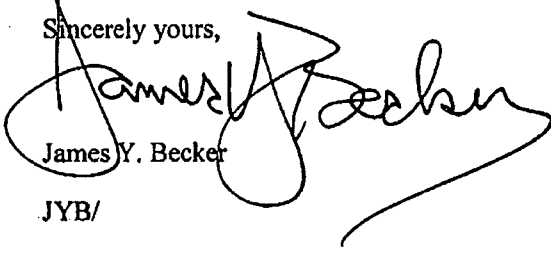
Richard S. Rosen, Esq.
June 5, 2017
Page 2

fees for separate counsel, and they are not prepared to authorize the Trust to pay the attorney's fees for Rigdon's separate counsel.

Surveyor and other expenses. Assuming that the surveying expenses include a full boundary survey of the Sumter Mountain Tract, Neither Mary Deas nor Alice believes that there ever was an agreement of the trustees to authorize this expense, and it appears that no such agreement is reflected anywhere in the minutes of the Trustee meetings. This is an expense which is normally borne by the purchaser of real property, if he or she even wants a boundary survey, and not the seller. At the least, the need for and expense of a full boundary survey becomes a point of negotiation between the buyer and seller at the time of a contract of sale. In any event, Mary Deas and Alice are prepared to have the Trust pay these surveying expenses, and to reimburse Rigdon for the \$25,000 payment he has made to Lindler Surveying, Inc., upon two conditions. The first condition is that that Rigdon must agree, as the Will itself provides, that no expenses for surveyors, appraisers, engineers, or consultants of any kind or type will be authorized unless voted on in advance by at least two of the three trustees, with such vote to be duly recorded in the minutes of the Trustee meetings. The second condition is that this agreement shall not constitute a waiver of the Trust's right to seek recovery of this payment from Rigdon, in any future judicial proceeding which Rigdon may bring either as plaintiff or counterclaim- plaintiff, regarding the Will, the resulting trusts, or any of his co-trustees of such trusts.

Thank you and we look forward to your response in this matter.

Sincerely yours,



James Y. Becker

JYB/

cc: via email only to:
Karen H. Thomas, Esq.
W.H. Bundy, Jr., Esq.
Mrs. Mary Deas Wortley
Mrs. Alice Belger

Becker, James

From: Rigdon Boykin <rhboykin@icloud.com>
Sent: Wednesday, May 24, 2017 1:04 PM
To: Becker, James
Subject: Fwd: Bills

James, I erroneously omitted you on the cc list. Sorry, Rigdon

Sent from my iPhone

Begin forwarded message:

From: Rigdon Boykin <rhboykin@me.com>
Date: May 24, 2017 at 11:54:04 AM EDT
To: David Siddons <dstaxlaw@bellsouth.net>, "Walter H. Bundy" <WHBundy@att.net>
Cc: Alice Belger <aliceb@belgerfarms.com>, mary wortley <marydeas@hotmail.com>, Karen Thomas <KThomas@sctlawfirm.com>, Richard Rosen <rsrosen@rrhlawfirm.com>, Liam Duffy <lduffy@rrhlawfirm.com>
Subject: Bills

David and Bill,

I do not know which one of you is representing Alice with respect to payment of bills by the trust but I would very much appreciate one of you talking to Alice about the payment of bills that have been approved. Bill Lindler was asked to do surveys months ago when Alice had agreed we would sell Sumter Mountain and the piece of property behind the Boykin Fire Station. We needed to locate the boundary lines for both parcels. Lindler Surveying did the work and submitted bills for it weeks ago. In the meantime, Alice decided to rescind her agreement to sell the two parcels of land and rescinded her agreement to sell the Boykin Millpond to Mary Deas and to sell 15 acres to May Boykin. This rescision was after the work was done.

There is also the invoice for Richard Rosen's retainer. This was discussed and Karen said the trust should pay for it and I thought Alice and Mary Deas had agreed to it at our last meeting. After agreeing to pay these bills, when it came time to sign the checks last week, Alice refused to sign them and said she wanted to talk to her lawyer about them. It is my understanding that Mary Deas has agreed to all three checks.

Changing her mind has become a recurrent theme in the administration of these trusts. I hope we can work together to ensure it does not end up hurting the reputation of the trust and the family. In an effort to alleviate the burden on Lindler Surveying, I have today personally advanced \$25,000 to the company pending resolution of this issue.

If you disagree about the payment of these bills please let me know so we can promptly apply for appropriate relief. Thank you for your help in this matter.

Rigdon

Exhibit 8
(Wortley Dep. pp. 33-34)

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1 Q. Well, you --
2 A. They have expectations of getting money.
3 Q. Okay. And is your -- is it your position that they
4 are only entitled to some income distribution on an
5 annual or quarterly basis and nothing other -- no
6 other distributions?
7 A. I wouldn't want to say no other distributions if -- I
8 would say they are definitely entitled to income from
9 the Trust as income beneficiaries, and if they wanted
10 a piece of land, I don't know why we couldn't do that,
11 too. We have that discretion.
12 Q. Well, you know -- you know Whit doesn't own a house;
13 right?
14 A. Well, that's for reasons to protect Whit. He has a
15 house we -- we built for him, and it is in the Trust
16 on purpose to protect Whit so that he won't lose it.
17 But it is his house. Everybody understands that. It
18 was built for him.
19 Q. Who owns that house?
20 A. The Trust.
21 Q. Is that the house he's presently living in?
22 A. Yes.
23 Q. To make sure I understand what you're telling me, Whit
24 and May are only entitled to monetary distributions on
25 a periodic basis and nothing further?

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1 A. No, I didn't -- I didn't say that.
2 Q. Okay. Tell me -- tell me what distributions you as a
3 Trustee intend to make to my clients, Whit and May, in
4 ---
5 A. Well, I intend to distribute the net income of the
6 Trust to them; that's what they're entitled to
7 receive. If they would want to somehow do a deal for
8 the land, I don't see why we couldn't work that out.
9 As far as I know, so far, they're only asking for
10 money.
11 Q. How would you -- how would you suggest as a Trustee to
12 generate monetary net income for Whit and May?
13 A. I think we can diversify -- well, this year we had a
14 net income of probably Eight Hundred and Fifty some
15 Thousand Dollars (\$850,000) using timber and rentals
16 and one sale of land.
17 Q. Was that net or ---
18 A. And ---
19 Q. I'm sorry. Was that net or gross?
20 A. That's net. The gross -- I'm trying to think what the
21 gross was. The gross was One Million Twenty-four
22 Thousand (\$1,024,000) or so. And then of that, you
23 know, the large portion, about Six Hundred Thousand
24 (\$600,000.00) or so or more was in timber and then
25 close to Three Hundred Thousand (\$300,000.00) was in

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1 rents.
2 Q. What do you -- what do you consider a reasonable
3 income distribution to my clients, Whit and May, on an
4 annual basis?
5 A. Well, they have been receiving a Hundred Thousand
6 (\$100,000.00) a year which I thought was very
7 reasonable. We have offered them more which, as you
8 know, was turned down. We offered a Hundred and Forty
9 (\$140,000.00). I think that's more than reasonable.
10 I think that's more than most people make. I never
11 made it in my lifetime, that much. I think it's not
12 only reasonable, it's generous.
13 Q. But wouldn't you agree that most people don't have an
14 interest in a Twenty-two Million Dollar (\$22,000,000)
15 Trust?
16 A. But they don't have an interest in it; they are income
17 beneficiaries of it. And they are left the net. I am
18 all in favor of giving them more than the net income,
19 but I'm not in favor of giving them so much more that
20 it affects the rights of the others. Alice and I have
21 -- we -- well, we will forego some of our income in
22 the years when there's not enough for, say, a Hundred
23 and Forty Thousand (\$140,000.00) for all of us. We
24 will forego some of our income. And I have talked
25 that over with Karen, and she said in the years where

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1 we're short of income, that we can distribute some
2 from principal without any harmful tax problems for
3 the Trust. So, if we want to give up our income from
4 principal, we can do that, and Whit and May can get
5 their guaranteed amount. We're willing to give up
6 ours in order to protect the treasured tracts. We
7 realize they don't earn their keep, but we want to
8 follow our father's wishes and keep them. But we're
9 willing to give up part of our income for that to May
10 and Whit when it's necessary.
11 Q. What -- what part of the Trust assets make up the
12 principal of the Trust assets?
13 A. What parts make up the principal?
14 Q. Yes, ma'am.
15 A. The land.
16 Q. Okay.
17 A. The land and the cash. I mean, we have probably Three
18 Million (\$3,000,000.00) in cash, and that's principal.
19 Q. Do I understand you to say that --
20 A. That's ---
21 Q. Did I understand you to say that you're not willing at
22 this time to distribute any of the principal of the
23 Trust to Whit and May?
24 A. No. I did not say that.
25 Q. But are you willing to distribute some of the

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1 principal of the Trust to Whit and May now?
2 A. Some of it if it's necessary to meet the guarantee
3 that we have offered them, yes. If we don't have
4 enough to distribute, yes, we're entitled to go into
5 principal and distribute from that.
6 Q. And you're willing to do that as a Trustee?
7 A. Yes.
8 Q. And which part -- you said the principal is made up of
9 the -- of the land. Which part of the principal would
10 you be willing to distribute to my clients?
11 A. Well, it's a complicated issue. It's a lot --
12 Q. What ---
13 A. Excuse me?
14 Q. You're breaking up on us. I'm sorry.
15 A. I say it's a lot -- it's a complicated issue because
16 a lot of our net income comes from timber sales, and
17 the way it's explained to me that timber sale profits
18 are judged on an accounting period that starts on most
19 -- on most of ours in Marital Trust B are -- the nets
20 in profit is judged according to the accounting that
21 starts on Alice's death. So, therefore, if we sell
22 timber, say, and cut Eight Hundred Thousand Dollars
23 (\$800,000.00) worth of timber, the parts that is
24 judged to profits, and it's an IRS sort of formula,
25 goes by the amount of growth of the trees during the

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1 accounting period. All the rest is principal. So,
2 we're going to have to be able to distribute some of
3 that principal because a lot of our income is not
4 going to be net. I mean, it's -- it's a taxing issue;
5 it's an IRS issue. So, I don't see how we can avoid
6 distributing from principal, and Karen says that if we
7 do that, Little Alice and I can forego our share
8 without tax problems to the Trust. But she says we
9 should probably try to make it up in the fat years
10 because of the reasonably equal distribution language
11 in the Trust. She said we should try to make it up;
12 she didn't say we had to.
13 Q. But wouldn't you agree, Mary Deas, that the
14 landholdings mostly of timber generate very minor
15 income relative to the potential of the Trust to earn
16 more income?
17 A. I -- I didn't understand the second part of your
18 sentence.
19 Q. Okay. The comparison of the generation of income from
20 what you all are doing now relative to its potential
21 to earn extremely more income -- you're having minor
22 sales -- what I'm saying is you're having minor sales
23 of timber right now; is that correct? It's ---
24 A. I have a what of timber?
25 Q. Very small sales of timber compared to what the

Exhibit 9
(Boykin Dep. pp. 67-71; 212-213)

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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

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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

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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

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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

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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

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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

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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 --

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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

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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?

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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. I
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

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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

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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 --

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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

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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

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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

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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

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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.

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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

Exhibit 10
(Trust Meeting Summary)

Estate of Boykin:

Meeting Summary 10/13/2017

In attendance was Alice, Rigdon, Mary Deas (by phone), Karen, Bill, and Jamie.

1. Payment of Trustee Fee:
 - a) General Administration per Bank Fee Schedules. Karen reported used four different corporate fee schedules to determine a range of fees to pay the Trustees. The fee range were all over the board, but if Gross Estate is \$18,000,000 then range is \$250,000 to \$400,000. Karen recommended a fee for the administration of the estate and trusts through the end of 12/31/17 to be \$100,000/Trustee. A vote was called and Mary Deas and Alice voted to pay each Trustee \$100,000 compensation; Rigdon voted no. Bill stressed that this vote was final.
 - b) Fees for Insurance and Residuary Trust: Karen stated the Residuary Trust and Insurance were not part of the gross estate and not part of the fee voted upon. A fee for continued management of the Trusts needs to be determined. We all agreed to table this until another time.
2. Payment of Attorney Fees/Other Expenses of Trust Litigation: We discussed whether each should be able to hire an attorney and have the Trust pay for each's attorney's fees. Bill stated that it was imprudent to pay themselves to sue each other, that the petitioner then has no skin in the game. Rigdon has requested \$72,000 of legal fees be paid. Further discussion was had and Rigdon voted to pay the fees (which could be reimbursed if the court determines unreasonable) and Alice and Mary Deas voted not to pay the fees until the Court orders that they be made.
3. Regular Income Distributions for Income Beneficiaries/Special Considerations for Whit and May. Trust language. A long discussion was had on the distributions to the beneficiaries. The Trust provides that all income based on needs/may adjust over time and principal distributions based on needs. Mary Deas and Alice presented options, for having one-fourth of income to each but guaranteeing White and May \$100,000 first, having Whit live rent free, having Whit and May present budgets to determine if \$100,000 is sufficient so that principal distributions may be made for support if the income is not sufficient in any one year. Mary Deas and Alice suggested Whit should take priority and receive special consideration. While Karen is concerned about distributing all income and determining the beneficiaries' needs for principal distributions Rigdon is not concerned as he is going to use the power to adjust as an independent trustee to convert principal to income to allow the distribution (converting to have 3% of the value being considered income). When he determined the distribution of \$100,000/per year/beneficiary he knew that was temporary at the time. Rigdon stated that he handled Whit's bank account so that he knew Whit could survive on \$100,000/year and pay his rent timely with no problem. Rigdon noted that Whit has repaid what was advanced to him prior to death and paid for his health insurance and rent. Rigdon felt strongly that all four beneficiaries should receive the same unless there was a drastic reason to not to and that the \$100,000 distribution should continue. Bill said there is probably no need to use the power to adjust and that Alice and Mary

Deas are willing to postpone their distributions. This was a long discussion and Bill added that the two Trustees are going to follow the terms of the Will and would be willing to postpone an annual distribution if the income is not sufficient; Rigdon said this is a bad idea for the Trust to have a debt to the beneficiaries for distributions. All three Trustees voted to continue the current distribution plan of \$100,000/year to beneficiaries for at least October and November.

4. Status of House Rent Payments. Except for the big house, all rent is up to date. Alice is concerned about paying \$2,500 as the house is an albatross. There is the issue of if Alice or the Trust should pay for maintenance and repairs and Big Alice didn't maintain the property and it is in disrepair. The Trustees agree that the rent for the Millway need to be finalized. Graham Realty suggested \$1,000/month and Milliken verbally told Karen it estimates the rent to be \$1280 to \$1600/month but will provide a written report. The Trustee agreed to revisit the following week and for Karen to have Milliken to give a report on its view of the rent.
5. Downton Boykin/Yellow House. A long discussion of the status of the structures of Ginny's house, downtown Boykin, Insurance and budgeting repairs was had. Rigdon is concerned that the costs of repairs could be so substantial that it would not be recovered with the rent. Mary Deas and Alice disagreed that all the buildings have substantial disrepair that need substantial work. Mary Deas and Alice believe that downtown Boykin is not a quaint village on Cape Cod and that the Trust should make repairs and commence renting, including the Church and Rosa Lee properties. Rigdon disagreed and gave example of the porch at the steak house being detached. This was just an example, Rigdon asked the Trust to determine what downtown Boykin could be for the long term and whether it if for the Trust to make it a quaint downtown area. Rigdon asked do we sell or rent the downtown on a long term basis in order for it to be improved? He asked for authority to get a contractor to look at the buildings and give quotes to either (1) maintain at the status quo, or 2) repairs to lease. The Trustees voted to give Rigdon the authority to have a contractor review the condition of the buildings and make recommendations as to upkeep, with priority given to the buildings which are rented. Rigdon said he is in preliminary discussions with a person that might be interested in buying the pond and maintain the dam. Rigdon said this is a long shot and does not want to pursue this possibility without authority of the Trustees. They may be interested in a buffer area, Mary Deas' place, acreage below the pond for drainage; Rigdon stated we may be able to accomplish the purpose of conservation and put \$2.7M in the Trust. The Trustees agreed to discuss this at the next meeting.
6. Potential Sale to Tommy Laney. Rigdon reported that he received a bid for \$390,000 for 130 acres that he wanted to purchase. He stated that a survey needed to be done for the acreage on the southern tip. Best Bill Lindler could come up with is 130+/- 4 acres. A discussion regarding the potential use of solar panels was had; there was a consensus to hold off on completing the sale to Tommy Laney while Rigdon looked into the solar panel potential.
7. May's option to purchase. The Trustees discussed giving May the right to purchase property; Mary Deas and Alice stated that they were in favor of her just using the property (the Trust giving her a life estate) without her having to pay for it. Rigdon pointed out that she would like to have 15 acres and if willing to pay the appraised price, but that full ownership is what she needed given all the buildings/money she is hoping to put into the property. The Trustees

Voted to sell the property to May with a restriction in the deed that the Trust be given the first right of refusal if she wanted to sell the property in the future.

8. Boykin Christmas Parade. Swift Creek Preservation Society may hold the parade. A discussion was had that whoever is holding the parade must enter into a lease and have adequate insurance and that the Trust not pay for the parade.
9. Alice and Mary Deas Investment Plan. Jamie provided on behalf of Mary Deas that she feels the directions of the Will controls, that there is no SC law that overrides the clear direction in the Will. That this is still early in the administration of a Trust with a lot of land and we don't even know the Estate tax values, how much the estate taxes will be, or when we will have to pay the taxes over what period of time. It is her position that it is premature to embark on a program to sell all real estate and invest it in the stock market; it is reckless and imprudent to dump all real estate and flood the market. Mary Deas is prepared at the appropriate time to consider any reasonable sale of any property but as governed by the Will. He stated the object is net income to the beneficiaries in accordance with the Will; the best way is to sell timber and she believes Jimmy LaFrage's timber management plan is adequate for the primary mission of the trust in this moment in time. Jimmy is reputable with decades of experience with the property and the plan provides sufficient income to the beneficiaries for a sufficient life style. Mary Deas and Alice stated that the current plan should be continued until there is further information available and a compelling reason to change. Jamie added that Rigdon had mentioned the trustee Duty; Jamie said the Trustees have a duty to minimize administration fees (attorney fees) and other expense to maximize net income for the beneficiaries. Rigdon responded that he never advocated dumping land to sell; that would be irresponsible. Rigdon said there is a real estate bubble in Boykin area that could dissipate; land selling at \$20,000/acre. He is also concerned about a hurricane that could cause the Trust to lose money overnight, also forest fires. Rigdon says this much of the Trust is timber and land is irresponsible. Rigdon doesn't believe Jimmy LaFrage's plan is a plan for the trust and that the Will is precatory. Rigdon says the Trustees have a multiple obligations: income to income beneficiaries, generate money for expenses, and to make sure the corpus grows for the remaindermen. Rigdon said he is not criticizing Jimmy's 15 year plan, but it will not generate the kind of money that is required. He said again that it should be treated as a unitrust and has hired Jim Harden as a trust expert. The discussion came back around to the Boykin bubble and how you cannot really get \$20,000/acre; that the average would be \$6,000/acres. As of now Rigdon has received no concrete offers.

10. Prices for Commercial/Other Properties to Sell

11. Rabbit Pen boundary/timber issues; Rigdon wants to understand more about this and the lines.
12. Racetrack Property: Work by Whit; all three Trustees agreed to have stump work done by Whit.

Exhibit 11
(1/16/18 Affidavit of Rigdon Boykin)

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
)
)

COUNTY OF KERSHAW

) CASE NO: 2017-CP-28-831
)
)

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,

**AFFIDAVIT OF
RIGDON H. BOYKIN**

Petitioner,

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

Respondents.

PERSONALLY APPEARED before me Rigdon H. Boykin, who being duly sworn does
state as follows:

1. My name is Rigdon H. Boykin and my address is address is 1626 Sumter
Highway, Rembert, South Carolina 29128.

2. I am the only non-beneficiary, disinterested Co-Trustee of the Lemuel Whitaker
Boykin, II, Residuary Trust (the "Residuary Trust"), which was created pursuant to Item VIII of

the Lemuel Whitaker Boykin Last Will and Testament, dated June 2, 1989. The other Co-Trustees are Respondents Alice Belger and Mary Deas Wortley.

3. To assist me in the performance of my duties as Co-Trustee, I have necessarily engaged the services of the attorneys Richard S. Rosen and Liam D. Duffy at Rosen, Rosen & Hagood, LLC of Charleston, South Carolina, who have also engaged James C. Hardin, III of The Law Offices of James C. Hardin, III to advise and assist as an expert consultant in this matter.

4. I am submitting this affidavit in support of the Motion to Authorize Sale of Trust Property simultaneously filed in this matter.

5. At the time of Alice S. Boykin's death in August 2016, it was clear to me that there was the potential for a huge difference of opinion among the Co-Trustees and among the income beneficiaries of the Residuary Trust regarding the need for diversifying the assets held by the Residuary Trust.

6. Respondent Belger for years had made it clear that she wanted to own or control most of the land in Boykin. Respondent Wortley for years had advocated putting the Boykin Millpond into a nature conservancy entity. Respondents Whit Boykin, III ("Whit") and May Cantey Boykin ("May"), who have no issue and are unlikely to have issue only wanted the assets to be diversified to reduce risk, and wanted the Trust to be managed pursuant to the prudent investor rule.

7. In an attempt to avoid a huge fight, at the first or second meeting of the Trustees in August of 2016, I suggested that Respondents Wortley and Belger might want to purchase land from the Trust. I also stated that I was prepared to have the Trust loan each of them up to \$1,500,000 to help them finance their purchases. They were also told that since this was a self-dealing transaction, the purchase and loan would have to be approved by all the beneficiaries and

perhaps also by a Judge. I had already cleared this offer with Respondents Whit and May, the other two income beneficiaries. Everyone was also told that the price would have to be "fair market value" as set by a qualified appraiser.

8. Respondents Wortley and Belger expressed great interest in this proposal. Respondent Wortley said she wanted to buy the Boykin Millpond and a buffer around it and perhaps some of the property and buildings in downtown Boykin. She expressed an interest in donating an easement or the fee of the Boykin Millpond to a conservation organization. Respondent Belger wanted to buy the house L.W. Boykin, II ("Whit Sr.") lived in at the time of his death ("Millway") and as much of the land around it that she could afford.

9. Consequently, I hired Charleston Appraisal Service, Inc. who were experienced in these types of appraisals, to appraise the various parcels that were of interest to Respondents Wortley and Belger.

10. During this period, extending for the first four months after Alice Boykin's death, Trustee meetings went fairly smoothly and included discussions about the need to diversify assets including a vote to sell some of the "Treasured" pieces of land included in the precatory language in Whit Sr.'s will. The Trust did sell a small piece of the treasured land – approximately 6.8 acres for \$15,000 per acre.

11. It very quickly became apparent that Respondent Belger did not appreciate the meaning of "fair market value" and thought that she should be able to buy the property at farm tax valuations or less. At one point she said she should be able to buy the land for \$1,300 per acre. Much time was spent in very emotional Trustee meetings where Karen Thomas, counsel for the Estate of Alice Boykin, and I tried to explain fair market value and urged Respondent Belger to hire counsel to give her independent advice regarding the concept.

12. Over time, as Respondent Belger began to understand that she would not be able to buy anywhere close to the amount of land she wanted based on the fair market value, Trustee meetings became more and more contentious and Respondent Belger began changing her previous votes to sell land, including the Treasured pieces that had been previously authorized by unanimous vote.

13. In February of 2017, the appraisers began releasing their reports on the various parcels of interest to Respondents Wortley and Belger and meetings became even more contentious as Respondent Belger studied what she wanted to buy. In the meantime, Wortley accepted the appraisal value and continued to state she would buy the Boykin Millpond and a buffer area around it. Also by that time it was becoming very clear to everyone that we were probably going to have to apply to the Probate Court for direction on whether Trust assets would have to be diversified and voting requirements (for example if there was a unanimous vote to sell something, did that vote stand unless there was a unanimous vote to change it?).

14. After months of study, Respondent Belger at a trustee meeting on March 23, 2017, said she had decided against buying any of the Trust land and would not vote to permit Respondent Wortley to buy the Boykin Millpond land. Respondent Belger hired litigation counsel and began to resist sales of property other than commercial property.

15. Respondent Belger's only plan going forward was to continue keeping the farm land and almost all of the timber land. On May 12, 2017 Respondents Belger and Wortley came to the Trustee meeting without a plan for how they were going to generate the income necessary for reasonable distributions to the income beneficiaries, pay expenses, and grow the corpus for the benefit of the remainder persons. At that meeting they again promised to deliver a plan. However, they then began refusing to schedule Trustee meetings and cancelled meetings for

approximately the next five months. Trustee meetings did not begin again until a Motion to Establish Complex Case Designation was filed on October 3, 2017. On October 13, 2017, a meeting of the Trustees was held after a five month stonewall by Belger and Wortley.

16. During the summer stonewall, I began trying to come up with ways to break the impasse and perhaps reach a settlement. The primary problem in achieving success was that the Treasured pieces of land constituted over 50% of the value of the Trust.

17. In the 1980's, I lived in Bedford Hills, New York and was the founding Chairman of the Westchester Land Trust in Westchester County, New York. That experience taught me about conservation stewardship, as well as land gifts and monetary gifts for the purpose of purchasing land worthy of being preserved in its current condition. Utilizing this experience, I began exploring contacts in the land preservation world to see if there were conservation donors that might be willing to purchase the Boykin Millpond and donate it to a land conservation entity.

18. I found a possible donor in September 2017 that said the existence of the rookery on the Boykin Millpond might be significant enough that it would entertain the proposal. Over the next few weeks, I met with the donor numerous times and was finally able to negotiate the option agreement that is the subject of the Motion to Authorize Sale of Trust Property.

19. This Option has three primary benefits.

a. It will preserve the land for posterity and because of the rookery, public access will be restricted other than a viewing area;

b. It is an above-market price which will give over \$4,000,000 to the Trust and the Trust could avoid an expenditure of over a million dollars in dam remediation and repairs to the buildings with no foreseeable possibility of earning a return; and

c. Most important of all to me, is that it provides the liquidity to enable a potential compromise of the two factions by splitting the Trust into two trusts. One trust would be for the benefit of Respondents Belger and Wortley and would consist of all the remaining Treasured tracts and the rest of the land around the Boykin area that Respondent Belger has indicated she would like to retain. The other trust would be for the benefit of Whit and May and would contain the rest of the land. The cash, including the proceeds from the exercise of the option, would be used to equalize the value of the two trusts. This second trust would sell most of the land and be administered in a prudent fashion. Upon the death of the income beneficiaries, both trusts would be distributed to any remaining issue, per stirpes.

20. Conservation donors are very rare and have thousands of requests for their money. So far, the prospective Donor has been very patient but is now telling me they need to have a final decision by the Trust or they will move on to one of the many of the other projects they have been considering.

21. I hereby respectfully request that the Court review the file herein, together with the other exhibits filed in support of the motion, and enter an Order authorizing the sale of Trust property which is the subject of the Motion to Authorize Sale of Trust Property, and requiring the Co-Trustees to approve the Option Agreement to purchase the Boykin Millpond and/or additional property in downtown Boykin, South Carolina owned by the Trust (or portions thereof).

FURTHER AFFIANT SAYETH NOT.

Rigdon H. Boykin
Rigdon H. Boykin

SWORN to before me this
16th day of January, 2018.

[Signature]
Notary Public

My commission expires: July 26, 2023

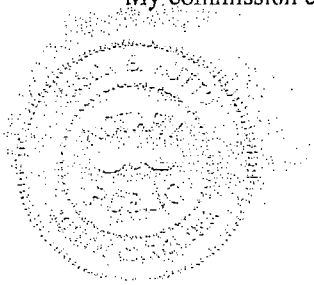


Exhibit 12
(Boykin Dep. pp. 240-241)

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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

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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

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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

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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

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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

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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

Exhibit 13
(4/20/18 Affidavit of Rigdon Boykin)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	CASE NO: 2017-CP-28-831
	)	
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,	)	
	)	
	)	AFFIDAVIT OF
	)	RIGDON H. BOYKIN
	)	
Petitioner,	)	
	)	
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	)	
	)	
Respondents.	)	
	)	

Rigdon H. Boykin, being first duly sworn, deposes and says as follows:

1. My name is Rigdon H. Boykin. I am a citizen and resident of Boykin, South Carolina. I am over the age of eighteen (18), and I am competent to give the testimony set forth in this Affidavit.
2. I have personal knowledge of the matters contained herein.
3. I am a Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B (the "Trust").

4. In August of 2016, at one of the first meetings of the Co-Trustees, I quickly realized that the illiquid and underproductive nature of the Trust's assets would most likely yield little or no "net income" for distributions to the income beneficiaries. It was also around this time that I informed my Co-Trustees, Mary Deas Wortley ("Wortley") and Alice Belger ("Belger"), that I was willing to consider having the Trust sell to them property that was important and/or sentimental to them. To that end, I agreed to have the Trust finance up to \$1,500,000 to each of them for their purchases. As a result of this proposal, the Co-Trustees collectively began discussing converting 85% of the remaining Trust assets into liquid assets.

5. I suggested that during the period of determining the value of the Trust and converting land into cash to be invested in stocks and bonds, I would be willing to use the power to adjust to distribute \$100,000 annually to each income beneficiary. This amount would be adjusted to a percentage of the value of the Trust, retroactive to the date of Alice Boykin's death and going forward, once the Trust value had been determined and the Trust was mostly liquid.

6. Now, after more than 20 months since the death of Alice Boykin, Wortley and Belger have succeeded in frustrating my attempts to diversify the Trust assets and in my opinion have refused to demonstrate a financial plan that would provide the return necessary for the income beneficiaries and remainder persons. In fact, there has been no analysis of the current or future financial status of the Trust whatsoever other than that produced through my efforts, with assistance from Jane Peacock, CPA. Those efforts and analyses appear to have been largely ignored by my Co-Trustees.

7. All three Co-Trustees have agreed that the value of the Trust, after the payment of estate taxes, is between \$22,000,000 and \$25,000,000. Prior to driving off the prospective purchaser of the Boykin Millpond and 12 acres and buildings at the Boykin crossroads, at the

Co-Trustee meeting on April 12, 2018, I requested approval to increase the income beneficiary distributions to \$180,000 per year retroactive to August 8, 2016, the date of Alice Boykin's death. Wortley and Belger voted against this proposition and voted in favor of a motion to pay income beneficiaries Whit Boykin and May Boykin \$150,000 per year going forward, and to pay themselves \$100,000 per year as income beneficiaries. I believe the provisions of the Trust require this difference to be made up in the future. This disagreement regarding the appropriate annual distribution to income beneficiaries is further reflected in the April 16, 2018 email exchange between Wortley's counsel and me, attached hereto as Exhibit 1.

8. Now that the potential sale of a largely unproductive asset (the Boykin Millpond & Downtown Boykin properties) for over \$4,700,000¹ has been driven off by Wortley and Belger,² it is evident that a continuation of the Trust in its present posture will result in a rapid depletion of the Trust assets.

9. It was clear to me that my Co-Trustees did not have any conception of the financial consequences of continuing to operate the Trust assets as had been done in the past, and that they had no interest in looking at or implementing a shift in management strategy. Consequently, I undertook with the help of Jane Peacock, a CPA who had been working on the Trust, to develop a comparison of the effects of continuing business as in the past versus diversifying the assets and investing in the stock and bond markets. Attached hereto as Exhibit

¹ On April 15, 2018, I was informed by the prospective buyer that they would increase the price 20%, which was confirmed in writing in the email of April 18, 2018 informing Petitioner that they were withdrawing the offer. That email was attached to my counsel's April 18, 2018 letter to the Court. The prospective buyer stated to me: "As discussed on April 15th, I assured you we would satisfy Mr. Bundy's request of an increased price of 20% in lieu of removing a few of the other requests that we would not be able to satisfy due to regulatory restrictions."

² Attached hereto as Exhibit 2, is an April 17, 2018 from the prospective purchaser's counsel to Belger's counsel, which provides the prospective purchaser's explanation for why it was forced to withdraw its offer under the Option Agreement. I received a copy of this letter on April 20, 2018.

3 is the comparison that was prepared and given to my Co-Trustees on April 2, 2018.³ Discussion of this comparison was an agenda item at the April 12, 2018 Co-Trustee meeting, but this agenda item was ignored by Wortley and Belger.

10. The critical aspect of the comparison for me is the fact that under the "Business as in the Past" scenario, the Trust asset value will decrease each year by \$800,000 to over \$1,000,000 per year for the first five years, and then over \$1,000,000 per year thereafter. Under the "Land Sale Option" scenario, the asset value would decrease \$930,000 in year one, and would turn positive in year four. By year five, the Trust would be generating an increase of \$330,000 in asset value. Both comparisons envision a distribution of \$180,000 to each income beneficiary per year.⁴ My Co-Trustees have agreed to sell a limited amount of property. But, as the analysis in Exhibit 3 demonstrates, all of the proceeds (and more) will be required to make up cash deficits.

11. Therefore, it appears to me that the only responsible option open to me, so long as the Trust is generating a return of less than 50% of a reasonable average return, is that the Co-Trustee/income beneficiaries should be treated as if the retention of the land is their income distribution. Consequently, for the foreseeable future, I believe Whit Boykin and May Boykin, the non-trustee income beneficiaries, should receive \$180,000 per year and Wortley and Belger should receive the psychic return of retaining the land they are refusing to sell.

12. My Co-Trustees have rejected the proposed Option Agreement, and have told the potential buyer under the Option Agreement that if there were an order directing the execution of the Option Agreement, they would appeal all the way to the Supreme Court thereby preventing a

³ Exhibit 3 contains four documents: (1) Accountant's Letter; (2) "Business as in the Past" Illustration; (3) "Land Sale Option" Illustration; and (4) Business as in the Past vs. Land Sale Option – Summary and Comparison.

⁴ In the "Land Sale Option" scenario the distributions would increase slightly as the asset value grows over time.

sale for years. Based on my experience, buyers like this are extremely rare, and the odds of finding another buyer willing to pay \$4,700,000 for this asset is probably less than one percent.

13. Attached hereto as Exhibit 4 is a rough analysis that I gave on March 19, 2018 to my Co-Trustees, which outlines the benefit to the Trust of selling the Boykin Millpond and related buildings. Aside from the fact that it would enable the Trust to avoid the expense of repairing the dam and doing the neglected maintenance on a number of buildings, the sale would generate approximately \$150,000 per year more than retaining the property.⁵ As with other analyses, my Co-Trustees have ignored this one, as well.

14. I have made a number of attempts to reach a settlement with my Co-Trustees. However, the illiquid nature of the Trust assets makes it very difficult to reach a settlement in the absence of the cash that would be generated by the proposed Option Agreement. As an example, attached hereto as Exhibit 5 is one such proposed settlement or resolution offer, which I sent to Wortley's counsel on January 29, 2018. This proposal envisioned splitting the Trust into two trusts: one for Whit Boykin and May Boykin that would, over time, sell all of the land assigned to it and invest the proceeds in the market; and one for Belger and Wortley that would keep most of the land they wanted in Kershaw County. I fully realized that the split would result in the combined trusts retaining approximately 50% of underproductive land, but I was willing to consider such a settlement if it were blessed by all the income and remainder beneficiaries, as well as approved by the Court. In addition, I felt the reality of generating no net income would eventually cause a sale of many of the properties.

FURTHER AFFIANT SAYETH NOT.

⁵ This rough analysis was drafted prior to the prospective purchaser's increased offer of an additional 20% from the original purchase price.


RIGDON H. BOYKIN

SWORN to before me this
20th day of April, 2018

Notary Public for South Carolina
My commission expires: 9/30/23

Exhibit 14
(Belger Dep., pp. 134-135)

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1 A. Egrets.
2 Q. Egrets and the ---
3 A. Ducks.
4 Q. -- wood storks and ---
5 A. Ducks. All wildlife.
6 Q. All the bird and wildlife; right?
7 A. Yes.
8 Q. That's a rookery, is it not?
9 A. I don't know about last year. It was not a rookery
10 last year.
11 Q. But prior to last year when the dam had some problems
12 and the water level dropped, it was a pretty important
13 rookery, was it not?
14 A. Yes.
15 Q. And I believe that rookery was blown in here from the
16 coast during Hugo? Hadn't always been there, had it?
17 A. It had been there before that.
18 Q. Okay. Is there -- do you -- do you attach some
19 significance to providing for the preservation of the
20 wildlife in the Boykin Mill Pond; do you put some
21 significance on the importance of doing 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 benefit

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1 everybody including the remaindermen?
2 A. The remaindermen love the pond.
3 Q. The remaindermen being the children of Mary Deas and
4 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 would
9 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 me.
13 Benefits Mary Deas. And the grandchildren.
14 Q. In the last several years that you've been co-Trustee,
15 can you tell me how many times Mary Deas' children
16 have visited the pond?
17 A. I'm not sure how many times.
18 Q. Less than five?
19 A. Well, it's about a year and a half.
20 Q. Since they've been there?
21 A. Well, about a year and a half, my mother -- since my
22 mother, they have come, but -- they have their own
23 lives; they have children that have to go to school.
24 They have -- they have obligations.
25 Q. Do you know how old ---

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1 A. Well, one -- two of them are in Washington, outside of
2 Washington. One is in Indiana. Mary Deas is in Ohio.
3 Q. The ---
4 A. And my daughter is in Char -- in Clemson.
5 Q. The remaindermen would have the right to sell any of
6 the Trust assets if they wanted to, would they not, if
7 they had them?
8 A. You know, I -- I'm assuming they could.
9 Q. So, if I understand your testimony, as -- back of --
10 before Christmas, you were -- the Trustees were
11 presented with the idea of granting an option on -- on
12 the property described in the Option Agreement; is
13 that correct?
14 A. Yes, but this is an -- absolute -- absolute sale.
15 Q. Sorry?
16 A. This is an absolute sale. You're -- you are not --
17 there's no terms, and I don't believe that my sister
18 would sign over her half of her property.
19 Q. Okay. You -- looking at Plaintiff's Exhibit Number --
20 is that Number Three, I think?
21 A. I think Four.
22 Q. Number Four. Okay.
23 A. No, Three.
24 Q. Looking at Plaintiff's Exhibit Number Three, you're
25 saying that is an absolute sale; is that what you're

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1 saying?
2 A. Yeah. It would be out of the family.
3 Q. All right. Is that an absolute sale or is that an
4 option to purchase it?
5 A. Supposedly, it's a sale. The reason ---
6 Q. Do you know the difference between an option to
7 purchase -- an option to purchase and an absolute
8 sale?
9 A. It's an option to buy -- buy it, but I don't think my
10 sister will sign this at all.
11 Q. Have you discussed it with your sister, Mary Deas?
12 A. Yes.
13 Q. When did you discuss it with her?
14 A. A couple weeks -- a couple days ago.
15 Q. And when you discussed it with her, did you have the
16 Option Agreement with you at that time?
17 A. Yeah, I think I did.
18 Q. Okay. Had you had time to review the terms of the
19 Option Agreement before you discussed it with Mary
20 Deas?
21 A. Yes.
22 Q. To your knowledge, had she been provided a copy of the
23 Option Agreement to consider signing?
24 A. I think she had -- I'm not sure what she has.
25 Q. Back before Christmas, I think you mentioned October,

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1 you all were presented with the idea of Mr. Boykin
2 trying to get an Option Agreement; is that correct?
3 A. We discussed it, but we had not went through all
4 avenues of anything.
5 Q. Did y'all -- did y'all discuss it in a Trustee
6 meeting?
7 A. Yes, we have. He just provide us what terms we want
8 for -- in option. He did not provide us a letter of
9 -- of disclosure between this individual -- individual
10 or anything.
11 Q. Well, the only ---
12 A. He just presented this and said, "This is the Option."
13 Q. Was this -- was this done in a Trustees meeting in
14 Karen Thomas' office?
15 A. I think so.
16 Q. And who all was present when the -- the issue of an
17 option came up?
18 A. Mary Deas was on the telephone speaker. Jamie ---
19 Q. Her attorney, Mr. Becker?
20 A. Mr. Becker was there. Bill Bundy was there.
21 Q. And you were there?
22 A. Yeah, and Rigdon.
23 Q. And Rigdon was there?
24 A. Yeah.
25 Q. Had anybody invited input from May or Whit?

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1 A. No, we were just talking about what we could do. We
2 did not discuss it with anybody.
3 Q. Had -- has May or Whit every been invited to a Trustee
4 meeting?
5 A. (Witness shakes head negatively).
6 Q. That's a yes or no.
7 A. No.
8 Q. Okay. What was your understanding as to what Mr.
9 Boykin was presenting at that first Trustee meeting?
10 A. I actually don't remember all the details.
11 Q. During that first Trustee meeting when this issue came
12 up, did you at that time tell him under no
13 circumstances you would agree to anybody purchasing
14 either one or two or any of the parcels listed in the
15 Option Agreement?
16 A. That's right.
17 Q. You did tell him that at that time?
18 A. Uh-huh (affirmative response).
19 Q. You have to say yes. I'm sorry.
20 A. Yes.
21 Q. This lady is going to get a switch to us if we don't
22 say verbally. So, -- but what I understand you're
23 telling me, when the issue or the opportunity to
24 discuss an Option to Purchase the optioned property,
25 at that time, you decided you weren't going to

Exhibit 15
(1/24/17 Email from Belger to K. Thomas)

From: Karen Thomas <kthomas@sctlawfirm.com>
Subject: Re: Decisions re Telephone Conference on 1/19/2017
Date: January 24, 2017 at 4:19:11 PM EST
To: Alice Belger <aliceb@belgerfarms.com>
Cc: Rigdon Boykin <rhboykin@me.com>, Mary Deas Wortley <marydeas@hotmail.com>, David Siddons <dstaxlaw@bellsouth.net>

I agree Alice that is the better approach.

I will circulate the information Thursday and we will talk a week later.

Thank you
Karen

Sent from my iPhone

On Jan 24, 2017, at 3:32 PM, Alice Belger <aliceb@belgerfarms.com> wrote:

Karen,

I did and do agree to the sale of the two lots to Anne at the price discussed.

I did not and do not agree to the sale of the 91 or 21 acre tracts.

I did and do agree to purchase a quick claim deed - R/R right way.

I did and do agree to the sale to the Garrens, However I believe the price is too low, after looking at past sales in the area, following our call.

You are correct I did not and do not agree to the Tommy Laney Proposal.

As such I will take your recommendation, as the Trustee's Attorney "for the consent to stand for all but the Tommy Laney price per acre".

Again this does not include any consent regarding the 91 or 21 acre tracts, which I never gave.

In order to avoid confusion in the future I propose that all decisions that require unanimous consent cannot and should not be relied upon until all three trustees have signed a written memorandum of understanding.

I will plan to attend all meetings in person at your office so there will be no miscommunication.

When I get the list and the appraisals, I will need time to review them, so I suggest we have our call/meeting next week as planned.

Alice

From: Karen Thomas [<mailto:kthomas@sctlawfirm.com>]
Sent: Tuesday, January 24, 2017 11:08 AM
To: Alice Belger
Cc: 'Rigdon Boykin'; 'Mary Deas Wortley'; 'David Siddons'
Subject: Decisions re Telephone Coference on 1/19/2017

Alice, I am back in my office this morning and went back and checked my notes again from our call. My notes reflect that the three trustees agreed to all but the Tommy Laney issue during that meeting and that you were going to get back with Rigdon that day on Tommy Laney as Mary Deas and Rigdon agreed to it. I imagine Rigdon has gone forward with the others offer to Anne and to Garrens based on his reliance of the Trustee consent during that call.

Are you now withdrawing your consent for the offer to Anne and the Garrens on the terms we discussed on the call? If so I need to know for the future calls/meetings. The Trustees need to decide if consent can be withdrawn in the future and if so for what period of time after a decision has been made. This is necessary in order to avoid

confusion and possible litigation if any of the Trustees act in reliance of a decision made in that meeting. My recommendation is for the Trustee consent to stand for all but the Tommy Laney price per acre.

I am going to go back through all the appraisals that we already have received both on the land and timber, what land is being appraised by different appraisers, the timeline, etc. I will circulate that list and make sure all have the appraisals by Thursday morning. Being that obtaining one much less two appraisals on the properties will take such a long time I am becoming anxious. Each appraisal we have received has been lower than expected and lower than the price you three Trustees have discussed selling the land for.

Giving the importance of these issues would you all prefer to move up our call to late Thursday afternoon or Friday morning this week?

Karen Hudson Thomas
Certified Specialist In Taxation Law
Certified Specialist In Estate Planning and Probate Law
Sojourner Caughman & Thomas, LLC
Physical Address: 1301 Gervais Street, Suite 1920, Columbia, SC 29201
Mailing Address: Post Office Box 12127, Columbia, SC 29211
Main: 803.978.5500
Direct: 803.212.4961
Fax: 803.978.5978
Email: kthomas@sctlawfirm.com

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From: Alice Belger [<mailto:aliceb@belgerfarms.com>]
Sent: Monday, January 23, 2017 5:31 PM
To: Karen Thomas
Cc: 'Rigdon Boykin'; 'Mary Deas Wortley'; 'David Siddons'
Subject: Telephone Coference on 1/19/2017

Karen,

Until I have more information on appraisals and comps here is what I will agree to.

Thanks,
Alice

Tommy Laney

He offered to buy these tracts: Charlie Grant, Black River Road & Southern Part of Sumter Mtn. – these tracts have good timber value and recreation value are equal to other tracts in the area. Tommy

made an offer below our asking price (\$4,000.00P/AC which we set price in an earlier meeting).

Rigdon is counter offering to Tommy \$3,500.00P/AC which is cheaper while other tracts in same area and/or adjacent are higher - \$4,000.00 - \$4,500.00P/AC.

I will agree to sell these tracts at \$4,000.00 P/AC. I would like a 10 year timber revenue projection on all timber tracts before they are sold.

Anne DuPont

She interested to buying a part of the Millway Tract – west of 261 Highway – adjacent to Red Bank Farm

Rigdon set price for A Lot (AC :___): \$40,000.00; B Lot (AC :___): \$60,000.00.

At this time I'm not interested in selling anything other than the non-contiguous parcel that is separated by Red Bank Rd.

I agree to sell the \$326,764.00 of timber estimated by Jimmy on this parcel west of Hwy.261 to pay taxes with

Garren Family

Garren are interest to buying Woodgate

Rigdon wants to sell 9.8 AC for \$20,000.00P/AC

Interest to buying Peckwoods (39.88AC)

Rigdon wants to sell 39.88AC for \$15,000.00P/AC

Rigdon wants to sell less 10 acres \$18,000.00P/AC.

I will agree to sell these tracts at \$25,000.00P/AC

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To: kthomas@sctlawfirm.com

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From: aliceb@belgerfarms.com

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Begin forwarded message:

From: Karen Thomas <kthomas@sctlawfirm.com>

Subject: Meeting Summary

Date: February 16, 2017 at 3:17:25 PM EST

To: Alice Belger <aliceb@belgerfarms.com>, 'Mary Deas Wortley' <marydeas@hotmail.com>, Rigdon Boykin <rhboykin@icloud.com>, David Siddons <dstaxlaw@bellsouth.net>

Attached is the meeting summary

Karen Hudson Thomas

Certified Specialist In Taxation Law

Certified Specialist In Estate Planning and Probate Law

Sojourner Caughman & Thomas, LLC

Physical Address: 1301 Gervais Street, Suite 1920, Columbia, SC 29201

Mailing Address: Post Office Box 12127, Columbia, SC 29211

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Exhibit 16
(1/27/18 Email from Wortley to Peacock)

1
2
3

From: Jane M. Peacock
To: Mary Wortley
Subject: RE: heritage LWB MTB Dec
Date: Saturday, January 27, 2018 2:14:26 PM

I'll look forward to your sharing whatever is appropriate when we get a chance to speak, Mary Deas. I have heard some from both Alice and Rigdon. The overriding statement from both was how fortunate all are to have Justice Toal in the process. Both stated, as you, that there is a ton of work to do. Alice didn't mention anything about compromise, so I'm glad to hear that she is willing and understands that anything less is not an option.

Have a great weekend!
 Jane

*Jane M. Peacock, CPA
 Sheheen, Hancock & Godwin, LLP
 1011 Fair St., P.O. Box 428
 Camden, SC 29021-0428
 803-432-1424 Ext. 18
 803-432-1831 (Fax)
jpeacock@shgcpa.com*

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From: Mary Wortley [mailto:marydeas@hotmail.com]
Sent: Saturday, January 27, 2018 2:07 PM
To: Jane M. Peacock <JPeacock@shgcpa.com>
Subject: Re: heritage LWB MTB Dec

Hi Jane---thank you for your thoughts and support. I think the hearing was basically a good thing because it let us all know in no uncertain terms that we have to work out a compromise. I didn't realize the extent of the compromise required, and Little Alice did not believe in any compromise at all. Period. Now she does, and she is willing, and we are busy working on it. (just fyi) I'll fill you in when I see you, but I'm sure you will soon know as much or more than I do, because as always we all will need your wisdom and advice re the financial details.

From: Jane M. Peacock <JPeacock@shgcpa.com>
Sent: Wednesday, January 24, 2018 11:36:45 AM
To: Mary Wortley
Subject: RE: heritage LWB MTB Dec

I am thinking of you all, especially today, and have already said a prayer on your behalf. I spent a little time with Alice yesterday and she is having a real hard time being as tough as she

likes to be. She told me she plans to be at the hearing today.

From: mary wortley [<mailto:marydeas@hotmail.com>]
Sent: Wednesday, January 24, 2018 9:10 AM
To: Jane M. Peacock <JPeacock@shgcpa.com>
Subject: Re: heritage LWB MTB Dec

I don't need copies at this time---thanks

Wish us luck today----

Take care----MD

From: Jane M. Peacock <JPeacock@shgcpa.com>
Sent: Tuesday, January 23, 2018 3:40:57 PM
To: mary wortley
Subject: RE: heritage LWB MTB Dec

Thank you for the bank statement.

Both Alicc and Rigdon have requested copies of Karen's firm's invoices, which we have sent to them. If you would like a copy of all or any of them, please let me know. Alice also requested a cc of the LWBII estate tax return. As with the other, if you also want a pdf of the core pages of it, let me know.

Thanks,
Jane

Jane M. Peacock, CPA
Sheheen, Hancock & Godwin, LLP
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From: mary wortley [<mailto:marydeas@hotmail.com>]
Sent: Tuesday, January 23, 2018 3:56 PM
To: Jane M. Peacock <JPeacock@shgcpa.com>
Subject: heritage LWB MTB Dec

Exhibit 17
(2/24/18 Email from Wortley to Peacock)

From: [mary wortley](#)
 To: [Jane M. Peacock](#)
 Subject: Re: Follow-up
 Date: Friday, February 24, 2017 1:48:28 PM

Did it---sorry I thought I'd done that when I was trying to get them to fill the tank just before the last cold spell. Anyway, they assure me Ginny's off of the account now. But in order to do it, they had to create a new account (go figure). So, we have a new account#, which, in case you need it is: 0921206371.

Tommy is better, thank you for asking---still feeling weary, but inching back toward normal.

I don't know how we are ever going to get any decisions made re our trust. (Just between you and me), Little Alice is the immovable object, and Rigdon is the irresistible force. To keep on quoting the same song, --- something's gotta give,--- but at this point, I don't see much sign of that. I love being in SC, I feel like Brer rabbit in the briar patch when I'm at home in Boykin, but right now, I have to admit, I'm glad I'm stuck 600 miles away in OHIO!

From: Jane M. Peacock <JPeacock@shgcpa.com>
 Sent: Thursday, February 23, 2017 1:23:58 PM
 To: mary wortley
 Subject: Follow-up

Hey, Mary Deas.

I had a note on my calendar to follow-up with you regarding getting Ginny's name off of the Duke Energy account for 81 Boykin Mill Rd. This has probably been done, but wanted to touch base as I promised. In case you need it, here is the account info: DukePwr
 Meter#Y19266 Acct 2167642822

The most recent bill that came was addressed as follows:
 Virginia L Barnette
 Mary Wortley c/o J Peacock
 PO Box 428
 Camden, SC 29021

As you know from my previous note, a bill has now come for that property from Palmetto Propane for the trust to pay. Thank you for getting that all squared away. We have sent that payment.

As to other bills that I asked the trustees' permission to pay, Alice says she has to discuss them with Rigdon before she will approve payment. I know she had questions particularly about payment to Casey Bolton. I asked for affirmative permission from you all because I had a feeling Alice would have questions. (The Charleston company's appraisal fees looked awfully high to me, however I don't know in how much detail the appraisals were done. I can't imagine Rigdon being OK with paying it if the fees were out of line.)

Hope Tom's progress is steady. Wishing you both the very best!

Thanks,

Jane

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Exhibit 18
(Wortley Dep. pp. 133-134)

Page 128
1 Agreement. Rigdon did that. Well, it came from
2 Rigdon. I assume he created it.
3 Q. Did you -- were you involved in all of the
4 negotiations about renovations that were included in
5 the original Option Agreement?
6 A. No.
7 Q. Ms. Wortley, if you would, do you have a copy of your
8 Answer and Counterclaim before you? I think Mr.
9 Tetterton would have sent you that, but I want to
10 confirm it.
11 A. Let me look. Okay. Here it is.
12 Q. I've got just a few questions about -- about that
13 document if you'll bear with me.
14 MR. TETTERTON: Are you going to
15 make it an Exhibit?
16 MR. DUFFY: Yes, I suppose we can.
17 I do not have copies, but --
18 Q. I'm trying to find something in here. I apologize.
19 A. All right.
20 Q. Do -- do -- there are allegations in this
21 Counterclaim, Ms. Wortley, that my client has exerted
22 undue influence over your brother, Whit. Are you
23 familiar with those allegations?
24 A. Yes.
25 Q. Can you explain to me what the basis for that is?

Page 129
1 A. Well, the basis for that is that I believe that they
2 will only say what he tells them to say and they don't
3 speak to us any more, and Rigdon told me over the
4 telephone, quote, "Whit and May think you are lower
5 than dirt." End of quote. And they have never told me
6 that. And I have written letters and made phone calls
7 they don't answer. Rigdon also told me I'm not
8 allowed to set foot on his property; even if he should
9 die, I can't even come to his funeral. I -- I just
10 think he is very angry, and he has influenced them to
11 be angry, too. And maybe that's just my opinion, but
12 they have never acted this way before. We have always
13 been affectionate with each other and communications
14 are very cut off now.
15 Q. So, the basis --
16 A. And that's since our mother died.
17 Q. And what is the basis for your allegation that Mr.
18 Boykin has exerted undue influence over May?
19 A. Same thing I just told you. And also, May always
20 stays with him. When her mother was old and sick, she
21 stayed with Rigdon. She would be there two or three
22 days before she'd even come by and see her. And I --
23 I just think that he has not fostered a close
24 relationship between May and her mother. I don't
25 know. I know there was anger between Rigdon and my

Page 130
1 mother, and I just think it's spilled onto May and
2 Whit. Maybe they're angry anyway. I'm not a
3 psychiatrist. It's been very distressing, all this
4 anger.
5 Q. I understand. I'm just trying to figure out what
6 evidence you intend to present that he's exerted undue
7 influence over them. Is it -- are you saying that
8 allowing --
9 A. I would say it's their lack of communication and
10 attitude.
11 Q. Do you have any evidence that the lack of
12 communication from them hasn't been their own
13 decision?
14 A. No, I don't. I don't have any evidence.
15 Q. Do you have any evidence that their lack of
16 communication or rather that their attitude has not
17 been of their own volition?
18 A. No, I have no evidence. I just -- it just seems
19 logical -- a logical conclusion to the circumstances.
20 Q. That's just your speculation?
21 A. Yes. It's my speculation.
22 Q. Do you know what the projected net income for the
23 Trust is in 2018?
24 A. Well, I know we have about Four Million in properties
25 listed, and we have about 1.3 Million in timber to

Page 128
1 cut.
2 Q. Do you know what percent ---
3 A. And we have the regular rents and so forth, you know,
4 the regular rents which are about Two Hundred and
5 Eighty Thousand (\$280,000.00) this year.
6 Q. Do you know what portion of that 1.3 Million in timber
7 that is projected to be cut will be allocated to net
8 income versus principal?
9 A. I tell you, that's up to the experts. That is up to
10 Jane and Karen.
11 Q. Is it fair to say that it will ---
12 A. All right.
13 Q. -- it will not -- 1.3 Million of those proceeds will
14 not be net income; is that fair to say?
15 A. I would say it's a tax issue how they are reported,
16 and it's a requirement of the IRS and their formula
17 for growth rate during the accounting period and how
18 ever little it might be that turns out to be that, we
19 are totally capable of using the part that is supposed
20 to be principal as part of our distributions.
21 Q. Do you have any concerns as a Co-Trustee that invading
22 principal will detract from the necessary growth of
23 the Trust?
24 A. Well, I'm certain it will detract some, but in -- in
25 the nature of our business, because so much of our

Page 129
1 what you would think of as net is actually going to be
2 counted as principal, I think it's an accounting
3 thing. It's an accounting and a tax issue, and even
4 if we invade principal, we still have plenty of
5 principal left and to grow the Trust.
6 Q. Do you have an opinion as to whether the Co-Trustees
7 are entitled to Trustee fees?
8 A. Well, I -- I understand under the law they are.
9 However, my sister and I are not asking for one.
10 Q. So, you -- you will be willing to agree that you will
11 not receive a Trustee fee for the management of this
12 Trust?
13 A. I -- I have never asked for a Trustee fee. However,
14 I understand that legally Rigdon is entitled to one.
15 Q. I just wanted to make sure I'm clear on -- on your
16 testimony. Are you saying you would not -- you agree
17 to not take a Trustee fee for this year or going
18 forward?
19 A. I never even considered asking for a Trustee fee.
20 Q. Okay. What do you think is a fair Trustee fee for my
21 client?
22 A. I have no idea.
23 Q. Do you know whether your sister is planning to take a
24 Trustee fee?
25 A. No, I don't.

Page 130
1 Q. Do you have any opinion about the reasonable
2 distribution to the income beneficiaries as a
3 percentage of the overall Trust value?
4 A. Well, let me think a minute. I know that Rigdon says
5 the rule of thumb is Three Percent (3%), but it's not
6 a law in South Carolina. And I don't know. I think
7 maybe we could approach Three Percent (3%). I think
8 we could finagle that. And I think that they are
9 probably entitled to more money than the net income
10 because, as you have been pointing out, the net income
11 is not necessarily the proceeds from the sale of our
12 timber. All of that has to be from the IRS point of
13 view attributed to principal. So, we are willing to
14 give them out of the net income more than what would
15 ever be net income. Around Three Percent (3%) or Two
16 and a Half Percent (2 1/2%), whatever, yes, I would be
17 -- I think they're entitled to that. I'm not sure
18 exactly how much, but certainly not a Hundred and
19 Eighty Thousand Dollars (\$180,000.00) a year.
20 Q. Well, do you -- would you like to pay them more than
21 Three Percent (3%)?
22 A. No.
23 Q. So, you think Three Percent (3%) is all they should
24 get?
25 A. I think it's the maximum.

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1 Q. And that is based on what?

2 A. Based on the fact that we have to be fair to

3 everybody. We have to be fair to the remaindermen and

4 to Whit and May. Alice and I don't care if it's fair

5 to us. We do care; it bothers us a lot, but we're

6 willing to make the sacrifice to follow the Will, to

7 follow my daddy's wishes, my father's wishes. So,

8 where was I? We're willing to give them more than the

9 net income because we understand the net income is a

10 slippery thing the way you figure it. I -- we're

11 still under negotiations as to how much.

12 Q. Earlier we were talking about the -- the Option

13 Agreement and you voiced a concern about -- I think it

14 was item Number Twelve on Page Five that talked about

15 successors and assigns.

16 A. Yeah. Wait a minute, let me get that.

17 MR. DUFFY: Had you made that -- sure.

18 We can mark that as an Exhibit. It will

19 be Number Two; right?

20 COURT REPORTER: Plaintiff's One.

21 MR. DUFFY: All right.

22 COPY OF OPTION AGREEMENT MARKED

23 PLAINTIFF'S EXHIBIT NUMBER ONE.

24 A. I can't find where I put it now amongst all these

25 papers. But go ahead. I don't know where I put it.

Page 135

1 Just a minute.

2 Q. Well, my -- I guess my question is -- I'll wait ---

3 A. I found it.

4 Q. I'll wait until you have it. Okay.

5 A. I found it. Okay.

6 Q. Yeah. On Page -- on Page Five, you were talking about

7 Item Number Twelve.

8 A. Okay.

9 Q. And just for the record, this is Exhibit -- this is an

10 Option to Purchase Real Property which has been marked

11 as Plaintiff's Exhibit Number One, and we're on Page

12 Five. Do you see the portion that says "successors

13 and assigns"?

14 A. Yes.

15 Q. Earlier, you I think voiced a concern that, you know,

16 basically, the purchase of this property could be

17 assigned to someone else and that was an issue for

18 you; is that correct?

19 A. That's correct.

20 Q. Is it your understanding, however, from this document

21 that any assignee, someone who -- to whom the document

22 is assigned, would still have to comply with the terms

23 of this document?

24 A. I would assume so, but I'm not sure.

25 Q. And that ---

Page 136

1 A. I would have to check with my legal -- with my lawyer

2 about that. I don't know, but I would assume it's

3 logical.

4 Q. Sure. And one of the requirements under this

5 Agreement is that the purchaser will donate the

6 property to a conservation group. Are you aware of

7 that?

8 A. Yes.

9 Q. Okay. So, therefore, anyone to whom the Contract is

10 assigned would also have to comply with that

11 obligation?

12 A. Right. But there's no time frame.

13 Q. Well, I believe it says "As soon as reasonably

14 possible after purchase," but I understand there's no

15 -- there's no exact date; is that your point?

16 A. Yes, if owned by somebody else, yeah. We don't know

17 who the purchaser is even.

18 Q. A moment ago, you were talking about ongoing

19 deliberations as to the -- the percentage of

20 distributions that would be paid to the income

21 beneficiaries?

22 A. Right. We -- we've tried to -- I think we might need

23 mediation. We've tried so -- you know, offers back

24 and forth, and I think mediation might be something

25 that would help. And it would also -- maybe we would

Page 137

1 get to talk face to face to Whit and May that way.

2 Q. Okay. And my question, you alluded to it, but you --

3 you were saying that we are in deliberations or we are

4 in discussions. Who is the "we" you are referring to?

5 A. Well, Mr. Tetterton on behalf of Whit and May and Mr.

6 Bundy on behalf of Alice and Mr. Becker on behalf of

7 me have been making offers or suggestions back and

8 forth.

9 Q. What -- what difference does it make to you who

10 purchases the Mill Pond?

11 A. Well, it makes a big difference because I think that

12 they're going to own the Mill Pond for quite a time.

13 We don't know how long. They're supposed to do, you

14 know, remediation on the dam. I would just like to

15 have an evaluation of their character and their

16 purposes and their intent, and are we dealing with an

17 honorable person. I don't think we should be required

18 to sell our treasured tract to some unknown entity who

19 could be a Mafia boss, not that it is, but really. I

20 mean, how -- who in the world is this and what a --

21 you know, I understand they want to put a conservation

22 easement on it. But what I don't understand is why it

23 has to be such a mystery who they are. Why can't we

24 talk to them and -- and -- and assure ourselves that

25 their motives are good.

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1 Q. And Ms. Wortley, we talked earlier about I think Ducks

2 Unlimited and there's obviously a list of land

3 management organizations in the Option Agreement?

4 A. Right.

5 Q. You understand I'm sure the difference between a fee

6 simple purchase and donating land to a conservation

7 easement?

8 A. What's a fee simple purchase? That's a legal term for

9 me. Fee simple means you buy something for money and

10 it's yours?

11 Q. Correct. I mean, and in layman's terms, yes. A

12 purchase of land.

13 A. Right. I understand that this Option is to sell the

14 land and then the buyer puts a conservation easement

15 on it. Yes, I understand that. But in the terms, it

16 gave a list of possible entities, and I would be more

17 willing -- but I'm not now under all these conditions

18 -- but I think we should be allowed to say what

19 conservation entity would be chosen.

20 Q. Rather than a list of potential options; is that what

21 you're saying?

22 A. Right. I have researched this and I know some

23 difficulties with some of them, and if I'm going to

24 live with half of my property owned by some other

25 person, I don't know whether this person is going to

Page 139

1 still own the land after they put the conservation

2 easement.

3 Q. I'm sorry. Go ahead.

4 A. This unidentified purchaser will own the land still

5 and put the conservation easement on it or will this

6 unidentified person gift the land to the conservation

7 entity. Can you answer me that?

8 Q. Well, I'll -- I'll -- I'll represent to you that it's

9 -- it's -- if you read the Option Agreement, I believe

10 it expresses an intent to donate the property rather

11 than put it in an easement.

12 A. Okay.

13 Q. But ---

14 A. If -- if somebody, some entity or some person that's

15 going to own this land, I would only want it to be --

16 I wouldn't -- if they were, I would want it to be

17 Ducks Unlimited.

18 Q. And I'm not -- I really don't know the answer, I'm

19 just asking. Do you know whether Ducks Unlimited is

20 in the practice or the habit of purchasing pieces of

21 land fee simple as opposed ---

22 A. I do not know. I don't know.

23 Q. As opposed to conservation ---

24 A. No. No, I don't know that but -- I don't know, but I

25 assume they would.

Exhibit 19
(11-9-17 Email from Wortley to Peacock)

11/9/17

From: Jane M. Peacock
 To: Mary Wortley
 Subject: RE: heritage statement LWB marital trustB- Oct
 Date: Thursday, November 09, 2017 6:25:32 PM

Mary Deas,

You did give me (and e-mailed me) USDA paperwork for the payments that came back in July/August, totaling the same amount....a delayed payment of the prior year, perhaps. In fact, I was supposed to return those papers to you and ended up with them in my possession. It's possible the USDA paperwork will follow the payment, which hit the checking account on 10/10.

So glad some progress was made today! Rigdon has spoken with me some about the Millpond property opportunity (with no names attached to the conversation). I have tried to throw in as many hints to Alice as I dare about the good aspects of that opportunity and how important it is to look at long-term goals and how it may accomplish them...could not speak directly on point because it is not really my place. Unfortunately opportunities like that could go away overnight. I know someone must have come away from the meeting very frustrated from that result today.

I'll be praying for you and Tommy, and especially as the 28th nears and passes. Do hope the possibilities become reality and Tommy can get some strength back.

Take care,
 Jane

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From: Mary Wortley [mailto:marydeas@hotmail.com]
 Sent: Thursday, November 09, 2017 5:08 PM
 To: Jane M. Peacock <JPeacock@shgcpa.com>
 Subject: Re: heritage statement LWB marital trustB- Oct

I think I did get a letter, and I thought I'd emailed it to you. But can't be sure. I'll look for it. Hope I can find it--if not I call & ask them.

by the way---we had a productive trust meeting today. We agreed to sell several properties. There is a big issue concerning the Millpond and downtown Boykin brought up by Rigdon which L Alice doesn't want to consider but I do--- I hope we can eventually get her to consider it. I'll tell you about it when I see you.

Tommy is going to get a special device --a 3 lead type pacemaker to synchronize his heart beats (which aren't in synch now due to something he has called a "left bundle branch block"--a condition which doesn't affect you when you're young and strong, but does when you are old and your heart is weakened)

ANYWAY--- the Doc believes it will strengthen his heart by 15 or 20 percent, significantly improving his strength and how he feels. The surgery (minor) is scheduled for the 28th. We are very hopeful about it.

AND I hope he will be up to a trip to SC in time for the Christmas Parade.

Take care---MD

From: Jane M. Peacock <jpeacock@shgcpa.com>

Sent: Thursday, November 9, 2017 1:04:54 PM

To: mary wortley

Subject: RE: heritage statement LWB marital trustB- Oct

Question for you...on the bank statement you sent me, there is a direct deposit from FSA for \$7,448. Are those dollars for CRP payments? October is the time when those normally come in, I believe.

If you rec'd some type of letter related to that, I would appreciate having a copy when you get a chance.

Thank you,
Jane

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From: mary wortley [marywortley@hotmail.com]

Sent: Thursday, November 09, 2017 12:20 PM

Exhibit 20
(Wortley Dep., pp. 15-16)

Page 14

1 Q. Okay. Where does Teddy live, your son, Teddy?
2 A. Fort Wayne, Indiana.
3 Q. And what does he do?
4 A. He's a doctor. Urologist.
5 Q. Where does Boykin live?
6 A. Boykin lives in McLean, Virginia.
7 Q. And what does he do?
8 A. He is an entrepreneur and a real estate -- he owns
9 several buildings and he sells real estate.
10 Q. And your daughter, where does she live and what does
11 she do?
12 A. She lives in Alexandria, Virginia. She used to work
13 in fund raising for Georgetown University, but now she
14 has retired from that job and she's a full-time
15 mother. She also used to work for Strom Thurmond.
16 For quite a few years.
17 Q. Yeah, it has been quite a few years.
18 A. And -- yeah.
19 Q. Have you discussed the -- this litigation with your
20 three children?
21 A. Yes, I have.
22 Q. Okay. And have you provided them the documents that
23 you have been given by your attorney, all of the
24 litigation documents?
25 A. There are so many, I'm not sure. I've provided them

Page 15

1 with the basic ones, but I -- I'm certain they don't
2 have all of them.
3 Q. I'm going to ask you a little bit about your
4 educational background. If you would, when and where
5 did you finish high school?
6 A. I finished -- I was in a boarding school called
7 Garrison Forest School in Baltimore, Maryland.
8 Q. I know where it is. My daughter went there.
9 A. There you go.
10 Q. And you graduated from Garrison Forest?
11 A. Yes, I did.
12 Q. And what did you do after you graduated?
13 A. I went to Sweetbriar College.
14 Q. And did you complete a Degree?
15 A. Yes, I did.
16 Q. In what?
17 A. Well, I majored in Psychology, but I had enough for a
18 minor in History of Art.
19 Q. Okay. After you graduated from college, what did you
20 do? Did you pursue any further educational pursuits?
21 A. Later, I worked toward my Master's but not right away.
22 Right away, I started working as a school teacher for
23 Georgetown Day School in Washington D.C.
24 Q. How long were you a school teacher?
25 A. Oh, my gosh. I can't remember. Until -- I would say

Page 16

1 about five years, but I'm just -- I'd have to go back.
2 I'm not, you know -- I can't remember exactly when I
3 quit. It was when I married Teddy and moved away from
4 D.C.
5 Q. Okay.
6 A. I just don't ---
7 Q. After you worked as a school teacher, did you work
8 anywhere else?
9 A. Yes.
10 Q. Where?
11 A. I worked for Butler County Children Services as a
12 Social Worker for abused and neglected children.
13 Q. How long?
14 A. Beg your pardon?
15 Q. How long did you do that?
16 A. Fifteen (15) years.
17 Q. And after you worked for fifteen (15) years as a
18 Social Worker, what did you do after that?
19 A. I retired.
20 Q. And raised children?
21 A. Well, my children were already raised, but I took a
22 hand with my grandchildren.
23 Q. Okay. Have you ever been involved in any litigation
24 prior to this litigation?
25 A. No.

Page 17

1 Q. Now, I'm going to ask you some personal questions. Do
2 you own any stocks?
3 A. Yes.
4 Q. Are they just in your name?
5 A. Well, I had them invested with Ansel Bunch at
6 Ameriprise Financial; so, they're not in my name.
7 Q. Is he your -- is he your financial advisor?
8 A. Yes, he is.
9 Q. How long has he been your financial advisor?
10 A. I can't remember. Before my financial advisor, he
11 advised my mother and I on the Marital Trustee, and I
12 can't remember what year we started investing with
13 him.
14 Q. And I don't know Ansel -- Bunch is it?
15 A. Yeah. Bunch.
16 Q. Where -- where is he located?
17 A. Columbia.
18 Q. Can you tell me the size of your stock portfolio or
19 your investment portfolio?
20 A. It's not very big. It's about Ninety Thousand
21 (\$90,000.00).
22 Q. Can you tell me about how long you've had that
23 portfolio, that investment with Ansel Bunch?
24 A. Well, I'll just have to say approximately because I
25 can't remember what year we started, but I would say

Page 18

1 maybe approximately ten years.
2 Q. Prior to that -- prior to that, did you have any
3 investments other than in land?
4 A. Well, once when I was a school teacher, I talked to
5 someone who worked for Northwest Orient Airlines who
6 talked it up big and I put some of my hard earned
7 school teacher salary into that, and I don't know if
8 you're familiar with what happened to them but it was
9 a big mistake.
10 Q. Do you have any other investments other than your
11 portfolio with Mr. Bunch?
12 A. No.
13 Q. And did I understand you to say you have only had that
14 for ---
15 A. I have to re -- I have an IRA that's invested with an
16 investor here. A small IRA.
17 Q. And who is your investor there?
18 A. Tim Brown. He works with Smith Barney.
19 Q. And the size of that investment?
20 A. I don't think it's -- I don't -- I don't -- it's
21 probably up to Ten Thousand (\$10,000.00) now. I can't
22 remember. Maybe Twenty (\$20,000.00).
23 Q. And so, is that ---
24 A. Beg your pardon?
25 Q. I'm thinking; all right, just one second. Now, let's

Page 19

1 talk about your land holdings. Do you own any land?
2 A. I own one-half an interest in three point oh six
3 (3.06) acres of Aunt May's cottage next to Millway.
4 Q. That is in Kershaw County?
5 A. And I ---
6 Q. That is in Kershaw County?
7 A. Yes.
8 Q. Do you have -- do you own any other land?
9 A. Well, I assume as married to Tommy I own half of this
10 house and three acres we live on. I don't think it's
11 in my name. It's not in my name; so, I don't know
12 legally if you would say I own it.
13 Q. Okay. Do you -- do you own any real estate that is
14 titled just to you?
15 A. No. Other than Aunt May's house.
16 Q. Okay. That's a half interest in Aunt May's house; is
17 that correct?
18 A. Well, wait. I own 1/13th interest in a beach house on
19 Jared McKee. 1/13th.
20 Q. How long have you owned it?
21 A. Probably since the year 2000.
22 Q. Is that at Edisto?
23 A. Yeah. That's -- Jared McKee is off of Edisto.
24 Q. Yes, ma'am. How often do you go down there?
25 A. Well, about once a year, we have a family vacation and

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

IN THE MATTER OF:
LEMUEL WHITAKER BOYKIN, II, deceased

Case No. 2017-CP-28-00831

Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B;


v. Petitioner,

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;

Respondent.

**RESPONDENTS MARY DEAS WORTLEY AND ALICE BOYKIN BELGER'S
MOTION TO VACATE CONFIDENTIALITY ORDER**

Respondents Mary Deas Wortley ("Wortley") and Alice Boykin Belger ("Belger") (collectively, "Respondents"), by and through their undersigned counsel, hereby submit their Motion to Vacate the Confidentiality Protective Orders, dated March 16, 2018, and March 19, 2018 (the "Confidentiality Orders").

BACKGROUND

The Confidentiality Orders at issue arise from the previously withdrawn Boykin Millpond Option Agreement that was the subject of Petitioner's Motion to Authorize the Sale of Trust Property (filed January 16, 2018). There were four versions of the Option Agreement that were submitted to the Trustees during the period from November 2017 to March 2018.¹ All of these Option Agreements were negotiated solely by Petitioner and the prospective purchaser without the involvement of his Co-Trustees or any of their counsel. All of the various versions of the Option Agreements referred to the prospective purchaser only as the "Donor." None of the Option Agreements disclosed the true identity of the "Donor," and referred to either an unnamed corporation or a completely obvious corporate surrogate for the true party in interest, as follows:

- _____, a Delaware limited liability company
- Boykin Millpond Conservation LLC, a Delaware limited liability company, By: Rubin Conservation LLC, a Delaware limited liability company, its sole member.²

Despite Respondents' repeated requests for more information on the Donor, Petitioner continuously withheld the Donor's true identity from Respondents. Unbeknownst to Respondents, counsel for co-respondents Lemuel Whitaker Boykin, III, and May Cantey Boykin (the "Boykin Respondents") was engaged in several email communications between Petitioner and the Donor's counsel. (See email from R. Boykin to W. Tetterton, attached as **Exhibit A**.)

