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SC Court of Appeals

**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

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 IV

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1 A Yes.

2 Q Beg your pardon?

3 A Yes.

4 Q All right. So it's your position today that with the
5 future of this trust that you would sell the commercial
6 properties at the highest of two appraisals?

7 A Well, I think you -- in a way, I think in the future
8 we should. But right now, I don't think is the right
9 time. It's providing income to this family.

10 Q Is -- is it your position to hold on to these
11 properties?

12 A Until we get a better offer.

13 Q A better offer than the appraised values?

14 A Uh-huh.

15 THE COURT: Mr. Tetterton.

16 MR. TETTERTON: I'm moving on.

17 THE COURT: All right. Well, here's my observation.
18 You took her deposition. The complete deposition is in
19 evidence. Excerpts are in evidence. And the video was
20 played this morning where you had more questions than
21 anybody else did of her in that deposition.

22 So I explained that I don't want repetitive
23 questions. And I think we are -- we've plowed a lot of
24 ground about four or five different times on just this
25 commercial property. So I ask you to try to move on.

1 MR. TETTERTON: I will.

2 THE COURT: You're on your cross claim now.

3 MR. TETTERTON: Yes, ma'am.

4 THE COURT: And I ask you to move on, unless you've
5 got something that is very necessitous and hasn't been
6 asked so far in these various times that this witness has
7 been examined.

8 MR. TETTERTON: Thank you, Your Honor.

9 BY MR. TETTERTON:

10 Q Alice, I had asked you about relying on -- relying on
11 Jimmy LaFrage's projections; is that correct? Do you
12 remember me doing that?

13 A Yes.

14 Q And I'm going to show you Exhibit No. 117. Are you
15 familiar with that exhibit?

16 A I've seen it before.

17 Q It's up on the screen. May I have that one back,
18 please?

19 A I'm going blind.

20 Q And are you telling this Court that you're going to
21 rely on those revenues to pay the expenses of the trust,
22 along -- along with the hunting leases and the commercial
23 businesses?

24 A That's just estimates.

25 Q I'm sorry.

1 A And every time we have sold property, sold timber,
2 it's been above -- if I remember correctly, above Jimmy's
3 appraisals.

4 Q That's just for that one tract, the rabbit pen at
5 Sumter tract, just that one tract in 2017?

6 A Well, we did -- there was some -- some -- no, we sold
7 three -- three tracts -- no, three plots of rabbit pen.

8 Q Okay.

9 A And they were above -- above our minimum price. We
10 sold those. And then the third one the -- the fourth, we
11 put out on bids and didn't get a good response. So Jimmy
12 said -- so we took it off and a couple months -- a couple
13 weeks later, he went back and got a better price.

14 Q Do you understand that these expenses do not include
15 his eight percent commission?

16 A Yes.

17 Q So I would have to, would I not, multiply that
18 \$7,572,000 by eight percent to get the --

19 A Some of the expenses right there is -- are -- are --
20 like, we do CPR programs through the USDA. And some of
21 that would be part of that.

22 Q But none of that -- none of those expenses include
23 his eight percent commission, does it?

24 A I don't think. I don't think so.

25 Q Okay. Do you have a program -- a government program

1 called CRP, CPR? And are y'all still using that program
2 now?

3 A I have not -- we have not. I think the last program
4 ended last year, or this year.

5 Q Just a couple of questions. Now, when your mother
6 and father owned this timberland, particularly, when your
7 father was still alive, they used it for multiple uses.
8 They used it for recreation, did they not?

9 A Yes, sir.

10 Q And they enjoyed watching the trees grow?

11 A Well, I think it was a business.

12 Q And they sold timber on it when they needed some
13 money; is that correct?

14 A Well, I seen my father clear cut. I seen my father
15 thin. I seen him -- that when my mother -- my mother and
16 my sister conduct the business of cutting trees and -- and
17 they use Jimmy LaFrage's recommendation.

18 Q Have you asked -- you never asked Ansel -- Ansel
19 Bunch to give you a projection on how you should invest
20 your money from proceeds of sale from --

21 A Well, I did some e-mails. And I did ask him about
22 the money that we would -- you know, if a potential sale
23 comes up. And he said, well, I need more information. So
24 I didn't have the information. So I couldn't give him any
25 more.

1 Q Would you be willing to sell the Tommy Laney tract
2 for \$3,850 that Mary Deas suggested?

3 A Well, if -- my problem -- big problem about that was
4 the acreage was different. There were power lines on it.

5 Q But that's an appraisal price, is it not?

6 A No. It was -- Rigdon has -- I had never seen the
7 offer -- offer -- a written offer from Tommy Laney.

8 Q It was discussed in the trustee meeting, was it not,
9 that you all wanted \$3,900 an acre?

10 A Well, it was -- we wanted 350 -- no, 3,500, but that
11 was too high. And Rigdon said, no, he won't go for it.

12 And he said --

13 Q Okay.

14 A -- he does not like --

15 Q My question is, are you willing to sell the Tommy
16 Laney tract?

17 A Well, the contract is on.

18 Q Okay.

19 A It's going to be a big loss.

20 Q And one other thing. I appreciate -- I'm sorry.
21 Were you going to finish?

22 A I do have to say that Rigdon Boykin did an appraisal
23 with the Charleston Appraisers and -- with the Sumter
24 Mountain tract. And he used that sale -- potential sale
25 from last year -- it was supposed to be last year as

1 455,000 as a potential comp.

2 Q If the option agreement was back on the table today,
3 would you consider exercising an option with Haile Gold
4 Mine?

5 A No, with false lies, no.

6 Q And one final question, I think. Your husband, Wayne
7 Belger, was renting the farmland; right?

8 A Yes.

9 Q From the trust?

10 A Yes.

11 Q And I think y'all decided not to let him rent it --
12 the farmland anymore?

13 A I removed -- from -- from -- Karen Thomas told us
14 to -- me -- suggested that I should remove myself from the
15 discussion because I was married to --

16 Q Right.

17 A And Rigdon and Mary Deas was making the decision.
18 But beforehand, Rigdon said Wayne could farm it. Then he
19 decided to not farm it after I started asking questions
20 about why would we have to sell all the land.

21 Q The decision by Rigdon primarily to not let your
22 husband farm the farmland created some problems between
23 you and Rigdon, did it not?

24 A No --

25 MR. BECKER: Objection. Leading.

1 BY MR. TETTERTON:

2 Q It didn't. Okay. Was there a reason --

3 THE COURT: All right. Just a second. I've sat here
4 the whole day, Mr. Becker, while you lawyers have been
5 testifying and getting the witnesses to agree with you.
6 And you are now at five minutes to 5:00 for the first time
7 raising an objection of leading.

8 MR. BECKER: Well, he's on direct.

9 THE COURT: What?

10 MR. BECKER: He's on direct.

11 THE COURT: All right. I'm simply saying all these
12 lawyers have been leading and dancing this whole day. And
13 you sat there saying nothing.

14 MR. BECKER: Well --

15 THE COURT: And, now, you suddenly make an objection
16 that the witness is being led. What I observed is this,
17 we're plowing some ground that has been plowed several
18 times before now.

19 You can ask a direct question about whether or not
20 Mr. Rigdon Boykin's vote against allowing her husband to
21 farm what he had been farming caused friction between her
22 and Rigdon. That is a fair and direct question. If you'd
23 ask it that way.

24 You may answer it, Ms. Belger.

25 THE WITNESS: We feel -- Wayne felt that we would

1 have been better off for me -- for him not to farm the
2 property because of them -- he thought it would be held
3 over my head.

4 BY MR. TETTERTON:

5 Q Okay.

6 A And -- on my votes or anything I discussed.

7 Q Is it being rented now, the farmland?

8 A Yes, it is.

9 Q That's about 500 acres, plus or minus a few?

10 A But, also, my husband had a [inaudible] planted on
11 one of the tracts, which we call yellow house. We had
12 almost 250 -- 220 acres of irrigation put on assets,
13 wells, three phase electric. We did a lot to improve the
14 property because we thought the property would go on to
15 the beneficiaries and for the -- for the next generation.

16 MR. TETTERTON: If the Court would indulge me for
17 just a moment.

18 THE COURT: Thank you.

19 (Pause.)

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION

22 BY MR. BECKER:

23 Q Ms. Belger --

24 THE COURT: Come around where she can hear you and I
25 can a little bit better, Mr. Becker.

1 MR. BECKER: I just have one question, Your Honor,
2 maybe two.

3 BY MR. BECKER:

4 Q Ms. Belger, in conducting yourself as a trustee at
5 all of the 24 meetings, plus meetings you've attended and
6 in all the other deliberations with your co-trustees and
7 in making the decisions you've made, have you relied on
8 your understanding of your father's will in taking your
9 actions as a co-trustee of his residuary trust?

10 A Yes, I have.

11 MR. BECKER: Thank you.

12 THE COURT: Anything further of Ms. Belger?

13 MR. TETTERTON: No.

14 Thank you.

15 THE COURT: Thank you, ma'am, very much.

16 THE WITNESS: Thank you.

17 THE COURT: You may step down.

18 All right. Mr. Tetterton.

19 MR. TETTERTON: We call Mary Deas Wortley.

20 THE COURT: Ms. Wortley, come around, please, ma'am.

21 Raise your right hand.

22 WHEREUPON,

23 MARY DEAS WORTLEY,

24 after first having been duly sworn, testified as follows:

25 THE COURT: Very good. You may have a seat here.

1 These lawyers promise it will be brief, but I can't
2 testify to that.

3 THE WITNESS: I hope so.

4 THE COURT: All right. Mr. Tetterton, you may
5 proceed.

6	DIRECT EXAMINATION

7 BY MR. TETTERTON:

8 Q How are you doing, Mary Deas?

9 A Okay. Thanks.

10 Q We've been knowing each other a long time, haven't
11 we?

12 A We have.

13 Q We have a common interest in the rookery.

14 | A Birds on the Millpond.

15	Q	Mary Deas --

16 THE COURT: I want you to speak up now,
17 Mr. Tetterton.

18 BY MR. TETTERTON:

19 Q Mary Deas, when you took over this trust as a
20 co-trustee, what did you consider the expenses of the
21 trust to be?

22 A The expenses when I took over as a trustee?

23 Q Yes, ma'am.

24 A The marital trust, or the residuary trust, or
25 which --

1 Q When you and the two other trustees took over, you
2 had three co-trustees?

3 A Right.

4 Q Residuary trust?

5 A Right. Well, at that point, we -- none of us had an
6 idea of what the expenses would be. We had no idea what
7 the taxes would be yet. And we had no idea what -- the
8 ongoing expenses. I can tell you that in 2017, the
9 expenses were around 300 -- three -- let me think,
10 300,000.

11 Q And what were those expenses for?

12 A They were management fees, attorney fees, payments on
13 the tax, maintenance.

14 Q And I believe your -- is it your understanding that
15 the value of the trust is \$22,000 -- \$22 million in land,
16 3,000 -- \$3 million in cash, and \$2 million in commercial
17 properties?

18 A Well, that was the retail expense. We have -- we're
19 going to let John Helms explain. He has made two
20 different -- a differentiation between retail expense --
21 retail value and wholesale value of our properties in his
22 management plan, which we will present tomorrow, he will.

23 Q Would some of the expenses of the trust today be
24 distribution for the income beneficiaries?

25 A Yes, of course.

1 Q Trustee fees?

2 A Well, it depends. I suppose we're entitled to
3 trustee fees and we might need trustee fees considering
4 the expense of this litigation. But, normally, I never
5 expected to ask for a trustee fee and didn't expect one.
6 I thought my father expected family members would not
7 charge.

8 Q Well, when you cease being the co-trustee for
9 whatever reason, do you have any knowledge of whether or
10 not the successor trustee would want trustee fees?

11 A I have no idea. Because, as I understand it, the
12 other two trustees would then appoint the trustee. And my
13 father specified a family member. So I would assume that
14 a family member would not charge trustee fees.

15 Q That's an assumption you're making today. But you
16 can't guarantee that, can you?

17 A Right. I can't guarantee for someone else. I don't
18 even know who it would be.

19 Q And other expenses of the trust would be the upkeep
20 on the downtown Boykin buildings?

21 A Yes.

22 Q And you -- would you agree with me that they need
23 some serious repair?

24 A Yes. We've already started. We've put a new roof on
25 in the last two weeks on Rosalee's cottage and we've

1 commenced work on the dam today.

2 Q And about what do you estimate -- or what has been
3 told to you about the costs to repair the dam?

4 A Well, this next phase is \$20,000 for the four-inch
5 and less removal of the bushes, for the four-inch and
6 less. We have 15 years to complete the rest. We, also,
7 have some concrete work that we have already gotten bids
8 for. And that will be, if I recall, about \$20,000 --

9 Q Have --

10 A And we, also, have a 15-year plan to remove the rest
11 of the trees from the dam required by DHEC at this time.
12 But we have budgeted in Mr. Helms' plan \$20,000 a year for
13 that.

14 Q For the next --

15 A For the next 15 years, \$20,000, maybe 15 to 20, if I
16 recall, for general maintenance in downtown Boykin and the
17 dam.

18 Q So that's about \$300,000; is that correct? If my
19 math is right. And would you agree, also, that Commerce
20 Alley should be sold?

21 A Yes.

22 Q For the appraised value?

23 A I think the downtown is dead. And I think we
24 probably should get what we can for it.

25 Q And how about the property on U.S. 1, commercial

1 property. Do you think it should be sold as soon as
2 possible?

3 A Well, I think we have to sell it, as my sister said,
4 for a decent price.

5 Q Would that be --

6 A I don't think we have to sell it all. For instance,
7 we don't have any plans currently to sell the Hawthorne
8 property.

9 Q Would that be for the appraised value?

10 A I can't remember what the appraised value was.

11 Q I mean, would you agree to sell it for the highest of
12 two appraisals?

13 A Yes.

14 Q Okay. Do you remember the Sue Ziemke sale?

15 A Yes, I do.

16 Q That was a -- one isolated sell in the year or 2017,
17 or was that an isolated sale for 6. --

18 A Yes.

19 Q 6.67 acres?

20 A Six acres what?

21 Q 6.67 acres?

22 A Yeah, right.

23 Q And that was for a hundred thousand dollars?

24 A Correct.

25 Q And that was the only sale, except for one lot in

1 Peckwoods that y'all had in 2017; is that correct?

2 A That's right. That's not to say we don't have 4
3 million worth of property listed.

4 Q But you have not sold any other properties in 2017,
5 have you?

6 A No, we have not.

7 Q You've not sold any other properties in 2018?

8 A No.

9 Q And you -- if I understand what you and Alice are
10 telling me, y'all are going to hold out until y'all get
11 the best price possible before you sell any property?

12 A I would say a fair and decent price. I don't know
13 what the best price possible would be. Things --
14 conditions vary.

15 Q All right. Did you, also, look at the civil cultural
16 report presented by Jim LaFrage?

17 A Yeah.

18 Q Would you agree with me that the estimated income for
19 the next 15 years from the sale of timber is only
20 \$7,572,000?

21 A I don't know why you say "only." I think that sounds
22 good.

23 Q That doesn't include -- I mean, against that would be
24 an eight percent commission; right?

25 A Correct.

1 Q So if I divide that by 16 years, I'd come up with
2 about \$431,000 a year that that timber would generate to
3 pay the expenses of the estate?

4 A Right.

5 Q Multiply that by 16. I'm talking about on the
6 right-hand side total income --

7 A Right. But that would be our only income.

8 Q The only other income you have is commercial rents
9 and the -- and the farm -- I mean farm and hunting leases;
10 right?

11 A Right. But we have 4 million in property for sale.
12 And we could invest that in the stock market and use the
13 proceeds from that and other properties we sell. In
14 15 years, we plan to sell a lot more properties and a lot
15 of -- even some of our timber properties --

16 Q That's what --

17 A -- and we will invest that and have the proceeds of
18 that added. We had planned to grow the trust by
19 1.4 percent the whole time.

20 Q In fact, I believe in your investment with Ansel
21 Bunch, you grew your stock by nine percent, I believe; is
22 that correct?

23 A Well, I'm not sure. I said six in my deposition.
24 But it might have been -- I'm not sure what that was.

25 Q Was that six for income and nine for growth? Do you

1 remember?

2 A No, I don't remember.

3 Q But you grew it by six percent?

4 A Yeah.

5 Q So you're telling this Court that if we take eight
6 percent off the total that that would be enough income
7 with the farm leases and the --

8 A You're talking 15 years. In this amount of time, we
9 expect to sell a lot of property and invest a lot in the
10 stock market. We have an ongoing plan. We're not just
11 stuck with timber. We, in fact, have less timber and more
12 investments as the years go by.

13 Q And -- and the truth of the matter is -- Mary Deas,
14 is that you and Alice Belger did not come up with a plan
15 to do that until Whit -- until Rigdon Boykin filed his
16 lawsuit; isn't that true?

17 A Well, I'll tell you for one reason, we didn't have
18 all the appraised values of the property. It's hard to
19 come up with a plan when you don't have the whole complete
20 picture. We were always planning to diversify. To tell
21 you the truth, we didn't have Mr. Helms plan in that
22 extensive book until recently. But it took him months to
23 make that plan.

24 MR. TETTERTON: The Court's indulgence one moment.

25 (Pause.)

1 BY MR. TETTERTON:

2 Q After -- after your father died, you and your mother
3 managed the forest -- timberlands of the estate; right?

4 A We did.

5 Q And did y'all have a plan at that time with Jim
6 LaFrage?

7 A Jim -- Jimmy LaFrage was always or forester. And he
8 advised us on management of the forestland.

9 Q Do you know what income you all have generated from
10 2009 until 2017?

11 A No.

12 Q Would you --

13 A I know there was an average Jimmy told me.

14 Q I'm sorry?

15 A I believe in the years that -- when you deposed Jimmy
16 that you told him it was 129,000 average a year.

17 Q Average a year?

18 A Uh-huh.

19 Q I'm sorry?

20 A That's what Jimmy told me.

21 Q So you would -- it's your -- your testimony that
22 managing this \$20 million timberland forest for the
23 estate, you only average for those -- from 2009 to 2016,
24 only 120,000 year?

25 A Well, I'm not sure. That's what Jimmy told me. But

1 I will tell that you my mother was of the old school. She
2 considered the timber money in the bank. She thought we
3 would need the money to pay taxes when she died. She was
4 reluctant to cut anything. It took a lot of persuasion to
5 get her to cut timber.

6 And back in the day, growing trees to a large size
7 was a recognized plan. A lot of -- a lot of timber
8 forestry plans included growing trees as big as they
9 could. That was the way to get the most profit. And that
10 only changed when the mills became computerized. And we
11 can still get a good profit from large trees. They just
12 go overseas.

13 Q Mary Deas, this is Exhibit No. 118. And that's what
14 Jane Peacock indicated from her notes, her records that
15 you all have generated from the different years in 2009 in
16 managing the timber.

17 In 2009, you only generated \$63,000, CRP 17-5. 2010,
18 259, 13 and 17. So do you agree that that's the only
19 money that your management of that time --

20 A That's because she was reluctant to sell the timber.
21 She was trying to save it for this period when she thought
22 we would need it.

23 Q And after -- after Hugo in 2000 -- I'm sorry, 1989 --
24 1999 -- 1989 --

25 A '89.

1 Q September 21st, 1989, y'all clear-cut a lot of land;
2 right?

3 A We did. We clear-cut about six or seven tracts. I
4 can't remember.

5 Q And wouldn't you agree with me that for that timber
6 to reach maturity, it takes about 35 years?

7 A We had all ages of timber. We had pulpwood. And we
8 had a lot of larger timber that had to be cut and maybe
9 not be timber, but chip and saw, and pulp wood. We lost
10 some money. But I think in the end, we salvaged every
11 single tract. And we made -- we made a lot of money.

12 Q Are you -- are you relying on Jim LaFrage to continue
13 managing the timberland as you and your mother managed it
14 for those years?

15 A Yes.

16 Q And that's the way -- the income y'all earned in
17 those years?

18 A We're going to earn a lot more now.

19 Q But you didn't back in those --

20 A No.

21 Q Back in those days, you could have managed the timber
22 differently?

23 A Well, we could. But there are other reasons to
24 manage timber besides just profit. We had wildlife to
25 consider. We were renting to hunters. There were a lot

1 of reasons to leave the understory and to maybe have some
2 old growth. Consider around the pond how beautiful that
3 timber is. Would you want that cut for the wilderness
4 there? I mean, there are reasons not to cut timber
5 sometimes.

6 Q Your mother and daddy were outdoorsman?

7 A Yes, they were.

8 Q And they had multiple uses for their property; right?

9 A That's right.

10 Q And that's hunting, food for the wildlife, and --

11 A Timber was -- cutting timber was not -- profit was
12 not always the top motive. They -- they had other reasons
13 to protect their land and timber. And they wanted to save
14 it for when they needed it. They considered it money in
15 the bank.

16 Q But when you were one of the co-trustees in charge of
17 managing this timberland and it, eventually, went into the
18 residuary trust, that's the only way y'all managed it?

19 A Well, I would say the facts are the facts. The
20 figures are the figures. I can't dispute Jane.

21 Q And you manage it differently now; right?

22 A Right.

23 MR. TETTERTON: Okay. Thank you.

24 I have no further questions.

25 THE COURT: All right. Anything Mr. Becker?

CROSS-EXAMINATION

BY MR. BECKER:

Q Mary Deas, just briefly. The marital trust, who is the beneficiary of the marital trust?

A Alice.

Q Was there only one beneficiary?

A Yes. It was for her comfort and maintenance during her lifetime.

Q And did -- did I hear you say that she managed it conservatively so there would be more money after her death? Her -- her land and timber would be worth more. There would be more available for cutting after her death?

A Exactly. She thought we would need it for expenses -- estate expenses after her death.

Q Now, I'm going to show you the Petitioner's exhibit list and ask you to take a look at No. 172. That is the Petitioner's investment plan. What is the date of that plan?

A 6/20/18.

Q June 20th, 2018?

A Right.

Q Just last month?

A Right.

Q Prior to that date, did you or Alice ever get any kind of written investment plan and strategy from

1 Mr. Boykin?

2 A No. We did not get a written. It was just his idea
3 to sell nearly everything and liquidate. That was his
4 investment plan. Nothing was written.

5 Q His plan all along has been simply to sell real
6 estate until you change that mix from 85 percent land and
7 timber and 15 percent financial assets and flip that?

8 A That's right. At the reception after my mother's
9 funeral, he told me that.

10 Q He told you that was his plana?

11 A He said we would have to sell everything and
12 liquidate.

13 Q Okay. Now, at all of those approximately 24 trustees
14 meetings that you've attended, has your sister, Alice,
15 been there?

16 A Yes.

17 Q That's 24 meetings in less than 24 months?

18 A Correct.

19 Q And you've conducted business by telephone and e-mail
20 as co-trustees?

21 A We conducted a lot of business by e-mail, as well as
22 the trustee meetings.

23 Q All during this time?

24 A Yes.

25 Q And, also, during this time, have you and Alice voted

1 to sell and put on the market for sale approximately
2 \$4.162 million of real estate?

3 A Yes.

4 Q And have you, also, approved sales that are in
5 process -- either completed or in process of approximately
6 1.6 million?

7 A Of what?

8 Q Of timber?

9 A Yes.

10 Q In all of the meetings you've attended and in all of
11 the actions you've taken as a co-trustee, have you relied
12 on your interpretation of your father's last will and
13 testament and what his desires were for the administration
14 of his trust?

15 A Yes, I have. He -- I understand what he wanted. He
16 explained it to me over the years. All through my
17 childhood, I knew how he felt about the land. And I knew
18 how that nothing ever changed. And he wanted to protect
19 it and pass it along to future generations.

20 And I don't think the fact that Whit never had a
21 son -- never -- he never said anything to me about
22 changing anything. He wanted future generations. It
23 might have been a male, it might have not. But he still
24 wanted it to go to his grandchildren and beyond.

25 MR. BECKER: Thank you.

1 No further questions.

2 THE COURT: All right, Mr. Becker.

3 Anything further?

4 MR. DUFFY: Your Honor, if I may, just a few
5 questions for Ms. Wortley.

6 THE COURT: All right.

7 MR. DUFFY: I'll be very quick.

8 THE COURT: Very good. That's just what I want to
9 hear.

10 CROSS-EXAMINATION

11 BY MR. DUFFY:

12 Q Ms. Wortley, good afternoon.

13 A Afternoon.

14 Q Just a moment ago, Mr. Becker asked you to look at
15 the Petitioner's Exhibit list. And I believe he asked you
16 to take a look at entry No. 172, which is the Petitioner's
17 investment plan. Is that the document you were talking
18 about?

19 A I guess. It looks a little different up there. He
20 had it highlighted.

21 Q And your testimony a moment ago was that it is dated
22 June 20th, 2018, and that was the first time --

23 THE COURT: Just a second. If she's going to be
24 asked --

25 THE WITNESS: I don't think that's the same paper.

1 THE COURT: Here you go.

2 THE WITNESS: Thank you.

3 THE COURT: If you're going to be asked about it, you
4 should have the thing in front of you.

5 THE WITNESS: Thank you.

6 MR. DUFFY: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 THE WITNESS: I still don't think this is what Jamie
9 gave me.

10 THE COURT: That's what that is, Ms. Wortley. What
11 this is is Mr. Boykin's plan for the administration.

12 THE WITNESS: All right. I'm familiar with that.

13 THE COURT: Okay. Mr. Rigdon Boykin's plan.

14 THE WITNESS: I got it.

15 THE COURT: That's what this is. And it's got three
16 pages. And then it's got those charts.

17 THE WITNESS: Right. I'm familiar with it.

18 THE COURT: All right.

19 BY MR. DUFFY:

20 Q And just a moment ago, was -- your testimony was that
21 you just received that on June 20th, 2018. That was the
22 date of that document?

23 A That was the date on the document.

24 Q Okay. And was it your testimony that prior to that,
25 you hadn't received a written investment plan from the

1 Petitioner?

2 A No. I didn't say that. I read the date on the
3 document. I can't remember when I received this. It's
4 been recent, though. It's been recent. And I don't
5 remember exactly, within the last few weeks.

6 Q And prior to that, had you received a written
7 investment policy or investment strategy from Mr. Boykin?

8 A Not that I recall, no.

9 MR. DUFFY: Okay. Give me just a moment, Your Honor.

10 (Pause.)

11 BY MR. DUFFY:

12 Q Ms. Wortley, I'd like to hand to you what's been
13 marked as Petitioner's No. 98. If you would, turn to Page
14 2 for me, please -- well, let's take a look at Page 1
15 first. Did you receive this e-mail on August 24, 2017?

16 THE COURT: Which number is this?

17 MR. DUFFY: This is No. 98, Your Honor.

18 THE WITNESS: I can't remember. August 24th, that
19 was long ago. I assume I did, but --

20 BY MR. DUFFY:

21 Q But that's you, Mary Wortley at the top --

22 A Yeah. My name is on it.

23 Q Okay. And if you look at Page 2, does that say
24 Trustee Statement of Purpose and Investment Policy? Did I
25 read that correctly?

1 A That's right.

2 Q Okay. And this is a document from Rigdon Boykin; is
3 that right?

4 A That's right.

5 MR. DUFFY: Okay. Ms. Wortley, that's all the
6 questions I have.

7 Thank you.

8 THE COURT: All right. Anything further?

9 (WHEREUPON, there was no response.)

10 THE COURT: Very good.

11 Thank you, Ms. Boykin [sic].

12 You may step down.

13 THE WITNESS: Thank you.

14 THE COURT: All right. Mr. Tetterton.

15 MR. TETTERTON: Your Honor, I've subpoenaed Jim
16 LaFrage to be here in the morning. I didn't think we
17 would be able to call him this afternoon. So if I could
18 wait and call him in the morning. I'm going to have two
19 short witnesses.

20 THE COURT: All right. Let me get a kind of global
21 view of your case. You want to put LaFrage up.

22 MR. TETTERTON: Excuse me, Your Honor.

23 THE COURT: Sure.

24 (Pause.)

25 MR. TETTERTON: Yes, I subpoenaed him to be here in

1 the morning. And, also, I'll put up May and Whit. And
2 then I'll be through in probably about an hour.

3 THE COURT: Right. I'll try to hold you to that as
4 strongly as I can. And that would complete the
5 Petitioner's case and the cross claim?

6 MR. TETTERTON: The cross claim.

7 THE COURT: The cross claim.

8 And we would then be in position to go forward with
9 the Respondents case, Mr. Becker; correct?

10 MR. BECKER: Well, we --

11 THE COURT: You've got to make your motions.

12 MR. BECKER: After our motions.

13 THE COURT: Yes. And then we would go forward with
14 your case; correct?

15 MR. BECKER: Correct.

16 THE COURT: All right. How many witnesses are we
17 talking about?

18 MR. BECKER: Well, my plan is to -- it's possible
19 that I would call --

20 THE COURT: I can tell you this.

21 MR. BECKER: Yes.

22 THE COURT: All right. Your principal clients, the
23 two trustees have now testified four different times the
24 way I count it. So I am going to be very, very
25 restrictive about -- I mean, we don't have a jury here.

1 We've just got me.

2 MR. BECKER: Yes.

3 THE COURT: And I think I am capable of evaluating
4 the positions of these two trustees putting forward and
5 the factual matters they have presented. I think they've
6 had the ground plowed rather thoroughly by everyone.

7 MR. BECKER: Well, Your Honor, my plan --

8 THE COURT: Yes.

9 MR. BECKER: -- is to call Mr. John Helms and Cheryl
10 Holland.

11 THE COURT: Right.

12 MR. BECKER: The -- I'm hopeful that those two
13 witnesses can finish tomorrow starting --

14 THE COURT: You've got to have a lot more than them
15 finish tomorrow, Mr. Becker.

16 MR. BECKER: Well, their -- Mr. Helms' presentation
17 is quite extensive, Your Honor.

18 THE COURT: I've got his written report. Y'all told
19 me Hardin was going to last two weeks the way y'all were
20 talking about how long. And then you didn't ask him any
21 questions.

22 So what I'm telling you is this, I've got these
23 gentlemens reports. And having some explanations of kind
24 of the highlights is my bet going to be sufficient to make
25 the points you want to make.

1 So tell me who else you've got besides -- you've got
2 LaFrage. And then you've got who else? Helms and who
3 else?

4 MR. BECKER: Well, we -- Your Honor, we -- we were
5 planning to put up Karen Thomas and George Bailey. They
6 are not -- no longer available for tomorrow. We had
7 anticipated --

8 THE COURT: Why not?

9 MR. BECKER: Because we --

10 THE COURT: You must have told them that you weren't
11 going to get to them.

12 MR. BECKER: Your Honor, we expected when we first
13 spoke with them that there would be more than two days of
14 trial. We -- we -- and since we -- and just planning for
15 what we would put up first, we planned to put up
16 Mr. Helms. We planned to put up Cheryl Holland, and then
17 other witnesses.

18 THE COURT: Well, who are the other witnesses?

19 MR. BECKER: Well, Deasy Heimbach, Allie Belger,
20 other witnesses on our list.

21 THE COURT: How many witnesses are on your list? I'm
22 not looking at it right now. Maybe I need to look at it.

23 MR. BECKER: I don't -- I don't have that copy
24 either.

25 THE COURT: Well, we're going to talk about this,

1 Mr. Becker. Because I'm not going to just let it be that
2 you have -- have told some of your witnesses, hey, I'm
3 going to string this thing along for another day --

4 MR. BECKER: Your Honor --

5 THE COURT: -- and then we're going come at another
6 time.

7 MR. BECKER: We have no interest in stringing it
8 along.

9 THE COURT: That's good.

10 MR. BECKER: I -- I told you at that status
11 conference that I believed it would take longer than two
12 days.

13 THE COURT: Mr. Becker, look in your papers and get
14 me your witness list.

15 THE LAW CLERK: I have it right here.

16 THE COURT: Oh, all right.

17 Mr. Becker, I'm looking at a witness list that's got
18 10 people on it.

19 THE LAW CLERK: No. Keep going on.

20 THE COURT: It's got 16 people on it. There's no way
21 I'm going to let you put up 16 people, and particularly
22 not when you've got a bunch of them by deposition already.

23 Ms. Wortley and Ms. Belger, we've heard from at
24 length. Mr. Bunch, the state of the Millpond dam and the
25 cost of repairs. Mr. Bailey, administration and actions

1 of Mr. Boykin as the residuary trustee.

2 What -- what possible pertinence does the
3 administration of the residuary trust from 1990 to 19 --
4 to 2016 have on the decision I have to make about the
5 propriety of the management of this trust at this time?

6 MR. BECKER: Well, it -- it has to do with
7 Mr. Tetterton's cross claim for mismanagement..

8 THE COURT: Mr. Tetterton's cross claim has nothing
9 to do with how the trust was managed from 1990 to 2016.
10 It all has to do with the management today.

11 MR. BECKER: I -- we read it differently, Your Honor.
12 But I agree with you. Because in -- Alice S. Boykin was
13 the sole beneficiary.

14 THE COURT: Correct.

15 MR. BECKER: And his clients had no right or
16 entitlement to anything during the period of the marital
17 trust.

18 THE COURT: I couldn't agree with you more.

19 MR. BECKER: Yes, ma'am. So --

20 THE COURT: Mr. Helms -- I think I understand --
21 Mr. Bailey's subject is going to be very limited what I'm
22 going to allow him to say. Because it has no pertinence
23 to -- as you just pointed out. I agree with you. It has
24 no pertinence to the management of this trust today.

25 Then you've got Mr. Helms, expert testimony on the

1 investment plan. Well, I've got his very complete report.
2 I would imagine it hit the highlights on that.

3 Deasy Heimbach.

4 MR. BECKER: Deasy Heimbach.

5 THE COURT: And she's a remainderman beneficiary?

6 MR. BECKER: Yes.

7 THE COURT: The wishes and desires of the
8 remainderman.

9 MR. BECKER: Allie Belger as well.

10 THE COURT: Well, I don't -- I can't imagine that
11 that would take long. Certainly, they want -- they want
12 the estate to be maintained in such a way that they stand
13 to get something out of it.

14 Burwell Boykin, general course of dealing as a
15 trustee. This relates to the old trust, the Alice Boykin
16 trust.

17 MR. BECKER: McKey [phonetic] -- the McKey G. Boykin
18 trust.

19 THE COURT: Well, I can't imagine that the McKey G.
20 Boykin trust is going to have anything to do with the
21 matters presented in this matter. We're talking about the
22 administration of this trust.

23 MR. BECKER: Well, we're talking about our claim to
24 remove Mr. Boykin as a trustee.

25 THE COURT: Yes, sir. And that's going to -- I am

1 going to focus my attention on his conduct in connection
2 with the trust that it is claimed he needs to be removed,
3 just like I am with your clients. But both of the -- each
4 side has got a claim that the other one ought to be
5 removed.

6 And, you know, maybe the best thing for impasse is to
7 have both sides removed and come with some new trustees
8 entirely. I don't know the answer to that.

9 But going back to other trusts managed at other
10 times, it seems to me completely irrelevant to this. Of
11 course, Ms. Belger -- I understand Ms. Belger, she's --
12 Ms. Belger has had testify a good many times so far today
13 by video, and by live, and deposition. I can't imagine
14 what -- what more she could do than what she's done.

15 Cheryl Holland, testimony regarding the comparison of
16 the Rigdon Boykin and Wortley Belger -- if she's an
17 expert, I understand that. And Mr. LaFrage, he's the --
18 I've got his very full report. That will be a hitting the
19 highlights thing. Karen Thomas, actions on this estate.

20 Mr. Bundy, I can tell you that I cannot see the
21 pertinence of Mr. Bundy's testimony if it's just all the
22 family disagreements that have been had. I don't know
23 that I'm going to permit that. We'll talk about it when
24 it gets to whether to offer him. Mr. Belger about
25 maintenance of the trust property. That, certainly, has

1 some relevance. Rigdon Boykin has already testified. You
2 had a chance to examine him. You did not do so.

3 MR. BECKER: Your Honor, well, we -- we have a
4 cross -- we have a counter --

5 THE COURT: I understand you have a cross claim,
6 Mr. Becker. But just as I asked Mr. Tetterton to go on
7 forward and get his done, you had the ability to -- in
8 fact, you had him on cross-examination where you could do
9 whatever you wanted to with him.

10 MR. BECKER: Well, we -- we can call him in our case
11 in chief.

12 THE COURT: All right. You can. But it's going to
13 be rather restrictive what I'll let you ask him. Because
14 he's already been asked a good many questions. And this
15 is non-jury. This is in front of --

16 MR. BECKER: Well, I understand that, Your Honor.
17 But there may be additional questions we would ask him.

18 THE COURT: Well, you've had the opportunity to do
19 that. And as I -- again, as I'm trying to tell you, I'm
20 trying in an effective and efficient way to get all the
21 information that is necessary for me to rule on whether
22 there's been a mismanagement of this trust, whether any of
23 these trustees or all of these trustees need to be
24 removed, whether the Court needs to make other directives
25 about how the trust is managed. And in that connection, I

1 don't need duplication. I've got Mr. Rigdon Boykin's
2 entire deposition here.

3 So all I'm saying to you, Mr. Becker, is, you know,
4 this isn't a jury trial. I will be scrutinizing quite
5 closely what is asked of some of these witnesses since I
6 got all their depositions. And in most cases, I've
7 already read their depositions. As I sit here taking
8 notes today, I'm seeing the same things that have been
9 asked again and again.

10 MR. BECKER: Your Honor, we have no interest in
11 creating duplicative testimony. That is not our -- not
12 our intent. We do want to put forward our case. And it
13 will take -- we will start tomorrow with Mr. Helms and
14 Ms. Holland. We will move forward as expeditiously as we
15 can. I -- I doubt that we will be able to finish
16 tomorrow.

17 THE COURT: Well, who are the witnesses that you say
18 can't come now?

19 MR. BECKER: Well, I cannot bring George Bailey or
20 Karen Thomas just because of --

21 THE COURT: I don't -- Mr. Bailey I don't think has
22 got any pertinence to the case.

23 But Ms. Thomas, it shocks me that as much involvement
24 that she has had with this matter that she wouldn't have
25 attended this whole trial anyway.

1 But why can she not be here tomorrow?

2 MR. BECKER: Your Honor, I -- she asked me
3 yesterday -- or the day before if we would need her at
4 this case. And I told her that I -- with just two days --
5 with just two days, I felt it was highly unlikely that we
6 would reach her. We had planned a long direct examination
7 with Mr. Helms. I mean, after all, there's -- there's a
8 lot at stake here for these trustees.

9 THE COURT: Yes, sir. I --

10 MR. BECKER: And he --

11 THE COURT: -- and no one is more aware of that than
12 I am.

13 MR. BECKER: He's done a phenomenal amount of work.
14 We wanted to make sure that the full depth and breadth of
15 that work is put before the Court. There is a massive
16 difference in -- of the value proposed by Mr. Rigdon
17 Boykin and our experts on this subject. A lot depends on
18 which plan is adopted and whether that's an abuse of
19 discretion. And we have evidence and information that we
20 feel is important to support our position.

21 THE COURT: Mr. Becker, y'all submitted to me and
22 you've updated it many, many, many, many, many times the
23 evaluations and the investment plan. And I have read
24 those things. And they are before me. And they're going
25 to be before me again tomorrow because you'll probably put

1 in a, yet, one more time updated --

2 MR. BECKER: Yes. I --

3 THE COURT: Let me finish.

4 MR. BECKER: Yes.

5 THE COURT: And Mr. Helms' very detailed evaluation
6 does not need to be covered in each and every detail in
7 his live testimony. That is not the purpose of his live
8 testimony. The purpose is to explore the nuances of what
9 he recommends, the timeframe that he's talking about, the
10 disparities between what is recommended by the other sides
11 plan and what is recommended by your plan. But focus is
12 what needs to happen with this testimony.

13 MR. BECKER: We -- we will, Your Honor. You may
14 remember that at the pre-trial conference, I told you that
15 he was doing some ArcGIS mapping. And you said that you
16 would like to see that. Well, that is part of what he
17 will present tomorrow. It will take a little bit of time.

18 He will, also, deal pretty extensively with his
19 assessment, his rebuttal to Mr. Boykin's evaluation of the
20 property. I'm not saying that we're going to try and
21 waste anyone's time. But there's a lot of information to
22 cover.

23 I -- I really believe that we will be lucky to get in
24 four witnesses tomorrow, Mr. Helms, Ms. Holland, and two
25 others. And that may leave us with some other witnesses

1 we would like to call at another day. But, perhaps, we
2 could cross that bridge when we get there.

3 THE COURT: I don't want to be in the position of
4 moving this trial as strongly as I can towards an
5 effective use of time and then have you tell me at the
6 last, when we still have time left to conduct these
7 proceedings, that they cannot be conducted because you
8 have a witness that is not available, and, certainly, not
9 one of the importance of someone like Ms. Thomas. And
10 that is what's got me concerned.

11 MR. BECKER: Well, I can --

12 THE COURT: You know, we are in a situation in terms
13 of the judicial system in South Carolina where resources
14 are very dear right now. I fight hard to get court
15 reporters for the cases that I, as a senior circuit Judge,
16 have to try. They're all very complex.

17 I try to move them along at the direction of the
18 Chief Justice in an efficient and effective way. And to
19 be told that, you know, just kind of in some vague way,
20 you know, we can't present our case unless we have this
21 very lengthy period of time with every witness is
22 something that perturbs me.

23 MR. BECKER: And I don't -- I don't think that's what
24 I'm saying, Your Honor, at least, that's not what I mean
25 to convey. What -- what I -- and we will certainly do

1 everything we can to move our case along.

2 THE COURT: Well, I -- your case, in my judgment,
3 will involve more than four witnesses tomorrow. So let me
4 just leave it at that.

5 MR. BECKER: All right.

6 THE COURT: And I would hope that you're going to
7 have the people that need to testify in this courtroom so
8 they can be put up to offer testimony and fill an entire
9 day in these proceedings and not simply string out who we
10 do have up here.

11 I realize that it may very well be that I'm going to
12 have to schedule another day or two for these proceedings.
13 And that's never a good thing to have to do. But I'm
14 doing the best I can with limited resources and a huge
15 cause on my time as somebody who is a senior fill-in
16 Judge.

17 MR. BECKER: And, Your Honor, I assure you no one
18 here -- no one on this side of this table is trying to
19 string things out at -- a minute more than we feel is
20 necessary to put our evidence before you.

21 THE COURT: All right, sir. Well, all right. We
22 will proceed again tomorrow.

23 Can everyone be in place and ready to start at 8:30
24 as we did -- or tried to do today?

25 MR. DUFFY: Yes, Judge.

1 (Pause.)

2 THE COURT: Y'all stay in place for a minute. I'm
3 trying to check on our court reporter availability here.

4 (Pause.)

5 THE COURT: All right. The court reporter we've got
6 tomorrow is coming from Fairfield. And I think I can get
7 her here by 8:30. So I'd like you to be prepared to start
8 at 8:30, if I can get everybody in place.

9 Mr. Tetterton.

10 MR. TETTERTON: Your Honor, I understand that I'll
11 probably end my case tomorrow. Then Mr. Becker will
12 probably make a motion for a directed verdict. And my
13 question is, will there be time to do it before you have
14 the opportunity to read the excerpts from all the
15 depositions?

16 THE COURT: I am -- we're going to move the case
17 forward. And you've got the responsibility to make
18 motions for directed verdict at the close of these cases
19 right now. And you're not going to be able to wait until
20 you get the transcripts and depositions to do that.

21 The case -- your ability to make a motion for a
22 judgment notwithstanding veredicto depends upon having
23 recited in your motion for a directed verdict the grounds
24 you want to recite. And I have never heard of having to
25 get a transcript to do that.

1 MR. TETTERTON: No, no. We're not on the same page.
2 I'm not going to be making a motion for directed verdict.
3 But in order to defend against his motion for a directed
4 verdict on my cross claim, I just wanted to know if the
5 Court's going to have the opportunity to read our entire
6 case, which is deposition excerpts before we argue against
7 that motion.

8 THE COURT: I am going to -- as I indicated, to begin
9 with, I am certainly going to read those things.

10 MR. TETTERTON: I -- I'll be prepared.

11 THE COURT: But, frankly, again, it's not so -- it's
12 very rare that I would direct a verdict, as you well know.
13 So I'm not planning on spending a whole lot of time on the
14 directed verdict. But you need to put in the grounds for
15 the motion for directed verdict so that you will be able
16 to -- or defend against his motion for directed verdict.

17 But your defense is not any big deal. All right.
18 Because the -- it would be rare for a Judge to grant a
19 directed verdict at this point in either sides case given
20 the complexities of these issues and the fact that they
21 involve judgments made by the parties, and so forth.

22 You've got to put your grounds in. And you certainly
23 want to, at least, put in the argument you would make.
24 But the key and important time is going to be at the close
25 of the case.

1 MR. TETTERTON: Okay.

2 THE COURT: And y'all got some time on that. So if
3 you're trying to put the responsibility all on me to be --
4 to see how prepared I'm going to be --

5 MR. TETTERTON: I didn't --

6 THE COURT: -- I think I'll be prepared, put it that
7 way.

8 MR. TETTERTON: Rest assured.

9 THE COURT: Okay. Anything further?

10 MR. TETTERTON: Not from me, Your Honor.

11 THE COURT: Very good. All right. Number one,
12 thanks to all for putting up with my being impatient. I'm
13 trying to move this case along as I've been directed.

14 But I respect all of you more than I can say. I
15 respect the trustees on all sides of this matter, as I do
16 the family members. This is a sad situation that
17 disagreements have brought you into a courtroom at odds
18 with each other.

19 And I -- it is my fervent prayer that before this
20 matter is concluded and even, perhaps, afterwards when I
21 make my decision that something will be done that will
22 heal the breach that has occurred between family members.

23 But at the same time, please, don't take my
24 impatience in my trying to move this trial along in an
25 orderly way as any reflection on the degree of respect I

1 hold for everyone in this courtroom. You're just good
2 people trying to perform your duties as you see it, and
3 protect your interest as you see them for yourself and
4 future generations. And I well understand and respect all
5 of that.

6 All right. Court will be in recess.

7 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Kershaw County, South Carolina, on the 9th day of July, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 9, 2018

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF KERSHAW) CASE NO. 2017-CP-28-00831

3 IN THE MATTER OF:)
 4 LEMUEL WHITAKER BOYKIN,)
 5 III, deceased,) Transcript of Record

6 Rigdon H. Boykin, as)
 7 sole disinterested) Date: July 10, 2018
 8 Co-Trustee of the Lemuel)
 9 Whitaker Boykin, II)
 10 Residuary Trusts A and)
 11 B:

12 Petitioner,
 13 vs.
 14 Mary Deas Wortley,
 15 individually, as
 16 Co-Trustee of the Lemuel
 17 Whitaker Boykin, II
 18 Residuary Trusts A and
 19 B, et. al.,

20 Defendants.

21 * * * * *

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B E F O R E:

24

25 The Honorable Jean Toal

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29 * * * * *

30

31

Denise J. Lauder, RPR

32

Ninth Judicial Circuit

33

1 A P P E A R A N C E S

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11 ALICE BOYKIN BELGER, AND INTERVENORS:

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19 BOYKIN, III AND MAY CANTEY BOYKING:

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21 Tetterton Law Firm, LLC

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23 Camden, SC 29020

24

25 ALSO PRESENT: Tina Cundari, Attorney for the Trust

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1 (The following proceedings were had
2 7/10/2018, Rigdon H. Boykin v. Mary Deas Wortley,
3 Kershaw County Court of Common Pleas.)

4 THE COURT: Please be seated.

5 Ladies and gentlemen, let me apologize
6 right off the bat. Now, I gave y'all such a hard
7 time about being here on time and getting ready. I
8 made a mistake, and perhaps you lawyers can
9 understand, if there's a new lawyer in here. I
10 promised a cousin I would take her over to
11 Florence; something was needed from one of our
12 joint family enterprises for her to sign.

13 So I left Columbia very early this
14 morning and went to Florence and got it signed and
15 was planning to be here by about eight. There was
16 an enormous wreck between Bishopville and here, and
17 I had to sit in line for a while. Then a law
18 enforcement officer was nice enough to let me turn
19 around and get back through Bishopville on 34.

20 So I've had a very circuitous route to
21 the Camden courthouse today, and my deep apologies
22 to all of you. I should have just -- I shouldn't
23 have taken on that extra piece of responsibility,
24 but y'all know how family is; you go to the ends of
25 the earth for them.

1 All right. We have motions as our
2 first order of business, am I right? Or, I think
3 -- Mr. Tetterton, have you rested?

4 MR. TETTERTON: No, ma'am. I have --
5 as I informed the Court yesterday I have a couple
6 of witnesses.

7 THE COURT: Oh, that's correct. You
8 have a couple of more witnesses to go and you
9 thought maybe you could get done with them in about
10 an hour?

11 MR. TETTERTON: Thirty minutes.

12 THE COURT: Good. Excellent. You may
13 proceed.

14 MR. TETTERTON: Your Honor, out of an
15 abundance of caution and to make sure the record is
16 protected, I move to put the same exhibits into my
17 case as has already been put into the record
18 through the petitioner's case.

19 THE COURT: Granted.

20 MR. TETTERTON: Thank you. I'd like to
21 call May Cantey Boykin.

22 THE COURT: Ms. Boykin.

23 MAY CANTEY BOYKIN,
24 being first duly sworn, testified as follows:

25 THE COURT: Ms. Boykin, if you will

1 adjust that microphone so you are speaking right
2 into it, and shove your chair up and kind of speak
3 out a little bit and try to --

4 THE WITNESS: Okay.

5 THE COURT: If you'll help her, that's
6 great. Thank you, sir. And, Mr. Tetterton --

7 MR. TETTERTON: Thank you, Your Honor.

8 THE COURT: -- be slow and be loud.

9 MR. TETTERTON: I've already told the
10 Court Reporter I would do that.

11 DIRECT EXAMINATION

12 BY MR. TETTERTON:

13 Q. May, I'm going to stand back here, and
14 I know you are very soft-spoken, and I know you
15 might be a little bit scared. Right?

16 A. Yes, sir.

17 Q. Okay. So I'm going to ask you to speak
18 up as loudly as I'm speaking so everybody can hear
19 you. Okay?

20 A. Yes, sir.

21 Q. And state your full name, please,
22 ma'am.

23 A. May Cantey Boykin.

24 Q. And, Ms. Boykin, do you mind if I call
25 you May?

1 A. You can.

2 Q. May, where do you live?

3 A. Bethel Hills, New York.

4 Q. Are you married?

5 A. Yes, sir.

6 Q. Thank you. And your husband's name?

7 A. James A. Cagle.

8 Q. And do you have any children?

9 A. No.

10 Q. Do you have -- do you know who the
11 trustees of this trust is?

12 A. Yes, sir.

13 Q. And who are they?

14 A. Alice Belger, Mary Wortley, Rigdon
15 Boykin.

16 Q. During the course of this litigation
17 and during the course of them handling this trust,
18 have you come to learn what the plans were to
19 handle this trust put forth by Mary Deas and Alice?

20 A. Yes, sir.

21 Q. What is your understanding of their
22 plan?

23 A. They want to put all their eggs in one
24 basket and to keep all the timber and don't put
25 anything in the stock market.

1 Q. Do you agree with that?

2 A. No.

3 Q. Do you think you have an understanding
4 of Rigdon Boykin's plan as a co-trustee?

5 A. Yes, sir.

6 Q. What is your understanding of his plan?

7 A. He wants to sell some and put it in the
8 stock market.

9 Q. Do you agree with that plan?

10 A. Yes, sir.

11 Q. Are you planning on some time in the
12 future to move to Camden?

13 A. Yes.

14 Q. Or Kershaw County?

15 A. Yes, sir.

16 Q. Has Rigdon Boykin done anything to
17 poison you against your siblings, Alice and Mary
18 Deas?

19 A. No.

20 Q. Do you have a good relationship with
21 them now?

22 A. Not really.

23 Q. How long has it been since you had a
24 good relationship with your sisters?

25 A. Before my mom died.

1 Q. And did something happen back then that
2 caused you to not have a good relationship with
3 them? I'm not going to ask you what, but did
4 something happen?

5 A. Yes, sir.

6 Q. Would you like for the Court to remove
7 them as trustees from this trust?

8 A. Yes, sir.

9 Q. Do you trust them to keep on managing
10 this trust?

11 A. No.

12 Q. Would you like for the Court to appoint
13 Rigdon Boykin as the sole disinterested trustee of
14 this trust?

15 A. Yes.

16 Q. Do you trust Rigdon Boykin's judgment?

17 A. Yes.

18 Q. Did you have to -- do you think they
19 are doing what they should be doing in the trust?

20 A. No.

21 Q. And because of that did you hire me to
22 bring a suit to have them removed and to get
23 damages?

24 A. Yes, sir.

25 Q. And have I done that for you?

1 A. Yes, sir.

2 Q. And do you understand that in your
3 lawsuit you are asking them to be removed and for
4 certain damages?

5 A. Yes, sir.

6 Q. And did you and I enter into an
7 agreement to pay my attorney's fees? Yes or no?

8 A. Yes.

9 Q. I'm going to hand you a document and
10 ask you if you can identify this document, please.

11 MR. TETTERTON: May I approach, Your
12 Honor?

13 THE COURT: Of course.

14 BY MR. TETTERTON:

15 Q. Can you tell the Court what that
16 document is, please, May?

17 A. It's my bill for Mr. Tetterton's law
18 firm.

19 Q. And is that a joint bill for you and
20 Whit?

21 A. Yes.

22 Q. And y'all are going to pay it together?

23 A. I hope.

24 Q. Okay. And how much is that bill? The
25 total is on the back page.

1 THE COURT: Help her get to where you
2 were pointing to.

3 BY MR. TETTERTON:

4 Q. I know you don't have your glasses on.
5 Is it \$114,964.96, including costs?

6 A. Yes, sir.

7 Q. Thank you.

8 MR. TETTERTON: Your Honor, I'd offer
9 this as my affidavit of attorney's fees.

10 THE COURT: Any objection, Mr. Becker?

11 MR. BECKER: No, Your Honor.

12 THE COURT: All right. Any objections,
13 Mr. Duffy?

14 MR. DUFFY: No, Your Honor.

15 THE COURT: Very good. Admitted
16 without objection, and I think that is --

17 MR. TETTERTON: Cross-claim Number 1.

18 THE COURT: Cross-claim Number 2.

19 Cross-claim Number 1 is the deposition excerpts.

20 MR. TETTERTON: Okay. Thank you.

21 (RESPONDENT BOYKIN, CROSS-CLAIM EXH. 2,
22 Affidavit of Attorney's Fees, was marked for
23 identification.)

24 MR. TETTERTON: May, answer any
25 questions the other side may have. Okay?

1 THE WITNESS: Yes, sir.

2 THE COURT: I turn first to, Mr. Duffy?

3 MR. DUFFY: Your Honor, we have no
4 questions for this witness.

5 THE COURT: Very good. And now,
6 Mr. Reibold.

7 MR. REIBOLD: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. REIBOLD:

10 Q. Good morning, ma'am.

11 A. Good morning.

12 Q. And I will warn you, I sometimes talk
13 too fast. If I do, let me know, and I'll try to
14 slow down for your benefit and for the benefit of
15 the court reporter.

16 A. Thank you.

17 Q. You testified as to your understanding
18 of what Mary Deas Wortley and Alice Belger have
19 done in their roles as trustee. What is your
20 understanding? What -- have you attended any of
21 these meetings?

22 A. No.

23 Q. Have you listened to any of the
24 transcripts?

25 A. No.

1 Q. Have you reviewed any of the meeting
2 minutes?

3 A. I don't know minutes.

4 Q. Any of the notes that were taken at the
5 meeting?

6 A. Well, Rigdon gave us some stuff on the
7 e-mails on my computer.

8 Q. So is it fair to say that everything
9 that you know about what my clients have done has
10 come from Mr. Boykin, Mr. Rigdon Boykin?

11 A. Not all of it. My lawyer too.

12 Q. Mr. Tetterton?

13 A. Yes, sir.

14 Q. So either Mr. Boykin or Mr. Tetterton
15 have told you what my clients have done in their
16 role as trustees?

17 A. Yes.

18 Q. And that's the only source of knowledge
19 you have for that?

20 A. For that, yes, sir.

21 Q. Are you familiar with the actual
22 cross-claim Mr. Tetterton has filed on your behalf?

23 A. Uh-huh.

24 Q. Have you read it?

25 A. Uh-huh.

1 THE COURT: You have to answer yes --

2 THE WITNESS: Yes, sir.

3 THE COURT: -- for the court reporter.

4 THE WITNESS: Okay.

5 MR. REIBOLD: I'm going to ask her some
6 questions about it. May I approach and hand her a
7 copy, Your Honor?

8 THE COURT: Of course.

9 BY MR. REIBOLD:

10 Q. Now, the first page of this document is
11 called the Summons, and you can skip that and go on
12 to the next page. It has a number 1 in the bottom
13 right corner.

14 THE COURT: Mr. Reibold, it'll be
15 helpful if you will point out to the witness what
16 you're going to ask her about. I don't think she
17 has her glasses with her, so it'll be helpful for
18 you to point out what she's --

19 MR. REIBOLD: Here are the glasses.
20 And if you want me to stand up here, I'm happy to
21 do that.

22 THE COURT: That would be good to.

23 Ms. Boykin, you just depend on me to
24 get you some help if you need it to point to what
25 he's asking you about.

1 THE WITNESS: Thank you.

2 THE COURT: Thank you, Mr. Reibold.

3 MR. REIBOLD: Absolutely, Your Honor.

4 BY MR. REIBOLD:

5 Q. Yes, ma'am. So this is the first page.

6 If you want to turn to page number 2, paragraph
7 number 7. Here we are.

8 Now, at the end of this paragraph, one
9 of the allegations is -- and you tell me if I read
10 this correctly: Further, these respondents on
11 information and belief would admit that there has
12 been prior mismanagement of the marital deductible
13 trust resulting in a reduction of the value of some
14 or all the timberland held in the residuary trust.

15 Are you and/or your brother making a
16 claim for mismanagement of the marital trust?

17 A. That's my mom's trust.

18 Q. So is the answer no? And I'll try to
19 short-circuit this. There are several allegations
20 in this cross-claim that deal with conduct that
21 occurred in the marital trust. And what I'm trying
22 to make clear is, are you asserting a claim for
23 conduct that occurred in the administration of the
24 marital trust, or is that past and we're not going
25 to argue about that in this proceeding?

1 The pleadings clearly allege this, so I
2 just need to -- I'm just trying to be clear.

3 THE COURT: If you don't know, it's
4 okay to say you don't know, Ms. Boykin.

5 THE WITNESS: I don't know.

6 BY MR. REIBOLD:

7 Q. Okay. If you'll turn to paragraph
8 number 9, right here. This says that: On
9 information and belief, there is considerable
10 discord between all three co -- I can't talk this
11 morning, I apologize, Madam Court Reporter --
12 between all three co-trustees to the extent that
13 Wortley and Belger have taken the positions that
14 they will just vote no on every investment strategy
15 proposed by the petitioner.

16 Is that your understanding of their
17 position?

18 A. Yes. This is not about selling the
19 property and everything else.

20 Q. Have you heard their testimony and --
21 have you been present for the last day of trial?

22 A. Yes, sir.

23 Q. Have you heard their testimony?

24 A. (Nodding head)

25 Q. Do you believe that is their current

1 position?

2 A. I don't know.

3 Q. Okay. Let's go to paragraph 11, right
4 here.

5 A. I see it.

6 Q. Okay.

7 A. Thank you.

8 Q. Paragraph 11 is referring to Ms. Belger
9 and Ms. Wortley's plan. And it says that you would
10 show that: If, in fact, this is a prudent
11 investment strategy proposed by them, the
12 petitioner, Mr. Boykin, has a fiduciary duty to
13 agree with the other co-trustees.

14 Is that your position, that if
15 Ms. Wortley's plan and Ms. Belger's plan is
16 prudent, that Mr. Boykin has a duty to agree?

17 A. No. If it's not right, no.

18 Q. If it's prudent, he would?

19 A. Yes, if it was prudent.

20 Q. Now, there is a long list of individual
21 allegations of misconduct. And I will refer you --
22 it starts here on page 5, and it goes -- it goes
23 for quite some time. And I'm not going to ask you
24 about them all because that will take too long.

25 But the first one says that: They have

1 failed to develop an overall investment strategy
2 that would objectively consider the risks and
3 returns of the residuary trust.

4 Have you reviewed their plan?

5 A. I haven't seen any of their plans.

6 Q. But you understand now that they have
7 come up with a strategy?

8 A. After two years.

9 Q. What did Mr. Boykin put forth in his
10 plan?

11 A. It's probably in my attorney's office.

12 Q. Okay. Do you have any knowledge --
13 let's short-circuit this some more -- any knowledge
14 of these individual allegations of misconduct?

15 A. They don't agree to anything; they
16 haven't invested anything; they sold one part of
17 the land, but they haven't done anything. I mean,
18 I'm paying taxes I don't even get any income for.

19 Q. But you don't know what they've read or
20 what they haven't read?

21 A. No.

22 Q. You don't know what they've agreed to
23 sell and what they haven't agreed to sell, do you?

24 A. They have the list and plans now, but I
25 can't remember what the plans are.

1 Q. All right. Have you read the will?

2 A. Yes.

3 Q. Does the will contain language about
4 your father's desire for the so-called treasure
5 tracts?

6 A. Yes, I mean, of course.

7 Q. And the will clearly says your father
8 desired that those should be kept to the extent
9 possible. Would you agree with that?

10 A. I agree with that, but they aren't
11 letting anything else go.

12 Q. But if they have agreed to sell other
13 property, you're okay with their conduct?

14 A. Well, if they invested it, yes, or not
15 hiding everything.

16 Q. How many beneficiaries are there of the
17 residuary trust?

18 A. Four.

19 Q. Those are four income beneficiaries,
20 and there's also four remaining for a total of
21 eight; is that right?

22 A. I'm not sure.

23 Q. The grandchildren are also
24 beneficiaries; are they not?

25 A. Yes, after we pass.

1 Q. Well, I'm talking about the existing
2 trust. There's currently eight beneficiaries; is
3 that right? Four grandchildren and four adult
4 beneficiaries?

5 A. Yes, sir.

6 Q. Do you have any knowledge what
7 beneficiaries, other than yourself and your
8 brother, Whit, wish to be done with respect to the
9 plans?

10 A. I don't know, sir.

11 Q. Have you made an effort to find out?

12 A. No.

13 Q. If the remaining beneficiaries -- or
14 remaining six beneficiaries are opposed to
15 Mr. Boykin's plan and in favor of my clients' plan,
16 don't you think that Mr. Boykin would have a duty
17 to follow the majority of the beneficiaries?

18 A. I can't speak for Rigdon.

19 Q. Well, what would you like to see done?

20 Would you want the will of the majority of the
21 beneficiaries to be respected or the minority?

22 A. I don't know.

23 Q. All right. I'll move on.

24 How did you come to select
25 Mr. Tetterton as your attorney?

1 A. I've known him all my life.

2 Q. Is Mr. Boykin present or in
3 communications with you and your attorney about
4 this case?

5 A. No. Mr. Tetterton discusses with me,
6 not Rigdon.

7 MR. REIBOLD: That's all I have for
8 right now.

9 THE COURT: Ms. Boykin, I have a couple
10 of questions.

11 THE WITNESS: Yes, ma'am.

12 EXAMINATION

13 BY THE COURT:

14 Q. And this is the main question I have.
15 And let me get up here where the -- I don't mean to
16 tower over you, but I want the Court Reporter to
17 see me while I ask the question.

18 Have you received any income from the
19 trust?

20 A. Yes.

21 Q. And, first of all, how much?

22 A. That's \$100,000.

23 Q. \$100,000. And that was done
24 approximately when? You don't have to give me the
25 exact date, but within the last year?

1 A. Yes, ma'am.

2 Q. Very good. And that's the only
3 distribution you've had from the trust since --
4 since your mother passed away?

5 A. Yes.

6 THE COURT: Very good. That's all the
7 questions I have.

8 Any other questions from anybody? Very
9 good.

10 Thank you, Ms. Boykin. You may step
11 down.

12 THE WITNESS: Thank you.

13 THE COURT: Yes, ma'am.

14 MR. TETTERTON: May I have just a
15 moment for the next witness?

16 THE COURT: Certainly. Certainly.

17 MR. TETTERTON: At this time, we call
18 Lemuel Whitaker Boykin, III.

19 THE COURT: Yes. Mr. Boykin, please
20 come around.

21 LEMUEL WHITAKER BOYKIN, III,
22 being first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. TETTERTON:

25 Q. I'm going to call you Whit. Okay?

1 A. Okay.

2 Q. Whit, do you live here in Kershaw

3 County?

4 A. Yes, sir.

5 Q. And where do you live?

6 A. Boykin, South Carolina.

7 Q. And do you have a home there, a house

8 there?

9 A. No, ma'am -- no, sir. I rent from the

10 trust.

11 Q. Your house is owned by the trust?

12 A. Yes.

13 Q. And you rent from them?

14 A. Yep.

15 Q. And you pay them \$1,000 month?

16 A. Yes, sir.

17 Q. Whit, I'm going to ask you, and I don't

18 mean to embarrass you, can you read and write?

19 A. Very little.

20 Q. And did you finish high school?

21 A. No.

22 Q. Whit, do you have any children?

23 A. No. My mother had -- my girlfriend had

24 an abortion because my mother paid her off.

25 Q. You had a girlfriend who was pregnant?

1 A. Yes.

2 Q. And she had an abortion?

3 A. Yeah.

4 Q. Was your mother involved in that?

5 A. Yeah.

6 Q. So you have no children now; is that
7 correct?

8 A. Nope.

9 Q. Whit, did you -- did you get involved
10 in trying to understand what this trust was all
11 about?

12 A. I tried to. You know, I'm kind of a
13 slow reader and all that stuff.

14 Q. And did you hire me to explain to you
15 what this trust was all about?

16 A. Yes, sir.

17 Q. And did I have several and many
18 meetings with you?

19 A. Yes, sir.

20 Q. And did I go over -- before I filed
21 this suit, did I go over the pleadings we were
22 going to file?

23 A. Yes, sir.

24 Q. And what did you ask me to do?

25 A. Remove Mary Deas and Alice Belger --

1 no, Mary Deas Wortley and Alice Belger.
2 Q. Remove them?
3 A. Yes, sir.
4 Q. And did you have a reason you wanted to
5 remove them?
6 A. Yes, sir, I would like to.
7 Q. All right. Did you -- in my meetings
8 with you, did we go over what they intended to do
9 in managing this trust?
10 A. Have them do their job. They just want
11 to keep everything in one basket.
12 Q. They wanted to put everything in one
13 basket?
14 A. Yes.
15 Q. Did I -- was I -- did I explain to you
16 what I thought their duties were under the law?
17 A. I can't remember.
18 Q. Okay. Whit, have you also received
19 \$100,000 since your mother died?
20 A. Yes, sir.
21 Q. Is that all you've received?
22 A. That's it.
23 Q. And out of that, you've paid your rent?
24 A. I pay everything.
25 Q. And with your limited ability to

1 understand, do you think I have explained
2 everything fully to you so you could understand the
3 best you could?

4 A. Yes, sir.

5 Q. Do you trust Rigdon Boykin?

6 A. Yes, sir.

7 Q. Do you trust Mary Deas?

8 A. Not really. Me and her had a falling
9 out.

10 Q. Do you trust your sister Alice?

11 A. No.

12 Q. Did you at one time work for her
13 husband, Wayne Belger?

14 A. Yes, sir.

15 Q. How did that go?

16 A. He hadn't paid me for one year.

17 Q. He hasn't paid you for one year for
18 working for him?

19 A. Yep.

20 Q. Did y'all have any other joint ventures
21 together?

22 A. Yeah. He made me buy some equipment
23 and he told me -- told me -- he told me we'll be
24 business partners, and he lied about that.

25 Q. He wanted you to be a business partner

1 with him?

2 A. Yeah. Buy equipment for him.

3 Q. Did you use your money to buy equipment

4 for him?

5 A. I couldn't. He wouldn't never pay me.

6 Q. Did you -- did y'all buy the equipment?

7 A. Yeah. I bought it and --

8 Q. With your money?

9 A. Yes, sir.

10 Q. Did he ever pay you back?

11 A. No.

12 Q. Have you asked him for it?

13 A. Yeah. He said he didn't care.

14 Q. And has that caused some problems

15 between you and your sister Alice Belger, his wife?

16 A. Yes, sir.

17 Q. Has Rigdon Boykin done anything to

18 poison you against your sister Alice Belger?

19 A. No.

20 Q. Has Rigdon Boykin done anything to

21 poison you against your half sister Mary Deas

22 Wortley?

23 A. No.

24 Q. And you're asking this Court to remove

25 him as trustee?

1 A. Yes.

2 Q. And to appoint Rigdon Boykin as the
3 sole disinterested trustee?

4 A. Yes, sir.

5 Q. Did I -- in my meetings with you, did I
6 go over with you what we called the Prudent
7 Investment Act? Did I go over that?

8 A. Yeah.

9 Q. And you think you understood it the
10 best you could?

11 A. Yes.

12 Q. Do you think they have done anything to
13 help diversify this trust?

14 A. No.

15 Q. Is it your position they've put all
16 their eggs in one basket?

17 A. Yes.

18 Q. And are you asking the Court also to
19 ask them or ask the trust to pay your attorney's
20 fees, along with May's?

21 A. Yes.

22 Q. Do you think that's fair?

23 A. Yes.

24 Q. And would you like to continue to get
25 income for your comfort, maintenance, and

1 well-being?

2 A. Yes, sir.

3 Q. Tell us about the house you live in.

4 A. It has mold and leaking water, and
5 they've never fixed it.

6 Q. And you would like to at one time build
7 your own house?

8 A. Yes, sir.

9 Q. Would you like some of the land so you
10 could build a house on it?

11 A. I do.

12 MR. TETTERTON: Okay. Thank you, Whit.

13 THE WITNESS: Thank you.

14 THE COURT: All right. Mr. Reibold.

15 CROSS-EXAMINATION

16 BY MR. REIBOLD:

17 Q. Good morning, Mr. Boykin.

18 A. Good morning.

19 Q. I need to walk through some of the same
20 types of issues I discussed with your sister, but
21 I'll try to keep it as brief as I can.

22 A. Okay.

23 Q. And, again, if I talk too fast, please
24 let me know.

25 A. Okay.

1 Q. Where does your understanding of what
2 actions my clients have taken with respect to the
3 trust come from? Where did you learn what they've
4 done?

5 A. Well, they never did their job right.

6 Q. Well, have you attended any of the
7 trust meetings?

8 A. No, I haven't. They never asked me to.

9 Q. Have you ever asked to?

10 A. They wouldn't -- no.

11 Q. Have you reviewed any of the notes of
12 the meetings?

13 A. No.

14 Q. So, then, how is it that you know what
15 happened at those meetings?

16 A. I don't.

17 Q. So, then, you don't know what actions
18 my clients may or may not have taken?

19 A. No.

20 Q. You heard me ask your sister about some
21 of the allegations in the pleadings for your case.

22 A. Yes, a little bit.

23 Q. And Mr. Tetterton just asked you about
24 your house. You understand, don't you, that your
25 house was established by your mother?

1 A. Yes, sir, the trust did.

2 Q. The marital trust?

3 A. I guess. I don't know.

4 Q. Do you know the difference between the
5 marital trust and the residuary trust?

6 A. Yes, sir.

7 Q. But as part of -- are part of the
8 claims that you're asserting today have to do with
9 how things were handled when your mother was alive?

10 A. Nope. I don't know.

11 Q. So was that a no?

12 A. No, I don't know.

13 Q. You don't know. Okay. Has anyone ever
14 read the will to you or informed you of what the
15 will contains?

16 A. No, never did.

17 Q. Do you understand or do you agree that
18 the will does contain language indicating that your
19 father wanted to preserve those treasure tracts as
20 long as possible?

21 A. Well, they want to have everything in a
22 basket. They won't sell, didn't put nothing in the
23 stock market and all that stuff.

24 Q. And you believe that because
25 Mr. Tetterton or Mr. Boykin has told you that?

1 A. No. Mr. Tetterton told me.

2 Q. Because I'm not trying to get into
3 attorney-client communications, but that's been
4 your source of information?

5 A. Yep.

6 Q. Have you made any other effort to find
7 out what the remaining beneficiaries, other than
8 you and your sister May, want to be done with the
9 trust?

10 A. Come back on that again.

11 Q. Have you tried to find out or talked to
12 the other beneficiaries to see what they want done
13 with the trust?

14 A. No.

15 Q. And, then, what's your feeling if the
16 majority of the beneficiaries want to adopt the
17 plan my clients put forth? Why shouldn't the
18 majority decide?

19 A. We owe a lot of taxes. We owe all that
20 stuff.

21 Q. Has Rigdon Boykin been your financial
22 advisor?

23 A. No.

24 Q. Has he been in the past?

25 A. A long time ago.

1 Q. When?

2 A. William Tetterton takes care of my
3 finances.

4 Q. Do you stay at his house?

5 A. Huh?

6 Q. Do you stay at his house?

7 A. Who, Rigdon?

8 Q. Rigdon.

9 A. No.

10 MR. REIBOLD: I think that's all I
11 have, Your Honor.

12 THE COURT: All right. Anything
13 further, Mr. Tetterton?

14 MR. TETTERTON: Nothing further. Your
15 Honor, at this time we're going to rest.

16 THE COURT: Thank you. Thank you,
17 Mr. Boykin. You may step down.

18 THE WITNESS: Thank you.

19 MR. BECKER: Your Honor, may I
20 interject for one second? I think the -- all the
21 income beneficiaries have been receiving \$100,000
22 annually since the day of Alice Boykin's death; and
23 I was thinking you might be under the misimpression
24 that the income beneficiaries have only received
25 \$100,000 in total since her death.

1 MR. TETTERTON: If I could explain, the
2 trustees agreed to pay them \$100,000 annually in
3 payments of 16,633.33 -- I think that's correct --
4 every two months.

5 MR. BECKER: That's right. And those
6 have been made faithfully --

7 THE COURT: How much per month?

8 MR. TETTERTON: Every two months, Your
9 Honor, 16,633.33 is the amount, if my memory serves
10 me correct. And those have been paid --

11 THE COURT: So I take it all parties
12 would stipulate that since Ms. Alice Boykin's death
13 in 2017, the beneficiaries -- income beneficiaries,
14 the four income beneficiaries, have received every
15 other month \$16,633.33; is that correct?

16 MR. TETTERTON: 16,666.66.

17 THE COURT: That's kind of what I
18 thought at the time.

19 MR. TETTERTON: 16,666.66.

20 THE COURT: And that is in fulfillment
21 of a vote by the trustees to pay \$100,000 per year.
22 And, of course, it's obviously been a little bit
23 more than a year, but the way the trustees have
24 chosen to make these payments is to make these
25 bimonthly payments of \$16,666.66, correct?

1 MR. BECKER: That is correct, Your
2 Honor.

3 THE COURT: And as of today, what is
4 that amount due per beneficiary?

5 MR. BECKER: Well, she died in
6 August 2016, and we are in July of 2018. So there
7 have been -- there either have been or soon will be
8 24 -- or 12 payments of that amount.

9 THE COURT: So \$200,000?

10 MR. BECKER: Yes, ma'am.

11 THE COURT: All right. Approximately.

12 MR. TETTERTON: Or soon will be.

13 THE COURT: Right.

14 MR. TETTERTON: And, Your Honor, in the
15 transcript excerpt you will see that that came out
16 of the insurance money, rather than out of the --

17 THE COURT: Well, I understand the
18 source, but the insurance money is like -- how they
19 might have chosen to get the cash by either
20 borrowing it or how that was accomplished, the
21 trust is the obligor, and the trust paid this
22 amount. Correct?

23 MR. TETTERTON: Yes, ma'am.

24 THE COURT: All right. Mr. Tetterton?

25 MR. TETTERTON: I rest, Your Honor.

1 THE COURT: Very good. All right.

2 Mr. Tetterton rests. Mr. Becker?

3 MR. BECKER: Mr. Reibold will be
4 arguing our directed verdict motion, Your Honor.

5 THE COURT: You don't intend to present
6 anything on the -- in the defense's cross-claim?

7 MR. BECKER: We had agreed that we
8 would defend against those in our case in chief.

9 THE COURT: Exactly. I just want it on
10 the record at this time that you -- I mean, it's an
11 awkward kind of thing. You will be making motions.
12 There will be motions made -- all right. That --
13 all right -- that really are not -- you can't
14 completely be heard by me because of this odd
15 situation where you want to defend everything at
16 one time.

17 But we're at a breaking point in this
18 case where they are going to make some -- where
19 you, possibly, are going to make some motions, and
20 your directed verdict motion would normally be made
21 at the close of their case.

22 All right. Now, you're going to make
23 it -- all right. All right -- at the close of
24 their case in chief, but reserving the right, if I
25 don't grant the cross-claim -- or grant your motion

1 to dismiss the cross-claim to put up evidence in
2 your case on both the defense of the petitioner and
3 the defense of the cross-claim; is that right?

4 MR. BECKER: That's right, Your Honor.

5 THE COURT: All right.

6 MR. TETTERTON: Just as a matter of
7 housekeeping, Your Honor. I have filed two causes
8 of action: One was a negligence, my first cause of
9 action; but the second cause of action was breach
10 of fiduciary duty. And I want the record to be
11 clear that I brought that under 62-7-1001 under the
12 trust code, rather than the tort action of -- tort
13 action of breach of fiduciary duty.

14 All of my allegations in that
15 particular second cause of action track the trust
16 code.

17 THE COURT: All right. And, therefore,
18 you're not bringing any kind of tort action, nor
19 are you seeking any kind of tort damages in
20 connection with your allegation of breach of
21 fiduciary duty, but rather, you are seeking damages
22 pursuant to the statutory requirements as set forth
23 in the code.

24 MR. TETTERTON: That's correct, Your
25 Honor.

1 THE COURT: All right, sir.

2 MR. TETTERTON: And at this time, I
3 would withdraw seeking damages of punitive damages.

4 THE COURT: All right. So the tort
5 case is withdrawn, and you're proceeding on the
6 basis of a breach of fiduciary duty, and the relief
7 you seek is removal of the trustee.

8 MR. TETTERTON: And what other relief
9 under that statute -- under the trustee --

10 THE COURT: And the other relief, such
11 as attorney's fees, et cetera, et cetera.

12 MR. TETTERTON: Yes, Your Honor.

13 MR. REIBOLD: The next case --

14 MR. TETTERTON: No. The next case --

15 THE COURT: What's that?

16 MR. TETTERTON: I'll proceed just on my
17 62-7-1001.

18 THE COURT: So the total -- the
19 cross-claim is simply a cross-claim for breach of
20 fiduciary duty under the statute with a -- the
21 requested relief of removal of the trustee and the
22 payment of certain expenses allowable under the
23 code?

24 MR. TETTERTON: Yes, ma'am.

25 THE COURT: All right. I think we

1 understand each other.

2 Very good. Mr. Reibold, on the motion.

3 MR. REIBOLD: On the motion. And this
4 is a Rule -- motion under 3(1)(b), a motion to
5 dismiss in a nonjury trial. Unlike directed
6 verdicts, the question is not the existence or
7 nonexistence of evidence. In this setting, the
8 Court has the power to be the judge of the facts
9 and the law for purposes of this motion.

10 And I'm going to start with the
11 petitioner claims, and there are some -- there is
12 some overlap, so I won't repeat myself when I get
13 to the cross-claimants; but on the petitioner's
14 claim, the third cause of action is one seeking to
15 declare that Mr. Boykin has, quote, preemptive
16 authority over his other co-trustees.

17 And when we had the summary judgment
18 motion, I argued to you that there was no legal
19 authority for that. And here's Mr. Hardin's book;
20 the words preeminent authority do not appear in it.
21 Here's the Trust Code; the words preeminent
22 authority do not appear in it.

23 We have not been cited. I have not --
24 and I have not found any case in South Carolina,
25 published or unpublished, which allows the vesting

1 of preeminent or superior authority in one trustee
2 over another; rather, the will determines what
3 authorities the various trustees have. Unless
4 there's a very specific statute, and those statutes
5 are not in play here.

6 You didn't hear the words special
7 fiduciary from anybody in their case. That's
8 because special fiduciary doesn't apply. Special
9 fiduciaries are appointed if there is a disability.
10 There's only one trustee, and he was -- is not
11 allowed, so he can get a special fiduciary
12 appointed to make that decision. A trustee has
13 been removed, and the trust can't operate without
14 that trustee's vote. The Court needs assistance in
15 investigating something about the trust.

16 Those are the types of situations where
17 a special fiduciary applies. An existing trustee
18 is not made a special fiduciary. It's just not the
19 way it's done or works.

20 So we feel that there is no basis
21 whatsoever for a declaration that he could be found
22 king of the trust and get to overrule or have
23 superior powers to the other trustees. That's just
24 as a matter of law.

25 And, frankly, the only complaint

1 Mr. Boykin made was that the unanimity requirement
2 was difficult. And this leads me into the next
3 claim which is the modification claim. Under
4 62-7-412, a modification is permissible if, because
5 of a change of circumstance -- an unanticipated
6 change of circumstances, the modification will
7 further the purposes, plural, of the trust.

8 And then there's this caveat on there
9 that says: To the extent possible, any
10 modification must be made in accordance with the
11 settlor's probable intent.

12 What was presented to you does not
13 satisfy those requirements. First of all, again,
14 the only modification that was remotely suggested
15 was the unanimity requirement. Well, none of the
16 changes of circumstances affect that requirement.

17 And, frankly, most of them don't
18 justify a modification in any event. The three
19 changes of circumstances that have been discussed
20 are, first, that the settlor, Lemuel Whitaker
21 Boykin, II, did not and could not have anticipated
22 that he would not -- that his son would not have a
23 male child.

24 That is -- that's just absurd.
25 Everyone knows you don't get to control the sex of

1 your children. Everybody knows as much as you try,
2 you may not have children. That's been common
3 knowledge for as long as people have been people.
4 And so the idea that he couldn't have anticipated
5 or did not anticipate that his son might not have a
6 male heir is ridiculous.

7 The next alleged change of
8 circumstances is Hurricane Hugo, but Hurricane Hugo
9 occurred during his lifetime, and he did not change
10 his will after Hurricane Hugo occurred. That is
11 not an unanticipated event. That is a known event.

12 The last change of circumstances is the
13 financial change of circumstance, but unlike First
14 Guaranty Bank -- and I think it's important because
15 you and I had a discussion about that case in our
16 summary judgment. In First Guaranty Bank, the
17 modification that was done to that will was to
18 authorize the sale of the land. And in that case,
19 the will didn't specifically say yes or no, but
20 there was some uncertainty about whether the will
21 authorized the sale of the land.

22 Here, there is no uncertainty. The
23 will provides for the sale of the land. We are not
24 in the same situation as First Guaranty Bank. We
25 don't have to modify the will or the trust to allow

1 for the sale because that provision already exists.

2 And I will also point out that the --
3 that change of circumstances does not relate, has
4 nothing to do with the unanimity requirement in
5 this case. There has been no change of any kind
6 that would affect the unanimity requirement. Our
7 clients have said they are willing to sell and
8 diversify. So it is not a situation where the
9 grounds for modification exists.

10 Now, there is also a counter-balancing
11 effect here. Again, the statute says purposes,
12 plural; so there could be more than one purpose of
13 the trust. And I think if anybody reads that
14 document, they can tell that there are at least two
15 purposes to the trust: One, obviously, is applied
16 to the beneficiaries; but the second, which is
17 clearly established in the text, Item 10, which is
18 all about the treasure tracts and throughout the
19 will in other places.

20 One of the purposes of this trust is to
21 preserve those treasure tracts, that family land,
22 as long as possible and to the fullest extent as
23 possible. So a modification which removes that or
24 which encourages or requires a sale of those
25 treasure tracts violates one of the purposes of the

1 trust and should not be made under that statute.

2 It's certainly not one that will be
3 made to the fullest extent possible in accordance
4 with the settlors' intent. So we don't believe
5 there's any grounds for modification. They didn't
6 even really tell you what they wanted in their case
7 in chief.

8 Now, that brings me to their third
9 cause of action, which is removal. And the first
10 thing I want to point out in removal deals with --
11 and this relates also to the cross-claims, so this
12 is one I can do double-duty on -- our affirmative
13 defense of 62-7-1006. And that statute provides
14 that there's no liability of the beneficiaries, in
15 other words, no serious breach of trust, if the
16 beneficiaries acted in reasonable reliance on the
17 language of the will.

18 And the evidence we have is that that's
19 what they did. They both testified that's what
20 they did. Mr. Hardin admitted that a reasonable
21 person would read the will and conclude that the
22 will expresses the desire to keep the treasure
23 tracts to the fullest extent possible, and there
24 has been no evidence of any kind that anything else
25 motivated their actions.

1 We believe that affirmative defense is
2 established as a matter of law, and as a result
3 there can be no removal, and as a result
4 Mr. Tetterton's cross-claims are barred. They are
5 an action by the beneficiaries. So that statute is
6 crucial here, and the requirements of that statute
7 have been satisfied.

8 Now, there are a few other matters that
9 I want to point out with respect to the
10 petitioner's case. You had before you previously a
11 motion to establish a mandatory minimum
12 distribution, and that seems to have fallen by the
13 wayside. Mr. Hardin didn't talk about it;
14 Mr. Boykin didn't talk about it; Alice Belger
15 certainly didn't talk about it; and Mary Deas
16 Wortley didn't talk about it.

17 They haven't asked you to do it. They
18 haven't put forth any evidence to you of what it
19 should be or even if they still want it. So I
20 think that's another thing that has fallen out of
21 this case.

22 And with respect to their removal
23 claim, there's a number of allegations that simply
24 have not held up now that the evidence has been put
25 in at this trial. For example, the petitioner

1 contends that my clients should be removed as
2 trustees because they failed to hold meetings.

3 But what the evidence shows is that
4 there were at least 24, maybe more than 24 meetings
5 in the past two years, that the only break occurred
6 during the summer months, and that the trustees
7 conducted business by telephone and by e-mail
8 throughout.

9 That's certainly not a serious breach
10 of trust warranting removal. We believe that the
11 Court should reject that ground.

12 Other grounds, the failure to propose
13 an investment plan. Well, that's obviously become
14 moot. An investment plan has been proposed. In
15 fact, our clients' detailed plan was put forth
16 before Mr. Rigdon's plan. So those allegations
17 don't support relief anymore.

18 The failure to diversify; our clients
19 have agreed to diversify. That allegation has
20 fallen out of the case as well. The dispute really
21 is a very short-term dispute. Alice Boykin died in
22 August of 2016. There was some initial meetings,
23 and I think you heard Mr. Boykin testify that it
24 was March of 2017 when things started to go south.
25 He filed his petition in August, and both parties

1 are here to seek additional guidance from the
2 Court.

3 This is not a protracted case in which
4 the trustees have not acted. This is normal in a
5 process of trust administration. They have reached
6 a point where they couldn't decide, and we are here
7 for you. That's what you do when you can't decide.
8 You get some extra guidance.

9 So this is not a case where my clients
10 at least have been obstinate. This is a case where
11 normal trustee matters have proceeded to a point
12 where they needed help and help was sought.

13 So I think that takes care of the
14 petitioner's claims as far as the motion to dismiss
15 goes.

16 I do need to address a little bit of
17 the cross-claims. He's withdrawing the motion for
18 punitive damages. I think I heard Mr. Tetterton on
19 direct examination say that he wants the trust to
20 pay the attorney's fees. If that's the case, that
21 wouldn't be a claim for damages directly against my
22 clients; that would be a claim against the trust.

23 On the cross-claims as well, there are
24 many allegations of misconduct relating to the
25 marital trust, but neither Rigdon Boykin or May

1 Boykin are beneficiaries of that trust. And those
2 claims, whether it's under the trust code or not,
3 should be dismissed. They have nothing to do with
4 the management of the residuary trust, which is
5 what we're addressing here today.

6 The affirmative defense applies to the
7 cross-claims as a complete bar. If you look at
8 what the cross-claims actually say about the
9 equitable relief they seek, they don't seek to have
10 Rigdon Boykin appointed as the sole trustee. That
11 is not in the pleadings.

12 It's one sentence which says: We want
13 an accounting, we want removal, we want suspension,
14 or we want denial of compensation. That's the
15 entirety of what they said in their cross-claim.

16 An accounting is equitable remedy, but
17 it's not appropriate here. And first of all, they
18 didn't assert the elements of it, so it would be
19 appropriate to dismiss that under 1206. But they
20 can establish the elements of it.

21 One of the elements of an accounting is
22 that's a remedy of law. They have had full
23 discovery in this case to find out what assets the
24 trust has, what payments have been made. There is
25 an adequate remedy of law with respect to that, and

1 they haven't alleged that they have been withheld
2 information. So we don't think the need for an
3 accounting is appropriate.

4 They haven't talked about suspension;
5 they didn't even ask for suspension in their case
6 in chief. They talked about the denial of
7 compensation, but my clients haven't taken any in
8 their capacity as trustees. So there's very little
9 left to their claim that even asserts an
10 affirmative cause of action.

11 All they've got is removal, and removal
12 and actual damages are barred by our affirmative
13 defense. We believe it's been established without
14 a doubt in this case. We would ask that the claims
15 of both the petitioner and the cross-claims be
16 dismissed.

17 THE COURT: All right. Mr. Duffy?

18 MR. DUFFY: Thank you, Your Honor.
19 I'll try to be as brief as possible in responding
20 to all of his points, and I apologize if I may
21 bounce around a little bit. I've got some notes
22 about the arguments made by Mr. Reibold.

23 First, they claim that the failure to
24 diversify allegation falls out of the case because
25 their clients have all of a sudden now given lip

1 service to the notion of diversification. Well,
2 bear in mind, the parties have -- the trustees have
3 only agreed and have only sold two pieces of
4 property throughout this time period, a one
5 \$100,000 piece of property for 6.7 acres and
6 another piece of property for \$30,000.

7 So while I hear them giving the notion
8 of diversification some credence, I don't know that
9 my client's petition, which was filed in August of
10 last year, all of a sudden is mooted by that fact
11 -- on the issue of diversification.

12 The same goes for the failure to
13 propose an investment strategy. Now, I heard them
14 say that -- and I believe Wortley testified that my
15 client hadn't put forth any investment strategy
16 prior to June 20th of this year. Of course, we did
17 submit on that date a complete and comprehensive
18 investment strategy as asked for by the Court.

19 Nevertheless, my client, going back to
20 April of 2018, going back to August of 2017, had
21 submitted in writing models, projections,
22 investment strategy, and trustee statements of
23 purpose. So I don't think that the failure to
24 propose -- a failure to propose an investment
25 strategy allegation also falls by the wayside as a

1 result of the fact that they've now submitted
2 Mr. Helms' evaluation.

3 As for the claims that -- on the
4 removal issue, as for the claim that, you know,
5 failure to meet is somehow insufficient or standing
6 alone is insufficient to justify the rule. Of
7 course, Mr. Hardin testified that given certain
8 circumstances that failure to meet could be viewed
9 as a breach of trust.

10 In any event, we believe that the
11 evidence before the Court, which includes not only
12 the live testimony and the video testimony we've
13 seen, but the 175 exhibits we've provided to the
14 Court with a list. Those documents as a whole
15 along with the testimony, we believe, support the
16 claim for removal, and certainly don't think that
17 -- that case can be dismissed at this point given
18 the contentious nature and the volume of evidence
19 on that topic.

20 You know, as to their claim that
21 62-7-1006 is an impenetrable shield with respect to
22 trustee liability on the removal issue, I would
23 just again point to the fact that my client,
24 Mr. Boykin, at the early portions of managing this
25 trust, it appears that Ms. Belger and Mrs. Wortley

1 had agreed to sell many of the pieces of property
2 in the will, and then, all of a sudden, their view
3 apparently changed to be, as they said, in reliance
4 on the language of the document.

5 So, again, I don't think that
6 62-7-1006 -- given the volume of evidence and given
7 the testimony that we've heard, I don't know that
8 that code section precludes moving forward with the
9 case on the removal issue.

10 Going back, Your Honor, to
11 modification, which is our fourth cause of action
12 under 62-7-412. Mr. Reibold said that the will has
13 language to the effect that Mr. Boykin wanted to
14 protect, preserve, tie up, however you want to put
15 it, the legacy properties or the identified
16 property for as long as possible.

17 Of course, there's been testimony to
18 that point from Mr. Boykin that this is a
19 one-generation trust and, in fact, Mr. Boykin,
20 L.W. Boykin, the testator, could have and elected
21 not to provide for the retention of property for a
22 longer duration than he actually did. So I think
23 that's a bit of a red herring on that point.

24 And, again, I think Mr. Reibold said
25 that his clients have agreed to sell land. So that

1 notion that the will is not a mandatory prohibition
2 against the sale of any property, he said that
3 issue doesn't need to move forward. Well, again,
4 that just goes back to the notion of giving lip
5 service to diversification. They say, yes, we can
6 sell land, but, again, there hasn't been any action
7 on that topic and so -- or very little action on
8 that topic.

9 And I think that we do agree,
10 Mr. Reibold and I, there's -- the primary purpose,
11 or I think it's one of the purposes, in our case,
12 the primary purpose of the trust is to benefit the
13 beneficiaries.

14 And I think there's a misunderstanding
15 about our change of circumstances argument, and I
16 certainly don't agree that there hasn't been any
17 evidence set forth on that. We've got a board here
18 that Mr. Boykin walked through with us yesterday in
19 correspondence with -- or connection with
20 Exhibit Number 175, which clearly shows that there
21 is something happening around the trust property,
22 and that there has been a change of circumstances.

23 I believe he testified that all of the
24 property in this area has a tax assessment value of
25 a minimum of \$5,000 now. So there is a

1 circumstantial albatross, so to speak, with some of
2 the Boykin property that I think certainly entitles
3 us to avoid dismissal of the case on change of
4 circumstances at this point.

5 And, finally, Your Honor, as to the --
6 our third cause of action, which is our cause of
7 action which was brought at the outset of the case
8 for declaratory judgment and further instruction
9 and guidance, of course, we included in that
10 request the notion that Mr. Boykin may have to be
11 appointed as a special fiduciary or exercise
12 preeminent authority.

13 And, of course, all sides are by now
14 intimately familiar with the various provisions of
15 the trust code that do envision and contemplate
16 that a disinterested trustee would have a different
17 posture than an interested trustee. I think we
18 also in some of our briefs cited to some case under
19 the ERISA, the federal ERISA statute which shows
20 interested trustees and disinterested trustees may
21 have a difference of authority level with respect
22 to certain decisions.

23 And so given, again, Your Honor, the
24 ton of evidence in the case from the petitioner and
25 given that evidence relating to change of

1 circumstances related to the Boykin trust and the
2 land around that area, it also relates to the
3 failure of the respondents to fulfill their duties
4 as trustees, and given the serious difference of
5 opinion as to trust management, again, they only
6 offered a plan after the lawsuit was initiated.

7 So from that perspective Mr. Boykin had
8 to come to court to even get his respondent
9 co-trustee to the table; and given all those facts,
10 Your Honor, we believe that dismissal under Rule 41
11 is improper and that that motion should be denied.

12 THE COURT: All right. Now, that
13 completes the arguments on the respondents' motions
14 for dismissal of various causes of actions under
15 12(b)(6). Now, your motion for a directed verdict,
16 if any, at the close of your case.

17 MR. DUFFY: We do not have a motion at
18 this time.

19 THE COURT: All right. Very good. All
20 right. I will deny the 12(b)(6) motions at this
21 time and allow the matter to go forward. I will
22 say that what is not directly dealt with by either
23 side in the arguments that have been made this
24 morning is the question of whether there is an
25 impasse between the trustees, such that the trust

1 cannot function as it needs to function to preserve
2 the assets of the trust or to provide income for
3 the income beneficiaries such that some
4 modification or removal or other change in the
5 current administration of the trust needs to be
6 made by the Court. Neither side has directly
7 confronted that.

8 What the clash has been about is
9 whether the trustee, either Mr. Rigdon Boykin or
10 the two co-trustees, who are sisters, have so
11 performed as to have breached their fiduciary
12 responsibilities and, therefore, they should be
13 removed.

14 Removal has been sought by both sides
15 on the basis of the failure to act as prudent and
16 responsible fiduciaries under the code, but that
17 does not address the issue of impasse and whether
18 impasse was the result of a breach of any fiduciary
19 responsibility or whether as a result of the
20 decision-making construct that is created by the
21 instrument is such that the Court under the trust
22 code would be required to step in and modify the
23 administration's responsibilities in this trust.

24 I'm still very concerned about that.
25 It may very well be that at the end of the day the

1 evidence will not support a finding that either --
2 that any of these three trustees have, quote,
3 unquote, breached their fiduciary duty as that
4 meaning is defined by the trust code, but the
5 evidence may very well establish that there is a
6 complete impasse as to how to manage this trust,
7 and what would then be explored is what will happen
8 to the trust properties if this impasse continues.

9 And I would expect that that would be
10 explored as this case goes forward. That is the
11 area that gives me much more concern than the
12 allegations about quote, unquote, breach of
13 fiduciary duty. Because if there is an impasse
14 which prevents the trust from being properly
15 administered at all and that impasse is caused by
16 the requirement that there be an absolute unanimity
17 in order to sell and diversify the assets of the
18 trust, then the Court would have to consider per
19 the trust code and per the requirements of trust
20 administration, as spelled out in First Guaranty
21 and other cases well before the so-called trust
22 code came into existence, whether or not some
23 relief needs to be granted by the Court in order to
24 preserve the assets of the trust.

25 So I just leave you with those concerns

1 on my part and deny the motions to dismiss at this
2 time. All right.

3 You may proceed, Mr. Becker.

4 MR. BECKER: Your Honor, our first
5 witness will be John Helms. He will need to set up
6 a computer and the screen. Could we take a short
7 break while --

8 THE COURT: Sure. Let's take a
9 ten-minute recess and let Mr. Helms set up what he
10 needs to set up.

11 MR. BECKER: Thank you.

12 (A recess transpired.)

13 THE COURT: Mr. Becker, you may
14 proceed.

15 MR. BECKER: Thank you, Your Honor.
16 We're just making sure we're ready to go here, and
17 I believe we are.

18 THE COURT: Is Mr. Helms one of your
19 first witnesses?

20 MR. BECKER: He is our first witness,
21 Your Honor, Johnny R. Helms.

22 THE COURT: Raise your right hand.

23 JOHN R. HELMS

24 being first duly sworn, testified as follows:

25 THE COURT: Thank you. Now, who is

1 this?

2 MR. BECKER: This is Bethany, my
3 assistant who is going to help me operate --

4 THE COURT: She's going to help operate
5 the computer.

6 MR. BECKER: Your Honor, I have copies
7 for you and your clerk of our Trial Exhibit
8 Number 2, which is Wortley-Belger Investment Plan
9 and Strategy. And we will refer to it throughout
10 the presentation, as well as the material she will
11 display on the screen. All of those materials will
12 also be offered as an exhibit in evidence.

13 THE COURT: Thank you, Mr. Becker.

14 MR. BECKER: Mr. Helms, could you test
15 the microphone?

16 THE COURT: Mr. Helms, what I'm going
17 to want you to do is speak into that microphone and
18 speak up. We've kind of got an acoustical issue
19 and we want to hear what you have to say.

20 THE WITNESS: Thank you.

21 DIRECT EXAMINATION

22 BY MR. BECKER:

23 Q. Mr. Helms, would you please state your
24 full name for the record.

25 A. Johnny R. Helms.

1 Q. And what is your current occupation?

2 A. I work at Middleton Forestry Company
3 where I am a co-owner and director of that company;
4 and I work as a forester and as a technical analyst
5 and as an appraiser.

6 Q. All right.

7 MR. BECKER: I'd like to direct the
8 Court to please turn to Tab B of the Wortley-Belger
9 Plan. This is the last page behind Tab B.

10 BY MR. BECKER:

11 Q. Is that a list of your qualifications,
12 Mr. Helms?

13 A. Yes, it is.

14 Q. All right. I see that you are a
15 state-certified general real estate appraiser in --
16 is that in seven southeastern states?

17 A. Yes, that's correct.

18 Q. And are you a registered forester in
19 South Carolina and North Carolina?

20 A. Yes, that's correct.

21 Q. You also have your real estate
22 salesperson's license in the state of South
23 Carolina?

24 A. Yes, which I recently obtained.

25 Q. All right. And, notably, you've been a

1 member of the Society of American Foresters since
2 1979; is that correct?

3 A. That's correct.

4 Q. Were you a chair of that division?

5 A. In South Carolina, yes.

6 Q. In 2000?

7 A. Yes.

8 Q. Okay. Let's -- could you tell us about
9 your professional experience, the work you've done
10 as both a -- in the timber and land appraisal
11 business?

12 A. Okay. Well, I began in the graduate
13 school of forestry at Clemson and --

14 THE COURT: Mr. Helms, I want you to
15 speak up a little bit. I don't mean to scare
16 you --

17 THE WITNESS: Okay.

18 THE COURT: -- but you're looking down
19 at your papers and kind of mumbling. I want you to
20 talk into that microphone, and I want you to speak
21 up. Thank you, sir.

22 THE WITNESS: Okay. So while I was at
23 graduate school in 1980 at Clemson, in forestry,
24 working on my master's degree, I found it necessary
25 to find a job in the middle of that. And I found a

1 job with Stone Container Corporation, which at that
2 time was a very small company that owned part of
3 the paper mill here in South Carolina, and it owned
4 a few little chip mills.

5 And while I was there for the next 18
6 or so years, that grew to have 30,000 employees all
7 around the world. So in my job there, I went to
8 work -- I was the first young forester that worked
9 in the forest products division, which was
10 headquartered in Columbia, South Carolina.

11 So for the next 18 years, we grew to
12 where we managed and supported seven U.S. paper
13 mills across the United States, and then we had
14 other facilities all around the world. So during
15 that period, I was constantly assigned a lot of
16 tasks where I had to analyze the timber resources
17 of different areas and economics of different
18 things our company did that included how we were
19 staffed and the strategies we took to try to get
20 wood fiber for those paper mills.

21 During this period -- or during my
22 career, forestry came under a lot of scrutiny in
23 the media and around the country, and a lot of
24 environmental issues arose including endangered
25 species like the Northern Spotted Owl, and then

1 here in the south it was the Red-Cockaded -- still
2 is the Red-Cockaded Woodpecker.

3 So having had little experience, other
4 than the wildlife classes about wildlife, I had to
5 self-learn about those things. And here in the
6 south, in South Carolina, in 1993, I helped develop
7 a habitat conservation and mitigation plan for
8 Red-Cockaded Woodpeckers on private land. And
9 that's been extended all around the southeastern
10 U.S. and that's for private land.

11 And so also while there, I was always
12 asked about what is forestry as an investment?
13 What does that yield? And so I became involved in
14 growth and yield models. The one I enjoyed the
15 most was going to Costa Rica and taking an exotic
16 species called Gmelina and learning how that would
17 grow. So we would do financial analyses of our
18 investments down there. So that was just a little
19 analytical sideline there.

20 Also, I found myself at one point in
21 time where I was a PTA President of the Society of
22 American Foresters Chair and the South Carolina
23 Wildlife Federation Chair all at the same time.

24 But somewhere during that period I got
25 an award from Stone Container for -- I was just

1 going to mention, I did receive the president's
2 award for outstanding performance in 1995. A few
3 years after that, Stone was involved in a merger
4 with Smurfit Corporation, and I -- at that time,
5 there was a lot of duplication in that organization
6 and uncertainty, and I decided to pursue other
7 career steps.

8 I got approached by two large
9 consultant forestry firms, both here in South
10 Carolina and both of which were mainly just
11 interested in knowing my work ethic. And both of
12 them, ironically, thought I would be good working
13 in appraisals of timberland property. So in the
14 course of that, I made a decision to go where I
15 still am, and which I now own as of the past
16 several years, Milliken Forestry Company.

17 So when I went to Milliken, I became
18 associated with Phil Adams, who some people here
19 may know or may have known. He was a successful
20 and well-respected appraiser, and I worked under
21 him learning how to do appraisals of all different
22 kinds of properties. Not just timberlands.

23 So this involves houses, businesses,
24 local home parks. Any kind of real estate that you
25 can name, I probably have done an appraisal for.

1 And so in that process, first, of course, I was an
2 apprentice as required by law, and then I became a
3 certified general appraiser circa 2004. And I've
4 been keeping up with that through continuing
5 education and lots of work ever since.

6 So the other item I wanted to mention
7 was, when I did arrive at Milliken, we were
8 presented with huge inventory projects because the
9 forest industry was selling all of its land. So
10 I've had the experience of designing inventory that
11 had to be done accurately in a very short time
12 period to come up with the right values for people
13 to buy it. I've seen a lot of it resold over the
14 last 15 years or so.

15 So now -- what I do now, I do more than
16 just appraisals. I do growth yield modeling for
17 some of our clients, project timber volumes and
18 values and things of that nature to help advise
19 them in the management of their large properties,
20 timberland properties.

21 And I also spend a lot of time now
22 trying to help manage and direct the growth of our
23 company, which includes forestry, real estate,
24 mapping, and then a variety of other services
25 including environmental.

1 BY MR. BECKER:

2 Q. Thank you. Briefly touch on your
3 formal education, Mr. Helms.

4 A. So when I started in forestry -- well,
5 I didn't start in forestry. I started in
6 agricultural engineering because this was the last
7 place I visited at the end of a long day. And
8 after a year, I decided to go into forestry. I
9 liked forestry because it involved some business,
10 and I've been there since then and I love it.

11 So I worked there -- I was very active
12 once I got into that at Clemson, and I was in all
13 of the business organizations we had. I worked in
14 the forestry summer camp program for three years.
15 After the first year or so, they let me help teach
16 that. And then I got awarded the Belle Baruch
17 Research Fellowship in 1978 when I graduated. It
18 was named after Belle Baruch, who is from Camden.
19 So I'm proud to be up here saying that today.

20 I began working on my master's thesis
21 project which involved taking aerial photographs
22 and satellite imagery to map and inventory forests
23 that are here in South Carolina. So I did a
24 full-scale inventory of a large area as my master's
25 thesis.

1 I had to leave in 1980, when my father
2 ... died, and then I came to work, and over the next
3 two years I managed to publish my master's thesis.
4 And so I got my master's in 1982.

5 Q. So you have a Master's in Forestry -- a
6 BS and a Master's in Forestry from Clemson?

7 A. That's correct.

8 Q. Now, during your professional career,
9 your professional practice as a real estate
10 appraiser, approximately, how many real estate
11 appraisal assignments have you had?

12 A. I conservatively would estimate about
13 33 a year on average. I don't have records of all
14 of those, but if you multiply that times about
15 14 years, that's over 500 assignments.

16 Q. And how many of those have been
17 appraisals of large landholding, such as this one?

18 A. I estimate probably 50 percent, two
19 thirds, possibly a little bit higher than that
20 involved more than 2,000 acres. And then the
21 remainder are smaller things.

22 Q. And what has been the size range in
23 terms of the value of the different tracts that you
24 have evaluated and appraised?

25 A. In terms of the values?

1 Q. Yes. Total value of all the --

2 A. Of the properties? Well, some of them
3 has been up as high as \$100 million and probably
4 routine is about \$10 million.

5 Q. Is the majority of your appraisal work
6 in the field of land and timber?

7 A. Yes. But contrary to what might be
8 assumed, I did appraise a lot of other things and I
9 get brought into -- I've been brought into a number
10 of situations where I have looked at very nice
11 improvements, large houses, ponds, hunting areas.
12 And then one time I did an entire interstate
13 highway interchange, and I did a 26-story office
14 building downtown, et cetera.

15 Q. All right. Now, I think you've alluded
16 to this, but in the course of your practice as a
17 professional real estate appraiser and forester,
18 have you also had the experience preparing cash
19 flow analyses for large land and timber holdings?

20 A. Yes, I do this all the time. A lot of
21 the work I do is for large institutional owners
22 that manage timberland properties, and they all
23 require that as far as appraisal work. And it's
24 really -- an income approach is technically
25 required to be considered and used in any appraisal

1 as long as it's appropriate for the kind of
2 property that's being appraised.

3 Q. Does the income approach involve a
4 discounted after-tax cash flow analysis?

5 A. Usually those -- for appraisal purposes
6 those are done pretax.

7 Q. Pretax?

8 A. Yeah, but they can be if requested.

9 MR. BECKER: Your Honor, at this time,
10 I move to qualify Johnny R. Helms as an expert
11 witness in the field of real estate and timber
12 appraisals and evaluations.

13 THE COURT: All right. Mr. Reibold,
14 any voir dire?

15 MR. REIBOLD: Not me, Your Honor.

16 THE COURT: Mr. Tetterton, any voir
17 dire?

18 MR. TETTERTON: May it please the
19 Court. If I understand what they are offering him
20 as an expert in is --

21 THE COURT: I'm -- I believe I'm being
22 asked to qualify him as an expert in timber
23 management and -- land and timber management; as an
24 analyst and technical specialty in the pulp, paper,
25 and solid wood industry; as well as a real estate

1 appraiser with a concentration on forestry and
2 timberland, but also with an expertise in farms,
3 houses, other buildings, hunting areas, and even
4 commercial properties such as highway exchanges.

5 So I think I'm being asked to qualify
6 him as a forestry expert and as a commercial
7 appraiser.

8 MR. TETTERTON: As long as his
9 testimony is within the bounds of that expertise,
10 Your Honor --

11 THE COURT: What are you worried about,
12 Mr. Tetterton? I mean, he has indicated that very
13 wide experience in appraisals of all sorts, both
14 large and small. So what is it that you're trying
15 to exclude?

16 MR. TETTERTON: In his summary that
17 they have provided me, he is making some
18 projections of the stock market, and I don't think
19 he has been offered as an expert in financial
20 affairs with regard to the stock market.

21 THE COURT: He has been -- he has just
22 testified that one of the things that he's
23 experienced in doing -- when he appraises, he
24 appraises from -- as land value, but he has also
25 made analyses for timberland businesses of all size

1 that analyze cash flow and analyze discounted
2 value. So if that is what you are -- and I think
3 that -- that is what I understand that inclusion to
4 be referring to, and I think that's within the
5 ambient of what I am being asked to qualify him
6 for.

7 MR. TETTERTON: It's my understanding,
8 Your Honor, that his analysis on cash flow analysis
9 is primarily based on income approach. He didn't
10 say anything about comparing it to the greater
11 return in the stock market or other financial
12 areas.

13 THE COURT: Well, if you want to voir
14 dire him on this, Mr. Tetterton, then you may go
15 forward, and then I will make a decision as to
16 whether what you're talking about goes to the
17 weight of his testimony or his qualifications as an
18 expert.

19 MR. TETTERTON: I think my best bet is
20 to wait until he offers testimony in that area and
21 then I can object to that testimony.

22 THE COURT: All right. Anything
23 further from anybody else?

24 MR. DUFFY: Nothing further, Your
25 Honor.

1 MR. BECKER: Your Honor --

2 THE COURT: Mr. Becker, I'm prepared to
3 rule, and I think you will like the ruling. So I
4 don't think you need to give me anything else.

5 MR. BECKER: All right. Sorry, Your
6 Honor.

7 THE COURT: I find that based on his
8 training, education, and experience,
9 Mr. John R. Helms is qualified as an expert in the
10 management and valuation of timberland, as well as
11 farms, houses, hunting areas, commercial property.

12 I also find that by reason of his
13 training, education, and experience, Mr. Helms is
14 qualified as a real estate appraiser, both in the
15 commercial sense, as well as in the specialty of
16 timber and timber valuation which includes both the
17 evaluation of timberland and analysis of cash flow
18 and revenue generated from timberland, as well as
19 analysis of income and the present worth or
20 discounted worth of the right to receive income
21 into the future from timberland. All right.

22 MR. BECKER: Thank you, Your Honor.

23 THE COURT: You may go forward,
24 Mr. Becker.

25 MR. BECKER: Thank you, Your Honor.

1 BY MR. BECKER:

2 Q. Mr. Helms, you have in front of you a
3 copy of the Wortley Trial Exhibit 2; is that
4 correct?

5 A. Yes, sir.

6 Q. And it is entitled, The Investment Plan
7 and Strategy, proposed by Mary Deas Wortley and
8 Alice Boykin Belger?

9 A. That's correct.

10 Q. And it was originally created June 18th
11 and was revised as of July 5th; is that correct?

12 A. That's correct.

13 Q. Have you played a role in preparing
14 significant portions of this investment plan and
15 strategy?

16 A. Yes, I have.

17 Q. Does it -- does it contain portions of
18 your work product?

19 A. Yes.

20 Q. All right. Can you briefly summarize
21 for the Court the work you've done related to real
22 estate, timber, and other assets of the residuary
23 trust, including the work product you've produced
24 for the Wortley-Belger Investment Plan and
25 Strategy?

1 A. For me, this began in the latter part
2 of 2016. And I was contacted by Karen Thomas who
3 was with the firm of Sojourner, Caughman, and
4 Thomas, and they -- she indicated that there was an
5 interest in having a tract of land called the
6 Sumter Mountain Tract, which I had never seen,
7 having that appraised and possibly for state tax
8 purposes.

9 And the Sumter Mountain Tract was 1,091
10 acres. So it's part of -- potentially, there were
11 approximately 20 percent -- 15 to 20 percent of
12 what the trust owns in terms of acreage.

13 During the next months, I become aware
14 there was a controversy involved here, and so --
15 and, also, that there was a question about how the
16 properties should be appraised for estate tax
17 purposes. And I was asked to research other tracts
18 of land that were involved in the estate of Alice
19 Belger, who died in August 2016.

20 And I did so, and as a result of that
21 work, I was able to identify five separate
22 appraisals needed to appraise the property that I
23 was looking at. Now, the property involved there,
24 those were the more rural tracts, rural pieces of
25 land that were involved in the estate.

1 There were some other small tracts of
2 land around Camden and a few little isolated pieces
3 of land here and there that weren't included in my
4 appraisal, but I appraised the bulk of what was
5 involved in the estate, and that was 4,794.21
6 acres.

7 And those acres were mapped tracts of
8 land that were mapped by the foresters and also
9 mapped by the tax assessors and in some cases may
10 involve parcel -- tax parcels and a combination of
11 tax parcels.

12 Q. And were there some lands owned by the
13 Boykin Trust that were not included in the estate
14 tax appraisal?

15 A. Yes. Primary, there was approximately
16 1100 acres that included the Boykin Mill Farm and
17 some land adjoining that in the Boykin community
18 and also a tract known as the swamp tract which is
19 near there. Those were not included in my
20 appraisal.