Shortly after Respondents noticed Petitioner's deposition, Petitioner filed his Motion for Protective Order on March 13, 2018, a mere six days before his scheduled deposition, based on expectations that Respondents' counsel would ask him to identify the Donor. (See email from L. Duffy to J. Rutkoski, **Exhibit B** at pp. 5-6.) In the Motion for Protective Order, Petitioner argued

¹ The two unsigned versions of the Option Agreement were dated: "this ____ day of November 2017," and this ____ day of _____, 2018; and the two signed versions were dated January 26, 2018 and March 12, 2018,

² The Authorized Person signing the option agreement on behalf of Rubin Conservation LLC, is Paul Baccari, who Respondents now know is a member of the law firm representing Haile Gold Mine, Inc.

that such a motion was necessary because “[t]he Donor has expressed . . . that it would be extremely detrimental to the Donor’s interest if its identity were disclosed.” (Motion for Protective Order and Expedited Hearing, filed 3/13/2018-17:20 at 3.) Petitioner further argued that “[t]he only way to ensure that a sale remains viable is to protect the identity of the Donor.” (*Id.* at 2.)

After Respondents’ counsel suggested a confidentiality protective order as a means of resolving the impasse, the Court approved Respondents’ requests that the parties enter into the Confidentiality Orders, which would allow Respondents’ counsel to question Petitioner in his deposition as to the Donor’s true identity. (See email from J. Rutkoski to all counsel, **Exhibit B** at p. 3.) The first order, dated March 16, 2018, specifically designated as confidential the facts and circumstances regarding the potential sale of the Boykin Millpond and Downtown Boykin properties to Boykin Millpond Conservation, LLC, as confidential. (See Confidentiality Protective Order, filed 3/16/2018-16:29.) The second order, dated March 19, 2018, set forth the general procedures for designating certain matters in the case as confidential. (See Confidentiality Protective Order, filed 3/19/2018-8:52.) The Confidentiality Orders ultimately allowed Respondents to question Petitioner about the potential purchaser, with the corresponding portion of the transcript to be marked “confidential,” and Petitioner identified the potential purchaser as Haile Gold Mine, Inc. in his deposition. (R. Boykin Dep. 95:3-7.) Petitioner further explained why he believed it was necessary to keep Haile Gold Mine’s identity a secret, noting that

. . . one is, if people know that they are actively going out and looking at properties, the rest of the value of the properties adjacent to that people start thinking that it’s – that they can hold them up, that it’s made out of gold, in essence. And – but – and the other problem is, you have politicians getting involved trying to get that put in their county, in their area, and then on top of that, you even have the conservation organizations getting involved and saying, you know, -- this ought to be for my organization, not this organization or that organization and there’s a huge free-for-all that goes on on this.

(*Id.* at 97:20-98:7.)

Shortly after Petitioner's deposition, Haile Gold Mine withdrew its offer to purchase the Boykin Millpond. (See Letter from G. Braker to W. Bundy, attached as **Exhibit C**.) Accordingly, the parties began discussing whether to vacate the Confidentiality Orders, and Petitioner relayed that Haile Gold Mine no longer saw a need for confidentiality since it withdrew its offer to purchase the Boykin Millpond. (See Emails from L. Duffy, attached as **Exhibits D** and **E**.) The parties ultimately conferred and on May 8, 2018, submitted a Proposed Consent Order Vacating the March 16, 2018 and March 19, 2018 Confidentiality Protective Orders (the "Proposed Order"). (See email from L. Duffy to J. Toal, attached as **Exhibit F**.) The Proposed Order remains pending before the Court.

Despite the Court's instructions at the status conference with counsel on April 23, 2018 that the parties "should not spend another minute on the Option Agreement," the Haile Gold Mine, working with Petitioner, submitted a "Final" Option Agreement dated June 8, 2018, which expires on June 30, 2018. In response, Respondents subpoenaed documents and noticed the deposition of David Thomas, the senior executive of Haile Gold Mine, Inc. for June 23, 2018. (A copy of Mr. Thomas' deposition transcript is attached as **Exhibit G**.³) In his deposition, Mr. Thomas revealed that, contrary to Petitioner's assertions, there was no need for this degree of secrecy regarding Haile Gold Mine's interest in purchasing the Boykin Millpond. (D. Thomas Dep. at 24:25-25:3.) While Mr. Thomas testified that "there was a level of confidentiality that [Haile Gold Mine] wanted mainly from the standpoint of not publicizing it beyond all the parties," he also testified that he had no interest in concealing Haile Gold Mine's identity from Respondents as of October 2017. (*Id.* at 25:17-20; 26:11-14.) Mr. Thomas also stated that "[w]e never have in the history of the company concealed or used a surrogate to do a transaction," and that Petitioner is the one who requested that

³ Because the final version of Mr. Thomas' deposition transcript is not yet available to the parties, Respondents have attached a rough draft version of the transcript.

Haile Gold Mine set up a separate LLC to conceal the purchaser's identity from his Co-Trustees. (*Id.* at 36:20-22; 40:24-41:7.) Moreover, Mr. Thomas testified that he was not aware that Haile Gold Mine's identity as the prospective purchaser was being withheld from Respondents, and agreed that it would be meaningful for a prospective seller of property to know the identity of the prospective purchaser. (*Id.* at 42:8-21.)

ARGUMENT

As Mr. Thomas' deposition makes clear, any need to withhold Haile Gold Mine's identity as the prospective purchaser was entirely orchestrated by Petitioner as a means of keeping Respondents in the dark as to Haile Gold Mine's involvement in the Option Agreement. Indeed, despite Petitioner's representations to this Court that "it would be extremely detrimental to the Donor's interest if its identity were disclosed," Mr. Thomas clearly stated that Haile Gold Mine's only concerns were with respect to individuals and entities that were not parties to the Option Agreement—not Respondents. (*Id.* at 25:17-20; 26:11-14.). Moreover, Petitioner himself forwarded communications between himself and representatives of Haile Gold Mine to counsel for the Boykin Respondents, who are not parties to the Option Agreement. (See email from R. Boykin to W. Tetterton, **Exhibit A**.) Thus, it is clear that there was *never* any need for Petitioners to withhold Haile Gold Mine's identity from Respondents, and, despite Petitioner's representations to this Court, there was no need for any sort of protective order or confidentiality order in this case. Moreover, all parties have consented to this Court vacating the Consent Orders, as evidenced by the Proposed Order circulated on May 8, 2018. Thus, there are ample grounds for this Court to vacate the Confidentiality Orders.

It is highly likely that the facts and circumstances surrounding the Option Agreement and potential sales of the Boykin Millpond, including Haile Gold Mine's identity, will be discussed at

the trial of this case. However, because the Confidentiality Orders remain in place, the parties cannot discuss any of those matters, despite the fact that the parties have already consented to this Court vacating the Orders. Accordingly, Respondents respectfully request that this Court vacate the Confidentiality Orders, which will allow all parties to refer to the facts and circumstances surrounding the Option Agreement and any potential sale of the Boykin Millpond without fear of violating the Orders.

CONCLUSION

For the reasons set forth above, Respondents respectfully request that this Court enter an order vacating the Confidentiality Orders.

HAYNSWORTH SINKLER BOYD, P.A.

By: s/James Y. Becker
James Y. Becker (SC Bar No. 64991)
Robert L. Reibold (SC Bar No. 9284)
Mary Cothonneau Eldridge (SC Bar No. 102698)
1201 Main Street, Suite 2200
Post Office Box 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 540-7706

*Attorneys for Respondent Mary Deas Wortley
and Alice Boykin Belger*

June 26, 2018

EXHIBIT A

ELECTRONICALLY FILED - 2018 Jun 26 4:58 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

From: Rigdon Boykin [<mailto:rhboykin@me.com>]
Sent: Monday, January 22, 2018 10:23 AM
To: William Tetterton <wstmail@bellsouth.net>
Cc: gregory S. Braker <gbraker@rubinrudman.com>
Subject: Re: Deed Description

Rigdon Boykin
rhboykin@me.com
803-432-5670 (O)
803-546-4274 (M)

On Jan 22, 2018, at 10:09 AM, Rigdon Boykin <rhboykin@icloud.com> wrote:

Good Morning Rigdon,

We are trying to finalize the Option Agreements today. To that end, we need to obtain the property description from "Deed-Book Page" 264-91 referenced in that attached map/chart. To that end, do you have online access to those records? If not, can you send someone over to get that?

Thanks,
Gregg

Gregory S. Braker
Rubin and Rudman LLP
800 Connecticut Ave NW
Washington, DC 20006
Direct: 240-356-1560
Cell: 301-633-3336
gbraker@rubinrudman.com

<image52f2c7.JPG>

53 State Street | Boston, MA 02109 | p:617-330-7000
800 Connecticut Ave. NW | Washington, DC 20006 | p:202-794-6300
99 Willow Street | Yarmouthport, MA 02675 | p:508-362-6262

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<Boykin Pond Area.pdf>

<image002.jpg> Virus-free. www.avg.com

Eldridge, Mary Cothonneau

From: Cooper, G. Thomas Law Clerk (Jamie Rutkoski) <GCooperLC@sccourts.org>
Sent: Friday, March 16, 2018 9:10 AM
To: Richard Rosen; Becker, James; Liam Duffy; Toal, Jean
Cc: William Tetterton; walter@bundymcdonald.com; Cynthia Gourdine; Robin Wilson; Ballew, Reeve; Eldridge, Mary Cothonneau
Subject: RE: Boykin Case 2017-CP-28-00831; Boykin Motion for Protective Order

Good morning all,

Justice Toal is planning to sign the proposed order from Mr. Becker which will lay out the procedure for protecting confidential information throughout this case.

Additionally, Justice Toal is prepared to sign an Order in regards to the March 19th deposition that will allow for the disclosure of the details of the prospective sale of the Boykin Millpond Land as CONFIDENTIAL to the trustees and their attorneys and CONFIDENTIAL- ATTORNEY'S EYES ONLY in regards to the beneficiaries and their attorney.

I'll hold off on filing the order in regards to the March 19th deposition until at least lunchtime to allow for you all to contact me with any concerns.

Thank you,

Jamie Rutkoski
 Law Clerk to the Honorable G. Thomas Cooper, Jr. and the Honorable Jean H. Toal
 Circuit Court of South Carolina
 1121 Broad St., Rm. 313
 Post Office Box 1557
 Camden, SC 29021
 Phone: (803) 425-7182
 Fax: (803) 425-5529

From: Richard Rosen [mailto:rsrosen@rrhlawfirm.com]
Sent: Wednesday, March 14, 2018 5:40 PM
To: 'Becker, James' <jbecker@hsblawfirm.com>; Cooper, G. Thomas Law Clerk (Jamie Rutkoski) <GCooperLC@sccourts.org>; Liam Duffy <lduffy@rrhlawfirm.com>; Toal, Jean <JToal@sccourts.org>
Cc: William Tetterton <wstmail@bellsouth.net>; walter@bundymcdonald.com; Cynthia Gourdine <cgourdine@rrhlawfirm.com>; Robin Wilson <rlwilson76@bellsouth.net>; Ballew, Reeve <rballew@hsblawfirm.com>; Eldridge, Mary Cothonneau <meldridge@hsblawfirm.com>
Subject: RE: Boykin Case 2017-CP-28-00831; Boykin Motion for Protective Order

Dear All,

We are in the process of trying to reach the prospective purchaser/conservation donor to determine whether this arrangement is satisfactory. We cannot comment on the proposed Confidentiality Order until we have consulted with them. We will revert with any comments to the proposed order as soon as we have done so.

Thank you.

Richard Rosen

|Attorney at Law|

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Charleston SC 29401
| office | 843-577-6726
| fax | 843-724-8036
| direct phone | (843) 266-8124
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From: Becker, James <jbecker@hsblawfirm.com>
Sent: Wednesday, March 14, 2018 4:56 PM
To: Cooper, G. Thomas Law Clerk (Jamie Rutkoski) <GCooperLC@sccourts.org>; Liam Duffy <lduffy@rrhlawfirm.com>; Toal, Jean <JToal@sccourts.org>
Cc: Richard Rosen <rsrosen@rrhlawfirm.com>; William Tetterton <wstmail@bellsouth.net>; walter@bundymcdonald.com; Cynthia Gourdine <cgourdine@rrhlawfirm.com>; Robin Wilson <rlwilson76@bellsouth.net>; Ballew, Reeve <rballew@hsblawfirm.com>; Eldridge, Mary Cothonneau <meldridge@hsblawfirm.com>
Subject: RE: Boykin Case 2017-CP-28-00831; Boykin Motion for Protective Order

Jamie:

Attached please find a proposed confidentiality protective order in this matter.

Thank you.

James Y. Becker | Attorney | Haynsworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor (29201) | Post Office Box 11889 (29211) | Columbia, South Carolina
Direct: 803.540.7706

From: Becker, James
Sent: Wednesday, March 14, 2018 4:32 PM
To: 'Cooper, G. Thomas Law Clerk (Jamie Rutkoski)'; Liam Duffy; Toal, Jean
Cc: Richard Rosen; William Tetterton; walter@bundymcdonald.com; Cynthia Gourdine; Robin Wilson; Ballew, Reeve; Eldridge, Mary Cothonneau
Subject: RE: Boykin Case 2017-CP-28-00831; Boykin Motion for Protective Order

Thank you, Jamie. We will forward a proposed order to you and the other counsel of record for review.

James Y. Becker | Attorney | Haynsworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor (29201) | Post Office Box 11889 (29211) | Columbia, South Carolina
Direct: 803.540.7706

ELECTRONICALLY FILED - 2018 Jun 26 4:58 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

From: Cooper, G. Thomas Law Clerk (Jamie Rutkoski) [<mailto:GCooperLC@sccourts.org>]
Sent: Wednesday, March 14, 2018 4:27 PM
To: Becker, James; Liam Duffy; Toal, Jean
Cc: Richard Rosen; William Tetterton; walter@bundymcdonald.com; Cynthia Gourdine; Robin Wilson; Ballew, Reeve; Eldridge, Mary Cothonneau
Subject: RE: Boykin Case 2017-CP-28-00831; Boykin Motion for Protective Order

All,

After conferring with Justice Toal and reading over the Motion for Protective Order, it seems a confidentiality agreement in coordination with what Mr. Becker proposed will be sufficient to protect both the trustees and the potential buyer. That way, the potential buyer will be protected from being inundated with sellers, which appears to be the Petitioner's concern, and the trustees are still informed of the details of this potential sale.

Mr. Becker, would you please propose an Order to reflect that ruling? And if any of the parties have any further concerns or objections to that, please let me know.

Thank you,

Jamie Rutkoski
Law Clerk to the Honorable G. Thomas Cooper, Jr. and the Honorable Jean H. Toal
Circuit Court of South Carolina
1121 Broad St., Rm. 313
Post Office Box 1557
Camden, SC 29021
Phone: (803) 425-7182
Fax: (803) 425-5529

From: Becker, James [<mailto:jbecker@hsblawfirm.com>]
Sent: Wednesday, March 14, 2018 11:57 AM
To: Liam Duffy <lduffy@rrhlawfirm.com>; Toal, Jean <JToal@sccourts.org>; Cooper, G. Thomas Law Clerk (Jamie Rutkoski) <GCooperLC@sccourts.org>
Cc: Richard Rosen <rsrosen@rrhlawfirm.com>; William Tetterton <wstmail@bellsouth.net>; walter@bundymcdonald.com; Cynthia Gourdine <cgourdine@rrhlawfirm.com>; Robin Wilson <rlwilson76@bellsouth.net>; Ballew, Reeve <rballew@hsblawfirm.com>; Eldridge, Mary Cothonneau <meldridge@hsblawfirm.com>
Subject: RE: Boykin Case 2017-CP-28-00831; Boykin Motion for Protective Order

Dear Judge Toal:

Respondents Wortley and Belger would like an opportunity to respond to Mr. Boykin's Motion for Protective Order.

However, it appears to us that a confidentiality protective order would address the concerns expressed by the Petitioner, while allowing the other Trustees to be fully informed about the nature of this proposed transaction and the identity of the purchaser. Respondents Wortley and Belger believe that knowing the identity of the purchaser, and any related entities or

individuals, is very important for reasonably and prudently fulfilling their fiduciary obligations as Trustees.

If the Court agrees that a confidentiality protective order would satisfactorily resolve the motion, then we will be glad to propose one.

James Y. Becker | Attorney | Haynsworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor (29201) | Post Office Box 11889 (29211) | Columbia, South Carolina
Direct: 803.540.7706

From: Liam Duffy [<mailto:lduffy@rrhlawfirm.com>]
Sent: Tuesday, March 13, 2018 5:26 PM
To: jtoal@sccourts.org; Cooper, G. Thomas Law Clerk (Jamie Rutkoski)
Cc: Richard Rosen; William Tetterton; Becker, James; walter@bundymcdonald.com; Cynthia Gourdine; Robin Wilson
Subject: RE: Boykin Case 2017-CP-28-00831

Dear Justice Toal,

We are looking forward to appearing before you in this matter on March 28, 2018 at 10:00 AM. With respect to Petitioner's Motion to Authorize the Sale of Trust Property (filed on Jan. 16, 2018), which is one of the pending motions, I am writing to provide an update from when we wrote the Court on February 6, 2018. Since then, we have been informed by counsel for Respondent Mary Deas Wortley that Mrs. Wortley has decided that she will not agree to sell her ½ ownership interest "Miss May's" cottage as set forth in the terms of the original Option Agreements. Given that fact, Petitioner has since gone back to the potential purchaser/conservation donor and negotiated to remove the requirement that Mrs. Wortley's property also be included in any Option Agreement.

I am enclosing for your convenience a courtesy copy of the Revised Option Agreement which is the subject of Petitioner's Motion. This single Revised Option Agreement (which supplants the former Exhibit A to the Motion to Authorize the Sale of Trust Property) was filed with the Court this afternoon, and as you will see, has been modified to remove the requirement that Mrs. Wortley's ½ interest in the cottage also be included in any purchase.

Furthermore, this afternoon we filed a Motion for Protective Order & Expedited Hearing in connection with Petitioner's upcoming March 19, 2018 deposition in this case. I have also enclosed a courtesy copy of that Motion. We would be happy to appear before Your Honor to address this Motion prior to Petitioner's deposition, or to keep the issue open for resolution until the Court's March 28th hearing—whichever is most convenient for the Court.

Thank you for your attention to these matters, and please let us know if we can answer any questions the Court may have.

Respectfully,
Liam Duffy

Liam Duffy

|Attorney at Law|

151 Meeting St., Suite 400
Charleston SC 29401
| office | 843-577-6726
| fax | 843-724-8036
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From: Liam Duffy

Sent: Tuesday, February 6, 2018 10:07 AM

To: Cooper, G. Thomas Law Clerk (Jamie Rutkoski) <GCooperLC@sccourts.org>;

'jtoal@sccourts.org' <jtoal@sccourts.org>

Cc: Richard Rosen <rrosen@rrhlawfirm.com>; 'William Tetterton' <wstmail@bellsouth.net>;

'Becker, James' <jbecker@hsblawfirm.com>; 'walter@bundymcdonald.com'

<walter@bundymcdonald.com>; Cynthia Gourdine <cgourdine@rrhlawfirm.com>; Robin Wilson

<rlwilson76@bellsouth.net>

Subject: Boykin Case 2017-CP-28-00831

Dear Jamie,

In accordance with Judge Toal's instruction at the motion hearing in this matter on January 24, 2018, attached please find an outline of a proposed order on (1) Petitioner's Motion for Fees and Appointment of Trust Counsel, and (2) Respondents' Motion to Strike. Please let us know if there are any changes the Court would like us to make.

Furthermore, since the hearing on January 24th, Petitioner has presented Respondents with a settlement plan and Respondents have stated that they will have a response to Petitioner by the end of this week. However, out of an abundance of caution and in the event the parties' negotiations are unsuccessful, we would respectfully request that the Court set a hearing for Petitioner's Motion to Authorize the Sale of Trust Property as soon as possible.

Lastly, when we filed Petitioner's Motion to Authorize the Sale of Trust Property on January 16, 2018, we had not yet received purchaser-signed copies of the Option Agreements that are at issue in that motion. The signed Option Agreements have since been received, distributed to all parties, and filed with the Court. They are also attached for your convenience. Of particular note is the fact that the Option Agreements automatically expire if not fully executed by April 1, 2018.

Thank you for your attention to these matters, and please let us know if we can answer any questions the Court may have.

Liam

Liam Duffy
|Attorney at Law|

151 Meeting St., Suite 400
Charleston SC 29401
|office| 843-577-6726
|fax| 843-724-8036
|direct phone| (843) 266-8121
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lduffy@rrhlawfirm.com
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**From:** Becker, James </o=HSB/ou=First Administrative Group/cn=Recipients/cn=jbecker>  
**To:** 'Richard Rosen'; Bill Bundy (walter@bundymcdonald.com); William Tetterton  
**CC:** Liam Duffy; Cynthia Gouridine; Robin Wilson  
**Sent:** 3/13/2018 10:25:53 PM  
**Subject:** RE: Boykin deposition  
**Attachments:** image001.gif

I am just now seeing this, but I also see that you have already filed it.

**James Y. Becker** | Attorney | Haynsworth Sinkler Boyd, P.A.  
 1201 Main Street, 22nd Floor (29201) | Post Office Box 11889 (29211) | Columbia, South Carolina  
 Direct: 803.540.7706

**From:** Richard Rosen [mailto:rsrosen@rrhlawfirm.com]  
**Sent:** Tuesday, March 13, 2018 3:07 PM  
**To:** Bill Bundy (walter@bundymcdonald.com); William Tetterton; Becker, James  
**Cc:** Liam Duffy; Cynthia Gouridine; Robin Wilson  
**Subject:** Boykin deposition

Bill, Jamie, and William:

We are planning to file a motion for a protective order this afternoon regarding some topics expected to come up at Rigdon Boykin's deposition, namely the identity of the purchaser under the Option Agreement. Of course, we have an obligation under the rules to consult you all before filing. Attached is a copy of the motion we plan to file. We think this is in the best interest of the Trust.

Please review and let us know whether you consent.  
 Thank you.

Richard Rosen

*|Attorney at Law|*

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 Charleston SC 29401  
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EXHIBIT C

 RUBIN and  
RUDMAN LLP  
Attorneys at Law

53 STATE STREET | BOSTON, MA 02109 | P:617-330-7000  
800 CONNECTICUT AVE. NW | WASHINGTON, DC 20006 | P:202-794-6300  
99 WILLOW STREET | YARMOUTHPORT, MA 02675 | P:508-362-6262

Gregory S. Braker  
Direct Dial: 240-356-1560  
E-mail: gbraker@rubinrudman.com  
Return Address: Washington, DC

April 17, 2018

**VIA OVERNIGHT DELIVERY**

Walter H. Bundy  
Bundy McDonald LLC  
1516 Old Trolley Road / 2<sup>nd</sup> Floor  
Summerville, SC 29485

Dear Mr. Bundy:

I am writing in response to your email to me on April 16, 2018 at 9:47 a.m., which states your intent to subpoena documents from Haile Gold Mine, Inc. and to depose one of Haile's representatives, David Thomas. Enclosed please find all documents related to your request for all communications between Rigdon Boykin and Haile Gold Mine, which we voluntarily provide to you. (If we have inadvertently included any communications between only Haile and its counsel, we in no way intend to waive privilege and would ask that you return such information immediately.) The materials include the following:

- All emails and texts between David Thomas and Rigdon Boykin (some of which include other individuals too) and any related attachments.<sup>1</sup>
- A receipt confirming that David Thomas purchased a new cell phone on February 4, 2018 because his old cell phone stopped functioning.<sup>2</sup>
- All emails and texts between Gregg Braker (Haile's counsel) and Rigdon Boykin (some of which include other individuals too) and any related attachments.

---

<sup>1</sup> In an effort to provide a timely response to your request for documents, Haile passed along its emails responsive to this request to my associate, Morgan Gerard, for printing and compilation. That is the only reason her name appears at the top of most (if not all) Haile emails, and this delivery process in no manner constitutes a waiver of privilege. It was just the quickest and easiest way for us to get these documents to you.

<sup>2</sup> Mr. Thomas' text messages prior to his phone failing did not carry over to his new phone, and we don't believe that his text messages were backed up at the time his phone malfunctioned. Regardless, if you feel the need to have those text messages (even though his email communications with Mr. Boykin prior to February 4, 2018 should alleviate your stated concerns), Mr. Boykin should have access to all of those text messages.

Walter H. Bundy  
 April 17, 2018  
 Page 2

- Invoices reflecting the following:
  - ✓ Payment by Haile for surveying work done on the Boykin Millpond parcels, as well as Rigdon Boykin's property along Swift Creek. (As you may know, it is standard operating procedure for a party seeking to obtain property for mitigation purposes to cover survey and due diligence costs.)
  - ✓ Payment for two separate instances in which Haile rented Mr. Boykin's Acorn Farms facility for meetings/functions. (There is nothing unusual about Haile's use of this facility, as it has been used by others in the community for similar purposes. In addition, Haile paid Mr. Boykin for its use, despite his offer of free use for these events.)
- Maps, Photos, and Drawings of the properties sought under the option agreement(s), which were attachments to the above-referenced emails.

In addition, I would like to briefly respond to a couple of other questions you raised in our telephone conversation on April 13, 2018 that are not addressed by the documents we have produced here as follows:

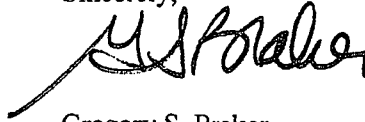
1. Around the time of one of the events at Mr. Boykin's Acorn Farms facility, Mr. Boykin and Mr. Thomas briefly discussed whether Haile Gold Mine might be interested in purchasing the Acorn Farms facility (and some related land owned by Mr. Boykin) as an event center / corporate retreat because Mr. Boykin was considering downsizing the property and building a smaller home. Haile was intrigued by the idea, but decided that it did not make logistical and economic sense for the Company.
2. Since that time, Haile has had discussions with Mr. Boykin about purchasing approximately 107 acres of his roughly 800 acres of land (comprising two separate parcels) along Swift Creek for mitigation purposes, just as Haile has had (and will continue to have) similar discussions with numerous other property owners along Swift Creek, the Wateree River, and the immediate area, including you.

During our call last Friday, you indicated that the two voting trustees to the L.W. Boykin II Residuary Trust other than Rigdon Boykin – Alice Belger and Mary Deas Wortley – remain adamantly opposed to selling the Boykin Millpond, and that you intend to pursue discovery from Haile and to appeal any judicial directive to sell the property so as to frustrate the Company's timeline for using the site for mitigation. As we discussed, and as David Thomas communicated quite clearly with you, your client, Mary Deas Wortley, her counsel, and all other participants in your meeting with him on April 12, 2018, that posture effectively puts an end to our negotiations to purchase the site.

Walter H. Bundy  
April 17, 2018  
Page 3

As you know, Haile's schedule for lining up mitigation will not allow for discovery-related or other procedural delays at this point, much less the risk of protracted appeals. As we have regularly communicated with you and the other parties to the Trust, the Company is considering many different acquisition opportunities for meeting its mitigation requirements, has a schedule that it needs to keep, and therefore has little appetite for the "complexities" that this site now poses. While Haile's ultimate goal aligns with that of your client – i.e., conserve (if not enhance) the site and its natural resources – we understand and respect the wishes of your client and Ms. Deas Wortley to not sell the site. Thus, my client regretfully withdraws its offer to purchase the Boykin Millpond (and Town of Boykin), and is turning its focus toward acquiring other sites.

Sincerely,

A handwritten signature in black ink, appearing to read "G. S. Braker", written over a horizontal line.

Gregory S. Braker

Enclosures

cc: David Thomas

## EXHIBIT D

ELECTRONICALLY FILED - 2018 Jun 26 4:58 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

**From:** Liam Duffy <lduffy@rrhlawfirm.com>  
**To:** Toal, Jean; Cooper, G. Thomas Law Clerk (Jamie Rutkoski)  
**CC:** Becker, James; Eldridge, Mary Cothonneau; Walter Bundy; Richard Rosen; William Tetterton; Cynthia Gourdine; Robin Wilson  
**Sent:** 5/3/2018 11:31:14 PM  
**Subject:** C/A No.: 2017-CP-28-831 [Rigdon H. Boykin v. Mary Deas Wortley, et al.]  
**Attachments:** image001.gif

Dear Justice Toal,

At the status conference in your Chambers on April 23<sup>rd</sup>, Mr. Bundy mentioned the prospect of vacating the Court's March 16, 2018 Confidentiality Protective Order (For Information Regarding the Potential Sale of Boykin Millpond), and we've since corresponded by email about this subject. I relayed this suggestion to my client, who in turn spoke with Mr. David Thomas as a representative of the prospective purchaser regarding the same. Mr. Thomas told my client that the purchaser no longer sees a need for confidentiality since it has abandoned the Option Agreement. Therefore, we agree to vacate the Court's March 16<sup>th</sup> Order as Mr. Bundy originally suggested.

Please let us know if we need to do anything further to effect this action. Thank you in advance, and we'd be happy to answer questions the Court may have.

Respectfully,  
Liam

Liam Duffy  
*[Attorney at Law]*

151 Meeting St., Suite 400  
Charleston SC 29401  
[office] 843-577-6726  
[fax] 843-724-8036  
[direct phone] (843) 266-8121  
[direct fax] (843) 266-2250  
[lduffy@rrhlawfirm.com](mailto:lduffy@rrhlawfirm.com)  
V-Card  
[www.rrhlawfirm.com](http://www.rrhlawfirm.com)

ROSEN | HAGOOD

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**Eldridge, Mary Cothonneau**

**From:** Liam Duffy <lduffy@rrhlawfirm.com>  
**Sent:** Wednesday, May 02, 2018 3:44 PM  
**To:** Walter Bundy; Becker, James; William Tetterton; Eldridge, Mary Cothonneau  
**Cc:** Richard Rosen; Cynthia Gourdine; Robin Wilson  
**Subject:** Boykin Trust - confidentiality order; amended petition  
**Attachments:** 356931.pdf

Dear All,

Our client has been informed that the prospective purchaser under the Option Agreement is willing to consent to rescinding the Confidentiality Order entered on March 19, 2018. Bill – I did not have this information yesterday when I emailed you regarding the Order. I hope this will obviate your need to draft any motion.

Also, please let us know if you can consent to our filing of the attached Amended Petition (amendments are in bold on pp. 2, 17-22). Please consider this our Rule 11 compliance communication. Let me know if you have any questions or concerns.

Many thanks,  
Liam

Liam Duffy  
*[Attorney at Law]*

151 Meeting St., Suite 400  
Charleston SC 29401  
|office| 843-577-6726  
|fax| 843-724-8036  
|direct phone| (843) 266-8121  
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**Eldridge, Mary Cothonneau**

**From:** Liam Duffy <lduffy@rrhlawfirm.com>  
**Sent:** Tuesday, May 08, 2018 4:46 PM  
**To:** Toal, Jean  
**Cc:** Cooper, G. Thomas Law Clerk (Jamie Rutkoski); Becker, James; Eldridge, Mary Cothonneau; Walter Bundy; Richard Rosen; William Tetterton; Cynthia Gouridine; Robin Wilson; Tina Cundari  
**Subject:** RE: C/A No.: 2017-CP-28-831 [Rigdon H. Boykin v. Mary Deas Wortley, et al.]  
**Attachments:** RE: Boykin; RE: Boykin; Proposed Order Vacating Confidentiality Protective Orders.doc

Your Honor,

I have now received (and attached) the written consent of all counsel to the proposed Order which is attached. If this proposed Order meets with your approval, we would appreciate you e-filing it with the Clerk of Court at your convenience. Thank you.

Respectfully,

Liam Duffy  
*|Attorney at Law|*

151 Meeting St., Suite 400  
 Charleston SC 29401  
 |office| 843-577-6726  
 |fax| 843-724-8036  
 |direct phone| (843) 266-8121  
 |direct fax| (843) 266-2250  
 lduffy@rrhlawfirm.com  
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 www.rrhlawfirm.com

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**From:** Toal, Jean [mailto:JToal@sccourts.org]  
**Sent:** Friday, May 4, 2018 6:47 AM  
**To:** Liam Duffy <lduffy@rrhlawfirm.com>  
**Cc:** Cooper, G. Thomas Law Clerk (Jamie Rutkoski) <GCooperLC@sccourts.org>; Becker, James <jbecker@hsblawfirm.com>; Eldridge, Mary Cothonneau <meldridge@hsblawfirm.com>; Walter Bundy <walter@bundymcdonald.com>; Richard Rosen <rrosen@rrhlawfirm.com>; William Tetterton

<wstmail@bellsouth.net>; Cynthia Gourdine <cgourdine@rrhlawfirm.com>; Robin Wilson <rlwilson76@bellsouth.net>; Tina Cundari <tcundari@sowell.com>  
**Subject:** Re: C/A No.: 2017-CP-28-831 [Rigdon H. Boykin v. Mary Deas Wortley, et al.]

Liam: 3 things need to be done. 1. All counsel need to indicate consent to lifting the confidentiality protective order. 2. A consent order needs to be submitted to me. 3. Trust Counsel Tina Cundari needs to be included in this matter, copied on all future correspondence and supplied with all relevant pleadings, correspondence and submissions. Best regards Toal, Jean Toal

Sent from my iPhone

On May 3, 2018, at 7:31 PM, Liam Duffy <lduffy@rrhlawfirm.com<mailto:lduffy@rrhlawfirm.com>> wrote:

Dear Justice Toal,

At the status conference in your Chambers on April 23rd, Mr. Bundy mentioned the prospect of vacating the Court's March 16, 2018 Confidentiality Protective Order (For Information Regarding the Potential Sale of Boykin Millpond), and we've since corresponded by email about this subject. I relayed this suggestion to my client, who in turn spoke with Mr. David Thomas as a representative of the prospective purchaser regarding the same. Mr. Thomas told my client that the purchaser no longer sees a need for confidentiality since it has abandoned the Option Agreement. Therefore, we agree to vacate the Court's March 16th Order as Mr. Bundy originally suggested.

Please let us know if we need to do anything further to effect this action. Thank you in advance, and we'd be happy to answer questions the Court may have.

Respectfully,  
 Liam

Liam Duffy  
 |Attorney at Law|  
 151 Meeting St., Suite 400  
 Charleston SC 29401  
 |office| 843-577-6726  
 |fax| 843-724-8036  
 |direct phone| (843) 266-8121  
 |direct fax| (843) 266-2250  
[lduffy@rrhlawfirm.com](mailto:lduffy@rrhlawfirm.com)<<mailto:lduffy@rrhlawfirm.com>>  
 V-Card<[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_www.rrhlawfirm.com\\_images\\_vcards\\_Duffy-2DLiam.vcf&d=DwMFAg&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=xyGAMxUw01eIPNGBoA0cWLplrB2xVkmhXDO41mXgQ4s&m=LUzL4L1nY8V9Lyhm12jwVHcAM8hFlGTrypik8HfJd1A&s=8I9oV4gVtOJmpUMOzURxe4JyBHOxgHG0on\\_ZnzfHME&e=>](https://urldefense.proofpoint.com/v2/url?u=http-3A_www.rrhlawfirm.com_images_vcards_Duffy-2DLiam.vcf&d=DwMFAg&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=xyGAMxUw01eIPNGBoA0cWLplrB2xVkmhXDO41mXgQ4s&m=LUzL4L1nY8V9Lyhm12jwVHcAM8hFlGTrypik8HfJd1A&s=8I9oV4gVtOJmpUMOzURxe4JyBHOxgHG0on_ZnzfHME&e=>)>  
[www.rrhlawfirm.com](https://urldefense.proofpoint.com/v2/url?u=http-3A_www.rrhlawfirm.com&d=DwMFAg&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=xyGAMxUw01eIPNGBoA0cWLplrB2xVkmhXDO41mXgQ4s&m=LUzL4L1nY8V9Lyhm12jwVHcAM8hFlGTrypik8HfJd1A&s=7lnUiKewLd9Xc42AJkdKGIYt4W3YGM8Vml1_oSt-4dY&e=>)<[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_www.rrhlawfirm.com&d=DwMFAg&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=xyGAMxUw01eIPNGBoA0cWLplrB2xVkmhXDO41mXgQ4s&m=LUzL4L1nY8V9Lyhm12jwVHcAM8hFlGTrypik8HfJd1A&s=7lnUiKewLd9Xc42AJkdKGIYt4W3YGM8Vml1\\_oSt-4dY&e=>](https://urldefense.proofpoint.com/v2/url?u=http-3A_www.rrhlawfirm.com&d=DwMFAg&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=xyGAMxUw01eIPNGBoA0cWLplrB2xVkmhXDO41mXgQ4s&m=LUzL4L1nY8V9Lyhm12jwVHcAM8hFlGTrypik8HfJd1A&s=7lnUiKewLd9Xc42AJkdKGIYt4W3YGM8Vml1_oSt-4dY&e=>)>

<image001.gif><[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_www.rrhlawfirm.com&d=DwMFAg&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=xyGAMxUw01eIPNGBoA0cWLplrB2xVkmhXDO41mXgQ4s&m=LUzL4L1nY8V9Lyhm12jwVHcAM8hFlGTrypik8HfJd1A&s=7lnUiKewLd9Xc42AJkdKGIYt4W3YGM8Vml1\\_oSt-4dY&e=>](https://urldefense.proofpoint.com/v2/url?u=http-3A_www.rrhlawfirm.com&d=DwMFAg&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=xyGAMxUw01eIPNGBoA0cWLplrB2xVkmhXDO41mXgQ4s&m=LUzL4L1nY8V9Lyhm12jwVHcAM8hFlGTrypik8HfJd1A&s=7lnUiKewLd9Xc42AJkdKGIYt4W3YGM8Vml1_oSt-4dY&e=>)>

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ELECTRONICALLY FILED - 2018 Jun 26 4:58 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

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IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, DECEASED

RIDGON H. BOYKIN

v.

MARY DEAS WORTLEY, ET AL.

- - -

UNCERTIFIED ROUGH DRAFT

- - -

DEPOSITION OF DAVID THOMAS

Friday, June 23, 2018

- - - oOo - - -

2

DAVID THOMAS, being first
duly sworn, testified as follows:
MR. BECKER: Before we start, let me just
make a statement for the record. All counsel

Page 1

RoughDraftDThomas.txt
5 have agreed that Mr. Thomas' appearance here
6 today will be in effect a de bene esse
7 deposition, and we will not -- as a result of
8 that agreement, all have agreed that we will ask
9 our questions here and won't plan to subpoena
10 him for the trial of the case.

11 MR. TETTERTON: Well, that's our agreement
12 as of now, but I don't know what you're going to
13 say. So unless something changes, that's my
14 agreement during the deposition testimony.

15 MR. BLACK: I had those conditions put in
16 there with my objection, so we're producing him
17 today subject to the agreement of it's de bene
18 esse and he's not to attend trial. So if
19 there's something different, I need to know.

20 MR. TETTERTON: Of course, we don't know
21 what he's going to say yet, but my intentions
22 right now is to let it be a de bene esse
23 testimony.

24 MR. BLACK: Okay.

25 MR. TETTERTON: You understand that.

3

1 MR. BLACK: Yes, sir.

2 MR. TETTERTON: We just don't know what
3 he's going to say yet.

4 MR. BECKER: We will take it up with the
5 judge. Liam Duffy has previously agreed in an
6 email to me that he will agree to that.

7 MR. BLACK: Yes, sir. Can you hear us
8 okay, Liam?

9 MR. DUFFY: I can hear you.

10 - - -
Page 2

RoughDraftDThomas.txt

11 EXAMINATION

12 - - -

13 BY MR. BECKER:

14 Q. Will you please state your full name for
15 the record.

16 A. David Brian Thomas.

17 Q. Mr. Thomas, as you know, we're here for
18 your deposition today in this litigation. I need to
19 give you just one instruction before we go further.
20 And that is that if I ask you a question and you need
21 any clarification of any words, terms or phrases, or
22 have any questions about my question to you, please
23 direct those questions to me and not your attorney,
24 Mr. Black.

25 A. Of course. Yeah.

4

1 Q. Thank you. Of course you understand, too,
2 we can take a break at any time --

3 A. Okay.

4 Q. -- you need.

5 A. Okay. Appreciate that.

6 Q. You are the vice president and country
7 director for OceanaGold; is that correct?

8 A. That's correct.

9 Q. And are you also involved with the Haile
10 Gold Mine here in South Carolina?

11 A. That's correct. I'm actually president of
12 Haile Gold Mine, Inc., which is the company that
13 holds Haile Gold Mine. And vice president and
14 country director of OceanaGold/Haile operations for
15 North America.

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16 Q. And Haile Gold Mine, Inc. is a subsidiary
17 of --

18 A. OceanaGold.

19 Q. OceanaGold.

20 A. Yes.

21 Q. Thank you.

22 All right. I want to give you a copy of
23 the subpoena that was issued in this case.

24 Have you seen this subpoena before?

25 A. Yes, I have.

5

1 Q. All right. Did you participate in
2 identifying and producing documents that are
3 responsive to the subpoena?

4 A. Yes.

5 Q. Please tell me generally how that process
6 took place.

7 A. I, internally from the information that was
8 requested, internally provided all the emails and
9 text messages and all the documentation that we had
10 at Haile Gold Mine, Inc., myself, and my assistant
11 Elizabeth Gullledge. And she -- and we just made sure
12 that we vetted all of the details around both
13 searches to make sure we covered everything.

14 Forwarded that to Greg Braker at Rubin and
15 Rudman firm in Washington, which was the attorney who
16 was instrumental in pulling together the option
17 agreement and so forth associated with this
18 transaction or perspective transaction.

19 And then he also pulled information and
20 correspondence that was pertinent to internally on
21 his end, and then, therefore, provided all the

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22 information that has been provided informally and
23 formally.

24 Q. All right. Is it your understanding that
25 all documents that might be responsive to the

6

1 subpoena have been produced by your counsel?

2 A. That is my clear understanding, yes.

3 Q. Are you aware of any documents that would
4 be responsive to the subpoena that have not been
5 produced?

6 A. None that I'm aware of.

7 Q. All right. You mentioned Mr. Greg Braker
8 with the Rubin and Rudman firm. Does he regularly do
9 work for Haile Gold Mine and OceanaGold?

10 A. Yes. He actually worked with Haile on the
11 original EIS for the Haile permitting.

12 Q. All right.

13 A. Approximately seven years of engagement.
14 well, prior -- he was previously with Venable, so
15 yes.

16 Q. All right. As you know, we're here today
17 to discuss the circumstances of the Haile Gold Mine
18 proposed option agreement to purchase the Boykin Mill
19 Pond?

20 A. Correct.

21 Q. When did that first become something that
22 Haile Gold Mine, Inc., was considering and how did it
23 come about?

24 A. The initial engagement or my introduction
25 to Rigdon was in August of 2016 and that was relative

7

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1 to an engagement through or introduction through
2 Nexsen Pruet. That was not the initial introduction
3 to the Boykin Mill Pond. It was strictly an
4 introduction of using the Rigdon's barn as a venue.

5 It was shortly thereafter that we engaged
6 him on another event, but at that time it was 2017, I
7 think -- let's see, October maybe a little earlier
8 perhaps in 2017, where we actually began discussions
9 on the property.

10 Our original discussions and introduction
11 and communication actually came around looking at his
12 property as participating as a corporate sponsorship
13 for a hunting club based on the fact that we had used
14 his venue a couple of times, and we obviously liked
15 it. It was separated from the rest of the community
16 and easy to get to, and people knew it in the area.

17 So the discussions kind of spawned from
18 that in terms of beyond that in terms of knowing
19 about the Mill Pond. I always knew about the Mill
20 Pond. I didn't know act the proximity of the Mill
21 Pond until we began to discussion the whole area and
22 the Mill Pond, not knowing how much -- I candidly
23 thought at the time he was actually involved with the
24 Mill Pond himself until he explained the details
25 around it.

8

1 But that was the original introduction. It
2 was in that 2017 period. That actually came on the
3 heels of the discussion around the -- looking at the
4 hunting club spawned into the interest of perhaps
5 using that venue or purchasing the property for the
6 venue for an event center for Haile Gold Mine, which

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7 we had looked at previously with another property in
8 Lancaster County, and then we couldn't do that at the
9 time.

10 That was maybe a three, maybe four-week
11 discussion around that, and we chose that we just
12 couldn't do it at the time. It was not appropriate
13 for us to do because of our own internal issues that
14 we were having in project development and just
15 getting into construction.

16 And then that spawned into looking at some
17 of the property along Swift Creek for the mitigation,
18 and I explained the mitigation process to him and we
19 had some correspondence around what mitigation was
20 used for with Haile Gold Mine, our interest in the
21 area. You know, if the pond was ever something that
22 would be considered, we would like to talk about it.

23 And that's the genesis of all those
24 discussions around how we got where we are today.

25 Q. Okay. So the when is the first time that

9

1 you met Rigdon Boykin?

2 A. That was in August of 2016, the day of or
3 two days prior to us actually using his venue for an
4 event center for one of our events.

5 Q. Okay.

6 A. Yeah.

7 Q. And then you mentioned that there were
8 discussions regarding either a purchase of or some
9 combination with Mr. Boykin. Would that have
10 involved purchasing his home and property?

11 A. No. There was after the hunting club

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12 discussion transpired, we -- he proposed and we
13 evaluated looking at buying -- I can't remember the
14 number of acres associated with it, but the barn area
15 that we used for an event center, and there's certain
16 land area that area that he was interested in
17 selling.

18 And at the time we thought, well, that
19 could be a very nice entertainment event center
20 because we used it, obviously, three times at that
21 point or through 2017. And so we considered it. But
22 because of our -- I don't need to go into the details
23 of that, but you can look at our website. We were
24 having some serious issues in the Philippines with
25 the government shutting down your entire in

10

1 operation.

2 We were just at the cusp of getting ramped
3 up with our construction, and we just declined any
4 further discussions because it just wasn't feasible
5 for us to make that kind of investment, you know, in
6 a property when we were not even profitable yet.

7 So we just decided to -- well, we never had
8 any substantive discussions or negotiations other
9 than back and forth on terms of price and acreage and
10 parcels associated with it.

11 We did look at also the greater whole as an
12 option, too, using it for a center shareholders, in
13 fact, for our shareholders and visitors because in
14 our area, the accommodations are very rare, very
15 difficult except in Rock Hill and Columbia, which is
16 somewhat dislocated from the proximity of the Haile
17 Gold Mine.

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18 But then again, it was just too much of a
19 capital investment for us to make at all the time
20 given all the other scenarios that we were dealing
21 with internally as a company. So we just never
22 entered into any type of formal agreements.

23 Q. Okay.

24 A. Or even option agreement.

25 Q. So approximately when did those discussions
11

1 take place?

2 A. Those were in 2017. I'm trying to think.
3 The timing of it was sometime after our third --
4 actually second event we had there and sometime
5 February, I think March of 2017.

6 Q. All right.

7 A. If I recall. Sometime in that timeframe is
8 when those discussions began.

9 Q. Okay. You mentioned some potential
10 interest in the land along Swift Creek --

11 A. Yes.

12 Q. -- that was part of Mr. Rigdon Boykin's
13 property?

14 A. Correct.

15 Q. And those are the subject -- what appear to
16 be a subject of a number of the documents that were
17 produced. We may get into that later.

18 A. Okay.

19 Q. But if you will tell me now just in general
20 terms, when did those -- I know they're still ongoing
21 to some extent at least as reflected in the records.

22 A. Yeah.

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23 Q. But when did those discussions first begin
24 about buying land along the bank of Swift Creek?

25 A. So that was during about the same timeframe 12

1 as when we concluded discussions on the other, you
2 know, and I actually brought up the proposition of
3 maybe considering the Mill Pond. Not knowing the
4 association of Rigdon with the Mill Pond other than
5 family, obviously, and by name.

6 And he gave me a little bit of background
7 as to how that was held and some of the ownership of
8 it and clearly said that he had no interest
9 personally in the Mill Pond.

10 I said, well, that's something -- and
11 again, explaining mitigation and how all that works,
12 and we would be interested in it. And particularly,
13 the watershed areas with the creek, and the reason
14 for that interest was that we were originally
15 mitigating in the original EIS in Kershaw County, and
16 as it turned out we did no mitigation in Kershaw
17 County so it was to keenly a focus for us in this
18 next round of optimization to do something in Kershaw
19 County in that Midland land area, as we call it for
20 mitigation.

21 And I explained what our interest was. He
22 actually declined the first discussion I had about
23 doing mitigation along his portion of Swift Creek
24 because of the proximity to the pond, and then
25 discussions began to separate from our interest in

13

1 his property because he had no interest in doing it
2 at the time to specifically talking about the pond.

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3 And then we looked at other land portions
4 and parcels all along Swift Creek as connectivity is
5 important for mitigation.

6 Q. All right. So did I understand correctly
7 that you were actually the first person to raise the
8 issue of your company's interest in the Mill Pond
9 with Rigdon Boykin?

10 A. That's correct, yeah. I believe so. I'm
11 certain of that actually.

12 Q. Okay. And approximately when did that
13 first discussion occur where you mentioned the Mill
14 Pond? Just approximately.

15 A. It was 2017. Somewhere between that March
16 date and that October date of our third and final
17 event that we held there, which was I think in
18 October of '17. Somewhere in that timeframe is when
19 those discussion. Certainly after our discussion of
20 going from the hunting club to the acquisition of the
21 event center and then I proposed -- or actually asked
22 about the Mill Pond because I had always heard of it.

23 Q. All right.

24 A. Certainly intrigued with it.

25 MR. BECKER: Let me hand you what we'll

14

1 mark as Exhibit 1. Let's make this Exhibit 2,
2 and we'll make the subpoena Exhibit 1.

3 (DEFT. EXH. 1, DESCRIPTION , was marked
4 for identification.)

5 (DEFT. EXH. 2, DESCRIPTION , was marked
6 for identification.)

7 BY MR. BECKER:

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8 Q. Mr. Thomas, what we've marked as Exhibit 2
9 appears to be a printout of an email from Rigdon
10 Boykin to you which includes a survey or a PDF copy
11 of an aerial photograph from Lindler Surveying.

12 Do you recognize this?

13 A. Yes, I do.

14 Q. All right.

15 A. Yes.

16 Q. Who is Morgan M. Gerard?

17 A. She was an attorney who was working with
18 Greg Braker on our permitting.

19 Q. All right.

20 A. She's no longer there, but that's who that
21 is.

22 Q. Okay. This is the first document that I
23 can find in the documents you and your company have
24 produced that appears to reference the Mill Pond.

25 A. Correct. Yeah.

15

1 Q. Do you recall any -- other than the
2 discussion you've already -- is this when -- the
3 better question would be, is this when you began to
4 seriously begin discussions with Mr. Boykin about a
5 potential option, offer of an option agreement on the
6 Mill Pond?

7 A. Yes. These were the original discussions,
8 and I do remember it being sometime in there we had a
9 couple of face-to-face meeting talking about the
10 process of it, which ultimately ended up in the
11 delivery of the plan view, if you will, of the
12 overlay. This was the original.

13 MR. BECKER: Okay.
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14 MR. DUFFY: Jamie, what is the date of the
15 email you're referencing?

16 MR. BECKER: October 20th, 2017.

17 MR. DUFFY: Thank you.

18 BY MR. BECKER:

19 Q. So you believe -- you had had some
20 face-to-face discussions before this?

21 A. That's where it all originated from, yes.

22 Q. And approximately how -- approximately what
23 time did those face-to-face discussions start?

24 A. As I remember, because it was around the
25 timing of our last event, I was thinking it was

16

1 somewhere between March, because we had an event in
2 March or February and October. It is probably closer
3 to the October date where those discussions happened.
4 Probably that September, early October timeframe.

5 Q. Of 2017?

6 A. Of '17, where we actually set out and had
7 substantive discussions about, you know, is this a
8 possibility, is it something that the family would
9 consider.

10 Q. Yeah. Did he come to you, or did you go to
11 him at that time?

12 A. No, I actually brought it up to him, as I
13 mentioned previously.

14 Q. Yeah.

15 A. Around the Swift Creek as an option on his
16 property. And then subsequently offered that, well,
17 you know, I referenced the Mill Pond because I
18 obviously profiled the property in the state and the

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19 community, particularly in Kershaw County, and I
20 brought it up to him at that point, you know, would
21 it be a -- if it was ever a possibility, I think is
22 the way I referenced it, we would certainly be
23 willing to look at it as a possible mitigation site
24 because we were certainly intrigued with it.

25 Q. And what I'm -- what I'm asking, though, is 17

1 in the September 2017 timeframe, did Mr. Boykin come
2 to you and say that I think the trustees might be
3 willing to consider --

4 A. Yeah.

5 Q. -- an offer on the Mill Pond, is that how
6 it started?

7 A. No. It wasn't from an offer point of view,
8 as much as it was I wanted to get an understanding of
9 the footprint because I never -- other than just
10 driving down the highway, as I mentioned to Rigdon, I
11 never even put a foot on the property and to date
12 never set a foot on the township.

13 But I wanted to see exactly what the
14 property entailed, all the parcels associated with
15 it, could we identify some connectivity of Swift
16 Creek all the way and down to the Wateree. He had
17 actually -- we, too, both sat down and looked at the
18 overlays of the aerial, of all the Wateree and how
19 all of that connected. And we are all about maps in
20 my industry, visually, particularly around
21 mitigation.

22 So at that point he says, well, I'm going
23 to deliver the map. And of course, that's what we --
24 that was the basis of the discussions. It was

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25 probably in this timeframe. I mean, it wasn't too 18

1 long after this where we began to look at, yes, this
2 could be a possibility and here are some of the
3 things we need to focus on going forward.

4 Q. Okay.

5 A. Regarding the option agreement itself. It
6 wasn't prior to this. It was within proximity
7 following our original discussions on what it all
8 looked like.

9 Q. Has Mr. Boykin ever given you a copy of the
10 will, the trust?

11 A. No, sir. No, sir.

12 Q. What did he say to you regarding his
13 authority to be negotiating with you a potential --
14 your interest -- or discussing with you your
15 company's interest in the Mill Pond at that time?

16 A. He was very candid about being a trustee,
17 which, embarrassingly, kind of implied to me he was
18 the focal point for the negotiation for the trustee.
19 He was very clear about he had no ownership or any
20 stake in the property because that was something I
21 always want to know who all the parties are and at
22 that time did not actually at that point in time.

23 But all I was assuming he was the focal
24 point for all discussions relative to the acquisition
25 of the property.

19

1 Q. Did you understand the voting
2 requirements --

3 A. No.

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4 Q. -- for the sale of real property?
5 A. I did not. No, not at that time.
6 Q. All right. When did you first become aware
7 of the voting requirements for the trust to sell real
8 property?
9 A. That, probably around the time of which we
10 met this year. In that first meeting, I began to
11 understand a little bit more about all the
12 complexities and the requirements. I'm not sure when
13 that date was. My apology.
14 Q. That would have been April 12, 2018?
15 A. Yeah, I think that was the first we had,
16 two, so yeah, around that time.
17 Q. So that was the first time that you were
18 made aware that it took a vote of all three trustees
19 to affect a sell of any property owned by the trust?
20 A. At that time. I mean, if there was a time
21 prior to that, I did not remember that.
22 Q. Okay.
23 A. But that's when I began to understand a lot
24 more about the complexities was around that April
25 period.

20

1 MR. BECKER: All right.
2 (DEFT. EXH. 3, DESCRIPTION , was marked
3 for identification.)
4 BY MR. BECKER:
5 Q. Mr. Thomas, the document marked as Exhibit
6 3 is an email from Rigdon Boykin to you dated
7 October 29, 2017.
8 A. Uh-huh.
9 Q. which includes terms for a sale of the

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10 Boykin Mill Pond and they're attached.

11 who -- who first drafted this document, if
12 you know?

13 A. That was Mr. Boykin. Rigdon Boykin.

14 Q. Okay. So he drafted the terms for the
15 sale?

16 A. That's correct, yeah.

17 Q. Had you and he discussed those terms
18 before?

19 A. Not in the specifics other than some of the
20 sensitivities around the cottage and, you know, how
21 we would have to potentially parse that out of the
22 transaction. And it's important to note that at the
23 time we did not have an interest in the township at
24 all because they had no mitigation value to us.

25 So that became -- this was kind of the

21

1 genesis of that discussion, and we always worked in
2 the premise we would make it work if we could. But
3 he proposed all the terms in this agreement or this
4 document.

5 Q. Including the inclusion of downtown Boykin?

6 A. That's correct, yeah. We had discussed it,
7 but it was something -- I was very clear that we
8 would try to make it work, but it wasn't a certainty
9 because it had no mitigation value to Haile, although
10 beneficial.

11 Q. And did he propose to include Ms. May's
12 cottage in the deal?

13 A. Yes. Other than the access for her, we
14 talked about that in prior discussions about making

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15 sure that she continued to have access and also to
16 the extent of some improvements to that cottage.

17 Q. How about the land that is on the other
18 side of the highway, did he propose to include that
19 land?

20 A. Yes. And that's something we were not
21 aware of at the time or I was not. But that was
22 going to be a part of the property that was included
23 on the other side of 521, I think you're referring
24 to.

25 Q. Yes.

22

1 A. We did not know that was a part of it at
2 the time, but later on through this, we began to --
3 and Rigdon may remember, we had a lot of complexities
4 around calculating the acreage. And there was
5 property and easements I think along the railway that
6 were causing some complexities in the total
7 calculation, but yes, we included that.

8 Q. Does the land on the other side of the
9 highway have any mitigation value to Haile Gold Mine?

10 A. Other than the drainage. The land itself
11 does from a landscape mitigation package, but it's
12 particularly the drainage from the pond through that
13 area and on to the Wateree that is beneficial, so
14 yes, it does.

15 Q. But that's only a relatively small portion
16 of that acreage on the other side of the highway,
17 right?

18 A. That's correct, yes.

19 Q. So if you look on the last page of Exhibit
20 3, it shows 91 -- page 7 -- paragraph 7D, there are
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21 91 acres on the west side of route 261.

22 And that's the property we've just been
23 discussing?

24 A. My apologies. I said 521, I meant 261.
25 sorry. My apology.

23

1 Q. Yes. Thank you. Let's clarify that.

2 A. Yes.

3 Q. But it's all there on the west side of
4 route 261.

5 A. Correct.

6 Q. Approximately how much of that acreage is
7 necessary for the drainage you discussed?

8 A. Well, that's -- we have not delineated
9 that.

10 Q. I see.

11 A. That's where we've been trying to get to
12 the point where we could, but nevertheless important.
13 we would have to do the environmental assessment to
14 determine that.

15 Q. Okay. Before you received this term sheet
16 from Mr. Boykin that's attached as part of Exhibit 3,
17 had you and he discussed any prices for any land?

18 A. It was more for my perspective in terms of
19 what we look at in terms of valuing land. Obviously,
20 we have been known to pay more than what the market
21 value is for a very good reason. And that's, you
22 know, for faith in terms of what we want to do and
23 what we want to establish.

24 And I gave him a range of somewhere between
25 sometimes it is 4,000 to about \$6,000, on average

24

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1 about 5,200 on property of this nature. He was aware
2 that we paid substantially more than that in our
3 prior mitigation plan.

4 But as I explained, it is not about the
5 mitigation. So I was the one that actually talked
6 about the numbers before he did.

7 Q. Okay.

8 A. And proposed this.

9 Q. You talked in terms of ranges.

10 A. Ranges, yes, that's correct.

11 Q. All right.

12 A. Not extending a particular offer.

13 Q. All right. Now, about this time you knew
14 that -- did you know there were three trustees to the
15 trust?

16 A. I knew there were trustees, but I didn't
17 know how many or who all was involved at this time.

18 Q. At this time.

19 A. I'll plead ignorance. I probably wasn't
20 focused on it because I was focused on the pond
21 itself and the property.

22 Q. Yeah.

23 A. But I quickly learned of the other
24 trustees, not knowing how the voting worked though.

25 Q. All right. In terms of the need for -- at

25

1 this point in time, was there a need for secrecy
2 regarding your company's interest in this property?

3 A. No. From our perspective, no.

4 Q. And we're talking about October 29, 2017.

5 A. That's correct, yeah.

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6 Q. You had no need for secrecy?

7 A. No need. We had never done a
8 confidentiality agreement, but nothing of this nature
9 in any transaction we have ever done.

10 Q. Okay. And so your company in October of
11 2017 --

12 A. Right.

13 Q. -- had no interest in keeping it a secret
14 that you were interested in purchasing the Boykin?

15 A. Right. Let me clarify one aspect of that,
16 though, is that because of the mitigation
17 opportunist, if you will, there was a level of
18 confidentiality that we wanted mainly from the
19 standpoint of not publicizing it beyond all the
20 parties because in the mitigation plan, as we had
21 happen before, there was some opportunists that came
22 in and escalated the price on us, candidly, because
23 they knew -- the word got out we had to have it for
24 mitigation or wanted it for mitigation. And by that
25 time, it was too far along the process so the price

26

1 went up substantially.

2 Q. Okay.

3 A. That -- I did express to Rigdon I was
4 concerned about that with opportunists coming in,
5 particularly a couple of brokers that were going to
6 try to glob on to parcels of land in the area to try
7 to turn around and market them to us.

8 So there was definitely an interest in
9 confidentiality from our part, but that was strictly
10 among the parties and not as we did, so ...

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11 Q. All right. But you had no interest in
12 concealing your identity from the other two trustees
13 as of October 2017?

14 A. No. There was no concern of that, no.

15 Q. All right. So would it be accurate to say
16 then it would not be Haile's policy to conceal its
17 identity from any co-owners or co-trustees of a
18 parcel of land that you were interested in
19 purchasing?

20 A. That's correct. We never have in the
21 history of the company concealed or used a surrogate
22 to do a transaction.

23 Q. Thank you.

24 Let's go off the record for just a second.

25 (Off the record.)

27

1 (DEFT. EXH. 4, DESCRIPTION , was marked
2 for identification.)

3 BY MR. BECKER:

4 Q. Mr. Thomas, I've just handed you what's
5 been marked as Exhibit 4. It's an email from Rigdon
6 Boykin to you dated November 16, 2017.

7 A. Uh-huh.

8 Q. Could you tell me -- I noticed there that
9 in response to your email to him regarding some
10 parcel ID numbers, he said, "Let me know when you
11 have delineated what is interesting from the pond to
12 the river and what along the river from Mullberry
13 south you would be interested in. Any progress on
14 thinking about Acorn?"

15 A. Yeah.

16 Q. What did you understand that to mean?

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17 A. Well, this was the time which -- with
18 respect to Acorn, any interest in buying the venue
19 and the portion at least the barn venue of it because
20 we kind of went from the barn venue to the whole
21 thing back to the barn venue and then ultimately
22 nothing. But there was no additional consideration
23 given.

24 He asked the question, and I told him if
25 anything would change, we would let him know. And

28

1 nothing ever transpired beyond that original
2 discussion, at least internally that we could do --
3 even be motivated to move in any regard.

4 Q. Okay.

5 A. That's what I take from that.

6 Q. All right. And how about the land from the
7 pond to the river and from Mullberry south would you
8 be interested in, did that involve any land owned by
9 Rigdon Boykin?

10 A. Well, it would inquire -- it would require
11 about -- less than a 120 acres along Swift Creek.
12 The whole goal, again, was to take Swift Creek into
13 the pond. Take Swift Creek from the pond all the way
14 to Wateree and possibly, depending what we could
15 garner, is some easement along the Wateree River for
16 our mitigation.

17 Q. So were you at this time discussing with
18 Mr. Boykin land that he might own along the river or
19 Swift Creek that your company might be interested in
20 purchasing?

21 A. Yes, I did, with regard to Swift Creek, but

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22 any substantive discussions, including any detail
23 discussions, did not come until this year because, as
24 I said, he rejected the possibility of buying or
25 parsing out a piece along Swift Creek at that time.

29

1 And those discussions did not happen until
2 this year where we began to reengage in discussions
3 about the Swift Creek area.

4 Q. Okay.

5 A. The easement, by the way. Not the whole
6 property, just the easement.

7 Q. Right. Did in fact your company make an
8 offer to Mr. Rigdon Boykin to buy land along Swift
9 Creek through his property?

10 A. This year. Well, not in 2017, no.

11 Q. Okay.

12 A. Nor this year either. We talked about it.
13 Never made a formal offer. Never talked -- I think
14 we did talk about price briefly but never took it to
15 an agreement.

16 Q. Okay. What price were you -- did you talk
17 about?

18 A. Again, it was 4,000 to \$6,000 range. If it
19 was just the 200-foot buffer plus any wetland maybe
20 associated with it, which we looked at and delineated
21 to some degree, as well as other properties along
22 that Swift Creek.

23 Q. Okay. So you did go so far as to delineate
24 the property along Swift Creek that Mr. Rigdon Boykin
25 owns that you would be interested in purchasing?

30

1 A. That's correct, yeah.
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2 Q. All right. What was the total acreage?

3 A. I think you have a survey there. About
4 79 acres on one little piece and then 28 acres on the
5 other, so less than -- overall about 108 acres.

6 Q. Okay.

7 A. Which was, again, the 200-foot offset which
8 we were proposing to all Swift Creek landowners and
9 approximately a little extra with some wetlands. The
10 extent of the wetlands that came off the creek, but,
11 again, not fully environmentally delineated.

12 Q. Okay.

13 A. That was strictly rough survey.

14 Q. All right. So you had gone as far as
15 delineating 108 acres of Rigdon Boykin's property?

16 A. That's right.

17 Q. That you would have an interest in
18 purchasing at somewhere between 4- and 6,000 per
19 acre?

20 A. Correct. Yeah.

21 Q. Are those discussions ongoing today?

22 A. They are not. We chose not to proceed.

23 Q. All right. Were those discussions ever in
24 any way tied to your option agreement or ultimate
25 acquisition of the Boykin Mill Pond?

31

1 A. No. No.

2 (DEFT. EXH. 5, DESCRIPTION , was marked
3 for identification.)

4 BY MR. BECKER:

5 Q. Mr. Thomas, I've handed you what's been
6 marked as Exhibit 5. It is an email from Greg Braker

7 RoughDraftDThomas.txt
 8 to Rigdon Boykin. It is dated January 17, 2018.

9 You'll note that in the email from
 10 Mr. Boykin to Braker that's right down below this
 11 one, it says, "On the signature page of the unsigned
 12 option agreement, it has a notary acknowledge space
 13 which lists County of Lancaster and State of South
 14 Carolina in it. Please take out of final. Could
 15 lead to guess re identity if someone focuses on it.
 16 Attorneys, et cetera have the draft."

17 were you aware of this communication with
 18 Mr. Braker?

19 A. Yes. I think it was relative to the -- we
 20 have a draft agreement that predominantly is in
 21 Lancaster County, except for mitigation. We had the
 22 same issue with Richland County when we did an
 23 agreement there. We still have Lancaster County on
 24 there, unfortunately.

25 So we made the change with Greg Braker to
 Kershaw County, not to reference Lancaster County.

32

1 Q. I see.

2 A. I think we redelivered that as Kershaw
 3 County, if I'm not mistaken.

4 Q. Okay. And normally, when you make
 5 purchases like this, do you create a new LLC to make
 6 the purchase the property?

7 A. No. It's always in Haile Gold Mine, Inc.
 8 or OceanaGold, Inc., depending on the nature of the
 9 property.

10 Q. You're aware that there was a new entity --

11 A. Yes. Yes.

12 Q. -- created?

RoughDraftDThomas.txt

13 A. That was confidentiality.

14 Q. Okay.

15 A. Yeah.

16 Q. Was that Mr. Boykin's idea?

17 A. For the confidentiality, yes.

18 Q. And was it his idea to create a new LLC

19 that would purchase the property?

20 A. Well, given the confidentiality of the --

21 whatever reason there was behind all of that and the

22 sensitivities, we mutually agreed to it because of

23 the protection of the opportunists coming in. And so

24 therefore, we mutually agreed but completely atypical

25 of everything -- anything we have ever done before.

33

1 Q. It is?

2 A. Even on the mitigation property. But we

3 were okay with it, given the sensitivity of

4 confidentiality that was presented, so ...

5 Q. Okay. Was that sensitivity of

6 confidentiality, was that Mr. Boykin's sensitivity or

7 yours?

8 A. Probably a combination of the two because

9 we were sensitive about someone coming in and

10 opportunists again and trying to interfere.

11 Q. But at least doing it the way you were

12 doing it here was different than any other time you

13 have ever done it before?

14 A. That's correct, yeah.

15 Q. In terms of creating some new LLC?

16 A. That's correct.

17 Q. Instead of buying it from the beginning in

18 RoughDraftDThomas.txt
 18 your own name?

19 A. That's correct. Yeah.

20 (DEFT. EXH. 6, DESCRIPTION , was marked
 21 for identification.)

22 BY MR. BECKER:

23 Q. Mr. Thomas, I've just handed you what's
 24 been marked as Exhibit Number 6.

25 A. Uh-huh.

34

1 Q. Which is an email string that ends with a
 2 email from Rigdon Boykin to Greg Braker, you're
 3 copied on it. And it says Option Agreement on the
 4 subject line. The date is Monday, January 22nd,
 5 2018.

6 I want to call your attention down to the
 7 email at the bottom, which is from Rigdon Boykin, in
 8 which he appears to be telling you -- I think you
 9 copied in Mr. Braker later, but he says, "David, our
 10 hearing is on Wednesday morning. If we are going to
 11 tee this up for it, we will need to send it to the
 12 court and lawyers no later than close of business
 13 Monday. Any later will be problematic.

14 "Please let me know if we are on schedule.
 15 The later I know that there is a problem, damage
 16 control will be more difficult. As it is, my butt is
 17 way out on a limb. Thanks, Rigdon."

18 A. Yeah.

19 Q. Do you know what he was referring to there?

20 A. Not in terms of the statement itself, but
 21 relative to the agreement, getting the agreement
 22 delivered. We're not the quickest in the world,
 23 unfortunately, because there's process and procedures

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24 we go through. There was a bit of an irritation
25 because it was taken us longer than I had planned to 35

1 get the agreement back to him, but it needed thorough
2 review.

3 By being out on a limb, I don't know
4 exactly what that pertains to, but we did want to
5 satisfy, you know, our -- the request to get it to
6 him, you know, before the hearing to have the
7 agreement at least in hand. And we were delayed on
8 that.

9 MR. BECKER: Okay.

10 (DEFT. EXH. 7, DESCRIPTION , was marked
11 for identification.)

12 BY MR. BECKER:

13 Q. All right. Mr. Thomas, I have just handed
14 you what's been marked as Exhibit Number 7. This is
15 another email string or thread. Some people call
16 them conversations.

17 A. Yeah, right.

18 Q. The last one is an email from Rigdon Boykin
19 to Gregory Baker dated January 22nd, 2018. It
20 includes in that string down at the bottom an email
21 from William Tetterton dated January 22nd, 2018.

22 Do you -- did you have any discussions with
23 Mr. Tetterton around this time?

24 A. Never had a --

25 Q. Okay.

36

1 A. That was the first introduction.

2 Q. Okay. Obviously, his firm was involved in

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3 communicating back and forth with Greg Braker in
4 January of 2018. To your knowledge, was
5 Mr. Tetterton aware of Haile Gold Mine's interest in
6 purchasing this property at this time?

7 A. I do not know. I did not know of the
8 communication with Greg Braker. And, in fact,
9 actually it was probably a month ago I had to ask
10 maybe up -- actually I think about the time we
11 submitted the second option agreement for review when
12 we were asked to come back to the table, asked who he
13 was and who he represented. Up until that point, I
14 did not know.

15 Q. Okay. All right.

16 A. I didn't realize -- I was unaware of this
17 discussion with Greg Braker and Mr. Tetterton.

18 Q. At this time were you aware that the -- all
19 of the trustees were not aware of the identity of the
20 proposed purchaser?

21 A. That, I can't answer.

22 Q. Okay.

23 A. I don't know about that. Are you talking
24 about in January?

25 Q. Yes.

37

1 A. I don't know. I did not know at what time
2 they -- except for when we had the first meeting and
3 the introduction at that time.

4 Q. All right. Are you aware of how the other
5 two trustees first became aware of the identity of
6 the proposed purchaser?

7 A. I am not.

8 MR. BECKER: Okay.
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9 (DEFT. EXH. 8, DESCRIPTION , was marked
10 for identification.)

11 BY MR. BECKER:

12 Q. Mr. Thomas, I have just handed you what's
13 been marked as Exhibit 8. I can represent to you
14 that this is another document that came from your
15 production, your company's response to the subpoena
16 duces tecum.

17 This includes another email by and among
18 Rigdon Boykin and William Tetterton and Greg Baker
19 (sic); is that right?

20 A. Braker, just for clarity.

21 Q. Braker. Yeah.

22 The first email in the string appears to be
23 an email from Greg Braker to Rigdon, and then it was
24 forwarded to William Tetterton with a copy to Greg
25 Braker; is that right?

38

1 A. I don't see the -- I see the front, but I
2 don't see the forward.

3 Q. Okay. It looks like if you look in the
4 middle of the page on January 22nd, 2018, at
5 10:09 a.m. --

6 A. Right.

7 Q. -- Mr. Braker was communicating somehow
8 with Rigdon Boykin. I think he said, "Good morning,
9 Rigdon," and then that was forwarded ultimately from
10 Rigdon to William Tetterton and Greg Braker.

11 A. My apology. I see now. I was looking
12 backwards. Yeah, I see that. Yes.

13 Q. Yeah. So I guess, again, it appears that

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14 Mr. Tetterton -- would you disagree that it appears
15 Mr. Tetterton was actively involved in communications
16 between him and Mr. Braker regarding this Mill Pond
17 option agreement?

18 MR. TETTERTON: Object to the form.

19 THE WITNESS: Can you say that again? Make
20 sure I'm clear.

21 BY MR. BECKER:

22 Q. It appears that based from the documents
23 produced by your company --

24 A. Right.

25 Q. -- in response to this subpoena that

39

1 William Tetterton as of January 22nd was in email
2 communication with Greg Braker at --

3 A. Right.

4 Q. -- Rubin and Rudman, your attorneys?

5 A. Right.

6 Q. And was, in fact, receiving a copy of
7 Boykin area --

8 A. Deed, yeah.

9 Q. -- PD -- Boykin pond area PDF and talking
10 about a deed description --

11 A. Right.

12 Q. -- in an email. Is that what this appears?

13 A. Yeah, I understand what you're saying. But
14 yeah, I, again, wasn't aware of any of these
15 discussions. So my apology for that.

16 Q. I understand you have no personal knowledge
17 about this.

18 A. Right. Exactly.

19 Q. But in terms of discussing what your

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20 company's documents produced in response to this
21 subpoena seemed to indicate, would you disagree with
22 that characterization that I just gave?

23 A. No. No.

24 MR. BECKER: All right.

25 (DEFT. EXH. 9, DESCRIPTION , was marked 40

1 for identification.)

2 BY MR. BECKER:

3 Q. Mr. Thomas, I've handed you what's been
4 marked as Exhibit Number 9. This the first -- it's
5 another email string. The last one which is actually
6 the first one at the top of that first page there, is
7 an email from you to Rigdon Boykin. It's dated
8 January 22nd.

9 He's forwarded you an email from Vincent
10 Sheheen to him regarding the Congaree Land Trust.
11 And your response says, "We are working diligently to
12 get the LLC and agreement in place. Working with a
13 24-hour time difference has been challenging. I will
14 keep you posted."

15 I take it you were in Australia at the
16 time?

17 A. No. Actually, I was here, but I was
18 working with our Australian counsel to see if we
19 could even do something of that nature, set up the
20 LLC.

21 Q. All right.

22 A. I had to get approval from corporate to do
23 the LLC.

24 Q. Yeah. So you had to get special approval

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25 within your company to set up the separate LLC as

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1 Mr. Rigdon Boykin requested --

2 MR. DUFFY: Object to the form.

3 THE WITNESS: That's correct.

4 BY MR. BECKER:

5 Q. -- to keep everything quiet and
6 confidential?

7 A. That's correct. Yes.

8 (DEFT. EXH. 10, DESCRIPTION , was
9 marked for identification.)

10 BY MR. BECKER:

11 Q. Mr. Thomas, I've handed you a email which
12 is from Greg Braker. You are copied on it. It is
13 dated January 24th. It's from Greg Braker to Rigdon
14 Boykin.

15 A. Uh-huh.

16 Q. The subject is Latest Option Agreement
17 Drafts. I call your attention to the second full
18 paragraph in that email from Greg Braker to Rigdon.

19 He says, "Unfortunately, the agreements are
20 not fully executed because we are still trying to get
21 clearance on LLC formation. However, as you and I
22 discussed, you can reasonably and accurately
23 represent to the court that we are still working
24 through getting final corporate sign-off on these
25 changes, as I have not yet conferred with general

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1 counsel to answer some questions related to the
2 changes.

3 "There is no reason to give the court or
4 the other trustees/beneficiaries to the Boykin trust

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5 any reason to believe that the buyer is having second
6 thoughts, as my client is fully committed to pursuing
7 the property."

8 Were you aware that at this time the other
9 two trustees of the trust were not aware of the
10 identity of the perspective purchaser?

11 A. No.

12 Q. Okay. Would you agree that if you own real
13 property and are considering whether to sell it, that
14 it would be meaningful to know who the perspective
15 purchaser is --

16 MR. TETTERTON: Object to the form.

17 MR. BECKER: -- to know their real
18 identity?

19 MR. TETTERTON: Object to the form.

20 THE WITNESS: I'll answer that, yeah, but
21 we always want to know who's involved.

22 MR. BECKER: Right.

23 THE WITNESS: And knew it's family, just
24 didn't know the respective roles of all of
25 those.

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1 BY MR. BECKER:

2 Q. I'm just talking about in principal, you
3 would agree with that?

4 A. Oh, yeah.

5 Q. And normally, as I hear your testimony,
6 your company is fully upfront and transparent about
7 who -- which set -- with the potential sellers that
8 it is meeting with and negotiating with; is that
9 right?

10 RoughDraftDThomas.txt
 10 A. It's always been me and it's always been
 11 Haile, yes.

12 Q. Except in this one instance.

13 A. Except in this case, yes. Pardon me.

14 (DEFT. EXH. 11, DESCRIPTION , was
 15 marked for identification.)

16 BY MR. BECKER:

17 Q. Mr. Thomas, I've just handed you what's
 18 been marked as Exhibit 11. This is an email from
 19 Rigdon Boykin to Greg Braker with a copy to you.
 20 It's dated Friday, March 23rd, 2018. The subject is
 21 Swift Creek Land.

22 The email says, "Greg, attached is a plat
 23 of the two parcels along Swift Creek. Parcel number
 24 1 is owned by Patricia W. Boykin and Rigdon H.
 25 Boykin. Parcel number 2 is owned by Patricia W.

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1 Boykin Revocable Trust dated 12-19-05. Note that
 2 there is a common easement for road access marked on
 3 the plat. Call me with my questions."

4 Can you just describe what the subject and
 5 context of this was?

6 A. I think when we were looking at this --
 7 this was a part of -- or the property that we wanted
 8 to purchase from Rigdon relative to the easement and
 9 also associated wetland footprint along Swift Creek.
 10 Did not know all the complexities of that about the
 11 ownership.

12 And this was in preparation of the option
 13 agreement we were going to put in place with Rigdon
 14 relative to this footprint or this parcel, 108 acres
 15 or -9 acres approximately.

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16 Q. HERE okay. So this identifies in more
17 detail the approximately 108 acres of land that your
18 company has had discussions with Rigdon Boykin --

19 A. Yes.

20 Q. -- about purchasing?

21 A. That's correct. Yes.

22 Q. And those discussions were ongoing at least
23 as late as March 23rd, 2018?

24 A. Yes. Well --

25 Q. That was the date of this email.

45

1 A. Yeah. I'm sorry, I'd have to go back and
2 look.

3 Q. Yeah.

4 A. Which have ceased, I mean, obviously.

5 Q. Right.

6 A. We terminated that because we didn't want
7 to move forward because of other complexities, but
8 that's correct.

9 MR. BECKER: Okay.

10 (DEFT. EXH. 12, DESCRIPTION , was
11 marked for identification.)

12 BY MR. BECKER:

13 Q. Mr. Thomas, I've handed you what's been
14 marked as Exhibit 12. It's an email from Rigdon
15 Boykin to you, and he appears to be reviewing a
16 proposed slide PowerPoint presentation, I believe.

17 A. Uh-huh.

18 Q. Leading up to the meeting you had with all
19 three trustees on --

20 A. Back in April.

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21 Q. -- March 27.
 22 A. March 27. Okay.
 23 Q. Yeah, the day before.
 24 A. Uh-huh.
 25 Q. I don't think we saw that PowerPoint slide, 46

1 but it was produced as part of what you --

2 A. Yeah. I had a hard copy, but we didn't
 3 present it. That's correct.

4 Q. Okay. So on the day before that meeting
 5 when you first meet with all three trustees,
 6 Mr. Boykin asked you, "David, on slide 8, it is
 7 stated that at the SCDNR will be designated as the
 8 longterm steward of the properties. To your
 9 audience, this will sound like DNR is the owner.

10 "Can it be said the Heritage Trust will own
 11 the land and DNR will be designated to make sure that
 12 Haile complies with all of the commitments for
 13 improvements and maintenance of the land that is a
 14 part of its mitigation plan?

15 "You can call me at the office to discuss
 16 this issue."

17 A. Right.

18 Q. Did you all have a conversation about that
 19 issue?

20 A. I think I followed up with him with a brief
 21 phone call to explain what I was referring to. The
 22 statement is accurate. It's a function that --
 23 because DNR would be the longterm steward. The
 24 Heritage Trust will actually hold the property, as
 25 they do with all conventional -- not all but with

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1 respect to Haile, they own -- the Heritage Trust has
2 all the mitigation property and DNR is the longterm
3 steward.

4 I think there was some confusion around
5 whether or not DNR would actually own the property,
6 even though they are steward. They're stewards of
7 the maintenance and management and the ongoing
8 responsibility we have as a permittee to make sure
9 all that work is done by regulation. But the
10 Heritage Trust is the actual owner of the property.

11 Q. All right.

12 A. And I was just trying to clarify or he was
13 trying to clarify. And I did follow up with him and
14 explain that. I think I may have explained it that
15 morning before we met.

16 (DEFT. EXH. 13, DESCRIPTION , was
17 marked for identification.)

18 BY MR. BECKER:

19 Q. Mr. Thomas, I have handed you what's been
20 marked as Exhibit 13. This is an email dated
21 March 28th, 2018, from Greg Braker to Rigdon Boykin
22 with a copy to you. It includes down there at the
23 bottom an email from Rigdon to Greg, also with a copy
24 to you.

25 And his question is, "Do you have any

48

1 questions about the transaction along the creek?"

2 And up above that, Mr. Braker's response
3 is, "Good morning, Rigdon. I've spoken with David
4 about this, and we are in the process of putting
5 something together. I am sure that I will have

6 RoughDraftDThomas.txt
 questions but am not quite there yet. Thanks for the
 7 follow-up. We'll talk with you soon."

8 A. Uh-huh.

9 Q. What transactions along the creek were the
 10 subject of that email?

11 A. That was the 108 acres or the Swift Creek
 12 easement.

13 Q. Belonging to Mr. Rigdon?

14 A. Yes. That's correct.

15 Q. So those discussions were still ongoing as
 16 of March 28, 2018?

17 A. Correct. Correct. Yeah.

18 (DEFT. EXH. 14, DESCRIPTION , was
 19 marked for identification.)

20 BY MR. BECKER:

21 Q. Mr. Thomas, I've handed you what's been
 22 marked as Exhibit 14. It's, again, an email to you
 23 from Rigdon Boykin dated month April 9th, 2018. The
 24 subject is Swift Creek.

25 Mr. Boykin says, "Good morning, David. Any 49

1 progress on the papers? Thanks, Rigdon."

2 A. Uh-huh.

3 Q. Did you -- how did you interpret this
 4 email? What was he asking about? What papers?

5 A. The status of the option agreement we were
 6 working with him on the Swift Creek easement, that
 7 108 acres.

8 Q. That he owns?

9 A. That's correct.

10 Q. Okay. So those discussions were still
 11 ongoing as of April 9th --

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12 A. Ninth.

13 Q. -- 2018?

14 A. That's correct.

15 (DEFT. EXH. 15, DESCRIPTION , was
16 marked for identification.)

17 BY MR. BECKER:

18 Q. Mr. Thomas, I've handed you what's been
19 marked as Exhibit 15. This is an email from you to
20 Rigdon Boykin dated April 18th, 2018, in which you
21 advise him -- and I won't read through the whole
22 email. But in which you advised Rigdon Boykin that
23 your company was not in a position to proceed with
24 consummating an option or purchase agreement of the
25 Boykin Mill Pond and Town of Boykin.

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1 what led you to send this email?

2 A. I thought my discussions would be with him
3 all the way through the transaction as we would with
4 any land transaction.

5 Q. Right.

6 A. He was the point of contact, and I want to
7 at least inform him that we were withdrawing because
8 of the time horizon, there was no sight in end (sic),
9 so we had an obligation to get mitigation in place.
10 I just wanted him to be apprised as to why we were
11 having to withdraw.

12 Q. Sure.

13 A. He was my point of contact.

14 Q. I understand he was your point of contact
15 and why you sent it to him as opposed to anyone else.
16 My question, though, is, what led you to terminate

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17 the --

18 A. Oh, pardon me.

19 Q. -- the interest in the -- in continuing a
20 discussion about purchasing the Boykin Mill Pond at
21 this time?

22 A. And that was directly related to a phone
23 call that Mr. Bundy had with Greg Braker the day
24 before talking about appealing it, challenging it.
25 And there was just no end in sight that this was ever 51

1 going to materialize to the point where we could
2 acquire the property fee simple.

3 And for mitigation and our permit process,
4 we have a very specific timeframe we have to pull
5 this together, and there was no indication it was
6 ever going to materialize.

7 Q. Okay.

8 A. So we just withdrew.

9 Q. Okay. All right.

10 A. Yeah.

11 MR. BECKER: Okay.

12 MR. TETTERTON: Are we at a point we can
13 take about a five-minute break?

14 MR. BECKER: Sure.

15 (A recess transpired.)

16 (DEFT. EXH. 16, DESCRIPTION , was
17 marked for identification.)

18 BY MR. BECKER:

19 Q. Mr. Thomas, the next exhibit is another
20 email from you to Rigdon Boykin regarding a meeting.
21 It's dated April 30th, 2018, and it comes 12 days
22 after your email to Mr. Boykin telling him that your
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23 company was not in a position to proceed with the
24 Boykin Mill Pond option agreement.

25 You said and I'm sorry, you had an illness

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1 due to overcoming pneumonia that I did not realize I
2 had. I must reschedule our meeting for tomorrow if
3 possible. I have to be in Charleston until
4 1:00 p.m., but we can meet around 3:00 p.m.

5 what was the purpose of the meeting that
6 was proposed there?

7 A. I do not know. We never had the meeting
8 because I did not return until 7:00 or 6:30 or 7 I
9 believe that evening. I do not recall the nature of
10 that meeting.

11 Q. Okay.

12 A. My apology or the purpose behind the
13 meeting.

14 Q. Okay. Let's go on the this. This did not
15 get -- I didn't get extra copies made.

16 MR. BLACK: We've got a copy up here if you
17 want to.

18 MR. BECKER: would that be okay. would you
19 make like four copies of that.

20 (Off the record.)

21 (DEFT. EXH. 17, DESCRIPTION , was
22 marked for identification.)

23 BY MR. BECKER:

24 Q. All right. Mr. Thomas, I've just handed
25 you what's been marked as Exhibit 17. This is an

53

1 email from Greg Braker to Rigdon Boykin dated

RoughDraftDThomas.txt

2 May 2nd. The subject is PSA questions. I guess that
3 stands for purchase sale agreement?

4 A. I would assume. In our terminology, it is
5 professional service agreement.

6 Q. Okay.

7 A. But that may be purchase and sale agreement
8 with regard to his terminology.

9 Q. Okay. All right. In the first paragraph
10 he states he's sorry things didn't work out on the
11 Boykin Mill Pond. But in the second, he says, "On
12 that score, Haile is interested in purchasing parcel
13 (or portions of them) along Swift Creek including
14 property owned by you and/or your wife.

15 "I'm in the process of putting together a
16 related purchase and sale agreement for your
17 properties and had a few related questions.

18 would you mind giving me a call when you
19 get a chance? Thank you."

20 well, so do you recall what were the
21 substance of those discussions, negotiations as of
22 May 2nd, 2018?

23 A. I am not, other than we obviously still had
24 an interest in the Swift Creek area, Swift Creek
25 parcel, but I am not aware of the specific

54

1 discussions that Greg had with Rigdon. I'm sure it
2 was all tied around the purchase agreement for that
3 easement -- or not easement, fee simple purchase of
4 the easement.

5 Q. Of the Mill Pond?

6 A. No, on the 108 acres.

7 MR. BECKER: okay.
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8 (DEFT. EXH. 18, DESCRIPTION , was
9 marked for identification.)

10 BY MR. BECKER:

11 Q. Mr. Thomas, this is Exhibit 18, an email
12 from you to Rigdon Boykin dated May 14th. In the
13 second paragraph you indicate that you're considering
14 reaching out to James Becker and Bill Bundy to offer
15 the removal of the -- well, hold on a minute.

16 That paragraph starts with, "I am following
17 up with counsel tomorrow relative to the deposition
18 and the prospects of proceeding with the Swift Creek
19 purchases."

20 What did you mean there?

21 A. That was -- well, the contact with counsel
22 was with Greg Braker.

23 Q. Okay.

24 A. And, you know, there was always the -- I
25 guess intent by Mr. Bundy that they were going to

55

1 depose us and subpoena us, so I thought, you know,
2 because time had passed and that had not happened.
3 So that's the reason I wrote the email that I was
4 considering having another third meeting among us
5 just to sit around and talk about the prospects of is
6 this a possibility, how long would this possibly
7 take, and could we get moving forward. And that was
8 a genuine --

9 Q. Right. All right.

10 A. -- approach that I have taken many times.

11 Q. So how did the subject of -- after your
12 email of April 18, in which you indicated the company

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13 was not interested in moving forward in terminating
14 discussions, when did it first -- when did you first
15 communicate with Rigdon Boykin that you might yet
16 still be willing to continue those negotiations?

17 A. Probably a couple weeks or maybe even a
18 month almost later. I mean, that's just the way I
19 have always done things, try to get back to the table
20 if we can, particularly if it's something of that
21 interest. And we have done it many, many times, and
22 that was a genuine interest on my part to sit face to
23 face and reengage again, possibly.

24 Q. Right.

25 A. Mainly to get some understanding just so

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1 everybody is aware. Mainly get some understanding as
2 to, you know, is this going to take a year, six
3 months, two months, not knowing the other
4 complexities, by the way, but could it take longer
5 than what our time horizon is in terms of ultimately
6 obtaining as a mitigation property.

7 Q. Right.

8 A. As you know -- or as I put in there, I
9 always thought that the township based on some
10 concerns that they had with respect to the township,
11 I thought, well, if we could get back to the table
12 and maybe remove that as a hurdle for maybe looking
13 at it later on down the line, we will focus just on
14 the Mill Pond. So that was presumptuous, but I
15 thought maybe we could sit down and work something
16 out along those lines.

17 Q. I understand. And it was Mr. Rigdon
18 Boykin's idea to begin with to put the downtown

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19 Boykin area in to the deal?

20 A. Yeah.

21 Q. Yeah.

22 A. I ultimately thought it would be
23 beneficial. Hard sale, but nevertheless, something
24 we were willing to pursue.

25 Q. Okay.

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1 A. Yeah.

2 Q. So did you and Mr. Boykin have a discussion
3 about your email after you had sent it to him?

4 A. Not that I recall. I think I had reached
5 out by text. I don't know the chronology on that.
6 Recently about reaching out, and he said, "I'll
7 follow-up," and that was the extent of the
8 conversation.

9 Q. Okay.

10 A. I'll ask or something of that nature. I'll
11 ask or I'll follow-up and get with back with you.

12 Q. Okay.

13 A. Which we provided. I think there's a text
14 on there somewhere along those lines.

15 MR. BECKER: Right. Okay.

16 (DEFT. EXH. 19, DESCRIPTION , was
17 marked for identification.)

18 BY MR. BECKER:

19 Q. All right. I've handed you what's been
20 marked as Exhibit 19. This is an email from Greg
21 Braker to Rigdon Boykin dated June 1, subject Option
22 Agreement. Here he says, "David Thomas reached out
23 to me earlier today and asked that we revise the

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24 option agreement for Boykin Mill Pond and downtown
25 Boykin per various instructions/terms he provided."

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1 When did you decide to ask Greg Braker to
2 do this? Was it at or about that time?

3 A. Yeah. This was following a discussion that
4 I actually had with Rigdon relative to, you know,
5 coming back and maybe sitting down and presenting a
6 substantive offer, coming back to the table, if you
7 will. And respectfully, particularly, Mr. Bundy had
8 removed himself because he was always going to be the
9 challenge, by his own admission.

10 Q. Right.

11 A. I thought, well, perhaps there's been
12 opportunity to come back, and I gave it some
13 consideration. I told Rigdon, I'll see, but I'm not
14 a hundred percent there. It took approximately a
15 week before I made the determination that we
16 probably, you know, maybe perhaps we should. And so
17 therefore, that's what started this discussion and
18 ultimately getting into an option agreement, a second
19 option agreement.

20 Q. Right. Okay. In other words, reviving an
21 offer?

22 A. Precisely.

23 Q. Somewhat different than the previous one,
24 but reviving the option agreement.

25 A. Correct. I mean, following through with

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1 some of the commitments we made in a meeting that we
2 had that day in terms of the price, but removing some
3 of the conditions that we just knew through

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4 discussions with regulators just weren't going to
5 happen.

6 Q. Yeah.

7 A. So some of that, yes, it wasn't
8 significant. Not significant, but somewhat different
9 from the previous except for the price increase,
10 obviously, is a big factor.

11 Q. Okay. All right. Well, and that brings me
12 to --

13 (DEFT. EXH. 20, DESCRIPTION , was
14 marked for identification.)

15 BY MR. BECKER:

16 Q. Mr. Thomas, this is Exhibit 20, another
17 email from Rigdon Boykin to Greg Braker. Subject
18 witness in which he's saying, "None of you are on
19 their witness list."

20 Did you have any discussions with
21 Mr. Rigdon Boykin about whether you or any other
22 parties associated with your company were on a
23 witness list in this case?

24 A. No. I think this was precipitated by a
25 question I had for Greg in the spirit of getting the 60

1 second option agreement put forth. You know, if this
2 was going to be something that we were going to
3 continue to be dragged into, sorry, we just -- we
4 were not going to move forward with the second option
5 agreement.

6 Q. Right.

7 A. So I asked the question to Greg what his
8 thoughts were and evidently --

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9 Q. Okay.
10 A. -- you know, Rigdon followed up to apprise
11 us that that was not the case.

12 Q. And so ultimately, on --
13 (DEFT. EXH. 21, DESCRIPTION , was
14 marked for identification.)

15 BY MR. BECKER:

16 Q. So ultimately on June 8th, 2018, this
17 month --

18 A. Just this month, yeah.

19 Q. -- through Greg with your approval and
20 authorization, I'm sure, gave to -- Greg Braker gave
21 to Rigdon via this email --

22 A. Correct.

23 Q. -- on Exhibit 21 the final -- Mill Pond
24 Final Option Agreement dated June 8, 2018.

25 How would you describe the major difference 61

1 between this option and the one that preceded it that
2 was discussed in the meetings we had with you on,
3 let's see, March 27th and April 12th of 2018?

4 A. Right. So we -- based on that last
5 meeting, the April meeting, there was a
6 recommendation or asked, a request to review
7 increasing the price by Mr. Bundy, which we did not
8 have any issue with. So we increased the price in
9 this agreement.

10 we did -- just because of the potential
11 exposure, if anything still existed that could
12 compromise our interest in terms of the option of
13 agreement, instead of -- even though were committed
14 to the 300, we were only going to fund a hundred and

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15 put the remainder in an escrow account, the 200
16 remaining.

17 And then some of the access issues around
18 because we still -- some of those issues we never had
19 the answers to or still to this day do not have the
20 answers to, although we were willing to pursue them.

21 So we pulled a lot of the special requests
22 out of the treatment just until we could pursue and
23 evaluate them. I'm not sure Greg conveyed that, but
24 we were certainly willing to continue to pursue the
25 ones we knew we could work towards. But some of them 62

1 were just like the ongoing, perpetual access to the
2 pond just wasn't going to happen.

3 Q. Okay.

4 A. And that's the discussion we always had.

5 Q. Right.

6 A. So other than that, everything was
7 consistently the same. And then all I can really
8 recall that we significantly -- the cottage was
9 another issue, if I recall that I had a concern with
10 at the time was having some definitive time horizon
11 on that in terms of Ms. Day's access to the pond and
12 her children, reduce that, but otherwise --

13 Q. And that's clear in the option, what that
14 is.

15 A. Otherwise, it's substantially the same.

16 Q. Back to the interest in ongoing, perpetual
17 access to the pond for Boykin family members --

18 A. Right.

19 Q. -- you're certain as of this time that

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20 that's just not a viable option going forward?

21 A. From a regulator's perspective. They're
22 okay with it for a timeframe that's specific but not
23 perpetual.

24 Q. I got it. Okay.

25 A. You know, because of the descendants coming 63

1 and the heirs, the other ownership around the area
2 and access. They just need -- for their longterm
3 stewardship, they need to have protection of that.

4 Q. And in this agreement, Ms. Mary Deas
5 Wortley's, the access for her and her family members
6 are limited to her lifetime?

7 A. That's correct. Yes.

8 Q. That was, I take it, about the best you
9 could offer for her; is that right?

10 A. That's correct. Yeah.

11 Q. Okay. Have you ever met any other family
12 members? Did you ever meet Whit and May Boykin
13 before you met all three trustees?

14 A. I never met May. I met -- I say met, I ran
15 into Whit. I didn't know who he was at the time. He
16 was waiting -- I was at Rigdon's house this year
17 sometime, I can't remember exactly what the date was
18 when we met earlier in the year, and he drove up the
19 same time I did.

20 Q. Okay.

21 A. Rigdon just happened to introduce us, and
22 that's the first time I had ever met him. I didn't
23 know May, and I didn't know the those parties until
24 now. Yeah.

25 Q. Okay.

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1 A. Or until the last couple of months.

2 Q. Okay. Give us just a few minutes. Let me
3 see if I have any further questions before we stop.

4 A. Sure.

5 (A recess transpired.)

6 MR. BECKER: I have no further questions at
7 this time. Thank you.

8 - - -

9 EXAMINATION

10 - - -

11 BY MR. TETTERTON:

12 Q. Mr. Thomas, how are you?

13 A. Good. Thank you.

14 Q. I think today is the first time we have
15 never met; is that correct?

16 A. That's correct.

17 Q. And the first time we ever had any verbal
18 conversation?

19 A. That's correct.

20 Q. Pleased to meet you.

21 A. Pleased to meet you.

22 Q. I represent May and also Whit in this
23 litigation.

24 A. Okay.

25 Q. And your testimony taken here today is

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1 going to be presented to the court as your testimony.

2 You understand that, right?

3 A. Yes. Yes.

4 Q. Looking at -- if you don't mind, look at

5 RoughDraftDThomas.txt
Exhibit 21, the option agreement.

6 A. Yes, sir.

7 Q. If I understand what's happened here, that
8 is going to be the final option agreement to purchase
9 the property listed in the option agreement until
10 June 30th; is that correct?

11 A. That's correct, yes.

12 Q. If you would, for the record so the Court
13 will understand this option agreement, tell me about
14 the financial part of it first, please.

15 A. In terms of the price?

16 Q. Yes.

17 A. Total price?

18 Q. Yes.

19 A. Okay. The total price was one that we
20 based the valuation in line with what we've done
21 consistently on other parcels that Haile has. This
22 price reflects a 20 percent increase over our
23 original option agreement, which I'm not sure if you
24 have that or not. You should have it.

25 But it wasn't ever less than 20 percent

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1 increase over that original option agreement that
2 this one reflects. That was a something we chose to
3 do based on a discussion we had in April by the
4 request of Mr. Bundy asking if we could increase the
5 price.

6 Q. Okay.

7 A. which we gave it some consideration and
8 chose to do so.

9 Q. Let's talk about the property that's in the
10 option agreement.

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11 A. Yes, sir.
 12 Q. Tell me, what property is that?
 13 A. So the property associated with this option
 14 agreement is the Mill Pond area.
 15 Q. Consisting of about how many acres?
 16 A. Of about 518 acres total approximately.
 17 Q. Okay.
 18 A. And then approximately another 35 acres.
 19 My apology for not knowing the details on that.
 20 About 35 acres associated with the township.
 21 Q. Can we call that downtown Boykin?
 22 A. Downtown Boykin. Pardon me, yes. I refer
 23 to it as the township and downtown Boykin, those two
 24 parcels. As well as the parcels that are reflected
 25 across the highway that Mr. Becker talked about

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1 earlier today.
 2 Q. Highway 261?
 3 A. Correct.
 4 Q. And would that be the area you described as
 5 the drainage area going towards the Wateree River?
 6 A. Well, the downstream flow from the Boykin
 7 Mill Pond down towards the Wateree River.
 8 Q. Following along Swift Creek?
 9 A. That's correct.
 10 Q. And Swift Creek does in fact run into the
 11 Wateree River?
 12 A. That's correct.
 13 Q. Any other properties involved in this
 14 option agreement?
 15 A. Not in this option agreement. Other than

16 RoughDraftDThomas.txt
the cottage. We removed that completely, which was
17 originally in the original option agreement.

18 Q. So Ms. May's cottage is not a part of the
19 offering to purchase?

20 A. Yes, sir, that's correct.

21 Q. Now we have identified the property, tell
22 me what the financial, the money part of it is.

23 A. Okay. So with respect to this option
24 agreement, we went into this with the intent to
25 purchase the property and the pond area and, pardon

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1 me, downtown Boykin.

2 And with that in this option agreement, we
3 accompanied it with a \$300,000 option payment, of
4 which in the original agreement we were going to fund
5 100 percent of the 300,000; in this agreement, we
6 were going to fund a hundred thousand, a third of the
7 total amount and then put the remaining 200,000 into
8 an escrow account until such time that the agreement
9 was consummated --

10 Q. Okay.

11 A. -- during this period. With respect to the
12 price, it is a 4.2 plus or minus. Let me get the
13 exact number. My apology.

14 Q. Would that be the total indicated on page
15 11 of Exhibit 21?

16 A. My apology. So it's -- the Mill Pond is
17 3.3 and downtown Boykin is 1.3. Which both reflect a
18 20 percent increase overall from the original option
19 agreement.

20 Q. So that would be about \$4.6 million --

21 A. Yeah.

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22 Q. -- if this option is exercised by you all?

23 A. That's correct.

24 Q. And consented to by the three trustees?

25 A. That's correct.

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1 Q. And if three trustees decide in a meeting
2 here shortly that they will agree to this option,
3 offer, are you all prepared to go through with the
4 agreement?

5 A. Yes, we are.

6 Q. I notice that the option agreement pertains
7 to downtown Boykin a little bit.

8 A. Right.

9 Q. Correct?

10 A. That's correct.

11 Q. And that includes the buildings down there
12 which I think include the restaurant, the grits mill,
13 the Boykin Grill; is that correct?

14 A. That's correct, yes.

15 Q. Is it your company's policy to protect in
16 perpetuity the ecological system and culturally
17 historic Boykin Mill Pond and related buffer area in
18 downtown Boykin?

19 A. That is a part of the mitigation plan as a
20 requirement. We will not be doing it individually,
21 but it will be set up to be managed by whatever trust
22 ends up with the property. And it is their
23 responsibility based on the terms and the conditions
24 of the mitigation plan itself.

25 Q. Make sure for the record that the judge

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1 hears your testimony, she will understand that you're
2 committed to protect in perpetuity the ecological
3 system and culture historic Boykin Mill Pond, related
4 buffer area in downtown Boykin?

5 A. That's correct.

6 Q. Do you recall what you all had and what you
7 intend to do about the buildings in the downtown
8 Boykin area, talking about the structures down there?

9 A. Right. And I have to clarify one aspect of
10 this, as I mentioned earlier, the downtown Boykin
11 does not have mitigation value for us, but it is a
12 very intriguing component to the litigation plan, and
13 it is something we were going to work with the
14 regulators to approve, which is something they
15 typically don't do.

16 Our intent to preserve downtown Boykin as
17 it is today, set up a endowment component to take
18 care of the ongoing maintenance and care of the
19 buildings. But also enhance the area with some
20 esthetics, landscaping, repair the building,
21 structural integrity, as well as put in some walking
22 paths potentially.

23 Now, that is not our decision. That is
24 ultimately the trust's decision whether or not they
25 want to do that.

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1 Q. Is your company committed, did I hear you
2 testify, to the preservation and restoration of
3 downtown Boykin?

4 A. 100 percent, yes.

5 Q. Does that includes the Grits Mill, the
6 restaurant, the Broom shop, and the gift shop?

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7 A. That's correct, yes.

8 Q. And why would you all want to do that for
9 the Boykin trust?

10 A. why would we want to do it?

11 Q. Yes. It is not part of a -- I mean, it
12 doesn't mitigate in a mitigation -- a true mitigation
13 plan.

14 A. That's correct.

15 Q. why would you want to do that?

16 A. well, it is something that we have done
17 before.

18 Q. That's my next question.

19 A. Yeah, so the Town of Kershaw, we were
20 talking about the schoolhouse. We have a historic
21 schoolhouse on our property that -- and this is --
22 pardon the example, but it is very important.

23 By law, we can let that building sit there,
24 deteriorate rot away, collect it, and put it in a
25 landfill. We're proposing to offer \$160,000 to

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1 repair and maintain the integrity of that building
2 and relocate it in the town to where everyone can
3 have the benefit and the use of it longterm.

4 Q. It has historic value?

5 A. It has historic value, yes. It's 1800s.

6 Q. In your opinion, your company thinks the
7 downtown Boykin area has historic value?

8 A. Historic value longterm, without a doubt.
9 we have to get regulatory approval on. That's one of
10 the challenges, but we are certainly going to work
11 towards getting that accomplished.

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12 Q. I'm going to ask you to go back and look at
13 Exhibit 18, if you have that handy.

14 A. Yes.

15 Q. I'm going to ask you to recall the best you
16 can when you first had a conversation with Mr. Becker
17 and where that conversation took place.

18 A. Our first introduction was the March
19 meeting. I think we just discussed. March, I don't
20 remember that date. Pardon me.

21 MR. BECKER: I'll tell you.

22 THE WITNESS: My apology, but my first
23 introduction was that March date.

24 MR. BECKER: March 27.

25 BY MR. TETTERTON:

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1 Q. So March 27, 2018, you met Mr. Becker?

2 A. That's correct.

3 Q. At that time did you meet Mr. Bundy?

4 A. I did.

5 Q. Where did that meeting take place?

6 A. At Haynsworth Sinkler and Boyd's office.

7 Q. Were you invited to come meet with them?

8 A. I was.

9 Q. Who was present at that meeting?

10 A. Obviously myself, Mr. Becker, Mr. Bundy,
11 and Mr. Boykin, and Alice. Pardon me. And Mary
12 Deas.

13 Q. Mary Deas?

14 A. Mary Deas, pardon me.

15 Q. By telephone?

16 A. By teleconference.

17 Q. What was the subject of that meeting?

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18 A. Just an overview as to -- the way I took
19 it, overview of the property, the desire of Haile
20 Gold Mine. That was about the time to where we were
21 happy to have that meeting from the standpoint of
22 everybody knowing who all the parties were and just
23 having an overview as to the project, what our
24 interest was, the desire of that, why our interest
25 existed the way it did, the basis of the pricing.

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1 Just general discussions, hence the reason the
2 presentation I provided.

3 A little bit about the ownership, who was
4 with going to have custody longterm, who was the
5 steward.

6 Q. Would it be fair to say at that March 17
7 meeting in 2018 at Mr. Becker's office that you
8 became aware that -- I'm sorry, the trustee became
9 aware that your company was involved in exercising an
10 option to purchase property?

11 A. Yes.

12 Q. Okay. And before that time, had you had
13 any conversation with either Mr. Becker or Mr. Bundy?

14 A. No, sir.

15 Q. Okay. At that time there was a full
16 disclosure that your company was the one that was
17 proposing to buy the property; is that correct?

18 A. That's correct.

19 Q. Tell me the best you can recall your direct
20 conversation just with Mr. Bundy.

21 A. Well, it was just at that meeting was the
22 first discussion we had, and that was my first

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23 introduction to him. He was adamant about -- he
24 asked a lot about where -- about our interest, why
25 our interest in the property. He was very open about 75

1 his desire to protect his clients' interest, which we
2 certainly respected.

3 Q. Did he tell you at that time he represented
4 Alice Belger?

5 A. Yes.

6 Q. And did you understand that Mr. Becker
7 represented Mary Deas Wortley?

8 A. That's correct, I did. But it was one that
9 not contentious, but there was definitely a posture
10 of, you know, we don't want this to happen and here
11 is why we don't want it to happen.

12 Q. Let me interrupt you there again, so you
13 discerned from that meeting that somebody didn't want
14 this to happen, didn't want your company to purchase
15 the property, correct?

16 A. Correct. Yeah. Since I had -- pardon me.

17 Q. Beg your pardon. Tell me who you got that
18 sense from.

19 A. Mr. Bundy.

20 Q. And he represented Alice Belger, correct?

21 A. That's correct.

22 Q. What did he do to give you the sense that
23 his client didn't want anything to do with your
24 company purchasing the property?

25 A. One in particular, he would make the 76

1 comment that he would appeal any decision by the
2 court to force a sale, if I recall, and somewhat of
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3 that nature. I can't remember specifically the way
4 he phrased it, but that's the way it was.

5 Q. And I'm reading from the Exhibit 15, which
6 is your email from David Thomas to you, the second
7 paragraph -- next to last paragraph, Evidenced by the
8 request of Mr. Bundy for all emails, texts, maps, et
9 cetera, between Haile Gold Mine and you, of which we
10 willingly provided. You did that, right?

11 A. Yes.

12 Q. And his statement that he would appeal any
13 decision to enter to into an agreement, we have no
14 other choice but to withdraw from the process and any
15 pending offer to purchase the subject properties.

16 So was it your position at that time based
17 on Mr. Bundy's comments to you and his position at
18 that time that your company is no longer interested
19 in purchasing this property?

20 A. That's correct.

21 Q. Is that primarily because of what Mr. Bundy
22 said or what Mr. Becker said to you?

23 A. Well, directly what Mr. Bundy said, not
24 only to myself but our counsel.

25 Q. During that meeting when Mr. Bundy was

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1 giving you the sense of his position, did Mr. Becker
2 express his position on behalf of his clients or
3 himself?

4 A. Not that I recall, no.

5 Q. Did he voice any objection to your company
6 continuing to communicate or negotiate?

7 A. No.

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8 Q. Did he say anything?

9 A. Yeah. Yeah. Very complimentary of the
10 time we took to come present who we were and what our
11 case was with respect to the --

12 Q. Did he voice any objections to any part of
13 the option agreement at that time?

14 A. None that I recall. Very complimentary of
15 what we provided.

16 Q. Did he represent to you the position of his
17 client Mary Deas Wortley?

18 A. Yes.

19 Q. And what did he represent to you as the
20 position of his client Mary Deas Wortley?

21 A. With respect to her interest particularly
22 in the cottage and the association of the cottage and
23 the ownership, of which we knew a little bit about,
24 but the complexities around that and the access of
25 the family and her heirs.

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1 Q. Is it fair to say that Mr. Becker
2 represented to you at that meeting that his only
3 concerns on behalf of his client were the cottage and
4 the access to -- by the Boykin family to the Mill
5 Pond?

6 A. I wouldn't say only concerns.

7 Q. Any concern about the price?

8 A. There was some reference about, you know,
9 the consideration of an increase in price once
10 Mr. Bundy brought that up.

11 Q. Was it Mr. Bundy's idea that he wanted to
12 squeeze more money -- I'm sorry, get more money out
13 of your company?

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14 A. I didn't take it that way, but yes, it's a
15 typical negotiation. I mean, you start someplace and
16 go. But yes, it was definitely -- I was perplexed --
17 I will have to say this, I was perplexed by the
18 request -- or the intent to derail it by appealing
19 it, and the same time negotiating for a higher price.
20 That's what irritated me. I couldn't understand
21 the --

22 Q. So you sensed he had two positions. He was
23 threatening to appeal; is that correct?

24 A. He said he would.

25 Q. He told you he was going to appeal?

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1 A. Yes, that's correct.

2 Q. And number two, at the same time he wanted
3 to get more money from you; is that fair to say?

4 A. Yeah, a 20 percent increase in price.

5 Q. All right. Did your company consider
6 giving -- meeting his demand of 20 percent more in
7 price?

8 A. We did that evening.

9 Q. Beg your pardon?

10 A. We did that evening, yes.

11 Q. So you told Mr. Bundy that, yes, your
12 company would increase the price by 20 percent?

13 A. And put it in writing to Mr. Boykin.

14 Q. At that time did he withdraw his statement
15 that he was going to appeal any decision, or did you
16 sense that he was still going to appeal any decision?

17 A. The very next day -- or I think perhaps
18 that evening, he had contacted Greg Braker per my

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19 request. I had introduced the two of them. And he
20 stated again to Mr. Braker that he was going to
21 appeal any decision and very aggressive, and so
22 that's what we chose to withdraw completely.

23 Q. All this took place on April 18th and 19th;
24 is that correct?

25 A. That's correct, yes.

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1 Q. What Ms. Belger present when he was making
2 these statements to you?

3 A. Yes.

4 Q. All these statements made by Mr. Bundy?

5 A. Yes.

6 Q. That he was going to appeal any decision
7 made by the trustees; is that correct? Every
8 decision had to made by the trustees?

9 A. Yeah. The comments were made by him.

10 Q. And he was going to appeal any decision,
11 all these statements were made in the presence of
12 Alice Belger?

13 A. Yes.

14 Q. And Mary Deas Wortley?

15 A. Yes.

16 Q. And Mr. Becker?

17 A. Correct. Yes.

18 Q. Okay. Did you have any other meetings with
19 Mr. Bundy after that one on one or in a trustee
20 meeting?

21 A. No. No. No communication.

22 Q. Did you have any other communication
23 with --

24 A. No, no. No communication.

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25 MR. BECKER: Are you forgetting the

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1 April 12 meeting?

2 THE WITNESS: I'm sorry, after the April,
3 yes --

4 BY MR. BECKER:

5 Q. April 18?

6 A. Right. Yeah. After April, that's what I
7 was just referring to. My apology. There was two
8 times where he iterated that, you know, he would be
9 appealing any decision. And it was the April 18th
10 meeting, which we thought we were making some
11 progress on the negotiation of the price and some of
12 the other conditions, only to find out that evening
13 and maybe the next day that he told Greg Braker that
14 he would definitely be appealing any decision made on
15 the acquisition of this property by Haile. And so
16 that's when we withdrew.

17 MR. BECKER: Just so the record is clear,
18 that was meeting was April 12, 2018.

19 THE WITNESS: That's correct. Yes.

20 BY MR. TETTERTON:

21 Q. My question was to you, after the April 18
22 meeting -- the April 12 meeting.

23 MR. BECKER: April 12, 2018.

24 MR. TETTERTON: I'm sorry. Okay. April 12
25 meeting.

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1 THE WITNESS: Yeah. April 12th.

2 MR. TETTERTON: I think the email was
3 April 17th. Anyway, the record is clear.

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THE WITNESS: Yeah.

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BY MR. TETTERTON:

Q. So after that decision by you, by your company not to go forward with the option agreement, did you have any more conversation with Mr. Bundy about any terms of the agreement?

A. No, sir.

Q. Or any concerns about Mary -- I mean, concerns about Alice Belger?

A. No, sir.

Q. Is it fair to say he did not contact you about further negotiations?

A. Not a word, no contact.

Q. Did Mr. -- did you or Mr. Becker have any more conversations about furthering the negotiations from the option agreement?

A. No, sir.

Q. None?

A. None.

Q. Okay. Did you attend any other trustee meetings?

A. I did not.

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Q. Okay. Is it fair to say any further negotiations between your company and the trust would be through Rigdon Morgan?

A. That's my understanding, yeah.

Q. And if I understand your testimony today, your company is still willing to go through the option agreement as set out in Exhibit Number 1, is that correct, until June 30th?

A. Until June 30th, that's correct.

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10 Q. Okay. Let's go to the Swift Creek issue.
11 Before we do that, let's talk about the
12 confidentiality agreement. You used the term
13 mitigation opportunist.

14 A. Yes.

15 Q. Do you know Mr. Larry Faulkenberry?

16 A. I do.

17 Q. Would you consider him a mitigation
18 opportunist?

19 A. Yes, he would be.

20 Q. And I believe your company had some
21 negotiations that ended up in purchasing Goodwill
22 Plantation from Mr. Faulkenberry.

23 A. Yes.

24 Q. In your opinion, Mr. Faulkenberry got word
25 that you all were entertaining the idea of getting

84

1 more mitigation properties, he would be a mitigation
2 opportunist?

3 A. There was that concern and two others as
4 well, yes.

5 Q. So there's more than one mitigation
6 opportunist in the woods out there?

7 A. Yes. There's plenty. There's plenty.

8 Q. That's normal, isn't it?

9 A. Well, it was in this case and the previous
10 case, no doubt, yes.

11 Q. And is it true that these mitigation
12 opportunists know that you are going to pay more than
13 a fair market value of property?

14 A. I would assume they would based on our

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15 history, yes.

16 Q. Okay. Is that one of bases for trying to
17 keep the company's name out of the public domain when
18 negotiating this agreement to just chill out these
19 mitigation opportunists?

20 A. You mean in terms of confidentiality?

21 Q. Yeah.

22 A. Well, in this case it was something we
23 were, from a global perspective, I have to
24 reemphasize that, we wanted a confidentiality.
25 Didn't want it to broaden among all the properties

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1 involved, mainly because of what happened last time
2 where everybody starts pulling us in different
3 directions wanting us to mitigate here, mitigate
4 there.

5 We thought if we could get this
6 accomplished quietly, then that would eliminate the
7 opportunists, therefore, you know, not having the
8 conflict that we had before.

9 Q. Had you in your experience and the
10 experience of your company experienced a problem with
11 the word getting out and everybody wanting to come to
12 you to sell their property?

13 A. Yes, we have. Yes.

14 Q. Did you try to -- did you and your company
15 try to avoid this in this situation?

16 A. The confidentiality?

17 Q. Yes, sir.

18 A. Well, at least with respect to family and
19 all involved, we wanted it to be held.

20 Q. Yes, sir.

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21 A. That's just what we do. But in terms of
22 the broad confidentiality, we wanted to make sure
23 that everyone was tight lipped about it, didn't want
24 it to get out in the community.

25 Q. Are there any other companies in the same

86

1 business as your company in the Midlands area that's
2 looking for mitigation properties?

3 A. Yes. Probably three or four.

4 Q. Okay.

5 A. Might be more than that, but there's a lot.

6 Q. They would be looking for mitigation
7 properties also?

8 A. That's correct.

9 Q. Would they be competing with you and
10 perhaps trying to negotiate with the Boykin trust to
11 get that property for them?

12 A. They could be. I'm not aware of that, but
13 they could be.

14 Q. And would that be a concern with your
15 company?

16 A. For our interest, yes. Selfishly.

17 Q. Okay.

18 A. We'd like to be the suitor.

19 Q. Did Rigdon Boykin express the same concern
20 to you about word getting out about your company
21 being interested in purchasing this property?

22 A. Yes.

23 Q. What was his concern?

24 A. The concern that we would have
25 opportunists, and ultimately, there would be

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1 interference with the process and as I conveyed, as
2 well, and it would be more complicated.

3 Q. Was one of his concerns that the family
4 members involved and the smallness of the community
5 would tend to let it leak out?

6 A. There was a -- yes, I think there was a
7 little bit of concern about that, yes.

8 Q. Okay. I'm a little bit confused about the
9 Swift Creek property that Mr. Boykin owned. I'm
10 going to look at Exhibit Number 11. Do you have that
11 in front of you?

12 I guess my basic question is, was the Swift
13 Creek property, I'm going to call that the 108-acre
14 tract; is that fair enough?

15 A. Yes. That's correct.

16 Q. Did that in any way play into your company
17 making the offer you did in Exhibit Number 21, which
18 is the final option agreement?

19 A. No. Actually the contrary.

20 Q. To the contrary?

21 A. Yeah. I mean, it's a -- we were looking at
22 all these proprieties along Swift Creek on both sides
23 of Swift Cree, but that did not have any bearing on
24 this agreement here.

25 Q. In fact, did you not have a conversation

88

1 with Mr. Rigdon Boykin about other property owners
2 along Swift Creek, and more particularly wilhelmina
3 McEwan, Dr. Baynard Boykin?

4 A. That's correct, yes, we did.

5 Q. Did you ask him to reach out to those other

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6 landowners along Swift Creek to see if they would be
7 interested in also negotiating with you?
8 A. Yeah. Some of them he did and some I did.
9 Q. And you in fact negotiated --
10 A. Not negotiated, but we were having
11 discussions, yeah.
12 Q. Did you contact any other property owners
13 along the Swift Creek area for maybe purchasing their
14 property?
15 A. Indirectly, yes. And indirectly one other
16 one.
17 Q. Do you recall exactly who it was?
18 A. Heather and Jim Matthews. I actually went
19 to their property and walked it, and then through --
20 this is --
21 Q. McEwan?
22 A. Yes. Thank. I told him -- I don't
23 remember the last name. My apology.
24 Q. Everybody remember wilhelmina.
25 A. Her counsel -- or Vincent Sheheen, and I 89

1 talked to him about that and he also was contacting
2 too.
3 Q. She owned property I think north of --
4 north of this area on Swift Creek?
5 A. That's correct. On Swift Creek, yes.
6 Q. Do you recall talking to Dr. Baynard Boykin
7 about some he had?
8 A. I know him, but I didn't talk to him
9 directly, no.
10 Q. For the record so the Court will be sure to

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11 understand, your interest in the Swift Creek
12 mitigation property had nothing to do with the option
13 agreement or the option negotiations with the Boykin
14 trust?

15 A. That's true, because regardless of that, we
16 were wanting to continue the Swift Creek drainage at
17 which I had those discussions with stakeholders as
18 well.

19 Q. In looking at the map attached to Exhibit
20 Number 11, it appears to me that this particular
21 piece of property is south of the Swift Creek --
22 actually the creek itself; is that correct?

23 A. The property itself. Mr. Rigdon's
24 property, yes, it's south.

25 Q. And I see north of that is Baynard Boykin; 90

1 is that correct?

2 A. That's correct.

3 Q. And also another landowner you said you
4 contacted was Wilhelmina Combs at that time?

5 A. That's right.

6 Q. She's back McEwan now. Also I see on the
7 other side of the creek is Heather Hoopes-Matthews;
8 is that correct?

9 A. That's correct.

10 Q. You were interested in -- were those
11 considered wetlands?

12 A. Well, we don't know. But the fact that
13 they're along Swift Creek makes them sensitive and
14 important. We have not because we haven't had access
15 to do the delineation for the wetlands along that
16 creek. That's the next step.

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17 MR. TETTERTON: Okay. I'm going to ask
18 counsel if they don't object, could I give you a
19 yellow highlighter and let you just highlight
20 the run of Swift Creek so it will be easier for
21 us to see easier and for the court to see.
22 Any objection, Mr. Becker?
23 MR. BECKER: No.
24 THE WITNESS: Now, this is only a small
25 portion of the overall interest in Swift Creek. 91

1 MR. TETTERTON: I understand. For purposes
2 of this document --
3 THE WITNESS: Yeah.
4 MR. TETTERTON: If you would, so we will
5 know where the creek is.
6 MR. BECKER: What exhibit is that?
7 THE WITNESS: 11.
8 BY MR. TETTERTON:
9 Q. While you're doing that, that's a pretty
10 good flow of water, is it not?
11 A. Significant, yes.
12 Q. Good flow?
13 A. Good flow, yeah.
14 Q. All right. Now, if you would, without
15 objection from counsel, unless they object, mark,
16 highlight wilhelmina Combs and also Heather
17 Hoopes-Matthews.
18 A. Okay.
19 Q. Okay. Thank you, sir. I just want to make
20 sure. I just want to make sure we knew what we were
21 talking about. Again, I'm going to ask you for the

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22 record so Judge Toal will understand your testimony,
 23 are you saying unequivocally your interest or your
 24 company's interest in these particular properties had
 25 nothing to do with your negotiation for the property 92

1 at the end of the option agreement?

2 A. That's correct.

3 Q. Okay. Did you say whether or not he talked
 4 to Henry Boykin?

5 A. I know Henry, but I did not talk to him
 6 specifically about this.

7 Q. He was one of the adjoining landowners on
 8 the north side?

9 A. That's correct, yes.

10 Q. Bear with me a minute, please.

11 After your meeting in Mr. Becker's office
 12 with Mr. Becker, Mary Deas, and Alice Belger, and
 13 Mr. Bundy, could you sense who was most adamant
 14 against your company purchasing this property?

15 A. Mr. Bundy just based on his comments.

16 Q. Representing Alice Belger?

17 A. Yes.

18 Q. And that date was back in April 2018; is
 19 that correct?

20 A. March and April.

21 Q. March. Okay.

22 A. April 21st, I think. March or April.

23 Q. Whenever it was that the document shows.

24 Let's explore just a minute the LLC.

25 What's the name of the LLC on the option agreement? 93

1 I can look at it and see.

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2 A. Boykin Trust. Boykin Mill Pond Trust. I'm
3 sorry. This one has changed. Pardon me. I'll have
4 to go back and look. I can't recall the name of it.
5 My apology. Boykin Mill Pond Trust, LLC.

6 Q. But I believe you indicated that the South
7 Carolina Department of Natural Resources will make
8 sure, if you get to exercise this option, will
9 supervise your commitment to doing what you said you
10 will do?

11 A. They're required by law to do that, yes.

12 Q. Is that federal law they're required?

13 A. Under the NEPA Act, the National
14 Environmental Protection Act. As part of the
15 mitigation rule, they have to adhere to the
16 stewardship and the disciplines and the conceptual
17 mitigation plan, ultimately the mitigation plan.

18 Q. I read in one of your -- one of the
19 comments in one of these documents that this would be
20 a win-win situation.

21 A. That's the way we viewed it, yes.

22 Q. And what do you mean? When you expressed
23 that opinion, what do you mean by it by being a
24 win-win situation?

25 A. Well, we looked at it as a benefit to the

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1 family members, as least that's the way we looked at
2 it. The benefit to the community because all that
3 property stays in preservation with no development
4 potential. And then win-win to the state because of
5 the protections it puts in place to basically
6 preserve and protect key watersheds from development.

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7 Q. That's pretty important these days, is it
8 not, to protect key watersheds?

9 A. Critically important. We're doing the same
10 in Lancaster County as we speak.

11 Q. Have you had an opportunity to go down and
12 look at downtown Boykin, the buildings down there?

13 A. I have not been in the buildings. I have
14 been in downtown Boykin but not in the buildings.

15 Q. If I understand your option agreement, you
16 all are committed to improving those?

17 A. (Nods head.)

18 Q. Is that a yes?

19 A. That's correct, yes. Pardon me. She can't
20 hear a head nod. Sorry. We're committed to that,
21 yes.

22 Q. Did you all commit to any amount of money
23 in the option agreement to spend on the improvement
24 of those structures?

25 A. No, that will be something that we'll have 95

1 to determine through the regulators. Once they
2 approve this, then we will come up with an endowment
3 sum that we can put into place for those improvements
4 to happen.

5 Q. Is that in perpetuity?

6 A. That will be in perpetuity to some extent.
7 Those funds will be managed by the state and what
8 degree they want to spend money is up to them. So it
9 could eventually based on the interest and the
10 compounding, it could be perpetuity.

11 Q. Are you aware of any compromise to the
12 integrity of the dam itself impounding the Boykin

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13 Mill Pond?

14 A. I am, yes.

15 Q. And is part of your option agreement to
16 commit to bringing that up to DHEC requirements?

17 A. Not only -- that is a regulatory
18 requirement. If we took control of the property,
19 that is part of the preservation aspect of the
20 mitigation plan, and we will have to renew that.

21 Q. Is it your opinion that there is a
22 compromise to the integrity to that particular dam?

23 A. Yes.

24 Q. You wouldn't have any idea what it would
25 cost to bring it up, do you?

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1 A. We haven't done those calculations just
2 yet. That's something we need to look at. That's
3 part of our -- again, the funds that we set aside for
4 that restoration part. That's considered
5 restoration.

6 Q. I understand what you're saying. It is a
7 commitment of your company to fix the dam?

8 A. Repair it, that's right.

9 Q. Repair the dam and bring it up to federal
10 standards?

11 A. Restore it, yes.

12 Q. And it's your opinion that it needs it?

13 A. It does need it, yes.

14 Q. Beg your pardon?

15 A. It does need it, yes.

16 Q. I gathered throughout Mr. Becker's
17 questioning of you that there was an attempt to --

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18 I'm going to ask you directly, did Rigdon Boykin
19 exert any undue influence on you to enter into this
20 option agreement?

21 A. Zero. No.

22 Q. Your answer is zero?

23 A. Zero, yeah, there was no --

24 Q. Did he ever express to you that he thought
25 it would be in the best interest of the Boykin trust

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1 to negotiate with you and enter into this option
2 agreement?

3 A. Not in those specific terms, but yes, we
4 talked about the benefit to all involved as we always
5 do. Yeah, that's the intent.

6 Q. So at Mr. Bundy's request, you increased
7 the price, right?

8 A. Yes, we did.

9 Q. And I believe Mary Deas' cottage is no
10 longer part of the equation; is that correct?

11 A. That's correct.

12 Q. So that leaves, according to my notes, the
13 only reason being the access issue?

14 A. The access issue, that's correct.

15 Q. And tell me about how we can resolve the
16 access issue.

17 A. Well, the resolution of that is contingent
18 again upon regulatory approval. And it is one we
19 have worked through or talked with them about and
20 there is some provisions for that, but with a tight
21 timeframe would be the requirement or the request and
22 ultimately the requirement to where it doesn't go on
23 into perpetuity.

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24 So that's the reason in this case we knew
25 we could probably get approved if we had it in her 98

1 lifetime certain with no perpetual ability for the
2 heirs of the family to access the pond.

3 Again, because I have to clarify this, the
4 importance is not -- that's not Haile being
5 adversarial, that's the regulators saying how can we
6 have no public access to the pond when people drive
7 by and see that there's individuals entertaining and
8 enjoying the pond, you know, we end up with the phone
9 calls and the challenges. So therefore, we prefer
10 not to have any access at all, although they always
11 allow public access.

12 But in this case, because the family wanted
13 protection, we were able to get it approved to where
14 there would not be any public access.

15 Q. I guess my last basic question is, any time
16 during your negotiations or conversations our
17 discussion with Rigdon Boykin, did you ever detect an
18 ulterior motive for him to push this agreement
19 through?

20 A. I don't know by --

21 Q. Did he have a hidden agenda?

22 A. No. No.

23 Q. You never detected that?

24 A. Not at all. I've done a lot of land
25 transactions.

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1 Q. I beg your pardon.

2 A. I did not detect that at all.

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3 Q. And you've been this business --

4 A. Quite a bit. I've done over a hundred
5 million dollars of land transactions just in South
6 Carolina.

7 Q. I don't think we put your background on the
8 record, but I wish you'd briefly tell me a little bit
9 about your background.

10 A. Yeah. Business finance is my background.
11 I have been involved with the oil and gas business
12 and then gas business transitioned into the mining
13 industry. I've been with this project for 11 years
14 intimately involved with the area, intimately
15 involved with the regulations and the requirements of
16 the state. But project development is my background.

17 MR. TETTERTON: Okay. Thank you. If you
18 all will excuse me a minute, I'll ask Mr. Boykin
19 and Liam if I have any more questions.

20 (A recess transpired.)

21 MR. TETTERTON: Mr. Thomas, I have no
22 further questions. I appreciate your candor.
23 Thank you.

24 MR. BECKER: I'm going to have just a few
25 follow-up on those topics you discussed,

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1 William.

2 Liam, are you ready to go forward?

3 MR. DUFFY: I have no other questions.

4 MR. BECKER: Okay.

5 - - -

6 REEXAMINATION

7 - - -

8 BY MR. BECKER:

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9 Q. Just a couple of follow-up questions,
10 Mr. Thomas.

11 Mr. Tetterton spoke with you about a class
12 of people he called mitigation opportunists.

13 A. Yes.

14 Q. You can -- if you're interested in a
15 property and they come with another property and want
16 you to buy that, you could always tell them, no, I
17 don't want your property, can't you?

18 A. Oh, well, yes. I wasn't referring to that
19 as much as I was interfering with the continuity of
20 Swift Creek, for example, where an opportunist would
21 come in and secure certain parcels along that Swift
22 Creek and then that could potentially inhibit the
23 continuity benefit of that watershed.

24 Q. Yeah.

25 A. Holding out for significant multiples. We 101

1 would rather deal directly with the landowner and
2 always have rather than going through a surrogate or
3 an opportunist.

4 Q. Okay.

5 A. We will not go through an opportunist. I'm
6 sorry for that connotation, but that's the fact.

7 Q. Thank you for that clarification.

8 Another topic you discussed with
9 Mr. Tetterton were the potential purchases along
10 Swift Creek, and you mentioned several people
11 including Mr. Rigdon Boykin with whom you had some
12 discussions.

13 A. Right.

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14 Q. Have you delineated property along anyone
15 else's property other than Mr. Boykin's?

16 A. Not delineated formally. Other than having
17 the aerial survey of that entire area and
18 highlighted, which I think you have the highlighted
19 focus area of all the properties we have an interest
20 in either by watershed easement or property itself.

21 Q. Right. We looked -- Mr. Tetterton had you
22 highlight a survey, a plat of land along Swift Creek.
23 It looked like you had actually surveyed or done a
24 delineation of about 108 acres on Mr. Rigdon Boykin's
25 land.

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1 A. That's correct, yes.

2 Q. Have you done that same thing on anyone
3 else's land?

4 A. Not as of yet, no.

5 Q. Are you continuing to have any discussions
6 with any other parties?

7 A. We had ceased all discussions and conveyed
8 that also to the representatives of some of the other
9 landowners because we had no end in sight that would
10 do what we wanted to do ultimately.

11 Q. Right. So today, you're not in fact having
12 any discussions with landowners along Swift Creek
13 about purchasing their property?

14 A. That's correct.

15 Q. If you were successful in entering into an
16 agreement to purchase the Boykin Mill Pond, would it
17 be your intent to resume those negotiations with
18 other landowners along Swift Creek?

19 A. Possibly. And I'll say that hesitantly

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20 only because we shifted gears because of this and
21 started focusing a lot more in the Flat Creek area,
22 and we are just about to put in an agreement of a
23 thousand acres down there. So we need to look at,
24 okay, what's the -- we're not going to over mitigate,
25 we're going to try to mitigate for what we're

103

1 required to mitigate with, so that's the reason for
2 the short timeframe in the option agreement. We have
3 decisions that we have to make.

4 Potentially, yes, I should say. We could
5 possibly reengage and we let everyone know, including
6 Mr. Sheheen just yesterday or day before that, you
7 know, we may enter, but we have to see what we can
8 get done in Flat Creek and finish that first to
9 satisfy our overall mitigation plan.

10 Q. All right. Now, you mentioned three or
11 four companies looking for mitigation properties.

12 A. Uh-huh.

13 Q. Who did you have in mind when you mentioned
14 those?

15 A. There's a number of companies. They used
16 to be Environmental Bank Exchange. I think they now
17 go by RES. There's also Open Spaces. There's
18 individual brokers out there. We have that happen
19 all the time, they're trying to buy property next to
20 us or things of this nature and then turn around and
21 sell it back to us.

22 There's a number of other mitigation.
23 There's some conservation companies through Congaree,
24 obviously, looking for easements and protections of

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 25 additional land, some of which Swift Creek is already 104

1 in the concrete land trust. So they're not
 2 necessarily opportunist. We all kind of have the
 3 same goal at the end of the day.

4 I was more referring to the -- even though
 5 if it gets under protection, great, but I'm talking
 6 about the brokers, the real estate brokers, you know,
 7 they all focus on Haile. I hate to say it, and will
 8 be down there interfering with what we want to
 9 accomplish and potentially cause us some consequence
 10 to our continuity plan.

11 Q. Right. I had a question, and it has
 12 slipped from my mind.

13 A. That happens to others.

14 Q. Just give me a minute.

15 well, let me go on to this topic.

16 Mr. Tetterton asked you about access to the pond.

17 A. Uh-huh.

18 Q. And in the final option agreement that's on
 19 the table now with Mary Deas Wortley, access by her
 20 and any of her family members --

21 A. Correct.

22 Q. -- is limited first to her lifetime?

23 A. That's correct.

24 Q. So that after she passed away, neither her
 25 daughter nor her grandchildren could access the Mill 105

1 Pond?

2 A. Yeah.

3 Q. And during the remainder of her lifetime,
 4 her access to the pond is limited to means of a

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5 hand-powered boat.

6 A. Right. Yeah.

7 Q. For other family members, do you believe
8 that you would be in a position to negotiate any kind
9 of longer term of access --

10 A. Access?

11 Q. -- than you had for -- than you have
12 offered for Mary Deas?

13 A. We can do our best. Again, it is not our
14 decision. It is -- as everyone knows, we want public
15 access to all the properties we use for mitigation.

16 Q. Right.

17 A. It was hard enough getting no public access
18 to the pond approved, which is not approved by the
19 way, but at least they are considering it. But with
20 respect to the public access to the family longterm,
21 I don't think that's a possibility. Short term
22 maybe.

23 And again, the focus -- the concern is that
24 because there's no public access to the pond at all
25 others in the area recognizing that there's

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1 individuals using the pond would be problematic for
2 the regulators and potentially challenged -- the
3 integrity of the mitigation plan could be challenged
4 because of that access.

5 So that's why they are very sensitive about
6 that. "They" being the regulators, and ultimately,
7 the custodian of the property. It presents a
8 challenge.

9 Q. So that --

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10 A. It's something we are willing to talk about
11 and look at, yes.

12 Q. The dilemma for the family is either turn
13 over -- it would involve essentially turning over
14 supervision of the property to the South Carolina
15 Department of Natural Resources?

16 A. That's correct.

17 Q. And they would then be determining who
18 could access the pond and who would not and for what
19 purpose?

20 A. No. There will be no public access.

21 Q. Right.

22 A. Now, as I mentioned before, there will
23 potentially be a trail around the pond, a very
24 restrictive area that can be accessed, but just to
25 walk, just the trail around it. The periphery of the
107

1 pond but not on the pond itself.

2 MR. BECKER: Okay. Okay. I have no
3 further questions. Thank you.

4 MR. TETTERTON: Thank you. I have no
5 further questions.

6 Liam, do you have any questions?

7 MR. DUFFY: That's it. Thank you.

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STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF KERSHAW

IN THE MATTER OF:
LEMUEL WHITAKER BOYKIN, II,
deceased

Case No. 2017-CP-28-00831

Rigdon H. Boykin, as sole disinterested Co-
Trustee of the Lemuel Whitaker Boykin, II
Residuary Trusts A and B,

Petitioner,

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,

Respondents.

**RESPONDENTS MARY DEAS WORTLEY'S AND ALICE BOYKIN BELGER'S
AMENDED ANSWER AND COUNTERCLAIMS TO RIGDON H. BOYKIN'S
AMENDED PETITION**

Respondents Mary Deas Wortley and Alice Boykin Belger (collectively "Respondents")
submit the following Amended Answer to Petitioner Rigdon H. Boykin's Amended Petition for
Attorney's Fees, Trustee Fees, Declaratory Judgment, Modification, and Trustee Removal filed
May 7, 2018 (the "Amended Petition"):

FOR A FIRST DEFENSE
(General Denial)

1. Except as the allegations may otherwise be specifically admitted herein, Respondents deny each and every allegation of the Amended Petition.

2. Responding to the first unnumbered paragraph of the Amended Petition, Respondents deny that the Amended Petitioner is a “disinterested” Trustee, deny that Petitioner is acting in the best interests of all beneficiaries of the Lemuel Whitaker Boykin II Residuary Trusts A and B (“Residuary Trust”),¹ and deny that he should be “entitled to exercise preeminent authority among the three Co-Trustees,” or otherwise be appointed as a special fiduciary under S.C. Code § 62-7-1001(b)(5), or that Petitioner is entitled to an order removing Respondents as Co-Trustees of the Residuary Trust. Further responding to the first unnumbered paragraph of the Amended Petition, Respondents admit that Decedent’s Will does not prohibit the sale of any Residuary Trust property, and that the Co-Trustees should follow the prudent investor rule to the extent so adopted in the Will.

BACKGROUND AND PARTIES²

3. Respondents admit the allegations of Paragraphs 1 through 6.

4. Responding to Paragraph 7, Respondents deny that Petitioner is “the only disinterested” Trustee of the Residuary Trust.

5. Responding to Paragraph 8, Respondents admit only that this action was properly removed by the Probate Judge of Kershaw County to the Court of Common Pleas for the Fifth Judicial Circuit of South Carolina.

¹ For ease of reference, this Answer adopts the defined terms in the Amended Petition.

² For ease of reference, this Answer includes the same subject headings as the Amended Petition.

THE RESIDUARY TRUST

6. Respondents admit the allegations of Paragraph 9, however, the quoted language is found in Item VIII subparagraph (1) of the Last Will and Testament of Lemuel Whitaker Boykin, II dated June 2, 1989 (“Will”), and not Item VII(1).

7. Respondents admit the allegations of Paragraph 10, however, the referenced language is found in Item VIII subparagraph (2) of the Will, and not Item VII(2)

8. Respondents admit the allegations of Paragraph 11.

9. Responding to Paragraph 12, Respondents admit only that they have living issue who could receive the assets of the Residuary Trust upon dissolution, and deny the remaining allegations of Paragraph 12.

10. Responding to Paragraph 13, Respondents admit that the quoted language is found in Item X of the Will, admit that the Will provides an order of preference for the sale of certain specified tracts of real property in the event that circumstances require such a sale, but deny that such circumstances currently exist and that any sale of the property referenced in Item X of the Will is necessary or prudent at this time.

11. Respondents admit the allegations of Paragraphs 14 and 15.

12. Responding to Paragraphs 16 and 17, Respondents admit only that the Trustees “are authorized in their absolute discretion with respect to any real property, by unanimous vote, or personal property, by majority vote,” to manage the affairs of the Residuary Trusts for the benefit of *all* current income beneficiaries and *all* remainder beneficiaries.

13. Responding to Paragraph 18, Respondents admit only that the provisions of Decedent’s Last Will and Testament prevail over the provisions of the South Carolina Trust Code, except as provided in S.C. Code Ann. § 62-7-105(b).

14. Respondents deny the allegations of Paragraph 19.

DISPUTE AS TO MANAGEMENT OF RESIDUARY TRUSTS ASSETS

15. Responding to Paragraph 20, Respondents admit only that on most issues, Petitioner has a different view of the proper administration of the Residuary Trust than Respondents.

16. Responding to Paragraph 21, Respondents admit only that Decedent's intentions are unambiguously expressed in his Will.

17. Responding to Paragraph 22, Respondents admit only that Respondent Wortley served as Co-Trustee of the Marital Deduction Trust from 1989 to August 8, 2016, with Alice S. Boykin ("Mrs. Boykin"). Respondents further state that the value of Lemuel Whitaker Boykin, II's ("Mr. Boykin's") estate has more than doubled in value under Respondent Wortley and Mrs. Boykin's management. Respondents deny the remaining allegations of Paragraph 22.

18. Responding to Paragraph 23, Respondents admit only that the most substantial part of the Residuary Trust's assets are real property tracts located in Kershaw, Sumter, and Fairfield Counties in South Carolina, and which are used primarily for farming, timber, and hunting.

19. Responding to Paragraph 24, Respondents admit only that they wish to follow the direction expressed by Mr. Boykin in the Will.

20. Responding to Paragraph 25, Respondents admit only that Lemuel Whitaker Boykin, III ("Whit III") and May Cantey Boykin ("May") are not Trustees and do not have any children. Respondents further state that Petitioner has acquired and exercises an undue influence over Whit III and May, and has disrupted the caring and loving family relationship among Whit III, May, and the Respondents, their spouses, and children.

21. Responding to Paragraph 26, Respondents admit only that investment diversification is one among many factors that the Trustees should consider in administering the Trust assets for the benefit of all income and remainder beneficiaries.

22. Responding to Paragraphs 27 through 31, Respondents admit only that the Petitioner has made several unacceptable proposals to them for the purchase and financing of certain real property assets of the Trust and that Petitioner, acting without a majority vote of the Trustees, has obtained numerous appraisals and surveys which are of significant cost and limited value to the Trust.

23. Responding to Paragraphs 32 through 36, Respondents admit only that the Residuary Trust must be managed in accordance with the directions expressed in Mr. Boykin's Will, except where those directions may conflict with the provisions of S.C. Code § 62-7-105(b).

24. Respondents deny the allegations of Paragraph 37, including footnote 2, and further denies that the Trustees must follow the provisions of the S.C. Uniform Prudent Investor Act, which states as follows: "The prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust." S.C. Code Ann. § 62-7-933(B)(2).

25. Respondents deny the allegations of Paragraphs 38 and 39.

FIRST CAUSE OF ACTION OF THE AMENDED PETITION
(Attorney's Fees – S.C. Code Ann. §62-7-1004)

26. Responding to Paragraph 40, Respondents repeat and reallege their answers to each and every previous paragraph of the Amended Petition as though fully set forth herein.

27. Responding to Paragraph 41, Respondents deny that S.C. Code Ann. §62-7-1004 supersedes the provisions of the Trust.

28. Respondents deny the allegations of paragraphs 42, 43, and 44, and further state that it would be inappropriate for this Court to order the Trust to pay the separate attorney's fees of any Trustee, as such an order would only encourage and prolong Petitioner's vexatious and self-serving litigation and further diminish the resources of the Trust for the benefit of the rightful beneficiaries.

SECOND CAUSE OF ACTION OF THE AMENDED PETITION

(Trustees' Fees – S.C. Code Ann. §62-7-708)

29. Responding to paragraph 45, Respondents repeat and reallege their answers to each and every previous paragraph of the Amended Petition as though fully set forth herein.

30. Respondents admit the allegations of Paragraph 46.

31. Responding to the allegations of Paragraphs 47 through 50, Respondents admit only that S.C. Code § 62-7-708(b) would apply in this instance and that a fair and reasonable trustees fee would be \$100,000, for each trustee, for services rendered as Trustee, from August 8, 2016 to December 31, 2017.

THIRD CAUSE OF ACTION OF THE AMENDED PETITION

(Declaratory Judgment – S.C. Code Ann. §§15-53-50, 62-7-201)

32. Responding to Paragraph 51, Respondents repeat and reallege their answers to each and every previous paragraph of the Amended Petition as though fully set forth herein.

33. Respondents admit the allegations of Paragraph 52.

34. Responding to Paragraph 53, Respondents deny that Petitioner is a "disinterested" Trustee, and admits the remaining allegations of this Paragraph.

35. Respondents deny Paragraphs 54 through 59, including all subparts and footnote 3, of the Amended Petition.

FOURTH CAUSE OF ACTION OF THE AMENDED PETITION

(Equitable Deviation/Modification of Trust – S.C. Code Ann. §§ 62-7-412, 62-7-413)

36. Respondents incorporate and reallege each of the foregoing allegations as fully as if repeated herein verbatim.

37. Responding to Paragraphs 61 and 62, Respondents admit that a court may modify the terms of a trust within the limitations prescribed by the South Carolina Trust Code.

38. Responding to Paragraph 63, Respondents admit only that the Will requires the Trustees, “in their sole discretion,” to make distributions for the beneficiaries’ “comfortable maintenance, welfare, and education.” (Will Item VIII(1), p. 7.) Further responding to Paragraph 63, Respondents deny that the Will has set forth any unreasonable restrictions on the use of Residuary Trust property.

39. Responding to Paragraph 64, Respondents admit only that Petitioner accurately quotes Item X, p. 9 of the Will.

40. Respondents deny Paragraphs 65 through 69.

FIFTH CAUSE OF ACTION OF THE AMENDED PETITION

(Removal of Trustees – S.C. Code Ann. § 62-7-706)

41. Respondents incorporate and reallege each of the foregoing allegations as fully as if repeated herein verbatim.

42. Respondents deny Paragraphs 71 through 77, including all subparts.

43. Respondents further deny that Petitioner is entitled to the relief requested in his prayer for relief.

FOR A SECOND DEFENSE

(Equitable Defenses)

44. Petitioner’s claims are barred by all equitable doctrines to Respondents including, but not limited to, estoppel, waiver, ratification, laches, and unclean hands.

FOR A THIRD DEFENSE
(Failure to State a Claim)

45. Petitioner fails to state facts sufficient to constitute a cause of action as to Respondents and the Amended Petition should be dismissed pursuant to 12(b)(6), SCRPC.

FOR A FOURTH DEFENSE
(Statute of Limitations)

46. Petitioner's claims are barred by all applicable Statutes of Limitations.

FOR A FIFTH DEFENSE
(S.C. Code Ann. § 62-7-1006)

47. Respondents have acted in reasonable reliance on the terms of the Trust as expressed in the Will and Petitioner's claims are thus barred by S.C. Code Ann. § 62-7-1006.

FOR A SIXTH DEFENSE AND FIRST COUNTERCLAIM
(Removal of Trustee Pursuant to S.C. Code Ann. § 62-7-706(b)(2))

48. Respondents incorporate and reallege each of the foregoing allegations as fully as if repeated herein verbatim.

49. In his Will, Mr. Boykin established a clear and unambiguous preference that certain parcels of real property "shall to the fullest extent possible be preserved for the benefit of or transferred to my children or their issue." (Will Item X.) These "treasured tracts" are identified as Millway Plantation, the Laney Tract, Broadview Plantation, the Swamp Tract, the Cantey Tract, and the Gillis Tract. (*Id.*) The Will further directs that "[a]ny sale or mortgage of these parcels (exclusive of timber rights) must be by unanimous consent of the Trustees after consultation with and approval of a majority of the four (4) named beneficiaries of this Trust . . . [and] my trustees may cut and remove timber which shall be treated as a crop." (*Id.*)

50. Mr. Boykin further expressed that in exercising "the discretionary powers granted under Item VIII [providing for income to the children or other beneficiaries during their

lifetimes]” and “all other powers granted” under the Will, “it is my hope that my . . . Trustees will be mindful of my intentions.” (*Id.*) Mr. Boykin also gave to all of the Co-Trustees, “in their absolute discretion with respect to any real property, by unanimous vote, or personal property, by majority vote,” to exercise all “rights, power, authority and privileges granted by any other provision of this Will or by statute or general rule of law . . .” (*Id.* at Item XIV.) Thus, the Will does not set any unreasonable restriction on the sale of the real property assets, but clearly allows the Trustees to sell any of the Residuary Trust’s real property pursuant to the voting model set forth therein.

51. Finally, the Will provides the Co-Trustees the discretion “to retain any of the original property constituting the . . . trust, regardless of the character of such property . . . or whether it leaves a disproportionately large part of the . . . trust invested in one type of property . . . and to dispose of such property . . . as and when they shall deem advisable.” (*Id.* at Item XIV(B.))

52. At the time he executed the Will, Mr. Boykin appointed three Trustees for the Residuary Trust: (1) his cousin, Petitioner, (2) his eldest daughter, Respondent Wortley, and (3) his wife, Alice Schoolbred Boykin (“Mrs. Boykin”). Mrs. Boykin passed away on August 8, 2016, at which time Respondent Belger became the third Co-Trustee of the Residuary Trust.

53. No provision of the Will provides that any one of the three Trustees, no matter how appointed, shall be entitled to pre-eminent status among the three, as Peititoner claims. Rather, the Will provides that each Trustee has an equal vote in matters of Trust administration.