21 Q. So have those properties been in the
22 residuary trust from 1989, when Mr. Boykin died?

23 A. I'm not sure when they became in there,
24 but they were already there when I worked with my
25 estate tax appraisal.

1 Q. Go ahead and describe -- if you'll
2 describe the work you've done since that point.

3 A. Since that point.

4 Q. Well --

5 A. Well, if I may --

6 Q. Go ahead.

7 A. -- let me talk about the five
8 appraisals that were done. We'll show here in a
9 moment -- using our map tool, we'll show these
10 properties and how they're aggregated, but during
11 my research we very intensely studied real estate
12 markets around all of this land.

13 We were doing this for estate tax
14 purposes, and we wanted to be sure that we could --
15 what we were concerned about is the marketability
16 of these tracts and the time period in which the
17 tracts would be sold and how they would be sold,
18 whether they would be sold all together, whether
19 they would be sold as separate tax parcels, how
20 long would that take, and how much money would come
21 in at different assumptions regarding that.

22 So when we got done, of course, all of
23 these five appraisals -- two of these appraisals
24 had to do with individual tax parcels in Lancaster
25 County and Fairfield County. They were stand-alone

1 tracts of land that we -- I felt could be sold,
2 just put on the market and sold like that.

3 The other tracts were considered --
4 because of their size and their location near each
5 other, they were considered aggregations of the
6 land, and they were appraised that way. And when
7 we -- when I got done, I made a sixth appraisal.
8 And I actually ran an income log on all of those
9 things combined over 15 years, and I sold all of
10 the land and all the timber in 15 years. And it
11 pretty well concluded that the five separate
12 appraisals could just be added together to get the
13 estate tax value.

14 Q. And the estate tax appraisal, is that
15 submitted with the estate tax return?

16 A. Yes, it is.

17 Q. Is it potentially subject to audit by
18 the Internal Revenue Service?

19 A. Yes, it is.

20 Q. What -- just very briefly, does that
21 necessitate a higher degree of care and attention
22 when you're doing an appraisal? How does it affect
23 what you do?

24 A. In theory, it should not change the way
25 you do an appraisal, but, in fact, it does because

1 it causes you to study things a lot more carefully,
2 and that potential is there.

3 Q. Okay. Thank you. And then in March of
4 2018, were you contacted by me as attorneys for
5 Ms. Belger and Ms. Wortley?

6 A. Actually, I got a call from Ms. Belger,
7 and then I heard from you and her about having a
8 meeting. And we did on April 2nd. So --

9 Q. All right. And then, in total, was the
10 property that was part of the marital trust and the
11 additional land that you have evaluated and
12 analyzed for purposes of this assignment, how many
13 acres and how much parcels are we talking about?

14 A. There is 5900 acres, and I think there
15 are 44 parcels, and the figure I have here is 5986
16 acres. There are some questions about some of the
17 acreage in these parcels, but I think -- but that's
18 an approximate figure that was used.

19 Q. Okay. So just right under about 6,000
20 acres?

21 A. That's correct.

22 Q. Okay. Now, if you could describe what
23 these properties include, just in general terms.

24 A. So they include all property that I
25 appraised earlier for the estate tax purposes;

1 although, there's seven acres that were in the
2 estate that were not in the residuary trust. Those
3 seven acres are rural timberland.

4 And then these 5900 or 6,000 acres,
5 they also include 1100 acres in the Boykin Mill
6 area not associated with the estate, as well as a
7 number of properties close to Camden that are
8 commercial and residential-type properties.

9 And then -- and that's all the tracts
10 now within 6,000 acres. So that's where all the
11 acreage came from.

12 Q. All right. And I believe you met with
13 all of the trustees on April 2nd, 2018 -- or,
14 excuse me, it was Ms. Wortley and Ms. Belger on
15 April 2nd, 2018?

16 A. That's correct.

17 Q. What did you proceed to do from there?
18 What was the outcome of that meeting?

19 A. Well, we talked about the fact of
20 trying to have the investment strategy, and I was
21 asked a number of questions about a number of
22 different things. And so one of the first things
23 we identified was having a big catalog of where all
24 the properties were. So that was one of the first
25 products that I was working on.

1 Q. All right. And is that contained
2 behind Tab D of your -- of the Wortley-Belger
3 Investment Plan and Strategy?

4 A. Yes. What's in Tab D is the printout
5 of the individual tracts, and that comes from a
6 larger master spreadsheet of this information.

7 Q. All right. So this is all the
8 information contained in that very large
9 spreadsheet printed out by individual tract; is
10 that correct?

11 A. Correct.

12 Q. So if you wanted to look at information
13 regarding any one of those tracts you can find it
14 here by tract number?

15 A. Yes, that's correct.

16 Q. So let's see -- and, also, were you
17 asked to develop a 15-year cash flow model?

18 A. Yes, I was. That was not on the
19 initial request, but as time progressed that idea
20 evolved, and that's what I did.

21 Q. All right. And I believe we'll talk
22 further about this large catalog spreadsheet later.

23 A. Yes.

24 Q. Let's see. Mr. Helms, you've obviously
25 done considerable work in researching real estate

1 and timber markets as well as understanding other
2 features and aspects of the trust real estate and
3 timber assets. Can you now please discuss some of
4 the tools you've used in the appraisal and asset
5 management and some of the features of the trust
6 real estate and timber holdings that are material
7 in terms of understanding their value?

8 A. Okay. So, yes, a great deal of time
9 gets spent doing this type of work. Initially,
10 doing an appraisal is very intensive and involves
11 many things, research of many things that affect
12 the value of the property. And now this certainly
13 evolves and changes every year, but we use
14 computers to research all kinds of things now.

15 And then, of course, spreadsheets are
16 useful in adding things up and modelling and that
17 sort of thing in our research. The Internet allows
18 us to do pretty good research on economic trends
19 and population trends, such as in this area, that
20 might affect the value of the property.

21 And so we go and we actually go
22 research all of those things, spend time doing --
23 and we research the tax parcel information, add it
24 all up, look at it. We research the comparable
25 sales. We research the listings of properties that

1 are nearby.

2 And then we have this technology that
3 you see on the screen up there, which is called
4 ArcGIS, and we use that to create and show the maps
5 of tracts and study aerial photography of the
6 tracts. In today's world, that's a really great
7 tool, and it's gotten -- all of that's gotten much,
8 much better with digital photography.

9 The imagery is outstanding that you can
10 obtain now compared to when I used to fly an
11 airplane and take aerial photographs with a big
12 camera. We also use things like Multiple Listing
13 Services and Zillow.com. We can research
14 residential properties, and we researched a lot of
15 high-value property in downtown Camden when I did
16 the appraisal. So, you know, there's a lot of
17 tools that we use.

18 And then our company manages
19 substantial acreage, and so just on a daily basis
20 we're familiar with things that sell and things
21 that are for sale, timber and land. So I have --
22 those are some of the tools I have available.

23 Q. Does your company maintain a large
24 database with sales information?

25 A. I maintain a large -- it's not really

1 public knowledge, but I maintain a large database
2 of large investment property sales that I use all
3 the time.

4 Q. All right. If you could speak to the
5 issue of market absorption and how that affects
6 your evaluation in this matter.

7 A. Okay. So, initially, I did estate tax
8 appraisals on 80 percent of the acreage that's now
9 in the residuary trust, and I had to go out ahead
10 of time and try to analyze how -- what time period
11 could that property be sold. And what my
12 conclusion was that there's so many acres that it
13 would take a substantial time period to sell that
14 as individual tracts.

15 And so in terms of appraising it, I
16 decided to divide it into these five geographical
17 groupings and study and appraise those separately.
18 And that's based on the concept of market
19 absorption which is how fast can the market absorb
20 all the properties. And that includes timber, by
21 the way.

22 These properties have a large amount of
23 timber value, and to be able to get the full value
24 of the tracts, it's necessary in some cases to
25 remove some of that timber separately before

1 marketing the land. So that's -- that's taking --
2 the size and amount of timber present was also
3 taken into account.

4 If you add up all the timber that's
5 here, there's a large amount of timber that you
6 would have difficulty selling at one time.

7 Q. And you also used some modern mapping
8 technology and digital aerial photography?

9 A. Yes. And that's what we have on the
10 screen -- the screen here; this is ArcGIS. And we
11 have just recently done this. I've just recently
12 compiled this. We did not have it in place at the
13 time of the appraisal, the estate and trust didn't
14 have this technology.

15 So we developed it so we could present
16 it here today and explain and show things that --
17 and, hopefully, it can be used by the trust later
18 to do -- as part of its management tools. So --

19 Q. Please, go ahead.

20 A. Okay. We're going to start, and we
21 want to kind of -- you can see or maybe you can see
22 here, it's a little difficult, but you can see the
23 red areas on the map and -- and could I get a
24 pointer? Is there a pointer available?

25 Q. Yes. Okay.

1 A. So we see the different little red dots
2 up there that are caused by the lines, the property
3 lines of the tracts, lines we have digitized and
4 are able to put over this aerial photography
5 digital imagery. I'm not sure when it was taken,
6 but maybe 2016 or '17. It may also vary by
7 different places on this map when the photography
8 was taken. It was put together by a computer as a
9 quilt.

10 One of the things that I think is
11 interesting to see on this, when I look at this
12 map, I see this little line right through here.
13 (Indicating) That's -- that's an area where
14 farmland gets better. And, also, there's some good
15 farmland, which we'll show later, is around Boykin
16 Mill area that's similar to some of that farmland
17 that I pointed out.

18 So that affects on the value of the
19 Boykin Mill area, the kind of soil that's there.
20 We do a lot of soil analysis, so I'm going to try
21 to show some examples of how that works.

22 And that's an escarpment where at some
23 point in time, the -- there are several events
24 where people believe the ocean came up all the way
25 as far as close to Camden and Columbia. Some of

1 the land around Camden may or may not have been
2 completely under the ocean, but as you get down to
3 where that line is, which is -- that's actually
4 where Shaw is located, and there's some really good
5 farmland on that line right there.

6 That's an escarpment, which is one of
7 the places where the ocean came up to and stopped
8 for a long time. And as you come back toward the
9 coast, the land becomes flat, very flat coming back
10 from there. As you proceed to the left of that
11 line, you come to the Sumter Mountain area, and
12 that's the deposits of sandy land, or sand, that
13 are not quite as productive. They have a value as
14 productivity, but they are rolling, hilly, and not
15 a very good agricultural source. So those are the
16 kind of things that I can see on a map like this.

17 So we're going to zoom in, and now
18 we're going to look at each assemblage where you
19 can just go one at a time and maybe look at
20 Lancaster. And so this is -- this is one thing
21 that I did in a separate appraisal on the Lancaster
22 tract; because, obviously, there's no other land
23 around it and you could go sell it, go put a sign
24 up on it or call somebody up and go sell that
25 tract.

1 The one thing about the Lancaster tract
2 is, though, that it has a lot of timber on it. And
3 so the forester of the trust, who was Jim LaFrage,
4 felt -- feels like the timber sale should be
5 scheduled or schedule a timber sale there. And I
6 sort of agree with that verdict for that tract; get
7 some of the timber off and then somebody will buy
8 it.

9 And they'll probably use it -- you
10 could put four houses on that piece of land. And
11 so that's a separate stand-alone appraisal that has
12 a value by comparing it to sales to other
13 properties that we've researched that within two to
14 three years of the appraisal date there in
15 Lancaster County.

16 Okay. So let's go to Fairfield. So
17 this is the Molly fruit tract. It's near Lake
18 Wateree, and this is convenient to Columbia and
19 Brightwood and Camden areas. And, of course,
20 people are beginning to express interest in Lake
21 Wateree again, after going through the recession
22 and we saw all the interest in those types of
23 properties pretty much collapse.

24 And so now people are interested again.
25 And Crescent Resources has sold a lot of land

1 around there; they've liquidated all of their
2 landholding. And the Crescent Energy Services was
3 initially part of the new power plant company.

4 People from Charlotte have bought many
5 of those properties just north of this tract. And
6 people from Charlotte are moving to Lake Wateree
7 because Lake Wadley is so expensive and crowded.

8 And then on the other side here, Columbia, Lake
9 Murray is sort of pricey and crowded too.

10 So this is an area where I think this
11 property is going to increase in value. So this is
12 a good investment.

13 Timberland investment value tract. It
14 has young timber on it that could be managed while
15 you're waiting for somebody to come along and offer
16 a really premium price for it. So that's my --
17 okay.

18 So let's go to the next -- let's go to
19 Lee County, three miscellaneous Lee County tracts.
20 I think a little bit more -- Turtle Creek. That
21 will be up higher -- can you see it. It's way up
22 there. So there is three pieces of land in Lee
23 County: That one, that one, and that one.

24 (Indicating)

25 And I felt like there was a couple of

1 things -- a couple of reasons those needed to be
2 aggregated: One is they're away from the other
3 tracts; two, they're in very sandy land, sandy
4 land, so the soils are not as good for those
5 tracts; and, third, oddly enough, they're all very
6 similar in size. They're all right around a
7 hundred acres in size.

8 And so I was able to go to similar
9 areas of sandy land in Kershaw County, the northern
10 part of Kershaw County and that lower part of
11 Sumter, and then up there in the northern part of
12 Lee and find comparable sales. And I also used --
13 for those tracts, I used some bigger tracts of land
14 to help indicate the amount of time that it would
15 take to sell all three of those tracts. So I did a
16 sales comparison on those.

17 So now we go to Sumter Mountain. So
18 this is what I call Sumter Mountain assemblage.
19 And almost all of it is in Sumter County, but some
20 little pieces of it are up here in Lee county, up
21 here at the top. That's the Rabbit Pen tract and
22 that's the Peach Orchard tract. (Indicating)

23 And those are fairly sandy, rolling
24 soils that have various productivity for timber,
25 but generally okay. Some areas are a little bit

1 sandy and not as productive, and then some of the
2 lower lying areas are above average. So it's just
3 sort of a mixture of things that -- that when you
4 look at it together is average. That's my term for
5 it.

6 The Sumter Mountain tract, that was the
7 first tract that I appraised. You see these little
8 yellow lines, those are tax parcel lines. And
9 there's actually a little --

10 THE COURT: What kind of lines?

11 THE WITNESS: Tax parcel -- tax parcel
12 lines.

13 THE COURT: Tax parcel lines. Okay.

14 THE WITNESS: Whereas the exterior red
15 lines are also tax parcel lines and the yellow
16 lines are where the parcels come together to form
17 that tract. And in the case of that tract, the tax
18 parcel -- one of those tax parcels actually
19 includes other tracts, so it becomes hard to
20 describe it, but that's how it is.

21 And the reason for that is, it's just
22 simple that it's within road frontages that make it
23 a -- you know, make it a continuous piece of land
24 that has good esthetics and good -- it has good
25 potential to be divided up into smaller tracts.

1 You can use the tax parcels with the
2 highway frontage. This is the highway here, and
3 you have an entrance to it here. This is an open
4 area up at the top, the higher elevation right
5 there. And then you have another high level over
6 here where you can break off pieces of it and sell
7 it. (Indicating) So it has a lot of value to it.

8 That one piece, that's a 1,091-acre
9 tract of land; it is a good quality piece of land
10 whereas some of the other pieces are out behind
11 people's houses or a little bit harder to get to,
12 maybe not on a public road. That varies, depending
13 on what tract you talk about.

14 The Cimmaron Road tract, of course,
15 it's on Cimmaron Road right there. (Indicating)
16 And it's a nice square piece of property that
17 somebody could use as a residential site, and maybe
18 convert a few areas to some open land and have a
19 horse or some cows or something out there, or
20 however they want to use it. It could be sort of a
21 mixed-use property if it were sold.

22 Some of the other tracts, other than
23 Sumter Mountain -- down in here (indicating) there
24 are three tracts that are proposed for sale right
25 now in combination with one buyer. And those have

1 -- I might not be exactly -- here they are: This
2 one, that one, and that one. Just those right
3 there.

4 And those have good recreational
5 qualities, and the proposed buyer owns land right
6 next to all three of those. And one of those is
7 the one that I will refer to most of the time as
8 the southern Sumter Mountain tract, and then you
9 have the Charlie Graham tract, and then this
10 42-acre tract that joins that.

11 Those are all deer and long-rafting
12 creeks, and it provides some interesting things.
13 It provides an investment in hardwood timber and
14 also good recreational quality.

15 Let's go to the Boykin Mill area.
16 Thank you.

17 All right. So this is -- the Boykin
18 Mill area includes the 1100 acres that I did not
19 initially appraise. The Boykin Mill area is 2789
20 acres. And I have some different tables where we
21 could study different ones -- groups of the tracts
22 or some of the individual ones.

23 Up here at the top you see -- this is a
24 good time to talk about the legacy properties. And
25 we have an overlay of that we can cut on. So let's

1 cut that on.

2 Okay. There we are. And the design --
3 my understanding and interpretation is -- let's see
4 if we can get that right. Those are the
5 ownerships. Looking for whether it's family legacy
6 or another category. It's up a little further on
7 the scale. Okay. That's the marital trust and the
8 residuary trust. Okay. All right.

9 I don't know if that's going to be on
10 this map, but the swamp tract and this area down
11 here, which I call the Boykin tract, that is about
12 -- is the other 1100 acres, and both of those
13 tracts are in the will and -- as legacy tracts, I
14 think --

15 EXAMINATION

16 BY THE COURT:

17 Q. Mr. Helms, I don't understand exactly
18 what you're saying. You've got blue tracts which
19 that legend says are Boykin Mill area, right?

20 A. Yes, ma'am.

21 Q. All right. And then you've got the
22 aqua -- you've got several different colors there.
23 That's how that --

24 A. This is it.

25 Q. All right.

1 A. Okay. This is what I'm trying to
2 illustrate.

3 Q. All right. The darker blue is family
4 legacy property, correct?

5 A. Yes, ma'am, mentioned in the will.
6 That's them.

7 Q. And then that green area is family
8 legacy property -- and I can't read the rest.

9 A. That says, post will acquisition. And
10 what that means -- and this is in my --

11 Q. That's post Mr. L.W. Boykin, II's,
12 will, right?

13 A. That's correct.

14 Q. And then you've got some purple
15 property and some red property. What's the purple?

16 A. The purple are not considered family
17 legacy properties, not in the will.

18 Q. And the red?

19 A. And all that red is simply the property
20 lines of the other tracts.

21 Q. Well, no, there's a red piece there.
22 See that?

23 A. At the top?

24 Q. I'm looking at the key way over to the
25 left there.

1 A. Oh, the red --

2 Q. See those?

3 A. There are a number of those kinds of
4 properties in the Boykin Mill area.

5 Q. Okay. All right. That's what I'm
6 trying to --

7 A. And so those -- these -- these colors
8 right here are the priority of the land sale in my
9 simulation model that I developed. And so in this
10 area, the Boykin Mill area, because of all of the
11 tracts that are Family Legacy tracts, there are no
12 tracts indicated as being sold in the first five
13 years.

14 That brings up a good point, which that
15 is simply how I put together the simulation model.
16 That doesn't mean I'm recommending when the
17 properties should or should not be sold, but that's
18 to generate the figures that I generated, these
19 assumptions were made.

20 Q. Okay. So all of the property that I'm
21 looking at right now, the blue property, the green
22 property, and the purple property, are those all
23 treasured tracts, family legacy, low priority to
24 sell?

25 A. The ones that are family legacy and

1 treasured are the blue and the green.

2 Q. All right. And the total -- and what
3 are the purple again?

4 A. The purples are other tracts that are
5 near there that are not considered legacy or
6 treasure tracts.

7 Q. What does the label say there, low
8 priority --

9 A. Okay. That relates to my simulation
10 model of when the land --

11 Q. Due to timber production and --

12 A. And recreational qualities.

13 Q. Okay. All right. So all of this
14 property here is low priority to sell, both the
15 treasure tracts and those purple tracts, right?

16 A. Yes.

17 Q. All right. What's the total acreage of
18 all that? 2700 plus?

19 A. 2789 acres.

20 Q. All right.

21 A. So that's -- and so the reason for
22 keeping these purple tracts, which you will see
23 purple other places, is that those are considered
24 to be tracts where I think the value of the land
25 may go up. In other words, there are other tracts

1 that could be sold now and obtain that money while
2 holding onto these tracts to grow timber and let
3 them appreciate in value.

4 Q. And the other tracts that could be sold
5 now are all of those red tracts we just looked at?

6 A. That's right. They're in the other
7 areas.

8 Q. All right.

9 A. All right. Can we -- I think we need
10 to go look at the land that's up near Camden to
11 show where some of this other land is that's in the
12 residual trust.

13 This is one right here. (Indicating)
14 This is Peck Woods that's got high commercial and
15 residential value. These are things that other
16 people appraised. I have looked at those
17 appraisals, and oddly enough, the market for that
18 improved after the date of death.

19 And I've actually substantiated that
20 myself since then because I was curious. But it's
21 got a pretty high value on it, and I consider that
22 a high-quality property.

23 It's classified as red, as being sold
24 in the first five years. Whether or not that will
25 be what the trustees decide to do or not, and it

1 would depend on the offers and how they came in and
2 prepared the appraisals that are there, as well as
3 everybody's perception of the market and what the
4 market is continuing to do, but that's about 7 --
5 or \$800,000 worth of property right that's just out
6 there.

7 It has a little bit of timber that
8 could be cut off. And that's in --

9 Q. And where is that property?

10 A. It's out here on the edge of horse
11 country on the northeast side of Camden. This is
12 where the horse race is held, right here.
13 (Indicating) The Springdale course is right there,
14 and Camden is right down here. (Indicating)

15 Q. And does it have a name?

16 A. This is called Peck Woods, and it's two
17 different parcels. And one of these -- well, this
18 -- no, they both have a little bit of pond
19 frontage. This one is fully undeveloped, and this
20 adjoins the other. Fairly nice, quality houses
21 that are being built in the Peck Woods subdivision
22 that exist right there.

23 Q. All right. And what's the acreage on
24 all of that?

25 A. I think it's about 70 -- okay. One of

1 those is 40 acres. That top one is 40, and then --

2 Q. Well, I saw the legend. It was 86,
3 wasn't it?

4 A. Let's go back.

5 Q. No. No. 47 plus 39?

6 A. Yes -- no. That's 47 map acres versus
7 40 tax parcels.

8 Q. Okay. So what's the other one?

9 A. So what's the other one? That's all
10 40, and then there's some lots. These pieces right
11 here. And there's a ten-acre tract -- maybe that's
12 it. That's it. That's a ten-acre, a smaller
13 tract.

14 Q. So what's the total? So it's going to
15 end up when you put them all together being about
16 70 like --

17 A. Maybe around 70, 60 or 70. And these
18 residential lots, of which one has been sold --
19 they're all listed, but one has been sold. The
20 residential lots are within some of those things in
21 red which are mapped out separately, but not on tax
22 purposes.

23 All right. Let's go over to -- there
24 is some others that say Camden. This is Camden
25 downtown, and this is out here on the highway.

1 And --

2 Q. Is that what used to be the dealership?

3 A. Let's see. Yes. Right in here is one
4 of those, I think. And this is the old former
5 Dupont plant, and then across from that is the
6 Lugoff commercial site.

7 Q. Yes.

8 A. And, then, I'm not sure what this was,
9 if that was a wood yard or what it was. It's a
10 fairly big piece out there that's sort of out there
11 by itself and not -- it doesn't have a huge value
12 associated with it, but -- like some of the other
13 ones. But the Lugoff site is worth somewhere
14 between \$800,000 and \$1 million with everything
15 that's out there now.

16 And it has three commercial buildings
17 and some vacant land, and it receives rents. I
18 think it receives good rent. And one of those
19 pieces is being considered -- part of that property
20 is being considered for sale right now.

21 And, then, I would like to show you
22 some other layers we have on this map that are soil
23 maps. And so if we may, let's go to the Boykin
24 Mill area and let's look at farmland, building
25 sites, and hydric soils.

1 Okay. Let's look at farmland. Okay.

2 And maybe zoom in just a little bit.

3 Q. It's a contour map?

4 A. No, it's a soils map.

5 Q. What's the key?

6 A. The key is -- let's put okay. The
7 bright green is -- the bright green is not prime
8 land. This color right here is prime farmland. So
9 that's farmland of statewide importance. So all of
10 that green on that map is classified by USDA as
11 either farm -- prime farmland or farmland of
12 statewide importance based on soils.

13 In reality, when -- the areas that are
14 easier to farm, they were mostly the fields. And
15 if you go look in different places where people
16 farm, the prime farmland is primarily where people
17 are farming today if they can. The other soils are
18 in actuality steeper or wetter or dryer, and they
19 present some obstacles.

20 Additionally, if you talk about
21 actually going out and farming, you can see that it
22 would be hard to plow a field down in that little
23 area right there --

24 Q. Well, all I see is the pond and the
25 watershed. And that's all pond -- either pond or

1 swampy land or --

2 A. That's correct.

3 Q. All right.

4 A. So that's right. So let's look at the
5 Sumter Mountain area to contrast it to the Boykin
6 Mill area. That's a good comparison. So you see
7 that because -- most of the sandiness and the
8 steepness of the soil there, there's hardly --
9 there's very little prime farmland at all in that
10 area, and that relates to timber productivity too.
11 So the Boykin Mill area is much better quality
12 land.

13 Q. And the pink that's shown in there is
14 swamp?

15 A. No. That's hilly -- most -- some of it
16 is swamp, but a lot of it is just because of being
17 hilly and sandy, and sandy soil. So it's not as
18 productive for farming.

19 Q. Well, sandy soil, unconsolidated sand
20 can be very productive for what my family has been
21 doing for years, sand mining.

22 A. Yeah, that's right.

23 Q. Is any of this sand -- big
24 unconsolidated sand dunes?

25 A. Not to my knowledge.

1 Q. What's that?

2 A. Not to my knowledge.

3 Q. That goes a little bit to the east
4 where Glasscock and all of that is?

5 A. Yes. Yes.

6 Q. All right.

7 A. And, also, there's some of that closer
8 to Columbia, between Columbia and Camden.

9 Q. Yes, in Lexington.

10 A. I call these upper coastal plain soils.
11 That's what I've always called these. They have
12 some sand and then they have a subsoil that's a
13 mixture of different kinds of texture.

14 Q. Okay.

15 A. All right. So those are the two main
16 issues there, but the other things that we haven't
17 looked at on the soils is really looking at Sumter
18 Mountain area and the Boykin Mill area in
19 contrasting the soils.

20 Hydric soil answers the question about
21 what's swampland. So we show hydric distributed
22 soils. The pink areas -- can you come in a little
23 bit -- so we can see the Rafting Creek down near
24 the bottom and to the right. Yeah, that's Rafting
25 Creek and tributaries, they kind of go up into the

1 Sumter Mountain tract.

2 And you can see they're narrow, but
3 that land next to those areas, particularly in the
4 big tract, the Sumter Mountain tract, that land is
5 very steep in some of those areas, and it goes down
6 to a narrow area, where the Rafting Creek is a much
7 wider flood plain. And so that's the hydric soils.

8 And you can see there are a lot of the
9 hydric soils. That's the Mill Pond, they don't
10 have mapped as soils, so it doesn't come up pink,
11 but that's -- right there is the Mill Pond. And
12 then all of that is pink and then --

13 Q. Watershed?

14 A. Yeah, the watershed. And really not
15 useable for -- I mean, they had this area
16 classified as farmland of statewide importance, but
17 it's in the flood way coming out of the dam.

18 You can see, this is an illustration --
19 and I'll show you the table later of some of the
20 different kinds of these soils in the Boykin Mill
21 area and how many acres of each kind there are.

22 Okay. Dwellings. These are soils
23 where the green are well-suited for dwellings
24 without basements. So you can see the hydric soils
25 are out. You can see, for example, the Millway

1 House is right over here, but across the street
2 from there, that land is not as good for dwellings
3 without basements.

4 So we were able to look at all of these
5 things and compare for the different tracts, and
6 based -- opinions is based on -- or at least part
7 of our opinions are based on this, and the things
8 we compare it to are based on these kind of
9 factors.

10 This one right there, that is the Billy
11 field tract and the Burnett tract. And this thing
12 gets out of control sometimes, and that's why I'm
13 glad I'm not operating it.

14 Billy's field is right there. So you
15 can see, Billy's field is kind of an unusual tract,
16 and the Burnett tract is next to it. And the
17 Burnett tract is considered a Legacy tract that is
18 not in the will, but it was acquired to provide
19 access to the Billy's field tract because there's a
20 highway right there.

21 And the way you get into the Billy's
22 field tract is through the Burnett tract. And
23 then, additionally, the Billy's field tract, about
24 half of that land is actually being farmed, I
25 think. Then none of this is -- this is all

1 timberland.

2 And you can see that both of those
3 tracts together have a lot of swampland, and part
4 of it's timberland, right there. (Indicating) If
5 you put those two tracts together, they compliment
6 each other, and they turn it into just a nice
7 multiple-use recreational with timber production
8 farming tract.

9 Somebody might want to buy that tract
10 and put together as a house site or something like
11 that. The Billy field part is, of course, in the
12 will is a Treasure tract.

13 Burnett -- if you sold Burnett, you
14 would leave Billy field out there by itself with no
15 access.

16 So I think -- I think that's pretty
17 well covered. That's so everyone gets an idea of
18 how this is used and what we can learn from it.

19 Q. All right.

20 A. And we want to say thank you to Beth
21 from my office for helping today. We will let you
22 go.

23 THE COURT: Thank you. Your assistant
24 has been very helpful. Thank you.

25 MR. BECKER: Your Honor, would you want

1 to take a lunch break now, or would you rather go
2 on?

3 THE COURT: Well, where do we stand?
4 Now, he's showed me all of the various data points
5 that affect the analysis he's made that -- I
6 presume he's now going to share with us about these
7 evaluations. So where are we going from here and
8 kind of how long are we talking about?

9 MR. BECKER: I think it could be about
10 another hour. He's going to touch on a number of
11 things and then go through to make sure -- to make
12 some key points about the after-tax cash flow
13 analysis, and then he will be discussing, comparing
14 the petitioner's valuation of the property to his
15 and comparing and contrasting those two.

16 THE COURT: All right. I think it
17 would be, Mr. Becker -- just a second.

18 What we're going to do, all right, is
19 take your suggestion, Mr. Becker, and go to lunch.
20 Let's be back here, ready to go at 1:15.

21 MR. TETTERTON: Thank you, Your Honor.

22 THE COURT: All right.

23 (A luncheon recess transpired.)

24 THE COURT: Mr. Becker, you may
25 proceed.

1 MR. BECKER: Thank you, Your Honor.

2 Before we move on, Your Honor, we have some
3 additional exhibits to offer and hand up to the
4 Court. These are a lot of the background material
5 that supports his -- we're just putting these in as
6 the background that helps support his research and
7 analysis. He's going to touch briefly on these,
8 and then we will move on.

9 THE COURT: All right, sir. Without
10 objection.

11 MR. TETTERTON: No objection, Your
12 Honor.

13 THE COURT: Very good.

14 MR. BECKER: They are Wortley Exhibits
15 17 through 21.

16 (RESPONDENT WORTLEY EXH. 17 - 21,
17 Wortley Exhibits, was marked for identification.)

18 THE COURT: Very good. Mr. Helms, you
19 may proceed, sir.

20 BY MR. BECKER:

21 Q. If you'll pick up where you left off,
22 Mr. Helms.

23 A. Okay. So these -- this next several
24 sets of slides -- and this first set is Exhibit 19.
25 And these are just some things that I threw in as

1 examples. And then as we get further into here,
2 I've got some analyses of some things like land
3 values and how I arrived at land values and things
4 of that nature.

5 So this first set is economics and
6 population.

7 Q. Mr. Helms, could I -- I was at the
8 wrong place at my outline.

9 A. Okay. Go ahead.

10 Q. I'm going to give you the question --

11 A. Yeah. Go ahead. Go ahead.

12 Q. -- that sets up this. In your
13 compilation of information about the trust, real
14 estate assets and developments of an economic
15 simulation model, you considered factors like
16 geographic concentration of acreage, soil
17 suitability, different uses and what you consider
18 to be comparably sized sales that have similar
19 types land uses in selection and development of the
20 values of the different tracts of land; is that
21 right?

22 MR. TETTERTON: Objection; leading,
23 Your Honor.

24 THE COURT: Don't lead, Mr. Becker.
25 Ask him a direct question.

1 BY MR. BECKER:

2 Q. All right. Did you consider all of
3 those things that I just mentioned?

4 A. Yes, I did.

5 Q. Okay. So tell us the other background
6 and information that you utilized in arriving at
7 your opinions.

8 A. So this is a set of information about
9 economics and population, not necessarily all
10 inclusive of everything, but just some examples.
11 This is Exhibit 19. And, of course, we look at
12 where land is situated when we're talking about
13 trust properties.

14 Charlotte is an influence a little bit,
15 increasingly, coming down here close to Lake
16 Wateree, because people can come down two different
17 ways. Really, there are two highways here to get
18 over there, mainly I-77.

19 But, mostly, Columbia is the influence
20 on the value of land for residential use or things
21 of that nature. Of course, we've got timber
22 markets all over the state and that sort of thing,
23 and foreign markets are pretty universal; but when
24 we talk about adding value to those types of land,
25 this relationship with Columbia and this little

1 piece of land up here -- this is Peck Woods, of
2 course, north of Camden.

3 And when you look at the Boykin Mill
4 area, you cannot drive across Wateree River there
5 to get over to here or to go straight to Columbia
6 for different reasons. Mainly the big one is that
7 place right there. (Indicating) That's called
8 Fort Jackson.

9 So we can't drive through Fort Jackson
10 to get to Columbia; however, what's happened as a
11 result of Fort Jackson being there is the growth of
12 Columbia is enormous in this little area right here
13 called northeast Columbia.

14 And as it turns out, I measured mileage
15 from the Boykin Mill area to the Village of
16 Sandhills, which is a big commercial shopping
17 center area that's developed up here, and it's
18 about 25 miles there. And then it's 25 miles to
19 the front gate of Fort Jackson. The front gate of
20 Fort Jackson is right over here. (Indicating)

21 And so it's -- the Boykin Mill area is
22 very convenient to those places and certainly
23 within commuting distance to a lot of places. I
24 consider those to be -- if it's Fort Jackson,
25 that's potentially an employment area. If it's a

1 northeast area, some employment, but mainly to be
2 close to venues for shopping and things like that.
3 So if somebody lives in this area, they're close to
4 that.

5 And there's also similar things here in
6 Camden. There's some shopping centers up about
7 where my little cursor is right now, in that area.
8 And so Sumter Mountain is a little more further
9 removed and a little harder to get to some of those
10 places. And if you go to Sumter Mountain area, it
11 appears to me to be a population of people that are
12 leaving.

13 So there's a big difference in these
14 two properties from that point here, and that's one
15 of the things we studied.

16 We can look at -- we often do look at
17 growth rates of population. Sort of an interesting
18 story that -- Kershaw County growing at the U.S.
19 population growth rate for the last seven years and
20 just under 1 percent per year in population.

21 And you try to interpret these
22 statistics, and you think about 20 years from now
23 how many -- there's going to be 20 percent more
24 people. So that's kind of startling if you think
25 about potential for change.

1 Richland County is higher than Kershaw
2 County; however, Richland County is below the South
3 Carolina average. So what does that tell us?
4 Well, in a minute we'll look at that chart, but
5 what it tells me is the growth is near Charlotte,
6 near Greenville, near Myrtle Beach, and near
7 Charleston.

8 So if you look at Lee County, Lee
9 County is just barely -- just losing a little bit
10 of population. And Sumter County -- well,
11 actually, that's not true. It's minus 9.7 for Lee.
12 Lee County is 9.7, so Lee County is losing over 1
13 percent per year. And then Sumter County is the
14 one that's pretty stable. It's just point -- it's
15 losing .1 percent per year.

16 So those things we know affect values
17 of property, and we know that -- we know here that
18 the western side of Kershaw County where most of
19 these properties are located is an area that's
20 growing. And if we have the right statistics here,
21 I would suspect that it would be very similar to
22 what's shown here for Richland County, for this
23 area of the county.

24 Of course, there's other things that
25 are there, like median household income. Those --

1 those tend to follow the urban areas too. In an
2 urban area, like you could go to a place like
3 Columbia with USC and Fort Jackson nearby, the
4 incomes go up and so on and so forth.

5 I wanted to look at one or two more
6 counties here. Calhoun County -- Calhoun County
7 has a lot of really good farmland, and it also has
8 a lot of middle coastal plain land and then some
9 really good farmland as you move south of the
10 county. This is just a rural county and it's not
11 gaining population.

12 Lexington County is one of the more
13 popular suburbs of Columbia, and it's growing over
14 7 percent per year. And then we looked at little
15 Lancaster County where the northern tip of
16 Lancaster County is within about ten miles of the
17 bypass around Charlotte, and Lancaster County as a
18 whole, population has gone up over 2 percent a
19 year.

20 And Fairfield County, again, north of
21 Columbia, is a popular place to hunt and a popular
22 place for recreational timberland tracts.
23 Fairfield County is losing at about 1 percent a
24 year, but it's not always bad if you're looking at
25 a population like that as far as having value,

1 because it makes better conditions to hunt and that
2 sort of thing. So rural timberlands and hunting
3 lands prices won't necessarily follow those kind of
4 trends.

5 This is just something that came out of
6 the University of North Carolina, looking at some
7 of these population growth trends. And, you know,
8 here is Charlotte, Riley, Durham, Chapel Hill,
9 Southern Pines, Fort Bragg, Wilmington, all the way
10 down through Myrtle beach. And this is --
11 Charleston County doesn't really have any more room
12 to grow.

13 So, now the growth is going to be
14 Dorchester and Berkeley down there, and then also
15 Beaufort County, Hilton Head area, and Jasper
16 County down near Savannah. So the same kind of
17 graphs and trends I just threw in there.

18 These are some of the things that are
19 out there. We're in a climate of huge uncertainty
20 about -- about where -- all kinds of investments
21 and even where how we're going to pay for our own
22 retirements and that sort of thing.

23 So these types of problems are facing
24 the trust as well as everybody else. The stock
25 market is at a very high level, if you look at the

1 graphs of that; very, very high level.

2 Just by coincidence, that man's picture
3 I put in there, and that's part of our political
4 uncertainty. (Laughter)

5 So this is just all -- you wake up and
6 you listen to the news and you don't really -- you
7 know, to me what that indicates is having a variety
8 of assets is a good thing, having some land is a
9 good thing, having good stock. If the stock market
10 goes down, you're able to invest -- to have some
11 money to invest in the stock market is a good thing
12 and not a bad thing; it's a good thing.

13 But if you invest it all now and it's
14 up at a high level, then you run the risk of that
15 crashing, and you might have been better off to
16 just have some stable things, like land, that stays
17 where it is and trees that grow. So that's sort of
18 how I look at this over all of the assets of the
19 trust.

20 Of course, we looked at economic
21 indicators and we looked at this discount rate,
22 which is used in income analyses for commercial
23 property. The overall cap rate is used -- for
24 example, the U.S. one commercial developed property
25 to put a value on those tracts, you should be

1 looking at some type of cap rate.

2 Now, the local cap rate considering the
3 ages of those buildings and so forth would be
4 higher than what these national averages are, which
5 are for better quality, younger commercial
6 buildings. But one of the buildings is a new
7 pharmacy building, and if you look at its rent
8 versus what it cost to build it, then its cap rate
9 is about 6.8 percent.

10 So all these figures -- appraisers and
11 people involved in real estate business look at all
12 these figures all the time and track them. They're
13 low, by some standards, right now. They're still
14 low end just like loan -- mortgage loan interest is
15 on the low end right now which has a positive
16 impact on real estate values as long as that holds
17 true. So we look at all these things.

18 The big one for timberland and land
19 and, really, the economy, as far as I'm concerned,
20 is the housing starts out. And, then, as recently
21 as 2016, we're at 1.2 million this year. We're a
22 little above 1.3. Everybody is praying for this
23 1.5 level or 1.6 level, and that's where we want it
24 to be. And, we haven't gotten there yet.

25 There is always pundits out there.

1 Some people say you may have trouble getting it at
2 1.3. If we get up to here, (indicating) I feel
3 real safe saying timber prices are going to go up
4 20 percent at least. So that's why we follow these
5 trends and see what people are predicting and that
6 sort of thing.

7 And, of course, when you make a model
8 to try to simulate a property like this, you've got
9 to build some assumptions. So you've got to have
10 something to base your assumptions on. So this is
11 why I study these things.

12 There's a person that thinks that in
13 the past the stock market went up 7 percent above
14 inflation, and now they're saying 3 percent above
15 inflation. And that's a real return. So when that
16 word -- to me, real return means inflation is 2
17 percent, and that's 9 percent. I don't know what
18 he meant when he used that term. And then he says
19 three, and that means five here.

20 So one thing that is happening is all
21 assets -- and I think timber and timberland are
22 like this too. I think the rates of return that
23 we're going to get, no matter what types of
24 investments we're in, are going to be lower than in
25 some points in the past.

1 You'll see some figures where
2 timberland went up 10 percent and right now 5
3 percent, maybe for institutional.

4 And so there is a lot of uncertainty,
5 and I just want to show these because as we get
6 into the models and so forth, then you'll see --
7 you know --

8 THE COURT: I think I've got a picture
9 of what he's talking about.

10 THE WITNESS: That's what we're doing.
11 I just wanted people to understand I did that. So
12 I have the same thing on farmland, timberland, and
13 Timber Mart South is a good resource. This is
14 their year-end report, and they track all the same
15 trends; what prices of timber are doing, what
16 prices -- wood products are going up.

17 Prices of timber has been going down
18 because we haven't reached 1.5 million starts yet.
19 So that's the first set.

20 So I'm going to go to the second set of
21 slides here, which is Exhibit 20. And Exhibit 20
22 has got to do with estimated land values. So there
23 we are.

24 And this is an excerpt from my estate
25 appraisal as of 8/08/2016, value date. Going

1 through the different types and assemblages of
2 land, and get down here to the bottom, and we had
3 4787 acres involved and a total estimated value of
4 everything was \$10.6 million.

5 The \$10.6 million takes into account
6 partial ownership interest in some of these
7 properties where, overall, it's a 92.92 percent
8 ownership interest. So if it were a full
9 100 percent -- it's not complete straight math, but
10 it would be higher than that 10.6 million. It'd
11 probably be 11 1/2 million or so. So that's what
12 that shows there.

13 These show the land values per acre for
14 the different kinds of ownerships out there. Not
15 as relevant to the 5600 where there's a 100 percent
16 ownership, but still relevant.

17 And let's see what we have here. This
18 is the improvements in that, and they totalled --
19 that included Millway House and buildings, one
20 occupied residence, and one cottage, one occupied
21 farm residence on the Yellow House tract, a
22 low-quality hunting cabin on Sumter Mountain, and
23 two small ponds. I think one of those is on the
24 Dr. Boykin tract and the other pond is on Sumter
25 Mountain.

1 So you look at all the little details
2 when you're doing something, and the biggest two
3 components are the timber and land. I wanted to
4 show this because this is my income approach from
5 the appraisal of --

6 EXAMINATION

7 BY THE COURT:

8 Q. Mr. Helms, let's go back to your land
9 appraisal.

10 A. Okay.

11 Q. All right. I'm trying to get some idea
12 of -- I want to understand why your appraisal is
13 \$14 million and Mr. Boykin's appraisal is \$22
14 million.

15 A. Right.

16 Q. So I don't want to have to go back
17 through everything on the chart again, but I want
18 you to give me some kind of global idea of what the
19 difference is between your approach and their
20 approach.

21 A. Okay.

22 MR. BECKER: Do you want to skip to
23 that part of the presentation, John?

24 THE WITNESS: Yeah; we can skip ahead,
25 and I think I can start addressing that. It's

1 pretty straightforward. That's a great -- a good
2 question. ...

3 BY THE COURT:

4 Q. We can come back to the income, but I
5 want to understand value of the land first.

6 A. All right. That's fine. So just still
7 looking at trends of timberland, timberland has got
8 a little trend where it's trending upwards, but not
9 at a huge rate.

10 This is talking about large timberland
11 investment property.

12 Q. Mr. Helms?

13 A. Yes, ma'am.

14 Q. We're on Exhibit 20, right?

15 A. That's correct.

16 Q. Okay. Well, when we go to the
17 beginning of Trial Exhibit 20, which is the
18 estimation of land value, that's the summary of the
19 land value, correct?

20 A. Right.

21 Q. That's what I want to understand to
22 begin with.

23 A. Okay. We'll start with that. Okay.
24 This is out of the estate appraisal.

25 Q. No, that's -- before you get to income

1 approach and all that, go back to the beginning,
2 the appraisal value. ..

3 MR. BECK: This is for the marital
4 estate, Your Honor, the estate tax returns for the
5 marital estate.

6 THE COURT: What I'm trying to get is
7 some kind of apples to apples comparison between
8 the evaluation that they put on the estate and the
9 evaluation that the marital and -- and the
10 nonmarital are all the residual estate, now, it's
11 just one thing. And I want to go to wherever it is
12 in here that that one -- that the residuary trust,
13 which includes both of them.

14 I don't need to go what he did way back
15 when when he evaluated the marital estate at
16 Mr. Boykin's death. What I'm trying to do is
17 understand the current evaluations of the residuary
18 estate, and I want to try to compare apples with
19 apples in that regard.

20 MR. BECKER:

21 Q. I think, John, that is your slide --
22 your slides regarding problems with petitioner's
23 plan that are in Exhibit 17.

24 A. Okay.

25 Q. Or you tell me where would be the best

1 place.

2 A. I think the best place to go to start..
3 is to look at the planning -- outline of the
4 planning spreadsheet.

5 Q. All right. Well, let's go to that
6 then.

7 A. So that would be Exhibit 17 and 18.
8 I'm not sure which of those.

9 THE COURT: I see all the performance
10 indicators and the different sets of assumptions.
11 What I want to look at is the bottom line numbers.

12 THE WITNESS: Okay. So let's go to
13 Exhibit 17 and 18. And this is -- starts with the
14 letter dated July 5th, 2018.

15 BY MR. BECKER:

16 Q. Actually, that is Tab B of your report.
17 Tab B of the investment plan and strategy.

18 A. Okay. Tab B. And this would be --

19 Q. In that book, yeah. (Indicating)

20 A. So this --

21 THE COURT: I'm looking at Tab B, and
22 it's just a planning document, Mr. Becker. What
23 I'm trying for -- I don't want to spend all day in
24 the granular details. I want to get some broad
25 view of his valuation and the other side's

1 valuation and have two different.

2 I understand that his is a very
3 detailed look at population trends and land value
4 trends and information about the type of land uses
5 and so forth, but what I want to get into now is
6 the values.

7 MR. BECKER: All right.

8 THE COURT: And I think that's in C,
9 but I could be mistaken about that.

10 MR. BECKER: I will have to ask
11 Mr. Helms where he can best articulate that, and it
12 may be that we don't have a real chart that
13 describes it, Your Honor.

14 THE COURT: Well, what we have from
15 Mr. Boykin was this spreadsheet --

16 MR. BECKER: Yes, ma'am, and he --

17 THE COURT: -- that talked about his
18 valuation and Mr. Helms' valuation and the option
19 valuation. And I don't want this whole afternoon
20 to get down into the weeds so much that I don't get
21 some general sense in the record here of what the
22 values are and why they're different.

23 MR. BECKER: All right. So, John, do
24 you understand what Judge Toal is looking for?

25 THE WITNESS: Yes. Yes.

1 MR. BECKER: I think that's sort of the
2 -- actually, the last part of our presentation.

3 THE WITNESS: I think it's in -- I
4 think we're talking about number two. I think this
5 was in slide two.

6 THE COURT: In which --

7 THE WITNESS: This will be Exhibit 20;
8 it's just further down than where we were in
9 Exhibit 20.

10 MR. BECKER: Actually, John, that is
11 Exhibit 18.

12 THE WITNESS: No, 20, Estimation of
13 Land Value.

14 THE COURT: It's not 18, I can tell you
15 that.

16 MR. BECKER: Your Honor, it's 18 -- are
17 you on the -- are you on the -- John, where --

18 THE WITNESS: I'm going to go down a
19 little further.

20 MR. BECKER: Show me where you want to
21 be.

22 THE COURT: Exhibit 18 is a list of a
23 whole bunch of different properties with a
24 valuation on each. That's what I've got. It
25 hasn't got a chart that shows them.

1 MR. BECKER: Yes, Your Honor. These
2 exhibits got split up a little bit, and that's why
3 John is a little confused I think right now. We
4 can correct this in just a second.

5 (Off-the-record conference.)

6 BY MR. BECKER:

7 Q. So you're in the big Excel planning
8 spreadsheet that we've given Judge Toal.

9 A. Right. So in this spreadsheet over
10 here, I have a number of statistics for each tract,
11 and let me get over here, and we have a wholesale
12 value and retail value. And those are broken down
13 further as we go across the spreadsheet. We have a
14 breakdown for wholesale value of bulk and combined
15 property considering the total size. And as you go
16 to the next set of figures, it's the estimated
17 retail value if properties are marketed separately
18 or opportunistically over time.

19 So wholesale involves the whole
20 property considered in bulk, considering that
21 you're faced with trying to sell 6,000 acres. And
22 retail is concerned with the fact that over time,
23 at opportunistic times, if all the property went on
24 the market at the same time, you would be trying to
25 sell a lot of different tracts of land that are all

1 near each other.

2 And a lot of those would be competing
3 with each other. Not all of them, but some of
4 them; the Boykin Mill area and the Sumter Mountain
5 area. Possibly, that may be true a little bit in
6 the Camden area, but I don't think it's quite as
7 bad because there's not a lot of commercial
8 properties near each other.

9 So when we look at the wholesale value,
10 that comes out of my estate appraisal, and then I
11 had to come up with similar values to use for the
12 additional 1100 acres of land. And, also, on some
13 of the other commercial properties and things like
14 that, I had to go to other people's appraisals and
15 take their -- I had to take their appraised values.
16 In a lot of cases, I discounted those 30 percent of
17 the wholesale value being faced with having to sell
18 that right away.

19 So as a wholesale value, you have land,
20 improvements, timber, and then total wholesale
21 value. And let's see what we have here. Go over
22 here to this side. And you can see this is
23 filtered on the Legacy properties here. There's
24 all the properties listed. And in this spreadsheet
25 I have --

1 THE COURT: What is it that you're
2 looking at, Mr. Helms?

3 THE WITNESS: This is a list of all the
4 tracts that the trust owns.

5 THE COURT: Is that something I've got
6 in front of me?

7 MR. BECKER: Well, you have the data
8 from it behind Tab --

9 THE COURT: It's not helping me to have
10 him kind of go through something that I don't have
11 a copy of and point out things. I am trying to get
12 some kind of a sense of why -- or what the
13 difference is between how these properties are
14 valued by Mr. -- by the petitioner in this matter
15 and by y'all.

16 And I am trying to get some sense of
17 what the Treasured lands are valued by the two of
18 you, and the non-Treasured lands, or the lands that
19 could more easily could be kept for their timber
20 potential or sold.

21 And, you know, you've got one side who
22 gave me a very sketchy look at everything, and
23 you're going in the opposite direction, getting so
24 granular that I can't get an overall sense of what
25 you're saying.

1 I can certainly go to these things as I
2 study your briefs and reference the various
3 contentions you're making about the various pieces
4 of land, Mr. Becker, but I want some kind of
5 overall sense of how you see this property, and
6 then I'm going to have some questions about the
7 specific pieces of property.

8 MR. BECKER: John, I think the summary
9 table might be the best. We've got -- this is sort
10 of the most global summary we have.

11 THE COURT: Where is it?

12 MR. BECKER: It's right here.

13 THE COURT: And where is it in the
14 materials I've got?

15 MR. BECKER: It is behind Tab C.

16 THE COURT: Tab C, in the investment
17 plan strategy?

18 MR. BECKER: Yes, ma'am.

19 THE COURT: All right.

20 THE WITNESS: So the summary table does
21 go through this planning list where each tract is
22 listed and --

23 THE COURT: Hold for just one second.
24 I'm looking at C. It's one page, and it says, Land
25 and Timber Value Summary Table.

1 THE WITNESS: That's it.

2 MR. BECKER: Yes, ma'am.

3 THE COURT: It's not what's being shown
4 on here -- well, maybe it is.

5 MR. BECKER: He zoomed in on the
6 corner.

7 THE COURT: All right. It has no
8 overall -- it's simply a list of each of them and
9 it doesn't total them up, right?

10 MR. BECKER: Well, it does, Your Honor.
11 The three --

12 THE COURT: Okay. This total, 16
13 million, is that what y'all say everything is worth
14 from a wholesale value standpoint?

15 MR. BECKER: Yes, ma'am.

16 THE COURT: And 20 million is what you
17 say is the retail value with information given for
18 marketing it in an opportunistic way and not
19 marketing certain pieces, et cetera?

20 BY MR. BECKER:

21 Q. And I think, John, if you could explain
22 your conception of the difference between the
23 wholesale and the retail value, I think that will
24 help Judge Toal.

25 A. Again, the wholesale is looking at the

1 properties in bulk, and then the retail is trying
2 to estimate if enough -- a reasonable period of
3 time was allowed to allow these things to be sold
4 separately, you would have opportunistic things
5 come along and eventually you would get better
6 pricing for each property.

7 EXAMINATION

8 BY THE COURT:

9 Q. Well, let me ask you this: In the
10 first line you've got Family Legacy property;
11 that's 11 tracts. It is 40 percent of the trust,
12 right?

13 A. Correct.

14 Q. And that's not ever going to be sold
15 under the investment plan you projected, correct?

16 A. There are two -- two of those -- let's
17 look at this. I need to look at this other sheet
18 for a second, if I may. That's correct, those
19 would not be sold.

20 Q. All right. So then you've got the
21 first five years, 25 tracts, wholesale value of
22 \$3,336,000, retail value \$4,433,000. Those tracts
23 would be sold in the years '18 through '22?

24 A. Yes, ma'am. That would be in the first
25 five years of my analysis.

1 Q. And that would be 16 percent of the
2 acreage, right?

3 A. That's correct.

4 Q. And then you've got low priority due to
5 timber production and recreational. And that's
6 \$5.5 million, right?

7 A. That's correct.

8 Q. Or retail value. But really there's no
9 plan to sell those; that's low priority to sell.
10 So really the only thing this investment plan
11 contemplates in the near future is selling the 25
12 tracts, that is 16 percent of the landholdings,
13 right?

14 A. That's correct.

15 Q. All right. And that's going to
16 generate in total somewhere between 3 million and
17 \$4 million?

18 A. That's correct.

19 Q. All right. And that would be the most
20 that would be available to invest in some non-land
21 investment, correct?

22 A. Correct.

23 Q. Under the plan that you are putting
24 forward?

25 A. That's correct. Now, in this plan,

1 this is really a model, and the model is considered
2 a conservative assessment that we hope would be
3 exceeded, but -- especially in terms of even these
4 tracts.

5 And so there's no -- in this investment
6 plan per se, there's nothing that says that one of
7 the low priority tracts would not be sold in the
8 first five years. It depends on the price -- price
9 that it would be sold.

10 Q. Right. But the projection is that that
11 wouldn't happen in the first five years, and
12 whatever income is going to be realized is going to
13 be income from investments of 3.3 to \$4.4 million
14 over time in the first five years, right?

15 A. Right. To an -- also you've got to
16 consider timber sales.

17 Q. I'm going to ask you about timber sales
18 in a minute.

19 A. Okay.

20 Q. What do you consider to be the
21 character of the revenue from timber? Is that
22 income?

23 A. That's income. And it's also money
24 that can be used to reinvest.

25 Q. And that column of figures totalling

1 \$5.7 million is the total of timber sales
2 anticipated in that same period of time?

3 A. Yes, ma'am.

4 Q. So if you've got, say, somewhere
5 between 3.3 and \$4 million in sales that you're
6 going to invest and what -- and your return is
7 going to be somewhere 3 percent and 6 percent on
8 that money?

9 A. My assumption is 4 1/2 percent.

10 Q. How much, 4 1/2?

11 A. 4 1/2 percent.

12 Q. All right. So 4 1/2 percent of --
13 let's say it's \$4 million. 4 1/2 percent of that
14 is what?

15 A. 1.6 -- no, 160,000.

16 Q. About 150- or \$160,000. So the revenue
17 that's totally going to be available in that first
18 five years is the \$5 million plus \$160,00. That is
19 it, right?

20 A. That's right. That's right.

21 Q. Now, against that sum you're going to
22 have to be paying -- you got that IRS debt of,
23 what? Three million bucks? That's got to be paid,
24 right?

25 A. That's correct.

1 Q. And you've got what it takes to keep up
2 all this property, right?

3 A. That's correct.

4 Q. I want to ask you something about that.

5 A. Okay.

6 Q. The least income-producing piece of
7 property there is the pond and the watershed below
8 it, right?

9 A. That's correct.

10 Q. It's not income-producing at all,
11 right?

12 A. At all. That's right.

13 Q. And it's got that dam there.

14 A. And it's got to be fixed.

15 Q. Yes, sir. And that dam is, what?
16 About half a mile long? And it's covered in a kind
17 of -- it's an earthen dam; is it not?

18 A. That's correct.

19 Q. And it's covered in a kind of mishmash
20 of concrete and asphalt that was put on top where
21 there used to be a road that you could traverse,
22 right?

23 A. That's right.

24 Q. And at the present time, there are
25 trees growing all in that dam; are they not?

1 A. That's what I understand.

2 Q. Well, have you been out there to look
3 at it?

4 A. Not in detail.

5 Q. Well, have you looked at it enough to
6 be able to see all the -- all those trees that are
7 growing in that dam?

8 A. Yes, ma'am.

9 Q. Well, all of those trees -- you can't
10 just cut a couple of bushes. Those trees have got
11 to come out; have they not?

12 A. They do.

13 Q. And let me you ask this, Mr. Helms.
14 And this gets down to something that I am very much
15 concerned about in terms of the assets of this
16 estate. The Treasure properties are to be
17 maintained, and that's the last to be sold.

18 A. Uh-huh.

19 Q. But they also are the ones that need
20 the most help in terms of investment and repairing.

21 A. Uh-huh.

22 Q. If a bad storm were to come, like we
23 had in Columbia where it stayed so long that it
24 breached dams all over Richland County -- it
25 breached the Columbia Canal; it flooded all kinds

1 of different places. If a bad storm like that came
2 here -- not even a hurricane, but just a bad, bad
3 rainstorm like that and blew out that dam, then
4 what would happen? There'd be a whole lot of
5 devastation below that dam; would there not?

6 A. There would be.

7 Q. And a tremendous amount of liability to
8 the trust; would there not?

9 A. There could be.

10 Q. And that might itself result in
11 financial liability that would break the trust?

12 A. Yes.

13 Q. Bankruptcy, correct?

14 A. That's correct.

15 Q. All right. Now, the other piece of
16 Treasure property that has a big call on resources
17 is the Boykin Village.

18 A. Uh-huh.

19 Q. The town.

20 A. Uh-huh.

21 Q. And it's got two restaurants and some
22 other buildings that are being used for other
23 things. Are they in good repair or poor repair?

24 A. They are dated.

25 Q. Sir?

1 A. They're certainly dated and they
2 ... certainly require expenses every year.

3 Q. Well, the window seals in the
4 restaurant building, many of them are rotted out;
5 are they not?

6 A. That's correct.

7 Q. And the underpinnings of the restaurant
8 itself and the kitchen are just being kind of
9 makeshift, shored up at the present time; are they
10 not?

11 A. That's correct.

12 Q. Sir?

13 A. That's correct.

14 Q. What would happen if there were some
15 kind of calamity there and a collapse and anything,
16 people were in there eating? What would happen?

17 A. That would be bad. There would be
18 liability there.

19 Q. Yes, sir. Do you have any idea of what
20 kind of liability insurance is being maintained by
21 the trust on that dam?

22 A. No, I do not.

23 Q. Do you have any idea what kind of
24 liability insurance is being maintained by the
25 trust on the rest of the properties?

1 A. No, I do not.

2 Q. Is the income that you're projecting in
3 what you just -- projecting about, you know, the
4 lands that are going to be sold in the next five
5 years and the timber, and the income from the
6 lands, if they were sold, it's going to be about
7 \$160,000 in total and from the timber about \$5.5
8 million, five years' worth.

9 A. Right.

10 Q. Is that kind of income anything like if
11 there's an uninsured liability from a dam collapse
12 or any kind of accident within the village, would
13 that \$5.5 million in any way be able to cover what
14 is necessary to keep the trust from going into a
15 financial decline?

16 A. I'm not sure I know the answer to that.
17 I know the trust maintains a lot of insurance. I
18 don't know what exactly it covers. I don't know
19 the details of that.

20 Q. Have you thought about that in terms of
21 what kind of strategy needs to be developed to
22 produce enough income to give income to the
23 beneficiaries, you know, the lifetime
24 beneficiaries, and at the same time protect the
25 trust so that no calamity happens financially that

1 destroys the building for anybody to get anything
2 out of the trust? Have you made that kind of
3 projection?

4 A. I think I tried to incorporate that
5 into my cash flow models.

6 Q. All right. Where is that?

7 A. That's the exhibit --

8 MR. BECKER: That -- Your Honor, the
9 components of the 15-year after-tax cash flow
10 projection --

11 THE COURT: All right. Where is that?

12 MR. BECKER: Behind Tabs H, I, and J.
13 These are the separate worksheets of a very large
14 Excel spreadsheet that model the operations of the
15 trust beginning in year zero to the end of year
16 '15.

17 THE COURT: Well, I see assumptions all
18 right in pages -- beginning about page 1.
19 Assumptions applied including notice -- cash flow
20 projections. That's behind J.

21 MR. BECKER: Yes, ma'am.

22 THE COURT: All right. I'm revisiting
23 this; I've looked at these before.

24 BY THE COURT:

25 Q. And, Mr. Helms, my question is: What

1 in any of these assumptions gives me your estimate
2 of what kind of financial impact it would be on the
3 trust if the calamities I'm describing took place?

4 A. I think the best place to look at that
5 is in H, Tab H.

6 Q. H?

7 A. Yes, ma'am.

8 Q. All right. So that's the big
9 spreadsheet?

10 A. That's right. And so you have to go
11 down in the spreadsheet to see it.

12 Q. I'm looking at landowner, shift acreage
13 assumptions. I'm looking at timber and property
14 selling price -- where are you pointing me?

15 A. So --

16 Q. And I'm looking at total amount of land
17 and a direct and indirect operating and selling
18 cost.

19 A. Uh-huh. Timber sold and direct
20 operating selling cost, there's an item down there
21 for Mill Pond dam repair.

22 Q. I see Mill Pond dam repair, and that is
23 exactly the thing that made me ask this question to
24 begin with. I noticed that and highlighted it
25 before. It says, Mill Pond dam repair and

1 investment in conservation values. Example used is
2 the wetlands mitigation project. It projects
3 \$75,000 in the first year; \$75,000 in the second
4 year; 50 in the third; 50 in the fourth; 50 in the
5 fifth; five in the sixth; 51, 52, 53, 54, 55, 56,
6 54, 58, 59.

7 That's the projections made over 15
8 years for what it would cost to maintain or repair
9 and maintain the dam. Is that going to be enough,
10 Mr. Helms, in a pretty quick way to get those trees
11 out of that dam, repair the earthen dam, and repair
12 the concrete cap on top of it so that it doesn't
13 blow?

14 A. I'm told that it will be 150,000 the
15 first two years and that'll take care of that part
16 of it.

17 Q. Well, that's different from what this
18 projection shows it.

19 A. So what that -- the rest of that item
20 there is working on some plans to try to have a
21 mitigation plan with the Mill Pond --

22 Q. So, that really -- that sheet doesn't
23 really tell me what it's going to take on the front
24 end to repair that dam, get all of those trees out
25 of that dam, and put a cap on it, right?

1 A. Actually, the first two years are
2 supposed to cover those costs and those activities.

3 Q. As you sit here as the person that's
4 been in the property business for a long, long time
5 and probably seen more farmland -- and this is a
6 pretty big one.

7 A. It is a big one.

8 Q. All right. Have you got any thoughts
9 that \$150,000 would be enough to pull all of those
10 trees out of that thing, shore it back up, and put
11 a cap on it?

12 A. I've been told that's been studied, and
13 that's the estimate that --

14 Q. I'm asking you. You're the expert,
15 Mr. Helms. Can you look me in the eye and tell me
16 that you think a \$150,000 for a half-mile dam to
17 pull all those big, mature trees out of it, repair
18 it, and put a cap back on it, and put the concrete
19 abutments on either side and repair that gate? Do
20 you think all that could be done for \$150,000?

21 A. If that's all done, it could certainly
22 be more than \$150,000.

23 Q. Well, all that's really got to be done
24 to conform to any reasonable notion of a dam that
25 is safe and works, doesn't it?

1 A. I think so. That's probably true.

2 Q. So \$150,000 doesn't start doing what
3 would be necessary to do what I'm talking about,
4 would it?

5 A. No.

6 Q. All right.

7 A. So back to your other question about
8 maintenance and things like that of that nature, up
9 above that in the worksheet there is another line
10 item for the Mill Pond upkeep and the Boykin area
11 upkeep.

12 And then there's another area for some
13 of the rental properties and those types of things
14 and expenses associated with the properties.

15 Q. Where is the Boykin Village upkeep? Is
16 that in that same --

17 A. It's just above the \$75,000.

18 Q. And that's \$15,000 a year. And I would
19 ask you to look at me one more time. With the
20 things that need to be done with those buildings,
21 the ones that are really -- like the steakhouse and
22 the one that is two buildings put together that is
23 the restaurant across the street, will \$15,000 or
24 maybe \$30,000 be enough to do all that repair?

25 A. To bring those up to good standards, it

1 certainly would not be, but my values are also one
2 third of what the other side values because of
3 those conditions.

4 Q. I understand and I respect that. I'm
5 not trying to -- and that's what I wanted to get
6 out of you, is some indication of why your values
7 are lower. And they take into account --

8 A. I understand that.

9 Q. -- the fact that those buildings have
10 got to be --

11 A. Yes.

12 Q. -- have some major repairs made on
13 them.

14 A. That's right. In appraisal language,
15 they are heavily appreciated.

16 Q. All right. So that -- just those two
17 things alone explain a lot of the disparity between
18 the two values, because otherwise the open land --
19 and I toured some of it, with all the corn tassels
20 in the fields and soybean planted and so forth and
21 so on.

22 But there shouldn't be a whole lot of
23 difference, and if there is, my money would be on
24 Helms who's looked at farmland like this for many
25 years. That -- it's this land that's got to have

1 something done immediately to protect the trust as
2 well as the land itself. That's what I'm trying to
3 get my head on.

4 A. And that's a touchy issue because of
5 deciding how to manage that and because the way the
6 will is worded and --

7 Q. Exactly.

8 A. It's hard to address.

9 Q. It's very hard to address.

10 A. It's hard for the trustees to address.

11 Q. Yes, sir. Yes, sir.

12 A. Hard for anyone.

13 Q. All right. Let me see if I -- I think
14 that's what I have for right now, Mr. Helms.

15 Excuse me for interrupting, but we kind of -- I
16 wanted to get some kind of global concept of why
17 the difference is what it is. And I think
18 Mr. Helms has done a great job of explaining to me
19 why.

20 MR. BECKER: Well, and there are other
21 differences that we can address.

22 THE COURT: Good. Do it.

23 BY MR. BECKER:

24 Q. John, since we're on the 15-year
25 after-tax cash flow projections, I think it would

1 be good to call the Court's attention to some of
2 the key factors in this model. This is a model.
3 What do we mean by that?

4 A. Okay. So when I do an economic
5 analysis -- that's what this is, is an economic
6 analysis, really. If you look at it, it's an
7 economic analysis and it's a model. And it's
8 designed to be a tool that a trust could use every
9 year to update as more information comes in on --
10 like, the properties can be sold or individual
11 things become more valuable for some reason, all of
12 these updates can be done manually.

13 But when you start something like this,
14 you want to have sort of like an average trend
15 built into all of these assumptions. So in
16 designing this, that's how I designed it. I had to
17 go through all of these different assumptions and
18 look at each one and decide what was assumed about
19 these assumptions.

20 Let me see if I can find -- so this is
21 where this was in -- this is that summary letter we
22 were looking at earlier. And it talks about the --
23 you know, this summary letter talks about making
24 the -- planning the spreadsheet where I made the
25 list of all the subject properties and came up with

1 a wholesale value and a retail value.

2 And then as I proceeded down through
3 the letter, I classified each one of these areas
4 and tracts in the Family Legacy properties, low
5 priority, land sell properties, and the first
6 five-year profits.

7 Q. John, could you describe the difference
8 between what you mean by the first five-year
9 priority and low priority?

10 A. Okay. The reason for the low priority
11 is, primarily, it's more of a simulation objective
12 as much as anything else; however, most of those
13 lower-priority tracts have timber that has to be
14 sold during the first five years.

15 So if you were trying to market those
16 as individual tracts, you would have to first cut
17 the timber and then sell the land.

18 And you don't have to do that, but a
19 lot of times the average value per acre for timber
20 is \$1400 an acre. And if you're trying to sell
21 that property to somebody that wants to hunt on it,
22 they have to really buy all that timber and use all
23 their money to buy timber.

24 So it's better to sell some of the
25 timber to the open market and then sell the

1 residual property to somebody that wants to use it
2 for some other purpose.

3 Q. Does the low priority category mean
4 it's not available for sale, or does it mean that a
5 sale could occur any time during those 15 years to
6 maximize the value of that?

7 A. That's right. What that means is,
8 there is a retail value that I've come up with for
9 every single tract. And what I said in this letter
10 is, this is my target. If somebody comes to the
11 door and offers that retail price, then it's time
12 -- not sell it right then, but go study it and see
13 if that still looks like, you know, a good thing to
14 do for what they've offered.

15 But that could happen to any of these
16 properties at any time. So there's not an attempt
17 there to schedule it. It's just -- all this model
18 demonstrates is you can have this level of sales
19 activity going on for 15 years, and it's a
20 reasonable market absorption rate for selling all
21 the land.

22 Q. Could you address the issue between
23 Mr. Boykin's evaluation at 26 million for all the
24 -- of this 5900 acres and yours at either the \$16
25 million retail evaluation --

1 A. Wholesale.

2 Q. Excuse me, 16 million wholesale
3 valuation for the 20 million retail valuation?
4 What's driving that figure?

5 A. I think a couple of items are driving
6 it. And first, let me say, you know, if this were
7 my asset to manage, I would be trying to maximize
8 every single aspect of it I could. So what's wrong
9 -- there's nothing wrong with trying to set as high
10 of a value as you can to go out and try to get
11 that.

12 And there are things that come up with
13 real estate where that can happen a lot sometimes.
14 And we've already seen one with the Boykin Mill
15 Pond area, which was this gold mine mitigation
16 proposal which was over \$4 million for something
17 that, you know, I valued at being, at best, 2
18 million.

19 So, you know, that is a -- you know,
20 it's Family Legacy property.

21 Q. Okay.

22 A. So, you know, that's one difference
23 right there. And then another reason that's kind
24 of interesting for the Boykin Mill area is the tax
25 assessor's values are very high on that land, and I

1 don't feel like they're accurate for the land.

2 I think the tax assessor uses mass
3 appraisal models. They see residential sales north
4 of the tracts that are in a slightly different
5 area, and they see those sales taking place, and
6 those sales are from 5 to 10 to 40 acres, and they
7 bring \$5,000 an acre. And so the assessor goes out
8 and says, okay, all 2,000 acres are \$5,000 an acre.

9 In reality, the market will not absorb
10 that level of activity in a short time period.

11 Q. Do you think -- let's just try to break
12 it down into these concepts. If you were
13 attempting to sell all 5900 acres within the next
14 12 to 24 months, so your plan was to liquidate it
15 all and convert it to cash.

16 A. All right.

17 Q. And you needed to do it within 12 to
18 24 months. What do you think you would get? What
19 would be your gross selling price?

20 How many buyers are out there in the
21 market? How big is the market to buy all 5900
22 acres at once? Who are the players in that market,
23 and what would they likely pay to buy it within the
24 next 12 to 24 months?

25 A. Okay. And this goes -- the Lancaster

1 tract will sell by itself --

2 Q. No. I'm talking about the whole thing.

3 A. I know the -- in terms of buyers, there
4 would be a person out there within that time period
5 that would buy the Lancaster tract, obviously. The
6 other buyers would be worried about that tract;
7 they would prefer somebody else bought it.

8 And so if somebody wants to live near
9 Charlotte, put a sign on it, and somebody will buy
10 it. Fairfield tract, the same way. That's why I
11 have assemblages in my appraisal.

12 When you get to the three Lee County
13 tracts, you're going to be looking at my wholesale
14 values because you're going to have those tracts
15 and the Sumter Mountain area tracts could both be
16 sold to one buyer that was an institutional
17 timberland investor, and that would be about 2700
18 or 2800 acres.

19 And those would bring a timberland
20 investment price which would be very similar to my
21 wholesale values and could be slightly lower than
22 that.

23 And then we get to the Boykin Mill area
24 which is a big question mark. And the reason it's
25 a big question mark is it's a mixed-use property

1 that includes farmland and potential farmland and a
2 huge lake, an old town with restaurants in it.. All
3 of these other things mixed together. You start
4 trying to -- you talk about trying to sell all of
5 that within a two-year period.

6 I don't know, right off the bat, if
7 there's a buyer for all that together. And so
8 whoever does show up is still going to have to be a
9 well-financed investigator or speculator in land to
10 post the property.

11 So they're going to offer 20 to
12 30 percent below at least what somebody will pay if
13 they're really interested in a particular tract of
14 land for a particular purpose.

15 When they buy it in bulk like that,
16 they're going to pay less.

17 Q. If the seller's objective was to get
18 your wholesale value, how would you go about it,
19 and how long would it take in your estimation?

20 A. I think that two-year period would
21 probably cover most of that. And then you have a
22 little bit of uncertainty period and you have a
23 little bit of uncertainty in the value, but that
24 would be -- as a general statement, I would say
25 about two years you probably could sell all of it

1 as I just described.

2 Q. And get your wholesale value?

3 A. Get my wholesale value. I might even
4 sell a little bit of timber during that time too.

5 Q. Now, to liquidate everything -- and I'm
6 not saying that would be the objective, but to
7 liquidate everything and if your objective was to
8 get the 26 million that Mr. Boykin estimates it's
9 all worth, how long would that take, and what are
10 the prospects of that happening and in what time
11 frame?

12 A. Well, I think -- I think that value is
13 a little high, although not totally impossible.
14 But I've done some studies of the different types
15 of soils and things, and I'm looking mainly at the
16 Boykin Mill area because that's where all the
17 difference is, is on those -- that land being
18 valued at \$5,000 an acre, which is too high for all
19 that land.

20 As an example, farmland sells for
21 3,000, 3200 an acre, for farmland, and timberland
22 sells for \$1500 an acre at best. And when you sell
23 it in a wholesale setting, it sells for 1200 an
24 acre. So 5,000 is just not going to work in trying
25 to put these pieces of land together with all of

1 the different kinds of wetlands and different
2 conglomerations and configurations of the tracts
3 and the amounts of road frontages and so forth.

4 You're just not going to get \$5,000 an
5 acre on that. Plus, the improvements are not worth
6 over a million dollars like Charleston Appraisal
7 Services said. It's just not worth that; \$1.3
8 million, or whatever, is just too high for those
9 improvements.

10 And so let's just say that if you
11 adjust a little bit, you would have \$23 million and
12 those would be retail values. I think over
13 15 years, if you look at my projections since I
14 have an increase in land values, you'll see that
15 \$23 million probably coming out over that 15 --
16 really over about 12 years, you know.

17 But you can't sell -- if you can't sell
18 -- under the will, you cannot sell the Family
19 Legacy properties. So it makes a lot of this
20 discussion on it, it's almost like a hypothetical
21 thing. So --

22 Q. Let's -- if we could, let's take a look
23 at the Petitioner's Exhibit 175 -- 172, excuse me.

24 THE COURT: Is this the one that you
25 want, Mr. Becker?

1 MR. BECKER: Yes, ma'am.

2 THE COURT: Come right up here. This
3 is part of 172.

4 MR. BECKER: Yes, ma'am.

5 THE COURT: They had a three-page
6 investment plan verbiage, and then they had this
7 one.

8 BY MR. BECKER:

9 Q. Mr. Helms, take a look at the
10 methodology employed by the petitioner to compare
11 your evaluation to Charleston Appraisal Service
12 evaluation, and then come up with his own. Comment
13 to the Court on that methodology and what you think
14 about it.

15 A. Okay. Well, I have alluded to part of
16 it already, but for one thing, the improvements are
17 overvalued; like we were discussing the pond dam
18 and the buildings.

19 Q. Well, be specific about that. Are you
20 talking about the --

21 A. I can find it here, let's see. One
22 that I'm familiar with is the Millway House. And I
23 think they have that valued at over \$500,000, and I
24 think I have it at -- in my wholesale value, I have
25 it at 280, and then my retail I have it at 350.

1 So this would be a retail value. If
2 you look at Charleston Appraisal's value of 500,
3 that would be a retail value.

4 That house needs lots of repairs. And
5 I've studied all over the county, looking at houses
6 and listings and sales for nice houses, older
7 houses, and the amount of money needed to get up to
8 those levels was substantial. The pond house is
9 another example.

10 Q. Have you studied all of these
11 appraisals in this Charleston Appraisal Service
12 column on petitioner's valuation of the real estate
13 assets?

14 A. Yes, I have. I will point out to you
15 that where it says, remainder of gun club tract is
16 \$6,000, is not -- those are not part of
17 Charleston's appraisals. Those were numbers that
18 were put in there, 6,000 and \$5500 --

19 THE COURT: Mr. Helms, he's got that
20 footnoted for us.

21 THE WITNESS: Oh, it's footnoted?

22 THE COURT: Yes.

23 THE WITNESS: All right, so --

24 THE COURT: Value from a signed
25 purchase agreement. And then this thing, it says

1 Charleston Appraisal, but it's got a mishmash.

2 THE WITNESS: It does. Where it says,
3 remainder of the gun club, I've looked at all of
4 those appraisals.

5 THE COURT: And you don't have to agree
6 with them certainly --

7 THE WITNESS: I don't. I don't. I
8 don't.

9 THE COURT: I know you don't, but --
10 and he put those when he departs from Charleston
11 Appraisal or adds to it.

12 THE WITNESS: That's right.

13 BY MR. BECKER:

14 Q. Could you just generally comment on
15 some of the issues that you found with the
16 Charleston Appraisal Service appraisal?

17 A. Okay. The 140 acres on the west side
18 of Highway 261 behind the firehouse, that's an
19 awfully high value of land right there. Then if
20 you look at the Millway steakhouse, they used a
21 really low level of depreciation.

22 They did not consider the fact that all
23 those things are all lumped together in one place,
24 and having to find somebody to come buy all of
25 these at one time, which would be called functional

1 obsolescence because who wants -- somebody
2 interested in buying all of that.

3 And that theme is -- they did some
4 other improvements, which is the store at Remley
5 House, Rosalie's Cottage. And so you're looking on
6 this sheet and you've got \$1.3 million for those
7 two items. And I think that's worth \$350,000, as a
8 retail buyer.

9 Q. You're referring now to the Millway
10 House?

11 A. No. I'm talking about the 481,000 and
12 744,000.

13 Q. All right.

14 A. And those add up to 1.3 million, and I
15 think -- but based on the rents primarily that are
16 coming out of there, and knowing how to depreciate
17 all the buildings or anything, and the fact they're
18 lumped together on two little tracts of land like
19 they're together, I just feel like that's too high.
20 And if you use the rent and 10 percent cap rate,
21 it's worth \$350,000 so...

22 Q. How about the 9.8 acres on the south
23 side of Highway 261?

24 A. And what's the value on that? If
25 that's included in the store, that's the 744,000.

1 Q. All right.

2 A. That's all I have.

3 Q. Okay.

4 A. One of the things I found is, they have
5 a separate appraisal for, I think, it's either the
6 140 acres or maybe another 100-acre parcel. And
7 they said the land value was \$2700 an acre on that
8 parcel. And that land is below the dam at the
9 spillway on the creek, and that's almost all --
10 that's swampland and timberland and you can't use
11 it for anything else, and they valued it at \$2700
12 an acre.

13 Then they went to the 478 acres on the
14 other side of the dam where the water is and said
15 that part of that was swampland. And they said it
16 was worth \$750 an acre because they had that value
17 on some swampland in their files. So if that land
18 is worth \$750 an acre, why is 100 acres worth
19 \$2900? That's just a question.

20 And I have not -- personally, I have
21 not gone out and tried to do an appraisal of this
22 property because this is all in the 1100 acres that
23 I did not initially appraise. I just had a look at
24 it and compared it to the other land I have looked
25 at in terms of private use and consistent values

1 for the land.

2 Q. Okay. Let's return just a minute to
3 the different -- is there anything else -- excuse
4 me. Before we move on, is there anything else that
5 you need to say about the differences, as you
6 understand them, that lead Mr. Boykin to value the
7 land at \$26.46 million and where you estimated it
8 at a range between 16 and 20?

9 A. Right. Most of the other -- besides
10 the Boykin Mill Pond area, most of the other
11 valuations to me appear to be similar. And I had a
12 -- I had a little error in there. That was a
13 misunderstanding about a list price that was in my
14 numbers, and he -- and his -- in Rigdon's analysis,
15 he pointed that out.

16 And I went back on my amended version
17 and corrected that; but overall those properties,
18 with the exception of maybe the Sumter Mountain
19 tract, are fairly similar. Sumter Mountain,
20 Charleston Appraisals was 10 percent higher than
21 me, and I looked at what they did.

22 And one thing they did not do, they did
23 not discount the timber value. Because in my
24 wholesale values, I generally discount the timber
25 values by 10 percent because there's so much timber

1 on all of this property together that you have to
2 take that into consideration. And they did not do
3 that.

4 And then they had -- I felt like they
5 were a little bit optimistic in the way they
6 adjusted the sales they had. But -- and then
7 Rigdon took their value and added 10 percent of
8 their value. And so what I can say, within the
9 course of 10 or 15 years, you know, that land may
10 very well -- it's a very nice tract of land, and
11 the trees are going to grow and so on and so forth.

12 So it may appreciate to that -- to that
13 retail value.

14 Q. Okay. Now, just take a minute before
15 we leave this and discuss the effect that the tax
16 appraisal -- the tax appraisal values had upon this
17 difference in valuation, the tax appraisal values
18 in the Boykin Mill area.

19 A. Okay. I will go to my land slide. I
20 think this is -- bear with me one second. Let me
21 find -- here it is right here. This is page 37 of
22 -- this is page 37 of Exhibit 20. And there are
23 several pages leading up to that that led to these
24 values in this table.

25 So this is Boykin Mill area.

1 (Indicating) And based on our measurements and all
2 the different soil types and my study of it, and
3 comparing it to the sales that are in Kershaw
4 County, is a residential and equestrian sales that
5 involve from about 3 acres up to about 60 acres
6 each, and all of those I could find from 2015,
7 2016, and 2017 -- and one of those properties
8 resold for slightly higher in 2018 I found.

9 For all of those sales, you know, I
10 have -- I've been studying all of those conditions.
11 Most of the sales have open land or all of them
12 have open land, and some of those have huge amounts
13 of paved roads, and some of them have fences
14 around, very high quality places, and I identified
15 -- out of the Boykin Mill area, I identified 1,000
16 acres that could be like that kind of land.

17 And I think that it would take -- you
18 could sell 50 acres like that a year, which means
19 it would take you 20 years to sell that 1000 acres.
20 And so if while that 20 years is going on, you
21 could sell some of the other lands too, but it's
22 going to have these lower values associated with
23 it. Like the pine timberland and the ag land
24 that's mixed together, it might not fit this other
25 model.

1 Let's say it's down in the wet area or
2 it's not -- that's worth \$2250 an acre. And low
3 land and wetland, like the land under the pond, you
4 know, the swampland, just because it's pretty,
5 someone might want to have a recreational event and
6 put \$1,000 an acre on that.

7 And so when we get down into the
8 bottom, it's actually not 2790. It's 2688 acres or
9 2690 acres. And so an average value or selling
10 price of that would be \$2629.82 an acre. And then
11 I'm going in and adding in my timber retail value
12 to that right now. And what I said is, the pond
13 down (indicating) and all of those other -- that
14 \$1.3 million includes some money I put on the pond
15 down, that I'll put it there, and it includes about
16 \$300,000 on the -- 350- on the Millway House,
17 includes the vacant house on the Mill House tract,
18 and those are the improvements.

19 And when you add all of that up, you've
20 got 2689 acres at \$5232 an acre for \$11.6 million.
21 Those would be kind of like the selling prices.
22 The problem is that 2656 -- it should be 2629 or
23 2659, right there.

24 If you sell that over 20 years, and you
25 use a 4 1/2 percent discount rate, which is the

1 rate I assumed for financial assets, then that land
2 is really only worth \$1727 an acre today. So
3 that's the net present value of that land today.

4 And when you add all of those figures
5 up, you're at between \$9 million and \$8 million.

6 Q. Well, would one way to characterize the
7 difference between your valuation and Mr. Rigdon
8 Boykin's valuation is that he's attempting to
9 capture too much future value in today's dollars?

10 A. Yes, that's correct.

11 Q. Is that an accurate way to say that?

12 A. Yes.

13 Q. If you were going to value that land --
14 if you were going to value all 5900 acres for the
15 purposes of putting it on a balance sheet that you
16 were going to take to the bank to support a
17 mortgage loan, secured by all 5900 acres, what
18 value -- let's assume you were doing the appraisal
19 for the bank.

20 A. Right.

21 Q. The trust has come and said, we need
22 some money and we want to mortgage everything and
23 get all its worth --

24 A. Uh-huh.

25 Q. -- what would you tell the bank that

1 the land was worth to support the mortgage loan?

2 A. That's on my cash flow projections
3 spreadsheet on -- on Row 135.

4 Q. That's behind Tab H in the plan and
5 summary?

6 A. Yes.

7 Q. Investment plan and strategy. Tab H,
8 which row?

9 A. Row 135 and --

10 Q. Page 4?

11 A. The first column --

12 Q. And that's on page 4 of 4, if I can
13 tell you that. I'm just trying to help Judge Toal.

14 THE COURT: I'm right there. I'm on
15 page 4 of 4, total estimated bulk real estate and
16 timber value --

17 THE WITNESS: Yes, I --

18 THE COURT: -- total value of all
19 assets, outstanding liabilities, and net value of
20 all assets.

21 THE WITNESS: Row Number 135.

22 THE COURT: And he's saying that the
23 net value of all assets is \$15,238,000. That's
24 after he takes out the estate value?

25 THE WITNESS: That's the real estate --

1 this is all the current trust assets, the real
2 estate and timber is worth 15 million -- 15.3
3 million, and then there's other assets. And some
4 of those other assets are -- you know, they come
5 from the balance sheet.

6 So once that I have the numbers I have
7 in there that would -- just for the time being.
8 When you add those in, it's close to \$18 million.

9 THE COURT: Right. 17,963 million --
10 and then you've got \$2.7 million of estate taxes.

11 THE WITNESS: Yes.

12 THE COURT: And you came up with a net
13 value of all assets of \$15,238,269.07, and that's
14 what you say you're taking to the bank?

15 THE WITNESS: Yes, that's correct.

16 THE COURT: Now, that would change over
17 time. And you've given -- every year you've given
18 a projection on what it would be.

19 THE WITNESS: That's correct.

20 THE COURT: All right. The outstanding
21 liabilities would go down if you paid them off over
22 time, and the outstanding -- the compound annual
23 increase would be 1.2. And so you end up 15 years
24 from now, if you kept it all, with \$18,230,000?

25 THE WITNESS: You've got 20 percent

1 more --

2 THE COURT: 20 percent more than what
3 you got right now. I get that.

4 Mr. Becker, that might be a very good
5 place to stop. We're at quarter of three; we've
6 still got the cross examination to do.

7 MR. BECKER: All right.

8 THE COURT: All right. We need to be
9 focused here now.

10 MR. BECKER: Well, there are just two
11 or three more lines on this spreadsheet I would
12 like to focus on, and then I'll be through, I
13 believe, unless you have other questions.

14 BY MR. BECKER:

15 Q. Over the course of these 15 years,
16 Mr. Helms, tell us what is the total -- comment on
17 the total income from all land sales, timber sales,
18 et cetera.

19 A. Slide over on the spreadsheet here.

20 Q. I think it's on line 108.

21 A. Line 108 is -- over the 15 years, it's
22 generating \$17.466 million.

23 Q. So that's income from all sources
24 including sales of land, sales of timber, return on
25 financial assets as cash is generated?

1 A. Well, actually, that's just the return
2 from the real estate and timber -- oh, yeah, it is
3 all. I'm sorry. That is all assets.

4 Q. And so over the course of this
5 15 years, how much land is sold and converted to
6 financial assets? And it might be easier,
7 Mr. Helms, if you want to look at the printout --

8 A. I have it here.

9 Q. If you want to look at this --

10 THE COURT: What are you looking at,
11 Mr. Becker?

12 MR. BECKER: Tab H, Your Honor, the
13 things that I would like you to focus.

14 THE COURT: I'm in H; what line?

15 MR. BECKER: Well, I'm going to have to
16 ask Mr. Helms because I don't remember exactly.

17 THE WITNESS: The total acres sold is
18 on line 8.

19 THE COURT: Eight?

20 THE WITNESS: On page 104.

21 THE COURT: All right.

22 BY MR. BECKER:

23 Q. So by the end of 15 years, you would
24 have sold 3542 acres?

25 A. That's correct.

1 THE COURT: Out of the 6,000. That
2 would have excluded all the Treasure properties and
3 some of the Non-Legacy property that you want to
4 keep for income production, right?

5 THE WITNESS: That -- that actually
6 takes all of the land except the Treasure tracts in
7 the will and two other tracts that join -- that
8 were post-will tracts --

9 THE COURT: Okay.

10 THE WITNESS: -- that are left. That's
11 what is left.

12 BY MR. BECKER:

13 Q. And have you included a way of
14 generating revenue from the Mill Pond in this
15 model?

16 A. Yes, I have.

17 Q. Describe that, please.

18 A. So as we already looked at the cost,
19 the first step was to spend money in the first five
20 years to build up the dam and also to start doing
21 studies to possibly use it as a mitigation bank.

22 And we obtained -- an estimate was
23 obtained given where the mitigation credits would
24 bring, I think it was about \$3.2 million over 10
25 years. So we showed some income for that for ten

1 years.

2 THE COURT: Is that the beginning of
3 year two from the spreadsheet?

4 THE WITNESS: That's correct.

5 BY MR. BECKER:

6 Q. What line is that, Mr. Helms?

7 THE COURT: 100.

8 THE WITNESS: Where we were earlier --

9 BY MR. BECKER:

10 Q. It's line 100.

11 A. Yeah, there it is.

12 Q. Based on your knowledge of conservation
13 values associated with real estate and your
14 knowledge of mitigation bank credit programs and
15 other ways of monetizing or gaining income from the
16 conservation values, do you believe that that is a
17 reasonable estimate of income that could be
18 generated from the sale of those conservation
19 values?

20 A. I think based on where these numbers
21 have come from, I think at this time it's
22 reasonable. I think there's -- as we saw the offer
23 of the gold mine, the only thing wrong with that
24 offer was they just wanted total control of the
25 property. And that would be compatible with this

1 number except for that fact. So I think they are
2 reasonable numbers.

3 Q. And by selling those conservation
4 values through a mitigation bank program, would the
5 trust be able to maintain ownership?

6 A. That's the intent. And this is all at
7 the mercy of the U. S. Army Corps of Engineers and
8 people like that, and they will not tell you the
9 answer until you ask them; ask the question and
10 give them an opportunity to rule on it.

11 Q. Over the course of your 15 years, how
12 much cash in your model would be distributed to the
13 income beneficiary of this trust? What line is
14 that?

15 THE COURT: 108.

16 THE WITNESS: 108.

17 THE COURT: That's total income timber
18 operations.

19 THE WITNESS: That's total income.

20 THE COURT: Right.

21 THE WITNESS: And that's on line 120.

22 THE COURT: Yes. That's the next line.

23 THE WITNESS: Yes. That's \$6.6

24 million, which means \$638,000.

25 BY MR. BECKER:

1 Q. And what would be the 15-year increase
2 in the net asset value of the trust?

3 A. Increased 20 percent.

4 Q. Okay. Now, right now, today, there are
5 about \$2.8 million owed in estate taxes?

6 A. Right.

7 Q. And do those payments start coming due
8 in about four or five more years?

9 A. The interest is paid every year
10 initially, and then I think in year five, the note
11 starts getting paid down.

12 Q. What row are you on?

13 A. I'm on Row 138.

14 Q. All right. And how does that -- so
15 that line shows the retirement of the estate tax
16 debt?

17 A. Yes.

18 Q. And how does that correlate with line
19 100, which is the income from the conservation
20 values?

21 A. Well --

22 Q. I should say compare. How does it
23 compare?

24 A. Oh, I mean -- well, we have \$3.2
25 million coming in in the conservation value, and so

1 that would be more than the estate liability.

2 Q. Do you think those values could be more
3 than that?

4 A. For the conservation?

5 Q. Yes.

6 A. Yes. Before this is over, before this
7 15 years is over, we may be seeing people that just
8 want to buy by the water.

9 MR. BECKER: Your Honor, unless you
10 have any other questions, I think that would be all
11 I have for Mr. Helms.

12 (Off-the-record conference.)

13 THE COURT: Very good.

14 Cross-examination, Mr. Tetterton.

15 MR. TETTERTON: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. TETTERTON:

18 Q. Mr. Helms, you've been the appraiser of
19 this for quite a while and you probably have a
20 record of doing appraisals; is that correct?

21 A. That's correct.

22 Q. And do you do appraisals for banks?

23 A. Yes, I do.

24 Q. And what is the requirement of a bank
25 when you go to apply for a mortgage on an

1 appraisal, how current -- how current?

2 A. How current?

3 Q. Yes.

4 A. Is the value estimate? The value
5 estimate would be real close to the closing date of
6 a sale or right now somewhere.

7 Q. And being real close to the closing
8 date of the sale is usually within 30 to 60 days;
9 is that correct?

10 A. Yes. Yes.

11 Q. And wouldn't you agree with me that
12 these appraisals that you're relying your values on
13 is outdated?

14 A. Actually, I don't think land prices
15 have changed all that much.

16 Q. Have you done an updated appraisal on
17 any of these land prices in that area?

18 A. In that area? Let me think for a
19 minute. No, I have not since 8/08/2016.

20 Q. And you wouldn't expect a bank to loan
21 you money on a 2016 appraisal, would you?

22 A. No.

23 Q. You know, I've got your book and I'm
24 impressed by it; I don't really understand, but I'm
25 going to ask you some basic questions from an old

1 country boy. Okay?

2 A. Okay.

3 Q. If I understand what you did, you
4 relied on several different tools to come up with
5 your values?

6 A. Right.

7 Q. And one of the tools was comparable
8 sales?

9 A. Yes.

10 Q. And also listings, multiple listings,
11 MSL (sic)?

12 A. Well, knowledge of timberland was used.

13 Q. And you used some appraisals of other
14 people?

15 A. Yes.

16 Q. Were those the Charleston Appraisals?

17 A. Actually, I had to discount some of
18 Charleston's.

19 Q. But you did use the Charleston
20 Appraisals?

21 A. I looked at them.

22 Q. And you also used Jimmy LaFrage's
23 projections; did you not?

24 A. Yes, I did.

25 Q. And I believe that's Exhibit

1 Number 172. You relied on a 10-year appraisal and
2 a 15-year appraisal; is that correct?

3 A. Yes. And, primarily, the -- for my
4 cash flow projections, I used the 15-year.

5 Q. And are you satisfied that those
6 projections for income could be earned by the trust
7 are accurate?

8 A. Yes. So far there's been several
9 tests, and I think they're pretty good.

10 Q. And I'm going to ask you to pull up
11 that, if you would, that projection for me, please.
12 If you look in your book, it's I.

13 THE COURT: It's what?

14 MR. TETTERTON: I'm sorry, it's Tab E.

15 THE COURT: And this is the Boykin
16 10-year projection silvicultural recommendations?
17 S-I-L-V-I-C-U-L-T-U-R-A-L.

18 MR. TETTERTON: Yes, ma'am.

19 THE WITNESS: If I may, I also have
20 independent timber appraisals for each tract too.

21 BY MR. BECKER:

22 Q. I understand. You're telling me,
23 though, and telling this Court that you relied on
24 Jimmy LaFrage's projections of income to be deemed
25 from timber sale?

1 A. Yes. The plan now, the scheduling of
2 the 10 percent sales income.

3 Q. And I'm looking at the 10-year
4 projections. Is that it on the screen there?

5 A. Yes.

6 Q. Okay. And the income you say is pretty
7 accurate, you would agree with me, that income
8 generated over that 10-year period?

9 A. So far I have found Jim's numbers to be
10 good.

11 Q. Okay. And look at the estimated
12 expenses.

13 A. I see it, yeah.

14 Q. Now, is there anything about those
15 estimated expenses you think might be wrong?

16 A. It depends -- well, in my model, I used
17 8 percent sales commission, but I think those
18 expenses are forest management expenses.

19 Q. So we're going to have to take
20 Mr. LaFrage's expenses and add 8 percent to it,
21 right?

22 A. Yes, that's right.

23 Q. And if my math is correct, if I add 8
24 percent to his expenses -- it would be 8 percent of
25 the \$6,657,655.00?

1 A. Right. Right.

2 Q. I get \$532,613. Do you agree with ...
3 that, if my math is right?

4 A. That would be correct.

5 Q. So now my expenses have gone up
6 \$1,079,799.00?

7 A. Uh-huh.

8 Q. And then I believe in your -- bear with
9 me a minute.

10 A. Now, that's the 10-year versus the
11 15-year, so --

12 Q. But, you know, 8 percent is not going
13 to change over ten years?

14 A. Right. Right. But in my model, I'm
15 selling some of the land. So some of these
16 expenses never get incurred.

17 Q. Also, on your Exhibit I in the book,
18 under O?

19 A. Uh-huh.

20 Q. I?

21 A. Okay.

22 Q. It's under O on the left-hand side?

23 A. Okay.

24 Q. Do you see --

25 A. Yes. Yes.

1 Q. Are you with me?

2 A. Yes.

3 Q. In addition to the 8 percent, we've got
4 to add to the expenses -- we've got to add an
5 additional 4 percent; do we not?

6 A. Yes.

7 Q. So now our estimated expenses for
8 selling timber is now 12 percent instead of --
9 we've got to add an additional 12 percent?

10 A. Right.

11 Q. That would be -- and you used those
12 projections of Mr. LaFrage in your evaluations; is
13 that correct?

14 A. Yes, I used the 15-year projections.
15 And then on particular tracts, the tracts get sold,
16 so some of those timber sales never occur and some
17 of those expenses never get incurred.

18 Q. Now, let me -- let me make sure that
19 I'm thinking clearly. I want to know if I have
20 enough money for my income beneficiaries. So if I
21 got -- if take those figures --

22 A. I'm sorry, you want to put it back up?

23 Q. So now I've got to add another 2
24 percent on top of the 8 percent on my estimated
25 expenses; is that correct?

1 A. You are adding 4, correct?

2 Q. Sorry?

3 A. Four.

4 Q. I'm sorry, 4?

5 A. Yeah. Eight plus two -- four is 12.

6 Q. Eight plus four is 12?

7 A. That's correct.

8 Q. So I've got to add -- I've got to add
9 another -- I got to add 12 percent to Mr. LaFrage's
10 estimated expenses?

11 A. Yes.

12 Q. And then I deduct that from the total
13 income. And I add those two figures up, and then I
14 divide that by ten years. Wouldn't you agree with
15 me that's only about \$557,000 a year that I'm going
16 to get to apply to the obligations of the trust?

17 A. Over a 10-year period.

18 Q. And so would you agree with me then,
19 once I factor in these additional costs --

20 A. Uh-huh, that's --

21 Q. -- these additional expenses --

22 A. Uh-huh.

23 Q. -- that you did -- that it is not shown
24 in Jim LaFrage's projection that you used, then
25 that's going to be -- I'm sorry, I didn't add the

1 extra 4 percent -- but it'd be less than -- right
2 around \$500,000 a year, correct?

3 A. Correct.

4 Q. So from timber sales I'm going to have
5 about \$500,000 a year of --

6 A. Uh-huh.

7 Q. Now, in this -- I'm just trying to
8 remember what you said. I believe you said there
9 were trustee fees of \$150,000 a year, right?

10 A. That's what I used, correct.
11 Initially.

12 Q. Take \$150,000 a year, and then we're
13 going to pay -- did you hear -- or you understand
14 that the income beneficiaries are getting \$100,000
15 a year?

16 A. Each, yeah.

17 Q. So I add that \$400,000 a year, and that
18 gives us \$550,000 a year just for those two
19 expenses?

20 A. Right.

21 Q. So, Mr. Helms, that's not quite enough
22 to pay -- in timber sales, that's not enough to pay
23 the expenses of the trust, just for the trustee
24 fees and just for the income beneficiaries, is it?

25 A. No, it's not. That's why we're selling

1 land.

2 Q. You have to sell land and have to
3 diversify; do you not?

4 A. You do absolutely.

5 Q. Well, with these projections for the
6 next ten years, it's not going to be enough money
7 for timber sales to pay?

8 A. No. It does help, and they help market
9 the properties because there's an excess of timber
10 on some of the tracts.

11 Q. And also, right now the timber market
12 has a pine log oversupply; does it not?

13 A. Yes.

14 Q. And that means that that price is going
15 down?

16 A. Probably not any further. It's
17 probably going to go up from now.

18 Q. That's oversupply because the mills are
19 not requiring -- or not requesting more pine logs;
20 is that correct?

21 A. Yes, and they're expanding right now.
22 All of them are expanding.

23 Q. Wouldn't you agree with me, though,
24 that there are some real risks in holding
25 timberland as an investment?

1 A. I don't really think so. I think it's
2 a profit opportunity.

3 Q. Well -- and I understand you to say
4 there's no risk?

5 A. No. There's a risk in all investments.

6 Q. And what risk would you have?

7 A. You know, the land is going to be there
8 hopefully. You know, hopefully all the land is
9 going to stay there. The main risk is the market
10 risk to the timber market.

11 Q. The timber market fluctuates, right?

12 A. Yes, sir.

13 Q. Sometimes it fluctuates pretty
14 drastically?

15 A. Within about a 15 percent range.

16 Q. And, also, some of the other risks of
17 holding timberland would be another Hugo?

18 A. Hugo would be a risk.

19 Q. And, you know, we speak of your
20 model -- modelling for this projection, it's sort
21 of like a hurricane model, if you get about four or
22 five; is that correct?

23 A. Say again.

24 Q. You're getting several different models
25 of where that hurricane is going to go.

1 A. Oh, that's correct.

2 Q. So this is sort of like your
3 projection; it's going to be like a hurricane
4 model, it could go anywhere?

5 A. This is believed to be slightly
6 conservative to list its projection.

7 Q. And you have used a lot of assumptions
8 in making this model?

9 A. Absolutely.

10 Q. Sort of like a hurricane model. They
11 make a lot of --

12 A. That's true, yeah.

13 Q. Your modelling that you're presenting
14 to the Court today is not much different there?

15 A. That's right.

16 Q. And some of the risks I think would
17 also be climate change? So perhaps a drought?

18 A. A drought could be.

19 Q. And that could affect timber size and
20 also timber pay?

21 A. Yes.

22 Q. And you understand we may be having
23 some climate change?

24 A. We're having bigger storms. Actually,
25 tree growth -- with global warming, tree growth is

1 expected to increase because of the longer growing
2 season and the temperature and the rainfall.

3 Q. And some of the other risks of holding
4 timber as a long-term investment would be fire?

5 A. Fire is a risk.

6 Q. And when you looked at -- have you
7 looked at all these pieces of property?

8 A. Yes, I have.

9 Q. Did you notice any firebreaks on any of
10 these properties?

11 A. No. Just some internal roads.

12 Q. But on some of those larger tracts, are
13 there any firebreaks?

14 A. No. It needs improvement, but, again,
15 contingencies are built in, things like that, by
16 8 percent, and things of that nature. And the 8
17 percent applies to the real estate sales too. And
18 what I'm observing is that the trust so far has
19 been doing its own real estate sales without even
20 having to pay that 8 percent.

21 Q. But that's not my -- that's not my
22 question about the risks. Would you, as a prudent
23 forestry consultant, advise this trust to put
24 firebreaks on their larger tracts?

25 A. I would.

1 Q. And they have not done that?

2 A. They have not done it.

3 Q. That would also decrease their damage
4 to their timber investment, wouldn't it? If they
5 had -- came from a fire?

6 A. It would be a good practice to put in
7 good firebreaks.

8 Q. And wouldn't you also agree with me,
9 Mr. Helms, that holding timber as a long-term
10 investment -- there are a lot of uncertainties in
11 holding it as a long-term investment?

12 A. Well, most people who own large tracts
13 of land this size cut some timber every year and
14 reforest it so that they have different ages and
15 sizes of trees, and that helps mitigate the main
16 risk that you have.

17 Q. Your expert opinion, holding this 5,900
18 acres of land, have you considered the highest and
19 best use of it?

20 A. I have.

21 Q. And what is the highest and best use of
22 it?

23 A. The highest and best use varies by the
24 individual tracts.

25 Q. In your analysis, you've also said that

1 Camden is in -- or Kershaw County is an equestrian
2 area where there is a large demand for small horse
3 farms?

4 A. Yes. Yes.

5 Q. Did you take that into consideration?

6 A. Yes, I did.

7 Q. And did you -- I want to show you what
8 has been introduced as Exhibit 170.

9 MR. TETTERTON: May I approach, Your
10 Honor?

11 THE COURT: Yes, of course.

12 BY MR. TETTERTON:

13 Q. Now, I'm going to represent to you that
14 those are some comparables that were introduced
15 into evidence that were within about a five-mile
16 radius of the Boykin Mill Pond.

17 A. Okay.

18 Q. Did you do any comparables on those?

19 A. Yes. On some of these I did, yes.

20 Q. Which ones did you do? Can you
21 identify them?

22 A. All of the ones at Ascot and -- which
23 is -- I did not do any after or before 2015.

24 Q. Okay. I'm looking at Ascot Number 10
25 and Number 12. Number 10, that's a sale for

1 \$6,622.00 an acre; is that correct?

2 A. Correct, for six acres.

3 Q. And also I'm looking at Number 12,
4 which is Ascot, those are subdivision lots; is that
5 correct?

6 A. Yes. It's a gated community of open
7 land with paved roads inside.

8 Q. Are you aware of the fact that they
9 sold 6.687 acres to Sue Zimkee for \$100,000?

10 A. Yes, I am.

11 Q. And that's a horse farm; is it not?

12 A. That's a residential mixed-use
13 property.

14 Q. So that would -- you and I would agree
15 then that there's a good demand in this area for
16 small tracts, 15, 10, 15, 20-acre horse farms?

17 A. I think 50 acres could be sold from the
18 Boykin Mill area based on what I analyzed.

19 Q. And based on selling that amount of
20 acreage per year, the average sales price would be
21 what, 10- to \$12,000 an acre?

22 A. No, I don't think it would be quite
23 that high.

24 Q. It would be more than -- it would be
25 more than what you're putting on it, though,

1 wouldn't it?

2 A. My sales that I found are more in the
3 \$5,000 range because they are bigger sales.

4 Q. Are you familiar with the tract on
5 Toomfield Road that sold for over a million
6 dollars?

7 A. Which one is that?

8 Q. Forty-two acres?

9 THE COURT: What number?

10 MR. TETTERTON: It's on Number 28, Your
11 Honor.

12 THE WITNESS: All right. That's 2011,
13 and, no, I'm not familiar with that sale.

14 BY MR. TETTERTON:

15 Q. And that's 20 acres?

16 A. Yes.

17 Q. Are you familiar with that piece of
18 property?

19 THE COURT: Where is the 20? Because I
20 see 42.

21 MR. TETTERTON: I'm sorry, Number 28.

22 THE COURT: 28. It's 42.72 acres?

23 MR. TETTERTON: Yes, ma'am.

24 THE COURT: Not 20 acres, right?

25 BY MR. TETTERTON:

1 Q. I'm sorry. Number 28, 42.72 acres for
2 1 million 875, for \$20,000 an acre. Are you
3 familiar with that piece of property?

4 A. No.

5 Q. Do you understand whether or not it was
6 a horse farm?

7 A. No.

8 Q. Is that the comparable size of a horse
9 farm that would be attractive to sell in this
10 particular area?

11 A. Yes, it is.

12 Q. And could the trustees expect to get
13 about that same price for a comparable horse farm
14 tract of land?

15 A. I cannot answer that question because I
16 don't know what types of land were on this tract.
17 I don't know if it was open land, fenced, had roads
18 to it, was sandy land, wetland, swampland.

19 Q. So I understand what you're telling me,
20 you're not familiar with the land on Toomfield
21 Road?

22 A. I am familiar with the sales on
23 Toomfield Road if it occurred since 2015.

24 Q. Were any of these sales -- looking at
25 Exhibit 170, are there any sales on there that you

1 would disagree with the value of -- the value?

2 A. The older sales, I wouldn't have a
3 comment on right now. I don't know what they were
4 or what was involved. And when you saw -- and so
5 if you looked at the ones from 2016, '17, and '18,
6 I would agree with those values.

7 But a horse farm is not well-defined
8 either because if it's all open land, that's one
9 thing.

10 Q. Well --

11 A. And so if it's got fences and that sort
12 of thing and other kind of horse farm improvements,
13 sometimes they don't come out as improvements.

14 Q. Mr. Helms, what intrigues me is that
15 you had said that the Camden area was an equestrian
16 area, prime for equestrian activities?

17 A. It is.

18 Q. And that would include people who want
19 to buy 15, 20 acres with their horse for the
20 daughter, right?

21 A. They could, uh-huh.

22 Q. And some of this property we're talking
23 about is suitable for that?

24 A. Some of it is.

25 Q. Now, in your modelling, you have made a

1 lot of assumptions, haven't you?

2 A. Correct.

3 Q. Let's look at -- I'm going to ask you
4 to look at I again, please.

5 A. H or I?

6 Q. Well, I.

7 A. I. Okay.

8 Q. Are you with me?

9 A. I am.

10 Q. Let's look at A, the first thing on
11 that particular chart.

12 A. Okay.

13 Q. Purposes and goals.

14 A. Yes.

15 Q. And one of the purposes was to provide
16 annual income -- I'm sorry, annual payments to
17 income beneficiaries; is that correct?

18 A. Correct.

19 Q. That's one of the --

20 A. That is.

21 Q. -- model?

22 A. That is.

23 Q. All right. Let's go to assumptions and
24 sensitivity analysis.

25 A. Okay.

1 Q. Trustees should avoid managing based on
2 assumptions or the use of this or other models and
3 projections.

4 A. Right.

5 Q. Do you still stand by that --

6 A. I do.

7 Q. -- statement?

8 A. I do.

9 Q. And if I understand what you're saying
10 there, you're standing by they should avoid
11 managing this trust based on your assumptions?

12 A. No, that's not what I'm saying.

13 Q. Well, let me read it again. Trustees
14 should avoid managing based on assumptions or the
15 use of this or other models and projections.

16 A. And what I mean by that is, is the
17 trustees need to go understand every little tract
18 of land and not everything they have, and not go --
19 a model of this type is an economic model.

20 And so all of the assumptions and all
21 of the variables that are in this model change
22 constantly. And so as a trustee, you have to stay
23 attuned with -- in other words, if stock prices go
24 way down and you have money in the bank, you need
25 to invest in some stocks.

1 If land prices go up, and you get high
2 land prices, you need to go sell some land.

3 Q. Mr. Helms, on your scenario of selling
4 only 16 percent of the property in the first five
5 years, I'm thinking about my income beneficiaries.
6 Is there any immediate liquidity in that scenario
7 if they had a catastrophic injury? Could you sell
8 timber overnight?

9 A. Oh, in the first five years?

10 Q. No, sir. If my income beneficiaries
11 run out there and got in a head-on collision and
12 had to go have major surgery, brain-injury surgery,
13 there is no way they could get any liquidity out of
14 the timber sales in a short period of time?

15 A. You probably could go sell a million
16 dollars' worth of timber.

17 Q. Overnight?

18 A. In a short period of time.

19 Q. What's a short period of time?

20 A. I would say a month.

21 Q. So you're telling this Court that this
22 trust could have the possibility and potential of
23 selling over a million dollars of timber within a
24 month?

25 A. I think -- well, most -- let's say

1 three months. Let's say three months.

2 Q. So in three months, this trust could
3 realize a million dollars' worth of cash --

4 A. That's what's scheduled like for this
5 year is close to a million dollars.

6 Q. That's not what's scheduled under
7 LaFrage's projections, though, is it? I think he
8 had less than \$600,000; is that correct?

9 A. A part of that -- a part of the timber
10 this year has already been sold --

11 Q. I'm looking at your --

12 A. -- than last year.

13 Q. I'm looking at your chart in I.

14 A. Uh-huh.

15 Q. And, Mr. Helms, I have counted the
16 number of times you used the words, assumptions or
17 assume. I count something like 42 times.

18 A. Uh-huh.

19 Q. So is that fair to say that you have
20 something like 42 different rep --

21 A. Yes.

22 Q. -- assumptions?

23 A. Yes.

24 Q. So your model is based on at least that
25 many assumptions?

1 A. Correct. It needs to be.

2 Q. And one of the most important
3 assumptions that I read in your chart was on
4 page 1, the last paragraph, the last chart: It is
5 assumed that there is orderly, professional,
6 non-liquidation management of all assets, land,
7 rental properties, timber, financial investments.

8 Is that -- to me, that means that there
9 must be an orderly and professional management of
10 these assets by these three trustees. Is that what
11 you're saying --

12 A. Yes, it is.

13 Q. Have you seen that? Do you know
14 anything about that? Have you seen that in this
15 case?

16 A. I don't know the entire history of it,
17 but I know at the present time that there is some
18 efforts to sell some of the assets.

19 Q. Well, they've already sold one piece of
20 property and that was significant.

21 A. Okay.

22 Q. I'm sorry, they sold one lot in Peck
23 Woods for \$33,000.

24 A. Right.

25 Q. And this trust has been going on two

1 years, and that's the only property they've sold?

2 A. There's two others under consideration
3 that I know of.

4 Q. Which ones are those?

5 A. The southern Sumter Mountain tract and
6 part of the commercial site on US 1.

7 Q. And are you aware of the fact that
8 there is a dispute between the co-trustees as to
9 what they should sell that tract for?