54. The Co-Trustees have met numerous times in person, by conference call, and through e-mail since Mrs. Boykin’s death in August 2016 regarding administration of the Residuary Trust. During these meetings, the Co-Trustees have conducted considerable business

and authorized the sale of numerous Trust assets, including some real estate tracts. (Aff. Alice Boykin Belger ¶ 8.)

55. However, Petitioner and Respondents have had significant good faith disagreements concerning the proper administration, distribution, management, and investment strategy as it relates to certain assets of the Residuary Trust. Specifically, Petitioner alleges in ¶¶ 34-36 of the Amended Petition that Respondents' strategy of managing Mr. Boykin's estate by periodically selling off timber as allowed by the Will, leasing hunting and fishing rights, and selling certain properties is less likely to grow the Residuary Trust, and that the Co-Trustees should sell off most of the real property, including the "treasured tracts," to diversify assets (the "Investment Strategy").

56. Pursuant to the procedures as set forth in the Will, Petitioner proposed adopting the Investment Strategy at a March 23, 2017 Residuary Trust meeting. After considering his proposal and comparing the proposal with the terms of the Will, Respondents properly voted against adopting the Investment Strategy because they felt such a strategy contradicted Mr. Boykin's clear intent to preserve the real property for the Residuary Trust beneficiaries, as set forth in the Will.

57. Rather than accepting that he was properly outvoted with respect to the Investment Strategy and consider the compromise offers Respondents proposed, Petitioner doubled down on the Investment Strategy and filed his Petition on August 23, 2017. Petitioner has also conducted secret negotiations to sell Trust assets, including the Boykin Millpond, the most treasured of the tracts according to the Will, without revealing and intentionally concealing the identity of the proposed purchaser from his Co-Trustees.

58. Petitioner has been overly solicitous of the needs and desires of two of the income beneficiaries, Whit Boykin, and May Boykin. Petitioner has repeatedly failed to consider the needs and desires of Respondents, as beneficiaries. Petitioner has never contacted any of the remainder beneficiaries, the intervenors in this action, to inquire as to their needs and wishes. Petitioner has favored the interests of Whit and May over all other beneficiaries.

59. In addition, Petitioner has attempted to override Respondents' votes on certain issues, in clear contravention to the terms of the Will, such as taking unilateral action to shut down Respondents' wedding business in Boykin, South Carolina, which had been a profitable venture for the Residuary Trust.

60. Although the terms of the Will clearly evidence Mr. Boykin's preference for preserving the Residuary Trust's real property assets, Petitioner refuses to administer his duties in accordance with the terms of the Will and instead relentlessly pursues his own agenda, regardless of whether that agenda conforms with Mr. Boykin's intentions as set forth in the Will.

61. In addition, rather than attempting to work with his fellow Co-Trustees as equals in the course of administering the Residuary Trust, Petitioner has treated Respondents with disdain and condescension, has been dismissive of any strategies they set forth, has frequently told them that his vote as Co-Trustee outweighs their votes even though he has no legal basis for making this assertion, has threatened litigation against his Co-Trustees and the Estate's counsel, and has been largely incapable of cooperating with his fellow Co-Trustees in order to efficiently manage the Residuary Trust in accordance with Mr. Boykin's express intentions. Moreover, Petitioner has frequently incurred expenses for the Trust without the consent of either or both of his Co-Trustees.

62. These above allegations demonstrate that Petitioner has failed to follow the terms and purposes of the Trust and to do so in good faith, and has failed to be open and honest with his Co-Trustees.

63. Because Petitioner's strategies for managing the estate diverge significantly with Mr. Boykin's intentions, and because Petitioner has consistently sought to override Respondents' votes as to administrative matters for the Residuary Trust and refuses to compromise with Respondents, the administration of the Residuary Trust is significantly impaired by the Co-Trustees' failure to agree.

64. Based on the foregoing, Respondents are informed and believe that they are entitled to a judgment removing Petitioner as a Co-Trustee pursuant to S.C. Code Ann. § 62-7-706(b)(2) because Petitioner's lack of cooperation with his Co-Trustees substantially impairs the administration of the Trust.

FOR A SEVENTH DEFENSE AND SECOND COUNTERCLAIM
(Removal of Trustee Pursuant to S.C. Code Ann. § 62-7-706(b)(3))

65. Respondents incorporate and reallege each of the foregoing allegations as fully as if repeated herein verbatim.

66. As alleged in the foregoing paragraphs, Petitioner and Respondents have had significant disagreements regarding the proper administration of the Residuary Trust. These problems have culminated in Petitioner's decision to file his Petition on August 23, 2017, which alleges, in pertinent part, that Respondents mismanaged Mr. Boykin's estate while Mrs. Boykin was alive, and that Respondents continue to mismanage the estate by seeking to administer the trust in accordance with Mr. Boykin's wishes to preserve certain real property, if possible.

67. Contrary to Petitioner's allegations, however, the value of Mr. Boykin's estate has more than doubled in value since he died in 1989, from an estimated value of \$10,262.00 at the

time of Mr. Boykin's death to a current estimated value of approximately \$26,000.00, utilizing Mr. Boykin's preferred strategy of real estate investment, farming, and timber management.

68. Moreover, in 2017 the Residuary Trust produced approximately \$1,024,122 million in gross revenue, out of which \$100,000 was paid to each of the four Residuary Trust income beneficiaries. Respondents both consider this a reasonable income for each of the income beneficiaries.

69. Accordingly, Respondents' proposed methods and strategy for administration of the Residuary Trust are financially sound and prudent, capable of producing adequate distributions for the income beneficiaries, while still honoring the testator's expressed intent. Thus, Petitioner's claims against Respondents regarding the management of the Residuary Trust are unfounded and frivolous.

70. Despite the frivolous nature of Petitioner's claims, Petitioner continues to drain the resources of the Residuary Trust at an alarming rate by amassing significant legal bills, at the expense of the Residuary Trust and its income beneficiaries and remaindermen. Because Petitioner is neither a beneficiary nor a remainderman of the Residuary Trust, he is not negatively impacted by this rapid depletion of the Residuary Trust's funds.

71. Moreover, Petitioner, as a Co-Trustee, has a duty to act in the best interests of all of the Residuary Trust's beneficiaries and remaindermen. Despite two of the beneficiaries'—Respondents—clear opposition to Petitioner's decision to use the Residuary Trust's assets to pay exorbitant legal expenses, however, Petitioner continues to incur significant legal fees at the expense of the Residuary Trust, leaving Respondents concerned that the Residuary Trust will be significantly drained of funds through this litigation, and that Petitioner will continue to amass significant expenses because he does not stand to inherit under the terms of the Will.

72. Petitioner's actions in bringing this frivolous action despite Respondents' objections clearly demonstrates an unwillingness to administer the Residuary Trust in reasonable cooperation and compromise with his Co-Trustees and reveals a pattern of indifference as to Respondents.

73. Based on the foregoing, Respondents are informed and believe that they are entitled to a judgment removing Petitioner as a Co-Trustee pursuant to S.C. Code Ann. § 62-7-706(b)(3), because of Petitioner's unwillingness to administer the trust in a cost-efficient manner.

FOR AN EIGHTH DEFENSE AND THIRD COUNTERCLAIM
(Removal of Trustee Pursuant to S.C. Code Ann. § 62-7-706(b)(1))

74. Respondents incorporate and reallege each of the foregoing allegations as fully as if repeated herein verbatim.

75. As alleged in the foregoing paragraphs, Petitioner has committed a serious breach of trust and should be removed as a Trustee pursuant to S.C. Code Ann. § 62-7-706(b)(1).

WHEREFORE, having fully answered the Amended Petition, Respondents pray that the Court look into the matters and things alleged in the Amended Petition, dismiss the Amended Petition with prejudice, compel Petitioner to redress any breach of trust by paying money, restoring property, or other means, remove the Petitioner as provided in Section 62-7-706, reduce or deny compensation to the Petitioner; and order any other appropriate relief. as the Court may deem just and proper.

[signature page to follow]

HAYNSWORTH SINKLER BOYD, P.A.

By: s/James Y. Becker

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July 2, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

IN THE MATTER OF:

Case No. 2017-CP-28-00831

LEMUEL WHITAKER BOYKIN, II, deceased

Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B;

Petitioner,

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;

Respondent.

RESPONDENT WORTLEY'S AND BELGER'S MOTION IN LIMINE

Pursuant to Rule 104, SCRE, Respondents request that the Court exclude or limit the presentation of the following evidence at trial:

I. James C. Hardin, III

The Court previously granted Respondents' motion to exclude Mr. Hardin from testifying as an expert in this case. The documents received in response to Respondents' subpoena for Mr.

Hardin's file and the witness list recently provided by Petitioner raise new and additional concerns with Mr. Hardin's testimony.

A. Mr. Hardin Has Not Served as Attorney for Mr. Boykin in His Capacity as a Co-Trustee of the Residuary Trust.

The Court precluded James C. Hardin, III from testifying as an expert witness on matters of law. It ruled that, while Mr. Hardin could not testify on matters of law, he could testify as a fact witness because he had been retained as counsel for Rigdon Boykin in his capacity as co-trustee of the Residuary Trust. Mr. Hardin, the Court concluded, could therefore testify to events he observed in that role, including advice he may have given to Mr. Boykin on trust matters.

The documents received from Mr. Hardin belie this assumption. Mr. Hardin has *not* been acting as counsel for Mr. Boykin in his capacity as co-trustee of the Residuary Trust. Mr. Hardin was retained purely in anticipation of litigation and serves as litigation counsel for this lawsuit.

Mr. Hardin's file reveals all of the following:

- Mr. Hardin was first contacted by Rigdon Boykin on July 17, 2017. The initial time entry reads:

Call from Rigdon Boykin and brief overview of my service as
an expert consultant.

Hardin immediately began advising Mr. Boykin's attorneys on the law that could help them receive payment for attorney's fees from the Residuary Trust.¹

- Mr. Hardin prepared an engagement letter which characterized Hardin as trust counsel for Mr. Boykin in his capacity as co-trustee of the Residuary Trust, but *Mr. Boykin did not sign it*;²
- Mr. Boykin signed a different version of the engagement letter which refers to Hardin as only as an expert;³

¹ Hardin Invoice to Rosen, Rosen and Hagood for time through August 31, 2017. (See Chronology, attached as **Exhibit A**, at p.2.)

² Hardin draft engagement letter dated August 1, 2017. (*Id.*)

- A few weeks later, Mr. Hardin emailed Mr. Rosen and enclosing yet a third engagement letter. This engagement letter characterized Mr. Hardin as having been retained not by Mr. Boykin, but by his attorneys, Rosen, Rosen & Hagood. Mr. Hardin was to provide expert consulting serves “as directed by” the law firm.⁴
- Hardin’s email explained that the change was necessary to establish that Rosen, Rosen & Hagood were responsible for Harden’s fees and to replace the prior agreement *ab initio* in order to “support the allegations” of the Petition for attorney’s fees;⁵
- Mr. Hardin backdated the engagement letter to August 1, 2017 so that it would appear the arrangement in the letter had always been in place;⁶
- Mr. Hardin proceeded to conduct legal research on issues to advance the litigation, including all claims asserted in the amended petition. The amended petition and Petitioner’s briefs regurgitate large portions of Mr. Hardin’s work almost verbatim;
- Mr. Hardin’s work included assistance with motion for complex case designation;⁷
- Mr. Hardin’s work included development of a strategy for *cross claims by Whit and May Belger* and identification of witnesses for use for possible use at trial;⁸
- Mr. Hardin’s work included helping craft emails which would be exchanged between Mr. Boykin and Karen Thomas to attempt to trap Karen Thomas into a conflict of interest. Mr. Hardin writes:

“Liam’s draft of a proposed response from Rigdon to Karen, including Rigdon’s proposed edits, are fine.”

“*In my view her response plays into hour hands. By Rigdon’s e-mailing her last week with a proposed date and time for a meeting, we were hoping state out her position on the record. In my view we certainly got what we wanted;*⁹”
- Hardin submitted an affidavit of fees to the Court which omitted a \$10,000

³ Hardin engagement letter dated August 4, 2017, signed by Boykin on August 10, 2017. (See Chronology at p. 3.)

⁴ Hardin engagement letter to Rosen dated August 10, 2017. (*Id.*)

⁵ Email from Harden to Rosen dated September 5, 2017. (See Chronology at pp. 4-5.)

⁶ *Id.*

⁷ Hardin time record/bill to Rosen dated Feb. 16, 2018. (See Chronology at p. 6.)

⁸ Email from Duffy to Boykin, Hardin and others re Agenda for meeting August 24, 2017. (See Chronology at p. 4.)

⁹ Email from Hardin to Boykin and others dated October 9, 2017 (emphasis added). (See Chronology at p. 6.)

credit for Mr. Boykin's original retainer shown on the true invoice he subsequently sent to Rosen apparently so that it would not create confusion about his role in the case;¹⁰

- Rigdon Boykin drafted portions of the affidavits which Hardin later signed and submitted to the Court;¹¹ and
- As late as June 19, 2018, Hardin assisted Rigdon Boykin with attempting to recruit an expert from South State Bank, and informed Duffy and Rosen that he "*vouch faced for Rigdon*, saying that he had only the best interest of the beneficiaries in mind."¹²

Although Mr. Boykin maintains that he hired Mr. Hardin to provide guidance to Mr. Boykin in his role as co-trustee of the Lemuel W. Boykin, II Residuary Trust, there is no record of Mr. Hardin having attended any of the *twelve* trustee meetings that took place before July 2017. Indeed, there is no record of Mr. Boykin even having reached out to Mr. Hardin for guidance concerning his duties as a trustee in 2017. Rather, Mr. Hardin was not hired until Mr. Boykin elected to file his petition for fees. At all times, he has served as *litigation* counsel. Tellingly, the earliest legal memorandum Mr. Hardin provided to Mr. Boykin concerned his potential action against Respondents—not Mr. Boykin's duties as a trustee.¹³ Because Mr. Hardin did not serve as trust counsel to Mr. Boykin in his capacity as co-trustee of the Residuary Trust, the premise under which he was permitted to testify in this case is inaccurate. Mr. Hardin has no more place on the witness stand in this case than does Mr. Rosen or Mr. Duffy. Indeed, this Court need only look at the pleadings and memoranda Mr. Rosen and Mr. Duffy have filed in this case if it wishes to ascertain what testimony Mr. Hardin can provide, as significant portions of his legal analysis are regurgitated almost verbatim therein.

B. Previously Undisclosed Opinions by James Hardin

¹⁰ Hardin email to Duffy and others dated August 31, 2017. (See Chronology at p. 4.)

¹¹ Boykin email to Hardin dated January 16, 2018 re Affidavit of Attorney's Fees.

¹² Hardin email to Rosen and Duffy dated June 19, 2018 (emphasis added). (See Chronology at p. 9.)

¹³ Hardin memo dated July 25, 2017. (See Chronology at p. 2.)

The witness list provided by Mr. Boykin's counsel raises additional concerns with Mr. Hardin's testimony. It discloses the following subjects for Mr. Hardin's testimony:

[t]his witness is expected to testify regarding the advice he offered to Petitioner in connection with his duties as Co-Trustee of the Residuary Trust, *his review of materials relating to the management and assets of the Residuary Trust (including the various plans set forth by the parties)*, and his interactions with Petitioner. (Petitioner's Witness List) (emphasis added).

Testimony regarding Mr. Hardin's review of the file and his opinions of the management plans is improper for several reasons. First, these matters are potentially opinions on matter of law, which are inadmissible. Second, the opinions are untimely. Petitioner previously provided a statement of the expert opinions expected to be rendered by Mr. Hardin in compliance with the Court's deadline for disclosures.¹⁴ The disclosure, however, did *not* list any opinions regarding conclusions Mr. Hardin may have drawn from his review of file materials or the merits of the parties' respective management plans. Untimely expert opinions should be excluded. Finally, Mr. Hardin is not competent to testify about the parties' proposed plans. He has no particular expertise, for example, in the stock market, land values, timber farming, or the proper asset mix necessary to mitigate risk in an investment portfolio.

If Mr. Hardin is permitted to testify, his testimony should be limited to testimony as a fact witness as the Court has previously ruled.

C. Limitations as a Fact Witness

(1) Limited Basis for Admission.

Because Mr. Hardin is a fact witness only, the advice given by him to Mr. Boykin is relevant only to Mr. Boykin's state of mind, and is not substantive evidence of the legal principles which may be discussed in the context of advice given. The Court should limit Mr. Hardin's testimony in this respect.

¹⁴ A copy of the disclosure and its 24 legal opinions is attached hereto.

(2) Personal Knowledge

Mr. Hardin's proposed testimony as a fact witness is still subject to the requirement that he have personal knowledge of the matters about which he will testify. Although the existence of multiple engagement letters makes ascertaining the date Mr. Boykin actually retained Mr. Hardin somewhat difficult, the earliest *signed* engagement letter in Mr. Hardin's file between himself and Mr. Boykin is dated August 4, 2017, and the earliest reference in Mr. Hardin's file to this matter is dated July 19, 2017. He therefore has no personal knowledge of events of which occurred before July 19, 2017, at the very earliest. Any testimony from Mr. Hardin should thus be limited to facts or events which occurred after he was retained.

(3) Relevance of Advice to Mr. Boykin

Mr. Hardin's advice to Mr. Boykin also has limited relevance. As discussed above, it is admissible for the limited purpose of its effect on Mr. Boykin, but only to the extent Mr. Boykin's state of mind is also relevant. What Mr. Hardin may have told Mr. Boykin regarding matters which occurred before Mr. Hardin's retention or which have been not been challenged in this action is not relevant.

II. Use of Depositions in Court

Petitioner and Respondents Whit Boykin and May Boykin have indicated that they plan to use the depositions of several witnesses as evidence at trial. Respondents do not object to the use of the depositions of Mary Daes Wortley and Alice Belger, who are parties to this action. Respondents also do not object to the use of the deposition of David Thomas, as that deposition was taken as a *de bene esse* deposition by agreement of the parties. Respondents do object to the use or admission of the following depositions:

1. Ansel Bunch;

2. Jane Peacock; and
3. James LaFrage; Jr.

The use of depositions in court is governed by Rule 32, SCRCP. This rule provides in pertinent part that:

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) that the witness is dead; or

(B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the State, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

None of the witnesses described above are dead and they all reside within 100 miles from the place of trial (and are therefore subject to subpoena for attendance at trial). There has no showing that any of these witnesses is unable to attend for any permitted reason. There has been no showing that Petitioner or Respondents Whit Boykin and May Boykin have been unable to procure the attendance of these witnesses. Finally, no exceptional circumstances are present.

Use of these depositions is also inappropriate under Rule 403, SCRE. The depositions involve a number of questions and answers regarding the "Trust," but, in many cases, fail to distinguish between the Marital Trust (which is essentially irrelevant) and the Residuary Trust. The depositions may therefore confuse or mislead the Court.

[signature page to follow]

HAYNSWORTH SINKLER BOYD, P.A.

By: s/James Y. Becker
James Y. Becker (SC Bar No. 64991)
Robert L. Reibold (SC Bar No. 9284)
Mary Cothonneau Eldridge (SC Bar No. 102698)
1201 Main Street, Suite 2200
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July 8, 2018

*Attorneys for Respondents Mary Deas Wortley
and Alice Belger*

EXHIBIT A

In Re: Estate of L.W. Boykin II
Rigdon Boykin v. Mary Deas Wortley, et al.
 Case No. 2017-CP-28-0831
 HSB File No. 39944.0001

CHRONOLOGY OF KEY EVENTS: JIM HARDIN

Date	Description	Source
EVENTS PRE-DATING JIM HARDIN'S INVOLVEMENT IN CASE		
08/08/2016	Trustee Meeting. ¹	Chronology of Trustee Meetings
08/15/2016	Trustee Meeting.	Chronology of Trustee Meetings
11/02/2016	Trustee Meeting.	Chronology of Trustee Meetings
12/19/16	Trustee Meeting.	Chronology of Trustee Meetings
01/19/17	Trustee Meeting.	Chronology of Trustee Meetings
02/02/17	Trustee Meeting.	Chronology of Trustee Meetings
02/16/17	Trustee Meeting.	Chronology of Trustee Meetings
02/23/17	Trustee Meeting.	Chronology of Trustee Meetings
03/02/2017	Trustee Meeting.	Chronology of Trustee Meetings
03/23/2017	Trustee Meeting.	Chronology of Trustee Meetings
04/13/2017	Trustee Meeting.	Chronology of Trustee Meetings

¹ Respondents Wortley and Belger have seen no record of Petitioner requesting that Hardin attend any trustee meeting prior to or during this litigation.

Date	Description	Source
05/12/2017	Trustee Meeting.	Chronology of Trustee Meetings
EVENTS AFTER JIM HARDIN ENGAGES IN MATTER		
07/19/2017	Hardin receives call from Rigdon Time entry narration: "Call from Rigdon Boykin and brief overview of my service as expert consultant."	James C. Hardin, III PLLC Invoice dated 7/31/17 ("August 31 Invoice") (attached as Exhibit 1)
07/21/2017	Hardin begins conducting legal research for Rigdon, Liam Duffy, and Richard Rosen in earnest Time entry narration: "Legal research and analysis of documents; preparation of memorandum to Rigdon Boykin, Richard Rosen and Liam Duffy regarding most important code sections for action by Trustee to secure recovery of attorney fees and his own compensation; forward the same to Rigdon, Richard and Liam with explanations."	August 31 Invoice
07/25/2017	Hardin sends memo to Rigdon, Richard Rosen, and Liam Duffy setting forth the bases for Rigdon's proposed legal action.	Memo from J. Hardin to R. Boykin and others, dated 7/25/17 (attached as Exhibit 2)
08/01/2017	Hardin drafts engagement letter to Rigdon, which Rigdon does not sign, describing his role as providing Rigdon "legal services as trust counsel in connection with your service as Co-Trustee of the Lemuel Whitaker Boykin II Residuary Trust."	August 1, 2017 engagement letter (unsigned) (attached as Exhibit 3)
08/02/2017	Hardin attends conference call with Rigdon Boykin, Richard Rosen, Liam Duffy and "William" (presumably Tetterton) regarding the Petition Time entry narration: "Preparation for conference call and conference call with Rigdon Boykin, Richard Rosen, Liam Duffy, and William about draft Petition and matters to be plead; begin preparation of Memo requested of me by Rigdon Boykin during conference call."	August 31 Invoice
08/02/2017	Hardin sends legal memo to Duffy and Rosen, copying Rigdon, titled "Proposed additional material for your draft Petition in the Matter of	Memo from J. Hardin to R. Rosen and L. Duffy, dated 8/2/17 (attached as

Date	Description	Source
	Lemuel Whitaker Boykin, II” The memo sets forth and explains legal bases for the Petition.	Exhibit 4)
08/03/2017	Hardin continues to draft a memo to Rosen and Duffy providing bases for declaratory judgment request. Time entry narration: “Continue drafting of Memo to Richard Rosen and Liam Duffy regarding bases for Declaratory Judgment that Rigdon be afforded special status as the sole disinterested Trustee; also attention to citation they need for Petition to support their allegation that 3% is a reasonable rate of return; e-mail to Richard, Liam and Rigdon.”	August 31 Invoice
08/04/2017	Hardin drafts a second engagement to letter to Rigdon, which Rigdon signs, describing his role as providing Rigdon “expert consulting and support services as requested and directed by you. My services may also include testimony during discovery and in any Court or arbitration body having jurisdiction over this matter.”	August 4, 2017 engagement letter (attached as Exhibit 5)
08/10/2017	Hardin drafts engagement letter to Richard Rosen to “confirm the terms of my engagement by <i>your firm</i> as attorney for your client Rigdon Boykin” (emphasis added). Hardin states in his letter that he will “provide expert consulting and support services <i>as requested and directed by your firm.</i> ” (emphasis added).	August 10, 2017 engagement letter (attached as Exhibit 6)
08/18/2017	Hardin continues conferring with both Rigdon <i>and</i> Rigdon’s legal counsel regarding drafting of Petition. Time entry narration: “Telephone conversations with Rigdon Boykin and Liam Duffy concerning Petition for counsel fees and trustee fees and appointment of Rigdon as a special fiduciary; email to Liam Duffy with specific comments and changes to Petition.”	August 31 Invoice
08/22/2017	Trustee Meeting – Hardin does not attend.	Chronology of Trustee Meetings
08/23/2017	Hardin communicates solely with Rigdon’s counsel—not Rigdon—in one email regarding legal strategies, and discusses potential cross-claims by May and Whit Boykin.	August 31 Invoice

Date	Description	Source
	Time entry narration: "Email from Liam Duffy regarding need for conference call to discuss removal of case to circuit court, cross-claims by other beneficiaries, and related issues; email from Rigdon Boykin."	
08/24/2017	Rigdon files his Petition against Alice, Mary Deas, Whit, and May, requesting that the Court appoint trust counsel, allow payment of attorneys fees, and issue an order that Rigdon has "preeminent authority" as a non-beneficiary trustee or otherwise appoint him special fiduciary. This comes slightly over one month after Hardin begins his legal research for the Petition. Duffy circulates email to Hardin, Tetterton, Rosen, and Rigdon setting forth agenda for call, which includes a cross-claim/counterclaim strategy on behalf of Whit and May Boykin, as well as identification of potential witnesses and experts.	Summons and Petition Email from L. Duffy to R. Boykin and others (sent 8/24/17) (attached as Exhibit 7)
08/31/2017	Hardin, Rigdon, and Rigdon's counsel further discuss securing payment of legal fees. Time entry narration: "Review emails from Rigdon Boykin and Liam Duffy concerning next steps in Motion to secure payment of legal fees, etc.; conference call with Rigdon, Richard Rosen and Liam Duffy; preparation of Affidavit of Jim Haridn forwarding statement for expert services and curriculum vitae and email the same to Liam Duffy, Richard Rosen, and Rigdon Boykin."	August 31 Invoice
08/31/2017	Hardin sends email to Rosen, Duffy, and Rigdon, explaining that he has prepared an expert services engagement letter for Rosen Hagood to sign to replace the "virtually identical" engagement letter Rigdon signed on August 10. Hardin explains that he is doing this "[t]o assure that, as my Affidavit provides, my engagement runs from Rosen Hagood rather than Rigdon," and that he has removed a \$10,000 retainer fee Rigdon paid from his first invoice because he felt the presence of the retainer on the invoice "would confuse the issue."	Email from J. Hardin to R. Rosen and others (sent 8/31/17 6:11 pm) (attached as Exhibit 8)

Date	Description	Source
09/05/2017	Hardin sends email to Rosen, Duffy, and Rigdon clarifying Rigdon's legal representation structure: "As we discussed in our conference call of late last week, Rigdon's desire with regard to my involvement is to follow the more conventional practice of having your firm, who are his attorneys, engage me to render expert consulting services and testimony as needed. . . . This arrangement is intended to supplant the current arrangement whereby Rigdon himself entered an engagement letter with me." Hardin attaches several documents "[i]n order to bring the arrangement in line with the allegations of the Petition and the Affidavits supporting it": - A proposed engagement letter between Rosen Hagood and Hardin that "is virtually identical to the engagement letter entered with Rigdon on August 10." Hardin further notes that in order "to support the allegations in the Petition, I have taken the liberty of dating the Engagement letter . . . August 10, such that the new letter will supplant, <u>ab initio</u>, the august 10 engagement letter with Rigdon." - Hardin's first invoice for expert consulting services "which is in the amount of the sum set forth in the Affidavit I furnished you which supports the Petition." Hardin explains that the invoice removes a \$10,000 retainer Rigdon paid Hardin, presumably so as to remove confusion regarding the legal representation structure. Hardin also recognizes that the Petition asks the court to order the Trust to reimburse Rigdon for his fees paid to his legal counsel and the retainer paid to Hardin, and asks that all such fees incurred moving forward, as well as the fees of a new trust counsel, be reimbursed out of the Trust as well. Hardin describes this as "the ultimate goal."	Email from J. Hardin to R. Rosen and others (sent 9/5/17 3:58 pm) (attached as Exhibit 9)
09/08/2017	Whit and May Boykin file their Answer to the Petition and Crossclaim	Summons, Answer, and Crossclaim

Date	Description	Source
	against Alice and Mary Deas, slightly more than one month after Hardin and Duffy confer regarding potential cross-claims. Whit and May's response essentially admits all of Rigdon's allegations against Mary Deas and Alice.	
09/18/2017	Hardin sends email to Rigdon, Rosen, and Duffy attaching code section setting forth trustees' duties and explaining how that section applies to actions taken by <i>Alice and Mary Deas</i> .	Email from J. Hardin to R. Boykin and others (sent 9/18/17) (attached as Exhibit 10)
09/22/2017	Hardin forwards draft Memo of Law in support of Rigdon's motion for attorneys fees to Duffy and Rigdon	Email from J. Hardin to R. Boykin and others (sent 9/22/17) (attached as Exhibit 11)
09/29/2017	Hardin sends email to Duffy offering comments on excerpt from Petitioner's memo in support of motion for attorneys fees and setting up conference call to discuss.	Email from J. Hardin to L. Duffy and others (sent 9/29/17) (attached as Exhibit 12)
10/09/2017	Hardin critiques proposed response from Rigdon to Karen, which was drafted by Duffy, and notes that " <i>In my view, her response plays into our hands</i> . By Rigdon's e-mailing her last week with a proposed date and time for a meeting, we were hoping state out her position on the record. <i>In my view we certainly got what we wanted.</i> " (emphasis added).	Email from J. Hardin to R. Boykin and (sent 10/9/17) (attached as Exhibit 13)
10/13/17	Trustee Meeting – Hardin attends for first hour.	Chronology of Trustee Meetings
11/09/17	Trustee Meeting – Hardin does not attend.	Chronology of Trustee Meetings
12/06/17	Trustee Meeting – Hardin does not attend.	Chronology of Trustee Meetings
12/21/2017	Hardin assists Duffy and Rosen with preparation of legal arguments for Motion to Designate Case Complex. Rigdon does not participate in this discussion. Time entry narration: "Call from Richard Rosen and returned call and spoke to Liam Duffy to add argument in support of the Motion to make the case complex litigation, expected to be heard by Judge Casey Manning on	James Hardin, III PLLC Invoice dated February 16, 2018 ("February 16 Invoice") (attached as Exhibit 14)

Date	Description	Source
	Wednesday, December 27, 2017.”	
01/09/18	Trustee Meeting – Hardin does not attend.	Chronology of Trustee Meetings
01/10/18	Trustee Meeting – Hardin does not attend.	Chronology of Trustee Meetings
01/16/18	R. Boykin revises J. Hardin’s affidavit, which was later submitted to the Court.	Email from R. Boykin to J. Hardin (sent 1/16/18) (attached as Exhibit 15)
01/17/2018	Trustee Meeting – Hardin does not attend.	Chronology of Trustee Meetings
01/23/2018	Hardin sends email to Duffy referring to their “mutual hard work” with respect to the Motion for Attorneys Fees and Appointment of Trust Counsel.	Email from J. Hardin to L. Duffy and others (sent 1/23/18 1:52:42 pm) (attached as Exhibit 16)
01/30/18	Trustee Meeting – Hardin does not attend.	Chronology of Trustee Meetings
02/07/2018	Rigdon forwards copy of Mary Deas and Alice’s settlement offer to Whit and May Boykin to Jim Hardin, William Tetterton, and others with the comment that it is “not even close.”	Email from R. Boykin to J. Hardin and others (sent 2/7/18) (attached as Exhibit 17)
03/02/2018	Hardin sends email citing and analyzing case regarding whether Alice and Mary Deas’ children must be added to the action to Duffy, Rosen, Rigdon, and <i>Tetterton</i> .	Email from J. Hardin to L. Duffy and others (sent 3/2/18) (attached as Exhibit 18)
03/06/2018	Hardin sends email to Rosen, Duffy, <i>Tetterton</i> , and Rigdon stating that although he wishes that the Probate Code “would preclude our having to name Mary Deas’ and Alice’s children and grandchildren,” he believes that the applicable case law requires Rigdon to name them in his suit.	Email from J. Hardin to R. Rosen and others (sent 3/6/2018) (attached as Exhibit 19)
03/22/2018	Hardin forwards additional case law to Duffy and Rosen for potential citation or argument at hearing concerning powers and duties of trustees.	Email from J. Hardin to L. Duffy and others (sent 3/22/18) (attached as Exhibit 20)
03/27/18	Trustee Meeting – Hardin does not attend.	Chronology of Trustee Meetings
04/03/18	Trustee Meeting – Hardin does not attend.	Chronology of Trustee Meetings

Date	Description	Source
04/12/18	Trustee Meeting – Hardin does not attend.	Chronology of Trustee Meetings
04/19/2018	Duffy sends email to Hardin thanking Hardin for his work on the Affidavit of Fees and Costs for Expert Consulting Service, calling it a “matter near and dear to all of our hearts.”	Email from L. Duffy to J. Hardin and others (sent 4/19/18 6:00 pm) (attached as Exhibit 21)
05/07/2018	Rigdon files his Amended Summons against Mary Deas, Alice, Whit, and May, asserting two additional causes of action: (1) equitable deviation/modification; and (2) removal of Mary Deas and Alice as trustees	Summons and Amended Petition
05/17/18	Trustee Meeting – Hardin does not attend.	Chronology of Trustee Meetings
06/14/2018	Hardin forwards 10-page memo to Duffy and Rosen forwarding legal authorities and analysis of those authorities for the legal brief requested by the Court. Large portions of this memo are regurgitated almost verbatim in Rigdon, Whit, and May’s joint pre-trial brief.	Email from J. Hardin to L. Duffy and others (sent 6/14/18) (attached as Exhibit 22) Memo from J. Hardin to R. Rosen and L. Duffy, dated 6/14/18 (attached as Exhibit 23)
06/14/2018	Hardin sends email to Duffy and Rosen forwarding case law for Duffy and Rosen to cite in support of one of his expert opinions	Email from J. Hardin to L. Duffy and others (sent 6/14/18) (attached as Exhibit 24)
06/16/2018	Hardin sends email to Duffy and Rosen providing additional case law and analysis for trial brief requested by court. Duffy confirms receipt of legal memo, states that he is “now beginning to work it into ‘Trial Brief’ form as requested by the Court.”	Email from J. Hardin to L. Duffy and others (sent 6/16/18) (attached as Exhibit 25) Email from L. Duffy to J. Hardin and others (sent 6/16/18) (attached as Exhibit 26)
06/19/2018	Hardin informs Duffy and Rosen that he reached out to a potential expert with South State Bank on behalf of Rigdon and “vouched face for Rigdon, saying that he had only the best interests of the beneficiaries in mind.”	Email from J. Hardin to R. Rosen and others (sent 6/19/18) (attached as Exhibit 27)

EXHIBIT 1

James C. Hardin III, PLLC

113 E. Main Street, Suite 330
Post Office Box 190
Rock Hill, SC 29731

Ph: (803) 329-8200

Fax: (803) 329-8121

Richard S. Rosen, Esquire
Rosen Hagood, LLC
151 Meeting St., Suite 400
Charleston, SC 29401

August 31, 2018

Matter Number: 002137-00

Invoice #: 678

Taxpayer I.D. #

RE: T/U/W Lemuel Whitaker Boykin II Residual Trust

Includes Charges through: 08/31/2017

LEGAL SERVICES RENDERED

DATE	STAFF	DESCRIPTION	HOURS	AMOUNT
19-Jul-17	JCH	Call from Rigdon Boykin and brief overview of my service as expert consultant	0.40	240.00
20-Jul-17	JCH	Review material, copy of Trust, correspondence and Flowchart, received from Rigdon Boykin in advance of meeting on July 21, 2017	1.20	720.00
21-Jul-17	JCH	Continue review of documents supplied by Rigdon Boykin; preparation for office conference with Rigdon; office conference with Rigdon and Richard Rosen and Liam Duffy (via speakerphone)	3.00	1,800.00
25-Jul-17	JCH	Legal research and analysis of documents; preparation of memorandum to Rigdon Boykin, Richard Rosen and Liam Duffy regarding most important code sections for action by Trustee to secure recovery of attorney fees and his own compensation; forward the same to Rigdon, Richard and Liam with explanations	4.00	2,400.00
31-Jul-17	JCH	Review and revise correspondence to Mr. Boykin	1.00	600.00
01-Aug-17	JCH	Review and revise correspondence; review draft Petition for Declaratory Relief and Attorneys' and Trustee fees as prepared by Richard Rosen and Liam Duffy; call from Rigdon Boykin, Richard Rosen and Liam	2.50	1,500.00

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		Duffy and discuss Petition and plan conference call for Wednesday; correspondence to Rigdon Boykin		
02-Aug-17	JCH	Preparation for conference call and conference call with Rigdon Boykin, Richard Rosen, Liam Duffy and William about draft Petition and matters to be plead; begin preparation of Memo requested of me by Rigdon Boykin during conference call	3.40	2,040.00
	FWF	Emails with Jim Hardin regarding eligibility of Trustees to participate in decanting	0.20	58.00
03-Aug-17	JCH	Continue drafting of Memo to Richard Rosen and Liam Duffy regarding bases for Declaratory Judgment that Rigdon be afforded special status as the sole disinterested Trustee; also attention to citation they need for Petition to support their allegation that 3% is a reasonable rate of return; e-mail to Richard, Liam and Rigdon	5.20	3,120.00
09-Aug-17	JCH	Receipt and cursory review of revised Petition for attorney fees, Trustee fees, and appointment of Rigdon Boykin as special fiduciary	0.80	480.00
15-Aug-17	JCH	Telephone call from Rigdon Boykin concerning first draft of Petition as prepared by Richard Rosen and colleague Liam Duffy	0.30	180.00
16-Aug-17	JCH	Email to Rigdon Boykin and telephone call to him	0.20	120.00
17-Aug-17	JCH	Begin review of revised Petition	0.40	240.00
18-Aug-17	JCH	Telephone conversations with Rigdon Boykin and Liam Duffy concerning Petition for counsel fees and trustee fees and appointment of Rigdon as special fiduciary; email to Liam Duffy with specific comments for changes to Petition	0.90	540.00
21-Aug-17	JCH	Email from Rigdon Boykin forwarding Statement of Purpose for the upcoming Trustees' meeting and requesting I review and comment; review Statement of Purpose and email Rigdon with comments as well as whether to develop an Investment Policy Statement (similar to Statement of Purpose)	2.40	1,440.00
22-Aug-17	JCH	Review revised Investment Policy Statement and send specimen of statement to Rosen Hagood and to Rigdon Boykin re Petition for attorneys and trustee fees; call from Rigdon Boykin; review revised Petition re attorneys	1.80	1,080.00

		and trustee fees and email Liam Duffy concerning the same		
23-Aug-17	JCH	Email from Liam Duffy regarding need for conference call to discuss removal of case to circuit court, cross-claims by other beneficiaries, and related issues; email from Rigdon Boykin	0.30	180.00
25-Aug-17	JCH	Email from Liam Duffy with proposed agenda for conference call scheduled this date; participate in conference call among Rigdon Boykin, Richard Rosen, Liam Duffy, and William; instructions to and conference with paralegal Roxanne Barron	1.40	840.00
	REB	Conference with Jim Hardin regarding Petition and Order for Payment of Counsel Fees	0.30	67.50
28-Aug-17	JCH	Emails regarding Affidavits needed from Rigdon Boykin and Jim Hardin; conference with Roxanne Barron	0.60	360.00
	REB	Further instructions from Jim Hardin; prepare draft South Carolina Petition and Order for Payment of Counsel Fees without Exhibits	0.40	90.00
30-Aug-17	JCH	Begin review of emails from Liam Duffy and Rigdon Boykin	0.40	240.00
31-Aug-17	JCH	Review emails from Rigdon Boykin and Liam Duffy concerning next steps in Motion to secure payment of legal fees, etc.; conference call with Rigdon, Richard Rosen and Liam Duffy; preparation of Affidavit of Jim Hardin forwarding statement for expert services and curriculum vitae and email the same to Liam Duffy, Richard Rosen and Rigdon Boykin	4.50	2,700.00

Total Professional Services

35.60 \$21,035.50

DISBURSEMENTS & EXPENSES

Photocopies	6.00
Postage	1.80
Research	30.50
Totals	\$38.30

Total Fees & Disbursements

\$21,073.80

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Invoice #: 6787

Page 4

Trust Transferred at Billing

10,000.00

BALANCE NOW DUE

\$11,073.80

DUE AND PAYABLE UPON RECEIPT

TRUST STATEMENT

		Disbursements	Receipts
Aug-09-17	Received From: Rigdon H. Boykin Retainer		10,000.00
Aug-31-17	Paid To: James C. Hardin III, PLLC Payment for invoice: 6787	10,000.00	
	Total Trust	<u>\$10,000.00</u>	<u>\$10,000.00</u>
	Trust Balance	\$0.00	

cc: Rigdon Boykin

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EXHIBIT 2

Memo to: Rigdon Boykin, Richard Rosen, Liam Duffy

From: Jim Hardin

Date: July 25, 2017

Re: Authorities and redacted material that may be of assistance to Richard and Liam with regard to Rigdon's proposed legal action to secure court approval for his engaging legal counsel for the trust and compensating such counsel from the general assets of the trust.

First, I looked for a template of a Petition for the reasonableness of attorney compensation, including the authority of one of several Trustees to hire an attorney and, because the hiring Trustee is the only disinterested Trustee, have his counsel fees paid from the general trust assets. I do not recall ever opining on that precise issue. However, I have located several pleadings whereby the court is asked to rule on the reasonableness of the fiduciary hiring an attorney and the reasonableness of the amount the attorney has charged or proposes to charge. I have attached one such Petition, with names (other than mine) redacted. In that case I am the Personal Representative and am asking the Probate Court for approval of the reasonableness of the fees I propose to pay myself, in advance of my making such a payment. I should note that advance approval is not required but in the estate I am handling I deem it prudent. Note I am using a court administration form (#380 ES) for this petition, but that form is not mandatory. In the Boykin Trust case, a specially crafted petition would be preferable in my view.

There the decedent's Will provides that I am to be compensated as Personal Representative not in accordance with a percentage but rather in accordance with my regular hourly rates for legal services rendered and out-of-pocket costs advanced. This is true even though I have, with court approval, hired litigation counsel to assist me in defending a claim against the estate. I am compensating that counsel from estate assets.

Redacted excerpts from my Federal Rule 26 (a)(2)(B) Report of Expert Witness in a 2008 federal case in South Carolina involving the reasonableness of fees which had been taken by two attorneys who served as Special Administrators of a Decedent's Estate and Trustee's of the Decedent's Trust Agreement.

The two lawyers' fees were fiduciary fees and not attorney fees but in offering my opinion that they were reasonable in amount I used some standards of compensation normally applicable to attorneys and I also cited relevant SC statutes on fiduciary compensation that may be applicable to the Boykin case. To my best recollection none of the cited statutes have been amended.

Immediately below are excerpts from the 2008 federal case summarized above.

I. Excerpts from Federal Case

"Fees and Commissions of P and B as Special Administrators, Personal Representatives and Trustees."

21. By way of compensation, Mr. J's Will provides at Item 4(iii) that for his, her or its service, the Personal Representative "shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses." In my experience references to "reasonable compensation" in the Will allow P and B to take the statutory percentage compensation for Personal Representatives. The fee for Personal Representatives under Code Section 62-3-719 is "not to exceed five per cent (5%) of the appraised value of the personal property of the probate estate plus the sales proceeds of real property of the probate estate received on sales directed or authorized by Will or by proper Court Order...." Additionally, the Personal Representative may receive "not more than five per cent (5%) of the income earned by the probate estate in which he acts as fiduciary."

22. The James J Trust provides at Article VIII (iii) that "the Trustee shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses." P and B promulgated bylaws to the Trust which afforded them a collective annual compensation of one-half (1/2) of one per cent (1%) of the Trust principal. In my opinion this is well within the norm for the services of Trustees. The fee schedule of many corporate Trustees is a higher percentage on principal. Further, many corporate Trustees charge in addition to a percentage of principal, a percentage of income earned. P and B are not proposing any compensation on income. Lastly, P and B are splitting the percentage compensation. It is not uncommon for Co-Trustees to be compensated independently of one another. This is especially true when one fiduciary is a corporation and the other is an individual.

23. In his January 8, 2008 Order, Judge E approved the payment of hourly fees of \$317,000 and unreimbursed costs of \$2,415.38 to P and B for their

services as Special Administrators between March 7, 2007 and November 20, 2007. The Court's resort to factors governing compensation of attorneys in scrutinizing the request for Special Administrator compensation was in my experience the proper approach. As Judge E noted, during this March to November period P and B worked more than 950 hours and their staffs and law clerks worked more than 680 hours. The Court further ordered that commencing November 21, 2007, for their services as Personal Representatives and Trustees of the James J Estate and Trust P and B were to be paid on a "time plus cost" basis. Such time and cost payments were to be a deposit toward and without prejudice to their ultimate receipt of percentage commissions as Personal Representatives and Trustees. In my opinion for attorneys of the experience and skill level of P and B to charge in the range of \$300 per hour for their services is reasonable, when attorneys of their experience can command an hourly rate of \$500 or more in a matter of this complexity. Although P and B are attorneys at law in private practice who will perform many legal services to the estate and Trust, it is my understanding that they are not asking to be compensated for services as attorneys as well as services as Personal Representatives and Trustees. Accordingly, P and B's legal skills are available without added expense. Were P and B to be non-lawyers, it would be customary for them as Personal Representatives and Trustees to collect their commissions and also hire estate and trust lawyers paying their fees from estate assets.

24. It is my opinion that the issue of whether the J Entities form a part of the Trust or Estate is not significant with respect to the compensation which P and B receive as Personal Representatives and Trustees."

II. Two templates for Petitions for Court approval of attorney fees and their payment from the trust or estate assets, one involving a case where I am the Personal Representative.

II. Other relevant authorities:

The following is a non-exclusive list of authorities for Richard and Liam to consider in the bringing the legal action regarding the right of Rigdon, the disinterested Trustee, to engage counsel for the trust and to have his attorney fees paid from the trust

assets. Such an action might also entail asking the court to declare that Rigdon's counsel is the only counsel for the trust, and that legal counsel hired by Alice Belger and Mary Deas Wortley are to be compensated by them. Will

- a. Besides the Declaratory Judgment Act, the section of the South Carolina Trust Code which authorizes a fiduciary to request court approval of attorney and trustee fees is Section 62-7-201 ("Role of court in administration of trust") at (a)(3), where the petitioning fiduciary asks the court to "review the propriety of employment of a person by a trustee including an attorney... and the reasonableness of the compensation of a person so employed, and the reasonableness of the compensation determined by the trustee for his own services..." Some of the templates I attach are under this statute.
- b. While Section 62-7-201 (a)(3) above provides that this remedy is within the exclusive jurisdiction of the Probate Court because it relates to the "internal affairs of the trust," curiously, a later (post 2006) addition to Section 62-7-201, that is paragraph (d), provides apparently to the contrary inasmuch as it states that "the probate court has concurrent jurisdiction with the circuit courts over attorney fees. Attorney fees may be a fixed or hourly rate or by contingency fee." Also of course the general removability statute from probate to circuit court, that is Section 62-1-302 (d), allows free removability by either party or by the court on its own motion in regard to, among other things, "(4) matters involving the internal or external affairs of trusts as provided by Section 62-7-201..." So even in the absence of Section 62-7-201 (d), petitions by trustees for the approval of their hiring of attorneys and for the reasonableness of the compensation of those attorneys would be removable to circuit court. As we discussed, many circuit judges are less informed about trust issues than experienced probate judges who are themselves lawyers.
- c. Another section of the trust code relating to a trustee's attorney fees is section 62-7-1004 ("Attorney's fees and costs"). It provides as follows: "In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's

fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.”

- d. Several Probate Code sections govern the relationship between a fiduciary (including a personal representative or trustee) and the attorneys hired by the fiduciary and compensated with funds from the estate or trust. Section 62-1-109, most recently amended in 2012 to extend to trustees as well as personal representatives, provides in part that “Unless expressly provided otherwise in a written employment agreement, the creation of an attorney-client relationship between a lawyer and a person serving as a fiduciary shall not impose upon the lawyer any duties or obligations to other persons interested in the estate, trust estate, or other fiduciary property, even though fiduciary funds may be used to compensate the lawyer for legal services rendered to the fiduciary. This section is intended to be declaratory of the common law...” In other words, legal counsel hired by the fiduciary has no duty to the beneficiaries of the estate or trust, who are not his or her clients. Contra authority exists, but is not well developed in South Carolina, in the arena of trust or estate attorney liability for aiding and abetting a fiduciary’s breach of duty to the beneficiaries.
- e. The next succeeding section is Section 62-1-110 (“Fiduciary-lawyer privilege”). It provides in part as follows: “Whenever an attorney-client relationship exists between a lawyer and a fiduciary, communications between the lawyer and the fiduciary shall be subject to the attorney-client privilege unless waived by the fiduciary, even though fiduciary funds may be used to compensate the lawyer for legal services rendered to the fiduciary...”
- f. A final Trust Code section of particular importance to Rigdon, in terms of actuating the diligence he is displaying with regard to the highest and best use of the trust property, is Section 62-7-703 (“cotrustees”). Admittedly this is a default code section (as is most of the Trust Code) meaning of course that it is applicable only unless contrary provisions do not exist in the governing instrument. In this case I did not recall any contrary provisions with regard to the following: Subsection (f) of Section 62-7-703 provides that “except as otherwise provided in subsection (g), a trustee who does not join in an action of another

trustee is not liable for the action." Subsection (g) provides as follows: "each trustee shall exercise reasonable care to:

(1) prevent a cotrustee from committing a serious breach of trust;
and

(2) compel a cotrustee to redress a serious breach of trust."

Serious breaches of trust can occur through omission as well as commission. Such serious breaches are defined in Trust Code Section 72-7-103 (24) as "a single act that causes significant harm or involves flagrant misconduct, or a series of smaller breaches, none of which individually justify removal when considered alone, but which do so when considered together." Trustee removal can result from a serious breach of trust. Aside from removal of his cotrustees, Rigdon should consider whether, if the neglect his cotrustees are displaying constitutes a "serious breach of trust," he has an affirmative duty to seek to redress it by securing instructions from a proper court.

g.

EXHIBIT 3

JAMES C. HARDIN III ATTORNEY AT LAW

JAMES C. HARDIN III, PLLC
EMAIL: JHARDIN@JIMHARDINLAW.COM
TELEPHONE 803.329.7801
FACSIMILE 803.329.8121

SUITE 330, 113 EAST MAIN STREET
POST OFFICE BOX 190
ROCK HILL, SOUTH CAROLINA 29731
ADMITTED: SC AND NC

BOARD CERTIFIED SPECIALIST
ESTATE PLANNING AND PROBATE LAW
FELLOW, AMERICAN COLLEGE OF
TRUST AND ESTATE COUNSEL

August 1, 2017

(VIA EMAIL (rhboykin@me.com) and US MAIL)

Rigdon Boykin, Esq.
PO Box 69
Rembert SC 29128

Re: Rigdon Boykin, Co-Trustee of the Lemuel Whitaker Boykin II Residual Trust

Dear Rigdon:

This letter will confirm the terms of our firm's engagement to provide you legal services as trust counsel in connection with your service as Co-Trustee of the Lemuel Whitaker Boykin II Residuary Trust.

Our duties as your trust counsel consist of advising and assisting you in fulfilling the requirements imposed upon you as a Trustee of the Lemuel Whitaker Boykin II Residual Trust (the "Trust"). You have requested our services because of the issues confronting you in your role as one of three Co-Trustees of the Trust. You report that the other two Co-Trustees, Alice Belger and Mary Deas Wortley, do not agree with your view of how to optimize the use and value of the Trust property, primarily consisting of real estate. You also report that your Co-Trustees also do not agree that your attorney fees incurred to this point and going forward should be paid from the assets of the Residual Trust. Your immediate goal is to secure an order of a court of competent jurisdiction, or perhaps prior to that an agreement of the Co-Trustees, to the effect that you and your Co-Trustees must pay the fees of your attorneys, and perhaps other agents of yours, from the Residual Trust assets. You are the only one of the three Co-Trustees who is not also a Trust beneficiary.

My understanding is that in the first instance you will be personally responsible for payment of our firm's fees and expenses. My further understanding is that, if you are successful in securing a court order or an agreement from your Co-Trustees that our firm's services and costs advanced are to be paid from the Trust assets, you will reimburse yourself from those assets for your payments on behalf of the Residual Trust of our firm's fees and expenses. If you are in agreement with the terms of this letter, I am requesting that you sign at the bottom of this engagement letter both in your capacity as Co-Trustee of the Residual Trust, and individually.

We are to charge fees on an hourly basis at the regular hourly rates of our firm. The attached statement sets forth the names and rates of attorneys and paralegals most likely to be working on this matter. The rate schedule is set for the current calendar year. Any out-of-pocket expenses directly attributable to the estate, including intra-office expenses such as long distance

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Mr. Rigdon Boykin
August 1, 2017
Page 2

telephone calls, photocopies, mileage, and extraordinary postage or freight charges, will be charged, in addition to attorney's fees.

We are to furnish itemized bills of services rendered, including the date and a brief description of the services, as well as the items of costs, disbursements, and intra-office expenses charged. We will generally render bills monthly while the matter is in active status.

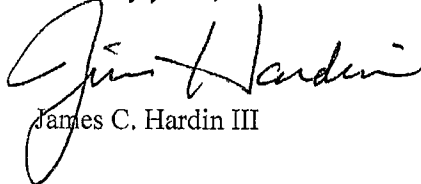
Either you or we may terminate this agreement upon reasonable written notice to the other party. Upon such termination, we reserve the right to be paid in full for fees earned and out of pocket expenses advanced through the date of termination.

I request that you remit to us an advance retainer of two thousand five hundred dollars (\$2,500) prior to our rendering further services on this engagement. Of course, any amount remaining upon termination or completion of our engagement and payment of all of our fees and expenses will be returned to you.

We appreciate the opportunity of being of service and look forward to working with you and your other counsel.

Should you have any questions, please do not hesitate to let me know.

Sincerely yours,


James C. Hardin III

JCHIII/avb
Enclosure

AGREED UPON AND ACCEPTED:

Rigdon Boykin, individually and as a Co-Trustee
of the Lemuel Whitaker Boykin, II Residual Trust

Date

JAMES C. HARDIN III, PLLC
Rate Schedule 2017

Attorneys

James C. Hardin III	\$550.00
Frederick W. Faircloth IV	\$290.00
Amy G. Montague	\$250.00

Paralegals

Cheryl A. Byrdic	\$225.00
Roxanne E. Barron	\$225.00
Janet C. Wallace	\$225.00

Legal Assistant

Dawn G. Roper	\$150.00

EXHIBIT 4

ELECTRONICALLY FILED - 2018 Jul 09 1:43 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

Memo

JAMES C. HARDIN III, PLLC

ATTORNEYS AT LAW
Email: JHardin@JimHardinLaw.com
113 East Main Street, Suite 330
Post Office Box 190
Rock Hill, South Carolina 29731
Telephone 803-329-7601
Facsimile 803-329-8121

To: Richard Rosen, Esq. and Liam Duffy, Esq.
Our File No. 002137-001
From: Jim Hardin
Date: August 2, 2017
Re: Proposed additional material for your draft Petition In the Matter of Lemuel Whitaker Boykin, II; Rigdon H. Boykin, Co-Trustee v. Mary Deas Wortley and Alice B. Belger, Co-Trustee
cc: Rigdon Boykin, Esq.

As a follow-up to our conference call of August 2, 2017 among you two, Rigdon Boykin and William as counsel for L.W. Boykin, III and May Cantey Boykin, the purpose of my memo is twofold. The first is to provide you with a citation to the allegation in paragraph 30 of the Petition that Rigdon Boykin believes that the income beneficiaries each year should receive a minimum of 3% of the value of the trust's assets. There I would cite Section 62-7-904E(B), a part of the unitrust conversion statute (see below). That subsection provides that no less than 3% nor more than 5% is a "reasonable current return from the trust."

Secondly, in the First Cause of Action, for a Declaratory Judgment, you will be adding another measure of declaratory relief, which is that Rigdon, in his capacity as the sole disinterested Co-Trustee, should be declared to have preeminent authority (the preceding two words not being terms of art) among the three co-trustees of the Lemuel Whitaker Boykin, II Residual Trust (the "Trust"). What tool might the court use to afford Rigdon this preeminent authority? Under Section 62-7-1001(b)(5) one of the remedies the court may order to redress a breach of trust (by Mary Deas and Alice) would be to "appoint a special fiduciary to take possession of the trust property and administer the trust." (emphasis supplied). Even though Rigdon is already a co-trustee, the court would not be precluded from appointing him as the "special fiduciary." See further discussion about the court's remedial authority under Section 62-7-802, Duty of Loyalty, below.

Further on the Application of the Prudent Investor Act

In paragraph 16 of the Petition, you quote from the Trust that the co-trustees must "invest and reinvest the property of the estate or trust in such manner as men of prudence

exercise in the management of their own affairs." (Item XIV (c)). In paragraph 18 you allege that the three co-trustees have, among other duties, the following arising under the South Carolina Trust Code: "the Duty of Prudent Investment—S.C. Code Ann. Sections 62-7-804, 62-7-933." Prudence requires the exercise of "reasonable care, skill and caution," a phrase on which the Reporter of the Prudent Investor Act, the late James Gamble of Michigan, placed great emphasis. Section 62-7-933 (C)(1). Both Sections 62-7-804 and 62-7-933 provide that the trustee must conduct himself or herself as a prudent investor, and the latter of the two delineates the precise parameters of the prudent investor rule.

First, section 62-7-933 (B)(2) provides that "the prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust..." While the decedent had much to say in his will about the investment of trust assets, I see no indication that he "restricted, eliminated, or otherwise altered" the application of the Prudent Investor Act by the precatory provisions in his Will about real estate sales. In fact, as you note in paragraph 16 of the Petition, the decedent makes specific reference in Item XIV (c) to the trustees investing trust assets as men of prudence would do in the management of their own affairs. This language from the Will echoes Section 62-7-815 (a)(2)(A) of the South Carolina Trust Code, wherein trustees are given the authority to exercise "all powers over the trust property which an unmarried competent owner has over individually owned property." Indeed under the Prudent Investor Act at Section 62-7-933 (C)(3), the trustee acting as a prudent investor "shall" consider the following factors among others: "(a) general economic conditions; (b) the possible effect of inflation or deflation;... (e) the expected total return from income and the appreciation of capital; ... (g) needs for liquidity, regularity of income, and preservation or appreciation of capital." These are all factors which Rigdon is urging his co-trustees to consider.

Mary Deas and Alice's Breach of their Duty of Loyalty

Section 62-7-802 ("Duty of loyalty") provides in relevant part as follows:

"(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) subject to the rights of persons dealing with or assisting the trustee as provided in section 62-7-1012 ["Protection of persons dealing with trustee "], a sale, encumbrance, or other transaction involving the investment or management of trust property be entered into by a trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by beneficiary affected by the transaction....." Here the General Assembly addresses the ill effects of the inaction of Mary Deas Wortley and Alice Belger, which inaction in my opinion constitutes a breach of trust as defined under Section 62-7-1001 ("Remedies for breach of trust"). That section defines a "breach of trust" to be "a violation by a trustee of a duty the trustee owes to a beneficiary..." Here the duty of loyalty which Mary Deas and Alice owe to all of the beneficiaries is being compromised by the conflict between these beneficiary/Co-Trustees' personal interests and their fiduciary duties.

Section (b) of Section 62-7-1001 affords the court multiple remedies to redress a breach of trust. The court may: (1) compel the trustee to perform the trustee's duties; (5) appoint a

special fiduciary to take possession of the trust property and administer the trust; (6) suspend the trustee; (7) remove the trustee as provided in Section 62-7-706; (8) reduce or deny compensation to the trustee; (10) order any other appropriate relief. See also on special fiduciaries Section 62-7-704 (e) and comments to that section. The comments to Section 62-7-1001 provide in part as follows: "The authority of the court to appoint a special fiduciary is not limited to actions alleging breach of trust but is available whenever the court, exercising its equitable jurisdiction, concludes that an appointment would promote administration of the trust." I infer from this that a special fiduciary need not be a new trustee or an additional trustee, but one currently serving who should enjoy enhanced powers by virtue of his being disinterested.

South Carolina Trust Code Sections recognizing the stature of a disinterested Co-Trustee, or, conversely, the potentially tainted status of a Trustee who is also a beneficiary:

Introductory comment: Since its initial enactment of the prudent investor rule in 2001, the South Carolina General Assembly has enacted three statutory mechanisms, which only a disinterested co-trustee may invoke in proper circumstances. All three provide avenues for the alteration of the dispositive or administrative terms of an otherwise irrevocable non-amendable trust. They are the following:

1. The power of a trustee to adjust between principal and income:
 - a. Section 62-7-904 (A) provides in part that "A trustee may adjust between principal and income to the extent that the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor[and] the terms of the trust described the amount that may or must be distributed to a beneficiary by referring to the trust income....." The Boykin Residual Trust would qualify for an adjustment because it describes the amount that may or must be distributed to the beneficiaries by referring to the trust income. The fact that the Boykin Residual Trust also refers to distributions of trust principal is irrelevant to the applicability of the power to adjust.
 - b. Section 62-7-904 (C) provides that a trustee may not make an adjustment: (7)" if the trustee is a beneficiary of the trust." Commentators have underscored the desirability of at least one trustee being a disinterested trustee because such an appointment fosters the availability of the power to adjust.
 - c. I am not here advocating that the power to adjust be used.
2. The power of a trust to convert an "income trust" to a "total return unitrust" under Section 62-7-904C. This power is known as unitrust conversion. An "income trust" is one, which "directs or permits the trustee to distribute the net income of the trust to one or more persons..." Section 62-7-904B(4). The decedent's Residual Trust qualifies under this definition. A total return unitrust is one which pays a percentage of trust assets, to the beneficiaries in lieu of a discretionary income amount which in today's low return environment could be quite small. The payment percentage unitrust is considered income and not principal and does not limit the ability of the trustee in making discretionary payments of principal if the governing instrument so allows, as this one does. Section 62-7-904E(B) provides that the percentage must

be "a reasonable current return from the trust, but not less than three percent nor more than five percent..." Most importantly, Section 62-7-904C(B) provides that only a disinterested trustee (one who is not also a beneficiary) can convert the trust to a unitrust. As with the power to adjust, unitrust conversion fosters the trustee's ability to manage the trust assets as a prudent investor.

3. The power of a Trustee(s) to appoint property from an original trust to a second trust, commonly known as decanting. Section 62-7-816A.
 - a. Section 62-7-816A (a) provides that "a trustee with the discretion to make distributions of principal or income to or for the benefit of one or more beneficiaries of a trust, the original trust, may exercise that discretion by appointing all or part of the property subject to that discretion in favor of another trust for the benefit of one or more of those beneficiaries, the second trust." The decedent's Residual Trust affords the trustees discretion over distribution of principal and income to the trust beneficiaries. Accordingly, the trustees of the original trust could have a second trust prepared and then, 90 days after advance written notice to all qualified beneficiaries, the trustees could transfer the assets of the original trust to the second trust.
 - b. The comments to section 62-7-816A (a) provide the following of examples of how decanting authority might be used: "modifying the administrative or substantive provisions of the trust to account for a change in law, combining trusts to reduce administrative costs, limiting the authority of interested trustees, correcting scrivener's errors,....." (emphasis supplied).
 - c. Most importantly, as with the power to adjust and unitrust conversion, discussed above, interested trustees (those who were also beneficiaries) are barred from being a part of the decanting process. Section 62-7-816A(e). Indeed, as is noted immediately above in the comments to the decanting statute, a disinterested trustee could utilize decanting to limit the authority of interested trustees.
 - d. On its face, the statute suggests that decanting can be undertaken by a disinterested trustee without court order, merely by providing notice to the qualified beneficiaries. Section 62-7-816A(g). However, since all qualified beneficiaries must be provided the 90 days advance written notice, presumably one or more of such qualified beneficiaries (including Mary Deas and Alice) could initiate an action to block the proposed decanting.
 - e. In addition to the filing of the legal action for attorney fees, trustee compensation and a declaratory judgment respecting the primacy of his position as the sole disinterested trustee, Rigdon Boykin could put pressure on the two interested co-trustees by preparing a second trust which does not contain a trustee unanimity requirement for the sale of real estate and which affords the power to sell real estate only to the disinterested trustee.

Finally, in regard to the Trust Code's recognition of the special status which a disinterested trustee should have, I would reemphasize the last point I made in my July 24, 2017 Memo to you two and Rigdon:

A final Trust Code section of particular importance to Rigdon, in terms of actuating the diligence he is displaying with regard to the highest and best use of the trust property, is Section 62-7-703 ("cotrustees"). Admittedly this is a default code section (as is most of the Trust Code) meaning of course that it is applicable only unless contrary provisions do not exist in the governing instrument. In this case, I did not recall any contrary provisions with regard to the following: Subsection (f) of Section 62-7-703 provides that "except as otherwise provided in subsection (g), a trustee who does not join in an action of another trustee is not liable for the action." Subsection (g) provides as follows: "each trustee shall exercise reasonable care to:

- (1) prevent a cotrustee from committing a serious breach of trust; and
- (2) compel a cotrustee to redress a serious breach of trust."

Serious breaches of trust can occur through omission as well as commission. Such serious breaches are defined in Trust Code Section 72-7-103 (24) as "a single act that causes significant harm or involves flagrant misconduct, or a series of smaller breaches, none of which individually justify removal when considered alone, but which do so when considered together." Trustee removal can result from a serious breach of trust. Aside from removal of his cotrustees, Rigdon should consider whether, if the neglect his cotrustees are displaying constitutes a "serious breach of trust," he has an affirmative duty to seek to redress it by securing instructions from a proper court.

EXHIBIT 5

JAMES C. HARDIN III ATTORNEY AT LAW

JAMES C. HARDIN III, PLLC
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FACSIMILE 803.329.8121

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ADMITTED: SC AND NC

BOARD CERTIFIED SPECIALIST
ESTATE PLANNING AND PROBATE LAW
FELLOW, AMERICAN COLLEGE OF
TRUST AND ESTATE COUNSEL

August 4, 2017

(VIA EMAIL to rhboykin@me.com; rhboykin@mac.com and US MAIL)

Rigdon Boykin, Esq.
PO Box 69
Rombert SC 29128

Re: Rigdon Boykin, Co-Trustee of the Lemuel Whitaker Boykin II Residual Trust

Dear Rigdon:

This letter will confirm the terms of my engagement by you as an expert in connection with your service as Co-Trustee of the Lemuel Whitaker Boykin II Residuary Trust (the "Trust"). I am to provide expert consulting and support services as requested and directed by you. My services may also include testimony during discovery and in any Court or arbitration body having jurisdiction over this matter.

I will report to you verbally on the progress of my work and the development of any opinions you will need from me. I will render such written opinions, as you may deem advisable.

You have requested my services because of the issues confronting you in your role as one of three Co-Trustees of the Trust. You report that, among other things, the other two Co-Trustees, Alice Belger and Mary Deas Wortley, do not agree with your view of how to optimize the use, value and return of the Trust property, primarily consisting of real estate. You are the only one of the three Co-Trustees who is not also a Trust beneficiary.

My understanding is that you will be personally responsible for payment of my fees and expenses. My further understanding is that, if you are successful in securing a court order or an agreement from your Co-Trustees that my services and costs advanced are to be paid from the Trust assets, you will reimburse yourself from those assets for your payments of my fees and expenses. However, unless you and I agree to the contrary, I am at least at present your and not the Trust's expert consultant and advisor. For that reason, your obligation to pay my fees and expenses shall not be dependent on your securing reimbursement from the Trust.

You will compensate me and, to the extent support services within my firm are needed in my judgment, my support personnel at our hourly rates from time to time. The attached statement sets forth the names and rates of attorneys and paralegals who may provide me assistance. The rate schedule is set for the current calendar year. Any out-of-pocket expenses directly attributable to the this matter, including intra-office expenses such as long distance telephone calls, photocopies, mileage, and extraordinary postage or freight charges, will be charged, in addition to fees.

I am to furnish itemized bills of services rendered, including the date and a brief description of the services, as well as the items of costs, disbursements, and intra-office expenses charged. I will generally render bills monthly while the matter is in active status.

I will not disclose any confidential or privileged information to any third party; provided,

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Mr. Rigdon Boykin
August 4, 2017
Page 2

however, that I may disclose confidential or privileged information (a) to my employees or agents who are to provide support services under this agreement, (b) to other expert consultants who may be engaged by you, (c) with your written consent, and (d) when legally or ethically required or allowed to do so. You and I agree that confidential and proprietary information will not be construed so as to include information that is available from public sources.

Either you or I may terminate this agreement upon reasonable written notice to the other party. Upon such termination, I reserve the right to be paid in full for fees earned and out of pocket expenses advanced through the date of termination.

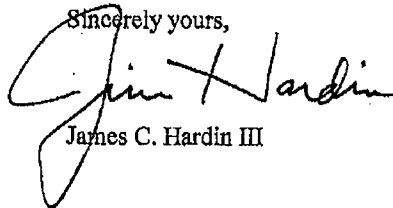
I request that you remit to me a retainer of ten thousand dollars (\$10,000). Of course, any amount remaining upon termination or completion of my engagement and payment of all of our fees and expenses will be returned to you.

If you are in agreement with the terms of this letter, I request that you sign at the bottom of this engagement letter both in your capacity as Co-Trustee of the Residual Trust, and individually.

I appreciate the opportunity of being of service and look forward to working with you and your counsel.

Should you have any questions, please do not hesitate to let me know.

Sincerely yours,



James C. Hardin III

JCHIII/avb
Enclosure

Enclosures: (1) Rate Schedule
(2) Photocopy of this letter, w/return envelope

AGREED UPON AND ACCEPTED:


Rigdon Boykin, individually and as a Co-Trustee
of the Lemuel Whitaker Boykin, II Residual Trust

Date Aug 10, 2017

JAMES C. HARDIN III, PLLC
Rate Schedule 2017

Attorneys

James C. Hardin III (for expert services)	\$600.00
Frederick W. Faircloth IV	\$290.00
Amy G. Montague	\$250.00

Paralegals

Cheryl A. Byrdie	\$225.00
Roxanne E. Barron	\$225.00
Janet C. Wallace	\$225.00

Legal Assistant

Dawn G. Roper	\$150.00

EXHIBIT 6

JAMES C. HARDIN III ATTORNEY AT LAW

JAMES C. HARDIN III, PLLC
EMAIL: JHARDIN@JIMHARDINLAW.COM
TELEPHONE 803.329.7601
FACSIMILE 803.329.8121

SUITE 330, 113 EAST MAIN STREET
POST OFFICE BOX 190
ROCK HILL, SOUTH CAROLINA 29731
ADMITTED: SC AND NC

BOARD CERTIFIED SPECIALIST
ESTATE PLANNING AND PROBATE LAW
FELLOW: AMERICAN COLLEGE OF
TRUST AND ESTATE COUNSEL

August 10, 2017

(VIA EMAIL to rsrosen@rrhlawfirm.com and lduffy@rrhlawfirm.com)

Richard S. Rosen, Esquire
Rosen Hagood, LLC
151 Meeting St., Suite 400
Charleston SC 29401

Re: Rigdon Boykin, Co-Trustee of the Lemuel Whitaker Boykin II Residual Trust

Dear Richard:

This letter will confirm the terms of my engagement by your firm as attorney for your client Rigdon Boykin, Co-Trustee of the Lemuel Whitaker Boykin II Residual Trust (the "Trust"). I am to provide expert consulting and support services as requested and directed by your firm. My services may also include testimony during discovery and in any Court or arbitration body having jurisdiction over this matter.

I will report to you verbally on the progress of my work and the development of any opinions you will need from me. I will render such written opinions, as you may deem advisable.

You have requested my services because of the issues confronting Rigdon Boykin in his role as one of three Co-Trustees of the Trust. You report that, among other things, the other two Co-Trustees, Alice Belger and Mary Deas Wortley, do not agree with Rigdon's view of how to optimize the use, value and return of the Trust property, primarily consisting of real estate. Rigdon is the only one of the three Co-Trustees who is not also a Trust beneficiary.

My understanding is that you will be responsible for payment of my fees and expenses and that I will be working at your direction and will communicate with you, other representatives of your firm and others at your suggestion. My further understanding is that Rigdon Boykin will reimburse your firm for your payment of my fees and expenses, although your obligation to pay my fees and expenses shall not be dependent on your securing reimbursement from your client. My final understanding is that, if Rigdon is successful in securing a court order or an agreement from his Co-Trustees that my services and costs advanced are to be paid from the Trust assets. Rigdon will reimburse himself from those assets for your or his payments of my fees and expenses. However, unless you and I agree to the contrary, I am at present your firm's and Rigdon's and not the Trust's expert consultant and advisor. For that reason, your obligation to pay my fees and expenses, and Rigdon's obligation to reimburse you, shall not be dependent on Rigdon's securing reimbursement from the Trust.

Your firm will compensate me and, to the extent support services within my firm are needed in my judgment, my support personnel at our hourly rates from time to time. The attached statement sets forth the names and rates of attorneys and paralegals who may provide me assistance. The rate schedule is set for the current calendar year. Any out-of-pocket expenses directly attributable to this matter, including intra-office expenses such as long distance telephone calls, photocopies, mileage, and

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Richard S. Rosen, Esquire
August 10, 2017
Page 2

extraordinary postage or freight charges, will be charged, in addition to fees.

I am to furnish itemized bills of services rendered, including the date and a brief description of the services, as well as the items of costs, disbursements, and intra-office expenses charged. I will generally render bills monthly while the matter is in active status.

I will not disclose any confidential or privileged information to any third party; provided, however, that I may disclose confidential or privileged information (a) to my employees or agents who are to provide support services under this agreement, (b) to other expert consultants who may be engaged by you, (c) with your written consent, and (d) when legally or ethically required or allowed to do so. You and I agree that confidential and proprietary information will not be construed so as to include information that is available from public sources.

Either you or I may terminate this agreement upon reasonable written notice to the other party. Upon such termination, I reserve the right to be paid in full for fees earned and out of pocket expenses advanced through the date of termination.

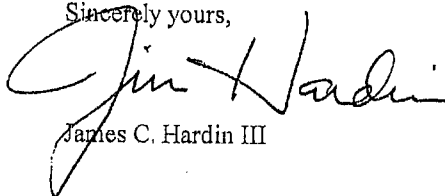
Rigdon Boykin has remitted to me a retainer of ten thousand dollars (\$10,000). Of course, any amount remaining upon termination or completion of my engagement and payment of all of our fees and expenses will be returned to you or Rigdon, as the case may be.

If your firm is in agreement with the terms of this letter, I request that you sign at the bottom of this engagement letter.

I appreciate the opportunity of being of service and look forward to working with you.

Should you have any questions, please do not hesitate to let me know.

Sincerely yours,



James C. Hardin III

JCHIII/avb
Enclosure

Enclosures: (1) Rate Schedule
(2) Photocopy of this letter, w/return envelope

AGREED UPON AND ACCEPTED:

Richard S. Rosen, Esquire
For Rosen Hagood, LLC

JAMES C. HARDIN III, PLLC
Rate Schedule 2017

Attorneys

James C. Hardin III	\$600.00
Frederick W. Faircloth IV	\$290.00
Amy G. Montague	\$250.00

Paralegals

Cheryl A. Byrdic	\$225.00
Roxanne E. Barron	\$225.00
Janet C. Wallace	\$225.00

Legal Assistant

Dawn G. Roper	\$150.00

EXHIBIT 7



From: Liam Duffy lduffy@rrhlawfirm.com
Subject: Working agenda for tomorrow's call

Date: August 24, 2017 at 8:14 PM

To: Rigdon Boykin rhboykin@me.com, Richard Rosen rsrosen@rrhlawfirm.com, James C. Hardin, jhardin@jimhardinlaw.com, wstmail@bellsouth.net

All, below are some items to discuss on tomorrow's call. Please advise if there's anything I missed that we need to add. I will circulate a Word document containing these points in the morning. Thanks.