10 A. Which one is that?

11 Q. The Sumter Mountain.

12 A. I know there is -- I know the sales
13 price is close to my retail value, but there's also
14 a demand for a survey to be done.

15 Q. And that's one of the costs of selling
16 timber; is it not?

17 A. Yes, it is.

18 Q. But do you know whether or not these
19 co-trustees -- and I understand that you have
20 talked to Mr. Becker's law firm. You talked to the
21 co-trustees?

22 A. Yes, sir.

23 Q. How close are they to selling the
24 Sumter Mountain property?

25 A. Sumter Mountain, there -- to my

1 understanding, it's either under contract or been
2 offered, and they're having it -- it's being
3 surveyed.

4 Q. Is that the Tommy Laney tract?

5 A. Yes.

6 Q. And I believe the testimony that I've
7 heard was, that there's a dispute of about \$50 an
8 acre over that per-acre price?

9 A. Well, I don't know about the dispute
10 about per acre, but I know there's a dispute over
11 the acreage.

12 Q. I understand that, but survey can solve
13 that problem?

14 A. Yes.

15 Q. And if it was on a per-acre price, it
16 doesn't make any difference as long as the surveyor
17 gets an accurate survey, right?

18 A. Well --

19 Q. Take the survey and the number of acres
20 found by the surveyor, and plat it by per-acre
21 cost --

22 A. Right, uh-huh.

23 Q. -- and that gives you the price?

24 A. If Tom Laney thought there were too
25 many acres there initially, and then if -- it

1 depends on the figures that we're talking about.
2 I'm not sure what those figures are that you're
3 talking about.

4 Q. But do you understand he has made an
5 offer?

6 A. Yes, and I believe it's \$3800; is that
7 right?

8 Q. I don't know, sir.

9 A. I think so.

10 Q. I've heard that he's offered 3,900 --
11 I'm sorry, \$3,800 an acre and they want \$3,900.
12 And Mary Deas said split the difference. What's
13 your evaluation of that piece of property?

14 A. I felt like at his offer price, that it
15 met my retail value as long as they didn't have to
16 spend over a certain amount on surveying the land.

17 Q. So it's your opinion that the
18 co-trustees of this trust should sell to Tommy
19 Laney that price -- that same price?

20 A. Yes. If it would come up and not
21 change that price based on the survey, they should
22 sell for that.

23 Q. Well --

24 A. If he tries to change the total price
25 based on the survey, I think it might come below my

1 target. And also I would point out that one of the
2 appraisals of the Sumter Mountain tract showed that
3 tract being worth \$450,000, and it was under
4 contract from the Charleston Appraisal Services.

5 Q. It's your professional opinion they
6 should sell the property to Tommy Laney for the
7 offered price?

8 A. That price meets my criteria. Once I
9 see the survey back and everything, I would agree.

10 Q. After talking to the co-trustees that
11 you talked to, do you have any idea why they didn't
12 take his offer? Particularly when you said that
13 that met your price.

14 A. No, I don't.

15 Q. Okay. And, also, looking at some of
16 your conservation trends, Camden is close to
17 Columbia, correct?

18 A. Yes.

19 Q. You said 25 miles?

20 A. Yes.

21 Q. We have I-20, so it doesn't take long
22 to get there.

23 A. That's right.

24 Q. Haven't you seen an influx of people
25 moving into Kershaw County from the Columbia --

1 from the northeast area because of quick access on
2 I-20?

3 A. I have seen -- there's right now, I've
4 studied the boundary between Kershaw and Richland
5 and all appraisals, and the market is improving
6 there. And not necessarily all of those people are
7 coming to the Camden area, but they're coming
8 across the line near Brightwood. They're coming
9 over in that area.

10 Q. Brightwood --

11 A. Yeah, that area.

12 Q. Are you -- I'm sorry, I didn't mean to
13 interrupt you. Go ahead.

14 A. So I feel like there are people -- and
15 I have an optimistic view of the Boykin Mill area.

16 Q. Are you aware of the fact that Kershaw
17 County has just -- not Kershaw County government,
18 but the forest people in Kershaw County have just
19 developed the South Carolina Equine Center here on
20 Highway 20?

21 A. I don't know the details of it, but
22 I've noticed it being there.

23 Q. And they have multiple horse shows
24 every so often up there?

25 A. Yes, right.

1 Q. And that's in close proximity to the
2 Boykin area; is it not?

3 A. It's reasonable, uh-huh.

4 Q. And I hate to go back to the -- I'd
5 like to keep going, but on LaFrage's projections
6 where you and I have agreed that it would be less
7 than \$500,000 a year, we agreed that that would
8 just barely meet trustees fees --

9 A. Uh-huh.

10 Q. -- income beneficiary fees, but would
11 not meet maintenance fees, particularly on the dam
12 and on the buildings or any of the commercial
13 properties?

14 A. That's right.

15 Q. Or taxes or utilities?

16 A. Uh-huh.

17 Q. Insurance?

18 A. Which those figures are in my sheet.

19 Q. Legal fees?

20 A. Legal fees, I'm not sure what I know
21 so --

22 Q. Accounting fees?

23 A. -- I don't know if I want to know.

24 Q. Well, consulting fees?

25 A. Consulting fees.

1 Q. You charge a consulting fee, right?

2 A. (No response).

3 Q. I've heard the phrase land opportunity
4 costs. Are you familiar with that phrase in timber
5 appraisals?

6 A. Land opportunity costs?

7 Q. Yeah. Well, I'm growing timberland, I
8 have the value of the timber and I'm losing the
9 land cost because I'm not selling my land.

10 A. Right. Yeah, I understand. That's
11 right.

12 Q. Did you take that land opportunity cost
13 in your -- into consideration when you were doing
14 your evaluations?

15 A. Yes, I did. Now, some of that depends
16 on what you assume, which is what we were talking
17 about what different -- what we have a disagreement
18 about certain aspects of it in some of the higher,
19 better values of the properties, but I did take
20 that into consideration.

21 Q. And looking at some of your projections
22 for paying the income beneficiaries an annual
23 income, I believe you used 2.65 percent?

24 A. Yes.

25 Q. And you used 2.65 percent of 15

1 million?

2 A. (No response)

3 Q. Is that the figure I should use? Or
4 14?

5 A. Let's see, let me make sure that we
6 answer that correctly.

7 Q. I just need to know what figure I need
8 to multiply 2.25 against.

9 A. It's 2.65 percent of the net asset
10 value, and so that would be 15.238 the first year.

11 Q. So if I multiply 2.65 percent times 15
12 million, I get right at \$400,000?

13 A. Correct.

14 Q. And so if I divide that by four, that's
15 \$100,000?

16 A. That's correct.

17 Q. And that's only -- that's on the low
18 side; is it not?

19 A. I think that's small and could improve
20 from a couple different ways.

21 Q. So you could tell this Court that it
22 could be raised as high as 3 percent?

23 A. It could.

24 Q. And if I do it at 3 percent of -- I'm
25 sorry, if I do 3 percent of Mr. Boykin's 24

1 million, I get that the income beneficiaries should
2 get \$180,000 a year, if my math is correct; is that
3 right?

4 A. Well, 24 times 3 is --

5 Q. That's 770,000?

6 A. 720, yes.

7 Q. And divide that by four income
8 beneficiaries. And if I used -- if this Court
9 finds a more realistic figure is 3 percent and
10 finds that the net asset value of the trust is \$24
11 million, then based on what you're telling me, they
12 should get \$180,000 a year?

13 A. That's how that math works out to,
14 yeah. Under these assumptions, though, if you go
15 to 3 percent, some of the other criteria go down.
16 So some of the other assumptions would have to
17 improve, like sales prices to cover the 3 percent,
18 which is feasible. All of those things are
19 feasible.

20 Q. Now, you have represented to this Court
21 that there is a potential to put some of this
22 property in mitigation banks, right?

23 A. Yes, sir.

24 Q. And you're not going to start doing
25 that until the sixth year?

1 A. Correct.

2 Q. And you're saying this will generate
3 income of about \$320,000 a year?

4 A. Correct.

5 Q. Now, I don't know much about mitigation
6 banks, but what little bit I do know, it takes a
7 while to be accepted into a mitigation bank?

8 A. Uh-huh.

9 Q. About how long does it take to be
10 accepted into a mitigation bank?

11 A. Three to five years.

12 Q. So in order for me to make \$320,000 a
13 year, I am going to have to wait three to
14 five years to see if my property is accepted into a
15 mitigation bank?

16 A. That's correct.

17 Q. And then it's going to cost me
18 something to put my property into a mitigation
19 bank?

20 A. Yes.

21 Q. What's it going to cost me, Mr. Helms?

22 A. I have an estimate; \$150,000 over three
23 years, years three, four, and five. It's on line
24 99.

25 Q. Well, I'd like to say, this is an

1 overwhelming figure.

2 A. Right...

3 Q. What's the total it's going to cost me
4 to get my property into a mitigation bank --

5 A. \$150,000, assume.

6 Q. So to get \$320,000 back, by putting my
7 property into a mitigation bank and making
8 \$320,000, I'm going to have to spend \$150,000?

9 A. You'll spend that amount of money over
10 two years, and then for ten years, you'll get a
11 total of \$3.2 million.

12 Q. Well, will I have to spend more than
13 \$150,000 each time I put another piece in?

14 A. No. That's for the total cost.

15 Q. And there is no guarantee that they'll
16 be accepted into a mitigation bank?

17 A. There is a pretty good probability, I
18 would say, if it's done appropriately.

19 Q. And that requires a --

20 A. Corps of Engineers' --

21 Q. -- approval?

22 A. Uh-huh.

23 Q. When you did your comparable sales, did
24 you look at the property that Mr. Rigdon Boykin
25 bought that adjoined the trust?

1 A. No.

2 Q. You don't think that would have been
3 important to see whether -- see where he paid
4 \$4,000 an acre for it?

5 A. He bought it a long time ago, so it's
6 not in the same market.

7 Q. Okay. So if he bought it a long time
8 ago for \$4,000 an acre, today it would be probably
9 worth -- raw acreage, would be worth what?

10 A. The same.

11 Q. So if he bought it five years ago, it's
12 still worth \$4,000?

13 A. Well, it depends on what year he bought
14 it in.

15 Q. I beg your pardon?

16 A. What year did he buy it?

17 Q. Well, he said a long time ago, but if
18 he bought it four years ago, five years ago?

19 A. Five years ago? Five years ago the
20 market was very weak due to the recession. It was
21 coming out of the recession, that was 2013. So it
22 would probably -- I mean, I really don't know the
23 details of it to know what's on the property.

24 Q. So that means you should sell your land
25 rather than hold onto it because it's not going to

1 appreciate?

2 A. You should sell when the market is
3 good, when the market is --

4 Q. And invest that money in liquid assets,
5 stock market?

6 A. Well, I think I would still keep some
7 land.

8 Q. Okay.

9 A. Because you -- what you want to have,
10 in my opinion, is in my -- the period of time that
11 I've sold these land tracts, other than this model,
12 that's a conservative estimate that I feel
13 competent that it could be sold at these prices
14 over that period of time.

15 That's not -- that doesn't mean you
16 shouldn't be trying to sell it.

17 Q. And that's based on some of those 42
18 assumptions you put in -- in this --

19 A. It's based on understanding how many
20 acres of land could be sold in a certain area over
21 a certain period of time and what prices.

22 Q. And like that hurricane model, we're
23 going to assume that the wind is going to blow to
24 Florida or we may assume it's going to blow it to
25 North Carolina; is that right?

1 A. But the land will still be there after
2 the hurricane.

3 Q. It wasn't here after Hugo, though, was
4 it?

5 A. The land was.

6 Q. The land was, but not the forest?

7 A. That's -- you know, a lot of the trees
8 blew down. Not all of them, depending on where
9 they were.

10 Q. In the Boykin area, would you agree
11 that about 70 percent of the timberland had to be
12 salvaged?

13 A. That's probably true.

14 Q. In fact, the cone of Hugo came right up
15 through this area, didn't it?

16 A. Yes.

17 Q. And did very devastating damage to --

18 A. It did, uh-huh.

19 Q. And that's a possibility of it too?

20 A. It is.

21 MR. TETTERTON: Thank you.

22 THE COURT: All right. Let's take a
23 ten-minute break.

24 (A recess transpired.)

25 THE COURT: All right.

1 Cross-examination, Mr. Duffy?

2 MR. DUFFY: Thank you, Your Honor.

3 I'll certainly do my best to be brief.

4 THE COURT: That is music to my ears,
5 Mr. Duffy.

6 MR. DUFFY: Thank you.

7 CROSS-EXAMINATION

8 BY MR. DUFFY:

9 Q: Mr. Helms, look at Tab I on the -- what
10 we've been handed, which is Trial Exhibit Number 2.
11 And in particular, I've got a question about --
12 well, I know there's a number of -- Column A, but
13 the second one down, it appears you've got an
14 assumption in there, in addition to your other
15 assumptions, that the income -- or the living
16 beneficiaries, or I should say the lifetime
17 beneficiaries rather, receive 2.625 percent of the
18 net asset value on an annual basis; is that
19 correct?

20 A. That's correct.

21 Q. And I assume -- was that number
22 supplied by Mr. Becker's firm to you?

23 A. Yes. After a variety of several
24 iterations of studying different amounts, some
25 lower and some higher, it's an intermediate amount.

1 Q. And that percentage 2.65 percent,
2 that's based on your net asset value which is your
3 wholesale value?

4 A. That's correct.

5 Q. And that's roughly \$16 million?

6 A. Yeah, 15 or 16.

7 Q. Okay. And so, if the math is correct,
8 that percentage, 2.65 percent of your net asset
9 value of 16 million, roughly, that's approximately
10 \$424,000 a year?

11 A. Correct.

12 Q. Or \$106,000 per beneficiary?

13 A. Yes.

14 Q. And what happens to that number,
15 Mr. Helms, if you instead used a net asset value of
16 24 million, for example?

17 A. That number would, of course, go up.
18 Simple math.

19 Q. Right. And, approximately, by my math,
20 636,000 using the net asset value -- or \$159,000
21 per beneficiary for each year?

22 A. Right.

23 Q. And if you used those distributions
24 based on your net asset value, of course, the trust
25 would be running at a deficit, wouldn't it?

1 A. Yes, that's right.

2 Q. Okay. Especially, if you removed your
3 hypothetical income of \$320,000 for conservation
4 values beginning in year six, correct?

5 A. Correct. Correct. Or if any of the
6 other assumptions changed.

7 Q. And as to the \$320,000 conservation
8 values, what -- there is no real foundation for
9 that, is there?

10 A. I found -- to my understanding, that
11 comes from meeting with some consultants on profit.

12 Q. And who were those?

13 A. I don't know the name of the firm.

14 Q. Are you aware that there was a
15 consultant that met with the trustees at a point in
16 time this year to discuss the idea of mitigation
17 credit?

18 A. Yes.

19 Q. And that \$320,000 value for
20 conservation income, that's approximately 2 percent
21 of your current net asset value; is that right?

22 A. That would be correct.

23 Q. Okay. And if I'm looking at your --
24 the same tab, Tab I, on page 2 of 4, it looks -- it
25 looks to me like under this current model, you

1 project a compound growth of the net asset value of
2 1.2 percent; is that correct?

3 A. That's correct.

4 Q. So, in other words, if the trust was
5 not able to realize the hypothetical income from
6 mitigation value in year six, which is
7 approximately 2 percent of the net asset value, it
8 would actually -- the trust would be running at a
9 deficit of .8 percent; is that correct?

10 A. I don't know. We can plug it into the
11 model and see.

12 Q. Well, you would agree with me that --

13 A. It would decrease the results. I don't
14 know the exact amount.

15 Q. You would agree that it would be
16 running at a deficit, wouldn't you?

17 A. Well, I think we need to look and see
18 if it would be.

19 Q. Is there any -- Mr. Helms, do you have
20 any idea sitting here today about the market for
21 selling mitigation credits six years from now on a
22 possible mitigation?

23 A. No. No, it's just an assumption. And
24 it's based on some experience where we're starting
25 to see increased sales of those in South Carolina,

1 and also the fact of looking at the gold mine offer
2 which is similar to a mitigation offer except that
3 it tries to tie up all the people.

4 Q. And that was for landscape mitigation;
5 is that correct?

6 A. Yes.

7 Q. As opposed to wetlands mitigation?

8 A. As opposed to wetlands mitigation,
9 that's correct.

10 Q. And you said earlier, I believe your
11 testimony was that there probably wouldn't be any
12 buyers for a large assembled mixed-use property
13 like the downtown Boykin Mill Pond area; is that
14 correct?

15 A. Well, the entire assemblage of all the
16 property together, there would, you know, be large
17 buyers for something like that. It will be a
18 mixture of uses.

19 Q. And even if there were, that buyer
20 would probably only be willing to pay 20 to
21 30 percent of the value because it's such a bulk
22 purchase?

23 A. Yes. Yes.

24 Q. And does that conclusion of yours, does
25 that include the Hale's gold mine offer that you

1 reviewed? Was that 20 to 30 percent below --

2 A. Oh, no, that was much higher.

3 Q. Mr. Helms, you're aware that the Boykin
4 trust property and land was in the cone of
5 destruction, so to speak, where -- during Hurricane
6 Hugo where --

7 A. Yes.

8 Q. -- where 70 percent of pine timber was
9 destroyed?

10 A. I'm not -- I know that -- that doesn't
11 sound like an unreasonable figure. I don't know
12 the statistics.

13 Q. Okay.. Mr. Helms, if I could get you to
14 look at -- I'm not sure if you've got Trial
15 Exhibit, Wortley Trial Exhibit Number 17 in front
16 of you. I'm not sure you have this one. I'll
17 display it on the screen. I think you've been
18 handed a copy.

19 A. Yes. Okay.

20 Q. If you would turn to the second to the
21 last page for me, please.

22 A. Okay.

23 Q. And this document is -- this document
24 appears to be, at least the last few pages, your
25 problems with the petitioner's plan --

1 A. Okay.

2 Q. -- is that correct?

3 A. Yes.

4 Q. Okay. And on the second to last page
5 you've got Number 1 and Number 2. Do you see that?

6 A. Yes.

7 Q. And on Number 2 you say: No one really
8 knows -- I think it should say: No one really
9 knows how long it will take to sell property even
10 at my retail values. If Rigdon can sell
11 non-Treasure tracts or non-Legacy properties at his
12 prices instead of my retail prices and still meet
13 the other income objectives such as timber values,
14 please do so and as quickly as possible.

15 Did I read that correctly?

16 A. Yes. Yes, that's correct.

17 Q. Okay. And I think you also testified
18 earlier that if the trustees could get your retail
19 price or value, that they should sell the land at
20 that value; is that correct?

21 A. Yes.

22 Q. Okay.

23 A. What I do want to clarify just for
24 general interest, when an offer like that were to
25 be made, you should evaluate each offer at the time

1 it's made on its own merits and not go to this and
2 say, okay, time to sell. You should say, okay, now
3 it appears to be time to sell.

4 Q. That's one of the disclaimers in your
5 report?

6 A. Yeah. It's -- I think it's important
7 for everybody to understand that, though.

8 Q. Sure. And that's along with the
9 disclaimer that the report and the model really
10 should be used as a management and that each
11 trustee should evaluate each sale on its own
12 merits, right?

13 A. Yes. Yes, that's right.

14 Q. Mr. Helms, is the -- in addition to
15 mother nature or Hurricane Hugo, we talked about
16 flooding, we talked about hurricanes. Is disease a
17 risk of timber?

18 A. On, now -- nowadays on a southern pine
19 field, there's a potential threat. In managed
20 timberland properties that threat gets greatly
21 reduced by thinning, and the property here is
22 starting to be thinned pretty well.

23 And I don't consider the pine beetle to
24 be a terrible risk here; it could pop up. I don't
25 consider it. And then in South Carolina, right now

1 we don't have any hardwood disease risks. There
2 are in some areas, I think.

3 Q. And the southern pine beetle, that's
4 pretty destructive --

5 A. Yeah. But usually you can go out and
6 salvage where it starts and stop it and usually
7 control it if you can catch it, if you have a
8 forester manage the property.

9 Q. Mr. Helms, you talked earlier about the
10 rates of return on timberland.

11 A. Uh-huh.

12 Q. Now, those rates of return, of course,
13 would vary depending on how the timberland is
14 managed, wouldn't they?

15 A. They do.

16 Q. Okay. And so they would also vary
17 depending on if the timber landowner were focused
18 solely on growing timber for income generation as
19 opposed to somebody that was a timber hobbyist or a
20 fan of wildlife who didn't necessarily thin or burn
21 or clearcut?

22 A. Right. Right.

23 Q. Okay. And so the rates of return on a
24 property -- the former property would be greater
25 than the latter, correct?

1 A. That's correct.

2 MR. DUFFY: Okay.. Those are all the
3 questions I have, Your Honor. Thank you.

4 THE COURT: Very good. Mr. Becker?

5 MR. BECKER: Just a few on redirect,
6 Your Honor..

7 REDIRECT EXAMINATION

8 BY MR. BECKER:

9 Q. Just a few just to clear up a few
10 things. Mr. Helms, Mr. Tetterton asked you about
11 whether you had -- about timber commissions?

12 A. Yes.

13 Q. And I believe you said your model
14 includes 8 percent timber commissions and another 4
15 -- another 4 percent for other expenses in selling
16 timber?

17 A. That also applies to any land sales in
18 my model also.

19 Q. So selling land involves commissions
20 just like selling timber?

21 A. Any contingency like surveying and
22 things like that, you know, dealing with the sale.

23 Q. So you included similar assumptions for
24 the land sales in your model?

25 A. Yeah, I did.

1 Q. Mr. Tetterton asked you about
2 firebreaks and whether they would be appropriate on
3 the timber property?

4 A. Yes.

5 Q. Are you aware that the trust has
6 installed firebreaks in the last five years in the
7 Sumter Mountain timber area and paid Whit Boykin to
8 install them?

9 A. No, I didn't realize that.

10 Q. Mr. Tetterton inquired and questioned
11 you about the fact that the trust has sold so few
12 properties so far.

13 A. Right.

14 Q. Are you aware that they have \$4.1
15 million of property on the market for sale right
16 now?

17 A. Yes, I am.

18 Q. What could be some of the reasons that
19 it's taken awhile to sell all that property?

20 A. I think, from my point of view, for one
21 thing, it took a year to do the estate tax
22 appraisal to figure out what the estate taxes was
23 going to be. And then, also, I think -- I know
24 when I became familiar with the property, we didn't
25 have the spreadsheet that even listed what it all

1 was where somebody had a good understanding of what
2 the values might be.

3 So I think there's a lag time in there
4 from the day of this -- going from about a year to
5 just do -- to just not being able to fully
6 understand what the dynamics are. Like doing the
7 studies and allowing them -- allowing time to make
8 an informed decision.

9 Q. Does it also take having a willing
10 buyer come along to buy the property?

11 A. Yes.

12 Q. Does the trust have any control over
13 when a willing buyer might come along?

14 A. No. And they have not -- out of that
15 property you mentioned, I'm not sure that it's
16 formally listed or advertised for sale. So if you
17 don't have it advertised for sale, how does
18 somebody know it's for sale?

19 Q. Okay. Mr. Tetterton asked you about
20 Rigdon Boykin's property. Have you taken a look at
21 Rigdon Boykin's property?

22 A. No. Only I know now where it is on the
23 aerial photographs.

24 Q. All right. Do you know where it is in
25 relation --

1 A. Yes.

2 Q. -- to the Boykin Mill Pond property
3 owned by the trust?

4 A. Yes, I do.

5 Q. Do you -- is it your understanding he
6 paid 4,000 an acre for it whenever he bought it?

7 A. Yes.

8 Q. Do you understand that he's also
9 developed six lots that he's attempting to sell?

10 A. I haven't seen those.

11 Q. Okay. Well, then, you wouldn't be
12 aware that he hadn't sold one of them?

13 A. I know that I studied -- and going back
14 to the horse farm question. I studied Cottesmore,
15 for example. I've been familiar with that property
16 since 2004, and I saw it go bankrupt and then I saw
17 it get repurchased circa 2011.

18 And then it took until 2015 to
19 seriously start selling lots there. So that's one
20 reason I've only been looking at sales since 2015.
21 Because what happened is the market pretty well
22 fell out, and now it's starting -- I'm optimistic
23 about it starting. And, of course, some of these
24 transactions here are demonstrating it's getting
25 better.

1 Q. Okay. Mr. Duffy asked you about the
2 2.625 percent distribution rate for the lifetime
3 beneficiaries that's in your model.

4 A. Right.

5 Q. You mentioned that was selected after
6 several iterations; is that right?

7 A. That's correct.

8 Q. What -- and would you -- are you
9 pointing to Exhibit 17?

10 A. Yes.

11 Q. All right. Tell us what -- what that
12 explains.

13 A. So if you go to Exhibit 17 and go to
14 the first page, this is a sensitivity analysis.
15 And in this sensitivity analysis, the payment to
16 the beneficiaries is not changed, but a lot of the
17 other assumptions have changed.

18 And so you can see on the first page
19 that if you improve some of these assumptions --
20 which none of these changes made in this table are
21 unreasonable. I feel like all of these could
22 occur, and you'd start seeing that, you know, the
23 rate of return on financial investments, if you add
24 2 percent to that, that brings the growth in net
25 asset value up to 2 percent.

1 And if the growth of net asset value
2 goes from 1.2 to 2, that means the literal payment
3 out to beneficiaries even at 2.625, that's going to
4 increase along with that.

5 So I haven't done -- I don't have an
6 analysis showing that rate changing, but it could
7 be easily done.

8 Q. All right. When you selected the 2.625
9 percent that went in the model that went to Judge
10 Toal, was that a balancing based on all the other
11 original assumptions that your model --

12 A. Exactly.

13 Q. -- was that a balance between two
14 things?

15 A. Yes, it is. Yeah.

16 Q. What were those two things?

17 A. It's a balance in a lot of things.
18 It's a balance in -- but it's a balance primarily
19 between having that paid out rate and then having
20 the ending net asset value grow at some rate that's
21 similar to the amount being paid to the income
22 beneficiaries.

23 So when -- if the ending net present
24 value increases at a 2 percent compound rate and
25 the income beneficiaries get 2.625, there's a

1 balance between those, the same kind of rate of
2 return for those two different groups of people.

3 Q. So it was set at a rate that, in your
4 opinion, balanced income to the lifetime
5 beneficiaries and growth in the net asset value
6 over time for the benefit of the remainder
7 beneficiaries?

8 A. And also --

9 Q. Is that a yes or a no?

10 A. Yes. Yes, it's true. It's true, I'm
11 sorry.

12 Q. Go ahead, I'm sorry.

13 A. Okay. So --

14 Q. You can explain.

15 A. One of the things to be realized here
16 is, if property is sold and it's sold at very good
17 prices, then more money is going to come in. And
18 regardless of what that percentage is, then the
19 income beneficiaries are going to get more money.

20 And that's -- if you look at all of
21 these variables in total, then, you know, that's a
22 good reason to be out there trying to sell land at
23 favorable prices.

24 Q. Okay. Mr. Helms, I'm going to ask you
25 to take a look at this document. Is that the chart

1 that you used to establish the -- that I provided
2 to you --

3 A. Yes, it is.

4 Q. -- to set the conservation values in
5 year six through ten?

6 A. Yes, it is.

7 Q. Did I tell you at that time that it
8 came from a meeting that all three trustees had
9 with Steve Nichols of New Kirk Environmental on
10 April 3rd, 2018?

11 A. I didn't realize all three had been
12 there. I'm sure you told me that.

13 Q. Okay. And is the conservation value
14 that you've selected there at the midpoint between
15 the income that Mr. Nichols --

16 MR. DUFFY: Your Honor, I'm going to
17 object to this as leading.

18 THE COURT: I am going to allow it in
19 the interest of time.

20 MR. DUFFY: Thank you.

21 BY MR. BECKER:

22 Q. At the midpoint between the total
23 income that Mr. Nichols estimated the trustees --
24 that the trust could earn from selling --

25 A. No, it's not. It's toward the lower

1 end.

2 Q. Okay..

3 THE COURT: Are you going to make that
4 an exhibit, Mr. Becker?

5 MR. BECKER: No, ma'am, but I can make
6 it one.

7 THE COURT: I think that might be
8 well --

9 MR. BECKER: Your client has one.

10 MR. TETTERTON: Can we have a copy of
11 that?

12 MR. BECKER: Your client has one.

13 MR. TETTERTON: My client doesn't have
14 it.

15 THE COURT: Well, gentlemen --

16 MR. BECKER: I only have one copy so
17 we'll need to duplicate --

18 THE COURT: Gentlemen. Gentlemen.
19 Quiet. Look at it for a minute, and then decide
20 what you're going to say about it, and then we're
21 going to have it duplicated so Mr. Becker will be
22 sure to have his file back.

23 Hang on for a minute and see what they
24 say about it first.

25 MR. DUFFY: Your Honor, we have no

1 objection to it.

2 THE COURT: No objection.

3 MR. TETTERTON: No objection.

4 THE COURT: Very good. Now, let's see
5 if we can get some copies made of it. Mr. Becker?

6 MR. BECKER: I have one last question,
7 I believe, Your Honor.

8 BY MR. BECKER:

9 Q. And I think this is something that we
10 were trying to find earlier when Judge Toal had her
11 question about your issues with the petitioner's
12 valuation of 26 million. Are those points set
13 forth in the last two pages to Exhibit 17?

14 A. Yeah. Especially on the last pages, it
15 explains the four areas of concerns.

16 Q. Under the heading, Problems with
17 Petitioner's Plan?

18 A. Yeah. Which is really problems with
19 the value level is really -- I mean, I don't know.
20 The details of the plan are sort of sketchy, it's
21 trying to liquidate faster. And so the question is
22 whether you can liquidate as fast as hoped or at
23 the prices or values that are anticipated in each
24 plan.

25 MR. BECKER: Okay. Thank you. I have

1 no further questions, Your Honor.

2 THE COURT: Mr. Becker, call your next
3 witness.

4 MR. BECKER: All right.

5 THE COURT: Thank you, Mr. Helms.

6 THE WITNESS: Thank you, too.

7 Yes, sir, we appreciate you.

8 MR. BECKER: Your Honor, he may need to
9 unhook his computer.

10 THE COURT: I understand. In the
11 meantime, did we get that document copied so that
12 we can -- that's great. Thank you so much. Now,
13 that is -- Mr. Becker, if that's your next exhibit,
14 what number would it be? Hang on a minute, she's
15 going to give you a number.

16 (RESPONDENT WORTLEY EXH. 22, Chart, was
17 marked for identification.)

18 THE COURT: All right. Call your next
19 witness.

20 MR. BECKER: Your Honor, the
21 Respondents Wortley and Belger and the Intervenor
22 call Cheryl Holland as our next witness.

23 THE COURT: Cheryl Holland?

24 MR. BECKER: Holland, H-O-L-L-A-N-D.

25 THE COURT: Come on around,

1 Ms. Holland.

2 CHERYL HOLLAND,

3 being first duly sworn, testified as follows:

4 THE COURT: Very good. Please have a
5 seat.

6 MR. BECKER: And, Your Honor, we have
7 an exhibit that will accompany Ms. Holland's
8 testimony as Exhibit 3.

9 THE COURT: Previously agreed to be
10 admitted. Mr. Tetterton and Mr. Duffy, are you
11 looking at it?

12 MR. TETTERTON: Yes, ma'am.

13 THE COURT: All right. This is the
14 expert report of Cheryl R. Holland.

15 MR. DUFFY: Your Honor, we have no
16 objection.

17 THE COURT: Very good. All right.
18 Admitted without objection.

19 (RESPONDENT EXH. 3, Report, in
20 evidence.)

21 DIRECT EXAMINATION

22 BY MR. BECKER:

23 Q. Ms. Holland, how are you today?

24 A. I'm good. Thank you.

25 Q. Would you state your full name for the

1 record, please?

2 A. Cheryl Renee Holland.

3 Q. And what is your current occupation?

4 A. I'm a financial advisor.

5 Q. And where are you currently employed?

6 A. At Abacus Planning Group.

7 Q. And what is your position with Abacus
8 Planning Group?

9 A. I'm founder and president.

10 THE COURT: Ms. Holland, you have a
11 gentle voice --

12 THE WITNESS: Speak up?

13 THE COURT: I want you to speak up.

14 THE WITNESS: Is that better?

15 BY MR. BECKER:

16 Q. I want to ask you a little bit about
17 your background, Ms. Holland. Would you turn to
18 Tab C in your report, and we'll briefly review
19 that. I see you're a graduate of Irmo High School?

20 A. Yes.

21 Q. And you are a certified financial
22 planner?

23 A. That's correct.

24 Q. Before that, you received a BA with
25 honors in economics from Bryn Mawr College in

1 Pennsylvania?

2 A. That's correct.

3 Q. And tell me about a certified financial
4 planner. What's required of you to achieve that
5 certification?

6 A. We complete the coursework through a
7 program; you take a rigorous examination; you must
8 have three years of experience, and then adhere to
9 the ethical standards and code of conduct for a
10 certified financial planner.

11 Q. And what do certified financial
12 planners do?

13 A. We advise on several areas ranging from
14 investments, risk management, also known as
15 insurance, estate planning, tax planning, and
16 retirement planning.

17 Q. I see that you also have received a
18 certificate from the Family Firm Institute in
19 family business advisor. Can you describe what's
20 required to achieve that certification and what it
21 involves?

22 A. That's a two-year program involving
23 coursework, exams, reading, class work,
24 collaborative case studies to understand shared
25 assets by families.

1 Q. Okay. And is -- I was going to ask,
2 what is -- what is family business advising? What
3 -- is that family-run businesses?

4 A. So it's essentially families that own
5 shared assets. It might be a closely held
6 business; it might just be real estate; it might be
7 timber, commercial real estate, it varies, but
8 families that have a shared asset where they make
9 decisions together about the disposition of an
10 asset.

11 Q. Somewhat similar to the situation that
12 this trust is in?

13 A. That's correct.

14 Q. Now, your financial experiences include
15 about eight years with J.P. Wilson Advisors?

16 A. That's correct.

17 Q. Are they local here in Columbia?

18 A. Yes, they are.

19 Q. And then the last ten years with Abacus
20 Planning Group; is that right?

21 A. Twenty. But, thank you.

22 Q. Oh, 20, yes. My math is horrible. Now
23 you know why I went to law school.

24 Abacus now manages how much?

25 A. We have discretionary management of a

1 billion -- \$1.1 billion.

2 Q. Okay. Now, I noticed that you serve on
3 a number of boards. I'm mentioning those because I
4 think they're relevant to your expertise in this
5 matter. First of all, you are on the Institute for
6 Fiduciary Standards. And it says, chairman
7 council, 2015 through the present. What is that?

8 A. The institute is an organization
9 designed to promote and advocate for the fiduciary
10 standards of advisors and other individuals who
11 have fiduciary responsibilities.

12 Q. All right. Are you -- in the course of
13 that work, are you familiar with the Prudent
14 Investment Act?

15 A. Yes.

16 Q. Were you involved in helping the --
17 that get through the legislature of South Carolina?

18 A. Yes. When the act came out, I
19 approached members of the Senate and the house and
20 said, how can we get this passed in South Carolina?
21 And I was advised on who I needed to talk to and
22 helped promote that package and that happened.

23 Q. All right. So you're very familiar
24 with that legislation --

25 A. Correct.

1 Q. -- is that right, that Act?

2 A. Correct.

3 Q. You also served on the Bryn Mawr
4 College Board of Trustees from 1994 to the present?

5 A. Correct.

6 Q. In that role, you also served as the
7 chair of the investment committee for their
8 endowment for ten years, 2003 to 2013?

9 A. Correct.

10 Q. What size endowment was that?

11 A. Well, because it went through the
12 financial crisis, it ranged -- it's about \$900
13 million right now. It was as low as \$550 million
14 at one point in time.

15 Q. And you were the chair of that, the
16 investment committee for that?

17 A. That's correct.

18 Q. You've been on the Clemson University
19 Board of Directors from 2015 to the present, and
20 since 2016, you've been vice chair of that -- that
21 board -- endowments for foundation investment
22 committee?

23 A. Correct.

24 Q. How much money is under management
25 there?

1 A. About 600 million.

2 Q. Now turning to the second page. It
3 looks like under Honors and Awards you've been
4 rated as one of the top 100 or 50 advisors by
5 numerous organizations, including Baron's Financial
6 Magazine, Bloomberg Wealth Managers, Worth
7 Magazine; is that correct?

8 A. Correct.

9 Q. That's quite a list of accolades. Are
10 there any others on that list, those Honors and
11 Awards that you think are particularly noteworthy
12 in terms of your assignment in this matter?

13 A. No.

14 Q. Thank you. Now, during your
15 professional practice as a financial advisor, have
16 you provided investment and planning advice to any
17 trust?

18 A. Yes.

19 Q. Approximately, how many?

20 A. About 150.

21 Q. What has been the range in terms of
22 asset values of those trusts?

23 A. Today, it's anywhere from 150,000 to 22
24 million.

25 Q. And do you have experience advising

1 clients with assets similar to those of the
2 L.W. Boykin, II, Residuary Trust?

3 A. Yes.

4 MR. BECKER: Your Honor, at this time,
5 I move to qualify Cheryl R. Holland as an expert
6 witness in the fields of financial planning and
7 investments and fiduciary standards for investing.

8 MR. DUFFY: Your Honor, we have no
9 objection.

10 THE COURT: All right. No objection
11 from either. All right. You didn't mention her
12 best qualification; she was an elder at the
13 Presbyterian Church from 2004 to 2007.

14 THE WITNESS: Judge Toal taught my
15 five-year old Sunday school for a year.

16 THE COURT: I find that by reason of
17 her training and education and experience, Cheryl
18 R. Holland is qualified as an expert in the fields
19 of financial planning and fiduciary standards for
20 investing, and has a strong background and
21 expertise in planning for family trusts, and I
22 declare her an expert in those areas. You may
23 continue.

24 THE WITNESS: Thank you.

25 BY MR. BECKER:

1 Q. Thank you. Ms. Holland, you were
2 engaged by Mary Deas Wortley and Alice Boykin
3 Belger as co-trustees of the L.W. Boykin, II,
4 Residuary Trust. What were you first hired to do?

5 A. I was asked to review and analyze and
6 compare the two investment plans and strategies
7 presented.

8 Q. Okay. And if you'll take a look behind
9 tab B of your report, that is Exhibit -- Wortley
10 Trial Exhibit 3. Is this a list of the documents
11 and other information that you've reviewed as a
12 part of that assignment?

13 A. That's correct.

14 Q. All right. Generally describe, if you
15 will, please, the work that you performed to
16 complete the comparison of these two -- of these
17 documents and through them your understanding of
18 the investment plans and strategies.

19 A. So I reviewed all of the documents,
20 highlighting what seemed to be pertinent to the
21 issues at hand in terms of looking to the future of
22 what's the best investment mix and strategy and
23 plan for the trust assets.

24 I then -- we were undertaking a review
25 of financial assumptions, broadly speaking, in the

1 organization, so I looked to see if the assumptions
2 presented in either or both plans seemed within the
3 range of logic of other investment professionals.

4 I then did a little homework around
5 timber, not the way John Helms has done, but as an
6 investor who would look at it as an asset class,
7 talked to colleagues, reviewed our own invested
8 history in that asset class.

9 And then I did an undertaking among
10 clients, and it turned out there were about 34 of
11 them who have come to us with substantial real
12 estate holdings and/or timber holdings over the
13 past 25 years to see the progression of those asset
14 allocations within those trust or partnerships or
15 outright holdings over time.

16 Q. Excellent. Thank you. I understand
17 you reviewed some resources. As a part of your
18 assignment you mentioned you checked some other
19 resources?

20 A. Correct.

21 Q. Are those listed behind Tab D of your
22 report, Wortley Trial Exhibit 3?

23 A. Yes, those are resources particularly
24 relevant to the issues at hand.

25 Q. All right. Now, you mentioned one

1 regarding timber; is that correct?

2 A. That's correct.

3 Q. And does that appear behind the page of
4 the resources you've consulted?

5 A. Yes, it does.

6 Q. Can you just give us a little bit of
7 information about why you selected this particular
8 overview? And then we can go through the different
9 figures I think that you might want to demonstrate
10 some of your opinions through.

11 A. Well, GMO has a very strong reputation
12 nationally as an investment organization, and so --
13 but their brand speaks for itself in terms of their
14 representation. And I also thought this document
15 did a good job of putting this asset class in
16 historical perspective, both in medium term and a
17 long-term perspective talking about its lack of
18 correlation with other assets and diversifying
19 properties and returns over time.

20 Q. Okay. Now, did -- were you -- were any
21 of the figures -- could we just go through Figures
22 1 through 4? I think those are particularly
23 relevant to your assignment and perhaps your
24 conclusions.

25 If we could zoom in there on Figure 1,

1 tell us what you -- what you see depicted there and
2 what you have concluded from it.

3 A. Well, this would be for those of you
4 who are not chart geeks. If you look along the
5 horizontal axis risks, that's measuring risks in
6 terms of volatility of the price of the investment
7 over time.

8 One standard deviation is two thirds of
9 the time it will vary above and beyond that circle
10 price on the left-hand side, the return. The
11 vertical axis is return. So, for example, if you
12 were going to use the U.S. three months treasury
13 bills purple dot, you would expect to have a 2.5
14 percent return over the time period 1995 to 2014.
15 But it would vary around that about 2 percent.

16 The price might be 2 percent lower, and
17 it's currently 2 percent less or more in any one
18 specific period of time.

19 Q. Now, how do -- talk about how the -- in
20 particular, the returns for US farmland and US
21 timberland compare to US equities in both large and
22 small towns.

23 A. So the benchmarks that represent this
24 asset class is over that 20-year period would have
25 return US farmland over 12 percent, and the

1 volatility around that price would have been
2 somewhere below -- 6 percent below that or above
3 that. Timberland would have been 8 percent,
4 broadly speaking, over that time period with a
5 volatility about the same.

6 If you look at US equities, you can see
7 the return there would have been 10 percent during
8 that time period, but much greater volatility in
9 the -- in that return in one period because you're
10 way over the 20 percent risk than its volatility
11 below or above the average return rate.

12 Q. So in general, then, equities are
13 riskier investments than US farm and US timberland?

14 A. In terms of price volatility on that
15 one dimension, yes.

16 Q. Okay. And the value or the price of US
17 farm and US timberland is much less volatile over
18 that 20 percent --

19 A. In price --

20 Q. -- 30-year period?

21 A. -- volatility.

22 Q. All right. But how would you say the
23 returns over time compare?

24 A. For this time period, US farmland is
25 greater, and US timberland is slightly less.

1 Q. Than --

2 A. Yeah, US equities, that's correct.

3 Q. Let's take a look at Figure 2. If you
4 could explain what that indicates and how that
5 might have affected your conclusions in this
6 assignment.

7 A. So one of the standards that we're all
8 discussing is the duty to diversify and to seek
9 investments that together reduce risks for the
10 portfolio. And what this chart is showing you in
11 this case is that US farmland doesn't march in
12 order with US equity.

13 So if US farmland is up point 4 --
14 5.4 percent in price, then you would expect US
15 equities to not correlate exactly with that. So
16 they don't move in tandem, and that's why you go
17 for diversification. So if something happens with
18 this asset class, it has less than impact with
19 another asset class.

20 Q. So would holding US timber and farmland
21 balance the risk of holding equities?

22 A. That's the theory, correct. And this
23 data would substantiate that during this time
24 frame.

25 Q. Shall we move on to Figure 3? Tell us

1 how -- what this figure is demonstrating and how
2 that might have affected your analysis in this
3 matter.

4 A. One of the considerations of the
5 Prudent Investor Act for a fiduciary is that the
6 impact of inflation or deflation on asset
7 selection. And so this chart just talks to the
8 issue between 1913 and 2014 for certain types of
9 timber, the rate of inflation, which is the
10 Consumer Price Index, in this case, the green line.

11 Douglas Fir was the red line and
12 Southern Pines was the blue line, which would say
13 that it has outpaced inflation over a long period
14 of time.

15 Q. And so is the conclusion to be drawn
16 there -- what is the conclusion to be drawn there
17 in terms of this trust?

18 A. For this trust, I would say that we
19 don't know the future; but if we were to go into an
20 inflationary time period, it is more likely that
21 timber would outpace the inflation than some of the
22 other assets that we would have to select from.

23 Q. What do you predict is the likely
24 course of inflation in the future?

25 A. Well, I just recently heard Janet

1 Yellen speak at a private gathering. And she was
2 projecting that the Fed will stay very close to the
3 2 percent target, but that it will vary around that
4 and the variation -- you know, we don't know how
5 far they'll let it lag one way or the other.

6 Q. All right. And finally Figure 4. If
7 you can, again, explain what that chart indicates
8 and how it might have affected your conclusions in
9 this matter.

10 A. So what I think is interesting about
11 this chart, if you look at the very far left, the
12 low inflation, that was probably the depression
13 when we had deflation, and you can see that
14 Southern Pines, you know, struggled along with
15 deflationary assets at the time, but in periods
16 where you have higher inflation that the timber
17 does quite well.

18 It keeps pace with or outstrips the
19 inflation in most of the scenarios.

20 Q. And if Ms. Yellen, Janet Yellen, the
21 former chair of the Federal Reserve Bank, in her
22 estimate that future inflation is going to track
23 along in the 2 percent range, would you consider
24 that mid-low inflation, mid-high inflation? Where
25 would it fit?

1 A. I would think it was mid to low.

2 Q. Mid to low?

3 A. Over the past, you know, time period
4 you could see that is true.

5 Q. And how does Southern Pines compare in
6 a mid to low inflation?

7 A. In that particular environment, it did
8 quite well.

9 Q. Okay. Thank you. Are there any other
10 takeaways from this document that you believe would
11 be helpful to explain or support your -- your
12 conclusions in this matter?

13 A. Well, I would only point out that it
14 also talks about the biological growth of timber,
15 which I think is probably implicit in most of this
16 conversation, is that you don't have to harvest it
17 in any one year.

18 Next year, barring the factor
19 displayed, it was worth more than the year before.
20 So patience can be reported with timber.

21 Q. Thank you. All right. Now, also I
22 believe you talked about -- let's turn to Tab E in
23 your report. I think you called that a spreadsheet
24 of asset class return assumptions. Could you
25 explain what this is and how it impacted your

1 analysis?

2 A. So this is an overview of the classic
3 types of investment types someone might select from
4 putting a portfolio together in the public markets,
5 and because some of the projections in both plans
6 related to those numbers, I just wanted to see what
7 other organizations of high regard also felt the
8 return assumptions would be over the coming
9 ten-year period.

10 And you can see how many -- how many
11 companies reported. So sometimes only one company
12 would report an asset cost assumption. And then we
13 took what would be the average of the group and
14 what was the median of the group to see where
15 broadly other prognosticators had fallen, partly to
16 get an assessment of what Schwab and Morning Star
17 would have as an analysis for the plan --

18 Q. Okay.

19 A. -- to the residuary trust to see if it
20 was accurate.

21 Q. All right. And did you find that to be
22 generally accurate?

23 A. Yes.

24 Q. Okay. If we could, let's go to Tab A.
25 Now, this is a letter dated June 15th from you to

1 me with a response to the request to provide an
2 expert witness opinion in this matter. And it
3 looks you've got four bullet points there. Is that
4 correct?

5 A. Correct.

6 Q. Are those -- is that in a summary
7 fashion what your opinions are --

8 A. Correct.

9 Q. -- in this matter? Since June 15th,
10 2018, you've received a June 18th, 2018, revision
11 of the Wortley-Belger plan, which now includes a
12 15-year after-tax cash flow projection of the
13 proposed diversification strategy and the trust
14 anticipated income and expenses; is that correct?

15 A. Correct.

16 Q. Have you had a chance to review that
17 document?

18 A. Yes.

19 Q. And since June 15, 2018, you've also
20 received the written version of the Rigdon Boykin
21 plan which was provided to us on June 20th, 2018.
22 Have you had a chance to review that document?

23 A. Yes.

24 Q. All right. So are the opinions that
25 you gave on June 15th the same after reviewing that

1 -- those second versions of the investment plans
2 and strategies proposed by the petitioner and
3 Ms. Wortley and Ms. Belger?

4 A. Yes. I appreciate the greater detail,
5 but the conclusions were similar.

6 Q. All right. Well, if you don't mind,
7 let's discuss the first bullet point there and
8 elaborate on what you were saying.

9 A. I felt strongly that because of the
10 assets currently in the trust, the geographic
11 concentration of the majority of those assets, the
12 needs of income for the current beneficiaries and
13 growth for the remainder beneficiaries that the
14 investment plan strategy was prudent.

15 It was quite thorough, not just
16 discussing asset allocation or liquidation
17 strategy, but government issues, which we all know
18 are quite important when making these decisions and
19 planning. And I also thought the underlying return
20 assumptions, given my research, were reasonable.

21 Q. Okay. How about your second opinion?

22 A. Again, I thought Mr. Boykin's
23 diversification scenario addressed the need for
24 income and growth in the sensitivity and retention
25 for income versus remainder of beneficiaries is

1 always present in these decisions.

2 I think the more the -- the thing that
3 I felt was more difficult to achieve and meet
4 optimal pricing and liquidation was the timing of
5 the liquidation for the timber and the real estate.
6 It was a five-year plan versus the longer-term plan
7 for all of those down to 15 percent. I think that
8 would be very difficult to achieve in my
9 experience.

10 Q. Did you read the trust instrument that
11 was provided?

12 A. Yes.

13 Q. Do you think that, just in your
14 opinion, is one of the -- does one of the purposes
15 of the trust as you read the document include
16 preserving, if at all possible, the Treasure tracts
17 enumerated in the will?

18 A. Yes, I did read that in the document.

19 Q. Do you believe that that would
20 constitute one of the purposes of the trust?

21 A. I think it should be part of the
22 decision-making matrix for a fiduciary, the
23 language of the document.

24 Q. And was there any ambiguity in that
25 language, in your opinion?

1 A. I don't know if I'm qualified to answer
2 that, but not to my mind.

3 Q. All right. Now, the third opinion, if
4 we could go to that. Did you notice that in the
5 petitioner's plan he assumed a payoff of the
6 deferred income estate taxes in year -- I believe
7 it's 2019? If I could -- well, in 2018. But let
8 me show you this copy of the petitioner's plan.

9 It's his -- Petitioner's Exhibit 172.
10 And there in -- right down here, U.S. treasury
11 interest assumes total debt paid in 2018.

12 A. Uh-huh.

13 Q. Did you notice that in the
14 Wortley-Belger plan that those -- that debt was
15 retired according to its permitted schedule with
16 the Internal Revenue Service over a 15-year period?

17 A. Yes.

18 Q. All right. Well, then explain to us
19 what your third opinion says about that difference
20 in the two plans.

21 A. Well, I think of 2 percent as cheap
22 money. If you have a plan to repay those dollars
23 over time, it gives the trustee more flexibility on
24 many of the issues they need, such as cash on hand
25 for all the other expenses and other issues we've

1 been talking about and are addressed in the plans.

2 And, because you're getting inflation
3 of at least 2 percent, your dollars will be
4 minimally cheaper over time to repay. So you want
5 to borrow, but that rate -- when you can borrow at
6 that rate, unless there are other reasons not to do
7 so, which is why we're having a great financial
8 asset rise and companies are going out and
9 borrowing money at 2 percent.

10 Q. Do you see with -- based on your
11 experience managing other trusts like this and
12 everything you've learned about this one, do you
13 see any reason that there -- would it be prudent,
14 in your opinion, not to make use of that 6166
15 selection?

16 A. Given the 2.78 million, it's a low loan
17 to value ratio; it has a long time for payoff.
18 It's low rate. It seems a very logical, prudent
19 decision to make.

20 Q. All right. Let's move on to your
21 fourth opinion. If you could please explain that
22 for us and how you came to that conclusion.

23 A. So if we're going by a strict
24 definition of income, trust income, it would be
25 very difficult for any model that you're creating

1 with existing asset classes to produce -- at the
2 time it was a 3 1/2 percent per year payment from
3 income, given where US stocks and US treasury bonds
4 are currently. Even if you took quite a bit of
5 undue risk, it's unlikely you could come up with
6 that rate.

7 So at some level you will be taking
8 funds from, logical, the growth of the portfolio to
9 meet the income needs.

10 Q. All right. Would that be a reason that
11 a total return-type distribution would be in order
12 in this situation?

13 A. I think that's much more useful for the
14 income beneficiaries to have an understanding and
15 stability of their income over time.

16 Q. Ms. Holland, now that you've reviewed
17 these -- you've reviewed the Wortley-Belger
18 Investment Plan and Strategy and you have reviewed
19 the Rigdon Boykin Petitioner's Plan and Strategy,
20 and based on your training and experiences as an
21 investment advisor, what are your general overall
22 observations and impressions of each plan? And
23 then we'll turn to a chart to compare -- compare
24 them.

25 A. I think my general overall impression

1 is that the Wortley plan is more thorough; it's
2 more detailed; it addresses a broader range of
3 issues. It's logical in its assumptions, and I
4 think, again, thoughtful in its time frame allowing
5 for escalation if opportunity arises, but
6 understanding that liquidating the concentrated
7 assets, whether it's Apple stock or timberland,
8 takes a good time frame to do it well. And so
9 that's my broad overview.

10 I think given the language of the
11 trust, the ending asset allocations for the 10- to
12 15-year time period is doable and logical. I think
13 you could always reset that over time as things
14 change. But to set a time for five years seems
15 very difficult to achieve.

16 We have 34 clients who came with us
17 with some large concentrated assets of this nature,
18 and we had no one who liquidated all their assets
19 in less than ten years. And you have to remember,
20 I get paid more to liquidate the assets and give it
21 to me to manage. So when we're holistically
22 advising, we're not in a rush to complete that, and
23 every single client, if you'd like to look at the
24 numbers, would be rewarded for that patience over
25 time.

1 Q. Also, right now if you were to
2 liquidate the land and timber holdings in the trust
3 and invest it in the stockmarket, what are prices
4 of equities right now in the US and
5 internationally? Are they at an all-time low or at
6 an all-time high; how do they compare based on
7 history?

8 A. So you can use dozens of metrics to
9 look at where the stocks is going to go. And,
10 quite frankly, none of us in this room know that.
11 But I would say that, you know, generally speaking,
12 when you look at the future return assumption,
13 people are saying the markets over the next decade
14 are going to return less than they might have over
15 a longer historical period of time because of where
16 evaluations are right now.

17 Q. So would a five-year liquidation plan
18 put you in a position of selling one asset class
19 and paying top dollar high historical price for
20 another?

21 A. I don't know the answer to that. I
22 would say it could go either way. You could sell
23 everything and the market could drop, and we would
24 have perfect timing to invest. So it's difficult
25 to know. That's why you have to diversify over a

1 long time horizon when you're coming into new
2 markets.

3 Typically, what clients prefer to do is
4 they're managing their lists and they're managing
5 their behaviors.

6 Q. Thank you. Now, if you were advising
7 these trustees in a meeting called to consider
8 these investment plans, which plan would you
9 recommend that the trustees should adopt?

10 A. If this exact set of facts were coming
11 to us?

12 Q. Yes.

13 A. I would say let's start with the
14 Wortley plan and reassess every year all the
15 factors that are in here. It's a very detailed
16 plan on the timber and the real estate. There's a
17 lot of work to be done, there's a lot of
18 opportunities out there over time, and we have to
19 generate the income and expenses to make it work
20 for everyone at hand.

21 Q. All right. Now, let's take a look at
22 the last Tab in your report. This compares some
23 key characteristics of each plan. Could you just
24 take the Court down this and --

25 THE COURT: I've read it and I've seen

1 it.

2 BY MR. BECKER:

3 Q. All right. Well, do you have any other
4 -- any other comments regarding this comparison of
5 the plans?

6 A. No. Just say some of the differentials
7 are not as big as they might seem if you figure out
8 what the evaluation is through this process. The
9 2.625 or 3 percent are not that distinct, and I
10 think it's very smart to use the total return
11 projection for the income beneficiaries.

12 I don't know that it would be possible
13 to get to an asset allocation lower than 60/40
14 without some fire sales along the way. In my
15 experience, over a 10-year period at least and
16 possibly a 15-year period.

17 So there's logic to both sides, there's
18 thoughtfulness to both sides; I just think the one
19 is the more useful.

20 Q. Thank you. Now, Ms. Holland, regarding
21 all of the opinions regarding these two investment
22 plans that you've testified to today, do you hold
23 these opinions to a reasonable degree of
24 professional certainty?

25 A. I hold them to a reasonable degree of

1 professional certainty, yes.

2 MR. BECKER: Thank you. I have no
3 further questions.

4 THE COURT: Cross-examination?

5 CROSS-EXAMINATION

6 BY MR. DUFFY:

7 Q. Ms. Holland, good afternoon.

8 A. Good afternoon.

9 Q. I've got just a few questions for you.
10 You testified that you grew up in Columbia; is that
11 right?

12 A. I did.

13 Q. Have you gone and seen some of these
14 properties that are in the Boykin trust?

15 A. I have not gone and seen them since I
16 was engaged. I have been to some of the properties
17 before.

18 Q. And which properties are those?

19 A. I've been to the Mill Pond.

20 Q. The Mill Pond?

21 A. Uh-huh.

22 Q. So you saw the downtown Boykin area and
23 all that?

24 A. Right, exactly. It's a rite of
25 passage, right?

1 Q. And, Ms. Holland, you advised your
2 clients -- I think I understand from your testimony
3 that you advised your client to diversify their
4 portfolio?

5 A. Correct.

6 Q. And the idea, of course, is to hedge
7 against risk; isn't that right? One of the ideas.

8 A. Absolutely.

9 Q. And I believe you testified earlier
10 that Ms. Wortley's plan -- or Ms. Wortley and
11 Ms. Belger's plan, in your view, is the more
12 prudent, and I think your report said the more
13 prudent and patient approach; is that right?

14 A. Correct.

15 Q. But prudence isn't always equated with
16 patience, is it?

17 A. Patience and decision-making,
18 absolutely.

19 Q. Well, aren't there circumstances where
20 it would be prudent to actually be nimble? For
21 example, if you were exposed to unnecessary
22 liability, wouldn't you want to be nimble?

23 A. We'd want to mitigate that liability.

24 Q. And avoid them, of course?

25 A. To avoid liability? Always, as a

1 financial advisor.

2 Q. And, Ms. Holland, is in part your
3 opinions in this case are based on a report or a
4 projection done by Mr. Helms; isn't that right?

5 A. So I have both reports.

6 Q. Okay. So a 15-year cash flow
7 projection and also a -- a very colorful
8 spreadsheet and all that?

9 A. And I also believe Ms. Peacock was
10 behind Mr. Boykin's.

11 Q. Okay. And you understand, of course,
12 that under Mr. Helms' current model, which your
13 opinions you tell me are partly based on, that he
14 suggests selling only 16 percent of the land over
15 the next five years; isn't that right?

16 A. Correct.

17 Q. Okay. And if my math is right, that
18 would be approximately diversifying away from land
19 of 3.2 percent every year of the first five years?

20 A. That's about right.

21 Q. Okay. And I'm sure you've heard the
22 term, trust, but verify, haven't you?

23 A. True.

24 Q. Okay. And you've trusted Mr. Helms'
25 data that you've been provided with, haven't you?

1 A. I reviewed it and read it with a
2 thoughtful eye.

3 Q. And you haven't done your own
4 quantitative analysis?

5 A. No, absolutely not.

6 Q. So, in other words, if there's an
7 assumption that Mr. Helms provides that is
8 unrealistic or unreasonable or incorrect, then it
9 would, of course, impact your opinions, wouldn't
10 it?

11 A. If there were an assumption that were
12 inaccurate or incorrect?

13 Q. Yes.

14 A. Yes.

15 Q. And, Ms. Holland, have you studied the
16 real estate market in Kershaw County?

17 A. I have several clients with properties
18 in Kershaw County. I'm not an expert, but over
19 25 years I've had a lot of exposure, so maybe not.
20 That's what I would say.

21 Q. Okay. But you haven't verified or
22 investigated -- independently investigated the
23 market as it relates to the land in this trust?

24 A. Correct.

25 Q. And speaking of trusting but verifying,

1 I think you testified earlier that the 6166
2 selection, the deferred tax payment, that that was
3 also the more prudent --

4 A. Yes.

5 Q. Okay. But you haven't investigated
6 whether that 6166 election was appropriate for the
7 estate, have you?

8 A. Would you explain what --

9 Q. Appropriate under the law, whether it
10 was an appropriate election?

11 A. I saw that in some of the e-mails back
12 and forth.

13 Q. Okay. And I know you're not a tax
14 lawyer, but you haven't independently investigated
15 whether that was the case?

16 A. No. I've only testified to the logic
17 of using it.

18 Q. Okay. Well, would it change your
19 opinion about whether it was prudent if you knew
20 that there had been requests from the estate to
21 actually close the estate on that issue and that
22 request had been denied?

23 A. Not as to the logic employing that
24 strategy.

25 Q. Okay. But it may affect whether it was

1 prudent, because it might not have been proper?

2 A. Absolutely.

3 Q. Ms. Holland, do you have any
4 understanding how much the stock market generally
5 has increased from January of 2016 to December of
6 the following year?

7 A. Yes.

8 Q. And what will that be?

9 A. Do you want me to give you a specific
10 number?

11 Q. Well, to the extent you can.

12 A. So for the, say, last calendar year,
13 how much did it --

14 Q. The last two years, calendar years, '16
15 to '17.

16 A. North of 20 percent.

17 Q. Okay. And that's pretty good, isn't
18 it?

19 A. It's quite good.

20 Q. Bear with me a moment, if you would.
21 My last question, I think you said if you had to
22 pick between these two plans, you said, let's just
23 start with the Wortley plan and see how things go,
24 is that fair to say?

25 A. No. I think I said I would -- I

1 believe the Wortley plan is the right platform and
2 the right strategy, the right detail, the right
3 outcomes based on those assumptions for the time
4 period. That's logical in my mind --

5 Q. Is there something other than the two
6 plans you've seen that you would propose if the
7 trust were your client coming to you?

8 A. I do not have enough data to give that
9 opinion.

10 MR. Duffy: Bear with me just a second.
11 I think that's all the questions I have, but I want
12 to confirm. That's all I have. Thank you,
13 Ms. Holland.

14 THE COURT: Mr. Tetterton?

15 MR. TETTERTON: Just a few, Your Honor,
16 and I can do them from here.

17 CROSS-EXAMINATION

18 BY MR. TETTERTON:

19 Q. Ms. Holland, you have read the will; is
20 that correct?

21 A. That's correct.

22 Q. And do you understand that 90 percent
23 of the assets are in timber?

24 A. Yes.

25 Q. And do you also understand that under

1 either plan it would require the vote of all three
2 trusts unanimously?

3 A. Correct.

4 Q. So if all three trustees don't vote
5 unanimously to adopt either plan, then neither plan
6 would work?

7 A. Understood.

8 Q. So if they have come to an impasse
9 about which plan to adopt or how to manage this
10 trust, then nothing is going to happen; is that
11 correct?

12 A. I understand.

13 Q. And do you think that the property is
14 being used for its highest and best use as we speak
15 here today?

16 A. I'm sorry, repeat that.

17 Q. Is the trust assets being used for its
18 highest and best use as you sit here today?

19 A. I'm not able to answer that.

20 Q. If the assumptions -- some 42
21 assumptions made by Mr. Helms are not accurate,
22 then his plan would be flawed; would it not?

23 A. So this is the second time that
24 question has been asked. And I think what was
25 important to Mr. Helms' analysis, he did do a

1 sensitivity analysis, which is standard when you're
2 making projections to say, I cannot be 100 percent
3 accurate in determining the long-term, so I will do
4 a sensitivity analysis to see what the outcomes
5 might be to mitigate the risk of being wrong.

6 Q. And all of these plans are based on
7 assumptions; is that correct?

8 A. Absolutely.

9 Q. Okay. And if any of these assumptions
10 don't come to fruition, then the plan goes out the
11 window or becomes flawed?

12 A. I would disagree. As a planner, you
13 have to have a plan. Everyone in this room has a
14 plan for their own budget for the year, retirement,
15 and it's got to change pretty regularly.

16 We live in a dynamic world and we have
17 to respond to those changes. So you have a plan
18 because -- and it will be flawed.

19 Q. But I think what you're telling me is
20 just have a Plan B?

21 A. You have to have a Plan A and adjust to
22 Plan B if needed.

23 Q. And maybe a Plan C?

24 A. And maybe a Plan C.

25 MR. TETTERTON: Okay. Thank you.

1 MR. BECKER: Nothing further from me,
2 Your Honor.

3 THE COURT: Very good. Thank you so
4 much, Ms. Holland. It's been very helpful. All
5 right. You may step down.

6 THE WITNESS: Thank you.

7 THE COURT: All right. Mr. Becker,
8 where do we stand?

9 MR. BECKER: We have two more
10 witnesses, if you'd like to keep going, Your
11 Honor.

12 (Off-the-record conference.)

13 THE COURT: Who are those witnesses?

14 MR. BECKER: Those witnesses are Mary
15 Deas Heimbach -- actually, Ms. Eldridge is going to
16 handle the direct of those witnesses -- and Allie
17 Belger.

18 MS. ELDRIDGE: Your Honor, it is Mary
19 Deas Heimbach and Allie Belger are our witnesses
20 for today.

21 (Off-the-record conference.)

22 THE COURT: I've got a lot of
23 questions. It's not because I'm trying to protect
24 anybody from being criticized, but I really don't
25 think my decisions about the performance of these

1 trustees is going to be influenced by other trusts
2 or other matters that they dealt with that don't
3 involve this trust.

4 So I've got questions about
5 Mr. Bailey's testimony from that standpoint. Put
6 that aside in a box for a moment. All right.

7 Mr. Bush is certainly someone you ought
8 to put up. I starred his name when I saw it there
9 for someone to tell me about that dam. And as you
10 can tell from the questions I asked Mr. Helms, one
11 concern I've got is whether or not either of these
12 plans accommodates the question of the catastrophic
13 failure of that dam. You've got the issue of that
14 dam and its condition, and I think that's a big
15 issue.

16 I frankly think the issue of that Mill
17 Pond is stuffed to the gills with growth such I
18 went in a very small, little boat, and the driver
19 of the boat had to lean over the bottom of it and
20 untangle the tiny little propellor that was on that
21 just to move around in the very little place we
22 moved around.

23 I had all visions of one of those
24 alligators coming around and snapping at me, to get
25 up there and untangle the propellor on what was not

1 a very big boat at all.

2 And I say that only because that is
3 another financial question about the maintenance of
4 this asset that is a Treasure that people want to
5 maintain, but it's going to take some money. And
6 I'll tell you, grass-eating carp won't even start
7 with this. There's going to have to be some major
8 lowering of that pond, cleaning that pond out,
9 getting that dam back in shape like it reasonably
10 ought to be.

11 All of that has got to be given some
12 attention and some numbers put on it in my view, or
13 at least I'm concerned about that so --

14 MR. BECKER: We can do that.

15 THE COURT: So, certainly, Mr. Bush is
16 an important component of talking about what it's
17 going to take if these Treasure properties are to
18 be maintained as Treasure properties, but not big
19 generators of income. There's got to be a plan
20 that balances what income beneficiaries are
21 entitled to vis-à-vis what it takes to maintain all
22 of these Treasure properties with the financial
23 impact that the current status entails.

24 I would also, you know, need to know
25 something about the liability insurance that may or

1 may not be available with respect to the uses that
2 are now being put on the Boykin Village property,
3 and whether or not -- I can't imagine that they've
4 got any liability insurance on that dam.

5 But I will tell you, if they have a
6 catastrophe like that that overcame Columbia, South
7 Carolina, there will be lawsuits galore about the
8 bursting of that dam and going through the
9 watershed and swamp and dam.

10 And so those are the kinds of things
11 that I am concerned about that nobody has really
12 addressed yet.

13 MR. BECKER: We can do that, Your
14 Honor.

15 THE COURT: Yes, sir. And I don't want
16 it to take ten days. I want it to take one day.

17 MR. BECKER: No, ma'am. No, ma'am,
18 we're not --

19 THE COURT: Now, in that connection,
20 Mr. Bundy is a former attorney for some of the
21 litigants who has withdrawn as an attorney, I
22 think, in preparation for perhaps testifying in
23 this matter. And I appreciate the ethical decision
24 that was made, and that's the proper decision to
25 make.

1 But, again, I don't want to get into
2 testimony that has to do with the squabble and feud
3 and disagreements that folks have gotten into and
4 whether they like each other or don't like each
5 other. That's not going to have one thing to do
6 with what I have to do to decide this case.

7 So I simply put that out to you because
8 I've already had a little bit of experience, even
9 in the arguments that have been presented to me
10 when Mr. Bundy was still attorney. And none of
11 that is going to be allowed to be testified to. I
12 can tell you that.

13 And if I'm appealed on that, that's how
14 it will be. Because I am not going to let this
15 trial be used as a vehicle to exacerbate the
16 already painful relationships that currently exist
17 between family members. This -- I'm hoping to back
18 that down and not have this trial be a vehicle for
19 stirring it up.

20 Now, with respect to Ms. Heimbach and
21 Ms. Belger, I understand what their testimony is
22 going to be, and I'm sure it would be brief, and I
23 think it's appropriate and proper for the next
24 generation to speak, so I have no dilemmas with
25 that at all.

1 I do not want these trustees to be put
2 through yet another wrinkle. And so if Ms. Mary
3 Deas Wortley has got something that has got to be
4 said that hasn't been said, that's one thing, but a
5 lot has already been said.

6 MR. BECKER: I understand, Your Honor.

7 THE COURT: And then, finally, you had
8 given some indication that you might call
9 Mr. Rigdon Boykin. I hope you've reconsidered that
10 because I think we've got a very full picture, but
11 that's something you'll have to decide.

12 MR. BECKER: I will -- at your request
13 I will reconsider that, Your Honor. And if I can
14 avoid calling him, I will. As I mentioned, I'm
15 cautiously hopeful that a second phase of this
16 trial might not even be necessary.

17 THE COURT: That would be the best
18 thing in the world if that happened. And I told
19 y'all to begin with that. I gave up on that
20 because you were at such an impasse. And that's
21 still the thing that worries me so much about this.

22 These are people of good faith and
23 you've got good lawyers and good financial planners
24 and advisors on both sides, but you are -- because
25 of the provisions of the will that require

1 unanimity, even these two investment plans cannot
2 be adopted unless there's unanimity.

3 And I've got to make a decision about
4 whether I should intervene in that. So that's
5 looming before me.

6 If y'all took that burden away by
7 deciding we don't want a judge to have to interfere
8 with our family and make these decisions, we want
9 to make them ourselves, it would be the best thing
10 in the world for this family. And, certainly, it
11 would be a good thing for me, but I will make the
12 decision if I have to.

13 And, of course, you know, if at the
14 end, I think it wise to get the independent report
15 the trustees of the trust -- I mean, the attorney
16 for the trust, Tina Cundair, she has spoken to
17 everyone; she's done a lot of research; you all
18 have favored her with all of this material, and she
19 studied it at length, and it might well be that we
20 could benefit from hearing from her, at least a
21 written report of her input. But all that looms in
22 the future.

23 I hope we can complete it in a day.
24 And, quite frankly, I will give some hard thought
25 to what I can do to adjust my schedule. I've got a

1 two-week trial, and I have babies and grandbabies
2 looking for Big Mama to be taking care of them in
3 August; in addition to which I've got at least a
4 small two-day trial I've got to do.

5 So I'm going to be trying to find
6 another day and not wait months before we resume
7 this thing. So if you can get together and agree,
8 the sooner the better. Now, I don't know if that's
9 possible or not, but I think it's wise.

10 MR. BECKER: We can certainly try.

11 THE COURT: Any further questions of
12 me?

13 MR. BECKER: No, ma'am.

14 THE COURT: Well, again, great respect
15 for all of you. This has been a good day. This
16 has been very excellent information offered by both
17 sides and good insights by the attorneys on all
18 sides of this matter.

19 So thank you very much, and court will
20 be in recess to be reconvened at a time to be
21 decided after consultation with the attorneys,
22 which I hope I would do and start throwing out some
23 suggestions to you within the next two weeks.

24 MR. BECKER: Thank you.

25 (These proceedings were recessed at

1 5:21 p.m., to be completed at a future date and
2 time.)
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1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 21 day of September, 2018 at
13 Charleston, Charleston County, South Carolina.

14

15

16

17 S/Carol Denise Lauder_____
18 Carol Denise Lauder
19 Registered Professional
20 Reporter, CP
My Commission expires
February 27, 2028

21

22

23

24

25

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.)

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 27 & 28, 2018
Columbia, South Carolina

BEFORE:

THE HONORABLE JEAN TOAL, JUDGE.

APPEARANCES:

LIAM DUFFY, ESQ.
RICHARD ROSEN, ESQ.
Attorneys for Ridgon Boykin

JAMES BECKER, ESQ.
ROB RIEBOLD, ESQ.
MARY ELDERIDGE, ESQ.
Attorneys for Mary Deas Wortley, Theodore Wagner, B.
Boykin Wagner, Mary Deas Heimbach,
Allie Boykin Belger

WILLIAM TETTERTON, ESQ.
Attorney for Lemuel Whitaker Boykin, III and May
Cantey Boykin

KAREN AMBROZIAK
Official Court Reporter

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PETITIONER'S EXHIBITS

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176	Email 2/21/17	141	
177	7/17/17 email	141	225
178	7/18/17 email	141	225
179	Memo, undated.	141	223
180	Revised valuation	387	387
181	Email 1/27/17	79	
182	Photograph	385	442
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<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Video deposition	385	

1 THE COURT: This is a resumption of proceedings in
2 the matter of L. Whitaker Boykin, II, Rubin H. Boykin,
3 petitioner against Mary Deas Wortley, Alice Belger and
4 others.

5 Counsel, I very much appreciate you and your clients
6 being accommodating to me and allowing this trial to be
7 moved to today. Thank you so very much for that.

8 With that, we will begin.

9 Mr. Becker.

10 MR. BECKER: We're in the middle of our case, we're
11 ready to go.

12 THE COURT: Sir?

13 MR. BECKER: We were in the middle of our case and
14 we're ready to go.

15 THE COURT: Yes, you may proceed.

16 MR. BECKER: Your Honor, we do have some binders of
17 exhibits that we'll go through with the witnesses in the
18 remainder of our case. I have a set of these for the
19 court reporter. I have a set for you and your clerk, if I
20 may come through here?

21 THE COURT: Yes, sir, please.

22 MR. BECKER: We have a seat for you and your clerk.

23 THE COURT: Thank you, sir.

24 MR. BECKER: And we have a set for the witness.

25 THE COURT: And I would say as you bring these

1 matters to my attention, I'm also aware of and have
2 reviewed the Respondent Wortley and Belger's second
3 amended answer and counterclaims to the amended petition
4 of Mr. Rigdon Boykin, so I'm familiar with these pleadings
5 and you may proceed.

6 MR. BECKER: Thank you, Your Honor. Our first
7 witness, Your Honor, is Mr. George Bailey. And he is at
8 the witness stand.

9 THE COURT: Mr. Bailey --

10 Let's swear Mr. Bailey.

11 GEORGE BAILEY, after being duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION:

14 BY MR. BECKER:

15 Q Good morning, Mr. Bailey.

16 THE COURT: All right. Mr. Bailey, you have a gentle
17 voice, and for the benefit not just of this Court, but of
18 those in attendance today, if you will speak up, sir.

19 THE WITNESS: I will, Your Honor. I'll move a little
20 closer.

21 THE COURT: Yeah, that microphone is going to be
22 picking you up and that's what you really need to bring
23 near you. I'm sure the court reporter will appreciate it
24 and the rest of us, as well.

25 BY MR. BECKER:

1 Q All right. Good morning, Mr. Bailey.

2 A Good morning.

3 Q Could you please state your name for the record,
4 please, sir?

5 A George Screven Bailey.

6 Q All right. Thank you. Could you, please --

7 THE COURT: All right. Mr. Bailey, you speak up, as
8 well, please, sir.

9 THE WITNESS: Yes, ma'am.

10 Q Mr. Bailey, could you please give the Court a general
11 description of your professional education and experience?

12 A I graduated from the University of South Carolina
13 School of Law in 1972 -- excuse me, 1975, and attended New
14 York University, got a Master of Law degree in taxation in
15 1976.

16 Q All right. Are you a certified specialist -- are you
17 practicing law in South Carolina?

18 A I am in a retiring state right now and I surrendered
19 my tax certification due to the fact that I was not in the
20 full-time practice of law.

21 Q All right. Are you -- or were you when you were in
22 active practice a certified specialist in any particular
23 area.

24 A Yes. In taxation law.

25 Q Now, did you practice with the Nelson Mullins Riley

1 and Scarborough Law Firm for a number of years?

2 A I did, for 32 years.

3 Q All right. And after -- which firm are you
4 associated with now?

5 A I'm of counsel for Sojourner, Caughman & Thomas.

6 Q How long have you been in that position?

7 A About two-and-a-half years.

8 Q So how many years have you practiced law?

9 A Forty-two.

10 Q During your professional practice as an attorney, did
11 you practice in the fields of estate planning and tax law?

12 A I did, exclusively.

13 Q Okay. Approximately how many estate planning
14 engagements did you have over the course of your 42 years
15 in practice?

16 A Hundreds, maybe thousands.

17 Q And about how many trust documents do you estimate
18 you prepared or reviewed over that time?

19 A Hundreds, perhaps, thousands.

20 Q Have you ever served as a trustee of any trust?

21 A Only family trust, members of my family.

22 Q All right. I assume you provided professional advice
23 in the counsel of the administration of trusts?

24 A I have.

25 Q Approximately how many different trusts have you

1 assisted with the administration?

2 A I would say hundreds.

3 Q Okay. What's been the range in size in terms of
4 asset value of the trust for which you provided
5 professional advice and counseling?

6 A Oh, you know, probably \$100,000 to tens of million of
7 dollars.

8 Q Okay. And what has been the range of the different
9 types of trust assets of the trust for which you've
10 provided counsel?

11 A Well, everything, real estate, stocks, bonds,
12 multitude of closely-held corporations, multitude of
13 various assets.

14 Q All right. Thank you. Now, if you'll look at
15 Exhibit 1, that is the Last Will and Testament of Lemuel
16 Whitaker Boykin, II. Are you familiar with that document?

17 A Yes, sir.

18 Q Do you know who prepared this document?

19 A It's my understanding it was prepared by Ed Royal.

20 Q All right. And just to set the stage here, does this
21 document name Alice S. Boykin, now deceased, and Mary Deas
22 Wagoner, now Wortley as co-personal representatives of Mr.
23 Boykin's estate?

24 A It was.

25 Q And this Will created both a residuary and a marital

1 trust; is that right?

2 A That's correct.

3 Q The trustees of that marital trust were Ms. Alice S.
4 Boykin, Mr. Boykin's widow, and Mary Deas Wagoner, now
5 Wortley; is that right?

6 A That's right.

7 Q And the trustees of the residuary trust are Rigdon
8 Boykin, Alice Boykin and Mary Deas Wortley?

9 A Correct.

10 Q Now, were you engaged as counsel by Alice S. Boykin
11 for the Lemuel -- the L.W. Boykin, II, residuary and
12 marital trust?

13 A Yes. At that time, I was a partner at Nelson Mullins
14 Riley and Scarborough and Bob Wilkins was of counsel to
15 our firm. And Rigdon Boykin had contacted Bob Wilkins
16 about assisting with the estate. Bob arranged to have us
17 all meet together. So that was my first time meeting
18 Alice Boykin or Rigdon Boykin.

19 Q Now, Mr. Boykin passed away in December of 1989. Did
20 you meet Ms. Alice S. Boykin shortly thereafter?

21 A Yes, I don't remember exactly when, but I certainly
22 wouldn't expect it to be during 1989.

23 Q Right. And you were ultimately engaged by her to
24 assist her with his estate and these marital and residuary
25 trusts?

1 A That's correct.

2 Q Did you ultimately prepare and file Mr. L.W. Boykin,
3 II's estate tax return?

4 A I did.

5 Q And at that time, did you also begin serving as
6 counsel for both the residuary trust and the marital
7 trust?

8 A Yes.

9 Q And did you also engage -- were you engaged to assist
10 Ms. Boykin with her own estate planning?

11 A Yes, I was.

12 Q Now, over the years you represented her, what were
13 Ms. Boykin's objectives in her own estate planning?

14 A Well, her objectives were to compliment Mr. Boykin's
15 objectives, and that was to preserve the Boykin property
16 to create an income stream that would benefit the
17 children.

18 She went to great pains to develop the Boykin
19 community there and try to develop it as a tourist
20 destination in the various income-producing properties
21 that were there as part of the Boykin community. That was
22 her whole driving force.

23 Q All right. Did your legal representation of her
24 continue until her death on August 8th, 2016?

25 A Yes.

1 Q Now, going back in time to when you were first
2 engaged by Ms. Alice S. Boykin, what was the status of
3 Mr. Boykin's estate after his death?

4 A Well, we just had hurricane Hugo come through, and
5 the estate was very heavily -- was not all, but was
6 substantially -- the bulk of the estate was real estate
7 and the bulk of the real estate was timberland. So there
8 was -- she was hit with a double whammy of having lost her
9 husband and, also, now suffered with Hugo on the property.
10 It was pretty dire circumstances as far as I'm concerned.

11 Q How much cash did the estate have?

12 A I don't recall.

13 Q Was it liquid or illiquid?

14 A Illiquid.

15 Q Did you recommend to Ms. Boykin that she begin to
16 sell some land to address the liquidity problems?

17 A I thought that that was her only alternative, but she
18 was very determined that she was not going to sell land.
19 We were in somewhat of a recession at that time. Land
20 values were very low, and she was adamant that she was not
21 going to sell the property given the current values, that
22 she was going to hang on and wait until property values
23 rebound and then she would start selling some of the
24 nonessential or nonpreferred properties in the estate.

25 Q All right.

1 A And I, quite frankly, you know, said, okay. I kind
2 of doubted her, that she could do that, but that was what
3 she decided to do.

4 Q Did she ultimately succeed?

5 A She did. She would always wait until the absolute
6 opportune time and pick the cherry from the tree. She
7 gradually disposed of some of, what I would call ancillary
8 tracts, and in my view, was able to get top dollar for
9 them.

10 Q How would you describe Ms. Boykin's business acumen
11 skills?

12 A She was a very bright businesswoman. She was very
13 shrewd. She didn't leave much money on the table when you
14 dealt with her.

15 Q Did she use her personal funds to pay trust expenses?

16 A She kind of looked at everything as one big pot and
17 if money -- she had money and the trust -- a trust needed
18 money to make improvements to a piece of real estate, she
19 would allocate, she would take her funds and use them for
20 the trust. Sometimes she would take trust funds and
21 use -- from one trust and use them for another trust.

22 And I was not involved in those transactions directly
23 to know exactly what she did, but that was the way it was
24 related to me and it was all part of the big picture of
25 carrying out the mission.

1 Q Of Mr. Boykin's Will?

2 A Well, both of their missions. They were in line with
3 what their objectives were, based on what you would
4 interpret from the Will. I didn't know Mr. Boykin
5 personally, so his mission was never related to me, but I
6 would base my opinion on this document.

7 Q Right. Now, she managed the residuary trust and the
8 marital trust along with her co-trustees from
9 December 1989 to August of 2016, almost 26 years. Did you
10 assist her throughout this time period?

11 A Yes. You know, she's the person that was on the
12 scene. So she is the person that was doing the bulk of
13 the work, negotiating timber sales, managing the
14 timberland, managing the investment real estate. You
15 know, she was a real estate broker herself, so she was a
16 very astute person as far as real estate was concerned.

17 So she was very hands-on, hands-on with the farm.
18 And again, this is not my direct dealings with her. She
19 had me prepare leases and so forth. I was never involved
20 with any of the negotiations with tenants, but from time
21 to time, I would present various leases per her direction.
22 So I knew that she communicated with Mary Deas when she
23 made decisions, and it's my understanding that Mary Deas
24 was always onboard with the decision, again, with the same
25 family purpose.

1 As far as communications with Rigdon and what
2 transactions occurred with respect to the residuary trust
3 assets, I'm not sure. Rigdon, at that time, was very busy
4 as an attorney with his own law practice in New York, so I
5 don't know how much communications there were. And, quite
6 frankly, I don't know what was going on. I couldn't tell
7 you specifically what transactions may have been involved
8 involving the assets of residuary trust that might have
9 required Rigdon's input.

10 Q Okay. What would you say are some of the highlights
11 of Ms. Boykin's management of these trusts? What would
12 she be most proud of in terms of accomplishments?

13 A I don't know. I don't know of particular -- I would
14 say she wasn't finished with her accomplishments, but I
15 would say that probably establishing the Boykin community
16 as a tourist -- I won't say a mecca, but, you know, a
17 tourist location and the Boykin Christmas parade and so
18 forth. I would say that was probably her proudest
19 accomplishment was putting Boykin on the map.

20 Q Did she bring most of those buildings to those
21 locations?

22 A I'm not sure about the restaurant, where it came
23 from. She did bring the church to the community, and I
24 believe she brought the little general store. The broom
25 shop I think was there, but she renovated that so she

1 could be there. She renovated the gristmill, which she
2 had to bring in some kind of expert on historic gristmills
3 to help refurbish the mill and make it work. Again, all
4 part of the tourist attraction.

5 Q Right. Did she preserve the mill pond?

6 A Yes. I think she -- I'm not sure that the mill pond
7 was ever threatened except for the flood during 2/15,
8 which my understanding, Wayne Belger was able to get the
9 flood gates open and save the pond.

10 Q Right.

11 A She treasured the mill pond.

12 Q All right. And did she also provide for her children
13 during this time?

14 A Well, she was always trying to balance between the
15 children and the needs of her children. It wasn't
16 necessarily equal, but she would want to try to take care
17 of -- my sense was that she wanted to try to take care of
18 everyone, perhaps, assessing based upon what she evaluated
19 their needs to be.

20 Q All right. Now, getting back to Mr. Boykin's Will, a
21 very singular aspect of this Will is that in Item 10,
22 Mr. Boykin identified a number of specific tracts of real
23 property and expresses his desire that they be retained if
24 at all reasonably possible.

25 If you'll take a look at Exhibit 10, that's a

1 demonstrative exhibit which includes the language from the
2 Will and those tracts that are specifically identified
3 along their acreages. And going back also to the Will,
4 did you review this language in the Will when you began
5 your representation of Alice S. Boykin and the trustee?

6 A Sure.

7 Q How did you interpret these provisions in Item 10?

8 A Well, I think it's pretty self-explanatory what his
9 desires were in terms of what pieces of property that he
10 viewed as being most valuable to him and to the family.

11 Q All right. Had you ever seen provisions in a Will
12 quite like this before?

13 A No.

14 Q Did you consider it -- what did you take from it that
15 a testator would include language like this about land in
16 his Will?

17 A Well, obviously, it was important to him that these
18 properties be retained if at all possible. You know, I'm
19 not sure -- my feeling was I'm not sure that that's going
20 to be possible or practical, but you should give great
21 credence to his objectives.

22 Q And did you share that interpretation with Ms. Boykin
23 and the other trustees?

24 A I did.

25 Q What was Ms. Boykin's attitude toward your

1 interpretation of the Will or that part of the Will?

2 A Well, she was going to -- that she was in line with
3 what the Will said and that was going to be her course of
4 action.

5 Q All right. And how about Mary Deas Wortley, what was
6 her attitude toward the treasured tracts. I sometimes
7 call these treasure tracts, legacy properties. If I use
8 one of these terms, will you know I'm referring to one of
9 those tracts identified in Exhibit 10?

10 A Sure.

11 Q All right.

12 A But Mary Deas was onboard with the plan, as well, for
13 the benefit of all the children, even -- you know, Mary
14 Deas had a different father from the other children, but
15 everybody was treated equally, everybody was a Boykin.
16 There was no distinction between the different families.

17 Q All right. Now, what was Rigdon Boykin's attitude
18 toward these treasured tracts?

19 A I don't know.

20 Q Okay.

21 A Because we never -- I don't recall ever having
22 communication with Rigdon about those tracts.

23 Q Now, when Mr. Boykin passed away in December 1989, I
24 want to ask you about the status of estate and generation
25 skipping taxes. Did the credit against the estate taxes

1 protect the transfer of 600,000 in assets?

2 A That's correct.

3 Q And the generation skipping tax protected one million
4 dollars in assets?

5 A That's correct.

6 Q Did Mr. Boykin's Will distinguish between these two
7 types of taxes?

8 A No.

9 Q Did it focus solely on saving estate taxes?

10 A Correct.

11 Q Did that present a challenge for you?

12 A Yes, it did.

13 Q Could you describe what those the challenges are?

14 A Well, it's kind of complicated, but the -- obviously,
15 what you would do is the Will provided, essentially, for
16 \$600,000 of assets to go into residuary trust and the
17 balance of assets to go in the marital trust, so the
18 \$600,000 residuary trust would be allocated 600,000 of
19 generation skipping tax exemption. So it would be
20 insulated from estate tax and generation skipping tax.
21 You have an extra \$400,000 of generation skipping tax
22 exemption that would then be allocated to the marital
23 trust.

24 The problem with that is you only get a pro rata
25 coverage of the assets in the marital trust. I mean,

1 assets in the marital trust might have been one \$11
2 million, \$10 million, but you've only got 400,000 divided
3 by \$10 million worth of coverage on the assets of the
4 marital trust. So the better thing to do would have been
5 to segregate aside another trust that would have only
6 \$400,000 of assets, which would be 100 percent exempted
7 from the generation skipping trust.

8 Q All right. So. Did you --

9 A I mean, generation skipping tax, excuse me.

10 Q Yes. Did you develop a strategy to bifurcate the
11 residuary trust?

12 A Yes, we sought to create a residuary trust A and a
13 residuary B and a marital trust A and a marital trust B.
14 The residuary trust A would be the \$600,000 trust, so
15 100 percent exempt from the estate tax and generation
16 skipping tax. The marital trust A would be a segregated
17 trust that would have \$400,000 in assets that would be
18 exempted from the generation skipping tax, but not from
19 the estate tax. Marital trust B would be not exempted
20 from the estate tax or from the generation skipping tax.

21 Q All right. Take a look at Exhibit 22?

22 A I'm got -- oh, here we go. Okay. Got you. Yes,
23 sir.

24 Q This is a letter dated April 6th, 1980 from you to
25 Ms. Boykin; is that correct?

1 A 1990.

2 Q I'm sorry. 1990?

3 A Correct.

4 Q Yes. Did you convey to her the advice you just
5 described in this letter?

6 A Yes.

7 Q And does it --

8 THE COURT: All right. What number is the exhibit?

9 MR. BECKER: It's Exhibit 22, Your Honor.

10 THE COURT: All right. Go ahead, Mr. Becker.

11 BY MR. BECKER:

12 Q All right. Does this letter convey to her the plan
13 and the advice that you just described?

14 A Yes, it does.

15 Q Okay. And did you -- I won't -- I think there's no
16 reason to ask you about the specifics. Did you -- in your
17 discussion just a moment ago, did you cover most of the
18 material that's described in this letter?

19 A Yes, I did.

20 Q Take a look at the last page of that, and I don't
21 know if this particular document belonged with that
22 letter, but do you recognize this document as something
23 you worked with back at that time?

24 A Yes, this looks like something that came from maybe a
25 schedule on the estate tax return, but, again, what we

1 were trying to do -- I take that back, probably was not
2 part of the estate tax return, but what we were trying --
3 what I was trying to get Ms. Boykin to tell me is what do
4 you think's going to be sold, what do you think's going to
5 be retained and let's look at values.

6 This was probably prepared in conjunction with
7 deciding which assets would go in residuary trust A and
8 which assets would go in marital trust A and which assets
9 would go in marital trust B.

10 Q All right. So you and Ms. Boykin would have
11 developed this together?

12 A Uh-huh.

13 Q And the properties that were to be retained,
14 according to her, were the mill tract, 1,319 other acres
15 remaining in Boykin and about 1,000 contiguous acres in
16 Sumter County?

17 A Right.

18 Q Is that Sumter County property, did you hear it
19 described as the Sumter Mountain?

20 A Yes.

21 Q All right. Now, did you also engage Mr. Edward Royal
22 to serve -- to assist you in implementing this bifurcation
23 of the trust?

24 A Yes.

25 Q Take a look at Exhibit 23.

1 A Yes.

2 Q Does this also describe the same general plan that
3 you had recommended to Ms. Boykin?

4 A I think so, yes.

5 Q Now, let's move then to Exhibit 24. Did you prepare
6 this petition?

7 A I did.

8 Q And did you -- did Mr. Royal assist with having
9 things filed here in Kershaw County?

10 A I don't recall, but I suspect probably so.

11 Q Was he serving as a guardian ad litem for unknown
12 beneficiaries?

13 A Yes.

14 Q Okay. Now, this amended petition includes all the
15 parties, both the trustees of the various trusts and the
16 defendants. Did you have the consent of everyone to move
17 forward this amended petition?

18 A I believe I did. If I'm not mistaken, everyone did
19 consent to the final order.

20 Q Okay. I'll get to that next, but I just wanted to
21 confirm that before you filed the petition you had
22 conferred with all --

23 A Oh, absolutely, yes.

24 Q -- relative parties and obtained their consent to
25 move forward?

1 A Because we were on a time deadline. We wanted to
2 have this completed prior to the due date for the estate
3 tax return. So, you know, if there was any problems with
4 anybody, we wanted to know about that in advance.

5 Q Okay. So all consented to file this amended
6 petition?

7 A Yes, as well as recollect.

8 Q And did it seek bifurcation of the two trusts into A
9 and B?

10 A Yes.

11 Q All right. Take a look at Exhibit 25. That is a
12 consent order. And if you'll look through it just
13 briefly, you'll see it responds to the amended petition
14 and grants the relief requested there. And did you obtain
15 all the signatures of the various parties to consent to
16 this relief?

17 A As far as I know. It looks like we did.

18 Q Did that include Mr. Rigdon Boykin on Page 9 in the
19 back?

20 A Yes, sir.

21 Q So at that point, once that order was filed, the
22 trusts were bifurcated into A and B. All right. We
23 touched briefly on this with that last page of Exhibit 22,
24 I believe it was. Let me just ask you again, the marital
25 trust provided in Item 5 that Mr. Boykin's personal

1 representatives shall have the sole discretion to select
2 the assets which they'll constitute the devise or bequest
3 to the marital trust.

4 A Uh-huh.

5 Q What -- did you assist Alice Boykin and Mary Deas
6 Wortley in making that transfer?

7 A Yes.

8 Q Describe the selection process that she undertook and
9 what her thinking was in selecting the properties --

10 A Well --

11 Q -- that would stay in the residuary trust and what
12 would go in the marital trust?

13 A Well, if you -- again, if you look at that sheet at
14 the end of 22, that was probably part of an analysis of
15 what assets do we want to select, what asset to go in
16 which trust, and the assets that are most likely to be
17 sold would have gone in marital trust B because you're
18 going to create liquidity that would be available to pay
19 estate taxes at Alice Boykin's death.

20 At that time, we were dealing with an exemption of
21 \$600,000. We're currently dealing an exemption in excess
22 of one \$11 million. So nobody had any idea we would be
23 where we are today as far as the exemption was concerned.

24 The identification of property most likely to
25 appreciate in the future creates a dilemma. Typically,

1 you would say you want to take -- since the residuary
2 trust is insulated from estate taxes and generation
3 skipping taxes, you would want to put your assets most
4 likely to appreciate in that trust because you'll be
5 bullet proof in the future.

6 On the other hand, you've got the strong desire to
7 retain these certain tracts or the expressed intention to
8 preserve these certain tracts which kind of put us in
9 somewhat of a dilemma as to what assets should go into the
10 residuary trust and what assets shouldn't go in the
11 residuary trust.

12 Ultimately, it was decided to protect the treasured
13 assets or to protect the most treasured of the treasured
14 assets by putting them in the residuary trust A and
15 marital trust A.

16 Q Okay.

17 A And I might say that Ms. Boykin in determining the
18 valuations of the various tracts, a lot of the value was
19 put in residuary trust A. She was very conservative on
20 her valuations of things what were going in trust A,
21 residuary trust A and very generous with her valuations of
22 assets going into marital trust B to establish a higher
23 tax basis in the event the property was sold in the
24 future.

25 Q So she was a shrewd tax planner?

1 A She understood.

2 Q Okay. Was she generally knowledgeable and able to
3 understand your advice?

4 A Yes.

5 Q All those issues. Did you also assist her with
6 establishing a irrevocable life insurance trust?

7 A Yes, I did. And again, that was a focus of okay,
8 we've got all of this real estate. We've got a lot of
9 illiquidity. We've got the potential of a significant
10 estate tax bill in the event of her death. What can we
11 do.

12 Q All right. If you'll take a look at Exhibit 26.
13 This appears to be a letter that you wrote to Mary Deas
14 Wagoner, now Wortley; is that right?

15 A Uh-huh.

16 Q Just to clarify, what was the value -- you see there
17 in the first paragraph the total value of the estate -- of
18 the assets of your father's estate was approximately
19 11 million and some change, of which 5,083,000 was real
20 property he owned and 55,000,659 was the value of Boykin
21 Land Company. Is that about the approximate ending value
22 of the estate?

23 A I haven't gone back to verify that, but I would
24 assume that's close.

25 Q Okay. If you look on Page 2, in that first full

1 paragraph, there's your discussion of Item 10 in the 1992,
2 of the Will, in that timeframe, is that again your
3 interpretation of what was necessary to be done with those
4 tracts identified in the Will, the treasured tracts?

5 A Well, I think that is kind of the summary of the
6 consensus that was reached to, again, put the assets
7 likely to be sold in marital trust B and prioritizing the
8 assets that were most important as far as retention to get
9 those in residuary trust A and marital trust A.

10 Q And again, I think you repeat that advice and
11 consensus at the end of Page 3, that last paragraph; is
12 that correct?

13 A Yes.

14 Q One other item from your files from Nelson Mullins
15 that I thought was worthy of explanation was your letter
16 of September 5th, 2006. That's Exhibit 27. But let me
17 first ask you, do you know when Rigdon Boykin returned to
18 South Carolina?

19 A No, I don't.

20 Q Prior to the time that he did, did you have a lot of
21 interactions with him?

22 A The only interactions -- the most extensive
23 interactions I recall were in conjunction with the
24 irrevocable trust and paying the insurance premiums on the
25 insurance policies that were owned by the irrevocable

1 trust.

2 Rigdon -- the money would be sent to Rigdon's office
3 and put in their escrow account and held for a certain
4 period of time before it was remitted to the actual
5 insurance company. So Alice was always short on cash, so
6 there was always a turmoil to get the money together to
7 pay the insurance premiums, to get it to Rigdon's office
8 and, ultimately, get it to the carrier. So there was some
9 communication there.

10 Q All right. Did Rigdon insist on doing it that way?

11 A Yes.

12 Q Was there any particular reason you felt like it
13 needed to be done that way?

14 A I didn't think it was necessary. I thought it was
15 possible -- or appropriate to pay the premiums directly,
16 but that's the way Rigdon insisted it be done, so we did
17 it Rigdon's way.

18 THE COURT: Could you speak up a little bit, Mr.
19 Bailey, please.

20 THE WITNESS: Yes, ma'am.

21 BY MR. BECKER:

22 Q Now, after -- so before he moved back to South
23 Carolina, other than the interactions regarding the
24 irrevocable life insurance trust and payment of premiums,
25 did you have many other interactions with Mr. Boykin

1 regarding the residuary trust?

2 A I don't recall -- I don't recall having any.

3 Q Did the residuary trust prior that time have meetings
4 of the trustees?

5 A Not that I'm aware of.

6 Q Did you participate in any?

7 A No.

8 Q Okay.

9 A Not prior to Rigdon coming back, no.

10 Q Okay. Now, let's look at Exhibit 27. That was done
11 September 5th, 2006. And you -- or in that letter, you
12 mention a conversation with Ms. Boykin on Friday. And in
13 response in that letter, you want to call her attention to
14 several provisions of her husband's trust that provides
15 some degree of protection to assure accomplishment of your
16 objectives. Do you see that?

17 A Uh-huh. I do.

18 Q Do you recall that conversation that you had with
19 her?

20 A Not specifically, no.

21 Q Okay. Do you know what was causing some concern
22 regarding the accomplishment of her objectives at that
23 time?

24 A I do not. I do not recall.

25 Q Okay. All right. And you conclude the letter by

1 saying on Page 2 at the bottom, as you can see, Whit went
2 to great pains to protect the tracts as he regarded as
3 significant. Does that summarize your interpretation of
4 Item 10 of the Will?

5 A Yes.

6 Q Okay. I'd like you to look next at Exhibit 28, Mr.
7 Bailey. And we'll go through this in a little bit of
8 detail. Let me ask, too, I noticed in your file that
9 there were -- they're not included here, but there were a
10 number of letters from you to Ms. Boykin over the years
11 keeping her up to date on changes in the tax law and
12 asking if she wanted to revise her estate planning as a
13 result. Did you normally do that with clients like her?

14 A Yes, I did.

15 Q I assume you did that with all your clients?

16 A Those that I felt would be impacted, yes -- or
17 potentially impacted.

18 Q Sure. Before this letter of November 26th, 2012, did
19 she respond positively to any of those annual letters?

20 A I don't recall. I mean, they wouldn't -- it would
21 not have been annual letters. It would be letters that
22 would be sent out as a result of, perhaps, some change or
23 anticipated change in the tax law that might adversely
24 impact the client.

25 Q Okay.

1 A This letter was the same sort of letter.

2 Q Right. And that was my point. So on November 26th,
3 2012, you wrote Ms. Boykin and sent her this letter. And
4 let's focus on that first full paragraph in the letter.
5 Can you explain what you were trying to let her know
6 there?

7 A The concern at that time in the estate planning
8 community was that as of 2012, the estate tax exemption
9 was roughly 5.12 million dollars, and the concern was that
10 there was going to be no change in legislation, which
11 would mean that the exemption would drop to one million
12 dollars. So a lot of people were considering or taking
13 steps to utilize that 5.12 million dollar exemption in
14 full in case it disappeared next year.

15 So this was alerting clients that this is a
16 possibility. It's also the possibility that the exception
17 could have been reduced from 5.12 to 3.5. No one had a
18 crystal ball at the time, but the question is do you want
19 to try to take advantage of your 5.12 million dollar
20 exemption in the event that it possibly disappears or gets
21 substantially reduced.

22 Q All right. So there in the middle of the page, you
23 say I recommend that a trust be used and that the trust be
24 a generation skipping trust so as to make the assets
25 available for the benefit of the children during their

1 lives, but keep the assets out of their estates at their
2 death.

3 A Yes.

4 Q And on Page 2 at the bottom, you give her your
5 thoughts that you go to court to get an authorization for
6 you to withdraw assets from marital trust B, and then put
7 the assets in a limited partnership and then gift
8 partnership interest to a new generation skipping trust
9 for the children to utilize her estate tax exemption; is
10 that correct?

11 A That's correct.

12 Q Did that advice change at all in terms of the
13 structure you were suggesting over the course of this?

14 A No.

15 Q Okay. So you also go on to say there, if you decide
16 to move forward with this idea, we need to get started
17 now. In light of the election results, many people are
18 formulating and implementing these large gift plans.
19 Everyone is swamped, including myself and all the
20 appraisers?

21 A Correct.

22 Q All right. That was a busy time in the estate
23 planning world, I assume?

24 A It was.

25 Q Now, would this recommended strategy that you're

1 proposing to Ms. Boykin in this letter potentially save on
2 the amount of estate and other taxes owed by her estate at
3 her death?

4 A Well, it particularly would have saved estate taxes
5 had the exemption been reduced. One of the attributes of
6 doing this gift would be you're dividing assets up -- the
7 original proposal was to put the assets in limited
8 partnership.

9 If you're putting a partial interest in a particular
10 asset, a piece of real estate, for example, there's the
11 concept of discounting, which is to say that half interest
12 in a piece of property worth \$100,000 is not worth \$50,000
13 because you can't find -- or would likely not find someone
14 who would pay \$50,000, so the value is discounted to
15 something less than 50,000. So that's -- you would use
16 partial interest in real estate to get the benefit of that
17 discount.

18 Then by putting it in a partnership, the partial
19 interest in a partnership, you get an additional discount
20 because, again, a partnership interest does not carry with
21 it control, a partnership interest does not necessarily
22 have liquidity, so those factors work to, again, discount
23 the value of the underlying assets or the value of the
24 gift. So that would -- kind of big picture strategy would
25 have been -- that would be the initial recommendation that

1 would take advantage of the greatest discounting
2 opportunities.

3 Q Okay. Now, is this the kind of advice, professional
4 advice that you would normally give to estate planning
5 clients?

6 A Yes.

7 Q Don't be offended by this question, but was there
8 anything illegal or improper about this type of advice?

9 A No, it was very common.

10 Q Now, did Ms. Boykin have enough money in her own
11 estate to take advantage of the 5.12 million exemption?

12 A No, she did not.

13 Q All right. So it made it necessary to gift property
14 from marital trust B to her, which she would then gift for
15 the benefit of the children?

16 A Correct.

17 Q And did you make this recommendation known to all of
18 the trustees and life beneficiaries of the residuary
19 trust?

20 A Yes, because, ultimately, they all had to consent to
21 the distribution from marital trust B to Ms. Boykin.

22 Q So that would have included all three trustees of
23 residuary trust and all of Ms. Boykin's four children?

24 A I don't recall if it required the consent of the
25 trustees of the residuary trust since no assets were being

1 distributed from the residuary trust, but the
2 beneficiaries of marital trust B and the potential
3 beneficiaries of marital trust B, as well as, obviously,
4 with Ms. Boykin.

5 Q Right. All had to agree?

6 A Right.

7 Q Okay. Did Alice S. Boykin want to follow this
8 advice?

9 A Yes.

10 Q And did Mary Deas Wortley want to follow this advice?

11 A As far as I know, yes.

12 Q Let's look next at Exhibit 29. This appears to be an
13 email from you to Rigdon Boykin. It's dated
14 November 29th, 2012.

15 In the first paragraph, you say, Rigdon, following up
16 on our conversation yesterday regarding your suggestion
17 that anything Alice receives from marital trust B be
18 dumped into the children's trust. I've attached copies of
19 the provisions from Whit's Will that creates the
20 children's trust.

21 Do you recall that conversation you had with him and
22 what the substance of it was?

23 A Only as refreshed by looking at this email, but my
24 suggestion was to create a new generation skipping trust.
25 Alice would create a new generation skipping trust, which

1 would potentially have some additional tax benefits that
2 Whit's residuary trust A did not have. And Rigdon did not
3 like that idea and insisted that instead of -- that Alice,
4 instead of giving the marital trust B assets that were
5 distributed to her, instead of giving them to a new trust,
6 as I proposed, he insisted that they go to the existing
7 residuary trust A.

8 Q So your best professional advice in order to save
9 future taxes for all the beneficiaries of this trust was
10 to create a new generation skipping trust and transfer
11 assets from marital trust B to that new trust; is that
12 right?

13 A Yes. And that's, you know, in order to save taxes,
14 not necessarily -- potentially save taxes depends on who,
15 you know, there's lot of balls in the air. It could save
16 estate taxes, not necessarily would save estate taxes.

17 Q And that was your advice to Alice Boykin?

18 A Correct.

19 Q But Rigdon Boykin wouldn't agree to it?

20 A Correct.

21 Q Did he state a reason why he didn't want to follow
22 your advice?

23 A I don't recall.

24 Q All right. Take a look at Exhibit 30, please,
25 Mr. Bailey. Now, let me first -- you will notice that

1 this letter has the date of June 11th, 2018 crossed out
2 and the 12/14/2012 actual date put in above it. Can you
3 describe why that was necessary?

4 A Because I believe, excuse me, when the documents are
5 printed, it automatically updates for the date it's
6 printed as opposed to the original date of the document.

7 Q Okay. So this document existed in a word file that
8 was printed from the word file? It wasn't a hard copy
9 letter in a paper file?

10 A Yeah, well, it certainly wasn't a hard copy if it's
11 June 11th, 2018.

12 Q Okay. Take a look at that little footer down at the
13 bottom. Describe what that is.

14 A That's a macro that I had set up for all my documents
15 that printed the document number, the file number for the
16 clients and the date. That helped me keep track of, you
17 know, version one, version two --

18 Q Yeah.

19 A -- what was done. So my thought would be that would
20 be an accurate date of when the document was created.

21 Q Actually created?

22 A Yes.

23 Q And sent to the recipient?

24 A Yes.

25 Q Okay. Now, this is -- again, closing in on that

1 timeframe of December 31, the end of year, this is a
2 letter from you to Alice Boykin. You're enclosing -- and
3 I'm skipping down to Items 4 and 5 on that. Deeds for
4 Kershaw County, Kershaw and Sumter County, and Sumter
5 County whereby marital trust B transfers to you property
6 that you will receive from the trust. As I said, the
7 property conveyed will depend upon the appraisal and the
8 legal descriptions will thereafter be attached.

9 Was that your plan to have her go ahead and have
10 these deeds signed and ready to go?

11 A Yeah, because we were working on such a short
12 timeframe, I wanted to have the documents in hand to be
13 prepared to file once everything -- the numbers were
14 finalized and everybody was in agreement.

15 Q Then there were answers to be signed by Alice, Whit,
16 May, residuary trust A and residuary trust B in response
17 to the petition to be filed requesting court approval of a
18 modification permitting distributions from marital trust B
19 to you; is that correct?

20 A Yes.

21 Q So those would have been answers consenting to the
22 relief requested in a petition you would be filing?

23 A Correct.

24 Q Look next at Exhibit 31, please, Mr. Bailey. Is this
25 the petition -- summons and petition and complaint that

1 you prepared to implement the advice that you had given to
2 Alice Boykin and she had agreed to?

3 A Yes.

4 Q Okay. If you'll take a look on Page 4 of this
5 document, those first two paragraphs up at the top.

6 Paragraph 14 says: To ensure that the opportunity is not
7 lost to pass 5.12 million of assets exempt from the ET --
8 that meant estate tax, correct?

9 A Yes.

10 Q And the GST, that meant generation skipping tax,
11 correct?

12 A Correct.

13 Q Many individuals are making gifts this year to use up
14 their exemption.

15 Paragraph 15 says: Alice does not have 5.12 million
16 of assets in her name to gift in order to use up her ET
17 and GST exemptions, and does not have access to the assets
18 of marital trust A and marital trust B so as to be able to
19 get those assets and thereby, perhaps, avoid the estate
20 tax that will be imposed upon her estate; is that correct?

21 A That's correct.

22 Q Finally, in paragraph 17, you stated that the
23 petitioners would request that the court modify the
24 marital trust effective for both marital trust A and B to
25 add that sentence at the end of subparagraph two of Item

1 7, the following language: There shall be distributed to
2 my said wife so much of the principle of this trust as may
3 be requested by my said wife and consented by all of my
4 children then living; is that correct?

5 A Correct.

6 Q So that was the plan?

7 A Yes.

8 Q Is that right?

9 A Yes.

10 Q To give her the permission to save on her -- the
11 estate taxes would be imposed on her estate?

12 A Potentially, yes.

13 Q Now, I noticed that on the first page of the summons
14 and the caption, Rigdon Boykin is listed as one of the
15 parties. I assume that you had his permission along with
16 everyone else's before you drafted and filed this summons
17 and petition and complaint?

18 A I was communicating with everyone.

19 Q Yes. All right. Now, take a look at Exhibit 32.

20 (Pause.)

21 This is a consent order. Looking at the first page,
22 it says: The petitioners file their summons and complaint
23 in this matter on December 18th, subsequently served the
24 respondents by mail on December 19th. Each respondent
25 thereafter filed his or her respective answer whereby he

1 or she admitted all of the allegations contained in the
2 petition and complaint and joined in the relief prayed for
3 by the petitioners in the petition and complaint; is that
4 right?

5 A That's correct.

6 Q So all respondents, including all of the four
7 children of Alice Boykin had approved this at that time;
8 is that right?

9 A That's correct.

10 Q On the order, it says -- it grants those
11 modifications to marital trust A and B, and then it says:
12 The court has reviewed -- the last paragraph on Page 2,
13 the Court has reviewed the request of the petitioners and
14 determined that granting the relief requested is
15 appropriate in light of circumstances not anticipated by
16 the decedent in order to carry out the decedent's intent
17 and to lessen the tax burden on the decedent's assets for
18 the benefit of its family. That was the purpose and
19 intent; was it not?

20 A Yes.

21 Q All right. Now, let me ask you to look at Exhibit
22 33. This in an email from you to Mary Deas and
23 Aliceb@belgerfarms.com. Was that Mary Deas Wortley and
24 Alice S. Boykin?

25 A Yes. I usually sent -- Alice Boykin, the decedent,

1 did not have an email.

2 Q Okay.

3 A So I would send things to her daughter.

4 Q Her daughter.

5 A Alice.

6 Q Okay. All right. So there, you're saying Alice and
7 Mary Deas, Judge Pierce has approved the modification of
8 your father's trust to allow the distribution from marital
9 trust B -- distribution of assets from marital trust B to
10 your Alice with the consent of all the children. Alice
11 has requested your approval of the distribution of several
12 tracts from her to the trust. Assuming you're in
13 agreement with the distribution as requested, I've
14 attached a consent to be signed by each of you. And that
15 is the next page. Did that describe the properties that
16 you had identified for transfer from marital trust B to
17 Alice S. Boykin?

18 A Yes.

19 Q Was the idea with the limitation that Rigdon had
20 imposed upon your advice that whatever was transferred to
21 her from marital trust B would then be transferred by her
22 to residuary trust A?

23 A That's correct.

24 Q That would have -- that would still achieve many of
25 the estate tax planning objectives that you had set forth?

1 A Right.

2 Q Would it not?

3 A Yes.

4 Q Maybe not all of them, but, at least, many of them?

5 A Yes.

6 Q All right. Let's look at those tracts. In the
7 middle paragraph there on that consent of distribution, it
8 lists the yellow house tract, the Whitaker tract, the
9 K-Park tracts, Cantey tract, Carter Hill, Carter Hill
10 number two and Sumter Mountain. Were those -- at least,
11 all of those except Sumter Mountain, were those considered
12 part of the family legacy tracts, the treasured tracts?

13 A I don't recall about K-Park tracts. It seems to me,
14 my recollection is that that was subsequently acquired,
15 but that was -- I don't know if it was contiguous to, but
16 it was in close proximity to the treasured tracts, so it
17 was kind of viewed as a part. It was kind of ingrafted
18 into the treasured tract status.

19 Q Now, was the intent to transfer as much of the
20 interest in those tracts as you could to make up the 5.12
21 million amount?