1. Priority of immediate relief sought:

- (A) Attorney's Fees
- (B) Authority for Rigdon to appoint trust counsel
- (C) Trustee Fees

2. Cross-claim/counterclaim strategy on behalf of May and Whit III

3. Motion for removal to circuit court? (Sounds like court will do this sua sponte, and hopefully appoint special referee)

4. Gathering evidence and other hearing preparation

- Affidavits (Hardin, Rigdon, other?)
- Legal memorandum
- Demonstrative evidence of need for prudent investment (e.g. Hurricane Hugo damage photos, etc.)
- Emails/other correspondence or documents showing co-Trustees creating delay, changing votes, etc.

5. Potential Witnesses/Experts

- Rigdon
- Karen Thomas
- Alice Berger
- Mary Deas (out of state)
- Lindler
- Jimmy LaFrage
- Jim Hardin (as expert)

Sent with BlackBerry Work
(www.blackberry.com)

ELECTRONICALLY FILED - 2018 Jul 09 1:43 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

EXHIBIT 8

From: James C. Hardin, III jhardin@jimhardinlaw.com
Subject: Jim Hardin signed Affidavit with two attached Exhibits

Date: August 31, 2017 at 6:11 PM

To: Richard Rosen rsosen@rrhlawfirm.com, Rigdon Boykin rhboykin@me.com, Rigdon Boykin rhboykin@mac.com, Liam Duffy lduffy@rrhlawfirm.com



Richard, Rigdon, and Liam;

Following up our telephone conversation of earlier this afternoon, I am attaching hereto my signed Affidavit with respect to my expert consulting and support services to the firm of Rosen Hagood in connection with its legal representation of Rigdon, as Co-Trustee of the Residual Trust under the Will of Lemuel Whitaker Boykin II. The Affidavit attaches and incorporates as Exhibit 1 my CV and as Exhibit 2 my invoice (not itemized) for fees incurred for expert consulting and support services through August 31, 2017.

Please let me know if any of you have any comments or desire any changes.

To assure that, as my Affidavit provides, my engagement runs from Rosen Hagood rather than from Rigdon, I have prepared an expert services engagement letter to be signed by Richard Rosen, to replace the virtually identical engagement letter which Rigdon signed with me on August 10, 2017. I will e-mail that replacement letter to you three tomorrow, September 1, with the request that if it is suitable Richard sign the same and e-mail it back to me. I will also e-mail to you three tomorrow the itemized statement for the expert services to date, should you have a question about how the amount was arrived at. That itemized statement will reflect as an offset Rigdon's payment to me of \$10,000 as a retainer. I did not reflect the retainer on the general invoice for the Affidavit, feeling that such would confuse the issue.

Regards,
Jim Hardin

James C. Hardin III

James C. Hardin III, PLLC
113 E. Main Street, Suite 330 (Zip 29730)
PO Box 190
Rock Hill, SC 29731
Telephone: 803-329-7601
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Fellow, American College of Trust and Estate Counsel

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Affidavit, CV
and Inv...8).PDF

EXHIBIT 9

ELECTRONICALLY FILED - 2018 Jul 09 1:43 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

From: James C. Hardin, III jhardin@jimhardinlaw.com
Subject: Engagement letter and Invoice
Date: September 5, 2017 at 3:58 PM
To: Richard Rosen rsosen@rrhlawfirm.com
Cc: Liam Duffy lduffy@rrhlawfirm.com, Rigdon Boykin rhboykin@me.com, Rigdon Boykin rhboykin@mac.com

Richard,

As we discussed in our conference call of late last week, Rigdon's desire with regard to my involvement is to follow the more conventional practice of having your firm, who are his attorneys, engage me to render expert consulting services and testimony as needed. The usual motivation for this arrangement is to preserve the attorney-client privilege between the law firm and me. This arrangement is intended to supplant the current arrangement whereby Rigdon himself entered an engagement letter with me. When the client's legal counsel engages the expert, my experience has been that the law firm's client, Rigdon, either pays my bills or reimburses your firm if you pay them. In order to bring the arrangement in line with the allegations of the Petition and the Affidavits supporting it, I am attaching herewith to you, and by copy to Liam and to Rigdon, to them, the following:

1. Proposed Engagement letter between your firm and me whereby I would render expert consulting services to your firm. This is virtually identical to the engagement letter I entered with Rigdon on August 10. To support the allegations in the Petition, I have taken the liberty of dating the Engagement letter between your firm and me August 10, such that the new letter will supplant, ab initio, the August 10 Engagement letter with Rigdon. If that is a problem with you or if any of you, Liam or Rigdon have any other questions or proposed changes please let me know. If the letter is suitable please sign it near the bottom of page 2 and return an electronic copy to me.
2. My first invoice for expert consulting services rendered and costs advanced, which is in the amount of the sum set forth in the Affidavit I furnished you which supports the Petition. You will recall that your invoice to Rigdon is Exhibit 1 to the Petition and your invoice includes the amount of my billings to this point. The attached invoice nets out of my billings the \$10,000 retainer which Rigdon has paid to date, leaving a balance due of \$11,072.80. Pursuant to the attached Engagements letter, either your firm could make payment and seek reimbursement from Rigdon, or, as I see frequently, Rigdon could pay me directly. I invite any comments from you, Rigdon or Liam on the attached invoice.

So as not to overlook the ultimate goal, I realize that in the Petition we are asking the Court to order the Residual Trust to reimburse Rigdon for, among other things, his fees paid to you and his retainer paid to me, but for that Trust to make payment of all such expenses to be incurred going forward, as well as the fees of a new trust counsel.

I look forward to working with you, Rigdon and Liam.

Regards,
Jim Hardin

James C. Hardin III

James C. Hardin III, PLLC
113 E. Main Street, Suite 330 (Zip 29730)
PO Box 190
Rock Hill, SC 29731
Telephone: 803-329-7601
Fax: 803-329-8121
jhardin@jimhardinlaw.com

Certified Specialist in Estate Planning in South Carolina and North Carolina
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PDF

PDF 8-10-17
engage...6).PDF



PDF

Invoice #6787
8-31-1...0).PDF

From: James C. Hardin, III jhardin@jimhardinlaw.com

Subject: Additional Trust Code statute for discussion

Date: September 18, 2017 at 10:50 AM

To: Rigdon Boykin rhboykin@me.com, Rigdon Boykin rhboykin@mac.com, Richard Rosen rsosen@rrhlawfirm.com, Liam Duffy lduffy@rrhlawfirm.com



Rigdon, Richard and Liam,

Good morning. My hope is that you three are having a productive inspection of the property. Attached is a South Carolina Trust Code section that I am not sure I have emphasized before. Section 62-7-703 deals with actions by Co-Trustees. As with almost all of the Trust Code, this section is a default rule which applies unless the governing instrument (here the Will of L. W. Boykin, II) provides to the contrary. The only matters in this code section which are addressed in the Will are with regard to paragraphs (a) dealing with the votes required for the Trustees to take action (unanimity as to real estate and majority as to personalty) and (b) dealing with the method for filling a vacancy in the trusteeship.

Yet I believe most of the other paragraphs of this section are germane as they (a) impose clear duties on Mary Deas and Alice to proactively perform their duties, (b) exculpate Rigdon from liability where he objects to a proposed action by the trustees (like the wedding chapel), and (c) support Rigdon's pending legal action as his effort to prevent his Co-Trustees from committing a serious breach of trust (see paragraph (g)(1) of Section 703) seeking to redress the prior and continuing serious breaches of trust (paragraph (g)(2)). The term "serious breach of trust" is defined in the Trust Code at section 62-7-103 (24) as "a single act that causes significant harm or involves flagrant misconduct, or a series of smaller breaches, none of which individually justify removal when considered alone, but which do so when considered together."

Just as 7-703 (c) requires Mary Deas and Alice to participate, so too does Section 62-7-801 ("Duty to Administer the Trust"), a seemingly self-evident section until you realize that many Trustees simply shirk all of most of their duties.

I will look forward to talking to you three at about 1:15pm today.

Regards,
Jim

James C. Hardin III

James C. Hardin III, PLLC

113 E. Main Street, Suite 330 (Zip 29730)

PO Box 190

Rock Hill, SC 29731

Telephone: 803-329-7601

Fax: 803-329-8121

jhardin@jimhardinlaw.com

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Fellow, American College of Trust and Estate Counsel

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S.C. code Ann.
62-7-7...9).PDF

EXHIBIT 11

ELECTRONICALLY FILED - 2018 Jul 09 1:43 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

From: James C. Hardin, III jhardin@jimhardinlaw.com
Subject: Draft of Memorandum of Law in Support of Motion

Date: September 22, 2017 at 6:04 PM

To: Rigdon.Boykin rhboykin@mac.com, Rigdon Boykin rhboykin@me.com, rosen@rrhlawfirm.com, Liam Duffy lduffy@rrhlawfirm.com



Rigdon, Richard and Liam;

Attached is a draft of a Memorandum of Law in support of Rigdon's Motion that his attorney fees be paid from the assets of the Family Trusts A and B and that he be authorized to employ trust counsel and pay that counsel from the trust assets. I welcome your questions, comments or proposed changes to this memorandum. I am sending this In Word form so that you may manipulate it as you desire.

In particular I would offer the following:

1. Liam, you were kind enough to forward me certain cases from other jurisdictions supporting our attorney fee claim. In my own research I found other non-South Carolina cases (attached) different from those you found. Time did not allow me to review the cases you e-mailed me, though I did review those I found. For that reason, I noted in bold on page 4 a place where at least a brief coverage of these non-South Carolina cases should be undertaken. Liam I would invite you to supplement my memorandum in this fashion. I will be happy to continue to work with you in this regard.
2. So as not to confuse a circuit judge, I did not address one nuance with regard to the attorney fee motion. Liam one of the non-South Carolina cases you found identified this nuance as well. Simply put, section 62-7-709 ("reimbursement of expenses), affords the trustee the authority to reimburse himself for expenses incurred in the administration of the trust. At least in my opinion, those would include the "routine" fees of an attorney at law whom the trustees engage to provide them advice concerning distributions to trustees, their duties to report or account to beneficiaries, etc. These would be more the duties of a trust counsel, once one is hired. On the other hand, section 62-7-1004 ("Attorneys fees and costs") appears to address the award of attorney fees in a controversy involving the trust, such as between co-trustees. Attorney fees of this variety would be such as those paid to legal advocates in a trust controversy. If any of you believe that this dichotomy should be addressed within this memo, I will be happy to make an effort to do so. I simply believe that such a dichotomy might be difficult to understand for a circuit judge who does not deal regularly with trust and estate matters.

I will be out of the office all next week (week of September 25-29) the level be checking my email and calling in each day. I will have a copy of this memorandum with me in the event we need to discuss its contents next week. My cell telephone number is 803-323-8592. Finally, if the hearing on the motion is scheduled next week, I will be there.

Regards,
Jim

James C. Hardin III
James C. Hardin III, PLLC
113 E. Main Street, Suite 330 (Zip 29730)
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Certified Specialist in Estate Planning in South Carolina and North Carolina
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Memorandum of
Law. Ri....DOCX



Non-SC Cases
located...8).PDF

EXHIBIT 12

ELECTRONICALLY FILED - 2018 Jul 09 1:43 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

From: James C. Hardin, III jhardin@jimhardinlaw.com
Subject: Re: Case law on interim award of trustee's attorneys fees - prior to completion of litigation
Date: September 29, 2017 at 12:31 PM
To: Liam Duffy lduffy@rrhlawfirm.com
Cc: Richard Rosen rsrosen@rrhlawfirm.com, Rigdon Boykin rhboykin@mac.com

Liam, Thanks. My local number here is 843-886-2614.
Regards, Jim

Sent from my iPad

On Sep 29, 2017, at 12:27 PM, Liam Duffy <lduffy@rrhlawfirm.com> wrote:

3pm works for me. I will call you then. What is the best number to reach you on?

Thanks.

Liam Duffy
[Attorney at Law]

151 Meeting St., Suite 400
Charleston SC 29401
|office| 843-577-6726
|fax| 843-724-8036
|direct phone| (843) 266-8121
|direct fax| (843) 266-2250
lduffy@rrhlawfirm.com
V-Card
www.rrhlawfirm.com

<image001.gif>

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From: James C. Hardin, III [<mailto:jhardin@jimhardinlaw.com>]
Sent: Friday, September 29, 2017 11:32 AM
To: Liam Duffy <lduffy@rrhlawfirm.com>
Cc: Richard Rosen <rsrosen@rrhlawfirm.com>; Rigdon Boykin <rhboykin@mac.com>
Subject: Re: Case law on interim award of trustee's attorneys fees - prior to completion of litigation

Liam,
Thank you for your e-mail. I am impressed by your excerpt and have a few comments, first as to the text and then as to the cases you attached and some the cases cited in those cases. I can most efficiently convey those to you by phone. Would either noon today or 3:00pm today suit you? If not I can discuss this with you on Monday.
Regards,

Jim Hardin

Sent from my iPad

On Sep 28, 2017, at 11:32 AM, Liam Duffy <lduffy@rrhlawfirm.com> wrote:

Jim – below is an excerpt from the draft memo I am working on, which encompasses the case law we discussed on the call with you, Richard, and I earlier this week. Some of the cases are attached for your review, as well.

Thanks.

Petitioner is entitled to an immediate award of attorneys' fees and costs, both retrospectively and prospectively, in connection with this litigation. Petitioner is entitled to—indeed, he has a duty to—bring suit to compel a Co-Trustee to redress a breach of trust or to prevent a breach of trust. *See* S.C. CODE ANN. § 62-7-703(g); *United States v. Boucher*, 735 F. Supp. 987, 989 (D. Colo. 1990) (“[I]t is a fundamental element of trust law that the trustee has a duty to protect the trust assets.”). When obligations are owed to a trust, courts have recognized that an interim award of fees and costs can be appropriate to avoid a situation in which the fiduciary would have to personally bear the expense of performing his or her duty to the trust. *See Shurtleff v. United Effort Plan Trust*, 289 P.3d 408, 416 (Utah 2012) (Based on Utah’s version of the UTC, which states that “[i]n a judicial proceeding involving the administration of a trust, the court may, as justice and equity may require, award costs and expenses, including reasonable attorney’s fees, to any party, to be paid by another party or from the trust that is the subject of the controversy,” which is practically identical to S.C. Code Ann. § 62-7-1004, the court upheld an interim payment of over \$5.7 million in trustee fees and costs to the special fiduciary appointed to protect trust beneficiaries because the award was appropriate to avoid a situation where otherwise the special fiduciary would

have to personally bear the expense for performing his duty to the trust.); *In re Life Ins. Trust Agreement of Julius F. Seeman, Dated Apr. 19, 1962*, 841 P.2d 403, 404-05 (Colo. App. 1992) (upholding award of trustee fees to trustee and attorneys' fees to attorney for trustee over objections of co-trustee and beneficiaries even though they had a pending lawsuit against the trustee alleging improper appropriation of trust funds and breach of fiduciary duty); *In re Daly's Estate*, 120 N.Y.S.2d 896, 903 (N.Y. Sur. 1953) (holding that a corporate trustee named as a defendant in a suit by an individual trustee was entitled to an award of attorneys' fees from the trust estate prior to the conclusion of the action); *see also Ball v. Mills*, 376 So. 2d 1174, 1182 (Fla. Dist. Ct. App. 1979) ("If in spite of every effort by a trustee to carry out his duties in a manner exhibiting his concern for the maintenance of a spirit of trust and cooperation, and with due regard for the honest convictions and opinions of his co-trustees with whom he differs, his vigilant concern for the proper administration or protection of the trust requires him to take legal action, we do not think that a partial award of attorney's fees and court costs from trust assets must necessarily await the final conclusion of the lawsuit.").

Liam Duffy
[Attorney at Law]

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 Charleston SC 29401
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 |fax| 843-724-8036
 |direct phone| (843) 266-8121
 |direct fax| (843) 266-2250
lduffy@rrhlawfirm.com
 V-Card
www.rrhlawfirm.com

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Internal Revenue Code or any other applicable tax law, or (ii) promoting, marketing or recommending to another party any entity, investment, plan, transaction, arrangement, or other tax related matter.

<Shurtleff v United Effort Plan Trust.pdf>

<Ball v Mills.pdf>

<In re Life Ins Trust Agreement of Julius F Seeman Dated April 19 1962.pdf>

ROSEN | HAGOOD

EXHIBIT 13

ELECTRONICALLY FILED - 2018 Jul 09 1:43 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

From: James C. Hardin, III jhardin@jimhardinlaw.com

Subject: RE: Karen Response

Date: October 9, 2017 at 5:48 PM

To: Rigdon Boykin rhboykin@mac.com, Richard Rosen rsrosen@rrhlawfirm.com, Liam Duffy lduffy@rrhlawfirm.com, tetterton William wstmail@bellsouth.net

Rigdon, Richard, Liam and Bill,

Please accept this e-mail as my comments on this morning's Karen Thomas response to Rigdon's e-mail to her of late last week, announcing a meeting of the trustees. I think Liam's draft of a proposed response from Rigdon to Karen, together with Rigdon's proposed edits, are fine, perhaps with the exception of whether Rigdon should ask Karen directly if she is acting as counsel to the Family Trust.

What was most striking to me about Karen's response is its robust and self-assured tone. While we all concede that Karen is counsel to "big" Alice's estate, she does nothing in her e-mail to dissuade anyone of her apparently self-appointed status as counsel to the Family Trust of L.W. Boykin. That strikes me as astounding, considering her clear conflict of interest in assuming both roles, and her knowledge of the fact that Rigdon has put the issue of the need for trust counsel before the court in his Motion. She seems to dispel any doubt we may have had about whether Bundy or Becker have claimed such status, as her response certainly suggests that such is not the case. She does not even defer to their thoughts or comments.

Also, as is apparent to all I am sure, her approach is that this complex, multi-faceted trust administration can be conducted without at least some face to face meetings (other than the ones which will occur in court). No responsible corporate trustee (or co-trustee) would ever make such a contention. In my view her response plays into our hands. By Rigdon's e-mailing her last week with a proposed date and time for a meeting, we were hoping to stake out her position on the record. In my view we certainly got what we wanted.

Regards,
Jim Hardin

James C. Hardin III

James C. Hardin III, PLLC

113 E. Main Street, Suite 330 (Zip 29730)

PO Box 190

Rock Hill, SC 29731

Telephone: 803-329-7601

Fax: 803-329-8121

jhardin@jimhardinlaw.com

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Fellow, American College of Trust and Estate Counsel

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From: Rigdon Boykin [mailto:rhboykin@mac.com]
Sent: Monday, October 09, 2017 5:16 PM
To: Richard Rosen; Liam Duffy; James C. Hardin, III; tetterton William
Subject: Karen Response

I have made some changes.

JAMES C. HARDIN III
ATTORNEY AT LAW

JAMES C. HARDIN III, PLLC
EMAIL JHARDIN@JIMHARDINLAW.COM
TELEPHONE 803.329.7601
FACSIMILE 803.329.8121

SUITE 330, 113 EAST MAIN STREET
POST OFFICE BOX 190
ROCK HILL, SOUTH CAROLINA 29731
ADMITTED: SC AND NC

BOARD CERTIFIED SPECIALIST
ESTATE PLANNING AND PROBATE LAW
FELLOW, AMERICAN COLLEGE OF
TRUST AND ESTATE COUNSEL

February 16, 2018

Richard S. Rosen, Esquire
Rosen Hagood, LLC
151 Meeting Street, Suite 400
Charleston, SC 29401

RE: T/U/W Lemuel Whitaker Boykin II Residual Trust
Our File No. 002137-001

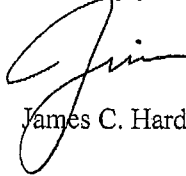
Dear Richard:

Thank you for the opportunity to consult with you and your firm in connection with the above matter.

Enclosed herewith please find our current invoice for consulting services rendered and costs advanced from November 9, 2017 through February 13, 2018. Please note that this invoice reflects a previous balance due of \$38,722.27 which is included in this invoice for a total balance due now of \$80,283.14 for services through February 13.

We look forward to hearing from you if you have any questions about this statement. Otherwise, I would appreciate your payment at your earliest convenience.

Sincerely yours,



James C. Hardin III

JCH/dgr
Enclosure

cc: Ridgon Boykin (with enclosure)

00167973

James C. Hardin III, PLLC

113 E. Main Street, Suite 330
Post Office Box 190
Rock Hill, SC 29731

Ph: (803) 329-8200

Fax: (803) 329-8121

Richard S. Rosen, Esquire
Rosen Hagood, LLC
151 Meeting St., Suite 400
Charleston, SC 29401

February 16, 2018

Matter Number: 002137-001

Invoice #: 7061

Taxpayer I.D. #

RE: T/U/W Lemuel Whitaker Boykin II Residual Trust.

Includes Charges through: 02/13/2018

LEGAL SERVICES RENDERED

DATE	STAFF	DESCRIPTION	HOURS	AMOUNT
09-Nov-17	JCH	Review emails and telephone call with Rigdon Boykin; attention to James Brown case (Wilson v. Dallas) as cited by Becker and Bundy, though no correlation to this case	1.00	600.00
	DMB	Review Wilson v. Dallas case concerning Trustee and retroactive application of Trust Code	0.50	115.00
10-Nov-17	JCH	Telephone call from Rigdon Boykin, describing Trustees meeting of yesterday, November 9, 2017 and discussing opposing counsel's position that the James Brown case is supportive of them; continue listening to audio of Trustee meeting of October 13	2.80	1,680.00
	DMB	Continue to review Wilson case for application in current matter	1.00	230.00
20-Nov-17	JCH	Call from Richard Rosen re status of securing a hearing date	0.20	120.00
05-Dec-17	JCH	Call from Rigdon Boykin regarding status of Trustee discussions and a Court proceeding and the IRS basis consistency rules; secure basis consistency rules and form 8971 and forward the same to Rigdon	0.40	240.00
12-Dec-17	JCH	Call from Rigdon Boykin concerning signatories to the Lease of downtown Boykin for the Christmas parade	0.20	120.00

Invoice #:

7061

Page

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ELECTRONICALLY FILED - 2018 Jul 09 1:43 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

Date	Initials	Description	Hours	Amount
13-Dec-17	JCH	Call from Rigdon Boykin respecting Estate Tax Valuations assigned and Forms 8971 (basis reports) delivered, in connection with the Alice Boykin estate	0.30	180.00
14-Dec-17	JCH	Call from Rigdon Boykin regarding Trustees who should be signatories of the Boykin downtown Christmas Parade Lease	0.20	120.00
15-Dec-17	JCH	Instructions to assistant concerning transcript of estate tax proceedings	0.40	240.00
19-Dec-17	JCH	Begin review of Alice Boykin Federal Estate Tax Return and Milliken Appraisals	4.60	2,760.00
21-Dec-17	JCH	Call from Richard Rosen and returned call and spoke to Liam Duffy to add arguments in support of the Motion to make the case complex litigation, expected to be heard by Judge Casey Manning on Wednesday, December. 27, 2017	0.30	180.00
02-Jan-18	JCH	Review Agenda received from Rigdon regarding Trustees' meeting week of January 1, 2018	0.40	260.00
09-Jan-18	JCH	Call from Rigdon Boykin concerning Trustees' meeting which has just occurred, assignment of case to former Chief Justice Jean Toal, request for my comments to a proposed email objecting to the amount of beneficiary distributions; research concerning the same; continue listening to tapes of Trustees' meetings	5.10	3,060.00
10-Jan-18	JCH	Call from Rigdon Boykin to get report on posture of the litigation and yesterday's Trustees' meeting; receipt and review of e-mail of Rigdon containing proposed dissent to Trustees' actions regarding distributions to beneficiaries; legal research and respond to Rigdon's e-mail	3.20	1,920.00
11-Jan-18	JCH	Telephone call from Richard Rosen regarding need for my preparation of Affidavit; subsequent emails to and from Liam Duffy; monitor tapes of Trustees' meetings	7.20	4,320.00
	FWF	Email from Jim Hardin regarding timeline for getting materials to Justice Toal	0.20	70.00
12-Jan-18	JCH	Legal research; instructions to associate; continue monitoring of recordings of Trustees' meetings	7.10	4,260.00
	DMB	Review cases regarding retroactive application of trust code; review restatement	7.80	1,950.00

Invoice #:

7061

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ELECTRONICALLY FILED - 2018 Jul 09 1:43 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

		of trusts regarding trustee duties; review prudent investor rules		
13-Jan-18	JCH	Review of documents and emails in connection with preparation of Affidavit in support of Motion for attorney fees	5.50	3,575.00
14-Jan-18	JCH	Review of documents and emails and monitor tapes of trustee meetings and begin preparation of affidavit in support of motion for attorney fees	10.20	6,630.00
15-Jan-18	JCH	Continue review of documents and emails; telephone conversation with Rigdon Boykin, Richard Rosen and Liam Duffy; continue preparation of Affidavit in support of attorney fees Motion; forward the same to Richard Rosen, Liam Duffy and Rigdon Boykin	10.50	6,825.00
	DMB	Review First Union National Bank v. Cisa and prepare memorandum; research duty of loyalty and duty of impartiality in Restatement (Third) of Trusts; research Uniform Principal and Income Act regarding under productive property	4.30	1,118.00
	FWF	Conferences with and instructions from Jim Hardin; review voluminous emails forwarded by Rigdon Boykin regarding Trust matters; review and provide comments on Jim Hardin's Affidavit for hearing before Justice Toal	7.80	2,730.00
16-Jan-18	JCH	Emails and calls to and from Richard Rosen, Liam Duffy and Rigdon Boykin in connection with Affidavits of Hardin and Rigdon Boykin; continued review and finalization of Affidavit of Hardin; numerous additional e-mails from and to Rigdon Boykin, Richard Rosen and Liam Duffy concerning revisions to Affidavit; calls with Rigdon Boykin and with Richard Rosen and Liam Duffy; begin review of opposing counsel's Memo of Law, filed today	9.50	6,175.00
	FWF	Review emails with follow-up comments to Jim's Affidavit	0.20	70.00
17-Jan-18	DMB	Update memo and draft email to Jim Hardin regarding underproductive property in 1962 Revised Uniform Principal and Income Act	0.20	52.00
18-Jan-18	JCH	Complete review of opposing counsel's Brief in attorney fee matter; conference call with Richard Rosen, Liam Duffy and Rigdon Boykin regarding Brief; email Liam Duffy regarding under productive property rule; email Rigdon Boykin respecting allocation of	5.20	3,380.00

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7061

Page

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ELECTRONICALLY FILED - 2018 Jul 09 1:43 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

		timber proceeds under Principal and Income Act		
24-Jan-18	JCH	Call from Richard Rosen and Liam Duffy to report on Hearing which occurred this date in Columbia before Justice Toal	0.40	260.00
25-Jan-18	JCH	Call from Rigdon Boykin to discuss the Hearing earlier this week and to request my suggestions for an attorney for the Trust in line with Order of Justice Toal	0.40	260.00
07-Feb-18	JCH	Review of email copy from Rigdon Boykin to attorney Tetterton re status of Option to Purchase by open space buyer; e-mail Rigdon	0.30	195.00
12-Feb-18	JCH	Receipt and review of email from Rigdon Boykin, said e-mail forwarding an e-mail from Karen Thomas to beneficiaries regarding various fiduciary income tax and related issues; attention to potential candidates for trust counsel; call Rigdon Boykin concerning both of the above items and email resumes of several possible trust counsel candidates	2.00	1,300.00
	REB	Instructions from Jim Hardin; research possible South Carolina attorneys certified in Estate Administration and Taxation, as candidates for Trust Counsel	0.90	202.50
13-Feb-18	JCH	Emails from and to Liam Duffy	0.60	390.00
	DMB	Review South Carolina Code regarding fiduciary-lawyer privilege; review Floyd v. Floyd; review cases that cite code section 62-1-110	2.00	520.00
Total Professional Services			102.90	<u>\$56,107.50</u>

DISBURSEMENTS & EXPENSES

Long Distance	25.00
Photocopies	22.50
Research	405.87
Totals	<u>\$453.37</u>

Total Fees & Disbursements	\$56,560.87

Previous Balance	38,722.27

Previous Payments	15,000.00

Invoice #: 7061

Page 5

BALANCE NOW DUE

\$80,283.14

DUE AND PAYABLE UPON RECEIPT

cc: Rigdon Boykin

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EXHIBIT 15

ELECTRONICALLY FILED - 2018 Jul 09 1:43 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

From: Rigdon Boykin rhboykin@me.com
Subject: Re: Affidavit of Jim Hardin in Support of Attorney Fee Motion
Date: January 16, 2018 at 3:12 PM
To: James C. Hardin, III jhardin@jimhardinlaw.com

Jim the final affidavit signed by you still contains the errors in Paragraph 12. Given the time constraints on us I am only going to address the most serious problem. Before the sentence that begins "Thereafter, for a period of months" insert "After over a month of no meetings, there was a meeting on May 12, 2017 where Attorney Becker was going to present the long over due plan regarding the administration of trust assets and how the plan would generate the income required. However, a plan was not delivered at that meeting." After this insertion, the dates in the "Thereafter" sentence needs to be changed to "May 12, 2017 through October 12, 2017"

Rigdon Boykin
rhboykin@me.com
803-432-5670 (O)
803-546-4274 (M)

On Jan 16, 2018, at 1:38 PM, James C. Hardin, III <jhardin@jimhardinlaw.com> wrote:

Richard and Liam,

In accordance with our discussion shortly after 11:00am, I am attaching hereto my signed and notarized Affidavit of my conclusions from my study of the Will of H.W. Boykin II, the tapes of selected Trustee meetings, and documents other than those originating from either of you or Rigdon. Please let me know if you have any changes or corrections.

Regards,
Jim

James C. Hardin III
James C. Hardin III, PLLC
113 E. Main Street, Suite 330 (Zip 29730)
PO Box 190
Rock Hill, SC 29731
Telephone: 803-329-7601
Fax: 803-329-8121
jhardin@jimhardinlaw.com

Certified Specialist in Estate Planning in South Carolina and North Carolina
Fellow, American College of Trust and Estate Counsel

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<Affidavit of James C. Hardin III in Support of Petitioner's Motion for Fees and Appointment of Trust Counsel
(00166575).PDF>

EXHIBIT 16

ELECTRONICALLY FILED - 2018 Jul 09 1:43 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

From: James C. Hardin, III
To: Liam Duffy
Cc: Richard Rosen
Subject: RE: Boykin Hearing on January 24
Date: Tuesday, January 23, 2018 1:52:42 PM

Liam, Thanks for the reply and your kind remarks. Let's hope our mutual hard work will resonate with Justice Toal

Regards,
Jim

James C. Hardin III
James C. Hardin III, PLLC
113 E. Main Street, Suite 330 (Zip 29730)
PO Box 190
Rock Hill, SC 29731
Telephone: 803-329-7601
Fax: 803-329-8121
jhardin@jimhardinlaw.com

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Fellow, American College of Trust and Estate Counsel

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From: Liam Duffy [<mailto:lduffy@rrhlawfirm.com>]
Sent: Tuesday, January 23, 2018 12:13 PM
To: James C. Hardin, III
Cc: Richard Rosen
Subject: RE: Boykin Hearing on January 24

Jim, that is correct. We will update you after the hearing.

Thanks again for all your hard work and assistance in getting us prepared.

Liam Duffy
|Attorney at Law|

151 Meeting St., Suite 400
Charleston SC 29401

|office| 843-577-6726
|fax| 843-724-8036
|direct phone| (843) 266-8121
|direct fax| (843) 266-2250
lduffy@rrhlawfirm.com
V-Card
www.rrhlawfirm.com

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From: James C. Hardin, III [<mailto:jhardin@jimhardinlaw.com>]

Sent: Tuesday, January 23, 2018 11:51 AM

To: Liam Duffy <lduffy@rrhlawfirm.com>

Cc: Richard Rosen <rsrosen@rrhlawfirm.com>

Subject: Boykin Hearing on January 24

Liam,

Good morning. Please confirm what I understand to be the case, which is that you and Richard do not need me to attend tomorrow's hearing in Columbia on the above case.

Thanks and good luck!

Regards,

Jim

James C. Hardin III

James C. Hardin III, PLLC

113 E. Main Street, Suite 330 (Zip 29730)

PO Box 190

Rock Hill, SC 29731

Telephone: 803-329-7601

Fax: 803-329-8121

jhardin@jimhardinlaw.com

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jhardin@jimhardinlaw.com

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EXHIBIT 17

ELECTRONICALLY FILED - 2018 Jul 09 1:43 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

From: Rigdon Boykin rhboykin@me.com
Subject: Fwd: 39944.1 Boykin Trust; Becker letter to Tetterton re: attempt to settle cross-claims
Date: February 7, 2018 at 1:03 PM
To: Liam Duffy (lduffy@rrhlawfirm.com) lduffy@rrhlawfirm.com, Richard Rosen (rsrosen@rrhlawfirm.com) rsrosen@rrhlawfirm.com, James C. Hardin, III jhardin@jlmhardinlaw.com

FYI not even done
Rigdon Boykin
rhboykin@me.com
803-432-5670 (O)
803-546-4274 (M)

Begin forwarded message:

From: "Becker, James" <jbecker@hcb-law.com>
Subject: FW: 39944.1 Boykin Trust; Becker letter to Tetterton re: attempt to settle cross-claims
Date: February 7, 2018 at 11:48:49 AM EST
To: William Tetterton <wtet@bellsouth.net>
Cc: "Rigdon Boykin" (rhboykin@cloud.com) <rhboykin@cloud.com>, Alice Belger <albel@belgerfarms.com>, Mary Wortley <marydeas@bmail.com>, "Walter H. Bundy (WHBundy@att.net)" <WHBundy@att.net>, "Walter H. Bundy (WaltH.Bundy@donald.com)" <WaltH.Bundy@donald.com>

William:

Please see the attached letter.

Thank you, and we look forward to hearing from you in this matter.

Haynsworth
Sinkler Boyd, PA.

ATTORNEYS AND COUNSELORS AT LAW

James Y. Becker | Attorney | Haynsworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor (29201) | Post Office Box 11889 (29211) | Columbia, South Carolina
Phone: 803.779.3080 | Fax: 803.765.1243 | Direct: 803.540.7706

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DM 5283450-v1
Becker...A.PDF

EXHIBIT 18

ELECTRONICALLY FILED - 2018 Jul 09 1:43 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

From: James C. Hardin, III
To: Liam Duffy; Rigdon Boykin; Richard Rosen
Cc: William Tetterton
Subject: RE: Issue of Indispensable/Necessary Parties
Date: Friday, March 2, 2018 4:34:10 PM

Liam,

Thank you very much for forwarding me a copy of the legal authorities you located on the issue of whether the descendants of Alice and Mary Deas, are, as Alice and Mary Deas' counsel contended in their Second Defense ("Failure to Join Necessary Parties") to Rigdon's Petition. In that defense Alice and Mary Deas allege that Rigdon's Petition should be dismissed for failure to join all necessary parties including, without limitation, four named individuals, who I assume to be the four adult children of Alice or Mary Deas, "who are all remaindermen under the terms of the Residuary Trust."

You appear to be of the mind, based on Section 62-1-403 of the South Carolina Probate Code and the case of Rutledge v. Fishburne (1903) which you cite, that at least the children of Alice and Mary Deas should be joined. Without belaboring all of the legal authorities I could cite, I am of the same mind (that there should be joinder), and of the children and grandchildren of Alice and Mary Deas, for the following reasons:

1. Alice and Mary Deas are, with Whit and May, in the senior most level of priority of beneficiaries under the South Carolina Trust Code because all are "distributees" (Section 62-7-103 (21): all four are presently entitled to either mandatory or discretionary distributions of income or principal from the Residuary Trust. Distributees are one form of what the Trust Code characterizes as "Qualified Beneficiaries," that is, those persons who are either present recipients of discretionary distributions or who will become recipients upon the death of the present distributees (Section 62-7-103 (12)). A trust's "qualified beneficiaries" embrace both the distributees and the trust's vested remainderpersons (the presently living children of Alice and Mary Deas). Here, the contingent remainderpersons are those persons who would receive a per stirpes share in the event that one or more of Alice or Mary Deas' children predecease the survivor of Alice, Mary Deas, Whit and May, in which case the descendants of those predeceased children of Alice and Mary Deas would take the predeceased parent's share. These contingent remainder persons, though not qualified beneficiaries, are still what the Trust Code defines as "beneficiaries," meaning the distributees, the qualified beneficiaries, and the contingent remainder beneficiaries (Section 62-7-103 (2)). Rutledge v. Fishburne, which you cite, holds that these contingent remainderpersons are necessary parties.
2. Circuit Court Rule 19 ("Joinder of Persons Needed for Just Adjudication") at (a) requires joinder of a person whose nonjoinder will "as a practical matter impair or impede his ability to protect that interest" which he has regarding the matter in controversy. The only trust case annotated under Rule 19 is Dorn v. Cohen, 791 S.E.2d at 313, 2016 South Carolina App. LEXIS 93 (Ct. App., 2016). There the Court of Appeals, quoting the above language from Rule 19, affirmed the Circuit Court's ruling that the sole special needs beneficiary of a special needs trust was a necessary party in regard to a legal action regarding that trust. Admittedly, the case did not address whether vested or contingent remainder persons were necessary parties, but it, coupled with the Rutledge v. Fishburne, which applies to contingent remainder persons, suggests that the children and more remote descendants of Alice and

Mary Deas' four children should be named.

3. If any such persons are minors, virtual representation by parties with a substantially identical interest is allowed not only under section 62-1-403 (2)(iii) of the broader South Carolina Probate Code but also under the more specialized, trust-oriented virtual representation statutes in the South Carolina Trust Code: Sections 62-7-301 ("When parties bound by others"), 62-7-303 ("Representation by fiduciaries and parents") and 62-7-304 ("Representation by person having substantially identical interest"). Presumably all of the four children of Alice and Mary Deas can be located and served. As to their children, they should be named but if they are minors or incapacitated persons they can be represented by their parents who are the children of Alice and Mary Deas, since those parents would appear to have a substantially identical interest under Section 62-7-304, and they are also the parents of these persons and so are qualified to represent them under Section 62-7-303 (a) (6) so long as a conservator, guardian, or guardian ad litem has not been named.
4. The final question is whether those contingent remaindermen who are presently unknown, unborn and unascertained should be named, with fictitious defendants (John Doe and Richard Roe) named in the Petition on their behalf. I have never found the naming of such fictitious defendants to preclude the fact that the four children of Alice and Mary Deas can virtually represent these unknown, unborn or unascertained defendants as they have a substantially identical interest.

In summary, based on the language of Circuit Court Rule 19 and the two cases cited above, I would name Alice and Mary Deas' children and grandchildren, despite the existence of our virtual representation statutes.

Liam, I stand ready to discuss this with you at your convenience.

Regards,
Jim Hardin

James C. Hardin III

James C. Hardin III, PLLC
113 E. Main Street, Suite 330 (Zip 29730)
PO Box 190
Rock Hill, SC 29731
Telephone: 803-329-7601
Fax: 803-329-8121
jhardin@jimhardinlaw.com

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Fellow, American College of Trust and Estate Counsel

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From: Liam Duffy [mailto:lduffy@rrhlawfirm.com]
Sent: Friday, March 02, 2018 11:23 AM
To: Rigdon Boykin; James C. Hardin, III; Richard Rosen
Cc: William Tetterton
Subject: Issue of Indispensable/Necessary Parties

Please see attached and below. This is a quick and dirty review of the statutory and case law. I have not had time to do a thorough analysis, including of states outside South Carolina.

South Carolina Probate Code § 62-1-403(2)(iii) provides that a minor or unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding. This concept is commonly referred to in the case law as "virtual representation."

Section 62-1-403(4) allows the Court to appoint a GAL to represent the interests of minors or unborn or unascertained persons if the court determines that representation of their interest otherwise would be inadequate. I believe that this Code section accurately reflects the case law from *Rutledge v. Fishburne*, 66 S.C. 155, 44 S.E. 564, 566 (1903), quoted below. If the remaindermen are not yet in being (*esse*), they can be virtually represented. But, if they are in being, they are necessary to the litigation.

The general rule in equity undoubtedly is that all persons who are materially interested in the subject of the suit must be made parties, but it is equally true that this rule is subject to some exceptions; and the practical inquiry is, does this case fall within any of the exceptions? Without undertaking anything like a review of the cases, we think the authorities show that the contingent remaindermen, who were in *esse* and within the jurisdiction of the court, were necessary parties. In Mitford's Equity Pleadings, *174, it is said: 'Contingent limitations and executory devises to persons not in being may, in like manner, be bound by a decree against a person claiming a vested estate of inheritance; but a person in being, claiming under a limitation by way of executory devise, not subject to any preceding vested estate of inheritance by which it may be defeated, must be made a party to a bill affecting his rights'—citing numerous authorities. These authorities establish the doctrine that while, as a general rule, the contingent remaindermen are necessary parties, yet where they are not in *esse* at the time, and there is before the court a person entitled to a prior vested estate of inheritance, and perhaps, if there is no prior vested estate of inheritance, then, if the person entitled to the prior life estate and the trustees are parties, the court may make a decree that will conclude the rights of such contingent remaindermen; but they do not warrant the idea that the contingent remaindermen who are in *esse* and can be made parties can be safely

dispensed with. ***

Rutledge v. Fishburne, 66 S.C. 155, 44 S.E. 564, 566 (1903)

Liam Duffy

Attorney at Law

151 Meeting St., Suite 400
Charleston SC 29401
|office| 843-577-6726
|fax| 843-724-8036
|direct phone| (843) 266-8121
|direct fax| (843) 266-2250
lduffy@rhlawfirm.com
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jhardin@jimhardinlaw.com

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From: James C. Hardin, III
To: Richard Rosen
Cc: William Tetterton; Liam Duffy; Rigdon Boykin
Subject: RE: Issue of Indispensable/Necessary Parties
Date: Tuesday, March 6, 2018 4:23:54 PM

Richard,

Thanks so much for your e-mail of Saturday afternoon, below. While I wish I could say that Section 62-1-403(2)(ii) would preclude our having to name Mary Deas' and Alice's children and grandchildren, I am not sure Justice Toal would agree with that for the following reasons:

1. Section 62-1-403(2)(ii) appears to apply to different kinds of cases than ours, in that it says in part "orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties..." (emphasis supplied) [note the apparent lack of needed commas in the emphasized portion];
2. The comments to South Carolina Trust Code Section 62-7-303 provide that "South Carolina Probate Code Section 62-1-403 is the counterpart of South Carolina Trust Code Section 62-7-303." (emphasis supplied). Trust Code Section 62-7-303 provides at (a) that "to the extent there is no conflict of interest," then under (a)(4) "a trustee may represent and bind the beneficiaries of the trust with respect to questions or disputes involving the trust." I think here there could be lack of agreement, and thus a conflict of interest, between the children and grandchildren of Alice and Mary Deas and these ladies themselves. For that reason I do not believe that orders binding Alice and Mary Deas would necessarily bind their children and grandchildren, thus the need, it appears to me, to join the latter as parties Defendant.

I am happy to answer any questions which you may have.

Regards,

Jim

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From: Richard Rosen [mailto:rsrosen@rrhlawfirm.com]
Sent: Saturday, March 03, 2018 12:02 PM
To: James C. Hardin, III; Liam Duffy; Rigdon Boykin
Cc: William Tetterton
Subject: RE: Issue of Indispensable/Necessary Parties

What about Sec. 62-1-403(2)(ii): Orders binding a trustee bind beneficiaries...??

Richard Rosen

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From: James C. Hardin, III [mailto:jhardin@jimhardinlaw.com]
Sent: Friday, March 2, 2018 4:34 PM
To: Liam Duffy <lduffy@rrhlawfirm.com>; Rigdon Boykin <rhboykin@me.com>; Richard Rosen <rsrosen@rrhlawfirm.com>
Cc: William Tetterton <wstmail@bellsouth.net>
Subject: RE: Issue of Indispensable/Necessary Parties

Liam,

Thank you very much for forwarding me a copy of the legal authorities you located on the issue of whether the descendants of Alice and Mary Deas, are, as Alice and Mary Deas' counsel contended in their Second Defense ("Failure to Join Necessary Parties") to Rigdon's Petition. In that defense Alice and Mary Deas allege that Rigdon's Petition should be dismissed for failure to join all

necessary parties including, without limitation, four named individuals, who I assume to be the four adult children of Alice or Mary Deas, "who are all remaindermen under the terms of the Residuary Trust."

You appear to be of the mind, based on Section 62-1-403 of the South Carolina Probate Code and the case of Rutledge v. Fishburne (1903) which you cite, that at least the children of Alice and Mary Deas should be joined. Without belaboring all of the legal authorities I could cite, I am of the same mind (that there should be joinder), and of the children and grandchildren of Alice and Mary Deas, for the following reasons:

1. Alice and Mary Deas are, with Whit and May, in the senior most level of priority of beneficiaries under the South Carolina Trust Code because all are "distributees" (Section 62-7-103 (21): all four are presently entitled to either mandatory or discretionary distributions of income or principal from the Residuary Trust. Distributees are one form of what the Trust Code characterizes as "Qualified Beneficiaries," that is, those persons who are either present recipients of discretionary distributions or who will become recipients upon the death of the present distributees (Section 62-7-103 (12)). A trust's "qualified beneficiaries" embrace both the distributees and the trust's vested remainderpersons (the presently living children of Alice and Mary Deas). Here, the contingent remainderpersons are those persons who would receive a per stirpes share in the event that one or more of Alice or Mary Deas' children predecease the survivor of Alice, Mary Deas, Whit and May, in which case the descendants of those predeceased children of Alice and Mary Deas would take the predeceased parent's share. These contingent remainder persons, though not qualified beneficiaries, are still what the Trust Code defines as "beneficiaries," meaning the distributees, the qualified beneficiaries, and the contingent remainder beneficiaries (Section 62-7-103 (2). Rutledge v. Fishburne, which you cite, holds that these contingent remainderpersons are necessary parties.
2. Circuit Court Rule 19 (" Joinder of Persons Needed for Just Adjudication") at (a) requires joinder of a person whose nonjoinder will "as a practical matter impair or impede his ability to protect that interest" which he has regarding the matter in controversy. The only trust case annotated under Rule 19 is Dorn v. Cohen, 791 S.E.2d at 313, 2016 South Carolina Ap. LEXIS 93 (Ct. App., 2016). There the Court of Appeals, quoting the above language from Rule 19, affirmed the Circuit Court's ruling that the sole special needs beneficiary of a special needs trust was a necessary party in regard to a legal action regarding that trust. Admittedly, the case did not address whether vested or contingent remainder persons were necessary parties, but it, coupled with the Rutledge v. Fishburne, which applies to contingent remainder persons, suggests that the children and more remote descendants of Alice and Mary Deas' four children should be named.
3. If any such persons are minors, virtual representation by parties with a substantially identical interest is allowed not only under section 62-1-403 (2)(iii) of the broader South Carolina Probate Code but also under the more specialized, trust-oriented virtual representation statutes in the South Carolina Trust Code: Sections 62-7-301 ("When parties bound by others"), 62-7-303 ("Representation by fiduciaries and parents") and 62-7-304 ("Representation by person having substantially identical interest"). Presumably all of the four children of Alice and Mary Deas can be located and served. As to their children, they should be named but if they are minors or incapacitated persons they can be represented by their parents who are the children of Alice and Mary Deas, since those parents would appear

to have a substantially identical interest under Section 62-7-304, and they are also the parents of these persons and so are qualified to represent them under Section 62-7-303 (a) (6) so long as a conservator, guardian, or guardian ad litem has not been named.

4. The final question is whether those contingent remaindermen who are presently unknown, unborn and unascertained should be named, with fictitious defendants (John Doe and Richard Roe) named in the Petition on their behalf. I have never found the naming of such fictitious defendants to preclude the fact that the four children of Alice and Mary Deas can virtually represent these unknown, unborn or unascertained defendants as they have a substantially identical interest.

In summary, based on the language of Circuit Court Rule 19 and the two cases cited above, I would name Alice and Mary Deas' children and grandchildren, despite the existence of our virtual representation statutes.

Liam, I stand ready to discuss this with you at your convenience.

Regards,
Jim Hardin

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From: Liam Duffy [<mailto:lduffy@rrhlawfirm.com>]
Sent: Friday, March 02, 2018 11:23 AM
To: Rigdon Boykin; James C. Hardin, III; Richard Rosen
Cc: William Tetterton
Subject: Issue of Indispensable/Necessary Parties

Please see attached and below. This is a quick and dirty review of the statutory and case law. I have not had time to do a thorough analysis, including of states outside South Carolina.

South Carolina Probate Code § 62-1-403(2)(iii) provides that a minor or unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding. This concept is commonly referred to in the case law as "virtual representation."

Section 62-1-403(4) allows the Court to appoint a GAL to represent the interests of minors or unborn or unascertained persons if the court determines that representation of their interest otherwise would be inadequate. I believe that this Code section accurately reflects the case law from *Rutledge v. Fishburne*, 66 S.C. 155, 44 S.E. 564, 566 (1903), quoted below. If the remaindermen are not yet in being (*esse*), they can be virtually represented. But, if they are in being, they are necessary to the litigation.

The general rule in equity undoubtedly is that all persons who are materially interested in the subject of the suit must be made parties, but it is equally true that this rule is subject to some exceptions; and the practical inquiry is, does this case fall within any of the exceptions? Without undertaking anything like a review of the cases, we think the authorities show that the contingent remaindermen, who were in *esse* and within the jurisdiction of the court, were necessary parties. In Mitford's Equity Pleadings, *174, it is said: 'Contingent limitations and executory devises to persons not in being may, in like manner, be bound by a decree against a person claiming a vested estate of inheritance; but a person in being, claiming under a limitation by way of executory devise, not subject to any preceding vested estate of inheritance by which it may be defeated, must be made a party to a bill affecting his rights'—citing numerous authorities. These authorities establish the doctrine that while, as a general rule, the contingent remaindermen are necessary parties, yet where they are not in *esse* at the time, and there is before the court a person entitled to a prior vested estate of inheritance, and perhaps, if there is no prior vested estate of inheritance, then, if the person entitled to the prior life estate and the trustees are parties, the court may make a decree that will conclude the rights of such contingent remaindermen; but they do not warrant the idea that the contingent remaindermen who are in *esse* and can be made parties can be safely dispensed with. ***

Rutledge v. Fishburne, 66 S.C. 155, 44 S.E. 564, 566 (1903)

Liam Duffy

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From: James C. Hardin, III
To: Liam Duffy
Cc: Richard Rosen
Subject: Federal cases under the Employee Retirement Income Security Act of 1974 ("ERISA")
Date: Thursday, March 22, 2018 9:01:42 PM
Attachments: Metro Life Insurance Co. v. Glenn - Boykin (00174366).PDF
Spires v. Schools (00174404).PDF

Liam, As noted earlier, the comment to the "Co-Trustees" Section of the Trust Code (62-7-703) refers to decisions under ERISA as providing guidance on the powers and duties of co-trustees.

We would highlight two ERISA cases where the of citation or argument at the hearing:

1. Metro. Life Ins. Co. v. Glenn, 554 U.S. 105, 128 S.Ct. 2343, 171 L. Ed. 2d 299, 2008 US LEXIS 5030 (2008).

A Lawyer's Edition headnote lays the background as follows: "ERISA, 29 U.S.C.S. Section 1001, et. seq. permits a person denied benefits under an employee benefit plan to challenge that denial in federal court. 29 U.S.C.S. Section 1132 (a) (1) (B). Often the entity that administers the plan, such as an employer or an insurance company, both determines whether an employee is eligible for benefits and pays benefits out of its own pocket. This dual role creates a conflict of interest. A reviewing court should consider that conflict as a factor in determining whether the plan administrator has abused its discretion in denying benefits. The significance of the factor will depend upon the circumstances of the particular case." In Metro the Supreme Court examined with favor its landmark Firestone decision in this area. In Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 109 S.Ct. 948, 103 L. Ed. 2d 80 the Supreme Court set out four principles as to the appropriate standard of judicial review under Section 1132 (a)(1)(B): (1) a court should be guided by principles of trust law, analogizing a plan administrator to a trustee and considering a benefit determination as a fiduciary act; (2) trust law principles required de novo review unless a benefits plan provides otherwise; (3) where the plan so provides, by granting "the administrator or fiduciary discretionary authority to determine eligibility," "a deferential standard of review is appropriate;" and (4) if the administrator or fiduciary having discretion "is operating under a conflict of interest, that conflict must be weighed as a "factor in determining whether there is an abuse of discretion."

In the Metro case the Supreme Court affirmed the Sixth Circuit's granting of long-term disability benefits to Mrs. Glenn, who had been an employee of Sears, Roebuck and Company. Metropolitan Life Ins. Co. was the administrator and the insurer of the Sears plan. Metropolitan denied Ms. Glenn's claim for long-term disability benefits.

At Headnote 8 on page 13 of the attached opinion, the Supreme Court looked at a variety of measures for neutralizing the conflict of interest of a plan administrator which both awarded or denied benefits and also was the repository of, and the payor of, the benefits themselves. One major would be for the plan administrator to follow a practice of "walling off claims administrators from those interested in firm finances or by imposing management checks that penalize inaccurate decision-making irrespective of whom the inaccuracy benefits." Perhaps in the Boykin case, you could cite Metro for the proposition that even if Justice told is not see grounds for removing Mary days and Alice, she could order that they be "walled off" from making any decisions as Trustees that would be a product of their inherent conflict of interest as both trustees and beneficiaries. This would leave the so disinterested trustee, Rigdon, in the status of being the only decision maker in

those contexts (i.e., he would have preeminent authority).

In a more localized context, we found the case of Spires v. Schools, 271 F. Supp. 3d 795 (District of South Carolina, Charleston Division)(signed September 19, 2017). In this case plaintiffs were former employees of Piggly Wiggly Carolina Company, Inc. or Greenbax Enterprises, Inc. they were participants in these companies Employee Stock Ownership Plan and Trust (the "ESOP"). The ESOP holds employee owned stock in the companies and the ESOP Trustees are executives of the companies, a common practice. Allegations were made concerning breaches of fiduciary duty by the ESOP trustees. The opinion was responsive to Motions to Dismiss by the defendants, and thus is not determinative of the issues in the case. The court granted some motions and denied others. In its opinion, it noted the following:

"under ERISA, employers' only duty...[as]... Trustees to avoid placing themselves in a position where their acts as officers or directors of the corporation will prevent their functioning with the complete loyalty to participants demanded of them as trustees of a pension plan." Citing Amato v. W. Union Int'l, Inc., 773 F.2d 1402 (2d Cir., 1985) among others. The Spires opinion is attached as well.

I would welcome your questions to any of the above and am signing off for the night.

Regards,

Jim

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EXHIBIT 21

ELECTRONICALLY FILED - 2018 Jul 09 1:43 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

From: James C. Hardin, III
To: Liam Duffy; Richard Rosen
Subject: RE: Affidavit of Fees and Costs for Expert Consulting Services
Date: Thursday, April 19, 2018 6:05:32 PM

Liam, Thanks. I read your second e-mail (about the Judge's review of our invoices) before I read this one. Jim

From: Liam Duffy [mailto:lduffy@rrhlawfirm.com]
Sent: Thursday, April 19, 2018 6:00 PM
To: James C. Hardin, III; Richard Rosen
Subject: RE: Affidavit of Fees and Costs for Expert Consulting Services

Jim, a great many thanks for your quick work on this. A matter near and dear to our all of our hearts, no doubt.

We will get the motion and your affidavit filed and will update you as things develop. I do not expect the Court will resolve this issue at the status conference on Monday morning, but Justice Toal did indicate in her email to us today that on Monday she'd like to schedule a hearing in the near future to hear all outstanding motions (including the motion for interim payment).

Thanks again.

Liam

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From: James C. Hardin, III [<mailto:jhardin@jimhardinlaw.com>]
Sent: Thursday, April 19, 2018 5:57 PM
To: Richard Rosen <rsrosen@rrhlawfirm.com>; Liam Duffy <lduffy@rrhlawfirm.com>
Subject: Affidavit of Fees and Costs for Expert Consulting Services

Richard and Liam;

Attached is my Affidavit. Please note that the total amount due me as noted in Paragraph 9 of my Affidavit, that is \$109,226.16, is only slightly different than the total due me shown in Paragraph 30 of Richard's Affidavit, that is \$109,031.16. The only difference is one item of service in the last ten days. Hopefully this will not matter to the Court.

Please let me know if you have any questions or if I can help concerning the emergency hearing. Good luck on Monday!

Regards,

Jim

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ELECTRONICALLY FILED - 2018 Jul 09 1:43 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

From: James C. Hardin, III
To: Liam Duffy; Richard Rosen
Subject: Boykin: Memo with of submissions regarding the Issues posed by Justice Toal through her law clerk
Date: Thursday, June 14, 2018 7:22:37 PM
Attachments: Memo to Duffy and Rosen of Legal Authorities for their Pre-Trial Brief, June, 2018 (00178518).DOCX

Liam and Richard;

Attached is my memo, in Word, wherein I seek to provide you with some legal authorities for your use in preparing your brief responsive to Justice Toal's questions. I am happy to answer any questions which you may have. I will be reachable by cell phone tomorrow (Friday) as well as through the weekend. Phone number 803-323-8592. Please note that in regard to the responses to Justice Toal's question 2, "The legal grounds supporting the trust management plans advanced by each side," I have in hand and reviewed the Belger-Wortley Management Plan dated April 6, 2018, but all I have from Rigdon at this point is what Liam you e-mailed to me this Wednesday, June 13, and especially the "Plan Comparison," the "Year One Sales," and the "Years Two through Four Sales." My understanding is that from this work Rigdon, perhaps assisted further by Jane Peacock, will be submitting a full blown Management Plan.

Also, if you learn that the trial scheduled for Monday, July 9 is going to be postponed, please let me know as I have another expert witness matter that I may need to reschedule.

Regards,

Jim

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Memo

JAMES C. HARDIN III, PLLC

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 113 East Main Street, Suite 330
 Post Office Box 190
 Rock Hill, South Carolina 29731
 Telephone 803-329-7601
 Facsimile 803-329-8121

To: Richard Rosen and Liam Duffy
 From: Jim Hardin
 Date: June 14, 2018
 Re: Legal Authorities and Analysis supportive of Petitioner Rigdon Boykin, Trustee's position with regard to legal issues Justice Toal wants briefed in advance of July 9, 2018 trial. Source: E-mail from Justice Toal's Clerk to counsel of record dated June 6, 2018

(1) "The interplay between the language in the Will and the language in the South Carolina Trust Code, including the Uniform Prudent Investor Act."

- a. In Item XIV of the Last Will and Testament of the late L.W. Boykin, II (the "decedent") dated June 2, 1989, in which Item the decedent granted his personal representatives and the trustees various powers, the decedent provided as follows in paragraph C. (quoting the entirety of the paragraph): "to invest and reinvest the property of the estate or trust in such manner as men of prudence exercise in the management of their own affairs. At any time, and from time to time, to keep all or any portion of the estate or trust in cash and uninvested for such period or periods of time, as he may deem advisable, without liability for any loss in income by reason thereof. In addition, the 'underproductive property rule' of the Revised Uniform Principal and Income Act shall not be applicable."
- b. The decedent died on December 19, 1989.
- c. The prudent man or prudent person rule, and the requirements of diversification of trust assets, applied in South Carolina case and statute law decades before the time of Mr. Boykin's death and applies at the present time. As noted above, the decedent's will imposes a standard of prudent investment which is consistent with long-standing South Carolina law.
- d. On the date of the decedent's death, South Carolina Code Ann. Section 62-7-302 ("Trustee's standard of care") set forth the default (unless the governing instrument provided differently) rule of trust investing. Section 62-7-302, in its form in 1989, was in Part 3 ("Duties and Liabilities of Trustees") of the South

Carolina Probate Code, enacted in South Carolina in 1986 eff. July 1, 1987. Then Section 62-7-302 provided in part as follows "(a) Except as otherwise provided by the terms or limitations set forth in any will, agreement, court order, or other instrument creating or defining the fiduciary's duties and powers (the terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument being taken, however, to mean any investment which is permitted by the terms of this section), in acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of another, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property and every kind of investment, specifically including but not by way lived limitation, bonds, debentures, and other corporate obligations, and stocks, preferred or common, and within the limitations of the foregoing standard a fiduciary may retain property acquired, without limitation as to time and without regard to its suitability for original purchase, and a fiduciary may retain the property received by such fiduciary on the creation of the estate, guardianship, or trust... without regard to its suitability for original purchase..."

- e. The current South Carolina Prudent Investor Act, section 62-7-933, works no revolutionary change to the pre-existing law of prudent trustee investments embodied in the prior Section 62-7-302. As it relates to this case, there is no material difference between the two. Then Section 62-7-302 effectively mirrors the standard of prudent investing which Mr. Boykin required of his fiduciaries in Item XIV, C. of his Will.
- f. The following South Carolina cases, dating to 1989 and earlier, formed a body of the decisional law at the time of the decedent's death, are annotated under then Section 62-7-302: Chandler v. Britton, 197 S.C. 303, 15 S.E.2d at 344 (1941); Ex parte Guaranty Bank & Trust Co., 255 S.C. 106, 177 S.E.2d 358 (1970). The prudence standard also applies in cases of receivership. See Chandler v. Britton, 197 S.C. 303 (1941). "[T]he facts disclosed by the record made it a question for the court and jury to determine whether the receiver in this case has exercised that degree of care and prudence in the management of the receivership funds which is required by law, to wit, the care, prudence, and diligence which a person of ordinary care, prudence and diligence would exercise in his own business." *Id.* at 309. In Ex parte Guaranty Bank & Trust Co., 255 S.C. 106 (1970), the court authorized the sale of land held in trust. The trustees instituted the action to ask the approval of the court to deviate from the terms of the trust alleging that the beneficiaries of the trust and the trust itself would suffer

unless the sale was authorized. Id. at 360. The opinion states that the property as farm land has had, in recent years, a very low monetary yield and that "[n]o landowner with complete control of this property, and in his right mind, would continue to use this land for agricultural purposes." Id. (Emphasis supplied).

- g. As noted above, then South Carolina Code Ann. Section 62-7-302 appears to have been based in part on the Restatement of Trusts 2d, Section 228 (1959), which provides for a standard of prudence. The federal Employee Retirement Income Security Act ("ERISA")(1974) insists upon the rule of Restatement of Trusts 2d Section 228 in regard to Trustee administration of pension trusts. Section 228 of the Restatement of Trusts 2d and Section 227 of the Restatement of Trusts 3d: Prudent Investor Rule (1992) form the basis for the Uniform Prudent Investor Act (1994), which was enacted in South Carolina in the year 2001, the same year our General Assembly enacted the Revised Uniform Principal and Income Act (1997). See below with regard to how the new principal and income act abrogated the "underproductive property rule."
- h. When the South Carolina Trust Code was enacted in 2005, effective January 1, 2006, the pre-existing South Carolina Prudent Investor Act was recodified so as to form a part of the South Carolina Trust Code. The Prudent Investor Act is presently codified as South Carolina Code Ann. Section 62-7-933. Counsels for the Respondents in this case appear to take the position that the South Carolina Prudent Investor Act is inapplicable to this case. The Respondents appear to concede that the South Carolina Trust Code is applicable to this case. The Petitioner does not understand how the Respondents could take that position, while at the same time contending that the Prudent Investor Act, embodied as it is as part of the South Carolina Trust Code, cannot be applicable here.
- i. The Respondents' position that the Prudent Investor Act is inapplicable is inconsistent with the effective date provisions of the South Carolina Trust Code, of which the Prudent Investor Act is a part, contained at South Carolina Code Ann. Section 62-7-1106 ("Application to existing relationships.") Subsections (a)(1) and (a)(5) of that Section are instructive:
 - i. "(a)(1) this article applies to all trusts created before, on, or after its effective date [January 1, 2006]"
 - ii. "(a)(5) an act done and any right acquired or accrued before the effective date of this article is not affected by this article. Unless otherwise provided in this article, any right in a trust accrues in accordance with the law in effect on the date of the creation of a trust."
- j. To the extent that Respondents' counsel are relying upon Subsection (a)(5) for their position that the Prudent Investor Act is inapplicable to this case,

Petitioner's counsel would argue that nothing in Subparagraph (a)(5) affords the Respondents the right to retain the vast majority (about 90%) of the assets in the L.W.Boykin, II, Trusts in real estate, especially when such retention is so prejudicial to the rights of two of the four present trust beneficiaries, Whit Boykin and May Boykin.

- k. The South Carolina Probate Code has a similar section regarding retroactive application of its sections, that is, Section 62-1-100. In two of the most salient cases cited there, White v. Wilbanks, 301 S.C. 560, 393 S.E.2d 182 (1990) and that Bowles v. Bradley, 319 S.C. 377, 461 S.E.2d 811 (1995), the Supreme Court was not reticent about applying the South Carolina Probate Code retroactively.
- l. Yet even if Respondents' counsel is correct that the South Carolina Prudent Investor Act, present Section 62-7-933, does not apply to this case, it is apparent that its predecessor Section in the South Carolina Probate Code (Section 62-7-302) was in effect in 1989, the year of the decedent's death, and earlier. This predecessor section, as quoted above, imposed a standard of prudence similar to the standard the decedent imposed in his will and the standard imposed by the Prudent Investor Act.
- m. As the comments to the South Carolina Prudent Investor Act (Section 62-7-933) note: "the prudence standard for trust investing dates back to Harvard College v. Amory, 26 Mass. (9 Pick.) 446 (1830). Trustees should 'observe how men of prudence, discretion and intelligence manage *their own affairs*, not in regard to speculation, but in regard to the permanent disposition of *their funds*, considering the probable income, as well as the probable safety of the capital to be invested.'" Id at 461. As the South Carolina Prudent Investor Act comments later note: "Case law overwhelmingly supports the duty to diversify. See Annot., Duty of trustee to diversify investments, and liability for failure to do so, 24 A.L.R.3d 730 (1969) and 1992 Supp. at 78-79."
- n. Petitioner contends that the South Carolina Prudent Investor Act does apply to this case. Hardin and Medlin in The South Carolina Trust Code (South Carolina Bar Publishers, 2006) note the following about the South Carolina Prudent Investor Act:
 - i. "Total return" and "modern portfolio theory" are the theoretical underpinnings of the Prudent Investor Act. "Total return" is the "total investment return derived from current yield (dividends and interest) and realized or unrealized capital appreciation or loss. Fundamental to the total return concept is the requirement that the fiduciary 'exercise reasonable care, skill, and caution.' The term "caution" refers to the fiduciary obligation to protect the interest of those in need of economic protection. Unless the governing instrument provides to the contrary, the

exercise of caution calls for the fiduciary to bear in mind both safety of capital and a reasonable return." Citing E. James Gamble, "Total Return meets the Uniform Principal and Income Act," Presentation Outline from Fiduciary Administration for the Total Return Era, the Essentials (South Carolina Bar seminar, Charleston, South Carolina, August 16, 2002) (Emphasis supplied). Hardin and Medlin, The South Carolina Trust Code (South Carolina Bar Publishers, 2006) at 9-3.

- o. With regard to the trustees required exercise of "caution," Petitioner would assert that of the four beneficiaries of the Boykin Trust, Whit and May Boykin are those most in need of economic protection.
- p. It was noted earlier that in Item XIV C. of his Will, where the decedent imposed a standard of prudent investing very similar to the standard that had been in effect for decades or longer when he died in 1989, the decedent provided as follows: "In addition, the 'underproductive property rule' of the Revised Uniform Principal and Income Act shall not be applicable." What is or was that rule and what application if any does it have to this case? In the year 1989, when the decedent signed his Will and died, South Carolina had in effect a prior version of the Uniform Principal and Income Act, which was formulated as a model act in the year 1962 and enacted in South Carolina in the year 1986 when the South Carolina Probate Code was enacted, effective in 1987. The then South Carolina Revised Uniform Principal and Income Act was codified as Sections 62-7-401 through 62-7-421 of the South Carolina Probate Code. It contained Section 62-7-415 ("Allocation of receipts from sale of underproductive property; delayed income."). Then section 62-7-405 included within trust income "receipts from disposition of underproductive property as provided in section 62-7-415." In proper circumstances trust principal also included receipts from the disposition of underproductive property under section 62-7-415.
- q. Section 62-7-415 regarding underproductive property and delayed income, as in effect in 1989, provided in its entirety as follows:

Section 62-7-415. Allocation of receipts from sale of underproductive property; delayed income.

(a) Except as otherwise provided in this section, a portion of the net proceeds of sale of any part of principal which has not produced an average net income of at least one percent per year of its inventory value for more than a year (including as income the value of any beneficial use of the property by the income beneficiary) shall be treated as delayed income to which the income beneficiary is entitled as provided in this section. The net proceeds of sale are the gross proceeds received, including the value of any property received in substitution for the

property disposed of, less the expenses, including capital gains tax, if any, incurred in disposition and less any carrying charges which have been paid while the property was underproductive.

(b) The sum allocated as delayed income is the difference between the net proceeds and the amount which, had it been invested at simple interest at four percent per year while the property was underproductive, would have produced the net proceeds. This sum plus any carrying charges and expenses previously charged against income while the property was underproductive, less any income received by the income beneficiary from the property and less the value of any beneficial use of the property by the income beneficiary, is income, and the balance is principal.

(c) An income beneficiary or his estate is entitled to delayed income under this section as if it accrued from day to day during the time he was a beneficiary.

(d) If principal subject to this section is disposed of by conversion into property which cannot be apportioned easily, including land or mortgages (for example, realty acquired by or in lieu of foreclosure), the income beneficiary is entitled to the net income from any form of property or obligation into which the original principal was converted while the property or obligation is held. If within five years after the conversion the property into which the underproductive property is converted has not been further converted into easily apportionable property, no allocation as provided in this section shall be made.

History: 1986 Act No. 539 § 1.

- r. Simply put, if a trust has an underproductive asset, defined as an asset which has not produced an average net income of at least 1% per year on its inventory value for more than a year, and that underproductive asset is sold, then a portion of the proceeds of sale are allocated to the income beneficiary as delayed income, to compensate that or those beneficiaries for the fact that they did not receive a better return on that trust asset. The method of allocation is determined in accordance with Paragraph (b) of then Section 62-7-415. The sum to be allocated to the income beneficiary or beneficiaries as delayed income is the difference between the net proceeds of sale and the amount which, had it been invested at simple interest at 4% per year while the property was underproductive, would have produced the net proceeds. In regard to the present case, it is difficult to see how the decedent's statement that this underproductive property rule would be inapplicable is helpful to one side of this litigation versus the other. In the event of a sale of some of the real estate of the L.W. Boykin, II Trusts, which real estate might have been defined as

underproductive pursuant to this code section, the allocation of delayed income would be equal as between all four of the present beneficiaries.

- s. The new Revised Uniform Principal and Income Act, enacted in South Carolina in 2001, contains no counterpart to the underproductive property/delayed income concept. According to the Comments to the new Revised Uniform Principal and Income Act (1997), the prior principal and income acts focus was on the trustee producing a reasonable income as determined on an asset by asset basis. Under the new Principal and Income Act, the concept of "total return investing" means that investment returns are not scrutinized on an asset by asset basis but on the portfolio of assets as a whole. See Restatement of Trusts 3d: Prudent Investor Act Section 227, comment I, at 34. Section 413 of the new principal and income act does away with the underproductive property rule in all cases other than trusts for which an estate tax marital deduction is available, where under the Internal Revenue Code and its Regulations the surviving spouse has a right to require that underproductive property be made productive.

(2) "The legal grounds supporting the trust management plans advanced by each side."

- a. Petitioner and Trustee Rigdon Boykin's trust management plan is superior to the investment plan and strategy proposed by the Respondents Wortley and Belger dated April 6, 2018. Rigdon Boykin's plan is preferable because it more closely adheres to the requirement of investment prudence imposed by the decedent in his Will and by the Prudent Investor Act, or, if it does not apply, imposed by South Carolina's prudent person statute in effect in 1989 and in the years leading up to the enactment in South Carolina of the Prudent Investor Act in 2001.
- b. Rigdon Boykin's plan most closely adheres to the total return theory of investing embodied in the Prudent Investor Act. The Act also requires an assessment of the portfolio of trust assets as a whole. It adopts an overall investment strategy having risk and return objectives reasonably suited to the Boykin Trust.
- c. Compared to the plan of Rigdon Boykin, the Respondents' plan seeks a much more gradual diversification from the present approximate 90% concentration of the trust assets in real estate. Rigdon Boykin's plan not only places careful attention on the real estate components, but also posits a concrete timeline for asset diversification that is highly quantitative in nature. The Boykin plan compares and contrasts the yearly surpluses and deficits which the Trust assets would produce under a continuation of the Respondents' preferred strategy versus the one offered by Mr. Boykin, the latter of which contains a well considered order of the sale of some but not all of the timber tracts.

- (3) "The legal grounds supporting the payment of a mandatory minimum to the income beneficiaries."

The Court has the authority to impose a mandatory minimum distribution to the current beneficiaries of income and principal. This authority is derived from the following sources:

- a. Under the assumption that the mandatory minimum distribution would be greater than the current net income of the trust, the Court's authority to impose a mandatory minimum is based on the terms of Item VIII, Paragraph (1) and (2) of the Will. There the Trustees must pay all of the net income and may in addition pay sums from the trust principal. Since the Trustees have the discretion to set such a mandatory minimum, so too would the Court have the inherent jurisdiction to direct the Co-Trustees to make payment of a mandatory minimum under the terms of S.C. Code Ann. Section 62-7-201 (a)(1) which gives the Court the authority to "ascertain beneficiaries, determine a question arising in the administration or distribution of a trust..." and under the terms of S.C. Code Ann. Section 62-7-105 (b)(11) which gives the Court the authority "to take such action and exercise such jurisdiction as may be necessary in the interests of justice;"
- b. Under the Unitrust Conversion Statute, S.C. Code Ann Sections 62-7-904 B through P, which affords a disinterested trustee only (here Rigdon Boykin) the authority to convert the Trust from one paying just the net income to the beneficiaries to a Trust requiring the payment of a "unitrust amount" which is a percentage (no less than 3% nor more than 5%) of the fair market value of the trust assets at the beginning of the Trust year. If the disinterested Trustee encounters opposition from other Trustees or Trust beneficiaries, the disinterested Trustee may apply to the court under SC Code Ann. Section 62-7-904A ("Judicial Control of Discretionary Power") for an order of conversion. The unitrust amount is the mandatory minimum distribution, which generally will afford the beneficiaries something more than just the net income.
- c. Under the Power to Adjust Statute, S.C. Code Ann. Section 62-7-904, which affords a disinterested trustee only (here Rigdon Boykin) the power to adjust between income and principal, which is literally the authority to convert to income trust assets which are traditionally considered to be principal (the corpus which produces the income), if to do so is in fulfillment of the Trustee's duties as a prudent investor. An opposite conversion can occur in some instances, that is, to convert which has traditionally been considered income into trust principal. If the disinterested Trustee encounters opposition from other Trustees or Trust beneficiaries, the disinterested Trustee may apply to the court under SC Code Ann. Section 62-7-904A ("Judicial Control of Discretionary Power") for an order of adjustment. An adjustment can be used by a disinterested Trustee and the court to impose a mandatory minimum distribution.
- d. Under the terms of S.C. Code Ann. section 62-7-412 (a) ("Modification or termination because of unanticipated circumstances or inability to administer trust effectively.") the Court "may modify the administrative or dispositive terms of the trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention." Here the Court could modify the Boykin Trust so as to impose a mandatory minimum distribution. As the petitioner Rigdon Boykin has alleged in his amended petition, seeking this relief, the late LW Boykin, second

could not have anticipated at the time he drew the will and died in 1989 the changes in the market for timberland, the growing market of urban, high net worth individuals for horse farms, etc.

- e. Under the decanting statute. This could be done by the decanting of the Boykin Trust into another Trust with substantially similar but not identical terms. The decanting statute, S.C. Code Ann. Section 62-7 816A affords only a disinterested Trustee such as Mr. Boykin the authority to transfer the assets from the present Trust to one that might afford, among other things, a mandatory minimum payment to the Trust beneficiaries, less restrictive terms than those requiring unanimous voting by the Co-Trustees, etc. If Mr. Boykin's Co-Trustees or any beneficiary object to the decanting after receiving the required advanced notice, or should Mr. Boykin commence an action for Court approval of the decanting, the Court could enter such relief as it deems advisable.
- f. The South Carolina Court of Appeals decision in Sarlin v. Sarlin, 312 S.C. 27, 430 S.E.2d 530 (1993). There the testator provided for the establishment at his death of a trust for the benefit of his surviving spouse, with remainder to the settlor's son and the son's descendants. The testator named that son from a prior marriage as the trustee and afforded the trustee discretion with respect to the payment of trust principal, directing that the trustee was to exercise his discretion "without the intervention or consultation of anyone." The surviving spouse commenced a declaratory judgment action requesting that the court determine, among other things, whether the trustee had violated his fiduciary duties in failing to pay adequate amounts to her, in paying himself allegedly excessive compensation, and in investing the trust assets aggressively, for capital appreciation and not income. The Circuit Court determined that the will required that all of the income of the trust be paid to the surviving spouse income, that the Trustee needed to realign his investments so as to enhance the net income to the spouse, and that the trustee pay the surviving spouse a mandatory minimum amount. The Court of Appeals affirmed, reasoning as follows:

"Additionally, we find no abuse of discretion by the trial court in ordering the Trustee to invest the trust assets in such a manner as to enhance the trust income. The trial judge ordered the Trustee to pay Sarlin [the surviving spouse] out of the trust funds, whether it be from income or principal, the greater of \$4,000 per year or 5% of the total value of the assets held in trust. It is well settled that, in proper cases, courts of equity may interfere with the disposition of trust funds; however, such power should be exercised only in cases of real necessity. Wanamaker v. South Carolina State Bank, 176 SC 133, 179 SE. 896 (1935). In light of the trustee's breach of fiduciary duties, we hold that this is a case of "real necessity" and find the trial court's remedy appropriate.

For the foregoing reasons, we affirm."

430 S.E.2d 530,533.

"(4) The legal grounds supporting the removal of a trustee."

Liam, by way of legal grounds for removal, please note that in my Statement of Opinions, Paragraph 17. thereof contains my opinion that Belger and Wortley should be removed. Since the decedent's Will is silent as to the process or grounds for trustee removal, the grounds for removal are those contained in S.C. Code Ann. Section 62-7-706, which at Paragraph (a) provides that removal may be sought by the settlor, a co-trustee or a beneficiary, or removal may be accomplished by the court on its own initiative. The specific grounds have all been addressed by you in your Amended Petition. I believe I echoed all of the statutory grounds Opinion number 17. My January affidavit though not prepared or offered in support of removal, sets forth a number of failings of the Respondents which come within the statutory definition of a serious breach of trust (single breach or many smaller breaches). You and Richard can articulate many more factual grounds than could I.

From: James C. Hardin, III
To: Liam Duffy
Cc: Richard Rosen
Subject: RE: Question
Date: Thursday, June 14, 2018 7:07:35 PM

Liam, For this proposition I would cite the following:

1. I believe that if the S.C. Trust Code applies here, which is undisputed, the South Carolina Trust Code's decanting statute, S.C.Code Ann. Section 62-7-816A, would be an available remedy to invoke, such that the assets in the present Trust could be decanted into (transferred to) a second Trust that contains (1) Trustee voting requirements less conducive to deadline; (2) reaffirms that the Testator's observations are absolutely precatory, etc. Recall that only a disinterested trustee can undertake a decanting. If the interested Trustees object, the Court can still order the decanting. Also in the comments to the decanting statute, the Reporter notes the following: "some examples of how decanting authority might be used by a trustee include: modifying the administrative or substantive provisions of a trust to account for a change in law all, combining trusts to reduce administrative costs, **limiting the authority of interested trustees**, correcting scrivener's errors, and conforming the distribution provisions of the trust to the requirements of a special needs trust." (Emphasis supplied).

2. In addition to decanting, the following remedies are available to the court but can only be initiated by a disinterested trustee: (a) converting the trust to a statutory unitrust under South Carolina Code Ann. Sections 62-7-904B through P; (b) adjusting between income and principal so as to convert what would otherwise be considered principal into income in order to enhance distributions to beneficiaries under S.C. Code Ann. section 62-7-904. Even if Rigdon has to initiate a unitrust conversion or an adjustment, the court is free at that point to order the same notwithstanding the objections of interested trustees such as Belcher and Wortley.

3. I know of no better indication than these statutes (and the comment quoted above to the decanting statute) of the General Assembly's skepticism of the motives of trustees who are themselves beneficiaries, than to vest these important powers only in the hands of a disinterested Trustee (or if there is no disinterested trustee, in the hands of a special fiduciary). By noting that decanting can be used to "limit the authority of interested trustees" as is stated in paragraph 1 above, the General Assembly virtually invites a disinterested Trustee to make changes to the trust so as to make the influence of interested trustees less pervasive.

4. All of the three remedies I mention here can be drafted around by a testator or settler. In other words, they could say in the will or trust that they specifically did not empower the trustees to undertake a decanting, a unitrust conversion or an adjustment. Not many clients of mine desire to so limit the flexibility of their instruments so as to rule out these techniques.

I hope this helps. My Memo to you two on the legal issues posed by Justice Toal's Clerk's e-mail will immediately follow.

Regards,

Jim

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From: Liam Duffy [mailto:lduffy@rrhlawfirm.com]
Sent: Thursday, June 14, 2018 5:32 PM
To: James C. Hardin, III
Cc: Richard Rosen
Subject: RE: Question

Sorry, I clicked "send" too fast. Here is the opinion he was asking about:

8. As the only one of the Decedent's three Co-Trustees who is not a beneficiary, the Court has grounds to afford Rigdon Boykin preeminent authority among the three Co-

Trustees, notwithstanding the language of the Decedent's Will requiring unanimous Trustee votes with respect to real property and majority Trustee votes with respect to personal property.

Liam Duffy

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From: Liam Duffy

Sent: Thursday, June 14, 2018 5:31 PM

To: James C. Hardin, III <jhardin@jimhardinlaw.com>

Subject: Question

Jim, Richard would like to know if there's a code section or other authority we should be citing for the following opinion:

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From: James C. Hardin, III
To: Liam Duffy
Cc: Richard Rosen
Subject: RE: Boykin: Memo with of submissions regarding the issues posed by Justice Tol through her law clerk
Date: Saturday, June 16, 2018 3:22:55 PM
Attachments: CISA Case (00178636).PDF

Liam,

Thank you for your e-mail. Also thank you for sending me your Supplemental Response to Respondents' Interrogatories, which contained my statement of opinions.

I am attaching hereto a copy of the 1987 South Carolina Supreme Court case of First Union National Bank of South Carolina, Trustee v. Cisa. Cisa remains good law today. It was essentially a "friendly suit" on which the South Carolina Supreme Court was willing to rule in order to avoid the IRS levy of a major estate tax on the estate of the surviving wife, a Mrs. O'Dowd. In our case, that would be analogous to the IRS trying to include the Residuary Trusts under the Will of L. W. Boykin, II in the taxable estate of Alice Boykin at her death, something which did not happen here. The primary holding in Cisa, as noted at 293 S.C. 456, at 460, is as follows:

"Likewise, for Mrs. O'Dowd to have participated as a trustee in decisions relating to the distribution of income and principal from the residuary trust to herself would have put her in position to favor herself at the expense of the other beneficiaries. Such a restriction does not preclude a beneficiary from service as a trustee. However, under the principles of trust law, the trustee-beneficiary is required to refrain from taking actions which it cannot exclude all selfish interests from affecting... Under the circumstances, Mrs. O'Dowd's participation in the trust would have been a breach of her fiduciary duty of loyalty to and impartiality among the beneficiaries. Therefore, we conclude that the law prohibited her from such participation here."

The IRS had asserted that because Mrs. O'Dowd could participate in decisions regarding distributions to herself, the residuary trust should have been included in her gross estate at her death because she would have had a general power of appointment under IRC section 2041, and this would give rise to the inclusion of the residuary trusts in her taxable estate. Internal Revenue Code Section 2041 provides that any power of appointment exercisable in favor of an individual, the individual's estate, the individual's creditors, or the creditors of the individual's estate will be conclusively presumed to be a general power of appointment, giving rise to estate tax inclusion in that individual's taxable estate. However, Treasury Regulations state that an individual may serve as trustee and may participate in distributions to herself so long as (1) the Trustee-beneficiary cannot make distributions to herself, her estate, her creditors or the creditors of her estate, and (2) the standard of distribution in the trust in question is limited to "an ascertainable standard."

The definition of ascertainable standard is set out in Treasury Regulation Section 1-2041-1 (c) (2) as follows:

A power is limited by such a standard if the extent of the holder's duty to exercise and not to exercise the power is reasonably measurable in terms of his needs for health, education, or support (or any combination of them). As used in this subparagraph, the words "support" and "maintenance" are synonymous and their meaning is not limited to the bare necessities of life. A power to use property for the comfort, welfare, or happiness of the holder of the power is not limited by the requisite standard. Examples of powers which are limited by the requisite standard are powers exercisable for the holder's "support," "support in reasonable comfort," "maintenance in health and reasonable comfort," "support in his accustomed manner of living," "education, including college and professional education," "health," and "medical, dental, hospital and nursing expenses

and expenses of invalidism."

The Cisa case does not quote from the standard provided for in that Will, so it is possible that the standard was not "ascertainable" such as being based on Mrs. O'Dowd's comfort, happiness or enjoyment. However the standard of distribution in L.W. Boykin, II's Residuary Trusts, as provided in Item VIII, (2), is unquestionably ascertainable, as it provides as follows:

"(2) My Trustees may pay to or apply for the benefit of any one or more of my children such sums from the principal of this trust in such shares and proportions as in their sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance and reasonable comfort of my said children, taking into consideration to the extent my Trustees deem advisable, any other income or resources of my said children known to my trustees..." (emphasis supplied).

Every good estate planner in South Carolina is aware of the Cisa case, and of an S.C. statute, now South Carolina Trust Code Section 62-7-814 ("discretionary powers; tax savings.") and especially at paragraph (c) intending to protect the careless drafter who fails to use an ascertainable standard.

Section 62-7-814 (c) provides in part as follows:

(c)... Any power conferred upon the fiduciary, in his capacity as a fiduciary..., Which word, except for this section, constitute, in whole or in part, a general power of appointment cannot be exercised by him in favor of himself, his estate, his creditors, or the creditors of his estate."

Liam, in summary, is very tempting to include an argument that the above quoted holding in the Cisa case means that Mary Deas and Alice have breached their fiduciary duty because they have already made numerous decisions regarding distributions to themselves. This would be very persuasive unless and until opposing counsel cites the ascertainable standard language contained in Item VIII, (2) of L.W. Boykin's Will. Even if opposing counsel fails to assert such an opposing argument, it is possible the Justice Toal, based on her own knowledge and "feel" for this area of the law, would asset it.

Please feel free to call me at 803-323-8592 if you want to discuss this. You can call either today, Saturday or tomorrow, Sunday.

Regards,

Jim

James C. Hardin III

James C. Hardin III, PLLC

113 E. Main Street, Suite 330 (Zip 29730)

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From: Liam Duffy [mailto:lduffy@rrhlawfirm.com]
Sent: Saturday, June 16, 2018 11:09 AM
To: James C. Hardin, III; Richard Rosen
Subject: RE: Boykin: Memo with of submissions regarding the issues posed by Justice Toal through her law clerk

Jim, I have just reviewed your memo again in earnest and am now beginning to work it into "Trial Brief" form as requested by the Court. Your authorities and explanations are outstanding. I will let you know if I have any questions over the weekend.

Thanks.

Liam Duffy
|Attorney at Law|

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Charleston SC 29401
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|direct phone| (843) 266-8121
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From: James C. Hardin, III <jhardin@jimhardinlaw.com>

Sent: Thursday, June 14, 2018 7:23 PM

To: Liam Duffy <lduffy@rrhlawfirm.com>; Richard Rosen <rsrosen@rrhlawfirm.com>

Subject: Boykin: Memo with of submissions regarding the issues posed by Justice Toal through her law clerk

Liam and Richard;

Attached is my memo, in Word, wherein I seek to provide you with some legal authorities for your use in preparing your brief responsive to Justice Toal's questions. I am happy to answer any questions which you may have. I will be reachable by cell phone tomorrow (Friday) as well as through the weekend. Phone number 803-323-8592. Please note that in regard to the responses to Justice Toal's question 2, "The legal grounds supporting the trust management plans advanced by each side," I have in hand and reviewed the Belger-Wortley Management Plan dated April 6, 2018, but all I have from Rigdon at this point is what Liam you e-mailed to me this Wednesday, June 13, and especially the "Plan Comparison," the "Year One Sales," and the "Years Two through Four Sales." My understanding is that from this work Rigdon, perhaps assisted further by Jane Peacock, will be submitting a full blown Management Plan.

Also, if you learn that the trial scheduled for Monday, July 9 is going to be postponed, please let me know as I have another expert witness matter that I may need to reschedule.

Regards,

Jim

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EXHIBIT 27

ELECTRONICALLY FILED - 2018 Jul 09 1:43 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

From: James C. Hardin, III
To: Richard Rosen
Cc: Liam Duffy
Subject: My telephone conversation with Anne Gluse today
Date: Tuesday, June 19, 2018 5:51:15 PM

Richard,

As a follow-up to our telephone conversation of late this morning, I called back Anne Gluse of South State Bank's trust group early this afternoon and had a good conversation with her. She said that Rigdon had tried her fairly recently and had ended up speaking to one of her subordinates, George King, who passed on the message that Rigdon wanted to speak to her. She said that before she called Rigdon back she wanted to talk to me as Rigdon had mentioned my name. As I have noted I have known and worked with Anne since about 2002, and she was a hard worker on the three year South Carolina Bar Committee effort which I chaired leading to the enactment of the South Carolina Trust Code.

She said that she had understood from George King that Rigdon might want her to be an expert witness in this matter. She said that generally, the bank's position was that they would not want anyone employed by the Bank to serve as an expert witness, as they might end up opining on something in one case that could increase their exposure on some other case where the Bank serves as trustee.

I gave her a general overview of the facts of the case and of the issues as between Rigdon, the disinterested trustee, and Alice and Mary Deas, the interested Trustees. She said every case turned on the provisions of the governing instrument and asked if there was any prohibition on the sale of real estate. I responded that there were precatory provisions about retaining certain tracts, but these provisions were specifically stated to be nonbinding on the trustees. She said that if the bank where the trustee in a similar situation, they would certainly take action to diversify the assets of the trust and make sales of some of the timber tracts in order to enhance liquidity to, among other things, pay the substantial expenses entailed in holding undeveloped parcels of real estate.

She volunteered that hopefully Justice Toal would be willing to consider an adjustment between income and principal, a unitrust conversion, or decanting in order to enhance the entitlements of Witt and May.

She concluded the conversation by saying that she would return Rigdon's phone call. She is at the head of a trust department of a burgeoning bank which has probably grown tenfold or more since she came on board in about 2005. It now operates in a multi-state arena, so her return call to Rigdon may not be immediate. I told her that the trial was scheduled for the week of July 9 so if she could return Rigdon's call soon, it would be very helpful. I vouch for Rigdon, saying that he had only the best interests of the beneficiaries in mind.

I have not returned Rigdon's call to me of midmorning (before I spoke to Ann Gluse). I wondered whether, in the interest of attorney-client privilege, you or Liam might be better suited to pass on the substance of this conversation to Rigdon. If you elect to do so, please communicate to Rigdon the reason why I did not call him back. On the other hand if you see no problem with my calling Rigdon back, I will be happy to do so.

Regards,

Jim

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	CASE NO: 2017-CP-28-831
	)	
IN THE MATTER OF:	)	
LEMUEL WHITAKER BOYKIN, II,	)	
deceased	)	
	)	
Rigdon H. Boykin, as sole disinterested Co-	)	PETITIONER'S MOTION FOR
Trustee of the Lemuel Whitaker Boykin, II	)	LEAVE TO NAME REBUTTAL
Residuary Trusts A and B,	)	EXPERT WITNESS
	)	
Petitioner,	)	
	)	
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, et al.	)	
	)	
Respondents.	)	
	)	

TO: THE RESPONDENTS ABOVE-NAMED AND THEIR RESPECTIVE COUNSEL:

YOU WILL PLEASE TAKE NOTICE that Petitioner, by and through his undersigned counsel, moves before this Honorable Court for leave to amend his expert witness disclosure to identify a rebuttal expert witness on his behalf. The grounds for this motion are as follows:

- Pursuant to the May 8, 2018 Consent Scheduling Order, Petitioner and Respondents were required to identify their expert witnesses by June 15, 2018. Petitioner named one expert witness, Jim Hardin, Esq., a certified specialist in estate planning and probate law, prior to this deadline. However, in light of testimony offered at trial by Respondents' expert witnesses, John Helms and Cheryl Holland, Petitioner now seeks to name an additional expert, Mr. William H. Harrison, Jr., a real estate finance and investment professor at the University of South Carolina's Darla Moore School of Business, and seeks leave of Court to do so.
- Petitioner's late naming of Mr. Harrison as a witness is substantially justified and harmless, and Respondents will not be prejudiced by the naming of this expert. Respondents have

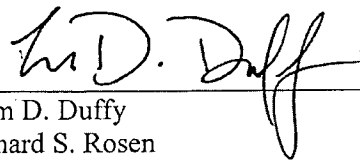
been aware of Petitioner's challenges to the accuracy and efficacy of Mr. Helms' report and projections since it was submitted to the Court. Mr. Helms' Revised Planning Spreadsheet and Analysis, along with his 15-Year Cash Flow Projection contain voluminous reports and spreadsheets which required the assistance of an expert to fully analyze for accuracy and comprehend.

- "The exclusion of a witness is a sanction which 'should never be lightly invoked.'" *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 108-09, 410 S.E.2d 537, 541-42 (1991) (quoting *Kirkland v. Peoples Gas Co.*, 269 S.C. 431, 435, 237 S.E.2d 772, 774 (1977)). "In determining the appropriate sanction for late disclosure of an expert witness, this Court has stated, 'it lies within the discretion of the trial judge to decide what sanction, if any, should be imposed. The rule is designed to promote decisions on the merits after a full and fair hearing, and the sanction of exclusion of a witness should never be lightly invoked.'" *Barnette v. Adams Bros. Logging*, 355 S.C. 588, 592-93, 586 S.E.2d 572, 574-75 (2003) (quoting *Jackson v. H & S Oil Co., Inc.*, 263 S.C. 407, 411, 211 S.E.2d 223, 225 (1975)); *See also Jumper v. Hawkins*, 348 S.C. 142, 152, 558 S.E.2d 911, 916 (Ct. App. 2001) (setting forth factors the trial court is required to consider and evaluate before imposing the sanction of exclusion of a witness: (1) the type of witness involved; (2) the content of the evidence emanating from the proffered witness; (3) the nature of the failure or neglect or refusal to furnish the witness' name; (4) the degree of surprise to the other party, including the prior knowledge of the name of the witness; and (5) the prejudice to the opposing party).
- Mr. Harrison's testimony will be in direct reply to testimony presented by Mr. Helms and Ms. Holland in Respondents' defense, and because it is restricted to those issues, the element of surprise is eliminated. *McGaha v. Mosley*, 283 S.C. 268, 277, 322 S.E.2d 461, 466 (Ct. App. 1984) (allowing testimony from a rebuttal witness who was not listed in plaintiff's interrogatory responses when such reply testimony was limited to issues raised by the defense). Moreover, Mr. Harrison is available to give a deposition prior to the second phase of trial on September 26, 2018, if Respondents so desire, which further moderates any surprise associated with Mr. Harrison's testimony at trial.
- Furthermore, any effect of Petitioner's disclosure is alleviated by the fact that Respondents have their own collection of at least two expert witnesses who, through their reports and trial testimony, have already addressed the issues raised by Petitioner's proposed witness.

For the foregoing reasons, and in the interests of justice and a full and final adjudication on the merits, Petitioner respectfully requests that this Court grant his Motion and that Mr. Harrison be allowed to testify at the trial of this case. This motion is further supported by the laws of the State of South Carolina, and such other and further argument and documents as may be presented at the hearing of said motion.

[SIGNATURE ON FOLLOWING PAGE]

ROSEN, ROSEN & HAGOOD, LLC

By: 

Liam D. Duffy
Richard S. Rosen
151 Meeting Street, Suite 400
Charleston, SC 29402
(843) 577-6726 (p)
(843) 724-8036 (f)

*Attorneys for Petitioner, Rigdon H. Boykin, as sole
disinterested Co-Trustee of the Lemuel Whitaker
Boykin, II Residuary Trust*

Charleston, South Carolina
September 11, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

IN THE MATTER OF:
LEMUEL WHITAKER BOYKIN, II,
deceased

Case No. 2017-CP-28-00831

Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B,

Petitioner,

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**; **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,

Respondents.

**RESPONDENTS MARY DEAS WORTLEY'S AND ALICE BOYKIN BELGER'S
SECOND AMENDED ANSWER AND COUNTERCLAIMS TO RIGDON H. BOYKIN'S
AMENDED PETITION**

Respondents Mary Deas Wortley and Alice Boykin Belger (collectively "Respondents") submit the following Second Amended Answer to Petitioner Rigdon H. Boykin's Amended

Petition for Attorney's Fees, Trustee Fees, Declaratory Judgment, Modification, and Trustee Removal filed May 7, 2018 (the "Amended Petition"):

FOR A FIRST DEFENSE
(General Denial)

1. Except as the allegations may otherwise be specifically admitted herein, Respondents deny each and every allegation of the Amended Petition.

2. Responding to the first unnumbered paragraph of the Amended Petition, Respondents deny that the Amended Petitioner is a "disinterested" Trustee, deny that Petitioner is acting in the best interests of all beneficiaries of the Lemuel Whitaker Boykin II Residuary Trusts A and B ("Residuary Trust"),¹ and deny that he should be "entitled to exercise preeminent authority among the three Co-Trustees," or otherwise be appointed as a special fiduciary under S.C. Code § 62-7-1001(b)(5), or that Petitioner is entitled to an order removing Respondents as Co-Trustees of the Residuary Trust. Further responding to the first unnumbered paragraph of the Amended Petition, Respondents admit that Decedent's Will does not prohibit the sale of any Residuary Trust property, and that the Co-Trustees should follow the prudent investor rule to the extent so adopted in the Will.

BACKGROUND AND PARTIES²

3. Respondents admit the allegations of Paragraphs 1 through 6.

4. Responding to Paragraph 7, Respondents deny that Petitioner is "the only disinterested" Trustee of the Residuary Trust.

¹ For ease of reference, this Answer adopts the defined terms in the Amended Petition.

² For ease of reference, this Answer includes the same subject headings as the Amended Petition.

5. Responding to Paragraph 8, Respondents admit only that this action was properly removed by the Probate Judge of Kershaw County to the Court of Common Pleas for the Fifth Judicial Circuit of South Carolina.

THE RESIDUARY TRUST

6. Respondents admit the allegations of Paragraph 9, however, the quoted language is found in Item VIII subparagraph (1) of the Last Will and Testament of Lemuel Whitaker Boykin, II dated June 2, 1989 ("Will"), and not Item VII(1).

7. Respondents admit the allegations of Paragraph 10, however, the referenced language is found in Item VIII subparagraph (2) of the Will, and not Item VII(2).

8. Respondents admit the allegations of Paragraph 11.

9. Responding to Paragraph 12, Respondents admit only that they have living issue who could receive the assets of the Residuary Trust upon dissolution, and deny the remaining allegations of Paragraph 12.

10. Responding to Paragraph 13, Respondents admit that the quoted language is found in Item X of the Will, admit that the Will provides an order of preference for the sale of certain specified tracts of real property in the event that circumstances require such a sale, but deny that such circumstances currently exist and that any sale of the property referenced in Item X of the Will is necessary or prudent at this time.

11. Respondents admit the allegations of Paragraphs 14 and 15.

12. Responding to Paragraphs 16 and 17, Respondents admit only that the Trustees "are authorized in their absolute discretion with respect to any real property, by unanimous vote, or personal property, by majority vote," to manage the affairs of the Residuary Trusts for the benefit of *all* current income beneficiaries and *all* remainder beneficiaries.

13. Responding to Paragraph 18, Respondents admit only that the provisions of Decedent's Last Will and Testament prevail over the provisions of the South Carolina Trust Code, except as provided in S.C. Code Ann. § 62-7-105(b).

14. Respondents deny the allegations of Paragraph 19.

DISPUTE AS TO MANAGEMENT OF RESIDUARY TRUSTS ASSETS

15. Responding to Paragraph 20, Respondents admit only that on most issues, Petitioner has a different view of the proper administration of the Residuary Trust than Respondents.

16. Responding to Paragraph 21, Respondents admit only that Decedent's intentions are unambiguously expressed in his Will.

17. Responding to Paragraph 22, Respondents admit only that Respondent Wortley served as Co-Trustee of the Marital Deduction Trust from 1989 to August 8, 2016, with Alice S. Boykin ("Mrs. Boykin"). Respondents further state that the value of Lemuel Whitaker Boykin, II's ("Mr. Boykin's") estate has more than doubled in value under Respondent Wortley and Mrs. Boykin's management. Respondents deny the remaining allegations of Paragraph 22.

18. Responding to Paragraph 23, Respondents admit only that the most substantial part of the Residuary Trust's assets are real property tracts located in Kershaw, Sumter, and Fairfield Counties in South Carolina, and which are used primarily for farming, timber, and hunting.

19. Responding to Paragraph 24, Respondents admit only that they wish to follow the direction expressed by Mr. Boykin in the Will.

20. Responding to Paragraph 25, Respondents admit only that Lemuel Whitaker Boykin, III ("Whit III") and May Cantey Boykin ("May") are not Trustees and do not have any children. Respondents further state that Petitioner has acquired and exercises an undue influence

over Whit III and May, and has disrupted the caring and loving family relationship among Whit III, May, and the Respondents, their spouses, and children.

21. Responding to Paragraph 26, Respondents admit only that investment diversification is one among many factors that the Trustees should consider in administering the Trust assets for the benefit of all income and remainder beneficiaries.

22. Responding to Paragraphs 27 through 31, Respondents admit only that the Petitioner has made several unacceptable proposals to them for the purchase and financing of certain real property assets of the Trust and that Petitioner, acting without a majority vote of the Trustees, has obtained numerous appraisals and surveys which are of significant cost and limited value to the Trust.

23. Responding to Paragraphs 32 through 36, Respondents admit only that the Residuary Trust must be managed in accordance with the directions expressed in Mr. Boykin's Will, except where those directions may conflict with the provisions of S.C. Code § 62-7-105(b).

24. Respondents deny the allegations of Paragraph 37, including footnote 2, and further deny that the Trustees must follow the provisions of the S.C. Uniform Prudent Investor Act, which states as follows: "The prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust." S.C. Code Ann. § 62-7-933(B)(2).

25. Respondents deny the allegations of Paragraphs 38 and 39.

FIRST CAUSE OF ACTION OF THE AMENDED PETITION
(Attorney's Fees – S.C. Code Ann. §62-7-1004)

26. Responding to Paragraph 40, Respondents repeat and reallege their answers to each and every previous paragraph of the Amended Petition as though fully set forth herein.

27. Responding to Paragraph 41, Respondents deny that S.C. Code Ann. §62-7-1004 supersedes the provisions of the Trust.

28. Respondents deny the allegations of paragraphs 42, 43, and 44.

SECOND CAUSE OF ACTION OF THE AMENDED PETITION
(Trustees' Fees – S.C. Code Ann. §62-7-708)

29. Responding to paragraph 45, Respondents repeat and reallege their answers to each and every previous paragraph of the Amended Petition as though fully set forth herein.

30. Respondents admit the allegations of Paragraph 46.

31. Responding to the allegations of Paragraphs 47 through 50, Respondents admit only that S.C. Code § 62-7-708(b) would apply in this instance and that a fair and reasonable trustees fee would be \$100,000, for each trustee, for services rendered as Trustee, from August 8, 2016 to December 31, 2017.

THIRD CAUSE OF ACTION OF THE AMENDED PETITION
(Declaratory Judgment – S.C. Code Ann. §§15-53-50, 62-7-201)

32. Responding to Paragraph 51, Respondents repeat and reallege their answers to each and every previous paragraph of the Amended Petition as though fully set forth herein.

33. Respondents admit the allegations of Paragraph 52.

34. Responding to Paragraph 53, Respondents deny that Petitioner is a “disinterested” Trustee, and admits the remaining allegations of this Paragraph.

35. Respondents deny Paragraphs 54 through 59, including all subparts and footnote 3, of the Amended Petition.

FOURTH CAUSE OF ACTION OF THE AMENDED PETITION
(Equitable Deviation/Modification of Trust – S.C. Code Ann. §§ 62-7-412, 62-7-413)

36. Respondents incorporate and reallege each of the foregoing allegations as fully as if repeated herein verbatim.

37. Responding to Paragraphs 61 and 62, Respondents admit that a court may modify the terms of a trust within the limitations prescribed by the South Carolina Trust Code.

38. Responding to Paragraph 63, Respondents admit only that the Will requires the Trustees, "in their sole discretion," to make distributions for the beneficiaries' "comfortable maintenance, welfare, and education." (Will Item VIII(1), p. 7.) Further responding to Paragraph 63, Respondents deny that the Will has set forth any unreasonable restrictions on the use of Residuary Trust property.

39. Responding to Paragraph 64, Respondents admit only that Petitioner accurately quotes Item X, p. 9 of the Will.

40. Respondents deny Paragraphs 65 through 69.

FIFTH CAUSE OF ACTION OF THE AMENDED PETITION

(Removal of Trustees – S.C. Code Ann. § 62-7-706)

41. Respondents incorporate and reallege each of the foregoing allegations as fully as if repeated herein verbatim.

42. Respondents deny Paragraphs 71 through 77, including all subparts.

43. Respondents further deny that Petitioner is entitled to the relief requested in his prayer for relief.

FOR A SECOND DEFENSE

(Equitable Defenses)

44. Petitioner's claims are barred by all equitable doctrines to Respondents including, but not limited to, estoppel, waiver, ratification, laches, and unclean hands.

FOR A THIRD DEFENSE

(Failure to State a Claim)

45. Petitioner fails to state facts sufficient to constitute a cause of action as to Respondents and the Amended Petition should be dismissed pursuant to 12(b)(6), SCRCF.

FOR A FOURTH DEFENSE
(Statute of Limitations)

46. Petitioner's claims are barred by all applicable Statutes of Limitations.

FOR A FIFTH DEFENSE
(S.C. Code Ann. § 62-7-1006)

47. Respondents have acted in reasonable reliance on the terms of the Trust as expressed in the Will, and Petitioner's claims are thus barred by S.C. Code Ann. § 62-7-1006.

FOR A SIXTH DEFENSE AND FIRST COUNTERCLAIM
(Removal of Trustee Pursuant to S.C. Code Ann. § 62-7-706(b)(2))

48. Respondents incorporate and reallege each of the foregoing allegations as fully as if repeated herein verbatim.

49. In his Will, Mr. Boykin established a clear and unambiguous preference that certain parcels of real property "shall to the fullest extent possible be preserved for the benefit of or transferred to my children or their issue." (Will Item X.) These "treasured tracts" are identified as Millway Plantation, the Laney Tract, Broadview Plantation, the Swamp Tract, the Cantey Tract, and the Gillis Tract. (*Id.*) The Will further directs that "[a]ny sale or mortgage of these parcels (exclusive of timber rights) must be by unanimous consent of the Trustees after consultation with and approval of a majority of the four (4) named beneficiaries of this Trust . . . [and] my trustees may cut and remove timber which shall be treated as a crop." (*Id.*)

50. Mr. Boykin further expressed that in exercising "the discretionary powers granted under Item VIII [providing for income to the children or other beneficiaries during their lifetimes]" and "all other powers granted" under the Will, "it is my hope that my . . . Trustees will be mindful of my intentions." (*Id.*) Mr. Boykin also gave to all of the Co-Trustees, "in their absolute discretion with respect to any real property, by unanimous vote, or personal property, by majority vote," to exercise all "rights, power, authority and privileges granted by any other provision of this

Will or by statute or general rule of law . . .” (*Id.* at Item XIV.) Thus, the Will does not set any unreasonable restriction on the sale of the real property assets, but clearly allows the Trustees to sell any of the Residuary Trust’s real property pursuant to the voting model set forth therein.

51. Finally, the Will provides the Co-Trustees the discretion “to retain any of the original property constituting the . . . trust, regardless of the character of such property . . . or whether it leaves a disproportionately large part of the . . . trust invested in one type of property . . . and to dispose of such property . . . as and when they shall deem advisable.” (*Id.* at Item XIV(B.))

52. At the time he executed the Will, Mr. Boykin appointed three Trustees for the Residuary Trust: (1) his cousin, Petitioner, (2) his eldest daughter, Respondent Wortley, and (3) his wife, Alice Schoolbred Boykin (“Mrs. Boykin”). Mrs. Boykin passed away on August 8, 2016, at which time Respondent Belger became the third Co-Trustee of the Residuary Trust.

53. No provision of the Will provides that any one of the three Trustees, no matter how appointed, shall be entitled to pre-eminent status among the three, as Peititoner claims. Rather, the Will provides that each Trustee has an equal vote in matters of Trust administration.

54. The Co-Trustees have met numerous times in person, by conference call, and through e-mail since Mrs. Boykin’s death in August 2016 regarding administration of the Residuary Trust. During these meetings, the Co-Trustees have conducted considerable business and authorized the sale of numerous Trust assets, including some real estate tracts. (Aff. Alice Boykin Belger ¶ 8.)

55. However, Petitioner and Respondents have had significant good faith disagreements concerning the proper administration, distribution, management, and investment strategy as it relates to certain assets of the Residuary Trust. Specifically, Petitioner alleges in ¶¶ 34-36 of the Amended Petition that Respondents’ strategy of managing Mr. Boykin’s estate by

periodically selling off timber as allowed by the Will, leasing hunting and fishing rights, and selling certain properties is less likely to grow the Residuary Trust, and that the Co-Trustees should sell off most of the real property, including the “treasured tracts,” to diversify assets (the “Investment Strategy”).

56. Pursuant to the procedures as set forth in the Will, Petitioner proposed adopting the Investment Strategy at a March 23, 2017 Residuary Trust meeting. After considering his proposal and comparing the proposal with the terms of the Will, Respondents properly voted against adopting the Investment Strategy because they felt such a strategy contradicted Mr. Boykin’s clear intent to preserve the real property for the Residuary Trust beneficiaries, as set forth in the Will.

57. Rather than accepting that he was properly outvoted with respect to the Investment Strategy and consider the compromise offers Respondents proposed, Petitioner doubled down on the Investment Strategy and filed his Petition on August 23, 2017. Petitioner has also conducted secret negotiations to sell Trust assets, including the Boykin Millpond, the most treasured of the tracts according to the Will, without revealing and intentionally concealing the identity of the proposed purchaser from his Co-Trustees.

58. Petitioner has been overly solicitous of the needs and desires of two of the income beneficiaries, Whit Boykin, and May Boykin. Petitioner has repeatedly failed to consider the needs and desires of Respondents, as beneficiaries. Petitioner has never contacted any of the remainder beneficiaries, the intervenors in this action, to inquire as to their needs and wishes. Petitioner has favored the interests of Whit and May over all other beneficiaries.

59. In addition, Petitioner has attempted to override Respondents’ votes on certain issues, in clear contravention to the terms of the Will, such as taking unilateral action to shut down

Respondents' wedding business in Boykin, South Carolina, which had been a profitable venture for the Residuary Trust.

60. Although the terms of the Will clearly evidence Mr. Boykin's preference for preserving the Residuary Trust's real property assets, Petitioner refuses to administer his duties in accordance with the terms of the Will and instead relentlessly pursues his own agenda, regardless of whether that agenda conforms with Mr. Boykin's intentions as set forth in the Will.

61. In addition, rather than attempting to work with his fellow Co-Trustees as equals in the course of administering the Residuary Trust, Petitioner has treated Respondents with disdain and condescension, has been dismissive of any strategies they set forth, has frequently told them that his vote as Co-Trustee outweighs their votes even though he has no legal basis for making this assertion, has threatened litigation against his Co-Trustees and the Estate's counsel, and has been largely incapable of cooperating with his fellow Co-Trustees in order to efficiently manage the Residuary Trust in accordance with Mr. Boykin's express intentions. Moreover, Petitioner has frequently incurred expenses for the Trust without the consent of either or both of his Co-Trustees.

62. These above allegations demonstrate that Petitioner has failed to follow the terms and purposes of the Trust and to do so in good faith, and has failed to be open and honest with his Co-Trustees.

63. Because Petitioner's strategies for managing the estate diverge significantly with Mr. Boykin's intentions, and because Petitioner has consistently sought to override Respondents' votes as to administrative matters for the Residuary Trust and refuses to compromise with Respondents, the administration of the Residuary Trust is significantly impaired by the Co-Trustees' failure to agree.

64. Based on the foregoing, Respondents are informed and believe that they are entitled to a judgment removing Petitioner as a Co-Trustee pursuant to S.C. Code Ann. § 62-7-706(b)(2) because Petitioner's lack of cooperation with his Co-Trustees substantially impairs the administration of the Trust.

FOR A SEVENTH DEFENSE AND SECOND COUNTERCLAIM

(Removal of Trustee Pursuant to S.C. Code Ann. § 62-7-706(b)(3))

65. Respondents incorporate and reallege each of the foregoing allegations as fully as if repeated herein verbatim.

66. As alleged in the foregoing paragraphs, Petitioner and Respondents have had significant disagreements regarding the proper administration of the Residuary Trust. These problems have culminated in Petitioner's decision to file his Petition on August 23, 2017, which alleges, in pertinent part, that Respondents mismanaged Mr. Boykin's estate while Mrs. Boykin was alive, and that Respondents continue to mismanage the estate by seeking to administer the trust in accordance with Mr. Boykin's wishes to preserve certain real property, if possible.

67. Contrary to Petitioner's allegations, however, the value of Mr. Boykin's estate has more than doubled in value since he died in 1989, from an estimated value of \$10,262.00 at the time of Mr. Boykin's death to a current estimated value of approximately \$26,000.000, utilizing Mr. Boykin's preferred strategy of real estate investment, farming, and timber management.

68. Moreover, in 2017 the Residuary Trust produced approximately \$1,024,122 million in gross revenue, out of which \$100,000 was paid to each of the four Residuary Trust income beneficiaries. Respondents both consider this a reasonable income for each of the income beneficiaries.

69. Accordingly, Respondents' proposed methods and strategy for administration of the Residuary Trust are financially sound and prudent, capable of producing adequate distributions

for the income beneficiaries, while still honoring the testator's expressed intent. Thus, Petitioner's claims against Respondents regarding the management of the Residuary Trust are unfounded and frivolous.

70. Despite the frivolous nature of Petitioner's claims, Petitioner continues to drain the resources of the Residuary Trust at an alarming rate by amassing significant legal bills, at the expense of the Residuary Trust and its income beneficiaries and remaindermen. Because Petitioner is not a beneficiary of the Residuary Trust, he is not negatively impacted by this rapid depletion of the Residuary Trust's funds.

71. Moreover, Petitioner, as a Co-Trustee, has a duty to act in the best interests of all of the Residuary Trust's beneficiaries and remaindermen. Despite two of the beneficiaries'—Respondents'—clear opposition to Petitioner's decision to use the Residuary Trust's assets to pay exorbitant legal expenses, however, Petitioner continues to incur significant legal fees at the expense of the Residuary Trust, leaving Respondents concerned that the Residuary Trust will be significantly drained of funds through this litigation, and that Petitioner will continue to amass significant expenses because he does not stand to inherit under the terms of the Will.

72. Petitioner's actions in bringing this frivolous action despite Respondents' objections clearly demonstrates an unwillingness to administer the Residuary Trust in reasonable cooperation and compromise with his Co-Trustees and reveals a pattern of indifference as to Respondents.

73. Based on the foregoing, Respondents are informed and believe that they are entitled to a judgment removing Petitioner as a Co-Trustee pursuant to S.C. Code Ann. § 62-7-706(b)(3), because of Petitioner's unwillingness to administer the trust in a cost-efficient manner.

WHEREFORE, having fully answered the Amended Petition, Respondents pray that the Court look into the matters and things alleged in the Amended Petition, dismiss the Amended Petition with prejudice, remove the Petitioner as requested herein, reduce or deny compensation to the Petitioner; and order any other appropriate relief, as the Court may deem just and proper.

HAYNSWORTH SINKLER BOYD, P.A.

By: s/James Y. Becker
James Y. Becker (SC Bar No. 64991)
Robert L. Reibold (SC Bar No. 9284)
Mary C. Eldridge (SC Bar No. 102698)
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(803) 779.3080

*Attorneys for Respondents Mary Deas Wortley
and Alice Boykin Belger*

September 26, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

IN THE MATTER OF:
LEMUEL WHITAKER BOYKIN, II, deceased

Case No. 2017-CP-28-00831

Rigdon H. Boykin, as sole disinterested Co-
Trustee of the Lemuel Whitaker Boykin, II
Residuary Trusts A and B;

Petitioner,

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;

Respondents.

**RESPONDENTS WORTLEY'S AND BELGER'S SECOND MOTION TO AMEND
ANSWER AND COUNTERCLAIMS TO CONFORM TO THE EVIDENCE**

Pursuant to Rule 15(a) and (b), SCRCP, Respondents Mary Deas Wortley and Alice Belger hereby move to amend their Second Answer and Counterclaim in the following manner:

1. Amend ¶ 17, which currently provides that the estate has "more than doubled in value" to state that the estate has "almost doubled" in value;
2. Amend ¶ 55, which currently states that Respondents have significant good faith disagreements concerning the administration of the estate to delete the words "good faith";
3. Amend ¶ 67, which currently states that the value of the "estate has more than doubled in value . . . from an estimated value of \$10,262,000" in 1989 "to a current estimated

value of approximately \$26,000,000,” to provide that the estate has almost doubled “to an estimated value of \$19.05 million (before estate taxes and other liabilities)”;

4. Amend ¶ 71, which currently refers to the opposition to Petitioner’s plan by Respondents, to reflect that Respondents and all remainder beneficiaries are opposed to the plan;

5. Amend the Second Answer to insert Respondents’ and Intervenor’s Eighth Defense and Third Counterclaim. This counterclaim would be a cause of action for removal of Petitioner Rigdon Boykin pursuant to S.C. Code Ann. § 62-7-706(4), which authorizes removal when “removal is requested by all of the qualified beneficiaries.” At trial, all parties were asked to inform the Court about the relief they requested. Respondents Wortley and Belger and all Intervenor’s (6 of 8 qualified beneficiaries) requested that Mr. Boykin be removed as a Trustee. Through their counsel, Respondents Whit and May Boykin (the remaining 2 of 8 qualified beneficiaries) requested that all three Trustees, including Mr. Boykin, be removed as a trustee. These requests for relief by the qualified beneficiaries constitute a showing of the unanimous consent required by Section 62-7-706(4) to remove Mr. Boykin as a trustee.

Respondents and the parties submitted evidence or made admissions regarding all of the above at the trial of this case without objection. As a result, these matters were tried by consent, and Respondents should be permitted to amend their pleadings to conform to the evidence and admissions made at trial. The rules governing amendment of pleadings strongly favors amendments and courts are encouraged to freely grant leave to amend. *Patton v. Miller*, 420 S.C. 417, 804 S.E.2d 252 (2017). Moreover, amendments to conform to the proof should be liberally allowed where, as here, justice requires and no prejudice results to the opposing party.

This motion is based upon applicable law and the evidence and admissions made at trial of this case.

HAYNSWORTH SINKLER BOYD, P.A.

By: s/James Y. Becker
James Y. Becker (SC Bar No. 64991)
Robert L. Reibold (SC Bar No. 9284)
Mary Cothonneau Eldridge (SC Bar No. 102698)
1201 Main Street, Suite 2200
Post Office Box 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 540-7706

October 8, 2018

*Attorneys for Respondents Mary Deas Wortley
and Alice Belger*

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

IN THE MATTER OF:
LEMUEL WHITAKER BOYKIN, II, deceased

Case No. 2017-CP-28-00831

Rigdon H. Boykin, as sole disinterested Co-
Trustee of the Lemuel Whitaker Boykin, II
Residuary Trusts A and B;

Petitioner,

v.

**WORTLEY, ET AL., MOTION FOR
PAYMENT OR REIMBURSEMENT
OF ATTORNEYS' FEES
AND OTHER COSTS**

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,
et al.

Respondents.

Respondents Mary Deas Wortley and Alice B. Belger and all Intervenors hereby move for an order directing either the L.W. Boykin II Residuary Trusts A & B (collectively the "Trust") or the Petitioner and Cross-Claimants, or any of them, as appropriate, to pay or reimburse certain attorneys' fees and other costs which Respondents and Intervenors have incurred in the administration of the Trust and in defending and prosecuting various claims in the above-captioned action. This motion is supported by the affidavits of Alice B. Belger and James Y. Becker, attached as Exhibits 1 and 2, respectively.

This motion is made pursuant to the following provisions of the South Carolina Trust Code:

- S.C. Code Ann. § 62-7-201(3), which provides that the Court has jurisdiction to “review the propriety of employment of a person by a trustee including an attorney, auditor, investment advisor or other specialized agent or assistant, and the reasonableness of the compensation of a person so employed, and the reasonableness of the compensation.” See also *Id.* § 62-1-302(d)(4).

- S.C. Code Ann. § 62-7-709(a), which provides that “[a] trustee is entitled to be reimbursed out of the trust property, with interest at the legal rate as appropriate, for: (1) expenses that were properly incurred in the administration of the trust”

- S.C. Code Ann. § 62-7-1004, which provides that “[i]n a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.”

Because the Court has decided to reserve any ruling on an award of attorneys’ fees and other costs until after a final order on the substantive factual and legal issues in this case and a hearing before the Court, the Court requested that the parties submit a brief accounting of their fees and costs along with proposed final orders. Respondents’ and Intervenor’s affidavits are thus submitted with this motion. Respondents and Intervenor’s also reserve and request the opportunity to submit additional information and briefing, as necessary, to fully present and support their request for fees and costs.

Pursuant to Rule 11, SCRCPP, the undersigned certifies that consultation regarding this motion with counsel for the opposing parties would serve no useful purpose.

[signature on following page]

HAYNSWORTH SINKLER BOYD, P.A.

By: s/James Y. Becker

James Y. Becker (SC Bar No. 64991)
Robert L. Reibold (SC Bar No. 9284)
Mary C. Eldridge (SC Bar No. 102698)
1201 Main Street, Suite 2200
Post Office Box 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779.3080

*Attorneys for Respondent Mary Deas Wortley
and Alice Belger and Intervenors*

January 17, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

IN THE MATTER OF:

Case No. 2017-CP-28-00831

LEMUEL WHITAKER BOYKIN, II, deceased

Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B;

Petitioner,

v.

**AFFIDAVIT OF ALICE B. BELGER
IN SUPPORT OF WORTLEY, ET AL.,
MOTION FOR
PAYMENT OR REIMBURSEMENT
OF ATTORNEY'S FEES**

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, *et al.*

Respondents.

PERSONALLY APPEARED BEFORE ME the undersigned, who being duly sworn,
deposes and says that:

1. I am a citizen and resident of Boykin, South Carolina. I am over 18 years of age, and I am competent to give the testimony set forth in this Affidavit.
2. I am a Co-Trustee of the L.W. Boykin, II Residuary Trusts A & B (collectively "Trust"). I have personal knowledge of the matters set forth in this Affidavit.
3. In order to fulfill my duties as a Trustee and to protect my rights as a beneficiary of the Trust, I have engaged the services of various attorneys for advice and counsel. When I first began serving as a Trustee in August 2016, I engaged Ms. Jennifer W. Davis, an attorney with Nelson Mullins in Charleston, SC, to represent me and my daughter, Allie Belger, as beneficiaries.



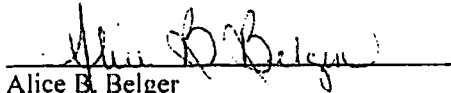
Ms. Davis practices in federal and state taxation and estate planning. Ms. Davis has billed me \$13,442.93 for her services. As of the date of this affidavit, I have paid approximately 38% of this outstanding obligation.

4. I later realized that I needed an attorney in the Camden, SC area, and I then engaged Mr. David W. Siddons, of Siddons Law Firm, PC in Columbia, SC. Mr. Siddons focuses his practice in estate administration and probate law, and he is a certified specialist in Taxation Law. Mr. Siddons attended many of the early Trustee meetings and provided excellent advice and counsel. He also prepared and circulated very thorough notes of these meetings. After my Co-Trustee, Rigdon Boykin, began threatening to commence litigation, Mr. Siddons preferred to discontinue the representation. Before he withdrew from representing me, Mr. Siddons billed me \$17,479.00 for his services. As of the date of this affidavit, I have paid approximately 38% of this outstanding obligation.

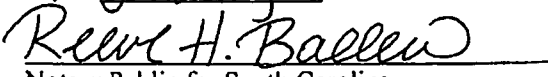
5. At that point, in the spring of 2017, Ms. Karen Thomas recommended that all of the Trustees hire their own litigation counsel. I engaged Mr. Walter H. Bundy, Jr. of Bundy McDonald, LLC to represent me. Mr. Bundy is an experienced litigator in the area of Trusts and Estates, having served as litigation counsel for Adele J. Pope and Robert L. Buchanan, Jr., Personal Representatives of The Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust. Mr. Bundy began providing advice and counsel to me and attending Trustee meetings with me. He also appeared and served as my counsel of record in the early stages of the above captioned litigation. On March 31, 2017, my Co-Trustee and sister, Mary Deas Wortley, engaged Mr. James Y. Becker, of Haynsworth Sinkler Boyd, P.A., as her litigation counsel. Mr. Becker also began attending Trustee meetings as Ms. Wortley's counsel.

6. In interrogatory responses dated May 21, 2018, Petitioner's counsel identified Mr. Bundy as a potential fact witness in this case, alleging that he had "direct knowledge of and involvement with the negotiations surrounding the Haile Gold Mine's desire to purchase the Residuary Trust's Boykin Millpond and related properties, and with the facts and circumstances leading to the breakdown of those negotiations and the failure of the Option Agreement to be consummated." Pet. Resp. to Alice B. Belger First Interrog. at 4. In this same response, Petitioner referred to audio recordings of various Trustee meetings as written or recorded statements of Mr. Bundy. Even though Mr. Bundy and Mr. Becker had both attended the same Trustee meetings, Petitioner named only Mr. Bundy as a potential fact witness. Rather than resist what appeared to be an inappropriate attempt to disqualify Mr. Bundy as trial counsel, Mr. Bundy and I then decided that the simplest and most efficient path forward would be for Mr. Bundy to withdraw as my counsel and to have Mr. Becker and his firm represent me in the litigation. Before he withdrew from representing me, Mr. Bundy billed me \$75,663.05 for his services. Petitioner's counsel never deposed Mr. Bundy or called him to testify at any hearing or at the trial. As of the date of this affidavit, I have not made any payments toward this outstanding obligation.

7. I swear or affirm that the facts set forth in this affidavit are true and correct.


Alice B. Belger

SWORN TO before me this 16
day of January, 2018


Notary Public for South Carolina
My Commission Expires: 10/29/28

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

IN THE MATTER OF:
LEMUEL WHITAKER BOYKIN, II, deceased

Case No. 2017-CP-28-00831

Rigdon H. Boykin, as sole disinterested Co-
Trustee of the Lemuel Whitaker Boykin, II
Residuary Trusts A and B;

Petitioner,

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,
et al.

Respondents.

2019 FEB 12 PM 3:54
JAMES Y. BECKER
CLERK OF COURT
KERSHAW COUNTY, S.C.

**AFFIDAVIT OF JAMES Y. BECKER
IN SUPPORT OF WORTLEY, ET AL.,
MOTION FOR
PAYMENT OR REIMBURSEMENT
OF ATTORNEY'S FEES**

PERSONALLY APPEARED BEFORE ME the undersigned, who being duly sworn,
deposes and says that:

1. I am an attorney with Haynsworth Sinkler Boyd, P.A. ("Haynsworth"), in
Columbia, South Carolina. I serve as counsel in the above referenced civil action to Mary Deas
Wortley, Alice B. Belger and their respective children, Theodore T. Wagner, III, B. Boykin
Wagner, Mary Deas Heimbach, and Allie Boykin Belger, the four remainder beneficiaries of the
Trust and the Intervenors in this action.

2. On March 31, 2017, Ms. Wortley, engaged my firm and me as her counsel in this
matter. I began attending Trustee meetings as Ms. Wortley's counsel and advising her on matters



coming before the Trustees. After the Petitioner first filed this litigation on August 23, 2017, we appeared as counsel of record for Ms. Wortley. Several months later, Haynsworth was also engaged to jointly represent Ms. Wortley's three children, as Intervenor, in this litigation. After Mr. Walter H. Bundy, Jr. withdrew as counsel to Alice B. Belger and her daughter, Allie B. Belger, Haynsworth was also engaged to jointly represent them as well.

3. Other professionals at Haynsworth have assisted me in representing these clients, including attorneys Robert L. Reibold and Mary Cothonneau Eldridge. Amanda Willoughby, a paralegal, has also assisted us since the inception of this representation. From time to time, other attorneys and paralegals in our firm have provided services or advice on discrete issues or tasks.

4. In addition to this litigation, our professional services have included advice and counsel to Ms. Wortley and Ms. Belger in their dual capacities as co-personal representatives of the Estate of Alice S. Boykin and Trustees of the L.W. Boykin Residuary Trusts A&B, advice to the Intervenor, in their capacity as Trust beneficiaries, and assistance with certain other legal matters such as liability insurance for the Trust, leases, and other contractual matters.

5. A summary of the professional time (by timekeeper) and other costs and expenses we have incurred and billed (or will soon bill) to our clients through January 15, 2019, is attached as Exhibit A. Beginning on August 1, 2018, we began applying an automatic 5% discount on the firm's standard hourly rates. This discount is effected by billing only 95% the hours actually worked for each professional beginning August 1, 2018. As of January 15, 2019, we have billed or will bill a total of \$597,029.08 in fees and costs. As of January 15, 2019, our clients have paid \$337,289.24, leaving a balance owing of \$259,739.84.

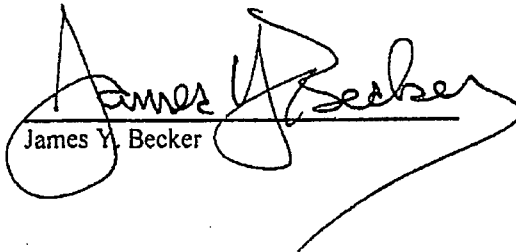
6. We have also engaged other professionals to provide advice to our clients and to provide expert witness testimony at the trial of this case. Mr. John Helms, a certified appraiser

and registered forester with Milliken Forestry, provided assistance with valuing the real property assets of the Trust, categorizing the property for sale and management, and preparing a comprehensive 15-year cash flow projection for the Trust. Mr. Helms's work-product provided the major components of the Wortley-Belger Investment Plan and Strategy for the Trust. As the court is aware, Mr. Helms testified at the trial of this matter and has provided significant post-trial analysis and reporting. All of the work-product produced by Mr. Helms should be very useful to the Trustees in future administration of the Trust. Mr. Helms has recently billed our clients \$21,000 for his services in this regard. No payments have yet been made on the invoice from Mr. Helms.

7. We also engaged Ms. Cheryl Holland as an expert witness in this matter. Ms. Holland is a Certified Financial Planner with Abacus Planning Group, Inc. Abacus is a Registered Investment Advisor based in Columbia, South Carolina managing over \$1.2 billion in assets. Ms. Holland is also a Certified Family Business Advisor with the Family Firm Institute and has over 30 years of experience as a financial advisor with a focus on advising high net worth families with shared investments. Ms. Holland reviewed and compared the competing investment and management plans of Petitioner and Respondents Wortley and Belger, and provided a report with her expert opinions. She testified regarding her analysis and opinions at the trial of this case and, after trial, provided an affidavit regarding the financial benefits of the 2032A election. Ms. Holland has billed our clients \$5,000 for her services in this matter, and she has been paid by our clients.

8. I swear or affirm that the facts set forth in this affidavit are true and correct.

[signature on following page]


James Y. Becker

SWORN TO before me this 17
day of January, 2018


Notary Public for South Carolina
My Commission Expires: 10/29/28

Haynsworth Sinkler Boyd, P.A.

Summary Report of Attorney's Fees & Costs Incurred by Respondents Wortley, Belger, and Intervenors

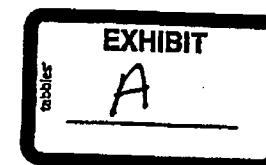
HSB Client Matter Number 39944.0001

Boykin v. Wortley, et al.; Case No 2017-CP-28-00831

As of January 15, 2019

		<i>Billed</i>	<i>Unbilled</i>	<i>Total</i>	<i>Paid</i>	<i>Unbilled & Outstanding A/R</i>
<u>Haynsworth Sinkler Boyd, PA</u>						
Fees	\$	554,878.80	\$ 33,571.50	\$ 588,450.30	\$ (332,867.86)	\$ 255,582.44
Costs	\$	7,551.06	\$ 1,027.72	\$ 8,578.78	\$ (4,421.38)	\$ 4,157.40
Total Fees & Costs	\$	562,429.86	\$ 34,599.22	\$ 597,029.08	\$ (337,289.24)	\$ 259,739.84
<u>Addtl Fees & Costs of Alice</u>						
<u>Belger</u>						
Nelson Mullins LLP	\$	13,442.93	\$ -	\$ 13,442.93	\$ (5,108.31)	\$ 8,334.62
Siddons Law Firm PC	\$	17,479.00	\$ -	\$ 17,479.00	\$ (6,642.02)	\$ 10,836.98
Bundy McDonald LLC	\$	75,663.05	\$ -	\$ 75,663.05	\$ -	\$ 75,663.05
<u>Expert Witness Fees</u>						
John R. Helms	\$	21,000.00	\$ -	\$ 21,000.00	\$ -	\$ 21,000.00
Cheryl Holland	\$	5,000.00	\$ -	\$ 5,000.00	\$ (5,000.00)	\$ -
TOTAL				\$ 729,614.06	\$ (354,039.57)	\$ 375,574.49

DM-#5684485



Haynsworth Sinkler Boyd, P.A.

Summary Report of Attorney's Fees & Costs Incurred by Respondents Wortley & Belger and Intervenors

HSB Client Matter Number 39944.0001

Boykin v. Wortley, et al.; Case No 2017-CP-28-00831

As of January 15, 2019

Cost Description	Base Amt	Billed Amt	To Bill Amt
Arbitrators / Mediators	\$1,720.00	\$1,720.00	\$0.00
Conference Call Services	\$96.36	\$85.23	\$11.13
Copying	\$351.50	\$351.50	\$0.00
Courier Service	\$116.03	\$116.03	\$0.00
Court Reporter - Deposition	\$4,602.85	\$3,693.75	\$909.10
Court Reporter - Hearing	\$324.75	\$249.00	\$75.75
Federal Express	\$92.94	\$92.94	\$0.00
Filing Fees	\$399.76	\$368.02	\$31.74
Meals	\$310.28	\$310.28	\$0.00
Mileage	\$251.06	\$251.06	\$0.00
Other	\$5.25	\$5.25	\$0.00
Out of Town Travel	\$150.43	\$150.43	\$0.00
Photocopies	\$96.00	\$96.00	\$0.00
Postage	\$8.23	\$8.23	\$0.00
Witness Fees	\$25.00	\$25.00	\$0.00
Witness Mileage	\$28.34	\$28.34	\$0.00
Grand Total	\$8,578.78	\$7,551.06	\$1,027.72

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

Rigdon H. Boykin)

Plaintiff,)

vs.)

Mary Deas Wortley, et al)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-28-00831

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Pro Se, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/ ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted _____	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
)

COUNTY OF KERSHAW

) CASE NO: 2017-CP-28-00831
)

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,

Petitioner,

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

Respondents,

Lemuel Whitaker Boykin, III; and May Cantey
Boykin,

Crossclaim Petitioners,

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.

**PETITIONER'S NOTICE OF
MOTION AND MOTION TO ALTER
OR AMEND ORDER AND FINAL
JUDGMENT**

2018 JUN -3 PM 4:45
CLERK OF COURT
KERSHAW COUNTY, S.C.

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,)
 Crossclaim Respondents.)

PLEASE TAKE NOTICE that within ten days after service hereof, or as soon thereafter as counsel may be heard, Petitioner will move, pursuant to Rules 52(b) and 59(e), SCRCF, for alteration or amendment of the Order and Final Judgment entered on May 24, 2019 in this matter.¹ The grounds for this Motion are as follows:

1. In entering its Order and Final Judgment, the Trial Court failed to account for the fact that the Residuary Trust had virtually no net fiduciary income for the years 2017 and 2018 and is unlikely to have any net fiduciary income going forward without substantial and immediate diversification out of underproductive Residuary Trust assets. To date, most of the distributions made to the lifetime beneficiaries of the Residuary Trust have been made out of Trust principal. This basis is sufficient for the Trial Court to adopt Petitioner's proposed management plan for the Residuary Trust as opposed to that of Respondents Wortley and Belger.

2. The Trial Court erred in failing to rule on a critical issue in the case—determining the net asset value of the Residuary Trust. The value of the Residuary Trust is a cornerstone issue—which was recognized by the Trial Court when it requested that all parties submit extensive analysis and documentation concerning the parties' positions as to the value of the Residuary Trust. A large portion of the evidentiary record and testimony at trial was linked to and predicated upon the parties' disagreement regarding the Residuary Trust value. Therefore,

¹ Petitioner hereby submits this Motion out of an abundance of caution and in the interest of preserving issues for any potential appeal in this matter.

the Trial Court, in failing to make a determination as to the value of the Residuary Trust, overlooked an essential element for determining the appropriate amount of beneficiary distributions, the appropriate timeline for achieving diversification of assets, and the appropriate degree of asset diversification.

3. The Order and Final Judgment apparently does not distinguish between Residuary Trust properties which are subject to the Decedent's precatory wishes expressed in his Will, and those which are not subject to any such expressed desire for retention. In failing to address this issue, or to provide sufficient clarification regarding the different categories of Residuary Trust property, the Trial Court implicitly held that Respondents Wortley and Belger, and the Co-Trustees of the Residuary Trust, may retain certain "non-precatory" properties held by the Residuary Trust for an undefined period of time by including them in the same category as the properties which are specifically expressed by tract in the Decedent's Will as subject to his precatory desire for retention.

4. The Trial Court erred in appointing Cheryl Holland as a substitute Co-Trustee of the Residuary Trust to take the place of Petitioner. Cheryl Holland served as Respondents Wortley's and Belger's hired expert for purposes of litigation, and therefore is subject to a conflict of interest. Because of this pre-existing relationship it is unlikely that Ms. Holland will bring an open mind to the management of the Residuary Trust. Moreover, neither Petitioner nor any of the parties at trial had the opportunity to present evidence on the issue of Ms. Holland being considered as a replacement Co-Trustee. At a minimum, if Respondents Wortley and Belger are to remain as Co-Trustees of the Residuary Trust, a third Co-Trustee who adequately represents the interests of Respondents Whit Boykin and May Boykin should be appointed.

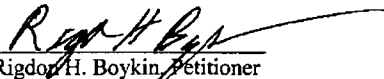
Certainly May Boykin or her husband, James Koegal would both satisfy the family requirement and add some balance.

5. The Trial Court misconstrued the parties' arguments concerning, and the impact of, the "underproductive property rule" on the Residuary Trust. For example, on page 48 of the Order and Final Judgment, the Trial Court held as follows: "In many ways, it [the Will] expresses a preference for the interest of the remainder beneficiaries over those of the income beneficiaries. For example, the Will waives the unproductive property rule and instructs the Trustees to consider what other economic resources a particular beneficiary may possess in determining a reasonable distribution, provisions which disadvantage income beneficiaries" (Emphasis added).

Petitioner's trial brief addressed the fact that the unproductive property rule was inapplicable after about 2001, when South Carolina adopted a new Uniform Principal and Income Act, which no longer contained an unproductive property rule. Further, even if it could be argued that the unproductive property rule is applicable in this case because it formed a part of the Principal and Income Act in effect when the Decedent wrote his Will, that rule does not favor Respondents Wortley's and Belger's position, as they argued at trial. The unproductive property rule was to the effect that if an unproductive asset was at some point made productive (such as by sale of the asset) the trust beneficiaries were to be made whole by the trustees' paying them "delayed income," that is, income which would have been received by them during the period when the asset was unproductive. When the Decedent in this case said he waived the delayed income requirement, he was providing that the four beneficiaries (Respondents Wortley, Belger, Whit Boykin, and May Boykin) were not to be made whole. This suggests that such waiver by the Decedent is indicative of his belief that real estate must be sold.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court alter or amend its Order and Final Judgment, and find in favor of the Petitioner.


Rigdon H. Boykin, Petitioner
Po Box 69
Rembert, SC 29128
803-432-5670 Phone
rhboykin@icloud.com

June 3, 2019
Camden, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

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,

Petitioner,

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

Respondents,

Lemuel Whitaker Boykin, III; and May Cantey
Boykin,

Crossclaim Petitioners,

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.

IN THE COURT OF COMMON PLEAS

CASE NO: 2017-CP-28-00831

**RE-FILING OF
PETITIONER'S NOTICE OF
MOTION AND MOTION TO ALTER
OR AMEND ORDER AND FINAL
JUDGMENT**

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,)
)
 Crossclaim Respondents.)

Petitioner hereby refiles this Motion To Alter or Amend over the signature of the undersigned counsel, who have just appeared in this action on behalf of Petitioner. Other than this introductory paragraph and the signature block, this filing is identical to the motion filed by Petitioner *pro se* on June 3, 2019.

PLEASE TAKE NOTICE that within ten days after service hereof, or as soon thereafter as counsel may be heard, Petitioner will move, pursuant to Rules 52(b) and 59(e), SCRCP, for alteration or amendment of the Order and Final Judgment entered on May 24, 2019 in this matter.¹ The grounds for this Motion are as follows:

1. In entering its Order and Final Judgment, the Trial Court failed to account for the fact that the Residuary Trust had virtually no net fiduciary income for the years 2017 and 2018 and is unlikely to have any net fiduciary income going forward without substantial and immediate diversification out of underproductive Residuary Trust assets. To date, most of the distributions made to the lifetime beneficiaries of the Residuary Trust have been made out of Trust principal. This basis is sufficient for the Trial Court to adopt Petitioner's proposed management plan for the Residuary Trust as opposed to that of Respondents Wortley and Belger.

2. The Trial Court erred in failing to rule on a critical issue in the case—determining the net asset value of the Residuary Trust. The value of the Residuary Trust is a cornerstone

¹ Petitioner hereby submits this Motion out of an abundance of caution and in the interest of preserving issues for any potential appeal in this matter.

issue—which was recognized by the Trial Court when it requested that all parties submit extensive analysis and documentation concerning the parties’ positions as to the value of the Residuary Trust. A large portion of the evidentiary record and testimony at trial was linked to and predicated upon the parties’ disagreement regarding the Residuary Trust value. Therefore, the Trial Court, in failing to make a determination as to the value of the Residuary Trust, overlooked an essential element for determining the appropriate amount of beneficiary distributions, the appropriate timeline for achieving diversification of assets, and the appropriate degree of asset diversification.

3. The Order and Final Judgment apparently does not distinguish between Residuary Trust properties which are subject to the Decedent’s precatory wishes expressed in his Will, and those which are not subject to any such expressed desire for retention. In failing to address this issue, or to provide sufficient clarification regarding the different categories of Residuary Trust property, the Trial Court implicitly held that Respondents Wortley and Belger, and the Co-Trustees of the Residuary Trust, may retain certain “non-precatory” properties held by the Residuary Trust for an undefined period of time by including them in the same category as the properties which are specifically expressed by tract in the Decedent’s Will as subject to his precatory desire for retention.

4. The Trial Court erred in appointing Cheryl Holland as a substitute Co-Trustee of the Residuary Trust to take the place of Petitioner. Cheryl Holland served as Respondents Wortley’s and Belger’s hired expert for purposes of litigation, and therefore is subject to a conflict of interest. Because of this pre-existing relationship it is unlikely that Ms. Holland will bring an open mind to the management of the Residuary Trust. Moreover, neither Petitioner nor any of the parties at trial had the opportunity to present evidence on the issue of Ms. Holland

being considered as a replacement Co-Trustee. At a minimum, if Respondents Wortley and Belger are to remain as Co-Trustees of the Residuary Trust, a third Co-Trustee who adequately represents the interests of Respondents Whit Boykin and May Boykin should be appointed. Certainly May Boykin or her husband, James Koegal would both satisfy the family requirement and add some balance.

5. The Trial Court misconstrued the parties' arguments concerning, and the impact of, the "underproductive property rule" on the Residuary Trust. For example, on page 48 of the Order and Final Judgment, the Trial Court held as follows: "In many ways, it [the Will] expresses a preference for the interest of the remainder beneficiaries over those of the income beneficiaries. For example, the Will waives the unproductive property rule and instructs the Trustees to consider what other economic resources a particular beneficiary may possess in determining a reasonable distribution, provisions which disadvantage income beneficiaries" (Emphasis added).

Petitioner's trial brief addressed the fact that the unproductive property rule was inapplicable after about 2001, when South Carolina adopted a new Uniform Principal and Income Act, which no longer contained an unproductive property rule. Further, even if it could be argued that the unproductive property rule is applicable in this case because it formed a part of the Principal and Income Act in effect when the Decedent wrote his Will, that rule does not favor Respondents Wortley's and Belger's position, as they argued at trial. The unproductive property rule was to the effect that if an unproductive asset was at some point made productive (such as by sale of the asset) the trust beneficiaries were to be made whole by the trustees' paying them "delayed income," that is, income which would have been received by them during the period when the asset was unproductive. When the Decedent in this case said he waived the

delayed income requirement, he was providing that the four beneficiaries (Respondents Wortley, Belger, Whit Boykin, and May Boykin) were not to be made whole. This suggests that such waiver by the Decedent is indicative of his belief that real estate must be sold.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court alter or amend its Order and Final Judgment, and find in favor of the Petitioner.

s/ Wallace K. Lightsey

Wallace K. Lightsey (SC Bar No. 6476)
Wade S. Kolb, III (S.C. Bar No. 100379)
Post Office Box 728
Greenville, SC 29602-0728
(864) 242-8200

Attorneys for Petitioner

Dated: June 13, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

IN THE MATTER OF:

Case No. 2017-CP-28-00831

LEMUEL WHITAKER BOYKIN, II, deceased

Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B;

Petitioner,

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, et al.

Respondents.

RESPONDENT WORTLEY'S AND BELGER'S AND THE INTERVENORS' REPLY TO CROSS-CLAIMANTS' OPPOSITION TO MOTION TO ALTER OR AMEND

Respondents Wortley and Belger (the "Respondent Trustees") and the Intervenors hereby reply to Cross Claimants' opposition to the Respondent Trustees' Motion to Alter or Amend.

Cross Claimants continue to oppose the § 2032A tax election, but offer no new or compelling reasons for doing so. They simply regurgitate and incorporate by reference their prior arguments. Respondent Trustees have previously demonstrated through citation to legal authority and expert testimony that invoking the § 2032A election does *not* prevent the land from being sold for ten years or commit the Trust to stay in the timber business for the same time period. If the Trust subsequently decides to sell a piece of land subject to the election or change its use, the Trust

must only return to the government the benefit it received, leaving the Trust in the same situation as if it had never invoked the election. There is no valid reason not to at least *try* to take advantage of the election.¹

Cross Claimants also address the Respondent Trustees' challenge to their award of attorney's fees. They rely exclusively on S.C. Code § 62-7-1004 as authority for deviation from the traditional American Rule, which would ordinarily require them to pay their own litigation expenses.² This section provides that:

[i]n a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

S.C. Code Ann. § 62-7-1004.

The language of this section is broad enough to encompass an award of fees to a beneficiary, but the Reporter's Comment contains a significant limitation for claims by beneficiaries. The Reporter's Comment states:

[t]he court may award a party its own fees and costs from the trust. The court may also charge a party's costs and fees against another party to the litigation. Generally, litigation expenses were at common law chargeable against another party only in the case of egregious conduct such as bad faith or fraud. With respect to a party's own fees, Section 62-7-709 authorizes a trustee to recover expenditures properly incurred in the administration of the trust. *The court may award a beneficiary litigation costs if the litigation is deemed beneficial to the trust.*

S.C. Code Ann. § 62-7-1004 (emphasis added).

Cross Claimants attempt to satisfy this requirement for an award of fees by arguing that their action benefitted the Trust in the following manner:

¹ Respondent Trustees incorporate their prior briefing on this matter by reference.

² Cross Claimants cannot avail themselves of any provisions in the Will or the Trust Code which address attorney's fees because these provisions only allow *trustees* to recover fees under proper circumstances. Cross Claimants are beneficiaries, not trustees.

1. The cross claim against the Respondent Trustees forced the Respondent Trustees to realize that their management was not prudent under the circumstances;
2. The cross claim against the Respondent Trustees forced them to retain John Helms to develop a management and investment strategy;
3. The cross claim against the Respondent Trustees forced them to identify the specific assets of the Trust and to acknowledge that they had a duty to diversify.

Put simply, these contentions are absurd. Cross Claimants initially asserted causes of action for negligence and breach of fiduciary duty. They sought actual and punitive damages against Respondent Trustees personally. Cross Claimants later *abandoned* these same claims at trial, and amended their pleadings to assert a single cause of action for removal, essentially piggy backing on Petitioner's pleadings. The Court itself noted that counsel for Cross Claimants "largely adopted the positions taken by Petitioner" and played a "limited role" in this action. (Order at p. 60). It is difficult to imagine how Cross Claimants, who abandoned their own claims and said "me too" when Petitioner's counsel spoke, could claim to be responsible for anything which occurred in this case.

Moreover, cross claims against the Respondent Trustees were not necessary to force Respondent Trustees to acknowledge a need to diversify or adopt a plan for diversification. Respondent Trustees have always been willing to diversify by selling Trust property and investing in the stock market. Where Respondent Trustees disagreed with Petitioner and apparently Cross Claimants is that Respondent Trustees did not desire to sell virtually all Trust property as soon as possible. They instead wished to preserve certain family legacy tracts and diversify over a longer time period to promote flexibility and avoid the natural decrease in sales prices which would accompany the type of fire sale promoted by Petitioner and Cross Claimants.

That Respondent Trustees have always been willing to diversify in the manner recommended by John Helms and Cheryl Holland is evidenced by the following facts:

- In August of 2016, shortly after Alice S. Boykin's death, and more than a year before Petitioner filed suit, Respondent Trustees voted with Petitioner to place certain Trust property for sale. (Final Order at p. 13.)
- Petitioner filed suit in Probate Court on August 23, 2017. His initial pleadings did not seek modification of the Trust or removal of the Co-Trustees.
- Cross Claimants filed their initial Cross Claims for negligence and breach of fiduciary duty on September 8, 2017.
- Petitioner's suit and the Cross Claims were filed *before* it was even possible to develop the Wortley Belger Plan. As the Court held, a timber survey and appraisal by Mr. LaFrage and Mr. Helms were necessary to obtain the data needed to ascertain the value of the Trust and to create an informed investment plan. (*Id.* at p. 15.) The date-of-death appraisals were not complete *until November 7, 2017.* (*Id.*)
- Petitioner himself subsequently commissioned independent appraisals of Trust property, which were not complete until the first quarter of 2018. (*Id.*)
- However, even before all of the information necessary to develop the Wortley Belger Plan had been obtained, Respondent Trustees had approved the sale of substantial Trust property. By January of 2018, Respondent Trustees had compiled a list of Trust properties to be sold. The properties on the list had an estimated value of \$3,803,638. (Alice Belger Aff. Jan. 24, 2018 at ¶ 8.).
- Alice Belger was deposed on February 26, 2018. In deposition, she stated under oath that she had a duty to diversify and that she would fund the obligation to diversify by selling land and timber and investing in stocks. (Belger Dep. At 66:18-71:25.) She was planning on putting forward a management plan that would generate income from stocks and bonds. (*Id.* at 91:17-25.)
- Mary Deas Wortley was deposed three weeks later. She testified under oath that she had a general investment strategy which she described in the following manner:

"I think we do need to diversify further. . . . I think we do need to protect the treasured tracts. I think we need to sell some [of] our assets and then invest them in the stock market. But I think we have to do it carefully and prudently. We cannot rush into dumping a whole lot of land on the market. . . . It would . . . drive [prices] down. I think we need the luxury of time to manage our timber resources and sell what we can and see how it goes."