22 A Yes, that would have been the recommendation.

23 Q So the plan would have been to obtain appraisals on
24 that property and then transfer partial interest in them
25 up to a limit of 5.12 million?

1 A Correct.

2 Q All right. If you'll take a look now at Exhibit 34.
3 This is a letter from you to May Cantey Boykin, who, at
4 the time, apparently lived in Bedford Hills, New York; is
5 that correct?

6 A Correct.

7 Q In here, you appear to be saying to her and sending
8 her -- the same things you said to Alice and Mary Deas in
9 Exhibit 33, you're saying to May Cantey Boykin in this
10 letter, which was sent via Federal Express?

11 A That's correct.

12 Q And you indicate that you're attaching a consent to a
13 distribution with that letter; is that right?

14 A Correct.

15 Q Would that have been the same consent to distribution
16 that you sent by email to Alice and Mary Deas?

17 A I would assume so.

18 Q Okay. All right. There are two more letters,
19 Exhibits 35 and 36. Take a look here for a minute --
20 well, let me -- before we go on with that, let me ask you,
21 did something happen that interrupted or affected your
22 plan as you had put in motion here?

23 A Well, I'm not sure -- I'm not sure I fully recollect
24 the sequence of events because there was a lot going there
25 in the last week of 2012, but at one point, Rigdon advised

1 me that he represented May and that May would not agree to
2 a distribution of more than a 20 percent interest in the
3 various parcels that were going to be targeted for
4 distribution to Alice. So we were basically stuck with
5 that baseline of a maximum of 20 percent interest in those
6 properties, which is the amount that was actually
7 distributed.

8 Q Did he tell you that he was acting as a lawyer for
9 May Boykin?

10 A He said he represented her, so I'm assuming he was
11 acting in the capacity of a lawyer.

12 Q And he said if you transfer more than 20 percent of
13 these properties from marital trust B to Alice S. Boykin,
14 then May won't consent to this?

15 A Yes, that was the message that understood.

16 Q Where did the 20 percent number come from?

17 A I don't know.

18 Q Could you -- was there any reason based on the
19 appraisals or anything like that to limit the distribution
20 to 20?

21 A I'm not sure we had the appraisal numbers in. Rigdon
22 was not happy with the appraiser. He questioned the
23 credibility of the appraiser that was selected. And the
24 appraiser -- I say was selected, I mean, Wayne Belger
25 located the appraiser and, I guess, engaged him on Alice's

1 behalf to conduct the appraisals.

2 Q Was he -- was Mr. Boykin concerned that the
3 properties -- the values on the appraisals might be too
4 high or too low?

5 A To low.

6 Q Well, from a tax perspective, is it better to have a
7 lower appraisal than a higher one?

8 A It would be better to have a lower appraisal.

9 Q Did you explain that to him?

10 A I don't recall, but I wouldn't think that was
11 necessary to explain to him.

12 Q Okay. Well -- I'm just wondering what he may have
13 said, if anything, about how the number -- the limitation
14 on those transfers of 20 percent was arrived?

15 A I don't recall being anything discussed as to why
16 20 percent was the magic number.

17 Q So let me just make sure I fully understand this,
18 Mr. Bailey. At this point in time, your best professional
19 advice as an estate planning and tax specialist was to
20 transfer as much of an interest in these properties
21 identified in that consent to distribution as you possibly
22 could to get up to 5.12 million dollars in value?

23 A Correct.

24 Q Is that correct? And the lower the appraisals on
25 that property, the more of that property you would be able

1 to transfer into residuary trust A; is that correct?

2 A Correct.

3 Q And that would accomplish your objectives of saving
4 on future estate and generation skipping taxes and
5 protecting those treasured tracts in residuary trust A?

6 A Well, you know, obviously, you're not getting the
7 entire treasured tract in the residuary trust A, but
8 you're protecting a part of --

9 Q Right.

10 A A portion of the tract.

11 Q Exactly.

12 A And you're setting up the estate for a reduced value
13 of the interest that are retained by marital trust B that
14 would be included -- or were included in Alice's estate at
15 her death.

16 Q So that was your best estate planning and tax advice
17 and counsel to this trust and this woman, Alice S. Boykin
18 at the time; is that correct?

19 A Correct.

20 Q And Rigdon simply said no, I don't like it. If you
21 transfer more than 20 percent, then May will not consent
22 to this?

23 A That's correct.

24 Q So by this time, looking at Exhibit 35, you were
25 having to adopt a lesser approach, shall we say; is that,

1 correct?

2 A Yes. And I don't recall the circumstances on Exhibit
3 35 totally.

4 Q All right. But in any event, because of Rigdon
5 Boykin's communication to you that he didn't like the
6 appraisals and as a result, his client, May Cantey Boykin
7 would not consent to anything more than a 20 percent
8 transfer?

9 A I'm not sure if the 20 percent related solely to his
10 estimate of the credibility of the appraiser. I don't
11 remember that. I just remember him not being happy with
12 the appraiser. You know, we didn't get the appraisal
13 numbers in until very late, but, obviously, given the
14 timeframe we were working under, any bump in the road
15 would have put us past 2012. So, basically, you had to go
16 along or get nothing accomplished.

17 Q Yeah.

18 A You didn't have time to work out any differences.

19 Q All right. Then there's Exhibit 36, you just sending
20 the signed order around to everyone. This was
21 January 30th, 2013. It appears -- was this just followup
22 administration on making sure everyone had a copy of the
23 order for their file?

24 A Well, I'm not a litigator, but I believe you have to
25 give everyone notice in order to start the clock running

1 if anyone wants to appeal.

2 Q Yes. Okay. That's correct. And then, finally,
3 Exhibit No. 37, this appears to have been dated
4 March 11th, 2013, and it includes information regarding
5 all those tracts that were listed in that consent to
6 distribution. Can you describe what this chart was and
7 how it was used at the time?

8 A I'm not sure because, again, this is dated in 2013.
9 We probably, at that time, were looking at exactly what to
10 report on the gift tax return as far as the value of the
11 gifted interest.

12 Q Okay.

13 A And, obviously, this is not complete because we don't
14 have all of Outlaw's valuations and he was the appraiser.

15 Q All right. So there's a column there for Alice's
16 value and Rigdon's value; is that right?

17 A Correct.

18 Q In two instances, it appears that Rigdon's value is a
19 good bit higher than Alice's value; would you agree?

20 A Correct.

21 Q Was that generally his approach, that the land was
22 undervalued and should be valued at a higher price?

23 A Well, Rigdon said he had some personal knowledge of
24 some other transactions that he thought were more
25 comparable and supported the value that he placed on the

1 property. I didn't have any personal knowledge of any of
2 the transactions involved and was, basically, just trying
3 to create a spreadsheet showing who said what piece of
4 property was worth what.

5 Q So was he suggesting that he was better able to
6 identify comparable sales than the appraiser was?

7 A No, I think he was using the comparable sales that he
8 was aware of -- or transactions that he was aware of to
9 demonstrate what he thought was a lack of credibility of
10 the appraiser.

11 Q Okay. Even though the lower appraised value would be
12 more beneficial for the tax and estate planning objectives
13 you had described?

14 A Correct.

15 Q And recommended; is that right?

16 A Correct.

17 Q Now, Mr. Bailey, based on your experience as a lawyer
18 and estate planning and tax specialist, can you think of
19 any good reason why a trustee of this trust would not have
20 wanted to follow this advice and -- or a beneficiary of
21 this trust would not have wanted to follow your tax
22 planning advice here?

23 A No.

24 Q What impact -- well, ultimately, was 20 percent of
25 those target properties, ultimately, conveyed to Alice

1 Boykin and then into residuary trust A?

2 A Yes.

3 Q What impacts did Mr. Boykin's unwillingness to
4 cooperate with your proposal have for the trust?

5 A Well, it, perhaps, negated the opportunity to
6 transfer some assets out of the -- that would be,
7 ultimately included in Alice's estate out of her estate at
8 a discounted value.

9 Q Okay. Did it leave them coming up short of the full
10 5.12 million dollar credit?

11 A Yes.

12 Q Have you made any calculation now with the benefit of
13 hindsight of what the losses to the trust may have been as
14 a result of your inability to fully carry out your tax and
15 estate planning recommendations for Ms. Boykin?

16 A I have not.

17 MR. BECKER: Your Honor, we've been at it almost an
18 hour-and-a-half. I probably have another 25, 30 minutes
19 to go. Would this be an appropriate time --

20 THE COURT: All right. Very well. Let's take a
21 15-minute break.

22 (Whereupon, a short break was taken.)

23 THE COURT: Mr. Becker, you may proceed.

24 MR. BECKER: Thank you, Your Honor.

25 BY MR. BECKER:

1 Q Ms. Alice S. Boykin passed away August 2018. Had you
2 transitioned your professional practice from Nelson
3 Mullins Law Firm to Sojourner, Caughman & Thomas at that
4 time?

5 A Yes, sir.

6 Q And did that reunite you in a professional
7 relationship with Ms. Thomas?

8 A It did.

9 Q I understand the two of you had worked together years
10 before when you were both at Nelson Mullins?

11 A We've switched roles. She worked for me, now, I work
12 for her.

13 Q All right. Did you recommend to the personal
14 representatives and the trustees that Karen Thomas take
15 over as counsel for the state of Alice S. Boykin and the
16 residuary trust?

17 A I did.

18 Q When you transitioned this responsibility to
19 Ms. Thomas, did you give her an overview of the assets of
20 the taxable estate, the types of trust and the liquidity
21 issues and things of that nature?

22 A Sure. We talked several times. Obviously, she was
23 coming with no background and I had had years of the
24 relationship, so yes, we talked numerous times.

25 Q Did you suggest to her that it might be a challenging

1 assignment due to the amount of real estate?

2 A Yes. And the individuals involved.

3 Q And what did you mean -- what did you mean by the
4 individuals involved?

5 A Well, my concern was that different people had
6 different agendas and, you know, everyone was not going to
7 be on the same page.

8 Q Okay. Did you also discuss at some point with
9 Ms. Thomas two special sections of the estate tax code
10 dealing with family businesses and timberland and
11 extension of time to pay the taxes?

12 A I did. And she was the one that initially identified
13 those opportunities and came to me and asked me what I
14 thought.

15 Q Okay.

16 A And I related to her that I've successfully used
17 2032(a) on more than one occasion in similar circumstances
18 where we had an elderly lady who owned a lot of a
19 timberland and we got great results from 2032(a). So she
20 and I discussed that at length about whether that would be
21 applicable for the Boykin estate.

22 THE COURT: I want both of you to speak up a little
23 bit more. It gets to be very conversational between the
24 two of you, but you have others that need to hear what
25 you're saying.

1 Let's see what we can do about getting that
2 microphone up.

3 MR. BECKER: I've got something I think will work,
4 Your Honor.

5 THE COURT: Good.

6 (Pause.)

7 THE COURT: That works great. Necessity is the
8 mother of invention.

9 MR. BECKER: Can you hear me better now? Is this
10 off?

11 THE COURT: Is it on? Speak forcefully into it, Mr.
12 Becker.

13 MR. BECKER: I will.

14 THE COURT: Very good.

15 MR. BECKER: Thank you, Your Honor.

16 BY MR. BECKER:

17 Q I'm going to let Ms. Thomas explain what these code
18 sections are, 2032(a) and 6166, because we'll get into
19 them in more detail with her, but did you agree with her
20 that both of those code sections could apply to either
21 save taxes or make payment of them easier for Alice
22 Boykin's estate?

23 A I did not, you know, delve into the specifics of the
24 situation, but I certainly felt like 2032(a) was an
25 opportunity.

1 Ms. Thomas is a certified specialist in estate
2 planning and tax law, both. She teaches at the
3 University. She has her LLM in tax from New York
4 University. I felt that she was very competent to make
5 her determination as to whether these would be appropriate
6 things to pursue.

7 Q Right.

8 A And didn't require me to second guess her.

9 Q Sure, but you did relay your experience, successful
10 experience relating 2032(a); is that correct?

11 A That's correct.

12 Q And did that save taxes for the estates involved?

13 A It did.

14 Q Now, in your view, would the benefits of qualifying
15 under 2032(a) or 6166, would those benefits generally
16 outweigh the cost that you might incur to attempt to
17 qualify and support?

18 A Absolutely.

19 Q Can you think of any reason why the Estate of Alice
20 S. Boykin should not attempt to take advantage of these
21 two sections of the estate tax code?

22 A No.

23 Q Now, the marital trust was in existence for
24 approximately 26 years. During all of that time, you
25 acted as counsel of the trustees of the marital trust,

1 Alice Boykin and Mary Deas Wortley, correct?

2 A Yes.

3 Q Based on your experience with these trustees, are you
4 aware of any conduct by either of them that might
5 constitute a breach of trust?

6 A No.

7 Q Are you aware of any conduct that might represent
8 mismanagement of the trust assets?

9 A No, but as I said, Alice tended to look at everything
10 as all one big pot and shuffling assets from one pot to
11 another, at least, as far as I knew. Since everything was
12 all focused in the same direction, that did not concern
13 me, you know. I'm not sure of the specific transactions,
14 but I thought it all was made in the best interest.

15 Q So you thought that what she did, what these two
16 trustees did with the marital trust was in the best
17 interest of the beneficiaries?

18 A Correct.

19 Q Were you aware of any conduct that might be harmful
20 or damaging to the beneficiaries?

21 A No.

22 Q Are you aware of any conduct that might contravene
23 the purposes, terms, distributional requirements or other
24 circumstances of the marital trust?

25 A No.

1 Q Now, those same questions for the residuary trust?

2 A Same answers.

3 Q Would you have the same answers?

4 A Yes.

5 Q Let me -- we talked a little bit earlier about
6 trustee meetings, but let -- and I believe you said that
7 the residuary trust did not have regular meetings?

8 A Not that I'm aware of.

9 Q Did Rigdon Boykin ever complain to you that Alice
10 Boykin Mary Deas Wortley fail to regularly conduct
11 meetings for the residuary trust?

12 A Not that I'm aware of.

13 Q What was Rigdon Boykin's general approach to his
14 trustee responsibilities while Alice S. Boykin was alive?

15 A Again, I'm not aware of what communications they may
16 have had. I'm not -- my assumption is there was not a
17 whole lot of communication while Rigdon was actively
18 practice. My assessment is that Rigdon became more
19 actively involved when he moved back to Camden and there
20 was more communication involved with Rigdon.

21 Q Did things change when that -- when he moved back?

22 A Well, I know that Alice became very unhappy with
23 Rigdon's involvement, or, at least, she expressed that to
24 me.

25 Q All right. Based on all of your observations, did

1 Rigdon Boykin have any consideration or concern for the
2 Testator's desires for the trustees to retain the
3 treasured tracts or the family legacy tracts for future
4 generations of Boykin of family members?

5 A I'm not aware of him having any concern. I do recall
6 him expressing at one point that -- telling me that after
7 Alice's death, the real estate was going to be sold. And
8 I don't know if he said -- I don't know if he meant all of
9 it or just some of it, but he said the real estate was
10 going to be sold.

11 Q Okay. Did he ever tell you that as the sole
12 disinterested trustee, he should be entitled to exercise
13 preeminent authority among the three trustees?

14 A I don't recall ever hearing anything about that.

15 Q In your years of legal practice, have you ever
16 encountered another trustee who took such a position?

17 A No.

18 Q Let's look back just at Exhibit 27, which correct me
19 if this is an improper characterization, but -- and as
20 you've said, it describes the great pains that Whit went,
21 meaning Mr. Boykin, the Testator, to protect the tracts he
22 regarded as significant and that that was your advice to
23 Alice Boykin and the other trustees.

24 In your opinion, did Alice Boykin follow this advice?

25 A Yes.

1 Q And did Mary Deas Wortley follow this advice?

2 A Yes.

3 Q Based on all your interactions with Alice Boykin and
4 Mary Deas Wortley, do you believe that they were willing
5 to follow the terms and purposes of the Will and to do so
6 in good faith?

7 A Yes.

8 Q Just to summarize here, Mr. Bailey, what was your
9 overall -- you've told us what you thought of Alice S.
10 Boykin, so I won't go over that again. But in all your
11 time acting as counsel for these trusts, what was your
12 overall impression of Mary Deas Wortley?

13 A Mary Deas was -- my understanding was that Mary Deas
14 and Alice were in communication about all significant
15 decisions that were made with respect to the trust assets
16 and Mary Deas concurred and was part of those decisions.

17 Numerous times, Mary Deas came to South Carolina and
18 we would have joint meetings with Mary Deas, Alice and
19 myself to talk about various issues that had come up or
20 transactions that were proposed or whatever. So my
21 assessment is that she was very involved in the activities
22 of the trust and the decision making related to the trust
23 and that she and Alice were on the same page.

24 Q Based on your assessments, do you believe she is
25 competent and capable to serve as the trustee of this

1 trust?

2 A Yes.

3 Q What is your overall impression of Rigdon Boykin
4 based on your experience as counsel of this trust?

5 A Well, my initial meeting with Rigdon when we met at
6 Whit Boykin's death, I thought that maybe Rigdon had lived
7 in New York too long and had lost --

8 THE COURT: Speak up, Mr. Bailey.

9 THE WITNESS: I thought that Rigdon had lived in New
10 York too long. He had lost some of his southern charm.

11 BY MR. BECKER:

12 Q Anything else?

13 A Well, he is very assertive and very opinionated and
14 can be difficult to get along with.

15 MR. BECKER: Thank you, Mr. Bailey.

16 THE COURT: Mr. Duffy, your witness.

17 MR. DUFFY: Thank you, Your Honor.

18 CROSS-EXAMINATION:

19 BY MR. DUFFY:

20 BY MR. DUFFY:

21 Q All right. Mr. Bailey, good morning.

22 A Good morning.

23 Q I'm Liam Duffy. I represent Mr. Rigdon Boykin.
24 Mr. Bailey, you've talked a little bit about the fact that
25 you kept Alice Boykin apprized of all kinds of changes in

1 the tax law just as you would with any of your other
2 clients; is that correct?

3 A Correct.

4 Q And you've got letters to that effect?

5 A Yes.

6 Q And you talked a minute ago about your first meeting
7 with Rigdon Boykin in which you thought he had lived in
8 New York too long?

9 A Yes.

10 Q Did you take notes at that meeting?

11 A I possibly did. That was some 30 years, 25 years
12 ago. I don't know.

13 Q And you would have taken notes of any other meetings
14 with Rigdon Boykin or conversations with Alice Boykin
15 about the trust, typically, correct?

16 A Sometimes.

17 Q And were you aware that we subpoenaed your files in
18 connection with this litigation?

19 A Yes.

20 Q Okay. And so those letters or those notes, those all
21 would have been provided as part of the subpoena response,
22 would they not?

23 A As far as I know.

24 Q As far as you know. Mr. Bailey, you testified a good
25 bit about a lot of events occurring in 1990, in 2012,

1 2013. You haven't really had much involvement with the
2 Boykin trust since the death of Alice Boykin; is that fair
3 to say?

4 A That's fair.

5 Q All right. That's been Karen Thomas in your office?

6 A Correct.

7 Q And I want to ask you about the sort of fire drill
8 you described at the end of 2012 where you were advising
9 many of your clients about the expiring 5.12 million
10 dollar tax exemption?

11 A Potentially expiring.

12 Q Potentially expiring, okay.

13 A Right.

14 Q And you clearly did some work in connection with that
15 fear or concern and drafting pleadings and consent orders
16 that we just looked at to try to take advantage of that
17 potentially disappearing exemption; right?

18 A Correct.

19 Q But it never did disappear, did it?

20 A No, it did not.

21 Q It was extended?

22 A Yes.

23 Q Okay. And Mr. Bailey, did there come a time where
24 there was some discussions about putting some of the
25 Boykin land into a conservation easement?

1 A There was.

2 Q Do you recall that?

3 A Yes.

4 Q And that would have been involving the Congaree land
5 trust?

6 A Correct.

7 Q And what is your relationship -- or what was your
8 relationship with the Congaree land trust?

9 A I was counsel to them, pro bono counsel to the land
10 trust.

11 Q Okay. And wasn't -- Mr. Bailey, wasn't it that issue
12 about placing some land into the Congaree land trust as a
13 conservation easement, wasn't it that issue and not the
14 expiring 5.12 million dollar tax exemption where Rigdon
15 told you that May would not consent?

16 A I don't recall.

17 Q You don't recall that?

18 A No, I was specifically told that May would not
19 consent to more than 20 percent.

20 Q Do you recall Rigdon stating he did not want the
21 Boykin land to be placed into a conversation easement for
22 two reasons. One, because the trust would not get a tax
23 deduction; and number two, because it would devalue the
24 property. Do you recall that?

25 A As a part of the overall possible transaction, there

1 would be exchanges so that the land would get to someone
2 who could benefit from some of the deductions, if I
3 recollect correctly. Clearly, it would devalue the
4 property, no question about that. That's the essence of a
5 conservation easement. But it also the value -- further
6 serve to protect the property if that was the objective of
7 the family.

8 We went through -- we viewed maps of the property,
9 more particularly, the Boykin mill pond. And, quite
10 frankly, Alice Boykin was not willing to give up any
11 development potential, any significant development
12 potential that would have made the conservation easement
13 provide any tax benefit to anyone. And I think there
14 wasn't -- the family as a whole, everyone was not in
15 agreement with the conservation easement concept, so we
16 abandoned it.

17 Q So that never went forward?

18 A No.

19 Q Okay. Let me ask you about Mr. Boykin's Will. In
20 Exhibit 29, I think I read that you didn't like
21 Mr. Boykin's Will and you had some issues with it; isn't
22 that right?

23 A Sure, yes.

24 Q And one of the issues was that it skips only one
25 general and that, in fact, could have been tied up, so to

1 speak, until the grandchildren for additional generations;
2 is that right? ..

3 A Right.

4 Q And you talked about some jurisdictions where there
5 is no rule against perpetuities and there is no
6 prohibition on the length of time for which you can
7 protect a retired property, right?

8 A Correct.

9 Q So there's nothing in South Carolina law, as I
10 understand it, and tell me if you agree. There's nothing
11 in South Carolina law which would have precluded Mr.
12 Boykin from quote, unquote, tying up the property for
13 longer than he did under his Will; is that right?

14 A That's correct.

15 Q Okay. So if someone were to say to you that
16 Mr. Boykin, big wig Boykin's Will expresses a desire to
17 retain certain land, quote, for as long as he could, that
18 wouldn't an accurate statement, would it?

19 A It depends on who advised Mr. Boykin of what at the
20 time he was drafting his Will.

21 Q Well, you would certainly agree with me that he could
22 have -- as you noted in Exhibit 29, he could have made it
23 a two-generation trust?

24 A That's correct, yes.

25 Q All right. And Mr. Bailey, I think you said earlier

1 that big Alice, Alice Boykin, she sold some what you call
2 ancillary properties; is that right?

3 A Correct.

4 Q And she got top dollar for those as far as you know?

5 A As far as you know.

6 Q Let me ask you about the current trustees. Are you
7 aware that the only two pieces of property that the
8 current trustees have sold are approximately 10 to
9 15-acres for a value of about \$130,000? Were you aware of
10 that?

11 A No.

12 Q And were you aware that the plan set forth by
13 Ms. Wortley and Ms. Belger, that under that plan, there's
14 a proposal to sell only 60 percent of the acreage of the
15 trust over the next five years. Did you know that?

16 A No.

17 Q I think I also heard you say that Ms. Boykin's goal
18 was to compliment Mr. Boykin's estate plan and to create
19 an income stream to benefit the children; is that fair to
20 say?

21 A Yes.

22 Q And Mr. Bailey, you haven't studied the numbers on
23 whether this trust is currently doing that, I mean,
24 generating an income stream for the children, especially
25 as measured against the current expenses, have you?

1 A No.

2 Q I want to also ask you about your statement that
3 Alice Boykin treated everything as one big pot. When you
4 made that, you're talking when she was the trustee of the
5 marital trust; is that right, during her lifetime?

6 A Yes.

7 Q Okay. And at that time, isn't it true that
8 Ms. Boykin was the only current, so to speak, lifetime
9 beneficiary of the trust?

10 A That's correct, of the marital trust.

11 Q The income was for her benefit?

12 A Correct.

13 Q And that's a pretty typical estate planning
14 mechanism, isn't it?

15 A Yes.

16 Q Marital trust --

17 A Yes?

18 Q But now that the residuary trust is in place, the
19 number of current beneficiaries, so to speak, that's
20 quadrupled from one to four; isn't that right?

21 A Yes.

22 Q Okay. And that would be?

23 A Or five.

24 Q Well, that would be Whit Boykin, correct?

25 A Right.

1 Q May Cantey Boykin?

2 A Right.

3 Q Alice Belger and Mary Deas Wortley?

4 A Okay, yes, you're right.

5 Q And Alice, according to you, she wanted downtown
6 Boykin to be sort of a handling tourist destination?

7 A That's correct.

8 Q A place for folks to come and visit, potentially,
9 spend some money; is that right?

10 A Yes. She wanted to develop the historic significance
11 of the location.

12 Q Develop the historical significance of downtown
13 Boykin?

14 A Right.

15 Q And in your view is the downtown Boykin area -- well,
16 let me ask you, how often do you visit the downtown Boykin
17 area?

18 A Well, I haven't visited since she died.

19 Q Haven't been recently?

20 A Right.

21 Q Well, to your knowledge, is the downtown Boykin area
22 currently profitable as a tourist destination?

23 A I'm not aware. I don't know.

24 Q And I think you mentioned also that big Alice, Alice
25 Boykin, she bought the church and the general store and

1 some of the other buildings in that area; is that right?

2 A Yes..

3 Q So Mr. Whit Boykin, the Testator, he didn't own those
4 properties that you're describing when he died; is that
5 right?

6 A I don't know where they came from. They may have
7 come from -- the buildings themselves may have come from
8 other Boykin properties. I don't know.

9 Q Well, it's fair to say if Alice Boykin acquired new
10 property after Mr. Boykin's death, he certainly didn't own
11 it at the time he died?

12 A But I'm saying those buildings may have come from
13 property that he owned at the time of his death. I don't
14 know where they came from.

15 Q And I understand what you're saying, I'm just asking
16 you generally, if it was newly acquired and it wasn't the
17 case as you're describing, but instead that it was newly
18 acquired property, certainly, he wouldn't have owned it at
19 the time he died?

20 A Correct.

21 Q And that means, also, he certainly couldn't have
22 contemplated it in drafting his Will; is that right?

23 A Correct.

24 Q And you said something about Alice Boykin hiring an
25 expert to renovate the gristmill or the restaurant or --

1 A The gristmill.

2 Q Do you recall when that occurred?

3 A No.

4 Q Would that have been in recent history during the
5 time of her death --

6 A No.

7 Q -- or was that years ago?

8 A Years ago. But she hired some person maybe from New
9 England that had special expertise in stone ground
10 gristmills and they completely -- and again, this is just
11 related to me from her. I have no personal -- I was not
12 there to see any of this, but this particular person had
13 some special expertise. She got him down there to
14 resurrect the mill so that it would start running again
15 and started grinding corn and selling Boykin grits and
16 Boykin cornmeal.

17 Q And they had all the little special commemorative
18 bags and Boykin everything?

19 A Yeah.

20 Q So you said it resurrected the mill to some degree at
21 that point?

22 A My understanding, it was not operable until she
23 undertook to get it fixed.

24 Q When she repaired it years ago, it became operable?

25 A Yes.

1 Q Any idea what the current state of the Boykin
2 gristmill is?

3 A No.

4 Q Do you know whether it's being operated?

5 A No.

6 Q Any idea --

7 A I don't know?

8 Q So no idea whether it's making a profit for the
9 trust?

10 A No.

11 Q You do understand that it's owned by the trust,
12 though?

13 A It's on trust property, yeah.

14 Q Okay. And let me ask you about Alice Boykin's -- the
15 time period after Mr. Boykin's death, Alice Boykin, as far
16 as managing timberland. Ms. Boykin, she didn't manage
17 timberland specifically with an eye for profit generation
18 or income generation, did she?

19 A My assumption and my observation would be she managed
20 the timberland to maximize the productivity from the land.
21 She engaged a forester. I remember one time there was an
22 infestation of kudzu at Sumter Mountain and she had to
23 hire a helicopter to come spray it. In my view, she was
24 doing all the appropriate things to properly manage the
25 timberland for maximum production.

1 Q You also said earlier that Alice was always short on
2 cash, didn't you say that?

3 A Yes.

4 Q So is it your testimony that despite the fact she was
5 managing the timberland, as you say, as a responsible or
6 active timberland would have done, nevertheless, she was
7 still short on cash; isn't that right?

8 A Yes.

9 Q Okay. And that was at a time when she would have
10 been the only beneficiary from the proceeds or the cash or
11 income that's generated; isn't that right?

12 A Well, I know that Whit received some money, young
13 Whit received some money from somewhere. What entity it
14 came from, I don't know. She was -- she was always trying
15 to take care of a lot of people other than herself.

16 Q Understood.

17 A Was my assessment.

18 Q Understood. I guess my question is, under the trust
19 document, the marital trust, she was the beneficiary?

20 A That's correct.

21 Q So anything that went to Whit would have been out of
22 the goodness of her heart; is that fair to say?

23 A Or it could have been paid to him out of the trust as
24 farm employee.

25 Q Okay. But it wasn't something provided for in the

1 document at that time?

2 A Well, the document does provide that Whit is to be
3 employed by the farm.

4 Q And paid a salary?

5 A Right.

6 Q Okay. I want to ask you, Mr. Bailey, to take a quick
7 look at Exhibit 22. Do you have that binder there in
8 front of you?

9 A Uh-huh.

10 Q Okay. Good. And this is the April 6th, 1990 letter
11 from you to Alice Boykin that you were discussing with Mr.
12 Becker earlier; is that right?

13 A Correct.

14 Q And I ask you to turn to the last page, which has
15 been the topic of some conversation. This is the sort of
16 schedule you provided. Did you draft this at the time, do
17 you recall?

18 A It looks like something I would have done, yes.

19 Q And we talk about it's got sort of three headings,
20 right, property most likely to be sold, property most
21 likely to appreciate in the future, and property to be
22 retained; is that correct?

23 A Correct.

24 Q And if I heard you correct when you were talking
25 about the three properties at the bottom, your testimony

1 was that these, in essence, were the most treasured of the
2 treasured tracts; is that fair to say?

3 A Yes.

4 Q Let me ask you a first question, the terminology
5 treasured tracts, that doesn't appear anywhere in
6 Mr. Boykin's Will, does it?

7 A No.

8 Q So to your testimony that these are the most
9 treasured of the treasured tracts, specifically, I want to
10 ask you about number three, Sumter. This is the Sumter
11 Mountain property; isn't it?

12 A Correct.

13 Q Sumter Mountain, that tract isn't identified in Item
14 10 of Mr. Boykin's Will?

15 A That's correct. This is a draft document. This is
16 not a final document. This was for discussion purposes.
17 It was developed during discussions with her as to what
18 she would identify as property to be retained or sold or
19 what she identified was property that was likely to
20 appreciate in value.

21 Q Okay. And I understand that. What I'd like to
22 understand is you would agree with me that Sumter Mountain
23 specifically --

24 A It's not identified as a treasured tract.

25 Q There no expression one way or the other about Sumter

1 Maintain?

2 A Correct.

3 Q And how about the Carter Hill tract?

4 A I don't recall. I'd have to go look at the document.

5 Q Also, not in the Will, right?

6 A I don't know. I'd have to look at the Will.

7 Q You don't know without looking at the Will which
8 tracts are named in Item 10; is that correct?

9 A That's correct.

10 Q And I want to ask you one other thing about this
11 topic. You say earlier that there were certain abutting
12 properties to those that are listed in the Will and that
13 those were, essentially, ingrafted into the, quote,
14 treasured tracts. Is that fair to say? That was your
15 testimony?

16 A Yes.

17 Q Okay. And there's no basis in the Will for
18 ingrafting additional properties onto those listed in the
19 Will, is there?

20 A That is correct. When I said they were ingrafted, I
21 meant that she attached great importance to those
22 properties, but the Will did not express any preference to
23 those properties at the date of his death.

24 Q Ms. Boykin liked those properties and wanted to maybe
25 hold onto them?

1 A Right.

2 Q But the trust that is the subject to this litigation,
3 that's a trust that was created under the Will of
4 Mr. Boykin; is that correct?

5 A Correct.

6 Q So you would agree with me that that is sort of the
7 operative document; is it not?

8 A Yes.

9 Q Okay.

10 MR. DUFFY: May I approach, Your Honor?

11 THE COURT: What is it?

12 MR. DUFFY: This is an email from Mr. Bailey to Ms.
13 Belger, dated January 27th, 2017. And this was obtained
14 --

15 THE COURT: Are you going to hand a copy of it to me
16 so I'll have one, too?

17 MR. DUFFY: Absolutely, Your Honor.

18 THE COURT: All right. Without objection?

19 MR. BECKER: I haven't seen it, but I doubt I will
20 object.

21 THE COURT: Mr. Becker, without objection?

22 MR. BECKER: No objection, Your Honor.

23 THE COURT: All right. 181 admitted. Petitioner's
24 181.

25 (WHEREUPON, Petitioner's Exhibit No. 181 was marked

1 for identification only.)

2 BY MR. DUFFY:

3 Q Mr. Bailey, do you have the document in front of you
4 there?

5 A No.

6 THE COURT: Mr. Duffy, have you got a whole bunch of
7 exhibits you're going to be using?

8 MR. DUFFY: I do not. I think we've exhausted that
9 avenue.

10 THE COURT: Good.

11 BY MR. DUFFY:

12 Q All right. Mr. Bailey, do you have that email in
13 front of you?

14 A Yes, sir, I do.

15 Q This is an email dated January 27th, 2017?

16 A Right.

17 Q From you to Alice Belger with a copy to Karen Thomas;
18 is that right?

19 A Uh-huh.

20 Q Okay. And I think you say here in this sort of third
21 line down to Alice: I have been thinking and it will
22 probably be a good thing if Rigdon takes you to court.
23 Did I read that right?

24 A Yes.

25 Q That way a judge will decide -- or we think the judge

1 will side with you and MD, is that Mary Deas?

2 A Yes.

3 Q And then you go on to say: Don't get upset and keep
4 your cool. Going to court does not have to be a nasty
5 experience. You all are not accusing one another of doing
6 anything wrong. You just have a disagreement about the
7 direction of the trust; is that correct?

8 A Yes.

9 Q Let the judge decide who's right and who's wrong.
10 You don't want it to escalate into name calling and
11 accusations which will destroy relationships, cost a
12 fortune; is that right?

13 A Yes.

14 Q Those are your words, correct?

15 A Yes.

16 Q Okay.

17 MR. DUFFY: That's all I have. Thank you.

18 THE COURT: All right. Mr. Tetterton.

19 MR. TETTERTON: Thank you, Your Honor.

20 CROSS-EXAMINATION:

21 BY MR. TETTERTON:

22 Q Mr. Bailey, how are you?

23 A I'm fine, sir. How are you?

24 Q I'm William Tetterton and I represent two of the
25 beneficiaries, little Whit Boykin and May Boykin.

1 MR. TETTERTON: I'll speak up, Your Honor.

2 Q If I understand correctly, you drafted or helped
3 draft the Will of Mr. Whit Boykin?

4 A No, sir, I did not.

5 Q Ed Royal did that?

6 A Yes, sir.

7 Q And you reviewed it with Mr. Whit Boykin?

8 A No, sir, I never met Whit Boykin during my lifetime
9 or his.

10 Q And isn't in the trust practice, isn't the settling
11 of a trust, isn't it his prerogative to choose his
12 trustees?

13 A Sure.

14 Q And didn't back in 1989 when this Will was prepared,
15 didn't Mr. Whit Boykin choose Rigdon Boykin as one of his
16 trustees?

17 A Yes, sir.

18 Q And if a trustee a settlor chooses has specific
19 experience, skill or other specific knowledge of
20 something, shouldn't some credence be given to that
21 trustee?

22 A Yes, sir.

23 Q And you and I can agree, can we not, that when
24 Mr. Whit Boykin picked Rigdon Boykin as his trustee, he
25 relied on Mr. Rigdon Boykin's experience and trust

1 experience or financial experience, would you agree with
2 that?

3 A I don't know. As I said, I didn't know Mr. Whit
4 Boykin. I'm assuming he must have, otherwise, he wouldn't
5 have designated it.

6 Q In fact, the code provides, does it not that when a
7 trustee -- 62-7-806, I believe. When a trustee -- I mean,
8 a settlor picks a trustee with special experience, he
9 picks that trustee for a particular reason. Wouldn't you
10 agree with that code section?

11 A I don't have it in front of me.

12 Q Well, let me suggest it to you. You're not familiar
13 with the holding of that particular code section or
14 meaning of that code that if a settlor picks a trustee
15 with special experience, then that trustee should be given
16 the benefit of --

17 THE COURT: I can read the code, Mr. Tetterton.

18 MR. TETTERTON: I just wanted to see if he was aware
19 of that code.

20 BY MR. TETTERTON:

21 Q At one time -- I'm trying to wrap my head around the
22 estate prior to August 8th, 2016. You got to know Alice
23 Boykin very well; is that correct?

24 A Yes, sir.

25 Q And I believe you said she was a very astute person

1 in business dealings?

2 A In my opinion, yes, sir.

3 Q And she much, would you say, controlled what happened
4 in those trusts and Mary Deas just went on along with her?

5 A No, I believe she engaged Mary Deas in her thought
6 process. Yes, she was the leader, but she also would
7 bring Mary Deas in the loop, make sure that Mary Deas was
8 in agreement with her. At least, that's my assessment.

9 Q And the picture I've discerned from what you've
10 described about what was going on with Alice Boykin and
11 Mary Deas and this trust or this land was they were
12 trust -- I mean, land poor. Is that fair to say?

13 A I think so, yes, sir.

14 Q And I think one of your biggest concerns was
15 liquidity, was it not?

16 A At the time of Mr. Whit Boykin's death, yes. I
17 expressed my personal opinion of what I would do and Alice
18 didn't agree, but that was a business decision.

19 Q You provided advice, professional advice based on
20 your credentials to Alice Boykin about what she could do
21 with the assets from the trust; is that correct?

22 A Yes, sir.

23 Q And what was advice you gave Alice Boykin?

24 A What she could do with respect to the assets of
25 trust? I don't know what specifically you're asking.

1 Q Well, she said she didn't follow your advice. What
2 advice did you give her?

3 A Oh, well, you know, my personal advice was -- not
4 professional legal advice, but my personal advice was that
5 I thought she was going to have to sell some of the real
6 estate and she didn't want to sell the real estate or she
7 didn't want to sell it in a weak market. And, you know,
8 as it turned out, she was correct and I was wrong. She
9 managed to hold the world together until the market turned
10 and then she started selling real estate.

11 Q But she sold timber during that period of time, did
12 she not?

13 A There was timber sold after Hugo. Whether other
14 timber was sold at different times, I'm not aware of.

15 Q Are you aware that in 2009, she only sold \$63,500
16 worth of timber?

17 A No, sir.

18 Q Are you aware in 2010, she sold \$259,000 worth of
19 timber?

20 A I was not involved in the day-to-day operations of
21 any of these trusts. Ms. Boykin, like anyone else, didn't
22 like to pay any more in legal fees than she had to, so she
23 didn't involve me in those decisions.

24 Q The picture I see you're painting of Ms. Boykin was
25 she only sold timber when she wanted to cherry pick such

1 timber whether she needed money? Lack of cash was a big
2 problem for her?

3 A That would be -- yeah.

4 Q In fact, that's fair to say about Ms. Alice Boykin,
5 she just didn't have any cash?

6 A That's what I understood about Whit Boykin and Alice
7 Boykin.

8 Q Okay, but I'm talking about you getting involved with
9 Ms. Alice Boykin. In fact, there was some concern about
10 her not even being able to pay -- not having enough cash
11 to pay the premiums on the insurance policy?

12 A She would always manage to raise the cash. She
13 didn't like to part with cash.

14 Q But y'all were concerned, were you not, about paying
15 the premium on the insurance policy that was going to be
16 used to pay the estate taxes?

17 A I wouldn't say we were concerned about paying the
18 premiums, we were concerned about getting her to initiate
19 the transfer of the money.

20 Q In fact, when you me with Karen Thomas in August
21 of 2016, you had three concerns. One of them was they
22 were heavy in real estate?

23 A Right.

24 Q I'm going to use the term land poor, is that fair to
25 say? They had more land than they had cash?

1 A Right.

2 Q Number two is, they had no liquidity in 2016, is that
3 fair to say?

4 A Well, there was some liquidity. I'm not sure whether
5 it was adequate liquidity. She had a significant
6 portfolio, if I'm not mistaken.

7 Q Did they have enough liquidity in August of 2016 to
8 pay estate taxes?

9 A I don't know that personally, but my assumption is
10 no.

11 Q Did they have enough liquidity in August of 2016 to
12 pay the administrative fees of the trust?

13 A I don't know the amount of the administrative fees of
14 the trust.

15 Q Well, we have administrative fees in having a trust
16 of this size, right?

17 A Sure.

18 Q And what was your understanding of the size of this
19 trust? Was it anywhere from 20 to 25 million dollars?

20 A I didn't have an understanding of the size.

21 Q You had no idea what the size of this trust was when
22 you talked to Karen Thomas?

23 A No.

24 Q You had no idea -- when you met with Karen Thomas you
25 represented that they were heavy in real estate, but you

1 didn't know the value of the real estate. Is that what
2 you're telling me?

3 A I did not know the value of the real estate.

4 Q So you wouldn't know at that time the size of the
5 trust?

6 A I knew that just based upon the relationship of the
7 liquidity versus the land at the time of Whit Boykin's
8 death that there had not been a significant -- or my
9 expectation was that there had not been a significant
10 change in that balance of assets. So he, at the time of
11 his death, they were short on cash and high on real
12 estate, so I assumed that was the same situation at the
13 time of Alice Boykin's death.

14 Q Were you under the impression at that time that the
15 value of the trust was about 10 million dollars?

16 A I don't have an assessment of the value of the trust.

17 Q I think you told me 5.1 million and then another 5
18 million dollars, so the value of the trust of Mr. Whit
19 Boykin being about 10 million dollars when he died?

20 A Yes, that was Whit Boykin's estate. I thought you
21 were talking about Alice Boykin.

22 Q Have you heard the expression from Rigdon, Mary Deas
23 or Alice that his estate doubled after that?

24 A Nope.

25 Q And if it had doubled, it would be worth 20 million

1 dollars, wouldn't it?

2 A Right.

3 Q The third thing -- other than heavy on real estate,
4 liquidity, the third thing you mentioned was the
5 personalities involved among the fiduciaries. You
6 expressed that to Karen Thomas in August 2016?

7 A I'm not sure. What are you referring to August
8 of 2016? It's like this is some event that I'm not --

9 Q Well, I take what you told us was that in
10 August 2016, you met with Karen Thomas when you
11 transferred trust over to her. You recommended she take
12 over the trust. And I'm only reading what she had
13 prepared was at that time --

14 A We've had numerous conversations. I just wasn't --
15 didn't recall specifically what you were talking when you
16 say August 2016, like it's some particular memorialized
17 event. I'm not aware of that.

18 Q Well, let's memorialize it. August 8th, 2016, Alice
19 Boykin died?

20 A Okay.

21 Q August 2016, you gave up being involved in the trust?

22 A Right.

23 Q August 2016, you helped retain the service of Karen
24 Thomas?

25 A Correct.

1 Q Does that help refresh your memory about August 2016?

2 A Sure, if you say it's August -- I don't recall
3 exactly when happened, but that's accurate what happened.
4 I couldn't tell you it all happened August 2016.

5 Q Let me just read it to you, when Alice Boykin passed
6 away in August of 2016, Mr. Bailey called me to handle the
7 administration of Ms. Boykin's estate. True?

8 A True.

9 Q He gave me an overview of the assets of the taxable
10 estate. True?

11 A Yes.

12 Q And at that time when you gave her an overview of the
13 assets of the taxable estate, you had no idea what that
14 estate was worth. That's what you just told me?

15 A I gave her an overview of the assets of the estate.

16 Q Being what?

17 A Of being a lot of real estate and probably very
18 little cash.

19 Q And --

20 A I did not go through -- I do not recall going through
21 with her specifically this trust owns this piece of
22 property. This is a complicated web that wouldn't have
23 been handled or dealt with in just one meeting.

24 Q And all during this time from 2000 -- I'm sorry, 1989
25 to 2016 when you were advising Ms. Boykin, you had no idea

1 of the net asset value of the trusts, of these different
2 trusts?

3 A No.

4 Q Okay.

5 A I mean, no idea. I knew it was significant value of
6 the assets, but I'm not qualified to determine the value
7 of any specific assets and the trust didn't maintain any
8 records indicating the value of the assets other than the
9 brokerage account.

10 Q I'll continue to read. He gave an overview of the
11 assets of the taxable estate, the types of trust. That's
12 true, right?

13 A Uh-huh.

14 Q The lack of liquidity?

15 THE COURT: Mr. Tetterton, asked and answered.

16 MR. TETTERTON: I'm sorry.

17 THE COURT: I think I got the picture. We haven't
18 got a jury here. It's just me. I think I got the picture
19 of what he said to Mrs. Thomas, the three things that were
20 problems. Let's move forward.

21 MR. TETTERTON: Thank you, ma'am.

22 BY MR. TETTERTON:

23 Q Is it the duty of trustees to properly and to
24 prudently invest trust assets?

25 A Yes.

1 Q Is it a duty of the trustees to diversify the assets
2 of a trust to maximize growth and minimize risk?

3 A I'd have to look at the trust code. I would say in
4 most cases, yes. You know, I don't know how Mr. Boykin's
5 specific directions implicate -- affect that.

6 Q Well, my question was wouldn't it be -- would you
7 advise a client to develop an investment strategy that
8 would maximize growth and minimize risk?

9 A Under normal circumstances, yes.

10 Q Would you think keeping all your eggs in one basket,
11 like having all your assets in the timber business and
12 land business would be a prudent investment strategy?

13 A No, but, again, you've got the extenuating
14 circumstances of Mr. Boykin's directions in his Will.

15 Q Would you agree that there could be a change in
16 circumstances between 1989 when he drew his Will until
17 2016 when the three trustees came onboard?

18 A Sure.

19 Q Would you advise the trustees to reach out to experts
20 in order to advise them on how to manage, properly
21 manage -- properly and prudently manage the trust?

22 A At what timeframe are you talking about?

23 Q Whenever trustees come onboard and they've got a
24 20 million, 25 million dollar trust, would it be your
25 advice to them to reach out to financial advisers to help

1 them develop an investment strategy?

2 A You're talking about subsequent to Ms. Boykin's
3 death?

4 Q I'm talking about in August of 2016, from that time
5 forward, would you advise clients -- I'm sorry, would you
6 advise trustees to reach out to financial advisers or
7 other experts to advise them how to develop an investment
8 strategy?

9 A I think it would be appropriate to develop an
10 investment strategy. It depends on the timing. You know,
11 obviously, immediately after someone's death when you're
12 dealing with a lot of issues like estate taxes and so
13 forth, you don't really have time to know what you have to
14 deal with and, therefore, decide what to do with it, but I
15 would think at some point, it would be appropriate, yes.

16 Q Do you think that the trustees in this particular
17 trust would be bound by the uniform prudent investment
18 act?

19 A That's uniformly applicable to South Carolina.
20 Again, I don't know the impact of the specific provisions
21 of the testator or settlor.

22 Q Did you form an opinion when you read Mr. Whit
23 Boykin's Last Will and Testament whether or not in
24 August 2016 there was a duty imposed upon these trustees
25 to comply with the uniform prudent investment act?

1 A Well, yeah. I mean, it's...

2 Q Thank you. Do trustees in your experience -- and I
3 admire your credentials, I really do, is it incumbent upon
4 the trustees to reach out to all beneficiaries to try to
5 get some input from them as to how to manage the trust,
6 not necessarily make decisions, but to get some input from
7 them?

8 A I think that's advisable.

9 Q Do you know whether or not in this particular trust
10 Alice Belger or Mary Deas reached to Whit or May to get
11 some sort of input from them?

12 A I'm not aware of what's happened with the trust
13 subsequent to Alice Boykin's death.

14 Q Do you think income beneficiaries such as my clients,
15 Whit Boykin and Alice -- I mean, May Cantey Boykin, would
16 be entitled to be informed periodically about what the
17 trust is doing?

18 A Yes.

19 Q Do you think they would be -- they should be informed
20 about the future investment strategy of the trust in
21 managing the trust assets?

22 A I think that that's advisable. I'm not sure that
23 they have to be informed, but I think it's advisable.

24 Q Isn't one of the duties of the trustees is to have a
25 duty of loyalty to the income beneficiaries?

1 A Have a duty of loyalty to all the beneficiaries,
2 income and remainder beneficiaries.

3 Q And that would include my clients, Whit Boykin and
4 Mary Deas Boykin [sic]?

5 A Yes.

6 Q Would they also have a duty of impartiality to all
7 beneficiaries?

8 A Yes.

9 Q Do you know whether or not -- after you read
10 Mr. Whit's Will, isn't it true that the future remaining
11 members are the children of Alice Belger and Mary Deas,
12 three children?

13 A Yes. Assuming that Whit Boykin doesn't have a child
14 or May Boykin doesn't have a child.

15 Q And as we understand it, they neither have children;
16 is that correct?

17 A They do not at this time.

18 Q So would that cause you some heartburn or some
19 concern about a conflict or some degree of impartiality if
20 Mary Deas and Alice decided to try to protect their
21 children in the future rather than the needs of my
22 clients, Whit and May?

23 A Yeah, that definitely puts them in a conflicting
24 situation.

25 Q Alice Boykin had a dream about making the Boykin

1 community a tourist attraction. You and I agree on that,
2 do we not?

3 A Right.

4 Q And she drove with the limited assets she had to do
5 that, did she not?

6 A Yes.

7 Q Do you think it's incumbent upon the trustees today
8 to promote that dream of Alice Boykin, to protect the
9 integrity of the buildings and the assets in the Boykin
10 community? I call it the Town of Boykin. Is it incumbent
11 upon them to try to promote that dream?

12 A I don't know. I know that Alice had consulted
13 with -- my recollection is she consulted with someone who
14 was more of a professional in the area of developing -- or
15 advising her on developing Boykin as a tourist
16 destination. Whether that's a viable endeavor, I don't
17 know.

18 Q What are some of the expenses during the management
19 of a trust? Let me just list what I think. You have
20 trustee fees, right?

21 A Uh-huh.

22 Q You have income beneficiary distributions, correct?

23 A Okay.

24 Q You have, of course, lawyer fees. You have
25 accountant fees and you have the normal administrative

1 cost. You also have maintenance fees, do you not, of the
2 commercial buildings and the buildings that are down in
3 the Boykin community?

4 A Yes.

5 Q Did you ever see a plan by anybody on how they were
6 going to maintain those buildings? Did Alice ever give
7 you a plan on how she was going to pay for maintaining
8 those buildings?

9 A No.

10 Q Wasn't your opinion that she would only cherry pick
11 and pay -- I'm sorry, sell some timber when she needed to
12 meet those maintenance expenses of the estate?

13 A I'm not sure of the correlation between cash needs
14 and cutting timber.

15 Q You were asked a few minutes ago by Mr. Becker about
16 Exhibit No. 37. And Exhibit No. 37, that is, I'll read
17 the caption, Boykin marital trust B gift target real
18 estate. Are you familiar with that?

19 A I'm looking at it.

20 Q And at the top, it says Alice's values. Do you see
21 that?

22 A Yes.

23 Q Where did those values come from?

24 A Out of her head.

25 Q And if it came out of her head, wouldn't you agree

1 with me that would be her opinion of the value of those
2 pieces of property on that particular date, 3-11-2013?

3 A Well, it depends on what purpose you're getting an
4 opinion from Alice. If you're getting an opinion for sale
5 purposes, it might be significantly different from the
6 value she would give you as her opinion for gift purposes.

7 Q But on that particular date, she valued just about
8 all the property, a couple exceptions, at \$3,000 an acre,
9 correct?

10 A As reflected on this schedule, yes.

11 Q And at that time, the appraisals had not come in?

12 A I don't know. I don't know when -- let's see. This
13 was prepared in '13. I would assume we had the appraisals
14 by then, but, perhaps, I'm mistaken. My suspicion is this
15 is a draft that went nowhere.

16 Q If you were advising the trustees of an estate of 20,
17 25 million dollars, how would you advise them to diversify
18 the assets of the trust to minimize risks and maximum
19 growth?

20 A Well, I think the -- in most cases, you would want to
21 diversify.

22 Q How?

23 A What do you mean how?

24 Q Well, do you leave it all in land and timber or do
25 you diversity putting some in --

1 A Well, you're not diversifying if you leave it all in
2 land and timber.

3 Q Well, what would you do in order to diversity?

4 A You would sell some of the land.

5 Q And do what?

6 A Buy different assets.

7 Q Would you buy stocks and bonds?

8 A That would be one alternative, yes.

9 Q And when you met with Mary Deas, did you ever learn
10 that she, in fact, had about \$90,000 in blue chip stocks?

11 A She personally?

12 Q Yes.

13 A I'm not aware of her personal finances.

14 Q Were you aware of the fact that Alice Boykin invested
15 a lot of her assets, liquid assets in blue chip stocks and
16 bonds?

17 A No, I knew she was using a stockbroker named Ansel
18 Bunch in Columbia, or I understood she was, but I wasn't
19 aware of her personal assets.

20 Q You weren't aware that she used Ansel Bunch and she
21 put most of her money in blue chip stocks and bonds
22 earning about eight to nine percent? Were you aware of
23 that?

24 A No.

25 Q Were you aware that Mary Deas also utilized Ansel

1 Bunch in investing her portfolio in blue chip stocks?

2 A No.

3 Q You think that's a good idea, though, don't you, to
4 diverse?

5 A Yes.

6 Q And put it in blue chip stocks and bonds?

7 A I don't know about blue chip, but, certainly, in the
8 stock market.

9 Q Is it a duty to diversify?

10 A In most cases, yes.

11 Q And if a trustee decides they're not going to
12 diversity, would that cause some concern about their
13 management of the trust?

14 A In most cases, yes.

15 Q In this case, we have three trustees. If one trustee
16 failed to cooperate with the other trustees in the
17 management of the trust, particularly in developing an
18 investment strategy, would that cause some concern about
19 there being competent, skillful management of the trust?

20 A I'm not aware of the circumstances, so I don't know
21 that I can comment on that.

22 Q Well, isn't it a duty for them to cooperate with all
23 the trustees?

24 A I don't --

25 Q Duty to cooperate?

1 THE COURT: Mr. Tetterton.

2 MR. TETTERTON: I'm sorry.

3 THE COURT: You know this isn't final argument. This
4 is cross-examination of this witness. We wouldn't be here
5 in the court if we haven't a severe disagreement between
6 these trustees as to how to manage this trust. I got
7 that. I understand.

8 MR. TETTERTON: That's what I want to make sure,
9 Judge.

10 THE COURT: Yes, sir.

11 MR. TETTERTON: All right. Thank you. Maybe just a
12 couple other questions.

13 BY MR. TETTERTON:

14 Q Did you have any -- you did advise or recommend to
15 Karen Thomas that this matter be taken to the courts early
16 on, did you not?

17 A No, not to Karen Thomas.

18 Q Who did you advise that to?

19 A The email that was brought up previously was in --
20 what I sent to Alice Boykin, young Alice, what I had
21 understood from Karen was that Alice was very upset, that
22 she was threatened to be taken to court and she was very
23 upset about it.

24 And so I called Alice as a friend of the family or
25 long time friend of hers to say maybe this is the best

1 thing. Let the court resolve. You know, stop your
2 arguing and disagreements between the trustees and let the
3 court resolve it and get to the end of it.

4 Q And in that email, you went on to say that the court
5 would probably decided in her favor and Mary Deas' favor,
6 did you not?

7 A That was my opinion.

8 MR. TETTERTON: Thank you. I have nothing further.

9 THE COURT: Anything further, Mr. Becker.

10 MR. BECKER: If I do, it will be just one little
11 thing.

12 THE COURT: Certainly. Consult with co-counsel.

13 REDIRECT EXAMINATION:

14 BY MR. BECKER:

15 Q Mr. Bailey, did Ms. Alice S. Boykin, to your
16 knowledge, did she play any role in helping her husband
17 decide who would be the trustees in his Will?

18 A She told me that she was the one that got Whit to --
19 big Whit, deceased Whit to appoint Rigdon as a trustee of
20 the trust. I have no -- that's just what she told me. I
21 don't have any personal knowledge of that myself.

22 Q Did she later express to you that she regretted that?

23 A Yes, she did.

24 Q Now, you mentioned -- Mr. Tetterton asked you about
25 what is this -- what does it present in terms of the fact

1 that Whit and May have no children, and he asked you about
2 favoring one set of beneficiaries over another. Now, as
3 long as trustees like Mary Deas Wortley and Alice Belger,
4 who do have children, don't favor remainder beneficiaries
5 over income beneficiaries, then that shouldn't present any
6 sort of conflict or problem for them, should it?

7 A Correct.

8 Q They can't help the fact, can they, that they have
9 children, but their two siblings don't?

10 A That's correct.

11 Q And that's not something that could have been
12 anticipated by Mr. Boykin when he drafted his Will, could
13 it?

14 A I would assume not.

15 Q Remainder beneficiaries have rights under the Will
16 just like income beneficiaries, don't they?

17 A Correct.

18 Q And doesn't a trustee have to be attentive to both
19 the needs -- the need of both income and remainder
20 beneficiaries?