(Wortley Dep. at 27:8-14.)

This description is remarkably similar to the final Wortley Belger Plan, and was provided to Petitioner in March of 2018.

- A summary of the Wortley Belger Plan was provided to Petitioner on April 6, 2018. (See Becker email to R. Boykin, attached as **Exhibit A**);
- The Wortley Belger Plan was discussed at a Trustee meeting which occurred on April 12, 2018. (Minutes of April 12, 2018 Trustee Meeting.)
- A draft of the proposed Wortley Belger Plan was also provided to the Court by email on April 24, 2018.
- Petitioner amended his complaint to introduce new claims for modification of the Trust and removal of his Co-Trustees more than a month later on May 7, 2018, after Petitioner heard sworn testimony from Respondent Trustees that they would seek diversification, after reviewing and discussing an outline of the proposed plan, and after the Court had been provided with a draft of the plan.

In summary, the Respondent Trustees have always been amenable to reasonable diversification. They did not suddenly change their position at trial.

Because Cross Claimants voluntarily abandoned their own claims at trial, the only claim presented to the Court by Cross Claimants was a claim for removal which mirrored that brought by Petitioner. This claim was asserted long after the Wortley Belger Investment Plan had been presented to the Court. Moreover, the Court held that the Wortley Belger Plan is a reasonable investment and management strategy. (Order at p. 20.) There was no need for Cross Claimants to even be present to achieve the benefits they now claim.

Neither Petitioner nor Cross Claimants can credibly argue that a claim for removal of the Respondent Trustees (the only claim tried by Cross Claimants) benefitted the Trust by causing the development of the Wortley Belger Plan – Petitioner and Cross Claimants had reviewed and rejected such a plan *before* any claim for removal was asserted. As the Court concluded, counsel for Cross Claimants failed to achieve any significant beneficial result on behalf of his clients. The Cross Claims did not benefit the Trust, and it is improper to tax the Trust with the cost of Cross Claimants' suit.

For the reasons stated above and in Respondent Trustees' original Motion to Alter or Amend, Respondent Trustees respectfully request that Cross Claimants be compelled to consent to the § 2032A tax election and that the award of attorney's fees and costs to Cross Claimants from the corpus of the Trust be stricken.

Most respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

By: s/James Y. Becker

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Heimbach, and Allie Boykin Belger*

June 18, 2019
Columbia, South Carolina

Becker, James

From: Becker, James
Sent: Friday, April 6, 2018 3:13 PM
To: Rigdon Boykin
Cc: mary wortley; Alice Belger; Alice Belger (alicebbelger@gmail.com); Walter H. Bundy (WHBundy@att.net); Walter H. "Bill" Bundy (walter@bundymcdonald.com); William Tetterton
Subject: Boykin Trust; proposed investment plan/strategy
Attachments: DM 5337763-v8 Boykin Trust Investment Plan and Strategy.DOCX

Rigdon:

Attached please find a draft investment plan/strategy document from Mary Deas and Alice, which we submit for your review and consideration.

As we discussed this morning, this is proposed as a method by which all three Trustees might reach consensus on general goals, objectives, and "rules of the road" for the future, but especially for the next several years. We have also included a proposed distribution for 2018 to the four income beneficiaries. As we also discussed, the hope is to increase that distribution in future years, when hopefully, the Trust has fewer legal fees and other expenses to cover. We look forward to your input and comments on this document.

As for the Millpond option agreement, my goal is to send you a list of proposed terms and changes for the agreement by Monday or Tuesday of next week, and sooner if possible.

As you will see from reading the attached document, we have consulted extensively with John Helms of Milliken and other investment advisors. We have also asked John Helms to start with the appraisal he prepared for the estate tax return and prepare a "master inventory" of the Trust's real estate and timber holdings that consolidates in one place comprehensive information regarding all tracts owned by the Trust (e.g. location, acreage, tax parcel #, land characteristics, any appraisal values, timber information, sale listing information, etc. The objective here is to have tools and methods to help the Trustees organize information and develop goals and priorities regarding land and timber sales as part of their overall investment strategy. The hope is that having all relevant information in one place, that is frequently updated, will make decisions on listing property for sale and responding to offers to purchase much more efficient in the future.

Also, John Helms has advised us that Milliken can produce very accurate maps of a particular tract or tax parcel for obtaining reasonable acreage figures with which to initiate a listing, subject to a survey, if necessary, to complete a sale. And you may already know this, but Milliken also has a real estate department experienced in selling rural as well as other types of land with a Broker in Charge (Gary Springer) and 5 assigned brokers/agents (Angus Lafaye, Billy Cate, Billy McTeer, Rob Drummond and Hale McCullough) working under Gary.

**Haynsworth
Sinkler Boyd, PA**

ATTORNEYS AND COUNSELORS AT LAW

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L.W. Boykin, II Residuary Trust
Investment Plan and Strategy
 Proposed by Mary Deas Wortley and Alice Boykin Belger
 April 6, 2018

1) The trustees will act in a reasonable and prudent manner to:

- a) manage the assets and liabilities of the trust in the interests of all beneficiaries;
- b) attempt to grow the total asset value (net of any liabilities) of the Trust over time in accordance with the investment goals and objectives outlined below;
- c) reasonably minimize trust administration expenses and reasonably maximize the trust's income and return on investment assets;
- d) carefully and diligently consider all reasonable investment options and proposals for the trusts' assets, and any offers to purchase the Trust's real property assets;
- e) to the extent reasonably practical, honor Mr. Boykin's wishes as expressed in his Last Will and Testament;

2) General Statement of Present Status and Future Strategy

- a) The Trustees agree that the net asset value of the Trust(assets less liabilities) is now approximately \$22 million (\$25 million in cash, timber, and real estate assets less \$2.8 million in deferred estate taxes and other payables).
- b) The Trustees will be committed to growing the net value of the Trust's investment assets over time.
 - i) This will promote increasing distributions to the income beneficiaries over time, and
 - ii) it will ensure that the remainder beneficiaries are protected from depletion of the trust principal.
- c) The Trust's investment assets, which now consist primarily of real estate and timber (approximately 90% of the total), are not as diversified as they should be.
- d) The Trustees should carefully, diligently, and prudently begin to sell real estate assets and diversify the Trust's portfolio of investment assets to include a significantly higher percentage of financial assets, such as stocks and bonds, while keeping in mind that though diversification of investments is important, the Will allows for the retention of certain "under-productive" real property assets.
- e) The plan will need to allow for a reasonable time period to avoid missing opportunities to maximize revenues and capture investment opportunities from land and timber assets and continue annual distributions to income beneficiaries.
 - i) At this point in time, however, it is not reasonable or prudent to adopt an optimal mix of real estate (timber and farm properties) and financial assets.

- (1) Placing too much property on the market at one time in a concentrated area could depress prices to the detriment of optimizing the long term value of the Trust's assets.
- (2) Due to liquidity and other concerns regarding land and timber markets and the existence of certain legacy lands in the Boykin Mill Pond area, as well as a need to carefully select the alternative investments systematically and at opportune times, it is not reasonable nor prudent to place excessive or immediate time pressure on this transfer. One reason is that timberland and farm land assets already have investment characteristics that are equal to or better than short to medium term bonds. Another reason is that timber markets are poised to improve and are at worst, considered stable. Finally, all the other asset classes and types of alternative investments go through cycles and a systematic investment approach involving as much diversity as possible is preferred.
- (3) Since land is a stable asset, the economy is gradually improving and because of the large acreage owned and the somewhat wide diversity of land types and other conditions involved, a prudent step is to first go through the inventory of land and identify factors such as potential to appreciate in value from ongoing population growth, productivity from farming or timber, ability to provide irrigation (agricultural water is an increasingly rare resource) and potential to provide recreational or residential sites. More remote and less productive land, land with less perceived potential for price appreciation, etc., should be prioritized for sale first. The Peckwoods land is already identified as having a potential to attain its maximum potential as residential sites in the near future and can be sold once (and if) that occurs.
- (4) Nevertheless, the Trustees should seriously consider any reasonable offer to purchase any of the Trust's real property assets at any time.

- ii) The Trustees should be guided in the process of diversification, i.e., converting the current real property assets to financial assets, by professionals in the field of farm and timber property, such as John Helms, Director of Real Estate and Appraisal Services, of Milliken Forestry Company, Inc., and Jimmy LaFrage.
 - (1) These consultants should be tasked with developing, a combined real estate and timber plan for each property, which should consider factors such as disposal priorities of the land and timber and reforestation and management objectives for any properties being retained.
 - (2) There is a large amount of acreage (almost 6,000 acres) in a wide diversity of geographic locations (although concentrated at Boykin Mill Pond and Sumter Mountain areas) and types of land involved, and thus a reasonable disposition period for almost 6,000 acres as individual tracts could easily involve 10 to 15 years.

(3) Therefore, the properties retained for the longer time period (or forever) should be based on a land (and timber) disposition strategy that is intensively studied and well thought out.

(4) Trustees should seek professional advice involving how to maximize land investments including timber management for better productivity on less land (by using better silviculture on fewer acres, since the less productive acres will be sold, etc. and also a variety of other types of land values such as conservation values, carbon credits, wetland mitigation credits, etc.

(5) Advantageous target prices for real estate and timber should be set for all properties by the Trustees, factoring in prices above “wholesale” values that reflect their perceptions of lands with the greatest productivity, potential for future appreciation and legacy values. As part of annual or more frequent assessments of land and timber disposal strategies, alternative investments, including risks, should always be assessed and taken into consideration. For example, if bonds and stocks are perceived as overvalued at a particular point-in-time, there is no need to aggressively sell land or timber, unless land prices and/or timber prices are exceeding expectations, etc.

f) The trustees should carefully consider all aspects of each tract to be sold, including the sales price and the likely gain (profit) on the sale of both land and timber.

g) The Trustees should appraise and analyze each real property tract and prepare an analysis of the estimated average annual rate of return (over a ten year holding period). If the estimated average annual rate of return does not meet or exceed the target average annual rate of return, then the tract should be sold or a plan established to meet the target amount of return, as soon as reasonably possible.

h) The conversion of real property assets to financial assets should be accomplished using a methodical and diversified approach (“Dollar cost averaging” and picking investments and types of assets that represent good opportunities at good times in their business cycles). There is considerable uncertainty in all financial asset markets at the present time, so it is advisable to retain a higher than normal allocation in cash and short term bonds while the investment planning is moving forward.

3) Investment Goals and Objectives

a) The Trust should seek to maintain a diverse mix of assets, recognizing that types or classes of assets tend to appreciate and depreciate on different cycles and have different levels of risk and liquidity. Also, that some asset classes, such as agricultural land and timberland, are considered counter cyclical (at least to a degree) to other types of investments. The Trust should maintain roughly 6% to 12% of assets in cash, CDs or short term government bonds in order to cover expenses and provide annual cash distributions to the income beneficiaries.

- b) The Trustees will utilize three asset categories for purposes of managing the Trust's assets:
- i) Cash and fixed income consists of:
 - (1) Cash held in banks, savings institutions, or money market mutual funds sponsored by reputable managers; and
 - (2) Fixed income investments, e.g., bonds, bond mutual funds, or bond exchange traded funds ("ETFs") traded on recognized U.S. and international exchanges;
 - ii) Equities, e.g., stocks, stock mutual funds, or stock ETFs traded on recognized U.S. and international exchanges;
 - iii) Timber and timberlands now held by the Trust or acquired in the future.
- c) The historical and expected average annual rate of return in each of these asset categories is as follows:

i) Financial assets:

(1) Charles Schwab Investment Advisory (a separately registered investment advisor and affiliate of Charles Schwab & Co. Inc.) (August 2017)

(a) *Highlights:* 6.7% expect nominal return from U.S. large-cap stocks from 2017-2026; 3.1% nominal returns from U.S. investment-grade bonds (August 2017)

(b) Charles Schwab Investment Advisory was forecasting higher equity returns than many of the other firms in the survey—roughly 7% on a noninflation-adjusted basis for U.S. and foreign-large caps as of August 2017. (Given stocks continued run in the second half of 2017, it's possible the firm has ratcheted its expectations downward since then). Moreover, the firm's return expectation for foreign equities wasn't appreciably better than for U.S. stocks. But like most of the other firms, Charles Schwab Investment Advisory expects returns over the next decade to be lower than the past 45 years, owing to high stock valuations, among other factors.

(2) Vanguard (December 2017):

(a) *Highlights:* Nominal U.S. equity-market returns in the 3% to 5% range during the next decade; 5.5% to 7.5% returns for non-U.S. equities;

(b) 2% to 3% expected returns for global fixed income markets.

- ii) Timber and timberlands: According to John Helms, timber value growth is 5% or 6% (and can be higher or lower under some circumstances). Conservatively, we expect these yields to average closer to 3% or 4%, especially when income factors such as hunting leases, pine straw, crop rents, etc. are factored in. Potential improvements in timber markets and continued population growth in South Carolina could add another 1% or more to these returns.
- iii) Some experience needs to be gained in evaluating and comparing the real estate assets to each other and to other assets, recognizing that they are a non-correlated asset class and provide participation in a variety of markets (different types of land and different types of timber, in different locations, etc.).

d) Recognizing that these are minimum expected returns and the goal is always to maximize returns, especially within asset classes, the Trustees should adopt the following target average annual rate of return ("TAARR") on trust assets:

- i) To ensure likely increases over time in annual distributions to the income beneficiaries and to grow the net value of the Trust's investment assets, the TAARR on total net trust assets should be 5% per annum or greater, while diversifying in an appropriate timeframe and maintaining a reasonably balanced mix of financial assets and real property/timber assets.
- ii) For all financial assets in the equities category, the TAARR should equal or exceed 6.0%. Results for this asset class can be averaged over any given 2 or 3 year period. We expect these returns to exceed 10% in good years, but could be a loss in other years.
- iii) For all financial assets in the cash and fixed income category, the TAARR should equal or exceed 3.0%. These investments should include a range of maturity or asset types deemed appropriate by the advisor/managers, subject to a 10% to 15% of total assets being in CDs, cash and short term bonds as a safety factor. These returns depend a lot on interest rates and the primary reason for having these assets is to assure cash flow and provide a defensive strategy.
- iv) For all real property assets (except the treasured tracts), such as farm land or timber land, the TAARR should equal or exceed 4.0%.
- v) A process should be developed through which rates of return can be compared between different investments and also different tracts and types of land. This information should be reviewed annually and used to formulate investment strategies for each year. All timberland and agricultural and real estate properties should be ranked and compared for their relative worth, acknowledging legacy values in addition to other factors such as income potential, price appreciation and productivity and including potential for use of advance pine silviculture on appropriate sites.
- vi) These benchmark rates of return for the various asset categories will be reviewed and adjusted at least once every two years.

e) The estimated TAARR of all existing trust assets will be measured against these target rates of return in the appropriate category. Any existing assets which are not reasonably expected to equal or exceed this TAARR should be sold as soon as reasonably practical.

4) Estate Tax 6166 election- has significant benefits to the Trust

- a) This election allows the Trust to defer payment of the approximately \$2.78 million balance of estate taxes due at very low interest rates (currently 3% or less) over a long period of time, while investing the money in other investment vehicles which should earn at least an equivalent and likely higher rate of return, e.g., timber, stocks, and bonds.
- b) The 6166 election also allows the Trust to use its cash now to support beneficiaries, and cover current operating and legal expenses.
- c) The 6166 election provides a long period of time to sell real estate assets over a longer term at stable or potentially higher prices, rather than a shorter term at potentially lower prices.

- d) The Trustees can always prepay the remaining amount of estate taxes at any time without penalty.

5) Investment Managers and Other Consultants

- a) The Trustees should use at least two separate advisors/managers for financial assets, as a way to promote competition and reduce risk to the Trust.
 - i) Investment funds should be allocated more or less equally to each firm.
 - ii) Advisors/managers should be evaluated and compared at least annually. Every 3 years, the Trustees should more formally evaluate and compare the advisors/investment managers and be prepared to make changes, if considered warranted.
- b) The Trustees should frequently consult with forestry and timber consultants such as John Helms and Jimmy LaFarge for advice and counsel on land and timber sales and forestry management practices.

6) Distributions to income beneficiaries.

- a) For 2018 only, distributions to the income beneficiaries should equal approximately 2.25% of the net value of the Trust's investment assets, currently approximately \$22 million. This equates to \$500,000 or \$125,000 per beneficiary.
 - i) Mary Deas Wortley and Alice Belger will agree to take \$100,000 each so that Whit Boykin and May Boykin may take \$150,000 each.
- b) In future years, the Trustees will consider increasing the amount of the annual distribution to income beneficiaries to 2.5% to 3.0%, depending on the rate of growth in the net value of Trust assets, and the amount of other expenses.

7) Trustee Fees

- a) The Trustees should be reasonably compensated for their work as Trustees
 - i) For 2017 and 2018, Trustee fees should be set at \$150,000, to be divided equally among the Trustees. All trustees retain the right, in their individual sole discretion and without prejudice to the right to any future Trustee fees, to waive their fees or any portion thereof.
 - ii) To qualify as a Trustee, any successor Trustee must agree to be bound by and to follow the current investment plan and strategy.

8) Risk Management

- i) The Trust should maintain liability insurance coverage for all property and also for the Trustees.

9) Conducting Trustee meetings.

- a) The Trustees should meet on a regular basis not less than monthly, but also whenever necessary.

- b) The Trustees shall elect by majority vote, one of the three Trustees to act as the Chair at all Trustee meetings. If the Trustees prefer, a non-Trustee may act as a non-voting Chair.
- c) Decisions to list for sale, sell, or mortgage any real property require a unanimous vote of the three Trustees.
- d) Decisions to list for sale, sell, or mortgage all or any portion of a "treasured tract" require a unanimous vote of the three trustees and a majority vote of the income beneficiaries then living.
- e) Any other decision of the Trust requires a majority vote of the three Trustees.
- f) No action may be taken by the Trust, or by any Trustee on behalf of the Trust, without a duly recorded vote of two Trustees to take such action.
- g) The Trustees will prepare an agenda prior to each meeting, and any Trustee may propose agenda items for any meeting.
- h) All Trustee meetings shall be conducted according to Robert's Rules of Order.
- i) A secretary or other assistant shall prepare minutes of each Trustee meeting, with a specific description of each Trustee vote, if any, on any agenda item or motion of any Trustee, within 5 days of each meeting and shall circulate the minutes for review by all Trustees.

DRAFT

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

IN THE MATTER OF:
LEMUEL WHITAKER BOYKIN, II, deceased

Case No. 2017-CP-28-00831

Rigdon H. Boykin, as sole disinterested Co-
Trustee of the Lemuel Whitaker Boykin, II
Residuary Trusts A and B;

Petitioner,

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,
et al.

Respondents.

**RESPONDENTS WORTLEY'S AND BELGER'S AND THE INTERVENORS'
REPLY TO PETITIONER'S RESPONSE TO MOTION TO ALTER OR AMEND**

Respondents Wortley and Belger and the Intervenor hereby reply to Petitioner's response to their Motion to Alter or Amend. Petitioner has not filed any opposition to the Trustee Respondents' requests that the Court: (1) amend its Final Order and Judgment (the "Order") to include a ruling on the Trustee Respondents' Motion to Compel a §2032A tax election;¹ and (2) strike the award of attorney's fees to Cross-Claimants, Whit Boykin and May Boykin.

¹ Indeed, Petitioner's concerns about management of the Trust are now moot because he has no standing to further oppose the tax election since he has been removed as a Trustee. Order at 53.

Petitioner argues that both the Will and the Trust Code authorize an award of attorney and expert fees because there is no evidence Petitioner failed to select his counsel with reasonable care and that, in any event, such an award is appropriate because Petitioner's suit benefitted the Trust. These arguments are seriously flawed. Petitioner ignores key requirements in the Will and applicable Trust Code provisions that he cannot satisfy. He also misstates the facts. Finally, he relies on benefits to the Trust which he himself did not achieve. Incredibly, he claims his litigation benefitted the Trust because he was removed, and the Trust is better off for it.

I. The Will Does Not Allow an Award of Attorney's Fees to Petitioner Because Petitioner's Suit Was Not Prosecuted for the Proper Administration of the Trust and Was Not Authorized by His Co-Trustees.

Petitioner argues that Items XIV(J) and XIV(N) of the Will authorize Petitioner to retain and compensate his counsel in this case from Trust assets. Item XIV enumerates the various powers conferred on the Trustees for management of the Trust. Item XIV(J) specifically addresses retention of attorneys. Item XIV(N) is a general grant of authority which does not refer to employment of counsel.²

Petitioner's argument, however, ignores key language in the preamble of Item XIV and both subsections which constitute a necessary condition precedent to any award of attorney's fees – a condition which is not met in this case. Item XIV(J) provides in pertinent part that:

Personal Representatives and Trustees, respectively, are authorized in their absolute discretion, with respect to any real property, by unanimous vote, or personal property, by majority vote, at any time held under the provisions of this will . . . [to exercise the following powers]: . . .

J. To employ and compensate, out of the principal or the income or both as to the Personal Representative or trustee shall deem proper, agents, accountants, brokers, attorneys-in-fact, attorneys-at-law . . . *deemed needful*

² Because subsection J specifically discusses attorneys, its requirement should prevail over the more general subsection N. Subsection N cannot be construed as a separate basis on which to authorize attorney's fees where, as here, the requirements of subsection J are not satisfied.

for the proper management, handling and administration of the estate or trust

N. In addition to the powers, authority and discretion herein conferred or conferred by law, the Personal Representative or trustee shall have the authority to do all things necessary and the right to exercise all powers reasonably necessary or incidental *to the proper management of the estate or trust*

(Will, Items XIV(J) and (N) (emphasis added).

As the italicized language reveals, the powers and authority granted under the Will, including subsections J and N, can only be exercised collectively, not unilaterally, and all actions must promote the proper management and administration of the Trust. Petitioner cannot satisfy this requirement. His employment of counsel was not undertaken in the proper management and administration of the Trust. It was taken, among other imprudent and disloyal reasons, to vitiate the Testator's expressed intent to save his real property for future generations of his family, and to force a sale of his most beloved property, the Boykin Millpond. There is a vast difference between consulting with counsel regarding a Trustee's duties and retaining litigation counsel to wrest control of a trust away from fellow trustees and unsuccessfully defending against counterclaims for removal.

Attorney's fees may be awarded in the former circumstance, but not in the later. It is the general rule that:

[a]lthough counsel fees may be a proper charge against a trust estate where a trustee has successfully defended against an effort to remove him or her, legal expenses involved in an unsuccessful defense resulting in removal for misconduct are the removed trustee's own personal obligation.

76 Am.Jur.2d, *Trusts* § 227 (Updated May 2019) (quoting *In re Estate of La Corte*, 777 N.Y.S.2d 209, 211 (NY.S.Ct. App. Div. 3rd Dpt. 2004)); *Citizens and Southern Nat'l Bank v. Haskins*, 327 S.E.2d 192, 203 (Ga. 1985) ("[w]hile a trustee may be entitled to attorney fees

incurred in the protection and preservation of the estate, 'he is not entitled to charge the trust estate with fees for defending his own maladministration . . .").

Petitioner's actions in attempting to force a sale of the Testator's most treasured real property, assuming "pre-eminent authority" over the Trust in a manner not contemplated by the Will, and unsuccessfully defending against the resulting counterclaims for his own removal were not actions taken in the proper management and administration of the Trust.³ Accordingly, the Will does not authorize Petitioner to use Trust assets to pay the costs and expenses of his unsuccessful efforts.

Petitioner also argues that because subsections J and N refer to "trustee" in the singular, the powers enumerated in the Will are "granted to *each* trustee, without the need for a vote." Pet. Response at 3 (emphasis in original), and he thus has complete discretion and authority to hire attorneys of his choice to bring an action to impose his preferences and to remove his co-trustees.⁴ Petitioner's argument ignores the plain language in the preamble to Item XIV, which specifically refers to Personal Representatives and Trustees, *in the plural*, and further describes the voting requirements for the *three* trustees to exercise their *collective* authority and powers, which is consistent the with Trust Code and general trust law. S.C. Code Ann. § 62-7-703(a) (cotrustees who are unable to reach a unanimous decision may act by majority decision); *Matter of Estate of Burke*, 492 N.Y.S.2d 892, 895 (N.Y.Sur.Ct. 1985) (two or more trustees must exercise their power collectively except in cases of emergency); *Frederick and Dorothy Westling Family Trust v. Westling*, 242 P.3d 805, 807-08 (Utah 2010) (Uniform Trust Code did not permit commencement of suit by Trust against Trustee without consent of majority of trustees).

³ Additionally, as previously argued, they were not actions taken in good faith. The Court itself ruled that there was no support in law or fact for many of the claims asserted by Petitioner.

⁴ In fact, all of the subsections of Item XIV, except subsection O, refer to personal representative or trustee in the singular. But there can be no doubt that the Testator named three Trustees to act collectively and not individually.

It is a recipe for chaos, and certainly one that the Testator could not possibly have intended, to construe any part of his Will so as to allow any one of the three Trustees, on their own and without the consent of at least one of their co-Trustees, to act in any way they deem appropriate, and to then send the bill to be paid out of Trust principal or income. Notably, Petitioner did not have the consent of either of his co-Trustees to bring this lawsuit, and for this reason, under the only reasonable interpretation of the Will and the Trust Code, his suit was unauthorized, and in breach of his fiduciary duties. *Restatement (Third) of Trusts* § 70 (2007) (“even a power expressly conferred by the trust instrument, or by statute, is subject to the fundamental duties of prudence, loyalty, and impartiality, to a duty *to adhere to the terms of the trust*, and to the other fiduciary duties of trusteeship.”) (Emphasis added.)

II. For Similar Reasons, the Trust Code Does Not Allow Recovery of Fees by Petitioner.

The applicable provisions of the Trust Code also contain a similar qualification for approval and reimbursement of attorney’s fees as does the Will – that the expenses must be incurred in the proper administration and management of the trust. Section 62-7-709 provides generally that a trustee may be reimbursed out of trust property for “expenses that where *properly incurred in the administration of the trust*.” S.C. Code Ann. § 62-7-709(a)(1) (emphasis added). Section 62-7-816 incorporates this same standard.⁵

Finally, § 62-7-1004 authorizes an award of attorney’s fees and costs “[i]n a judicial proceeding involving the administration of the trust . . . as justice and equity may require.” S.C. Code Ann. § 62-7-1004. But justice and equity do not require the payment of attorney’s fees in

⁵ Section 62-7-816(24) authorizes a trustee “to prosecute or defend an action, claim, or judicial proceeding to protect trust property and the trustee in the performance of the trustee’s duties.” The Comments to § 62-7-816(24) in turn provide that “[p]aragraph (24) authorizes a trustee to prosecute or defend an action. *As to the propriety of reimbursement for attorney’s fees and other expenses of an action or judicial proceeding, see Section 62-7-709 and Comment.*” S.C. Code Ann. § 62-7-816(24) (emphasis added).

the circumstances of this case. The factors generally considered in a § 1004 inquiry are: (a) reasonableness of the parties' claims, contentions, or defenses; (b) unnecessarily prolonging litigation; (c) relative ability to bear the financial burden; (d) result obtained by the litigation and prevailing party concepts; and (e) whether a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons in the bringing or conduct of the litigation. *See Atwood v. Atwood*, 25 P.3d 936, 947 (Ok. 2001) (discussing identical statute from Uniform Trust Code). All of these factors weigh in favor of rejecting any fee award. Here, Petitioner's claims were not reasonable, as the Court concluded that many, if not all, lacked legal and factual support. Petitioner unnecessarily prolonged the litigation by refusing to compromise or settle, despite numerous settlement offers and a mediation with the Honorable Thomas W. Cooper, Jr. Petitioner is a retired Wall Street lawyer with substantial personal assets, including a multi-million dollar residence property and acreage adjoining Trust property. Petitioner did not succeed on any claim. Finally, his case was not filed to benefit the Trust, but to assist Petitioner in his personal battle for control over Trust property.

III. Petitioner's Litigation Did Not Benefit the Trust.

Petitioner repeatedly asserts that a benefit to the trust is not a legally critical factor in determining whether attorney's fees should be awarded. Petitioner's mere repetition of this contention, however, does not make it true. There is ample authority that attorney's fee are properly denied where the litigation generating the fees did not benefit the trust. The two cases originally cited by the Trustee Respondents, *Whittlesey v. Aiello*, 128 Cal.Rptr.2d 742, 748 (2002) and *Nickas v. Capadalis*, 954 S.W.2d 735, 741 (Tenn. App. 1997) were not cited for their factual similarity to this case, but merely as examples of the general rule.

Other examples of the general rule are: *Garwood v. Garwood*, 233 P.3d 977, 984 (Wyo.2010) ("the Uniform Trust Code requires that an award of fees and costs from a trust fund

be premised on a finding that the action benefited the trust.”); *Bartlett v. Betlach*, 146 P.3d 1235, 1242 (Wash. App. 2006) “[a]ttorney fees may generally be awarded against a trust only where the litigation results in a substantial benefit to the trust”; *Weatherly v. South Trust Bank of Calhoun County, N.A.*, 706 So.2d 1209 (Ala.App. 1997) (“courts will award costs and attorneys' fees from the trust estate to the party benefiting the trust estate”); *In re Trust No. 7-1 of Trimble*, 826 N.W.2d 474, 492 (Iowa 2013) (in determining whether to require a trust to pay fees and cost of the trustee under section 633A.4507 [Iowa’s identical counterpart to S.C. Code § 62-7-709], a court should consider “whether the expenditures were properly incurred in the administration of the trust or otherwise benefitted the trust.”); Bogert, Goerge G. and Bogert, George T, *The Law of Trusts and Trustees*, Procedure-Parties-Costs and Fees § 871 (Updated June 2019) (in determining whether to award fees, “the court will consider whether the plaintiff or other party was successful in obtaining the relief requested or in defending or conserving the trust estate, for example, by protecting the trust against an unjust claim. *The court may also consider whether the successful party benefitted or enhanced the trust estate in deciding whether his attorneys' fees should be awarded from the trust estate*”).

The requirement that a suit benefit the Trust is in fact expressly stated in S.C. Code § 62-7-709. This section provides in pertinent part that:

(a) A trustee is entitled to be reimbursed out of the trust property, with interest at the legal rate as appropriate, for:

- (1) expenses that were properly incurred in the administration of the trust; and
- (2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

S.C. Code Ann. § 62-7-709 (emphasis added). The Official Comment explains the language of subsection (a)(2). It states that “a trustee is entitled to reimbursement for *unauthorized*

expenses only if the unauthorized expenditures benefited the trust.” Id. (emphasis added). The purpose of subsection (a)(2) is not to ratify the unauthorized conduct of the trustee, but to prevent unjust enrichment of the trust. *Id.*

Here, Petitioner commenced an unauthorized suit to modify the Trust and to have the Court vest preeminent authority in him in contravention of the terms of the Will. As discussed above, such a suit required the consent of a majority of Trustees. Will at Item XIV; S.C Code Ann. § 62-7-703(a); *Burke*, 492 N.Y.S.2d at 895 *Westling*, 242 P.2d at 807-08. Petitioner lacked this consent, making his actions unauthorized. He is therefore not entitled to compensation from the Trust, unless his actions benefitted the Trust.

Petitioner argues alternatively that if a benefit to the trust is required, this litigation benefitted the Trust for two reasons: (1) Respondent Trustees never would have agreed to diversify or develop the Wortley Belger Investment Plan if not for Petitioner’s lawsuit, which Petitioner asserts “likely added value to the trust’s long-term value”; and (2) the lawsuit brought an end to the friction between the Trustees because Petitioner was removed as a Trustee. These arguments are riddled with factual errors. They also attempt to claim credit for the benefits resulting from Respondent Trustees’ actions in resisting Petitioner’s suit and seeking Petitioner’s removal. Petitioner takes the unusual position that the Trust is better off because *he lost*. He implicitly admits that the claims he asserted by did not actually benefit the Trust.

A. Petitioner’s Arguments That His Suit Benefitted the Trust Rest on Misstated Facts.⁶

Petitioner asserts that, without the litigation, Respondent Trustees were content with diminishing real estate assets and would not have agreed to diversify Trust assets. He boldly states

⁶ Petitioner preliminarily asserts that he did not stand to benefit from the litigation because he was a disinterested trustee. However, Respondent Trustees believe Petitioner was motivated to sell Trust property, including the Mill Pond itself, at least in part to affect the property values of neighboring property he owned. Petitioner actively misled

that “[t]hese Respondents would never have even created [their] plan, let alone act on it, without Petitioner’s lawsuit,” (Petitioner’s Response at p. 6) and that Respondent Trustees only changed their position on diversification at trial, *id.* at p. 8.

The facts of this case belie this argument. Petitioner’s suit was not necessary. Respondent Trustees have always been willing to diversify over time by selling Trust property and investing in the stock market. Where Respondent Trustees disagreed with Petitioner is that Respondent Trustees did not desire to sell virtually all Trust property as soon as possible. They instead wished to preserve certain family legacy tracts and diversify over a longer time period to promote flexibility and avoid the natural decrease in sales prices which would accompany the type of fire sale promoted by Petitioner.

That Respondent Trustees have always been willing to diversify in the manner recommended by John Helms and Cheryl Holland is evidenced by the following facts:

- In August of 2016, shortly after Alice S. Boykin’s death, and more than a year before Petitioner filed suit, Respondent Trustees voted with Petitioner to sell some of the Trust’s real property. (Final Order at p. 13.).
- Petitioner filed suit in Probate Court on August 23, 2017. His initial pleadings did not seek modification of the Trust or removal of the Co-Trustees.
- Petitioner’s suit was filed *before* it was even possible to develop the Wortley Belger Plan. As the Court held, a timber survey and appraisal by Mr. LaFrage and Mr. Helms were necessary to obtain the data needed to ascertain the value of the Trust and to create an informed investment plan. (*Id.* at p. 15.) The date-of-death appraisals were not complete until November 7, 2017. (*Id.*)

his co-trustees about the true identity of the potential purchaser of the Mill Pond (the Gold Mine) in an effort to sell the Testator’s most beloved property. The sale would have increased the value of certain parcels owned by Petitioner. Additionally, Petitioner absolutely sought a personal benefit. He aimed to wrest control of the Trust from his co-trustees by: (1) seeking preeminent authority over his co-trustees; (2) literally amending the terms of the Trust to enshrine his desired course of action; or (3) failing that, removing all trustees who opposed his wishes. Petitioner’s desire for control, and his inability to brook dissenting opinions, cannot be discounted as a motivating factor in his decision to initiate this litigation. Moreover, if Petitioner was truly concerned about allowing what he considered to be imprudent administration of the Trust, rather than commencing and pursuing disastrously expensive litigation, he could have formally dissented and notified all beneficiaries, all of whom are adults, or he could simply have resigned.

- Petitioner himself subsequently commissioned independent appraisals of Trust property, which were not complete until the first quarter of 2018. (*Id.*)
- However, even before all of the information necessary to develop the Wortley Belger Plan had been obtained, Respondent Trustees had approved the sale of substantial Trust property. By January of 2018, Respondent Trustees had compiled a list of Trust properties to be sold. The properties on the list had an estimated value of approximately \$3,803,638. (Alice Belger Aff. Jan. 24, 2018 at ¶ 8.)
- Alice Belger was deposed on February 26, 2018. In deposition, she stated under oath that she had a duty to diversify and that she would fund the obligation to diversify by selling land and timber and investing in stocks. (Belger Dep. At 66:18-71:25.) She was planning on putting forward a management plan that would generate income from stocks and bonds. (*Id.* at 91:17-25.)
- Mary Deas Wortley was deposed three weeks later. She testified under oath that she was committed to a general investment strategy which she described in the following manner:

“I think we do need to diversify further. . . . I think we do need to protect the treasured tracts. I think we need to sell some [of] our assets and then invest them in the stock market. But I think we have to do it carefully and prudently. We cannot rush into dumping a whole lot of land on the market. . . . It would . . . drive [prices] down. I think we need the luxury of time to manage our timber resources and sell what we can and see how it goes.”

(Wortley Dep. at 27:8-14.)

This description is remarkably similar to the final Wortley Belger Plan, and was provided to Petitioner in March of 2018.

- A summary of the Wortley Belger Plan was provided to Petitioner on April 6, 2018. (See Becker email to R. Boykin, attached as **Exhibit A**). This draft of the Plan includes a commitment to sell real property, to diversify the Trust’s assets, and to pay reasonable income beneficiary distributions and Trustee’s fees.
- The Wortley Belger Plan was discussed at a Trustee meeting which occurred on April 12, 2018 (Minutes of April 12, 2018 Trustee Meeting).
- A copy of the April 6, 2018 proposed Wortley Belger Plan was also provided to the Court by email on April 24, 2018.
- Petitioner amended his complaint to introduce new claims for modification of the Trust and removal of his Co-Trustees just a month later on May 7, 2018, after Petitioner heard sworn testimony from Respondent Trustees that they would seek diversification, after reviewing and discussing an outline of the proposed plan, and after the Court had been provided with a draft of the plan.

- The trial of this case did not begin until July 9, 2018.

In summary, the Respondent Trustees have always been amenable to reasonable diversification. They did not suddenly change their position at trial.

Petitioner's suit was unnecessary. At a minimum, Petitioner cannot credibly argue that his claims for modification of the Trust and removal of his Co-Trustees benefitted the Trust by causing the development of the Wortley Belger Plan – Petitioner reviewed and rejected such a plan *before* he asserted these claims and took his case to trial.

B. Petitioner Cannot Usurp the Benefits Achieved by the Respondent Trustees and Intervenors as His Own.

Petitioner argues that this litigation benefitted the Trust because “Respondents obtained their requested relief” to remove Petitioner, thereby eliminating the friction among trustees. This argument intentionally blurs the distinction between claims asserted by Petitioner, and those asserted by Respondent Trustees. The claims Petitioner asserted were all rejected by the Court. They did not benefit the Trust in any way. He is not entitled to be reimbursed from the Trust for asserting claims which did not benefit the Trust. The claim which was successful and did benefit the Trust was the *Respondent Trustee's* claim to remove the Petitioner. Petitioner cannot tack his coat tails to a benefit achieved by his opponents in this litigation. The benefit was the removal of Petitioner himself.

IV. The Trust Should Not Be Forced to Bear the Expense of Hiring Mr. Hardin.

Petitioner argues that the sole criterion for whether Mr. Hardin's fees should be paid from the Trust is whether or not he was selected and retained with reasonable care. This argument stems from language in Item XIV(J) of the Will. Petitioner again ignores another crucial part of subsection J – that the employment of attorneys must be undertaken in connection with the proper management and administration of the Trust. As discussed above, Petitioner's suit and his

employment of Mr. Hardin to assist with suit were not undertaken in the proper management of the Trust. Far from it, a review of early communications between Mr. Hardin and Petitioner, Petitioner's counsel, and even Respondent Whit and May Boykin's counsel, shows that Petitioner clearly retained Mr. Hardin for the purpose of wresting authority from his co-Trustees and securing attorney fees to be paid from the Trust. Notable communications include, but are not limited to, the following⁷:

- Mr. Hardin's June 21, 2017 time entry narration: "preparation of memorandum to Rigdon Boykin, Richard Rosen and Liam Duffy regarding most important code sections *for action by Trustee to secure recovery of attorney fees and his own compensation . . .*" (emphasis added).
- August 3, 2017 time entry narration: "Continue drafting Memo to Richard Rosen and Liam Duffy regarding bases for Declaratory Judgment that Rigdon be afforded special status as the sole disinterested Trustee"
- August 18, 2017 time entry narration: "Telephone conversations with Rigdon Boykin and Liam Duffy concerning Petition for counsel fees and trustee fees and appointment of Rigdon as a special fiduciary"
- September 5, 2017 email to Petitioner and his counsel clarifying Petitioner's legal representation structure, and writing "*So as not to overlook the ultimate goal*, I realize that in the Petition we are asking the Court to order the Residual [sic] Trust to reimburse Rigdon for, among other things, his fees paid to you and his retainer paid to me, but for that Trust to make payment of all such expenses to be incurred going forward, as well as the fees of a new trust counsel."
- September 18, 2017 email to Petitioner and his counsel setting forth trustees' duties and explaining how that section applies to actions taken by *Respondents Wortley and Belger*.
- September 29, 2017 email to Petitioner's counsel offering comments on excerpt from memorandum in support of Petitioner's request for attorney fees and setting up conference call to discuss.
- October 10, 2017 email from Mr. Hardin to Petitioner, Petitioner's counsel, and Respondents Whit and May Boykin's counsel, critiquing Petitioner's proposed response to trust counsel Karen Thomas' email regarding an upcoming trustee meeting, wherein he states that "[i]n my view, her response plays into our hands. By Rigdon's

⁷ All of the foregoing communications are attached as exhibits to Wortley and Belger's Motion in Limine, filed July 9, 2018.

emailing her last week with a proposed date and time for a meeting, we were hoping to stake out her position on the record. *In my view we certainly got what we wanted.*" (emphasis added).

- December 21, 2017 time entry narration, wherein Mr. Hardin describes assisting Petitioner's counsel with preparation of legal arguments for Petitioner's motion to designate case complex.
- February 7, 2018 email from Petitioner to Mr. Hardin, Petitioner's counsel, and Respondents Whit and May Boykin's counsel, wherein Petitioner forwards a copy of Respondents' Wortley and Belger's settlement offer to *Whit and May Boykin* with the comment that it is "not even close."
- March 2, 2018 email from Mr. Hardin to Petitioner, Petitioner's counsel, and Respondents Whit and May Boykin's counsel, where Mr. Hardin provides an analysis of cases regarding whether Respondents Wortley and Belger's children must be added to the suit.
- March 6, 2018, Mr. Hardin sends second email to the same group concerning adding Respondents Wortley and Belger's children to the suit, stating that although he wished that the Probate Code "would preclude *our* having to name Mary Deas' and Alice's children and grandchildren," he believed that the applicable case law required Petitioner to do just that.
- April 19, 2018 email from Petitioner's counsel to Mr. Hardin, thanking Mr. Hardin for his work on an affidavit of fees and costs for expert consulting service, calling it a "matter near and dear to all of our hearts."
- June 19, 2018 email from Mr. Hardin to Petitioner's counsel reporting that he reached out to a potential expert with South State Bank *on Petitioner's behalf* and that he "vouched safe for Rigdon, saying that he had only the best interests of the beneficiaries in mind."

As is clear from the foregoing communications, Petitioner never had any intention of retaining Mr. Hardin's services with management of the Trust in mind. Rather, Petitioner engaged Mr. Hardin to provide guidance to Petitioner with his attempts to be named king of the Trust, while simultaneously ensuring that any legal or other fees he incurred in connection with this pursuit would be compensated from the Trust. Indeed, the bulk of Mr. Hardin's correspondence to Petitioner is focused on Petitioner's claims for the designation that he be named a special fiduciary or deemed to hold preeminent authority over his co-Trustees, his claim for attorney and trustee

fees, and his claim for removal of Respondents Wortley and Belger. All of those claims have been rejected by the Court.

Moreover, Mr. Hardin's correspondence with Petitioner's counsel reveals that he was kept in the loop on Respondents Wortley and Belger's settlement offers to Respondents Whit and May Boykin—the latter of whom are not his clients—and even engaged in a meeting with a South State Bank employee to serve as a potential expert in the litigation. All of these actions relate solely to the litigation, and thus are not expenses that were undertaken in connection with the proper management and administration of the Trust. As such, Mr. Hardin's expenses should not be reimbursed out of the Trust.

Petitioner also argues that Mr. Hardin's status as a fact witness is irrelevant. According to Petitioner, experts can and do serve dual roles. He asserts that there is nothing that prevents an attorney from serving as both an expert and a fact witness. While that may be true in many cases, there is something in this case that prevents Mr. Hardin from being compensated as an expert in connection for his services as a witness at trial – the Court's Order limiting Mr. Hardin's role to that of a fact witness. While Mr. Hardin may have acted as an expert in other parts of the case, all activities related to his testimony were not “expert” activities. Mr. Hardin is only entitled to the witness fee and mileage for these activities.⁸

Respondents Wortley and Belger and the Intervenor respectfully request that the Court grant their Motion to Alter or Amend.

⁸ While none of Mr. Hardin's fees should be assessed against the Trust because the litigation he assisted in was not undertaken in the proper administration of the Trust and did not benefit the Trust, Respondent Trustees concede, and indeed have not argued, that *all* of Mr. Hardin's fees should be stricken merely because his appearance at trial was limited to that of fact witness. Mr. Hardin's status as a fact witness affects only his entitlement to fees for work done in connection with his trial testimony – review of materials in preparation for testimony, meeting with counsel in preparation for testimony, travel to and from the courthouse for testimony, and or course, the actual testimony itself.

Most respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

By: s/James Y. Becker

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Heimbach, and Allie Boykin Belger*

June 18, 2019
Columbia, South Carolina

Becker, James

From: Becker, James
Sent: Friday, April 6, 2018 3:13 PM
To: Rigdon Boykin
Cc: mary wortley; Alice Belger; Alice Belger (alicebbelger@gmail.com); Walter H. Bundy (WHBundy@att.net); Walter H. "Bill" Bundy (walter@bundymcdonald.com); William Tetterton
Subject: Boykin Trust; proposed investment plan/strategy
Attachments: DM 5337763-v8 Boykin Trust Investment Plan and Strategy.DOCX

Rigdon:

Attached please find a draft investment plan/strategy document from Mary Deas and Alice, which we submit for your review and consideration.

As we discussed this morning, this is proposed as a method by which all three Trustees might reach consensus on general goals, objectives, and "rules of the road" for the future, but especially for the next several years. We have also included a proposed distribution for 2018 to the four income beneficiaries. As we also discussed, the hope is to increase that distribution in future years, when hopefully, the Trust has fewer legal fees and other expenses to cover. We look forward to your input and comments on this document.

As for the Millpond option agreement, my goal is to send you a list of proposed terms and changes for the agreement by Monday or Tuesday of next week, and sooner if possible.

As you will see from reading the attached document, we have consulted extensively with John Helms of Milliken and other investment advisors. We have also asked John Helms to start with the appraisal he prepared for the estate tax return and prepare a "master inventory" of the Trust's real estate and timber holdings that consolidates in one place comprehensive information regarding all tracts owned by the Trust (e.g. location, acreage, tax parcel #, land characteristics, any appraisal values, timber information, sale listing information, etc. The objective here is to have tools and methods to help the Trustees organize information and develop goals and priorities regarding land and timber sales as part of their overall investment strategy. The hope is that having all relevant information in one place, that is frequently updated, will make decisions on listing property for sale and responding to offers to purchase much more efficient in the future.

Also, John Helms has advised us that Milliken can produce very accurate maps of a particular tract or tax parcel for obtaining reasonable acreage figures with which to initiate a listing, subject to a survey, if necessary, to complete a sale. And you may already know this, but Milliken also has a real estate department experienced in selling rural as well as other types of land with a Broker in Charge (Gary Springer) and 5 assigned brokers/agents (Angus Lafaye, Billy Cate, Billy McTeer, Rob Drummond and Hale McCullough) working under Gary.

**Haynsworth
Sinkler Boyd, PA.**

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L.W. Boykin, II Residuary Trust
Investment Plan and Strategy
 Proposed by Mary Deas Wortley and Alice Boykin Belger
 April 6, 2018

1) The trustees will act in a reasonable and prudent manner to:

- a) manage the assets and liabilities of the trust in the interests of all beneficiaries;
- b) attempt to grow the total asset value (net of any liabilities) of the Trust over time in accordance with the investment goals and objectives outlined below;
- c) reasonably minimize trust administration expenses and reasonably maximize the trust's income and return on investment assets;
- d) carefully and diligently consider all reasonable investment options and proposals for the trusts' assets, and any offers to purchase the Trust's real property assets;
- e) to the extent reasonably practical, honor Mr. Boykin's wishes as expressed in his Last

Will and Testament;

2) General Statement of Present Status and Future Strategy

- a) The Trustees agree that the net asset value of the Trust (assets less liabilities) is now approximately \$22 million (\$25 million in cash, timber, and real estate assets less \$2.8 million in deferred estate taxes and other payables).
- b) The Trustees will be committed to growing the net value of the Trust's investment assets over time.
 - i) This will promote increasing distributions to the income beneficiaries over time, and
 - ii) it will ensure that the remainder beneficiaries are protected from depletion of the trust principal.
- c) The Trust's investment assets, which now consist primarily of real estate and timber (approximately 90% of the total), are not as diversified as they should be.
- d) The Trustees should carefully, diligently, and prudently begin to sell real estate assets and diversify the Trust's portfolio of investment assets to include a significantly higher percentage of financial assets, such as stocks and bonds, while keeping in mind that though diversification of investments is important, the Will allows for the retention of certain "under-productive" real property assets.
- e) The plan will need to allow for a reasonable time period to avoid missing opportunities to maximize revenues and capture investment opportunities from land and timber assets and continue annual distributions to income beneficiaries.
 - i) At this point in time, however, it is not reasonable or prudent to adopt an optimal mix of real estate (timber and farm properties) and financial assets.

- (1) Placing too much property on the market at one time in a concentrated area could depress prices to the detriment of optimizing the long term value of the Trust's assets.
- (2) Due to liquidity and other concerns regarding land and timber markets and the existence of certain legacy lands in the Boykin Mill Pond area, as well as a need to carefully select the alternative investments systematically and at opportune times, it is not reasonable nor prudent to place excessive or immediate time pressure on this transfer. One reason is that timberland and farm land assets already have investment characteristics that are equal to or better than short to medium term bonds. Another reason is that timber markets are poised to improve and are at worst, considered stable. Finally, all the other asset classes and types of alternative investments go through cycles and a systematic investment approach involving as much diversity as possible is preferred.
- (3) Since land is a stable asset, the economy is gradually improving and because of the large acreage owned and the somewhat wide diversity of land types and other conditions involved, a prudent step is to first go through the inventory of land and identify factors such as potential to appreciate in value from ongoing population growth, productivity from farming or timber, ability to provide irrigation (agricultural water is an increasingly rare resource) and potential to provide recreational or residential sites. More remote and less productive land, land with less perceived potential for price appreciation, etc., should be prioritized for sale first. The Peckwoods land is already identified as having a potential to attain its maximum potential as residential sites in the near future and can be sold once (and if) that occurs.
- (4) Nevertheless, the Trustees should seriously consider any reasonable offer to purchase any of the Trust's real property assets at any time.

ii) The Trustees should be guided in the process of diversification, i.e., converting the current real property assets to financial assets, by professionals in the field of farm and timber property, such as John Helms, Director of Real Estate and Appraisal Services, of Milliken Forestry Company, Inc., and Jimmy LaFrage.

- (1) These consultants should be tasked with developing, a combined real estate and timber plan for each property, which should consider factors such as disposal priorities of the land and timber and reforestation and management objectives for any properties being retained.
- (2) There is a large amount of acreage (almost 6,000 acres) in a wide diversity of geographic locations (although concentrated at Boykin Mill Pond and Sumter Mountain areas) and types of land involved, and thus a reasonable disposition period for almost 6,000 acres as individual tracts could easily involve 10 to 15 years.

- (3) Therefore, the properties retained for the longer time period (or forever) should be based on a land (and timber) disposition strategy that is intensively studied and well thought out.
- (4) Trustees should seek professional advice involving how to maximize land investments including timber management for better productivity on less land (by using better silviculture on fewer acres, since the less productive acres will be sold, etc. and also a variety of other types of land values such as conservation values, carbon credits, wetland mitigation credits, etc.
- (5) Advantageous target prices for real estate and timber should be set for all properties by the Trustees, factoring in prices above "wholesale" values that reflect their perceptions of lands with the greatest productivity, potential for future appreciation and legacy values. As part of annual or more frequent assessments of land and timber disposal strategies, alternative investments, including risks, should always be assessed and taken into consideration. For example, if bonds and stocks are perceived as overvalued at a particular point in time, there is no need to aggressively sell land or timber, unless land prices and/or timber prices are exceeding expectations, etc.

- f) The trustees should carefully consider all aspects of each tract to be sold, including the sales price and the likely gain (profit) on the sale of both land and timber.
- g) The Trustees should appraise and analyze each real property tract and prepare an analysis of the estimated average annual rate of return (over a ten year holding period). If the estimated average annual rate of return does not meet or exceed the target average annual rate of return, then the tract should be sold or a plan established to meet the target amount of return, as soon as reasonably possible.
- h) The conversion of real property assets to financial assets should be accomplished using a methodical and diversified approach ("Dollar cost averaging" and picking investments and types of assets that represent good opportunities at good times in their business cycles). There is considerable uncertainty in all financial asset markets at the present time, so it is advisable to retain a higher than normal allocation in cash and short term bonds while the investment planning is moving forward.

3) Investment Goals and Objectives

- a) The Trust should seek to maintain a diverse mix of assets, recognizing that types or classes of assets tend to appreciate and depreciate on different cycles and have different levels of risk and liquidity. Also, that some asset classes, such as agricultural land and timberland, are considered counter cyclical (at least to a degree) to other types of investments. The Trust should maintain roughly 6% to 12% of assets in cash, CDs or short term government bonds in order to cover expenses and provide annual cash distributions to the income beneficiaries.

- b) The Trustees will utilize three asset categories for purposes of managing the Trust's assets:
- i) Cash and fixed income consists of:
 - (1) Cash held in banks, savings institutions, or money market mutual funds sponsored by reputable managers; and
 - (2) Fixed income investments, e.g., bonds, bond mutual funds, or bond exchange traded funds ("ETFs") traded on recognized U.S. and international exchanges;
 - ii) Equities, e.g., stocks, stock mutual funds, or stock ETFs traded on recognized U.S. and international exchanges;
 - iii) Timber and timberlands now held by the Trust or acquired in the future.
- c) The historical and expected average annual rate of return in each of these asset categories is as follows:

i) Financial assets:

- (1) Charles Schwab Investment Advisory (a separately registered investment advisor and affiliate of Charles Schwab & Co. Inc.) (August 2017)
- (a) *Highlights:* 6.7% expected nominal return from U.S. large-cap stocks from 2017-2026; 3.1% nominal returns from U.S. investment-grade bonds (August 2017)
 - (b) Charles Schwab Investment Advisory was forecasting higher equity returns than many of the other firms in the survey—roughly 7% on a noninflation-adjusted basis for U.S. and foreign large caps as of August 2017. (Given stocks continued run in the second half of 2017, it's possible the firm has ratcheted its expectations downward since then.) Moreover, the firm's return expectation for foreign equities wasn't appreciably better than for U.S. stocks. But like most of the other firms, Charles Schwab Investment Advisory expects returns over the next decade to be lower than the past 45 years, owing to high stock valuations, among other factors.
- (2) Vanguard (December 2017):
- (a) *Highlights:* Nominal U.S. equity-market returns in the 3% to 5% range during the next decade; 5.5% to 7.5% returns for non-U.S. equities;
 - (b) 2% to 3% expected returns for global fixed income markets.

- ii) Timber and timberlands: According to John Helms, timber value growth is 5% or 6% (and can be higher or lower under some circumstances). Conservatively, we expect these yields to average closer to 3% or 4%, especially when income factors such as hunting leases, pine straw, crop rents, etc. are factored in. Potential improvements in timber markets and continued population growth in South Carolina could add another 1% or more to these returns.
- iii) Some experience needs to be gained in evaluating and comparing the real estate assets to each other and to other assets, recognizing that they are a non-correlated asset class and provide participation in a variety of markets (different types of land and different types of timber, in different locations, etc.).

d) Recognizing that these are minimum expected returns and the goal is always to maximize returns, especially within asset classes, the Trustees should adopt the following target average annual rate of return ("TAARR") on trust assets:

- i) To ensure likely increases over time in annual distributions to the income beneficiaries and to grow the net value of the Trust's investment assets, the TAARR on total net trust assets should be 5% per annum or greater, while diversifying in an appropriate timeframe and maintaining a reasonably balanced mix of financial assets and real property/timber assets.
- ii) For all financial assets in the equities category, the TAARR should equal or exceed 6.0%. Results for this asset class can be averaged over any given 2 or 3 year period. We expect these returns to exceed 10% in good years, but could be a loss in other years.
- iii) For all financial assets in the cash and fixed income category, the TAARR should equal or exceed 3.0%. These investments should include a range of maturity or asset types deemed appropriate by the advisor/managers, subject to a 10% to 15% of total assets being in CDs, cash and short term bonds as a safety factor. These returns depend a lot on interest rates and the primary reason for having these assets is to assure cash flow and provide a defensive strategy.
- iv) For all real property assets (except the treasured tracts), such as farm land or timber land, the TAARR should equal or exceed 4.0%.
- v) A process should be developed through which rates of return can be compared between different investments and also different tracts and types of land. This information should be reviewed annually and used to formulate investment strategies for each year. All timberland and agricultural and real estate properties should be ranked and compared for their relative worth, acknowledging legacy values in addition to other factors such as income potential, price appreciation and productivity and including potential for use of advance pine silviculture on appropriate sites.
- vi) These benchmark rates of return for the various asset categories will be reviewed and adjusted at least once every two years.

e) The estimated TAARR of all existing trust assets will be measured against these target rates of return in the appropriate category. Any existing assets which are not reasonably expected to equal or exceed this TAARR should be sold as soon as reasonably practical.

4) Estate Tax 6166 election- has significant benefits to the Trust

- a) This election allows the Trust to defer payment of the approximately \$2.78 million balance of estate taxes due at very low interest rates (currently 3% or less) over a long period of time, while investing the money in other investment vehicles which should earn at least an equivalent and likely higher rate of return, e.g., timber, stocks, and bonds.
- b) The 6166 election also allows the Trust to use its cash now to support beneficiaries, and cover current operating and legal expenses.
- c) The 6166 election provides a long period of time to sell real estate assets over a longer term at stable or potentially higher prices, rather than a shorter term at potentially lower prices.

- d) The Trustees can always prepay the remaining amount of estate taxes at any time without penalty.

5) Investment Managers and Other Consultants

- a) The Trustees should use at least two separate advisors/managers for financial assets, as a way to promote competition and reduce risk to the Trust.
 - i) Investment funds should be allocated more or less equally to each firm.
 - ii) Advisors/managers should be evaluated and compared at least annually. Every 3 years, the Trustees should more formally evaluate and compare the advisors/investment managers and be prepared to make changes, if considered warranted.
- b) The Trustees should frequently consult with forestry and timber consultants such as John Helms and Jimmy LaFrage for advice and counsel on land and timber sales and forestry management practices.

6) Distributions to income beneficiaries.

- a) For 2018 only, distributions to the income beneficiaries should equal approximately 2.25% of the net value of the Trust's investment assets, currently approximately \$22 million. This equates to \$500,000 or \$125,000 per beneficiary.
 - i) Mary Deas Wortley and Alice Belger will agree to take \$100,000 each so that Whit Boykin and May Boykin may take \$150,000 each.
- b) In future years, the Trustees will consider increasing the amount of the annual distribution to income beneficiaries to 2.5% to 3.0%, depending on the rate of growth in the net value of Trust assets, and the amount of other expenses.

7) Trustee Fees

- a) The Trustees should be reasonably compensated for their work as Trustees
 - i) For 2017 and 2018, Trustee fees should be set at \$150,000, to be divided equally among the Trustees. All trustees retain the right, in their individual sole discretion and without prejudice to the right to any future Trustee fees, to waive their fees or any portion thereof.
 - ii) To qualify as a Trustee, any successor Trustee must agree to be bound by and to follow the current investment plan and strategy.

8) Risk Management

- i) The Trust should maintain liability insurance coverage for all property and also for the Trustees.

9) Conducting Trustee meetings.

- a) The Trustees should meet on a regular basis not less than monthly, but also whenever necessary.

- b) The Trustees shall elect by majority vote, one of the three Trustees to act as the Chair at all Trustee meetings. If the Trustees prefer, a non-Trustee may act as a non-voting Chair.
- c) Decisions to list for sale, sell, or mortgage any real property require a unanimous vote of the three Trustees.
- d) Decisions to list for sale, sell, or mortgage all or any portion of a "treasured tract" require a unanimous vote of the three trustees and a majority vote of the income beneficiaries then living.
- e) Any other decision of the Trust requires a majority vote of the three Trustees.
- f) No action may be taken by the Trust, or by any Trustee on behalf of the Trust, without a duly recorded vote of two Trustees to take such action.
- g) The Trustees will prepare an agenda prior to each meeting, and any Trustee may propose agenda items for any meeting.
- h) All Trustee meetings shall be conducted according to Robert's Rules of Order.
- i) A secretary or other assistant shall prepare minutes of each Trustee meeting, with a specific description of each Trustee vote, if any, on any agenda item or motion of any Trustee, within 5 days of each meeting and shall circulate the minutes for review by all Trustees.

DRAFT

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS

CASE NO: 2017-CP-28-00831

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,

Petitioner,

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

Respondents,

**PETITIONER'S SUPPLEMENTAL
MEMORANDUM REGARDING
POST-TRIAL MOTIONS**

Lemuel Whitaker Boykin, III; and May Cantey
Boykin,

Crossclaim Petitioners,

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,)
)
Crossclaim Respondents.)

Petitioner Rigdon H. Boykin ("Petitioner") by and through his undersigned counsel, respectfully submits this Supplemental Memorandum Regarding Post-Trial Motions. Petitioner submits this memorandum with great respect and deference to the Court to urge reconsideration of what he and his counsel believe to be a more effective long-term solution to the parties' dispute, a solution that can bring about the peace and healing that this family so desperately needs.

As this Court observed a number of times in the course of this litigation, the best outcome for this litigation would be for the parties to find a conclusive way to end their differences and begin a process of reconciliation within their family. While the Court's Final Order and Judgment of May 24, 2019 ("Final Order") does address the immediate problem of the existing impasse among the trustees, it does not resolve the conflict of interest that is inherent in the positions of Respondents Wortley and Belger, nor does it deal with the logical impossibility of compliance with Mr. Boykin's Will whenever there is a difference of opinion among the trustees as to whether to sell or retain a particular piece of real estate.

Because of this, the Final Order merely sets the stage for future litigation. It resolves the immediate problem but does not bring about a long-term solution. If Respondents Whit Boykin and May Boykin come to believe that Respondents Wortley or Belger are not acting in good faith to follow the Court's directive to diversify the trust assets, or that they are engaging in acts of self-dealing, partiality, or mismanagement subsequent to the trial, or that by either negligent or willful act or omission they are failing to achieve the results that they projected in trial and on

which this Court's Final Order was based, there will almost certainly be another lawsuit. The Court itself recognized these same concerns and acknowledged them in the Final Order, warning Respondents Wortley and Belger that "it is imperative that they implement the management and investment plan presented by their counsel and consultants" and expressing "reservations about whether Respondents are capable of executing the plan presented at trial, as it required sale of properties that their family has held dear for decades." Final Order at 49.

Furthermore, if it turns out that Petitioner's view of the economics of the trust assets was correct, and that the assets are so unproductive that they cannot support reasonable distributions to the income beneficiaries without severely diminishing the trust principle, there could well be further litigation (by either the income beneficiaries or the remainder persons, depending on how the situation is dealt with by the trustees). This is particularly likely if the inability to make reasonable distributions comes about because Respondents Wortley and Belger insist on retaining substantial additional property on top of the Will's precatory tracts, as their plan proposes to do, in effect placing the interests of their children over the interests of Respondents Whit and May Boykin. This inherent conflict of interest is not resolved by removing Petitioner as a trustee and keeping Respondents Wortley and Belger in place.¹ The Final Order similarly acknowledged this set of concerns too, with the Court reminding Respondents that "[a]s times change, the Trustees must use their best judgment to prudently manage the Trust and maximize the Trust's benefits to *all beneficiaries*," and recognizing the need for the vacant trustee position to be "filled by a third party that can continue to provide a *different perspective from that of Respondents*." Final Order at 50 (emphasis added).

¹ Even witnesses testifying for Respondents Wortley and Belger acknowledged the conflict. See, e.g., Transcript of Record, at 148 (July 10, 2018) (Helms testimony); Transcript of Record, at 94 (Sept. 27, 2018) (Bailey testimony).

In addition, if the trustees (with Petitioner's replacement, whoever that may be) are unable at any point in the future to agree on whether to sell or retain a tract of property, there will likely be another lawsuit. Indeed, in that situation, the Will creates a Catch 22, in which it is impossible to comply with the Will no matter what is done. This logical dilemma arises because Item XIV of the Will requires unanimity among the trustees to *either* sell *or* retain real property:

Item XIV: My Personal Representatives and Trustees, respectively, are authorized in their absolute discretion with respect to any real property, by unanimous vote ...:

A. To sell, transfer and convey the whole or part of the property ...

...

B. To retain any of the original property constituting the estate or trust

Thus, if the trustees cannot agree on whether to sell or retain certain property, retaining it violates the requirement of unanimity just as much as does selling it.² *No matter what they do*, the trustees who constitute the majority will be in violation of the Will as they will be either retaining or disposing of real property without unanimous agreement. Litigation is practically unavoidable.

Petitioner respectfully submits that the only effective long-term solution to these implacable problems is to split the trust so as to allow Respondents Whit and May Boykin to proceed on their own without further involvement with and control by Respondents Wortley and Belger. It would give them the opportunity to have some control over their own destiny and not be left feeling that their financial well-being is in the hands of siblings with whom they have a strained relationship and who have an inherent incentive to minimize distributions in order to

² Thus, Respondents Wortley and Belger's insistence on retaining property that Petitioner wanted to put on the market was a violation of the Will as a matter of law. While this Court's Final Order strove to honor the terms of the Will, in effect what it did was to endorse this violation.

maximize the property that will be left for those siblings' children. A proposal along these lines was made a number of times both pre-trial and during the trial by Petitioner's counsel,³ and Petitioner urges the Court to reconsider it. While the proposal put forth to the Court involved a 50/50 split of the trust assets, Petitioner is willing to advocate and promote a division in which Respondents Whit and May Boykin receive significantly less than 50% of the value of the trust assets.⁴

Accordingly, Petitioner suggests that the Court order the parties to re-engage in mediation and settlement discussions to see if they can come to a voluntary allocation of the trust assets into separate trusts. If an agreement can be reached, there will be no appeal of the Court's Final Order, the likelihood of further litigation will be substantially diminished if not eliminated, the drain on trust assets from further legal expense will be avoided, and the family can begin work on reconciliation. Particularly in comparison to the significant time and expense incurred by all parties in litigating this matter to date, sending the parties back for additional negotiation now would not involve much expense or time but may lead to the lasting resolution everyone seeks.

Even if the parties are unable to reach agreement in new settlement talks, the Court has the authority to effectuate a split on its own, the particulars of which could be decided upon the recommendation of a special master appointed by the Court (unless the Court itself wishes to undertake the allocation of particular assets). The Court has broad statutory power founded in

³ For this reason, Petitioner respectfully disagrees with the finding in the Final Order that this issue was not properly before the Court. *See* Final Order, at 51.

⁴ In the event of such a division, upon the death of Whit Boykin and/or May Boykin, the income from their trust would be divided among all the remaining income beneficiaries, and upon the death of the last surviving income beneficiary, the assets of both trusts would be distributed per stirpes to the issue Whit Boykin, May Boykin, Alice Belger, and Mary Deas Wortley.

S.C. Code Ann. § 62-7-412 to “modify the administrative or dispositive terms of a trust” and even to “terminate the trust” entirely where circumstances warrant, provided such modifications will “further the purposes of the trust” and are, “to the extent practicable . . . made in accordance with the testator’s wishes.” See *S.C. Nat’l Bank v. Bonds*, 260 S.C. 327, 337, 195 S.E.2d 835, 840 (recognizing that courts are allowed “considerable discretion” to effectuate the intent of a testator); see also 90 C.J.S. Trusts § 94 (“A court of equity has the power to modify the terms of a trust in order substantially to carry out the intention, or to effectuate the primary purpose, of the creator of the trust.”). The Trust Code also specifically permits trustees to order a trust divided so long as the division does not “impair rights of any beneficiary or adversely affect achievement of the purposes of the trust,” S.C. Code Ann. § 62-7-417, and recognizes that a division “is often beneficial and, in certain circumstances, almost routine,” and that “[c]onflicts among beneficiaries, including differing investment objectives, often invite such a division,” § 62-7-417 Reporter’s Comments. Against a similar background of authority, courts in other jurisdictions have ordered trusts divided. See *Matter of Goldberg Irrevocable Tr.*, 608 N.Y.S.2d 382, 383 (N.Y. Sur. Ct. 1994) (approving application to split irrevocable trust into three subtrusts “to enable the trustee to invest the assets in a manner that will meet the disparate financial needs and investment goals of the individual trust beneficiaries”); *Bankboston v. Marlow*, 701 N.E.2d 304 (Mass. 1998) (approving split of three subtrusts created under will into two separate trusts each, for tax purposes).

For the above reasons, Petitioner urges the Court to hold the pending post-trial motions in abeyance, order the parties to engage in good faith in settlement discussion and/or mediation to attempt to agree upon an allocation of the trust assets to split the trust, and failing such agreement, appoint a special master to propose such an allocation to the Court. This path offers

the best prospect for a final and conclusive resolution of the parties' differences, without the expense of an appeal and potential litigation down the road, and would lay the groundwork for a family reconciliation.

As this Court poignantly stated at the end of the first day of trial:

[I]t is my fervent prayer that before this matter is concluded and even, perhaps, afterwards when I make my decision, that something will be done that will heal the breach that has occurred between family members.

Transcript of Record, at 315, lines 19-22 (July 9, 2018).

Petitioner sincerely joins the Court in that sentiment and respectfully entreats the Court to consider the suggested resolution put forth.

Respectfully submitted,

s/ Wallace K. Lightsey

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Wade S. Kolb, III (S.C. Bar No. 100379)
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Attorneys for Petitioner

Dated: July 15, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

IN THE MATTER OF:
LEMUEL WHITAKER BOYKIN, II, deceased

Case No. 2017-CP-28-00831

Rigdon H. Boykin, as sole disinterested Co-
Trustee of the Lemuel Whitaker Boykin, II
Residuary Trusts A and B;

Petitioner,

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,
et al.

Respondents.

**RESPONDENTS WORTLEY'S AND BELGER'S AND THE INTERVENORS'
REPLY TO PETITIONER'S SUPPLEMENTAL MEMORANDUM
REGARDING POST-TRIAL MOTIONS**

Respondents Wortley and Belger (the "Respondent Trustees") and the Intervenor hereby reply to Petitioner's Supplemental Memorandum (the "Memorandum") Regarding Post-Trial Motions. Petitioner's Memorandum is not, as its name implies, a brief with additional legal authority on matters pending before for the Court. It is yet another episode in what has become an unrelenting and costly pattern of behavior by Petitioner.

Petitioner cannot abide being told "no." When Respondents Wortley and Belger refused to accede to Petitioner's demands to sell family legacy property, he filed this lawsuit to seize

control of the Residuary Trust.¹ Now, it is clear that Petitioner cannot accept the word “no” even when it comes from the Court. Petitioner asks the Court to reverse its decision. His Memorandum rehashes arguments that have already been considered and rejected by the Court. It contains arguments which are untimely and improper. It also explicitly threatens additional litigation and damage to the Trust, if the Trustees and the Court do not act as Petitioner insists they should.

For the reasons set forth below, Respondents Wortley and Belger respectfully request that the arguments and requests made in Petitioner’s Memorandum be swiftly and soundly denied. Petitioner should not be allowed to continue to divide and hurt the Testator’s family and deplete Trust assets.

I. Petitioner’s Arguments are Untimely and Improper.

In the guise of a supplemental memorandum, Petitioner attempts to insert and preserve the following arguments for appeal: (1) Petitioner attempts to resurrect the argument that Respondents Wortley and Belger have an impermissible and inherent conflict of interest; (2) he raises for the first time the argument that it is impossible for any Trustee to comply with the Will’s direction regarding real property transactions; and (3) he asks the Court to set aside its ruling denying Petitioner’s request to split the Trust, reopen evidence on the issue, and in a final insult to the Court, suggests that the issue might be better decided by a different tribunal. These arguments are both untimely and improper.

A. Petitioner’s Arguments are Untimely.

The Court issued its Final Order and Judgment (the “Final Order”) on May 24, 2019. It adjudicated the claims of all parties before the Court. It therefore constituted a final order under Rule 54(b), SCRCp. The only avenue provided by our Rules of Civil Procedure to request that a

¹ Petitioner sought preeminent authority, and failing that, to have Respondents removed as Trustees.

Court reconsider a final written order lies in Rules 52 and 59, SCRCP. *Norris v. Heyward*, 312 S.C. 67, 439 S.E.2d 264 (1993).

Under either rule, a request for reconsideration of an order must be made no later than ten days after receipt of written notice of entry of the order. Rule 52(b), SCRCP (“[u]pon motion of a party made not later than 10 days after receipt of written notice of entry or judgment the court may amend its finding or make additional findings and may amend the judgment accordingly.”); Rule 59(e), SCRCP (“[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of entry of the order”). These deadlines are “absolute.” *Overland, Inc. v. Nance*, 423 S.C. 253, 256, 815 S.E.2d 431, 432 (2018). Trial courts lose jurisdiction when the time to file post-trial motions has elapsed. *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006).

Petitioner improperly filed a pro se motion within this 10 day time limit, refiled the same motion more than a week later, and improperly argued against the Final Order in his motion to reconsider the Court’s Order confirming the appointment of Cheryl Holland as a Trustee, but *none* of these motions asserted the arguments made in Petitioner’s latest Memorandum. The arguments are untimely and should not be considered.

B. Petitioner’s Arguments are Improper.

It is not appropriate to use a motion to alter or amend to reargue or rehash arguments already rejected by a court. *Palmer v. Champion Mortg.*, 465 F.3d 24 (1st Cir. 2006) (plaintiff was not entitled to reconsideration of a district-court order when the motion for reconsideration reiterated plaintiff’s same arguments earlier advanced and rejected by the court); *FMD Restoration, Inc. v. Baistar Mechanical, Inc.*, 320 F.R.D. 320, 323 (D.D.C. 2017) (post-trial motions to amend are not to be used when a party is merely seeking to re-litigate a finding that was made during the course of the trial). Our Rules of Civil Procedure specifically provide

that it is improper for counsel to further argue any matter after counsel has been heard and the court has ruled. Rule 43(i), SCRCP. Because Petitioner has already argued that Respondents Wortley and Belger have an impermissible conflict of interest and requested that the Court split the Trust,² and the Court has rejected these arguments, Petitioner cannot now raise these arguments again.

It is also improper to use a motion to alter or amend to raise an issue which was not previously presented to the trial court. *Gartside v. Gartside*, 283 S.C. 35, 677 S.E.2d 621 (Ct.App. 2009) (a party cannot use a motion to alter or amend to present to the trial court an issue the party could have raised prior to judgment but did not). At no time before entry of the Final Order did Petitioner argue that the provisions of the Will with respect to real property are contradictory and cannot be honored under any circumstance. This argument cannot now be considered.

II. Another Mediation is Unnecessary and is Not a Reason to Stay Consideration of the Pending Post-Trial Motions.

In an effort to end this lengthy and expensive litigation, Respondent Trustees have previously made numerous settlement offers to Petitioner, beginning early in this case before the first phase of trial on July 9, 2018 and continuing until just recently, with a written offer made on June 10, 2019. The Petitioner has rejected *all* previous offers of settlement. As Petitioner notes in his Memorandum, “[a] proposal [to split the Trust] was made a number of times both pre-trial and during the trial by Petitioner’s counsel.” In fact, all parties to this action previously

² Petitioner’s request that the Court set aside its ruling denying Petitioner’s request to split the Trust, reopen evidence on the issue, and refer the matter to a special referee is actually a request to reopen the case. *Johnson v. Johnson*, 288 S.C. 270, 274, 341 S.E.2d 811, 814 (Ct.App.1986) (“[a] judge may not, after all testimony has been taken, receive additional contested evidence without reopening the case”). Trial courts enjoy broad discretion to reopen a case before the entry of judgment, but Petitioner has presented the Court with no authority which suggests courts possess such discretion where, as here, final judgment has been entered. Rather, a court’s ability to reopen a final judgment such as the Final Order rests in a motion to alter or amend under Rule 52 or 59, SCRCP, or a motion for relief from judgment under Rule 60, SCRCP. As discussed herein, Rules 52 and 59 do not authorize the relief sought by Petitioner and Petitioner has not filed a motion under Rule 60.

participated in a thorough mediation conducted by the Honorable Thomas W. Cooper, Jr. on August 27, 2018, shortly before the second phase of the trial began on September 27, 2018. Petitioner presented a detailed proposal to split the Trust at that mediation, and it was carefully considered by Respondent Trustees and their counsel and declined. Because the same or similar proposal has previously been unsuccessfully advanced by Petitioner numerous times, and because Petitioner has previously rejected numerous reasonable settlement offers, a second mediation would likely serve no useful purpose, but would certainly increase the already crushing legal fees and other expenses already incurred by the Trust.