21 A Yes.

22 Q Do you know of -- do you have any knowledge that Mary
23 Deas Wortley or Alice Belger may have favored the
24 remainder beneficiaries over the income beneficiaries in
25 the administration of this trust?

1 A No.

2 Q Thank you.

3 THE COURT: All right. Nothing further?

4 MR. BECKER: No, ma'am.

5 THE COURT: All right. Mr. Bailey, thank you so
6 much.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: You may be excused.

9 THE WITNESS: All right. Thank you.

10 THE COURT: All right. Mr. Becker.

11 MR. BECKER: Your Honor, we call Karen Thomas to the
12 stand.

13 THE COURT: Ms. Thomas, please come around.

14 KAREN THOMAS, after being duly sworn,
15 testified as follows:

16 THE COURT: You may be seated.

17 DIRECT EXAMINATION:

18 BY MR. BECKER:

19 Q Good morning, Ms. Thomas.

20 A Hey.

21 Q Would you like some water?

22 A Yes. I think I'm going to be grilled, so...

23 THE WITNESS: Can you hear me? I'm so...

24 THE COURT REPORTER: Speak up just a little bit.

25 BY MR. BECKER:

1 Q As I refer to an exhibit, the number tabs are right
2 there.

3 A Goes by tab.

4 Q You can go right to it.

5 A Thank you.

6 Q Ms. Thomas, would you please state your full name for
7 the record?

8 A It's Karen Hudson Thomas.

9 Q Could you please give the Court just a general
10 description of your professional education and experience?

11 A I graduated from Clemson in 19 --

12 THE COURT: I want you to speak up now. I know it's
13 awkward.

14 THE WITNESS: I'll try.

15 THE COURT: You're used to having a conversational
16 talk with your clients and not testifying in court.

17 THE WITNESS: My second time ever.

18 THE COURT: But we've got a lot of folks who need to
19 hear what you have to say.

20 THE WITNESS: I'm a Clemson graduate from 1985, and
21 then I went to law school at Carolina. At law school, I
22 fell in love with tax, and most of the tax classes was
23 offered because the tax student awards.

24 So my professors encouraged me to go to NYU. At NYU,
25 I was also an editor for the Law Review there, got my

1 Masters in tax law. I came back to practice with George
2 at Nelson Mullins in 1989. So I had the fortune to be
3 trained at Nelson Mullins by not only George, but Bob
4 Wilkins, who was the lawyer that Rigdon referenced, went
5 to.

6 At Nelson Mullins, I practiced full-time and enjoyed
7 every bit of it. My baby was diagnosed with rheumatoid
8 arthritis and couldn't be treated in Columbia. So I
9 talked with George and I left the firm to go to Ellis,
10 Lawhorne & Sims to practice with my good buddies Dave
11 Sojourner and Rita Cullum. We're still practicing today.

12 We went through Ellis Lawhorne together, and then
13 when Adams and Reese purchased us, we set up our own
14 boutique law firm. Now, there's seven of us there who do
15 only estate planning and probate and tax.

16 During that period of time, I became a specialist in
17 tax law and chaired that specialization board, became a
18 specialist in estate planning, chaired that board, became
19 an adjunct fellow. And the same professors who convinced
20 me to go to tax school convinced me to be an adjunct
21 professor. So that's what I only do is estate planning
22 and taxes.

23 Q And you are an adjunct professor here at the
24 University of South Carolina school of law?

25 A Yes.

1 Q Now, during -- about how many years have you been
2 practicing law?

3 A I had a 30th anniversary last week.

4 Q During that time, in your professional practice as an
5 attorney, approximately how many estate planning
6 engagements have you had?

7 A That's all we do, hundreds, thousands. I'm not quite
8 sure.

9 Q Approximately how many trust documents have you
10 prepared or reviewed?

11 A The same. Sometimes multiple trusts in each estate
12 plan.

13 Q Have you ever served as a trustee of any trust?

14 A Only for family.

15 Q Have you ever provided advice and counsel in the
16 administration of trusts?

17 A Oh, yes.

18 Q Again, the number, approximately how many different
19 trusts?

20 A Really, hundreds and hundreds of them.

21 Q Okay.

22 A If not thousands.

23 Q What's been the size range in terms of asset values
24 of the trusts for which you provided advice and counsel?

25 A They could be as small as 150 to \$100,000, which is

1 not practical, up to 80, 100 million dollars. The normal
2 right now for me is 40, 50 million dollars.

3 Q What's been the range of the different types of
4 trusts in terms of the assets of the trust for which
5 you've provided advice?

6 A It could be as little as a house and, more often,
7 lots of land, farmland, timberland, closely-held
8 businesses, banks, factories, you name it.

9 Q Okay. Now, Ms. Thomas, you've heard Mr. Bailey talk
10 about the advice he gave to Alice S. Boykin and the trust,
11 the trustees and beneficiaries in December 2012?

12 A Yes.

13 Q About modifying marital trust B to permit a
14 distribution for marital trust B to her that she would
15 then gift to either a new trust -- and we learned it ended
16 up being the residuary trust for the purpose of helping
17 her save on estate and future generation skipping taxes
18 potentially?

19 A Yes.

20 Q Correct? And you heard about -- Mr. Bailey testify
21 about Rigdon Boykin's refusal to cooperate fully with that
22 plan to save estate and generation skipping taxes,
23 correct?

24 A Correct.

25 Q Have you made a calculation of how much in tax

1 savings were lost as a result of Rigdon Boykin's failure
2 to cooperate fully with Mr. Bailey's proposed strategy?

3 A Using lots of estimates, I did. And I don't remember
4 what the number is, but using lots of estimates, going
5 back and getting Mr. Outlaw's appraisals from 2012,
6 comparing it to the estate tax return appraisals and the
7 differential there.

8 Q All right. Had you -- either you or Mr. Bailey
9 attempted to calculate and quantify those lost tax savings
10 before this time?

11 A No, sir.

12 Q Did you that recently?

13 A Yes, sir, when I went back through the history --

14 THE COURT: Speak up now, Ms. Thomas.

15 THE WITNESS: Yes, sir, when I went back through the
16 history to prepare the summary of the administration,
17 that's when I noticed.

18 BY MR. BECKER:

19 Q So was that done sometime this year?

20 A Yes, it was done this summer.

21 Q Was it after July 12th of 2018?

22 A Probably.

23 Q How much extra taxes did result based on your
24 calculation as a result of Mr. Boykin's failure to fully
25 cooperate with Mr. Bailey's proposed plan?

1 A I have it in my letter, Mr. Becker. I don't know
2 where that is in here.

3 Q That is Exhibit -- that is Exhibit 56.

4 THE COURT: Fifty-six.

5 MR. BECKER: Yes, ma'am.

6 MR. DUFFY: Your Honor, if I may. I'm not sure
7 whether they're planning to move all of these into
8 evidence. One issue we do have with this letter, and I
9 reviewed it, I'm sure Mr. Tetterton has as well.

10 While we appreciate the streamlining of evidence and
11 exhibits, there is a lot of, in our view, objectionable
12 hearsay contained in this document, and I don't know how
13 the Court wants to handle that.

14 THE COURT: All right. Your objection to Exhibit 56
15 is on the basis of hearsay?

16 MR. DUFFY: Well, hearsay, double hearsay. I mean, I
17 can point out some specifics to you if you'd like.

18 THE COURT: Well, let's go on and get it disposed of.
19 I, frankly, thought that y'all had worked these things
20 out. But if not, then --

21 MR. DUFFY: Well, we hadn't seen exactly what --
22 except for some of the exhibits which they prepared prior
23 to the July meeting, we weren't sure exactly what --

24 THE COURT: You haven't seen Ms. Thomas' -- this is
25 Wortley Exhibit 56.

1 MR. DUFFY: I've seen it. I haven't seen it with the
2 intention to be used as an exhibit in the trial.

3 THE COURT: Have you seen this thing before?

4 MR. DUFFY: Yes.

5 THE COURT: It's dated August 23rd, 2018.

6 MR. DUFFY: Yes, sir.

7 THE COURT: I would assume that you all have seen
8 this before the last couple of days, right?

9 MR. DUFFY: Your Honor, I have with the exception of
10 the fact that it was not marked as a trial exhibit.
11 That's my only issue is that --

12 THE COURT: And when did you learn it was marked as a
13 trial exhibit?

14 MR. DUFFY: Just a moment ago.

15 THE COURT: All right. Then, yes.

16 MR. BECKER: Can I lay foundation for this, Your
17 Honor, and explain what brought it about?

18 THE COURT: Yes. I think that would be fair. You
19 lay a foundation for what we're looking at and we'll see
20 what Mr. Duffy wants to enter into the record by way of
21 objection.

22 Is that okay, Mr. Duffy?

23 MR. DUFFY: That suits me, Your Honor.

24 THE COURT: Very good.

25 Go ahead, Mr. Becker.

1 MR. BECKER: Thank you, Your Honor.

2 BY MR. BECKER:

3 Q Ms. Thomas, please take look at Exhibit 67.

4 A Sixty-seven.

5 THE COURT: We're at 57 now?

6 MR. BECKER: Well, 67.

7 THE COURT: Sixty-seven?

8 MR. BECKER: Yes, ma'am.

9 THE COURT: All right.

10 BY MR. BECKER:

11 Q Is that a letter that I wrote to you?

12 A Yes, sir.

13 Q Did you receive it?

14 A Yes.

15 Q Did we meet, as this letter states, on July 12th on
16 behalf of my clients, Mary Deas Wortley and Alice B.
17 Belger?

18 A Yes.

19 Q And did I ask you at that time to provide a written
20 narrative of your experience and observations in
21 representing the trustees of the residuary trust and to
22 also comment on the four numbered -- five numbered topics
23 that are listed in that letter?

24 A Yes.

25 Q Did I discuss with you that we might potentially

1 place that material in an affidavit?

2 A Yes.

3 Q That would be used as potentially helping to avoid a
4 second phase of this trial?

5 A Yes.

6 Q Is that the purpose that I explained to you of why I
7 wanted a written statement you?

8 A Yes. Since I had not been deposed, you thought it
9 would be helpful with the mediation.

10 Q And did you prepare a letter in response to this
11 letter of August 14th, 2018?

12 A Yes, I did.

13 Q Is that the letter, Exhibit 56, behind tab 56 that is
14 dated August 23rd, 2018?

15 A That's the final letter. I think I had a draft or so
16 that was not as long.

17 Q Right. Did you prepare this letter based on a review
18 of your files and notes regarding not only Mr. Bailey's
19 file with respect to this estate and these trusts, but
20 your own file with respect to these estates and trusts?

21 A Yes. But just to let you know, when Mr. Bailey left
22 Nelson Mullins, most of his file was destroyed, so I only
23 had pieces of his file.

24 Q Right. So the letter that you've drafted is a
25 narrative history as best you could produce it of the

1 history of the Estate of L.W. Boykin, II, and the
2 administration of the Estate of Alice S. Boykin from
3 August 2016 to the present time?

4 A Yes, sir.

5 MR. BECKER: Your Honor, on that basis, we would --
6 we intend to admit this.

7 THE COURT: Very good. You're offering it on the --
8 basis of the --

9 MR. BECKER: Yes.

10 THE COURT: -- foundation you just laid.

11 And Mr. Duffy, let me hear you on your objections
12 now.

13 MR. DUFFY: Your Honor sure. And I appreciate the
14 purpose for which this was prepared. This is document, as
15 I understand it, Ms. Thomas prepared at Mr. Becker's
16 request.

17 She's already alluded to the fact they're in
18 possession of not, but, at least, two drafts of this
19 document, which are in many ways different from the final
20 document.

21 There's a number of references in here. I think
22 Ms. Thomas would agree that she did not have any personal
23 knowledge regarding the Boykin trust prior to August 8th,
24 2016.

25 So if there's anything in here that relates to dates

1 or activities or conduct prior to that, it would not be
2 based on personal knowledge. Furthermore, I think there's
3 hearsay and double hearsay in reference to what Mr. Boykin
4 told Mr. Bailey and what Mr. Bailey told Ms. Thomas. And
5 I think furthermore it's -- what I understand it would
6 be is simply -- it was provided to us as a recap of what
7 Ms. Thomas might have testified were we required to appear
8 here today, and she's here on the stand.

9 She can testify to it. She doesn't need to put, you
10 know, 24 pages in writing subject to the objections we've
11 got. So that's our opinion on that, Your Honor. We would
12 ask -- I don't know if the Court is interested in seeing
13 the drafts if it's going allow this document into
14 evidence.

15 THE COURT: Well, I can't rule but one thing at a
16 time, but the drafts sound like impeachment material, at
17 most. What your -- I understand foundation of your
18 objection is to be thirdhand information, hearsay and so
19 forth and so on?

20 MR. DUFFY: And lack of personal knowledge, yes.

21 THE COURT: That's what I'm saying, lack of personal
22 knowledge.

23 MR. DUFFY: Yes, ma'am.

24 THE COURT: All right. Your objection is overruled.
25 This is the answer to a request by counsel for the parties

1 in this matter. And the request is a very specific one
2 with respect to Mr. Rigdon Boykin's conduct as the
3 trustee. Which his conduct as the trustee and Alice
4 Belger and Mary Deas Wortley's conduct as the trustee is
5 what this controversy is all about.

6 Mr. Becker asked for an opinion about the effect on
7 the estate of Mr. Rigdon Boykin's conduct as trustee. And
8 this is Ms. Thomas, who is now the attorney for the trust,
9 as I understand it, this is her evaluation as a
10 professional of his conduct and its effect on the trust.

11 I flipped through it real quickly, speed reading and
12 that's what I get out of it, is that's what it is. Would
13 you agree that's a pretty characterization of the letter?

14 MR. DUFFY: Yes, I think it's her narrative of the
15 account.

16 THE COURT: All right. The matters that involved
17 statements of third parties are not in here for the truth
18 of the matter asserted, but rather to explain her opinion
19 about the conduct of Mr. Rigdon Boykin in his capacity as
20 trustee.

21 I have no doubt that any other documents that may
22 come in and be offered by you or Mr. Tetterton that
23 contain allegations about the conduct of the other two
24 trustees. To the extent they include these kinds of third
25 party commentaries, they've be admitted not for the truth

1 of the matter asserted, but in order to lay a foundation
2 for the opinions expressed about the conduct of the
3 trustee. So it's on that basis that I will overrule the
4 objection and admit the document.

5 Go ahead, Mr. Becker.

6 (WHEREUPON, Respondent's Exhibit No. 56 was admitted
7 into evidence.)

8 BY MR. BECKER:

9 Q All right. Ms. Thomas, we were on the subject of
10 your calculation of the lost tax savings that resulted
11 from Rigdon's Boykin's failure to fully cooperate with
12 Mr. Bailey's proposed tax planning in December 2012, and I
13 asked you how much extra taxes or lost tax savings did you
14 calculate?

15 A It's little over 300,000 in estate taxes and if all
16 the children had died at the same time, it would be
17 300,000 in generation skipping taxes, as well.

18 Q Now, where in your letter is that mentioned?

19 A And I'm rounding, but 500 -- I can't do the math, but
20 520 minus 206. That's 300.

21 THE COURT: He's asking where in the letter this is
22 discussed, Ms. Thomas.

23 THE WITNESS: I'm sorry. It is on Page 6.

24 THE COURT: Six.

25 THE WITNESS: Page 6 and 7 at the bottom.

1 THE COURT: Six and 7 of Exhibit 56?

2 THE WITNESS: Yes.

3 THE COURT: All right.

4 BY MR. BECKER:

5 Q All right. Let me direct your attention to the last
6 two words on Page 6 and the first page of Page 7. It
7 says: However, had the full amount been allowed to have
8 been transferred, the estate tax savings to Ms. Boykin's
9 estate would have been around 520,000 and the future
10 generation skipping taxes around 520,000?

11 A But we were able to do 20 percent, so the difference
12 being we say \$206,000 doing the 20 percent. If we had
13 done 100 percent, it would have been 520,000, so that's
14 the differential.

15 Q I understand, okay. Thank you for that
16 clarification. Now, did -- if you'd take a look at
17 Exhibit dome 7. Did that document assist you in making
18 your calculation of these loss tax savings?

19 A No, sir, I've never seen this.

20 Q Okay. I'm sorry. Well, tell me -- you did
21 mention -- did you consult the 2012 gift tax return of
22 Ms. Boykin?

23 A Correct.

24 Q And are you able to say now definitively with the
25 benefit of hindsight that the beneficiaries of this trust

1 have or will pay those extra \$300,000 in extra taxes both
2 in estate or generation skipping taxes as a result of
3 Mr. Boykin's unwillingness to cooperate with the 2012 gift
4 tax planning?

5 A If the tax laws stay the same, correct.

6 Q All right. Now, let's discuss your engagement as
7 counsel in this matter and Mr. Bailey has testified to
8 some of this. Did you -- did he come to you and ask you
9 at or about the time of the death of Alice Boykin to take
10 over this matter for him?

11 A Yes.

12 Q And did you -- were you then engaged as the counsel
13 for the Estate of Alice S. Boykin and the residuary trust
14 A and B?

15 A And the marital trust.

16 Q And the marital trust?

17 A Yes.

18 Q Okay. What -- describe what you learned in that
19 first meeting?

20 A Well, I was prepared that it would be a heated
21 conversation, and it was. It wasn't bad. It was just a
22 disagreement on the laws and the Will between Mr. Boykin
23 and myself.

24 Q Wait a minute. You may be jumping ahead of me just a
25 little bit. I'm talking about your meeting with

1 Mr. Bailey.

2 A Oh, I'm sorry, Mr. Bailey. Well, we disagree a lot,
3 too, but it wasn't heated. He was going to throw me in
4 the fire. But it was brief, he didn't have his file
5 handy. He couldn't remember it, neither could I.

6 When I looked at it shortly thereafter, we couldn't
7 figure out the size of the estate was, what assets were
8 owned where, how much was in a brokerage account because
9 nobody had the statement.

10 So in talking with him, he gave me an overview of the
11 family. He reminded me I actually probably worked on Mr.
12 Boykin's estate, all the different trusts that were
13 involved and what all we needed to do to get from this
14 point and to get the estate tax return done.

15 Q Okay. Now, did you also discuss, either at this
16 time, in your first meeting, or some time shortly
17 thereafter, did the two of you also discuss the potential
18 application or election that the estate might undertake
19 under sections 2032(a) and 6166 of the Internal Revenue
20 code?

21 A Yes, we did.

22 Q Was the objective of considering those to save estate
23 taxes and help with the orderly payment of taxes?

24 A Yes.

25 Q If you could please describe -- let's begin with

1 section 6166?

2 A Okay.

3 Q Just tell us what that is and how it works?

4 A Section 6166 is a special provision for closely-held
5 businesses. If a closely-held business is a significant
6 portion of an estate, the IRS recognizes that the business
7 doesn't have to be liquidated at fire sale to pay estate
8 taxes.

9 It allows you to apply to the IRS for an extended
10 time to pay those estate taxes. It's a 15-year payment
11 plan. You can prepay it at any time, and the first five
12 years is interest only.

13 The interest rate for a portion of it is two percent,
14 and the interest rate for the rest of it is 45 percent of
15 the underpayment rate. It just so happens now the
16 interest rates are so low that that 45 percent is lower
17 than two percent. So this is a provision which allows
18 estates with small businesses in it, closely-held
19 businesses --

20 THE COURT: What percentage of the estate does it
21 have to be?

22 THE WITNESS: 35 percent.

23 THE COURT: 35 percent.

24 THE WITNESS: This estate had much more than that.

25 I've had other estates that get under that and they can't

1 apply. But it's designed to not have a fire sale. Again,
2 you can prepay it at any time.

3 By doing this, the IRS allows you to use your other
4 cash to support the businesses, support the beneficiaries,
5 so you've got a lot more flexibility if you qualify under
6 these provisions. That's why we thought it would be best
7 for this estate giving the beneficiaries more options and
8 the trustees more options.

9 Q And so --

10 THE COURT: What was the interest rate?

11 THE WITNESS: The underpayment rate?

12 THE COURT: Yeah.

13 THE WITNESS: The underpayment rate at this time when
14 I looked at it, I believe was four percent. So we could
15 have paid four percent -- to avoid the penalties, we would
16 have paid if we didn't pay under the 6166. But by doing
17 the 6166, we got two percent for part of it and 45 percent
18 of four percent for the other part of it. That varies
19 every year, but we've gotten our bill for the interest
20 rate. I think it was 52 or \$56,000 was all we had to pay
21 on the estate taxes.

22 THE COURT: And the total amount of taxes due was how
23 much?

24 THE WITNESS: Four-and-a-half million. I could be
25 wrong on that. It could have been 4.7. And we paid

1 1,000,380, I believe when we sent in the tax return
2 because that was on the nonbusiness assets, and then the
3 rest, we tried to maximize the flexibility for the estate,
4 but again, we haven't been audited.

5 And another part of this is if you qualify for it or
6 even apply for it, we don't know what the final values of
7 these assets are going to be, so the assets that qualified
8 for the business are probably the ones that will argue is
9 larger.

10 So this would allow us to get in the payment plan of
11 just doing interest only on the extra estate tax bill and
12 that gives us five years to pay the interest and then the
13 10 years.

14 THE COURT: Does the audit time for the government
15 extend because of the loan or does the --

16 THE WITNESS: It's a regular audit and then --

17 THE COURT: So they have not been audited?

18 THE WITNESS: No, ma'am, not yet, nor have we had the
19 department that deals with 6166 respond to any of our
20 requests to actually deal with them on the matter.

21 THE COURT: So they haven't given you any letter one
22 way or the other?

23 THE WITNESS: Well, the 6166 has.

24 THE COURT: Of course.

25 THE WITNESS: But the other side has not. We've

1 asked them for it and they said they need more time.

2 THE COURT: Got you.

3 BY MR. BECKER:

4 Q Thank you, Ms. Thomas. Just to -- we do know now
5 with the benefit of hindsight what the taxes were. Do you
6 recall that -- is this number correct, 4,578,679. Does
7 that sound about --

8 A I'm sure that's correct. I don't know.

9 Q And you mentioned that 1,380,000 has already been
10 paid?

11 A Yes.

12 Q And that would leave, if my math is correct,
13 \$2,777,670.

14 A That sounds correct on the values reported on the
15 estate tax return.

16 Q All right. And you said the first year's interest
17 charge on that balance was about -- it was \$52,699?

18 A That sounds right.

19 Q And that works out to less than two percent per
20 annum?

21 A Probably is with the interest rates right now.

22 Q All right. Now, thank you. Can you please describe
23 for the Court section 2032(a) and how it works?

24 A I'll try on that one. That one is probably one of
25 the most complicated provisions in the code. Again, it's

1 one to help farmers and timber management people. It has
2 a special valuation section. It has like five different
3 ways it has to be valued.

4 The goal is if you use these values, then you can
5 eliminate over \$1,000,000 worth of value if the family
6 agrees to keep this business going for 10 years.

7 When Mr. Bailey and I talked and Mr. Simmons, who
8 became involved, talked, this seemed like an ideal estate
9 to consider that since we have the preparatory language in
10 the document to please keep these properties. So we
11 probably were going to keep, at least, some of them for 10
12 years.

13 This provision under 2032(a), if we had qualified, we
14 would have to keep it for 10 years, everybody in the
15 family had to sign off on it. Rigdon and all of the
16 trustees and all the beneficiaries had to agree to keep it
17 in the family and keep going, but if we eliminated that
18 million dollars with the value, we eliminated \$400,000 in
19 estate taxes, that also eliminates the generation skipping
20 tax, too.

21 So if everybody had died at the same time, it would
22 have been 400,000 of estate taxes and \$400,000 of
23 generation skipping taxes that that one provision would
24 allow us.

25 Now, it's a very complicated provision. Aside from

1 the different appraisals that have to be done, the little
2 things like there's two marital trusts, marital trust A
3 and marital trust B.

4 Marital trust A has less assets in it, but we used --
5 we kind of segregated it and used some of Mr. Boykin's
6 generation skipping exemptions for that. We didn't -- the
7 bigger one with all the trustees, well, there's an odd
8 provision in 2032(a) that only allows the family members
9 of the decedent to take advantage of this, so it has to be
10 the children and grandchildren.

11 Mary Deas is not a child of Ms. Boykin. She's a
12 child of Mr. Boykin, so her decedents technically only
13 qualify for marital trust A, not marital trust B, but for
14 the fact that there's one little area that says Ms. Boykin
15 doesn't remarry during her lifetime, so the IRS will
16 consider Mary Deas and her descendants of Ms. Boykin so
17 they would qualify for 32(a).

18 So 32(a) is very complicated and technical and
19 without consent of Mr. Boykin and the other beneficiaries,
20 there's no need even go down there. They all have to sign
21 an agreement with the IRS that they're going to stick with
22 this for 10 years.

23 THE COURT: Which in practical terms, in terms of
24 this group of assets means you hold onto those assets for
25 10 years?

1 THE WITNESS: Yes, ma'am.

2 THE COURT: In whatever vehicle you decide to put
3 them in whether it's -- I mean, this was going to be
4 gifted directly to Alice, right, marital trust B?

5 THE WITNESS: This was at big Alice's death when it
6 moved into the residuary trust.

7 THE COURT: So the agreement would be we're keeping
8 these assets in the residuary trust of 10 years?

9 THE WITNESS: Yes.

10 THE COURT: All right.

11 THE WITNESS: And it's even more complicated than
12 that. You're keeping so you have to look at the dirt, if
13 you can see -- get the 2032(a) to apply to the dirt
14 underneath the timber or if you've got new timber, you
15 apply it to the timber because you know you'll never cut
16 that timber for 10 years. There's a lot of moving parts
17 to 2032(a).

18 THE COURT: All right. So it's not simply like a
19 small business that is an LLC or a family partnership or
20 something like that, this thing, you've got to pay some
21 attention to each and every asset to see how it would
22 operate with the additional complication of children of a
23 first and second marriage, right?

24 THE WITNESS: Manage it, monitor it every year for 10
25 years.

1 THE COURT: So there are other reasons than just
2 being disagreeable where some people might think that's a
3 bridge too far?

4 THE WITNESS: Right. I've got one estate right now
5 that said that's a bridge too far.

6 BY MR. BECKER:

7 Q Ms. Bailey -- Ms. Thomas, excuse me.

8 A Sorry, George.

9 Q You did discuss these two sections with Mr. Bailey,
10 did you not?

11 A Yes.

12 Q Based on his experience with her business activities
13 and estate planning and your collective knowledge about
14 the tax code, did you and Mr. Bailey both believe that
15 Ms. Boykin's estate would qualify for treatment under both
16 of these sections?

17 A Likely. Without getting into the weeds, we didn't
18 know if it would.

19 Q All right. Based on your professional experience and
20 based on what you've learned since those early discussions
21 with Mr. Bailey, what do you believe is the percentage of
22 likelihood the estate could qualify for both?

23 A For 6166, I'm real confident. I mean, 80 90 percent,
24 depending on what agent I get, but for 2032(a), I still
25 don't know without going back and redoing all of the

1 numbers.

2 Q Okay. In your view, would the benefits of qualifying
3 under these code sections outweigh the cost of attempting
4 to qualify for them?

5 A I think so, in this large of an estate.

6 Q Can you think of any good reason why the estate of
7 Alice S. Boykin should not attempt to take advantage of
8 these two sections of the estate -- tax code.

9 A Not for 6166, but 2032(a) is complicated, so it needs
10 to be a trustee decision looking at the pros and cons.
11 But I think I would have done it with the dollar amount
12 here.

13 Q Okay.

14 A And because he requires the preparatory language, to
15 keep these assets just made it ideal.

16 Q So you mean this estate was an ideal candidate for
17 2032(a)?

18 A Yes.

19 Q Okay. Now -- and we'll get back to these code
20 sections later, but just -- I just wanted to set the stage
21 for what they were and what they were designed to
22 accomplish. Let's move now to that first meeting with the
23 family that you be Mr. Bailey had. That occurred on
24 August 8th, 2016?

25 A I know. Looking back on it, I don't know how we

1 pulled that off. That was her date of death.

2 Q Date of death, yeah. And who did you and Mr. Bailey
3 meet with?

4 A I believe only Rigdon, Mary Deas and Alice was in the
5 room. I don't know if anyone else was in the lobby.

6 Q Now, we've a chart I believe that you prepared that
7 just would sort of explain what this -- I think we're
8 going to need to display it over there because we don't
9 have copies. It's just a demonstrative exhibit.

10 THE COURT: Well, we all have copies in our book.
11 Are you talking about 57?

12 MR. BECKER: No, ma'am, this is a little chart.

13 THE COURT: Oh, the chart?

14 MR. BECKER: Yes, ma'am, I'm going to just.

15 THE COURT: Why don't you just put it on the
16 overhead. I think everybody has a copy of it. I know I
17 do somewhere.

18 MR. BECKER: It may not have made it in there. I'll
19 hand you a copy just so you can follow along. Get me one
20 more copy M.C.

21 THE COURT: Oh, this is something different. I
22 haven't seen this before, although this is very helpful.

23 MR. BECKER: All right.

24 THE WITNESS: I can try by memory. I can try by
25 memory.

1 MR. BECKER: Okay.

2 THE COURT: You got it, Ms. Thomas?

3 THE WITNESS: No, ma'am.

4 THE COURT: Well, she's the most important person.

5 MR. TETTERTON: It won't take two seconds. We can
6 make extra copies.

7 THE COURT: Just hold up for a minute. . . .

8 Be at ease until we get this.

9 (Pause.)

10 All right.

11 BY MR. BECKER:

12 Q Will that chart assist you in explaining sort of what
13 the focus was at that first meeting with the family in
14 terms of the trusts you were dealing with and what would
15 go where?

16 A Sure. And this is kind of a simplified version of
17 what we worked off of for a year-and-a-half. There are so
18 many different pots or entities in this particular estate
19 and trust administration.

20 We've got the normal probate estate that most folks
21 have. The probate estate was very small for Ms. Boykin.
22 Most of her assets had been taken out of probate, but the
23 personal representatives of the probate assets have a lot
24 of duties not only for the probate assets, but for the
25 IRS. And the personal representatives were Mary Deas and

1 Alice. So that's the probate assets.

2 .. Then another category was a revocable trust. The
3 revocable trust was drafted by Mr. Bailey to contain the
4 language that you would normally find in a will for
5 Ms. Boykin, and then it also had most of her assets
6 transferred to it prior to her death so it would avoid the
7 probate process, okay.

8 THE COURT: Same trustees?

9 THE WITNESS: As the personal representatives,
10 correct, Mary Deas and Alice.

11 The marital trust A, that's the GSE trust, the little
12 one that was set when you Mr. Boykin died for his extra
13 generation skipping exemption. At his death, it was
14 \$400,000.

15 Marital trust B was everything else in his estate.
16 Marital trust B, once we get blessing from the IRS, the
17 language says it's distributed either to residuary trust
18 A, which is on here, or residuary trust B.

19 Residuary trust A was the one created at Mr. Boykin's
20 death with the \$600,000 credit or the \$600,000 exemption,
21 so it's fully exempt from generation skipping taxes just
22 like the above marital trust A. So marital trust A will
23 go into residuary trust A so that those assets will always
24 be generation skipping --

25 THE COURT: We're talking about what happened in 2016

1 when Alice died?

2 THE WITNESS: Right. This is what's left for them to
3 administer.

4 THE COURT: Marital trust A goes into residuary trust
5 A. Marital trust B?

6 THE WITNESS: It gets divided between residuary trust
7 A and residuary trust B based upon Alice Boykin's
8 remaining generation skipping exemption at the time of her
9 death. That becomes the numerator of the fraction.

10 THE COURT: Right.

11 THE WITNESS: The denominator of the fraction becomes
12 the value of the assets in marital trust B as found to be
13 determined on the audit. So a fraction of the marital
14 trust B assets or -- I think it was around 4 million over
15 the value of all the assets would pass into residuary
16 trust A and the balance will go into this empty residuary
17 trust B.

18 THE COURT: So you've got 4 million over -- what
19 was --

20 THE WITNESS: I think on the return, it was around
21 15 million.

22 THE COURT: So four over 15 is going into A and the
23 balance is going into B?

24 THE WITNESS: Yes. Now, we also have one other
25 trust. This was the irrevocable trust that owned the life

1 insurance.

2 THE COURT: That's the life insurance trust and it's
3 going to A?

4 THE WITNESS: Correct. During Ms. Boykin's lifetime,
5 those annual gifts that we talked about, Mr. Bailey filed
6 a gift tax return to allocate the generation skipping
7 exemption of Alice's to it.

8 So when that 2 million dollars came in to the
9 irrevocable trust, it was estate tax free and generation
10 skipping tax free, so it would be added to the residuary
11 trust A.

12 THE COURT: And as I understand it, that cash pot of
13 the life insurance proceeds is still in residuary trust A?

14 THE WITNESS: I believe it's been moved there in the
15 last -- yes, it's still there.

16 THE COURT: It hasn't been spent?

17 THE WITNESS: It has not been spent. Some of it has
18 been spent.

19 THE COURT: Huh?

20 THE WITNESS: Some of it has been spent, but not all
21 of it. I would hope not.

22 THE COURT: Right.

23 THE WITNESS: So we should end up after the audit
24 with two trusts, residuary trust A, which will be GS
25 exempt, and residuary trust B, which when the children

1 die, it's going to be hit with the generation skipping
2 tax. The current rate is 40 percent.

3 THE COURT: All right. And that's about what,
4 60 percent of the estate?

5 THE WITNESS: Maybe so.

6 THE COURT: So the vast bulk of the assets are going,
7 particularly the nonliquid assets, the property assets are
8 going into B and the proceeds from the life insurance and
9 maybe some of the other little bit more liquid stuff is
10 going into A?

11 THE WITNESS: And whatever her generation skipping
12 exemption --

13 THE COURT: So whatever the generation skipping --

14 THE WITNESS: So when I look at residuary trust A and
15 residuary trust B as a planner, I'm itching to get in here
16 to figure out how I can minimize this future generation
17 skipping tax.

18 Okay. So that's what we started with, that many
19 entities, that many hats. Each one of them has separate
20 duties, tax reporting, et cetera.

21 BY MR. BECKER:

22 Q All right. Now, In that first meeting with the
23 family on or about August 8th, 2016, was there a
24 discussion of Ms. -- well, first of all, let me make sure.
25 Who was there at the meeting?

1 THE COURT: She's already said Rigdon, Alice, Mary
2 Deas, George and Karen.

3 MR. BECKER: Thank you, Your Honor. I wasn't sure we
4 had covered that.

5 BY MR. BECKER:

6 Q In that first meeting, was there a discussion of
7 Mr. Boykin's Will and whether or not it needed to be
8 followed?

9 A Yes, it was.

10 Q What was Mary Deas and Alice's position on this
11 issue?

12 A They were very quiet, but they thought that they
13 needed to follow their father's directions in the Will.
14 They just assumed that it would be followed.

15 Q All right. What was Rigdon Boykin's position on this
16 issue?

17 A We needed to sell all the assets. That precatory was
18 not mandatory and therefore all the real estate -- well,
19 15 percent could be held back. 85 percent had to be sold.

20 We had a heated discussion that South Carolina law, I
21 interpreted, would allow the trustees to respect his
22 precatory language, but he said under New York law, it
23 would have to be sold.

24 THE COURT: This is all taking place in the first
25 meeting?

1 THE WITNESS: Oh, yes, ma'am and multiple meetings
2 after that.

3 THE COURT: All right. Well, what I'm going to try
4 to do is stop you at the first meeting.

5 THE WITNESS: Okay.

6 THE COURT: Because I think we about got a picture
7 of that, haven't we, Mr. Becker.

8 MR. BECKER: I think so.

9 THE WITNESS: That's all we did.

10 THE COURT: All right. I'm going to stop here and
11 take a break for lunch, but I need a little preview of
12 what's going to happen here. Who else have you got?
13 We've got Ms. Thomas, a very important witness. And then
14 what else have we got?

15 MR. BECKER: Your Honor, we had planned to have Wayne
16 Belger testify. He is the manager of the mill pond dam
17 under the DHEC --

18 THE COURT: All right. Now, I may say to you all,
19 Mr. Tetterton, thank you for the overhead projection,
20 drone projection of the mill pond and so forth. I've
21 looked at it in detail. I've gone down each one of the
22 episodes that's on there, so I'm familiar it.

23 MR. TETTERTON: And, Your Honor, we do have
24 photographs taken the last couple of days of the condition
25 of the mill pond now after Florence.

1 THE COURT: That's great. I'm sure they'll be
2 admitted without objection so we go forward.

3 So you would have Mr. Belger testify about management
4 of the mill pond?

5 MR. BECKER: Yes, ma'am.

6 THE COURT: All right. And then what else?

7 MR. BECKER: We would have Mr. Bundy testify for just

8 --

9 THE COURT: What is Mr. Bundy going to testify to?

10 MR. BECKER: Well, he's going to testify regarding
11 his experience with Alice Belger, as her attorney, and his
12 view of her suitability to serve as a trustee of this
13 trust.

14 THE COURT: Well, I'm going to give some prayer for
15 that, have to think about that.

16 MR. BECKER: All right.

17 THE COURT: Because what I'm not going to turn this
18 into is a big conflagration between various strong
19 personalities in here about what they think about each
20 other. Mr. Bundy's own opinions about the petitioner in
21 this matter and so forth are not something that I think
22 needs to be gone into.

23 MR. BECKER: Well, we don't intend to do that.
24 That's not the purpose of his testimony is to say anything
25 --

1 THE COURT: Well, anyway, you got Mr. Bundy. What
2 else?

3 MR. BECKER: We would testify about one other thing.
4 He is a neighbor of Mr. Boykin's. He's familiar with a
5 residential subdivision.

6 THE COURT: What does that have to do with anything?

7 MR. BECKER: Well, it has to do with the tests --
8 Mr. Boykin's, if I may say, inflated estimate of the value
9 of the residuary -- of the trust property, and Mr. Bundy
10 has personal experience --

11 THE COURT: I don't know if I'm going to let that in,
12 Mr. Becker. I'll have to think about that.

13 MR. BECKER: All right.

14 THE COURT: I think there are other ways to
15 discuss -- y'all have all got people, independent people
16 who don't have any particular dog in the fight other than
17 they've been hired by one side or another to value these
18 properties and we've plenty of information in that regard.

19 MR. BECKER: Okay.

20 THE COURT: I don't know what Mr. Bundy's position is
21 going to be about these valuations and what -- upon what
22 basis he's going to talk about the inflated nature of the
23 valuation, but I know this much, there's a lot of bad
24 blood between these folks and I'm not going to have this
25 turn into a platform for getting into all of that. I'm

1 going to try to get the facts that we need to decide this
2 matter. And I don't know that this adds to my knowledge
3 base.

4 MR. BECKER: I understand your feelings, Your Honor.

5 THE COURT: All right.

6 MR. BECKER: We will consider that accordingly.

7 THE COURT: Okay. Mr. Bundy, what else?

8 MR. BECKER: Daisy Heimbach. She is Mary Deas
9 Wortley's youngest child. She is a remainder beneficiary.

10 THE COURT: Yes, I'm aware of her. I understand.
11 I've met Ms. Heimbach and so y'all have previously
12 indicated that she would kind of be speaking for that
13 generation of beneficiaries. I understand that. What
14 else?

15 MR. BECKER: And that's it.

16 THE COURT: All right. What do you anticipate in
17 terms of whether we can get your testimony in today?

18 MR. BECKER: I think it will be very difficult to
19 complete all those witnesses today. Oh, we also have a
20 little bit of the deposition of Mr. Rigdon Boykin to
21 publish, maybe 20 minutes, if that much.

22 THE COURT: All right.

23 MR. BECKER: Fifteen. It's very short.

24 THE COURT: All right.

25 MR. BECKER: But that's all.

1 THE COURT: All right.

2 MR. BECKER: I think we could be through by
3 midmorning tomorrow.

4 THE COURT: All right. Well, I've got to turn to
5 Mr. Tetterton.

6 Mr. Tetterton, tell me about your case. What we got?

7 MR. TETTERTON: Your Honor, I don't think I'm going
8 to call any reply or rebuttal witnesses.

9 THE COURT: So you're not going to have any?

10 MR. TETTERTON: I'm not going to have any rebuttal
11 witnesses.

12 THE COURT: No rebuttal?

13 MR. TETTERTON: No rebuttal.

14 THE COURT: All right. Then Mr. Duffy?

15 MR. DUFFY: Yes, Your Honor. I sort of raise an
16 issue to be presented by motion whether we would be
17 permitted to put on the witness stand Mr. William
18 Harrison, who is a professor at the University of South
19 Carolina. We presented a motion for leave to amend to
20 allow Mr. Harrison to testify in rebuttal to Mr. Helms'
21 direct testimony, which was set forth on July 10th. So
22 that issue is out there. I don't know what the Court
23 would like to do about it. We have papers on that and
24 it's been briefed.

25 THE COURT: Well, yes, let's be sure we take care of

1 that today so we know how we're sailing. So at some point
2 in time today, we'll take up that motion, probably at the
3 end of the day's case and get it out of way so you'll know
4 one way or the other where you stand about calling the
5 gentleman to the stand.

6 MR. DUFFY: That will be great, Your Honor.

7 THE COURT: And that would complete the case?

8 MR. DUFFY: Your Honor, we may -- depending on the
9 ruling on that motion, we may need to call Mr. Rigdon
10 Boykin in a short rebuttal to respond to some --

11 THE COURT: All right. I got it. I think I got a
12 picture of it. I think we can finish the case in two
13 days. That's what I was kind of beginning to have a few
14 heart palpitations about. That's good. That's excellent.

15 Now, we're at 1:05. Let's try to be here at 2:15.
16 Does that give y'all adequate time to be refreshed? Very
17 good. Very good. Thank you. See you here at 2:15.

18 And remember, Ms. Thomas, you're a lawyer so you know
19 this, don't discuss your testimony.

20 (WHEREUPON, a lunch break was taken.)

21 (WHEREUPON, Petitioner's Exhibit Nos. 178 through 179
22 were marked for identification only.)

23 THE COURT: Mr. Becker, you may proceed.

24 MR. BECKER: Thank you, Your Honor.

25 THE COURT: Yes, sir.

1 BY MR. BECKER:

2 Q Ms. Thomas, right before the lunch break, we were on
3 the subject of that first meeting with the trustees and
4 Rigdon Boykin's position on the -- maintaining the
5 treasured tracts, the legacy properties. I think you said
6 he was against it from the beginning and pushed for a sale
7 of 85 percent of the real estate, keeping only 15 percent
8 and investing the proceeds in stocks and bonds; is that
9 right?

10 A Yes, sir.

11 Q Did he also have an idea that Mary Deas and Alice
12 should each purchase 15 -- 1.5 million dollars worth of
13 property that they would want to stay in the family?

14 A Yes, he was very excited about that. I don't know if
15 that was his idea or a joint idea, but he was very excited
16 about that for the family.

17 Q All right. Did he say he was unwilling to follow the
18 precatory language in the Will?

19 A Yes.

20 Q Now, let's move forward to the next meeting of the
21 trustees. That occurred on August 15th, 2016, a week
22 later?

23 A Yes, sir.

24 Q You had a second meeting with all the trustees?

25 A Yes.

1 Q Now, did you bring up the issues of sections 2032(a)
2 and 6166 at that meeting?

3 A I tried to.

4 Q Okay. Before I ask you anything further, I want to
5 just clarify, in your discussions with Mr. Bailey and
6 based on your review, your initial review during that
7 first week, I believe you said that the -- in your's and
8 Mr. Bailey's view, this estate -- this trust should be the
9 ideal candidate for both 2032(a) and 6166; is that right?

10 A Correct.

11 Q In your professional opinion, was the likelihood that
12 they might qualify greater than 50 percent?

13 A Yes, sir.

14 Q One other question. You mentioned a 10-year
15 restriction in section 2032(a)?

16 A Yes.

17 Q Would that have applied to all the property owned by
18 trust or only certain property?

19 A Oh, no, only certain property. If the IRS gives you
20 this benefit of reduced value, then only that property is
21 limited for 10 years. Everything else can be sold or
22 do -- you could do whatever you want to with it.

23 Q All right.

24 A So it's just that one piece of property that's
25 restricted.

1 Q And because this will stated a preference for
2 retaining certain tracts until the last of the children
3 were to die, would it have been easy to place a
4 restriction on property that the trust intended to retain
5 anyway?

6 A I never say 2032(a) is easy, but it would, at
7 least -- it worked in the parameters of the document, yes.

8 Q Okay. All right. So you tried to bring up the
9 issues of 2032(a) and 6166 for discussion with the
10 trustees at that second meeting; is that correct?

11 A Yes.

12 Q What prevented you from bringing that matter up for a
13 discussion?

14 A Mr. Rigdon Boykin said that he understood those
15 provisions and that she was not qualified.

16 Q She meaning who?

17 A The estate.

18 Q Okay.

19 A I'm sorry, the estate was not qualified.

20 Q For what reason?

21 A He said she wasn't in the timber business.

22 Q All right. Did he offer any other reason why, in his
23 view, those sections might not apply to this estate?

24 A I don't remember if it was that meeting or another
25 when he said he had talked to an accounting firm and said

1 they agreed with him that she wasn't -- she wouldn't
2 qualify, or this estate wouldn't qualify for those
3 sections.

4 Q Well, now, Ms. Thomas, we know this estate had almost
5 6,000 acres of timber and farmland. Did this suggestion
6 by Mr. Boykin, Rigdon Boykin that Alice S. Boykin was not
7 in the timber business seem realistic or accurate to you?

8 A Not really.

9 Q What -- did you discuss that with Mr. Bailey?

10 A Yes.

11 Q His objection?

12 A Sorry?

13 Q His objection to it?

14 A Yes.

15 Q Did both of you share the same opinion?

16 A Yes, it was worth investigating.

17 Q Were you able to investigate?

18 A On 2032(a), no.

19 THE COURT: Speak up a little bit, Ms. Thompson.

20 THE WITNESS: On 2032(a), no, we never were able to
21 investigate because we needed Rigdon's cooperation. At
22 the very end, when we didn't have any -- I thought we had
23 limited options, we did use 6166. Because personal
24 representatives, the two women, were the only ones that
25 had to make that.

1 Q At this second meeting on August 15th, 2016, did you
2 again discuss the precatory language in the Will?

3 A Yes.

4 Q Had Rigdon Boykin's attitude toward that changed?

5 A No, sir.

6 Q And did he insist that it needed to be done the way
7 he did it in New York?

8 A Yes, sir.

9 Q Because this is what they did with the trust that he
10 was a trustee of in New York?

11 A That was an example for using three-and-a-half to
12 five percent is what should be distributed to the
13 beneficiaries, but he said in New York, they were required
14 to sell a little of the real estate.

15 Q Now, I believe you mentioned earlier that you had
16 offered your own professional opinion, perhaps, like
17 Mr. Bailey did of your view of the precatory language.
18 Did you do that?

19 A Yes.

20 Q What was your professional opinion based on your
21 understanding of that will in South Carolina law regarding
22 the precatory language?

23 A Well, based on my experience with 30 years of
24 drafting documents for clients, that's the most mandatory
25 precatory language I've ever seen. It looked like the

1 drafter and Mr. Boykin had spent a lot of time together to
2 come up with this language because it's -- even the
3 boilerplate in this document had pieces which were
4 personalized.

5 Q So Rigdon did -- how did he react to your
6 professional advice regarding the precatory language?

7 A He disagreed.

8 Q Did you also discuss the distribution of income to
9 the life beneficiaries at that meeting?

10 A Yes.

11 Q What did you advise the trustees at that meeting
12 about income for --

13 A We started looking at the terms of the document. And
14 the problem is we had no idea what the estate taxes were
15 going to be and it looked like the only liquid assets were
16 in the marital trust or in the insurance trust.

17 The marital trust, I was scared for them to use to
18 make distributions to the beneficiaries because that's the
19 one the IRS is going to be looking for their estate tax
20 bill to be paid. So they don't really like it when you
21 make distributions to beneficiaries before paying the
22 estate tax.

23 So we talked about the language of the document, what
24 it said, income to the beneficiaries, it's a little bit
25 strange language, old language, and discretionary

1 principle distributions, and the fact that, at least, one
2 of the income beneficiaries, the family felt like needed
3 distributions for support at that time. That we couldn't
4 wait until we paid the estate tax bill to make these
5 distributions.

6 Q Did you advise, based on your analysis, that all of
7 the fiduciary accounting income should be distributed?

8 A Yes. Yes, that's what the document says.

9 Q And that principal distribution should be supported
10 by a demonstration of need?

11 A That's what it says. It's an ascertainable standard.
12 The principal can be distributed by the trustees for
13 education, support, maintenance, general language.

14 Q How did Rigdon react to this professional advice
15 about the income beneficiary distribution?

16 A Well, Mr. Boykin is really good at making quick
17 practical decisions. He decided let's just do a know that
18 \$100,000 would be sufficient to support this
19 particular beneficiary, so let's just make a distribution
20 annually of \$100,000. We'll use the insurance trust since
21 the IRS doesn't regulate that to go ahead and make
22 distributions to the beneficiaries.

23 Q All right. Was that Mr. Boykin's idea to distribute
24 100,000 --

25 A My recollection, he came up with it, but he

1 understood that would be sufficient.

2 Q What was the basis of that understanding?

3 A I think it was the knowledge of the needs of the
4 beneficiary. My recollection is.

5 Q Okay. Did he say that that amount should be
6 appropriate and sufficient for all the income
7 beneficiaries?

8 A Just the one they all were concerned about.

9 Q Okay.

10 A And the one he had the most knowledge on the
11 finances.

12 Q All right.

13 A But he was insistent that it be equal.

14 Q Did Rigdon Boykin say anything about his relationship
15 with Whit Boykin and what he did for him at that meeting?

16 A Yes, he was very protective of Mr. Whit Boykin and he
17 said that he helped him with his finances and he
18 understood that this would help him out and he could live
19 off of it.

20 Q All right. So he felt like that was sufficient for
21 Whit's needs?

22 A Right. Yeah.

23 Q Did he direct you regarding any notices or other
24 communications that would be sent to Whit Boykin as an
25 income beneficiary?

1 A Yes, in the administration, South Carolina law
2 requires two things for whenever there is a personal
3 representative appointed that we give notice to the heirs.
4 And the second thing is if there's a trust that we give
5 notice to the trust beneficiaries. And normally, we send
6 a letter along with those, and Mr. Rigdon Boykin said send
7 Whit's package to him and he would explain it to him.

8 Q Did Mary Deas or Alice want income from the trust?

9 A Not that I recall, but they did want Whit Boykin to
10 be taken care of.

11 Q All right. Now, after those two initial meetings,
12 how did the schedule for meetings and the manner of your
13 communications with the trustees progress?

14 A We had a lot of work to do in the beginning, just
15 getting started. I know we tried to meet every week or
16 two. Probably, on average, it was two -- every two weeks
17 in the beginning. A lot of that had to change with
18 people's schedules, but we did so much by email or phone,
19 too. Occasionally, I would meet with one of the trustees
20 by themselves.

21 Q All right. During this time, did you work more with
22 Rigdon than other trustees?

23 A I did. He was extremely helpful in getting this
24 thing going and figuring out all the different legal
25 issues. There was a lot, a lot thrown at these trustees

1 that needed to be addressed.

2 Q So in these early days, he was of considerable
3 assistance to you?

4 A I loved working with him, yes.

5 Q What was his initial attitude or did he say anything
6 to you about the four children of Whit Boykin, II?

7 A Yes, he did.

8 Q Just tell us what his comments were about those
9 children in those early days of the trust administration.
10 Let's start with Whit?

11 A He bragged on Whit and had a balanced attitude toward
12 each of the kids, like a loving big brother or a daddy. I
13 mean, you could feel his love for these kids.

14 Whit, he told me about his good and bad sides, his
15 pros and cons and how he wanted to protect Whit from Whit.
16 He -- oh, my gosh, the things he said about May, how
17 wonderful May was, how everybody loved May, how she's the
18 most warm person and as soon as you meet her, you fall in
19 love with her.

20 For Alice, he bragged and bragged on Alice's running
21 of the business that brought his clients down to and how
22 satisfied they were that they would be brought down year
23 after year, and he did say for me to be cautious and
24 prejudging Alice based upon her verbal.

25 She's very quiet and sometimes she doesn't speak as

1 clearly as -- well, probably better than I do, but he
2 didn't want me to use her verbal abilities against her.

3 For Mary Deas, she's wonderful. He liked Mary Deas.
4 He loved Mary Deas. He talked about her husband being so
5 wonderful. He's really close to her children. So he had
6 nothing but complimentary things to say in a weird big
7 brother way that you can say their faults and their pluses
8 at the same time. So he made me see them as people and
9 how he loved these people.

10 Q Did he tell you that he thought Alice was actually
11 smart and capable?

12 A Absolutely.

13 Q Now, did there come a time when Rigdon asked you to
14 prepare some specific legal memorandum on particular
15 issues?

16 A Yes. And I'm not sure if it was just Rigdon, but
17 there were three issues in the beginning that we kind of
18 wanted to look at that were giving us some -- we just
19 wanted to know.

20 Q Okay. Was one of those whether life insurance
21 proceeds paid to the irrevocable trust had to be used to
22 paying estate taxes?

23 A Yes.

24 Q What was the purpose in that request from Mr. Boykin
25 and, perhaps, other trustees?

1 A They wanted to make sure that the decision to support
2 the beneficiaries from this money that they didn't have to
3 be used to pay the estate taxes was proper. That under
4 the documents, they weren't required to use it to pay
5 estate taxes and could use it for distributions.

6 Q Okay. Did he also request a memorandum regarding the
7 number of trustee votes that might be required for various
8 actions or decisions?

9 A He did or any of the three of them did. This caused
10 us trouble throughout.

11 The document states three trustee votes for real
12 estate decisions, but it does -- real estate issues or
13 anything dealing with real estate. So everything dealt
14 with real estate and we didn't really know if that meant
15 fixing a rotten step or selling real estate. I mean, what
16 was the range, and so that caused some problems because we
17 could never always get everybody together and on the same
18 page. But that was a common issue among the trustees and
19 it lasted the whole time.

20 Q Was there also a request from Mr. Rigdon Boykin to --
21 on the issue of whether an adopted grandchild could
22 inherit from the residuary trust?

23 A Correct. They wanted to make sure if Whit or May or
24 anyone adopted a child if that would be considered a child
25 by Mr. Boykin.

1 Q Now, as the administrator --

2 THE COURT: Let me understand this.

3 THE WITNESS: Yes.

4 THE COURT: You were being asked to provide a
5 memorandum on whether under the will of Mr. Whit Boykin
6 and a child -- if a child adopted a child whether that
7 child would inherit?

8 THE WITNESS: Yes, ma'am. If --

9 THE COURT: Was something contemplated along those
10 lines by any of these children?

11 THE WITNESS: No, ma'am. That was the suggestion
12 later on that, perhaps, Whit or May could adopt a child
13 and that child could inherit. The request to me was did
14 the document or anything in South Carolina law say that an
15 adopted child would not inherit. And it did not.

16 THE COURT: Well, why was he asking you about that if
17 they weren't interested? I mean, I don't understand why
18 that was pursued? Can you enlighten me?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: All right. Well, I want to be
21 enlightened.

22 THE WITNESS: Mr. Rigdon Boykin had an idea that one
23 of the properties should be sold and it would be very
24 helpful to the family if Alice and Wayne bought property
25 they were interested in for a million-and-a-half and Mary

1 Deas bought property that she was interested for a
2 million-and-a-half. And there was some resistance, at
3 least, from Alice and Wayne to do this. That it was part
4 of the trust and why buy it --

5 THE COURT: Where would they get the money to do it
6 anyway?

7 THE WITNESS: Well, he was suggesting the trust
8 finance it for them.

9 THE COURT: Okay.

10 THE WITNESS: But the idea was that he thought if
11 Whit fathered a male child, he could inherit all the
12 property or if he adopted a child, then that child could
13 inherit and therefore, perhaps, Wayne and Alice wouldn't
14 be able to get the inherited property. So it was the
15 leverage.

16 THE COURT: My, my. All right.

17 BY MR. BECKER:

18 Q Did Rigdon ever tell you that he was going to see
19 about having Whit father or adopt a child in order to
20 divert property from Alice and Wayne's daughter, Allie
21 Belger, who's one of the current remainderman?

22 A I'm hoping he did that in jest.

23 THE COURT: What now?

24 THE WITNESS: Whether or not he would encourage
25 Mr. Whit Boykin to father a child.

1 MR. TETTERTON: Your Honor.

2 THE COURT: Yes.

3 MR. TETTERTON: I think the comment was she was
4 hoping he said that in jest.

5 THE WITNESS: I do hope that was in jest, but it was
6 said.

7 BY MR. BECKER:

8 Q And did he --

9 A And he was going to talk to Mr. Tetterton and Whit
10 and May about that.

11 Q All right. And did he also tell you that he was
12 going to use that issue specifically with Alice and Wayne
13 Belger with the threat of divesting their daughter of her
14 inheritance under the Will?

15 A Correct. It was to put pressure for them to buy the
16 property.

17 Q Did he also tell you at one time that he would take
18 pleasure in the discomfort that a deposition might cause
19 Alice Belger?

20 A Unfortunately, yes.

21 Q Now, moving on to the subject of the estate tax
22 appraisals. The estate tax would require, would it not, a
23 date of death appraisal of all of the estate's land and
24 timber; is that right?

25 A Yes. And by estate's, global, marital trust and