This does not mean that the Respondent Trustees and the Intervenor, including the newly appointed Trustee, Cheryl Holland, who will also have to approve any settlement, do not remain open to a negotiated resolution. If Petitioner has a settlement proposal, he can certainly submit it through his new counsel, and the Respondent Trustees, the Intervenor, and Ms. Holland will carefully consider it. That Petitioner wants to again submit a proposal to split the Trust, however, is not a valid basis to stay the litigation or the consideration of the pending post-trial motions. As they have in the past, settlement negotiations can continue while the litigation moves forward.³ If the parties reach a settlement, it can be brought to the Court for consideration and approval at that time.

III. Petitioner's Litigiousness Should be Discouraged.

Petitioner's Memorandum is further evidence that Petitioner is unrelenting, overly litigious, and willing to pursue legally and factually unsupported claims to get his own way, regardless of the financial damage he may cause to the Trust. Petitioner declares that *the Court's* Final Order, rather than providing the closure that one would expect and promoting the family

³ Counsel for the parties are, in fact, currently in communication to explore any reasonable settlement alternative.

healing that he purports to desire, “merely sets the stage for future litigation.” (Pet. Memo. at 2.)

Citing a host of possible future outcomes, with no factual evidence that these outcomes are even likely, Petitioner repeatedly and explicitly threatens further lawsuits:

- If Respondents Whit Boykin and May Boykin believe that Respondents Wortley and Belger “are not acting in good faith,”⁴ or are “engaging in acts of self-dealing, partiality or mismanagement subsequent to the trial,”⁵ or if “by either negligent or willful act or omission they are failing to achieve the results that they projected in trial⁶ . . . ***there will almost certainly be another lawsuit.***” *Id.* at 2-3 (emphasis added).
- “[I]f it turns out that Petitioner’s view of the economics of the trust assets was correct . . . ***there could well be further litigation.***”⁷ *Id.* at 3 (emphasis added).
- “[I]f the trustees . . . are unable at any point in the future to agree on whether to sell or retain a tract of property, ***there will likely be another lawsuit.***” *Id.* at 4 (emphasis added).
- “***No matter what [the trustees] do,*** . . . [regarding] retaining or disposing of real property without unanimous agreement[,]***] litigation is practically unavoidable.*** *Id.* at 4 (first emphasis in original, second emphasis added).

Since this litigation began on August 24, 2017, Petitioner has demonstrated the he is either incapable or unwilling to compromise. The driving force behind the current emotional and financial distress of the Testator’s family has been the Petitioner’s relentless pursuit of his meritless and ultimately futile action to ignore the Testator’s Will and seize control of the Trust, his attempt to charge the Trust with over \$820,000 for his attorneys’ and consultants’ fees, while the Respondent Trustees and Intervenors have been forced to spend in excess of \$750,000 to defend against Petitioner’s meritless lawsuit, and now his continued refusal to accept the Court’s

⁴ At the trial of this case, Whit and May Boykin both testified that their only source of information regarding Trust administration and this litigation is Petitioner or their own counsel. Trial Transcript, July 10, 2018 at 13-14; 25-26, 30-33. It is also both telling and puzzling that Petitioner, and not their own counsel, continues to advocate exclusively on behalf of Whit and May Boykin, who are both vulnerable adults, and now appears willing to “advocate and promote a division in which . . . Whit and May Boykin receive *significantly less* than 50% of the value of the trust assets.” (Pet. Memo at 5 (emphasis added).) It is highly questionable whether such an outcome would be in the best interests of these beneficiaries.

⁵ The Court’s review in the trial of the entire history of the Respondent Trustees’ actions as Trustees revealed no such pattern or likelihood.

⁶ Notably, a failure to achieve *projected* results could occur for a host of reasons, despite the Trustees’ best efforts.

⁷ Presumably, Petitioner will be the sole judge of this issue.

decision. In his latest filing with the Court, Petitioner threatens to continue this destructive cycle, if the Trust's future does not unfold as he believes it should. While Petitioner's threats are not particularly surprising, given the numerous instances of similar threats that are contained in the record of this case, these latest threats clarify that Petitioner is willing to drain the Trust's financial resources through additional frivolous litigation.

Petitioner's Memorandum should be considered by the Court in support of eliminating or reducing the attorneys' fees awarded to Petitioner, as requested in Respondents' motion to alter or amend. Despite Petitioner's hollow assertions that he has only the best interests of the Boykin family at heart, Petitioner's Memorandum makes it clear that the only way this family can begin to heal is if Petitioner's clearly ill-intended attempts to litigate this matter come to an end.⁸ Awarding fees to Petitioner (and to Cross Claimants) further incentivizes the additional Trust litigation Petitioner has threatened. As long as Petitioner can charge his attorney fees to the Trust, however, he will have no incentive to cease filing frivolous lawsuits against the Trust, and thus will continue to drain the Trust of its financial resources. Petitioner should be required to pay his own fees.

Respondents Wortley and Belger and the Intervenors respectfully request that the Court deny all relief sought by Petitioner in his Memorandum.

[signature on following page]

⁸ The record of this case makes it clear that Petitioner's actions caused and worsened much of the purported strife amongst the family members that Petitioner now claims to want heal.

Most respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

By: s/James Y. Becker

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Wagner, III, B. Boykin Wagner, Mary Deas
Heimbach, and Allie Boykin Belger*

July 22, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

IN THE MATTER OF:
LEMUEL WHITAKER BOYKIN, II, deceased

Case No. 2017-CP-28-00831

Rigdon H. Boykin, as sole disinterested Co-
Trustee of the Lemuel Whitaker Boykin, II
Residuary Trusts A and B;

Petitioner,

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,
et al.

Respondents.

**NOTICE OF MOTION AND AMENDED MOTION TO
ALTER OR AMEND**

TO: ALICE PAYLOR, ESQ., ATTORNEY FOR RIGDON BOYKIN
WILLIAM TETTERTON, ESQ., ATTORNEY FOR LEMUEL WHITAKER
BOYKIN, III AND MAY CANTEY BOYKIN

YOU WILL PLEASE TAKE NOTICE THAT on the tenth day after service hereof or at
such other time is convenient for the Court, Respondents Mary Deas Wortley and Alice B. Belger,
and the Intervenors, Theodore T. Wagner, III, B. Boykin Wagner, Mary Deas Heimbach, and Allie
Boykin Belger will, pursuant to Rule 59(e), SCRCF, move before the Honorable Jean Hoefer Toal
at the Kershaw County Courthouse, or such other place as the Court shall designate, for an order

altering or amending the Final Order and Judgment (the “Order”) issued by the Court on May 24, 2019.¹ Specifically, Respondents Wortley and Belger and Intervenors seek the following relief:

1. An order compelling Petitioner and Respondents Lemuel Whitaker Boykin, III and May Cantey Boykin (“Cross-Claimants”) to accept and cooperate with the IRC § 2032A tax election for the Trust’s estate tax return; and
2. A modification of the Order to eliminate any award of fees, costs, or expenses to Cross-Claimants and/or their counsel. There is no legal basis on which to award litigation fees to an unsuccessful beneficiary;
3. A modification of the Order to eliminate or substantially reduce any award of fees, costs, or expenses to Petitioner Rigdon Boykin, including fees awarded to various experts; and
4. In the event that the Court concludes that an award of fees to Petitioner in some amount is appropriate, a modification of the Order to eliminate or further reduce fees paid to James Hardin, III.

Grounds for these requests are set forth separately below:

I. IRC Section 2032A Tax Election

Respondents Wortley and Belger and the Intervenors filed a Motion to Compel Petitioner and Cross-Claimants to Consent to an IRC § 2032A tax election on November 28, 2018. The Court’s Order is well-reasoned and comprehensive, but it did not specifically rule on this outstanding motion. For the reasons originally set forth in the motion, Respondents Wortley and Belger respectfully request that the Court amend its Order or issue a separate order to address the motion, and to compel Petitioner² and Cross-Claimants to acknowledge, accept, and perform all acts necessary to cooperate with the § 2032A tax election.

¹ Respondents and Intervenors received electronic notice of the Final Order and Judgment on May 24, 2019.

² While Petitioner has been removed as a Trustee, the possibility of appeal remains, making his consent desirable.

II. Attorney's Fees

At trial, the Court instructed the parties as follows:

Excerpt 1

THE COURT: . . . [i]f at the end when I issue the order, there is some sort of post-trial motion to change my final order to reflect a supplemental fee, that can be done. It can be a Rule 5[9] situation, but I think it's best for us to get all the fees . . . when you [submit] proposed orders [].

(Trial Tr. Sept. 28, 2018 62:2-7.)

Excerpt 2

THE COURT: Here's what I say. I say you are to submit your affidavits for up to date attorney's fees when you send in the proposed orders. I'll give some consideration as to whether it's more orderly to deal with the that, to hold those motions for attorney's fees until after I have issued the substantive order[,] and we can schedule a hearing on that. I want to be sure that [the parties] get all the [chance] you need to fully explore the issue and not get it clouded up in the merits.

MR. DUFFY: Yes.

THE COURT: All right. So submit so I have some idea what they are, but let's have an understanding amongst each other that [I will] defer a final ruling on those matters until [after] the substantive order is issued. Does that suit everybody?

MR. DUFFY: Yes, thank you, Your Honor.

(*Id.* at p. 63:22-64:12.) (See attached transcript excerpts.)

Pursuant to these instructions, Respondents Wortley and Belger and Interveners submit this Rule 59, SCRCF motion to address the fees and expenses claimed by Cross-Claimants and James Hardin, III.

A. There Is No Legal Basis on Which to Award Fees and Expenses to Cross-Claimants and their Counsel.

The Court discussed several provisions of the Trust Code which, under proper circumstances, might authorize an award to a trustee for expenses incurred in the administration and management of a trust: S.C. Code Ann. §§ 62-7-709, 62-2-816, and 62-71004. The first two

of these statutes apply to fees and expenses incurred by a *trustee*. S.C. Code Ann. § 62-7-709(a) (“[a] *trustee* is entitled to be reimbursed . . . for expenses that were *properly incurred in the administration of the trust*”) (emphasis added), S.C. Code Ann. § 62-2-816(15) (“a *trustee* may . . . pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust”) (emphasis added). Cross-claimants are mere beneficiaries, not trustees. Sections §§ 62-7-709 and 62-2-816 are, by their own terms, inapplicable to a request for fees by Cross-Claimants.

The only provision of the Trust Code which is potentially applicable to a claim for fees and expenses by trust beneficiaries is S.C. Code § 62-7-1004. That section provides:

[i]n a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

S.C. Code Ann. § 62-7-1004. The language of this section is facially broad enough to encompass an award of fees to a beneficiary, but the Reporter’s Comment to this section indicates that its application with respect to beneficiaries is limited. The Reporter’s Comment states:

[t]he court may award a party its own fees and costs from the trust. The court may also charge a party's costs and fees against another party to the litigation. Generally, litigation expenses were at common law chargeable against another party only in the case of egregious conduct such as bad faith or fraud. With respect to a party's own fees, Section 62-7-709 authorizes a trustee to recover expenditures properly incurred in the administration of the trust. *The court may award a beneficiary litigation costs if the litigation is deemed beneficial to the trust.*

S.C. Code Ann. § 62-7-1004 (emphasis added). An award of litigation costs to a beneficiary may be appropriate under § 62-7-1004 where the litigation is deemed beneficial to the trust. If, however, litigation by a beneficiary is not beneficial to the trust, no award of litigation costs to the beneficiary is appropriate. *See id.* This rule functions as a deterrent. If beneficiaries were entitled

to fees even for litigation that did not benefit the trust, then beneficiaries could employ litigation to influence the trust without consequence.

The claims asserted by the Cross-Claimant beneficiaries were not beneficial to the trust for the following reasons:

- Cross-Claimants Pursued Personal Objectives. Cross-Claimants pursued their claims not for the benefit of the Trust as a whole, but instead for their personal benefit. They sought to increase the annual income they would receive from the Trust, and to do so despite the consequences such an action might have on the interests of the remainder beneficiaries and the Trust's ability to meet its other expenses and obligations.³

- Cross-Claimants Obtained No Relief and Improperly Depleted Trust Assets. Cross-Claimants voluntarily abandoned most of their claims at trial, and their efforts on the remaining claims were wholly unsuccessful. The Court itself noted that counsel for Cross-Claimants was "unable to obtain any significant beneficial results on behalf of his clients." (Order at p. 60.) Counsel for Cross-Claimants actually failed to obtain *any* beneficial result for his clients. Instead, Cross-Claimants harmed the Trust. Respondents Wortley and Belger were forced to spend Trust funds and Trustee time defending the abandoned and meritless claims. The litigation has been a colossal drain on Trust resources.

- Cross-Claimants' Efforts Were Unnecessary. Cross-Claimants' and their counsel added nothing to the litigation. As the Court observed, counsel for Cross-Claimants largely adopted the positions taken by Petitioner. (Order at p. 60.)

³ Indeed, Respondents Wortley and Belger's Motion in Limine, filed July 9, 2018, sets forth and attaches numerous communications between Petitioner, his counsel, his retained expert Jim Hardin, and Cross-Claimants' counsel where the sole focus of the communications appears to be directed at securing attorney fees, trustee fees, removing Respondents Wortley and Belger as co-Trustees, and establishing a mandatory minimum distribution amount to increase Cross-Claimants' distribution sizes.

In summary, Sections §§ 62-7-709 and 62-2-816 do not authorize an award of fees and costs to Cross-Claimants because they are not trustees. Section 62-7-1004 does not authorize an award to Cross-Claimants because Cross-Claimants' actions were unsuccessful and did not benefit the Trust. The award of costs and expenses to Cross-Claimants and their counsel should be stricken.

B. The Award of Attorney's Fees and Expenses to Petitioner Should Be Stricken or Substantially Reduced.

An award of attorney's fees and expenses, including expert fees, to the Petitioner is improper for several reasons. Petitioner's suit:

- (1) was not taken in good faith administration of the Trust; and
- (2) did not benefit the Trust.

1. Petitioner's Suit Was not Undertaken in Good Faith Administration of the Trust.

The Court concluded that an award of attorney's fees and expenses to Petitioner from the Trust was appropriate because the suit was an attempt to manage and operate the Trust. (Order at p. 57.) While fees may be awarded to trustees for management of a trust in proper circumstances under S.C. Code Ann. § 62-7-709, the Court's Order omits consideration of a key element in this analysis. Section 62-7-709 provides that:

(a) A trustee is entitled to be reimbursed out of the trust property, with interest at the legal rate as appropriate, for:

- (1) expenses that were *properly* incurred in the administration of the trust; and
- (2) *to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.*

(b) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

(c) A prospective trustee is entitled to be reimbursed from trust property for expenses reasonably incurred by the prospective trustee pursuant to Section 62-7-701(c) to protect or investigate the trust assets before deciding whether or not to accept the trusteeship.

S.C. Code Ann. § 62-7-709 (emphasis added). The Reporter's Comment further explain that:

[a] trustee is ordinarily not entitled to reimbursement for *incurring unauthorized expenses*. Such expenses are normally the personal responsibility of the trustee. As provided in subsection (a)(2), a trustee is entitled to reimbursement for unauthorized expenses *only if the unauthorized expenditures benefitted the trust* . .

Reimbursement under this section may include attorney's fees and expenses incurred by the trustee *in defending an action*. However, a trustee is not ordinarily entitled to attorney's fees and expenses if it is determined that the trustee breached the trust.

S.C. Code Ann. § 62-7-709 (emphasis added).

The expense of Petitioner's suit was not "properly incurred" because the suit was unauthorized. S.C. Code Ann. § 67-2-816(15) ordinarily authorizes a trustee to compensate employees and agents of a trust, and § 67-2-816(24) ordinarily authorizes a trustee to institute legal actions related to a trust, both of these grants of authority are subject to an important qualification. As the Reporter's Comment state "[a]ll the powers listed are subject to alteration in the terms of the trust." S.C. Code Ann. § 67-2-816.

The Will in this case alters the general rule. Powers of the Trustees are described in Item XIV of the Will. Item XIV provides that Trustees are authorized in their discretion "with respect to any real property, by unanimous vote, or any personal property, by majority vote" to undertake the actions set forth in subsections A through O. Subsection J of Item XIV authorizes Trustees to employee and compensate attorneys, but like all subsections in Item XIV, this power must be exercised either by unanimous vote or majority vote depending on the nature of the action in question.

Under the terms of the Will, Petitioner was not authorized to unilaterally retain counsel and bring suit. This action required approval of a majority of the Trustees. Petitioner never sought nor obtained such approval. Given the restrictions found in the Will, the South Carolina Trust Code did not authorize Petitioner to attempt to seize control of the Trust from his Co-Trustees through the means of legal action.⁴

Additionally, the claims of the Petitioner were not instituted in connection with good faith administration of the Trust. The Court has found that at numerous times Petitioner did not act to benefit the Trust, but instead acted for his own independent reasons. The Court stated:

[t]he Court further finds that some of Petitioner's actions and positions were not taken out of genuine concern for the trust and its beneficiaries, but rather in an attempt to intentionally frustrate Respondents' attempts to administer the Trust and manipulate the actions of his co-trustees.

(Order at p. 40.) This litigation was more of the same. Petitioner filed suit expressly seeking to be awarded controlling authority over his co-trustees, to modify the Trust to force his co-trustees to act as he desired, and, failing these efforts, to remove both of his co-trustees. This action was begun solely to interfere with administration of the Trust by his co-trustees in accordance with the Testator's Will. Petitioner sought *control* for himself, either by declaration, construction, or removal of Respondent Trustees.

Petitioner's actions were not authorized and were not taken in good faith administration of the Trust. An award of fees and expenses to Petitioner is therefore improper.

2. Petitioner's Action Did Not Benefit the Trust.

It is the general rule that an award of litigation costs, even those incurred by a trustee, is improper when the litigation does not benefit the trust. *Whittlesey v. Aiello*, 104 Cal.App. 4th

⁴ Because Petitioner's suit was not authorized, fees can only be recovered if the suit benefited the Trust. S.C. Code Ann. § 62-7-709(a)(2). As explained in more detail below, Petitioner's suit did not benefit the Trust. It was extremely harmful to the Trust.

1221, 128 Cal.Rptr.2d 742, 748 (2002) (no basis for trustee to recover litigation expenses if litigation does not benefit trust); *Nickas v. Capadalis*, 954 S.W.2d 735, 741 (Tenn. App. 1997) (“[u]nless some benefit is contributed to the preservation of the trust estate, however, an award of attorney’s fees is not permitted from the trust fund, notwithstanding the rule that a trust estate should bear the expense of the administration of the trust”); *see also Glasscock v. Glasscock*, 304 S.C. 158, 161 403 S.E.2d 313, 315 (1991) (the beneficial results obtained is a factor in determining whether an award of fees is proper).

Additionally, the general criteria in determining the amount of fees required by “justice and equity,” as used in S.C. Code § 62-7-1004, are: (a) reasonableness of the parties’ claims, contentions, or defenses; (b) unnecessarily prolonging litigation; (c) relative ability to bear the financial burden; (d) result obtained by the litigation and prevailing party concepts; and (e) whether a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons in the bringing or conduct of the litigation. *See Atwood v. Atwood*, 25 P.3d 936, 947 (Ok. 2001) (discussing identical statute from Uniform Trust Code).

These criteria do not support an award of fees to Petitioner. Petitioner’s suit did not benefit the Trust. Petitioner commenced his suit to seize control of the Trust and interfere with administration of the Trust by his co-trustees. He hoped that the litigation would force his co-trustees to buckle to his will despite the clear desire of the Testator to preserve the properties Petitioner sought to sell. Additionally, Plaintiff’s suit was wholly unsuccessful. He obtained no relief of any kind. The Court expressly found that there was no basis in law or fact for most of the claims asserted.

Petitioner instead inflicted real harm on the Trust. If the Court does not alter its award of fees, the litigation will have cost the Trust a total of \$1,429,835.79 in attorney's fees and other litigation costs -- an amount representing approximately 8.75% of the net asset value of the Trust. Saddling the Trust with an expense of this size as a result of improper and unsuccessful litigation harms the innocent beneficiaries of the Trust in a tangible way. Distributions to income beneficiaries are determined either based on the net income of the Trust or its net asset value. Because both measures will decrease as a result of the attorney's fee award, income beneficiaries will receive lower distributions.

Remainder beneficiaries also suffer. If the fee award remains unchanged, the Trust will lose \$1,429,835.79 in assets. If this amount had remained in the trust and been invested over a 20 year time period at an average rate of return of 5%, it would have grown to \$3,793,777.92. This suit results in a future loss to remainder beneficiaries as a group in excess of 3.5 million dollars.

Petitioner's contentions were not reasonable. The Court expressly found that there was no basis in law for some for the claims asserted. Petitioner is a self-made business man with substantial assets. Petitioner and Cross-Claimants obtained no beneficial results whatsoever, and are not prevailing parties in this litigation. Finally, as discussed, this litigation was begun only to interfere with administration of the Trust by Respondents Wortley and Belger.

The award of fees and expenses to Petitioner's should be stricken, or alternatively, substantially reduced.

C. The Award of Fees and Costs to James Hardin, III Should Be Eliminated, or, Alternatively, More Substantially Reduced.

If the Court does not otherwise eliminate the award of fees and expenses to Petitioner, Respondents Wortley and Belger ask the Court to eliminate or further reduce any award of fees or expenses to James Hardin, III. While a trustee may have authority to retain counsel to assist a

trustee in the performance of his or her duties as a trustee, Mr. Hardin did not act in that capacity. Mr. Hardin was instead a litigation expert, and, in many cases, shadow litigation counsel. His role was to assist in improper and unsuccessful litigation by Petitioner. The rationale that Petitioner had the authority to retain and compensate Mr. Hardin as a trust advisor does not apply, and therefore, does not support an award of fees to Mr. Hardin.

Additionally, and in any event, Mr. Hardin's role in the case was altered by the Court on June 18, 2018. Although he may have been serving as a proposed testifying expert to that point, the Court limited his testimony, and following the Court's ruling, Mr. Hardin was purely a fact witness. He had no authority to continue acting as an expert witness in the matter, and certainly no right to expert fees or travel expenses in connection with trial. Mr. Hardin should not recover for work performed after the Court confirmed that Mr. Hardin was merely a fact witness.

1. Mr. Hardin Was Not Trust Counsel.

Petitioner has argued that Mr. Hardin's fees should be paid from the Trust because he was retained by Petitioner to assist and advise Petitioner in his role as a trustee. The Court so held in its February 16, 2018 Order when it stated that the "consultant's fees incurred by Petitioner have been occasioned by his attempt to manage and operate the Trust, and therefore those are valid fees chargeable to the Trust." (Order at p. 3, n. 1.) When Respondents Wortley and Belger moved to exclude Mr. Hardin's testimony as an expert witness, the Court again explained that Mr. Hardin had been retained as counsel for Mr. Boykin in his capacity as trustee.

Facts subsequently uncovered, however, reveal that Mr. Hardin was a litigation expert, not trust counsel. Documents in the record obtained by subpoena from Mr. Hardin revealed all of the following:

- Mr. Hardin was first contacted by Mr. Boykin on July 17, 2017. The initial time entry reads:

Call from Ridgon Boykin and brief overview of my service as an *expert consultant* (emphasis added);

- Mr. Hardin prepared an engagement letter which characterized Hardin as trust counsel for Mr. Boykin in his capacity as co-trustee, *but Mr. Boykin did not sign it*. (Hardin draft engagement letter dated August 1, 2017);
- Mr. Boykin signed a different version of the engagement letter which refers to Hardin *only as an expert*. (Hardin engagement letter dated August 4, 2018, signed by Mr. Boykin on August 10, 2017);
- A few weeks later, Mr. Hardin emailed Mr. Rosen with yet a third engagement letter. This letter characterized Mr. Hardin as having been retained not by Mr. Boykin, but by his attorneys, Rosen, Rosen, & Hagood. Mr. Hardin was to provide expert services “as directed” by the law firm. (Hardin engagement letter to Rosen dated August 10, 2017);
- Hardin’s email explained that the change was necessary to establish the law firm, not Mr. Boykin, was responsible for Mr. Hardin’s fees to replace the prior agreement ab initio. (Email from Hardin to Rosen dated September 5, 2017):
- Mr. Hardin backdated the engagement letter to August 1, 2017. *Id.*⁵

In summary Mr. Hardin was not retained by Mr. Boykin as trust counsel. Mr. Hardin was not even retained by Mr. Boykin, but instead by Mr. Boykin’s counsel, to whom he reported. Fees to Mr. Hardin cannot be justified under the premise that Mr. Hardin acted as trust counsel.

Nor can fees to Mr. Hardin be justified as litigation expenses. As discussed above, an award of litigation costs, even those incurred by a trustee, is improper when the litigation does not benefit the trust. Neither Mr. Hardin’s work nor Petitioner’s suit, which was premised on Mr. Hardin’s work, benefitted the Trust. Petitioner commenced his suit to seize control of the Trust and interfere with administration of the Trust by his co-trustees. He hoped that the litigation would force his co-trustees to buckle to his will despite the clear desire of the Testator to preserve the properties Petitioner sought to sell.

⁵ Copies of the aforementioned documents are attached as exhibits to Respondents Wortley and Belger’s Motion in Limine, filed July 9, 2018.

More specifically, Mr. Hardin's activities harmed the trust. Mr. Hardin supplied Mr. Boykin with legal theories which were legally unsupported. For example, Mr. Boykin testified in his deposition that his claim for preeminent authority over the trust was something Mr. Hardin suggested. The Court has now ruled that "there is no basis in law or fact to grant Petitioner's request that he be vested with preeminent authority over his Co-Trustees or to be a special fiduciary with superior authority over his Co-Trustees." (Order at p. 28.) In fact, the Court observed that much of Mr. Hardin's legal analysis was "completely contrary to the Court's interpretation of the applicable law." (*Id.* at p. 59.)

Mr. Hardin promoted and assisted Petitioner in maintaining meritless and wholly unsuccessful litigation. His contribution to the litigation did not benefit the estate, and he is not entitled to fees.

2. Mr. Hardin Was a Fact Witness.

Mr. Hardin was initially retained as a litigation expert, and later designated as a testifying expert. On June 18, 2018, the Court ordered that Mr. Hardin would no longer serve as an expert witness, but instead would serve only as a fact witness. Mr. Hardin confirmed this status when he testified at trial.

Excerpt:

Q: Mr. Hardin, you heard my objection moments ago. Do you understand that you're here in the capacity as a fact witness?

A: Yes.

(Trial Tr. July 9, 2018 30:12-15.) (See attached transcript excerpts.)

After June 18, 2018, Mr. Hardin was a fact witness. Fact witnesses are not entitled to compensation other than mileage and the standard witness fee. Mr. Hardin cannot recover expert fees for any work done in connection with his testimony following the Court's Order of June 18,

2018. For example, Mr. Hardin is not entitled to compensation for review of materials and recordings of meetings in preparation for trial, time spent with counsel preparing his testimony, travel to and from court, and any actual time spent in the courtroom. The time records submitted by Mr. Hardin include these matters, and Mr. Hardin attempts to be compensated for all of this time at \$650 per hour.

If the Court elects to compensate Mr. Hardin at all, then Mr. Hardin's time for these activities must be eliminated before the Court's applies its percentage reduction.⁶

Most respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

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Wagner, III, B. Boykin Wagner, Mary Deas
Heimbach, and Allie Boykin Belger*

June 3, 2019
Columbia, South Carolina

⁶ This amended motion incorporates by reference the exhibits filed with the original motion to alter or amend.

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.)

PARTIAL 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

1 MR. ROSEN: Okay. Bear with me one second.

2 (Pause.)

3 MR. ROSEN: Mr. Hardin, that's all the questions I
4 have.

5 THE COURT: Cross-examination.

6 MR. REIBOLD: Thank you, Your Honor.

7 THE COURT: Mr. Reibold.

8 CROSS-EXAMINATION

9 BY MR. REIBOLD:

10 Q Good afternoon.

11 A Good afternoon.

12 Q Mr. Hardin, you heard my objection moments ago. Do
13 you understand that you're here in the capacity as a fact
14 witness?

15 A Yes.

16 Q And if I remember correctly, you were first contacted
17 by Mr. Boykin in July of 2017?

18 A That's correct.

19 Q That was your first exposure to anything about this
20 trust, any of the trustees, et cetera?

21 A That's right.

22 Q So you don't have any personal knowledge of anything
23 happening before you were contacted by Mr. Boykin?

24 A No.

25 Q And have you ever talked to Mary Deas Wortley?

STATE OF SOUTH CAROLINA)
County of Kershaw)

COURT OF COMMON PLEAS
2017-CP-28-00831

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,)

PETITIONER,)

vs.)

PARTIAL
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)
A 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,)

RESPONDENTS,)

September 28, 2018
Columbia, South Carolina

1 proceedings and they'll adjourned at some future time when
2 I'm advised by parties.

3 And my guess is, by that time, you'll probably have
4 those motions in writing and there won't be any question
5 for their submitted time.

6 MR. BECKER: I think that gives us plenty of time,
7 Your Honor.

8 THE COURT: Okay. That's good.

9 Anything further?

10 MR. BECKER: Your Honor, just one other item we
11 alluded to or Mr. Tetterton, I guess. Does the Court have
12 a preference on -- of course, the issue of attorney's fees
13 is an issue in this case. It's been before the Court
14 before. We're just inquiring whether the Court has a
15 preference on how to go about handling that, whether it's
16 submission of an affidavit or otherwise?

17 THE COURT: We would probably -- we won't cover that
18 until -- what we'll -- here's how I'd like to handle that.
19 I'd like to handle that by dealing with proposed orders on
20 the substance of the issue. And in those proposed orders,
21 you can submit, each side, to request for attorney's fees,
22 expert's cost and the other things that you have in mind.
23 I would then have the whole thing in front of me by the
24 time I prepare the final order. I think that's the best
25 way to do it. Your proposed orders will contain almost

1 everything.

2 If at the end when I issue the order, there is some
3 sort of post-trial motion to change my final order to
4 reflect the supplemental fee, that can be done. It can be
5 a rule 58 situation, but I think it's best for us to get
6 all the fees as they're then going in when you get your
7 proposed orders in.

8 MR. DUFFY: That suits us.

9 THE COURT: And then I have everything I need to make
10 a decision in that regard.

11 MR. DUFFY: That suits us, Your Honor.

12 THE COURT: Mr. Becker.

13 MR. BECKER: Your Honor, in looking at that Glasscock
14 factors, one of them is -- for awarding attorney's fees,
15 one of them is beneficial results.

16 THE COURT: Well, now, Glasscock? Oh, you're talking
17 about Glasscock on the attorney's fees. I thought you
18 meant punitive damages, those are out of way.

19 MR. BECKER: Yes, ma'am. You know, one of the
20 factors you have to -- the trial court must consider --

21 THE COURT: Is the result necessarily obtained.

22 MR. BECKER: Yes, ma'am.

23 THE COURT: Yes, I understand. That's why I want all
24 that in.

25 MR. BECKER: Well, I was thinking that we won't know

1 --

2 THE COURT: I will. I'm the one making the order.

3 MR. BECKER: Well -- all right. So I was thinking we
4 might argue differently depending upon the way the case
5 turns out, but, of course, you will know.

6 THE COURT: Well, it may very well be that the easier
7 thing to do is to reserve the matter of attorney's fees
8 for after the substantive award has been made.

9 MR. BECKER: I think that would be easier. We really
10 know we wouldn't be working with a moving target at that
11 point.

12 THE COURT: My guess is that your objections are not
13 going to change very much for either side, depending on
14 who prevails or thinks they prevail or halfway prevailed
15 or whatever that comes down to. I imagine both of you are
16 going to be fined based on what has been spent or what has
17 been billed, but I could be wrong.

18 MR. BECKER: I would imagine our clients will need
19 some help.

20 THE COURT: Yeah, well.

21 MR. BECKER: From --

22 THE COURT: Here's what I say. I say you are to
23 submit your affidavits for up to date attorney's fees when
24 you send in the proposed orders. I'll give some
25 consideration as to whether it's more orderly to deal with

1 that, to hold those motions for attorney's fees until
2 after I have issued the substantive order and we can
3 schedule a hearing on that. I want to be sure that y'all
4 get all the change you need to fully explore that issue
5 and not get it clouded up in the merits.

6 MR. DUFFY: Yes.

7 THE COURT: All right. So submit so I have some idea
8 what they are, but let's have an understanding amongst
9 each other that defer a final ruling on those matters
10 until the substantive order is issued. Does that suit
11 everybody?

12 MR. DUFFY: Yes, thank you, Your Honor.

13 THE COURT: All right. Now, we are at almost
14 3 o'clock and both parties -- all parties, I guess we
15 should say, are prepared to give us a final summation, if
16 I I'm not mistaken. I'm going to take a five-minute
17 recess to let the court reporter catch her breath and
18 y'all, too, and then we'll proceed to final arguments.

19 (WHEREUPON, a short break was taken.)

20 THE COURT: All right. You may proceed, Mr. Duffy.

21 MR. DUFFY: Thank you, Your Honor. I'm going to use
22 the podium if that's all right.

23 THE COURT: Of course.

24 MR. DUFFY: Given that this is, of course, a nonjury
25 case, Your Honor, we weren't sure whether we were going to

Video Deposition of - Rigdon H. Boykin

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF KERSHAW) CASE NO.: 2017-CP-28-00831
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,)
)
Plaintiff,)
)
vs.)
)
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 Canty)
Boykin,)
)
Defendants.)

Video Deposition of RIGDON H. BOYKIN, taken by
Doris Tompkins Brown, Certified Verbatim Reporter
and Notary Public in and for the State of South
Carolina, commencing at 9:24 A.M. on March 19, 2018,
at the offices of Speedy, Tanner, Atkinson and Cook,
708 Lafayette Avenue, Camden, South Carolina.

Video Deposition of - Rigdon H. Boykin

APPEARANCES

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(Videographer: J. Larry White)

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* * * * *

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Rough Analysis of Benefit of Selling Mill Pond and related buildings	Def. Ex. 4

* * * * *

(COURT REPORTER'S NOTE: --- INDICATES INTERRUPTION,
INCOMPLETE PHRASE, TRAILING OFF, INCOMPLETE SENTENCE)

1 The video deposition of Rigdon H. Boykin is being
2 taken pursuant to Notice and in accordance with the South
3 Carolina Rules of Civil Procedure and Amendments as adopted
4 by the Supreme Court which shall control the taking and use
5 of said deposition.

6 Counsel, with the specific consent of the witness,
7 waives the reading and signing of the deposition prior to
8 the time it is filed with the Court.

9 (Rigdon H. Boykin, having been duly sworn, testifies as
10 follows:)

11 VIDEOGRAPHER: On the record, 9:24 A.M.
12 This is the video deposition of Rigdon H.
13 Boykin held in Camden, South Carolina March
14 19, 2018. I, J. Larry White, hereby affirm
15 that I am familiar with the State and Federal
16 Rules of Civil Procedure pertaining to video
17 depositions and assure that the videoing of
18 this deposition is done in compliance with
19 the provisions of the Rules and in an
20 impartial manner. The attorneys will
21 introduce themselves and the court reporter
22 will swear the witness.

23 MR. TETTERTON: My name is William
24 Tetterton and I represent May Boykin and
25 Whit Boykin.

1 MR. BUNDY: My name is Bill Bundy. I
2 represent Alice Belger.

3 MR. BECKER: James Becker of Haynsworth
4 Sinkler Boyd representing Mary Deas Wortley.

5 MR. DUFFY: Liam Duffy representing the
6 Petitioner.

7 COURT REPORTER: Would you raise your
8 right hand, please? Do you solemnly swear
9 to tell the truth, the whole truth and
10 nothing but the truth so help you God?

11 MR. BOYKIN: I do.

12 COURT REPORTER: Thank you.

13 (Rigdon H. Boykin, having been duly sworn, testifies as
14 follows:)

15 EXAMINATION BY MR. TETTERTON:

16 Q. Mr. Boykin, I'm going to ask you to state your full
17 name, please, sir.

18 A. Rigdon Hiet Boykin.

19 Q. And where do you reside?

20 A. I live down 521 next to Boykin. It's -- the address,
21 physical address, is 1626 Sumter Highway.

22 Q. That's in Kershaw County?

23 A. Yes, it is.

24 Q. And if you don't mind, I'm going to call you Rigdon;
25 is that okay?

1 A. That's fine.

2 Q. Rigdon, at the beginning of a deposition, I've got
3 some things that I've got to admonish you about.
4 Number one is, during this deposition, if I ask you
5 anything that you don't understand, please ask me for
6 clarification, definitions or explanations of any
7 words, questions, documents presented during the
8 course of the deposition. I understand that Mr. Duffy
9 is representing you here today; is that correct?

10 A. Yes, he is.

11 Q. And during your deposition, the Rules require that you
12 do not discuss your testimony with him. During a
13 break, you're not allowed to discuss your testimony
14 with him; okay? Fair enough?

15 A. Yes.

16 Q. Also, the court reporter is going to be taking your
17 testimony down and I would ask that you speak out
18 verbally and not answer with a uh-uh or uh-huh so she
19 can make sure she has an accurate record of your
20 testimony today. Okay?

21 A. Yes.

22 Q. And if you need to take a break at any time, just let
23 us know. We'll all take a break and catch our breath
24 and get started back again. First of all, are you
25 married?

- 1 A. Yes.
- 2 Q. To whom are you married?
- 3 A. To Patricia Bruce Williams.
- 4 Q. How long have you been married?
- 5 A. I think forty -- close to forty-eight (48) years.
- 6 Q. Do you all have children?
- 7 A. Yes, we have two boys.
- 8 Q. Names and ages?
- 9 A. Richard is -- I'm not sure exactly to tell you the
- 10 truth.
- 11 Q. He's an adult?
- 12 A. Oh, yes. He's about -- he's forty-three (43), forty-
- 13 four (44), and Arthur who is about forty-one (41).
- 14 Q. And where does Richard live and what does he do?
- 15 A. Richard lives just above Durham in North Carolina and
- 16 he is sort of a funny -- he works for a company that
- 17 edits educational manuscripts and -- and other things
- 18 of that type for publication.
- 19 Q. Are they married -- is Richard married?
- 20 A. No, he is not.
- 21 Q. Arthur, where does he live and what does he do?
- 22 A. Arthur lives in Sunnyside, Alabama. He is a doctor.
- 23 Q. Does he have children?
- 24 A. Yes, he has one child.
- 25 Q. Rigdon, I'm going to go back and ask you about your

1 younger days. Did you grow up in Kershaw County?

2 A. I was born in the Charlotte Thompson community which
3 is about two miles from downtown Boykin, roughly
4 speaking. I was born there at a plantation house
5 called Mount Pleasant. That burned when I was about
6 two years old and we -- Daddy and Mother rebuilt a
7 sort of a ranch style house there, and then when I was
8 about I would say six or seven, we sold that house and
9 moved to the other side of Camden to a place called
10 Cool Springs.

11 Q. Did you go to schools in Camden?

12 A. I went to Calvert School for a little bit and then I
13 was home schooled.

14 Q. Did you get a high school Diploma?

15 A. I went -- for high school I went to a prep school in
16 New York called Millbrook. My father died when I was
17 around ten or so, and I lived after he died with
18 relatives for parts of the year and with a woman by
19 the name of Mrs. Waller, Thomas Waller, who had
20 promised my father she would see to my education. And
21 she had me go to New York and I first attended a
22 school before high school named Harvey School for
23 Boys. It was a boarding school in Hawthorne, New York
24 and I went there for I think three years, and then
25 when I graduated from Harvey, I went to Millbrook and

1 was at Millbrook for four years and I received --
2 graduated with I guess the equivalent of a high school
3 education. That's not what they call it.

4 Q. Did you continue your education after that?

5 A. Yes, I did. I went to Kenyon in Ohio for one year,
6 and then I could not afford to stay at Kenyon because
7 Mrs. Waller and I had some disagreements as to what my
8 career path should be, and I told her I did not want
9 to accept her aid any longer. And I had to transfer
10 to the University of South Carolina because of that,
11 and I finished my college education two years later;
12 so, I went through college in three years.

13 Q. What type of Degree did you get from the University of
14 South Carolina?

15 A. I got a Bachelor of Arts in -- I think my major was
16 English.

17 Q. After graduating from the University of South
18 Carolina, did you continue your education?

19 A. Yes. After I graduated from the University of South
20 Carolina, I began law school at the University of
21 South Carolina. However, during the middle of my
22 first year of law school, they changed the draft law
23 so that law students were no longer draft exempt; so,
24 at that time, I had to enlist in a delayed enlistment
25 program so I could finish my first year of law school

1 because the draft board here in Camden told me I was
2 1A and I was going to be going fairly quickly. So, I
3 enlisted on a delayed -- delayed sort of reporting
4 date so I could attend -- I finished my first year of
5 law school. And then I went and, actually, it was a
6 program which included OCS and I went to OCS.

7 Q. After your first year in law school?

8 A. After my first year in law school, I went to Combat
9 Engineer School for the OCS and was commissioned into
10 the Army Security Agency which is basically a
11 communications and electronic intelligence entity.

12 Q. How long did you serve in the US Army?

13 A. I think it was a little bit less than three years.
14 I'm not sure.

15 Q. Did you go back to law school after leaving the Army?

16 A. Yes, I did. I went back to law school and completed
17 that. Went back for my last two years.

18 Q. Did you get a Juris Doctorate at that time?

19 A. Yes, I did.

20 Q. So, you have a law degree; is that correct?

21 A. Yes, sir.

22 Q. Were you ever licensed to practice in the state of
23 South Carolina?

24 A. No.

25 Q. After finishing law school, did you attend any other

1 educational pursuits? As far as colleges or masters
2 or doctorates.

3 A. No.

4 Q. Did you go to work right after law school?

5 A. Yes, I did.

6 Q. If you would, walk us through your work experience.

7 A. All right. I started at a small to medium -- small
8 firm at the time called Dunnington, Bartholow and
9 Miller in New York.

10 Q. Did that firm specialize?

11 A. That firm, basically, it had a specialty in Trusts; it
12 represented the Bessemer Trust Company and a lot of
13 the Phipps family, the Whitney's, the Vanderbilt's.
14 It had a huge Estate and Trust practice, and it had a
15 huge practice representing Arthur Anderson in 10b-5
16 cases.

17 Q. How long were you with that firm?

18 A. I was with that firm about I would think seven years.

19 Q. What experience did you gain working with that firm?

20 A. In that firm, I started working on some of the
21 Bessemer cases which involved beneficiaries of some of
22 the Trusts suing Bessemer; we defended Bessemer, And
23 then I worked primarily in litigation, again, starting
24 off representing Bessemer. I spent about a year on a
25 case where Bessemer was being sued as a control person

1 on a 10b-5 case.

2 Q. For those who don't know who Bessemer is, who is
3 Bessemer?

4 A. Bessemer is a large investment advisory company.
5 Originally, it was a company that was set up only to
6 take care of the Phipps, the various Phipps family
7 Trusts and investments. Subsequently, it is an
8 investment advisor for a lot of other types of -- of
9 Estates and Trusts. I think the minimum for being a
10 Bessemer client is Fifty Million.

11 Q. What was your role in the -- the Bessemer case?

12 A. The Bessemer case, I was basically the number two
13 person rep -- on the trial of that case. That case
14 was tried in San Diego. We ended up getting a
15 directed verdict at the end of the Plaintiff's case,
16 and then the other -- one of the other Defendants
17 asked me to work with them until the case came to a
18 conclusion, and we ended up getting a jury verdict.

19 Q. After seven years with that firm, did you work in New
20 York after that?

21 A. Yes. Oh, before that, while I was working at
22 Dunnington, I started representing the American Paper
23 Institute in the energy sector.

24 Q. Where was their headquarters?

25 A. Their headquarters at that time was in New York. And

1 the firm represented American Paper Institute across
2 the board. I started representing them in the energy
3 sector. In the paper industry, most people don't know
4 this, but Fifty Percent (50%) of all the energy that
5 they use is generated by them, by their own waste.
6 And the National Energy Act was being discussed in the
7 1978 time frame and they passed the National Energy
8 Act in '79, and that Act contained a provision in
9 there which required public utilities for the first
10 time to buy electricity from independent power
11 producers, whether it be industrial facilities or just
12 a strict stand-alone power entity.

13 Q. Were you working at the same time with Dunnington when
14 you worked with American Paper Institute?

15 A. Yes, sir. I was.

16 Q. Did they just loan you out to American Paper or ---

17 A. No, basically, I went to all the committee meetings,
18 interacted with them, developed testimony for Hearings
19 and stuff, helped them on the implementation of the
20 National Energy Act both at the Federal Energy
21 Regulatory Commission and ---

22 Q. Any ---

23 A. -- at the Energy Department.

24 Q. Any litigation involved with American Paper?

25 A. The -- there were a number of cases which challenged

1 both the Statute and the Regulations that came out of
2 that Act. I participated in two that ended up going
3 to the Supreme Court.

4 Q. U.S. Supreme Court?

5 A. Yes. The first one, I didn't have but just a very
6 peripheral role. The second one was appealing a
7 decision of the Court of Appeals overturning the
8 Federal Energy Regulatory Rules, implementing a
9 requirement that utilities pay for electricity that
10 they got from independent power at the cost they were
11 avoiding by buying it from those independent
12 producers.

13 Q. So what would be your experience that you gained at
14 the American Paper Institute? It was in ---

15 A. I learned a tremendous amount about the paper
16 industry, obviously, and the forest products industry
17 as well because they were -- were very much
18 interrelated. Over that -- and subsequent to that, I
19 represented I would say probably at least half of the
20 major paper companies in this country. I represented
21 International Paper on a lot of work; Boise Cascade.
22 Potlatch, Wesvaco.

23 Q. Did any ---

24 A. A large number of paper companies.

25 Q. Did any of those companies have timberland holdings in

1 South Carolina?

2 A. Yes. Wesvaco did. Bowater did. International Paper
3 did. I think Stone Container did.

4 Q. Did Boise Cascade have any holdings in South Carolina?

5 A. I believe they did. I can't remember for sure, but I
6 think they did.

7 Q. Okay. How long did you stay with American Paper or
8 with Dunnington -- you said seven years, but after ---

9 A. Dunnington moved -- Dunnington broke apart in the year
10 of -- basically, '79, it was breaking apart primarily
11 because five corporate partners had died within the
12 last few years, and they were not bringing in strong
13 corporate partners to replace them. So, a whole group
14 of us left Dunnington and went to a firm called
15 Chadbourne and Parke, Whiteside and Wolfe at the time.

16 Q. When you mentioned that you got involved with forest
17 products, what was the extent of your involvement
18 while working with American Paper Institute concerning
19 forest products?

20 A. It was mostly dealing with regulatory aspects.

21 Q. When you left and went to Chadbourne, what was your
22 experience there?

23 A. Well, American Paper Institute came with us to
24 Chadbourne. And in fact, the Supreme Court case that
25 I worked primarily on was handled at Chadbourne. That

1 case, I think it was -- actually went to the Supreme
2 Court in about 2000 -- I mean, the 1981 time frame.

3 Q. All during this time, were you still residing in New
4 York?

5 A. Yes, I was.

6 Q. Did you own any property in Kershaw County, South
7 Carolina during that time?

8 A. No, I did not.

9 Q. How long were you at Chadbourne?

10 A. I stayed at Chadbourne until 1998, I think. Might
11 have been '99. '99, I'm pretty sure I was still at
12 Chadbourne. I left Chadbourne in that year and went
13 to a firm called O'Melveny and Myers.

14 Q. Okay. For the court reporter, how do you spell
15 O'Melveny?

16 A. O-'-M-E-L-V-E-N-Y.

17 Q. Okay. Thank you. And what was your experience at
18 O'Melveny?

19 A. Well, at O'Melveny -- I came to O'Melveny in 1980. I
20 think my first day was January 1, 1980.

21 Q. What was their specialty? If they had one.

22 A. O'Melveny was a general firm, I think, to the extent
23 if it was known for anything at the time, it was that
24 they represented American Brands and British American
25 Tobacco in all of the tobacco litigation. And its

1 other really big practice was, it was probably one of
2 the premier tax firms in the country. We had eight
3 tax partners at that time, which was highly unusual,
4 including the person who had just stepped down as Dean
5 of the NYU tax school by the name of George Simon.

6 Q. But was he there while you were there?

7 A. Yes, he was.

8 Q. And what ---

9 A. George joined almost about the same time I joined.

10 Q. And what department were you involved in with
11 O'Melveny?

12 A. I started the energy practice at O'Melveny. I was --
13 I became a partner at O'Melveny about a year after I
14 came to O'Melveny, and I started the energy practice
15 because we were instrumental in the passage and
16 implementation of the legislation that created
17 independent power. We were an obvious choice for
18 paper companies to use when they started trying to
19 negotiate with utilities to get power Contracts, and
20 that ultimately developed into a practice that became
21 very large actually even by New York standards. And
22 that was developing and -- and -- and helping in the
23 financing of independent power projects. We actually
24 were in the process -- in large part, teaching our
25 clients the business in large part, and at that point

1 in time, I acquired a client known as AES, Applied
2 Energy Services. They shortened it eventually to AES.
3 And that company became one of the leading independent
4 power companies in the world actually for a while.
5 And it's important because I in essence became their
6 general counsel even though I was at Chadbourne. They
7 didn't have any attorneys. I attended all of their
8 executive meetings, all of their management meetings,
9 everything. I was literally from a law firm acting as
10 in-house executive, almost.

11 Q. While you were devoting a considerable amount of time
12 to the energy practice, did you ever interact with the
13 partners that were involved in the -- in taxing in
14 that firm?

15 A. I had to work very closely with the Tax Department,
16 but it was more than that because, about three years
17 after I became partner, I became the dominant person
18 on the management committee at Chadbourne.

19 Q. What did that ---

20 A. And ---

21 Q. What did that entail?

22 A. That basically -- we had a small group of people that
23 basically ran Chadbourne. Chadbourne at that time had
24 about I would say a hundred partners and two hundred
25 associates, and because of my -- I'm more of a numbers

1 person than most of the partners -- and because of
2 that, I basically, about three years after I became a
3 partner, I was the sort of dominant person on the
4 committee and we did a lot of interesting things.

5 Like, we hired the first law firm manager, non-lawyer
6 law firm manager, on Wall Street. It was a big deal.

7 Q. When you were at Chadbourne and also O'Melveny, did
8 you all have to do some sort of future projections
9 concerning the clients you represented?

10 A. Oh, absolutely. We would have to -- we would do
11 projections every year. We would do analysis of the
12 contributions of all the partners. We would set
13 compensation. We would have to follow every single
14 practice group and try and figure out where we should
15 go for the future because, certainly, practice areas
16 would -- would go and become very profitable, and then
17 a period of time would happen when they would become
18 unprofitable and you had to figure out how to retrain
19 people or move associates and partners around to keep
20 them productive. It was a very intense -- if you're
21 on the Management Committee, you're doing a heck of a
22 lot of planning. I mean, it was taking up probably a
23 third of my time.

24 Q. Would that include an income analysis and expense
25 analysis?

- 1 A. Absolutely.
- 2 Q. Okay. After O'Melveny, did you stay with them or did
3 you move somewhere else?
- 4 A. After I left O'Melveny, I went to -- I went to -- I'm
5 sorry; can you repeat the question?
- 6 Q. Yes. What did you do after O'Melveny?
- 7 A. Oh, after O'Melveny, I retired here in South Carolina.
- 8 Q. Do you remember what year that was?
- 9 A. 2005, I think. About the end of that my guess would
10 be.
- 11 Q. Prior to retirement, did you own any property in South
12 Carolina?
- 13 A. I think I retired before I bought any property here in
14 South Carolina. I'm not really sure to tell you the
15 truth. It was right about the same time.
- 16 Q. Let me ask you now at this point; what relationship
17 are you to the Whit Boykin family?
- 18 A. L.W. Boykin, II, that was Old Whit I guess if I could
19 use that word.
- 20 Q. Is he the testator; is he the testator ---
- 21 A. He was the person whose Estate set up this Trust.
- 22 Q. That's the L.W. Boykin, II?
- 23 A. Yes.
- 24 Q. Okay.
- 25 A. He was -- my father was his uncle, and actually, we

1 were -- my father was related to -- was -- was the
2 brother of Whit's mother and I think the first cousin
3 of his father. You have two first cousins married
4 each other.

5 Q. Okay. What was your interactions with L.W. Boykin,
6 II? That's the -- that's the person you've known as
7 Old Whit?

8 A. Yes.

9 Q. The person who died in 1989?

10 A. Yeah.

11 Q. Okay. All right. So, ---

12 A. I spent some vacations at Millway.

13 Q. And Millway is what?

14 A. Millway is the home he lived in at the time he died.
15 That was some property that his father -- that used to
16 be in the Boykin family a long time ago. They lost it
17 because -- as Boykin's do very often -- because they
18 couldn't pay their taxes. In fact, there were seven
19 brothers and five of the seven brothers lost all of
20 their land.

21 Q. In Kershaw County and surrounding areas?

22 A. Yeah. Yeah. But in any event, I spent some vacations
23 there, and when I was in college and law school, I was
24 -- I was there a lot because they had had -- Whit and
25 -- Old Whit and Alice, his second wife, had three

1 children all of which had learning disabilities of one
2 kind or another. And Alice had determined or believed
3 that basically taking the children back into their
4 infancy could remedy some of those issues. So, we --
5 there was a program which was instituted where they
6 had to crawl through boxes and learn how to crawl
7 again like babies would and do a whole pile of things
8 like that. I was over most weekends actually while I
9 was in college and a good bit of the summers helping
10 them do this program specialists had determined they
11 should do.

12 Q. Let me interrupt you now. Old Whit was previously
13 married?

14 A. Yes, he was. He had one -- he was married to Betty
15 Carrison -- I think that was her last name -- and ---

16 Q. Did they have any children?

17 A. They had one child, Mary Deas.

18 Q. Is she about your age?

19 A. Mary Deas is I think about four or -- four years older
20 than I am.

21 Q. Okay.

22 A. Which when you're a kid is a -- is a lot -- is a big
23 difference. Nowadays it's nothing.

24 Q. So, Big Whit or Old Whit was married to Betty
25 Carrison. Did they divorce?

- 1 A. Yes, they got a divorce.
- 2 Q. And Mary Deas was their only child?
- 3 A. Correct.
- 4 Q. And then he married Alice?
- 5 A. Married Alice.
- 6 Q. Did Alice have ---
- 7 A. Several years later.
- 8 Q. Who was she married to?
- 9 A. Alice was originally married to a person by the name
10 of Clifford Leonard.
- 11 Q. Was he out of Chicago?
- 12 A. There was a -- his father I think had something to do
13 with Northern Trust Company, was an extremely wealthy
14 individual and had a plantation and land ownership
15 here in South Carolina. They owned Sunnyfield
16 Plantation, I think, and also Chancefield.
- 17 Q. Was that Sunnyhill Plantation?
- 18 A. Sunnyhill, yes.
- 19 Q. And Chancefield?
- 20 A. I think so.
- 21 Q. She was divorced from Clifford Leonard; is that
22 correct?
- 23 A. Yes, she did.
- 24 Q. All right. And did Alice and Clifford Leonard have
25 any children?

1 A. They had two children. Cliffy and Ginny. Virginia
2 something. I think it was Virginia Shorebred Leonard
3 or something like that.

4 Q. Now, you -- you indicated that you were interacting
5 with the three children of Alice. Was that Little
6 Alice, Whit and May?

7 A. That's correct.

8 Q. Who is the oldest of those three; do you remember?

9 A. Alice is.

10 Q. Okay. And the second one?

11 A. Whit. And the youngest is May.

12 Q. How would you describe what you observed about their
13 challenges, physically or mentally, while you were
14 interacting with them?

15 A. Well, first of all, I think all three children had a
16 sweetness about them that -- that -- that was really
17 admirable. They -- but I think the -- I -- I don't
18 know exactly how to characterize what the disabilities
19 were for each one of them. I can tell you what my
20 perception was.

21 Q. That was -- that was my question.

22 A. Okay. I think Alice's problems were more a -- a
23 difficulty processing information. It takes her a
24 while to process information and it -- it's difficult.
25 I think Whit has a -- has a very hard time

1 understanding numbers and the relationships of
2 numbers, in terms of understanding numbers in
3 relationship to what it ought to cost or things like
4 that. He also has -- reads at a fairly low level.

5 Q. And May?

6 A. May seems to have, at least from my perception, less
7 issues than the other two. I think her -- she has a
8 speech impediment. I have not dealt with May
9 intensely from a business type relationship; so, I
10 cannot tell you what other handicaps she may have.
11 But she seems to be functioning fairly well.

12 Q. Is Alice married? I'm going to say Little Alice;
13 okay?

14 A. Little Alice is married. She married Wayne Belger.

15 Q. Do they have children?

16 A. Yes. One child -- I guess her name is Alice, but they
17 call her Allie.

18 Q. Okay. Is Whit married?

19 A. No, he is not.

20 Q. Any children?

21 A. No, he does not.

22 Q. Is May married?

23 A. Yes, she is. She's married to a person by the name of
24 James Cagle.

25 Q. And where do they live?

1 A. They live in New York.

2 Q. Are they -- do they have employment or do you know?

3 A. May for a long time rode for various people exercising
4 their horses. In fact, she -- she rode for David
5 Yurman, the person who makes the silver jewelry, and
6 you will love May. Everyone loves May. It's just --
7 I mean, all three children have a very sweet
8 disposition.

9 Q. Does May and James have a business in New York?

10 A. May no longer does riding. I think she just burned
11 out. Jamie works as a caretaker for a family that
12 both of the -- well, the wife of the family was a
13 partner at Goldman Sachs. The husband was the -- a
14 real hot-shot trader for Goldman Sachs and they
15 married each other.

16 Q. All right. And when did you first perceive that
17 Alice was having some difficulty processing
18 information?

19 A. To tell you the truth, I did not recognize that in
20 large part until this -- until Big Alice died and I
21 started interacting with Alice a lot on this Trust,
22 the Residuary Trust. I knew there were some issues,
23 but I didn't realize how serious they were.

24 Q. What was your relationship with Big Alice up until the
25 time she died?

1 A. Okay. When Big Alice was courting Whit, I saw a great
2 deal of her because Daddy was a very close friend of
3 hers and of Whit. She was delightful. She was
4 sparkly, full of life, a lot of fun to be around.
5 Everyone was -- really loved Alice during that period
6 of time. And then she married Whit. I think my
7 relationship with Alice when I lived at a lot of the
8 time at Millway was extremely good. Alice would let
9 me use her car from time to time for dates, for
10 example. I didn't have a car until after my first
11 year in the Army. I just didn't have any money when
12 I grew up. I had nothing. But Alice -- until Whit
13 died -- well, actually, before Whit died, I did not
14 have a lot of interaction with Whit and Alice, other
15 than on vacations, I would come down here and bring
16 people down from New York to shoot and stuff like
17 that. But what happened is, in part, both Whit and
18 Alice became alcoholics. And I think the pressure of
19 trying to deal with three handicapped kids and
20 everything caused Alice to turn and -- and have a lot
21 of issues with Big Whit. I think they probably had a
22 lot of disagreements on how to take care of the kids
23 and what-have you. But Whit, shortly before he died,
24 Whit asked me to come down and discuss what -- how he
25 wanted to leave his Estate, and my relationship with

1 Alice soured somewhat during there because there was
2 obviously a time that Whit and Alice were fighting
3 with each other. Whit said he couldn't afford to
4 divorce her because he had lost a lot of his assets in
5 his first divorce, and he didn't want to go through
6 that process again.

7 Q. What was your understanding of Old Whit's accumulation
8 of property prior to his death?

9 A. Well, Whit, in those days -- well, Whit was a timber
10 broker, for example, first of all. He was really not
11 a farmer. He leased the farm to other people to run
12 or hired people to run it, but he didn't actually
13 participate that much in farming. When I was a kid,
14 Baynard ran the farm for him.

15 Q. Now, who is Baynard?

16 A. Baynard is my first cousin and Baynard has a PhD in
17 Agronomy from Clemson.

18 Q. Is he known as a farmer in Kershaw County?

19 A. Very much so. He has a PhD in Agronomy from Clemson,
20 taught Agronomy at Clemson for a number of years
21 before he became a farmer. And Whit employed him. He
22 actually employed -- employed a fellow by the name of
23 Hope Sanders at one point. I'm not sure who else.

24 Q. Did Baynard Boykin -- oh, excuse me -- was Baynard
25 Boykin a large landholder in Kershaw County?

1 A. No. Baynard's -- Baynard's father was Deas Boykin and
2 Caroline Boykin was his mother. I think Caroline and
3 -- and Deas had some land, but it was not on the order
4 of -- it was not on the order -- it might have been,
5 you know, a few hundred acres, maybe three or four
6 hundred acres then but nothing significant. I just
7 realized I failed to answer your question on Whit's
8 ---

9 Q. And I'm getting back to that, ---

10 A. Okay.

11 Q. -- about the accumulation of property, and you
12 mentioned he was a timber broker?

13 A. Yeah. In those days, a lot of the smarter timber
14 brokers would go and buy tracts of land and basically
15 pay for the land by cutting all the timber, and so,
16 they would end up being left with land that was --
17 that they maybe only had a few dollars in because they
18 had paid for the land with the timber that they had
19 cut. And so, they would keep that land, reforest it,
20 and a lot of people, Whit included, accumulated a lot
21 of land in that process. By the time Whit died, I
22 really don't know how much land Whit had. It would
23 probably be -- my guess is it might have exceeded what
24 he -- what the Estate has today. But it would have
25 been at least six thousand (6,000) acres of timberland

1 and farmland. But the farmland was the minor part of
2 it. The farmland at the time Whit died was probably
3 only about five hundred (500) acres or so.

4 Q. And is that -- is that the farmland that he would hire
5 Baynard Boykin or Hope Sanders to farm for him?

6 A. That's correct.

7 Q. Is it -- is it your understanding from being involved
8 in this Trust that the farmland encompasses only about
9 five hundred (500) acres more or less?

10 A. In that range, yes, sir.

11 Q. Okay. And the rest of it be in timberland?

12 A. There was -- there was timberland -- there were also
13 a few commercial properties, some of which came out of
14 activities relating to timber. For example, he had a
15 chip mill at one point. He had a liquor stove mill at
16 one point, and that land was located in I think Lugoff
17 and those -- it's about seven acres in Lugoff still
18 that the Estate holds that came out of that. He also
19 ran a Pontiac dealership early on. Because of the
20 Pontiac dealership, he acquired a parcel of land with
21 buildings at 1 Commerce Alley in the corner of I guess
22 that's Broad Street in Camden. He also acquired land
23 which originally came out of a partnership he had with
24 one of the Beard's, I think, on U.S. Number 1 where he
25 built a liquor store. Claimed he drank up most of the

1 profits.

2 Q. Oh, did he?

3 A. Yeah.

4 Q. Okay.

5 A. And they had some land north of Camden which they
6 started developing. I think most of the development
7 work was done by Alice where they split the land up
8 into lots, and it's all around Cool Springs where we
9 had lived earlier. And by "we," I mean my father had
10 lived, not Whit or Alice.

11 Q. Is that the Peckwoods area?

12 A. The Peckwoods area. That's correct. I think that was
13 one of the developments. They developed those lots,
14 and they have currently I think about eleven (11) lots
15 that have been unsold there. And they have about
16 forty (40) acres of land and a smaller piece still
17 that has not been developed up there.

18 Q. Okay. You came back in 2005; is that what I
19 understand you to say?

20 A. Yes, sir.

21 Q. All right. At that time, was Alice and Wayne living
22 in Kershaw County?

23 A. You mean Little Alice?

24 Q. Little Alice and Wayne.

25 A. Yes.

1 Q. Belger.

2 A. Yes.

3 Q. Was she still -- to your knowledge still involved in
4 her career in photography at that time?

5 A. Yes, I think so. Alice had a lot of photographic --
6 no, I think she had pretty much quit her photography
7 work by that time. Earlier, she had done a lot of
8 photography, had worked with Molly Nettles some on
9 weddings. I know -- I believe and I could be wrong on
10 this, but I think I helped them buy some photography
11 equipment even that Little Alice had. I -- I just
12 don't recall the details.

13 Q. But she was married to Wayne Belger?

14 A. Yes, sir.

15 Q. And what was Wayne Belger involved in at the time they
16 married? If you know.

17 A. I think Wayne was -- had been hired or -- or I think
18 Wayne was renting the farm from Alice.

19 Q. Big Alice?

20 A. Big Alice. And I think -- and I don't know all the
21 details of that, but I believe he was renting the farm
22 and I think he was basically working to develop
23 whatever farming business and disposing of chicken
24 waste.

25 Q. Okay.

1 A. Or turkey waste.

2 Q. So, would it be fair to characterize him as a farmer?

3 Or was that -- was that his occupation?

4 A. I don't really know how much of Wayne's business was
5 actually farming as opposed to his business of
6 disposing of the liquid waste that would come from a
7 turkey or chicken processing plants. I just don't
8 know.

9 Q. Just prior to Mr. Whit's death, what was your
10 interaction with Alice and Wayne?

11 A. Wayne did not marry Alice until long after Whit's
12 death.

13 Q. Okay. Prior to Big Alice's death, what was your
14 interactions with Little Alice? Just Little Alice by
15 herself, after 2005.

16 A. I think -- well, I think it was fine. I mean, I -- I
17 think Little Alice for a while -- but I think before
18 she married Wayne, had managed the Green Leaf Inn for
19 Alice in terms of -- in terms of, you know, making
20 sure that the help was making up the beds and fixing
21 up the rooms and taking care of or being in charge of
22 the kitchen activities and everything else. I thought
23 we had a very good relationship. In fact, Little
24 Alice made -- I used to bring people down from New
25 York every year and we stayed at the Green Leaf Inn,

1 and Little Alice one year had T-shirts made up with
2 New York Dove Club on them.

3 Q. Do you know how -- how many rooms the Green Leaf Inn
4 had? Approximately.

5 A. Gosh. I would say ten, maybe. I'm not really sure.
6 I know when we would come down from New York, we would
7 take most of the Inn.

8 Q. And what was Little Whit doing during this time?

9 A. I had very little interaction with Little Whit during
10 that time. After I left and went to New York, I would
11 only come down here primarily to shoot doves and to
12 see my wife's parents in Columbia or go to the beach
13 or what-have you. I didn't have the time with my work
14 schedule; I mean, you're -- if you're working in a New
15 York law firm in those days, you were working
16 basically eighty (80) hours a week. It was -- it was
17 pretty brutal.

18 Q. Have you interacted with Alice and Wayne since Big
19 Alice died? I'm sure as Trustee but ---

20 A. Oh, oh, sure. Obviously. And before -- there is one
21 sort of seminal event that really changed a lot, of
22 not my relationship so much, but a lot of the
23 community's relationships with Alice and Wayne and
24 that was I think a couple years before Alice died,
25 maybe in the time frame of 2006, Wayne wanted to build

1 a huge storage tank of this liquid waste he was
2 disposing of in about a mile from the center of Boykin
3 and the smell and associated reputation of it got the
4 community very upset because I think, especially the
5 Wooten's, and that caused Alice to fall out in a major
6 league way with a lot of the community that was upset
7 with this.

8 Q. When you speak of liquid waste, can you be more
9 descriptive of that?

10 A. I'm not that sure of where it all comes from. As I
11 understand it, when you take chickens or turkeys to be
12 processed, the Regulations require -- they're --
13 they're hauled in these trucks and, you know, it might
14 be however many chickens crammed together in these
15 pens in these tractor-trailers and there's a lot of
16 waste from the chickens in those pens, and I think the
17 Regulations require them to wash the chickens before
18 they process them. And that wash -- I think they then
19 concentrate the solids somewhat out of that wash, and
20 I think Wayne's business -- and it may also involve
21 similar waste from the liquid; I have no idea. But he
22 would take that -- he was contracted to receive that
23 waste and obligated to dispose of it according to
24 Regulations promulgated I think by DHEC.

25 Q. Later on, I'll ask you more about that, but did -- to

1 your knowledge, did Wayne distribute some of the
2 liquid waste on farmland he leased from Alice and/or
3 the Trust?

4 A. A huge amount, yes.

5 Q. Okay. And, eventually, that created a problem, or did
6 it?

7 A. I don't know much about the Regulation of that and how
8 it is controlled. It's my understanding that you make
9 an application to DHEC and they have rules and
10 Regulations about how much you can put out on land and
11 you're supposed to test the land every sixty (60)
12 days, and it's sort of a self-reporting reg -- reg --
13 regimen to DHEC. It's not where DHEC comes and
14 independently tests as I understand it, and you get a
15 Permit to dispose of so many thousand, hundreds of
16 thousands or whatever of gallons of this stuff based
17 on how much land you had to be able to dispose it on.

18 Q. Was some of this being disposed on land owned by Alice
19 Boykin and/or the Trust? That was my question.

20 A. There's no question. A lot of it was disposed there.

21 Q. Okay. All right. Is he still farming the farmland in
22 the Trust?

23 A. No.

24 Q. All right. Now, what year did Alice die?

25 A. Alice died in -- August 8th of 2016.

1 Q. Now, if you would, tell me your involvement with
2 Alice's Estate and/or Trust starting in 2016.

3 A. Well, at the date that Alice died, I was one of three
4 Co-Trustees of the Residuary Trust. The Trusts were --
5 there were two Trusts set up by Whit's Will. One was
6 a Marital Deduction Trust and the other was a
7 Residuary Trust. They were later split into two
8 Trusts, each to be able to take advantage of the
9 Generation Skipping provisions of the Tax Code. But
10 for the purpose of -- of this deposition, if it's okay
11 with you, I would like to just treat them as one Trust
12 each, the Residuary Trust and the Marital Deduction
13 Trust.

14 Q. Well, let me make sure I understand. The Marital
15 Deductible Trust was divided into two Trusts; right?

16 A. Both of them were ---

17 Q. Okay.

18 A. -- divided into two Trusts. And so, we have four
19 Trusts ---

20 Q. I got you. Okay. All right. And tell me your
21 involvement as the Trustee of the Residuary Trust.

22 A. Well, the Residuary Trust held for the most part
23 nonproductive property.

24 Q. Let's get into that ---

25 A. I ---

1 Q. Let me interrupt for a minute; let me make sure I
2 understand. The Marital Deductible Trust named two
3 Trustees?

4 A. The Marital Deduction Trust had two Trustees, Mary
5 Deas, who is married to Tommy Wortley. Or, actually,
6 she was Mary Deas Wagner, which was her first husband,
7 and became Mary Deas Wortley.

8 Q. Who is the second Trustee of that Trust?

9 A. Alice.

10 Q. Little Alice?

11 A. Big Alice.

12 Q. Oh, Big Alice?

13 A. Yes.

14 Q. So, that was set up in Whit's Trust, Big Whit?

15 A. That was what was set up by Whit's Will.

16 Q. Okay. All right. And after Big Alice died, was --
17 was -- did Mary Deas have another Trustee that was a
18 successor Trustee?

19 A. Mary Deas, myself and Big Alice were the Trustees of
20 the Residuary Trust.

21 Q. Okay.

22 A. And Alice had the right by Will to appoint her
23 successor as Trustee for the Residuary Trust.

24 Q. Okay. Who did she appoint?

25 A. She appointed Alice Belger.

1 Q. Okay. And tell me at that time, were you familiar
2 with any experience that Little Alice had in managing
3 a Trust?

4 A. As far as I know, she had no experience.

5 Q. To your knowledge, what experience has Mary Deas had
6 in handling a Trust prior to being named Trustee at
7 this time?

8 A. I don't know if she had been involved with any Trust.
9 As far as I know, there may be something involving
10 Teddy's family or Teddy's, the man -- her first
11 husband's grandparents or something, or maybe Tommy
12 Wortley. I have no idea if she -- as far as I know,
13 she has no experience, but there may be something that
14 I don't know about.

15 Q. Let's -- let me ask you to establish this for me. As
16 of 2016, what was your interaction with Mary Deas? I
17 mean, how -- how often did you all interact?

18 A. Okay. When Mary Deas -- first of all, I knew Mary
19 Deas as a kid and from the time I was at Millway.
20 However, during that period of time, Mary Deas was off
21 at college and -- and a lot of the time and doing
22 other things, and then she married Teddy Wagner in the
23 I'd say '78, '79, '80 time frame; I'm not sure exactly
24 when.

25 Q. And where did they live?

1 A. They lived in Pennsylvania I think initially and then
2 Ohio. So, I didn't see Mary Deas a lot. And in fact,
3 didn't have a lot of interaction from her and with her
4 until Teddy Wagner and she got a divorce. And at that
5 point in time, Mary Deas had a very difficult time
6 because there was very little money to live on and --
7 because I don't think Whit was supporting her a lot
8 because Whit believed that Mary Deas should be
9 supported for the most part in those days by her
10 mother or what she inherited from her mother, which
11 was a large part of Whit's Estate at the time, and so,
12 Mary Deas didn't have a lot of funds. My interaction
13 with her at that point is, I think I invited Mary Deas
14 a couple times to Cape Cod to spend a week or so with
15 us at the beach there for summer vacations. I know we
16 invited -- we took our whole family to Steamboat
17 skiing for a week with us, you know, just trying to
18 help out and pay things. I also helped financially
19 with some educational expenses for her children at
20 that time.

21 Q. During the time you were doing this with Mary Deas,
22 were you ever aware of any financial -- substantial
23 financial experience she had in investments?

24 A. I don't think Mary Deas, at least if she has any
25 financial experience at all, she's never evidenced it.

1 I don't think she has any. I think, you know, her --
2 the extent of her financial experience was basically
3 trying to make sure Alice's bills got paid and trying
4 to search them out because Alice kept all of her mail
5 in a big pile most of the time on her kitchen table,
6 and bills got mislaid and everything else. I think
7 Mary Deas tried very hard to bring some organization
8 from the standpoint of getting bills paid and stuff
9 like that just before Alice died.

10 Q. Did she ever discuss with you any investments in the
11 stock market?

12 A. No.

13 Q. Did she ever discuss with you any of her land
14 holdings?

15 A. I don't -- if Mary Deas had any land other than maybe
16 her house, I don't know of it.

17 Q. Did she ever seek your advice on investments during
18 this time?

19 A. No.

20 Q. Did Little Alice ever seek your advice before --
21 before Alice, Big Alice died about investments?

22 A. No.

23 Q. About the stock market?

24 A. No.

25 Q. About farming?

1 A. No.

2 Q. About managing timberland?

3 A. No.

4 Q. Do you have any knowledge of whether or not, prior to
5 Big Alice's death, that Little Alice had any
6 experience in liquid investments such as stock market,
7 Bonds, Certificates of Deposit?

8 A. I don't think she has any, but ---

9 Q. Did she ever discuss any with you?

10 A. No.

11 Q. Has Wayne ever discussed any financial business with
12 you?

13 A. Wayne would talk a lot about various stock investments
14 that he had. He's apparently -- he told me on several
15 occasions of the various stocks that he had. How big
16 his stock portfolio might or might not be, I have no
17 idea. But he would discuss that from time to time
18 before Alice died.

19 Q. Okay. Now, after Alice died, there were three
20 Trustees of the Residuary Trust; right?

21 A. Yes, sir.

22 Q. And what were the assets of the Trust at that time, of
23 the Residuary Trust?

24 A. I am not sure what the value of the assets were in the
25 Residuary Trust at that time. I've never split the