

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC 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 V

Wallace K. Lightsey (SC Bar No. 6476)
Wade S. Kolb, III (SC Bar No. 100379)
Post Office Box 728
Greenville, SC 29602-0728
(864) 242-8200

Attorneys for Appellant-Respondent

James Y. Becker (SC Bar No. 64991)
Robert L. Reibold (SC Bar No. 9284)
Mary C. Eldridge (SC Bar No. 102698)
P.O. Box 1189
Columbia, SC 29211-1889
(803) 779-3080

Attorneys for Respondent-Appellants

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1 estate and revocable trust.

2 Q All right. In the early trustee meetings, did you
3 give the trustees advice on how you wanted that appraisal
4 process to proceed for preparation of the estate tax
5 return?

6 A Yes.

7 Q What advice did you give them?

8 A We normally in our practice because we -- well, I'm
9 dealing with estate tax issues that are going to be
10 audited, we like to be the one to engage the appraiser so
11 that there's some protection in our conversations and in
12 the results.

13 So what we normally do and what we talked about doing
14 at that meeting was let me give you a list of appraisers
15 that I have suggest you might use. I'll call them and see
16 would they come -- the ones I'm comfortable with are in
17 Columbia, would they go to Camden, do they feel
18 comfortable doing this, their price ranges. And then Mr.
19 Austin Sheheen was looking into an appraiser for me to
20 contact for the timber and farm land. So that was my
21 recommendation to him.

22 Q Do did you need three types of appraisers, one for
23 timber --

24 A Oh, we already had Mr. LeFraige for that.

25 Q How about one for commercial properties?

1 A Yes.

2 Q And you also needed one for the rural farm and
3 timberland?

4 A Correct. Mr. LeFraige didn't feel like he could
5 appraise the land under the timber.

6 Q So, ultimately, who did the trustees select as
7 appraisers for these property types?

8 A For the commercial properties, Jimmy Carter from
9 Columbia. I've worked with him before. It worked out
10 great. He was not one of the ones that I thought to call,
11 but he's a great appraiser.

12 Q Okay. And Mr. LeFraige for the timber?

13 A That's correct.

14 Q And you --

15 A And oh, Mr. Sheheen recommended Milliken, John Helms
16 and Milliken for the other land.

17 Q Have you worked with Mr. Helms before this?

18 A Oh, yes. We're both from Orangeburg, so yes, I've
19 known him forever and we've worked together.

20 Q All right. So you've worked with him on a number of
21 other assignments for different estates and trusts?

22 A Yes.

23 Q Are you generally satisfied with the quality of his
24 work?

25 A Yes.

1 Q Have you ever had any reason to doubt or complain
2 about it?

3 A The work, no.

4 Q All right. The estate tax return was due in
5 May 2017; is that correct?

6 A Nine months from date of death, so May 8th.

7 Q So let me ask you to take a look at Exhibit 68. This
8 was in the March -- it's dated 1-March of 2017. Did you
9 begin a process of attempting to estimate what the estate
10 taxes might be even though the appraisers might have been
11 just getting the work?

12 A Yes, we started trying to estimate probably well
13 before March 2017.

14 Q Okay.

15 A By March 2017, we may have -- I think we had the
16 timber values and I know we had the commercial values.

17 Q Okay. Some Mr. LeFraige -- by time you prepared this
18 estimate, Mr. LeFraige had valued the timber and
19 Mr. Carter had valued the commercial properties?

20 A Correct.

21 Q About what percentage of the total value of the trust
22 land and timber are the commercial properties? A small
23 percentage or a large --

24 A Right, the maximum -- well, just looking at this, the
25 maximum it could have been was a million dollars.

1 Q Okay.

2 A But I think there were other assets in that
3 one million.

4 Q All right. Did you and the trustees need to start
5 discussing these value estimates?

6 A Oh, yes, long before.

7 Q So if you did not yet have the appraisal work back
8 from Mr. Helms on the rural, farm and timberland, how did
9 you estimate the value for that land?

10 A Rigdon was very good at coming -- we started in the
11 fall of -- once we figured out where all the properties
12 were and which trust, we would sit down and come up with a
13 high and a low value per acre and use those to multiple it
14 by the acreage and then add the timber to it. And that's
15 how -- and we tinkered with this for six months trying to
16 fine tune it to give us a good number before we got the
17 real appraisals.

18 Q Okay. Did you create a spreadsheet and share that
19 back and forth?

20 A Oh, we did.

21 Q Was Mr. Boykin the one who was primarily working with
22 you to develop these estimates of the value?

23 A Yes. Yes, sir.

24 Q Were Mary Deas and Alice actively involved in that
25 process or did they rely on Rigdon's estimates?

1 A I believe we talked about the ranges in meetings, but
2 he and I were the ones who sat down together and working
3 together to come up with the initial talking points.

4 Q All right. So walk us through Exhibit 68 -- wait a
5 minute.

6 A I'm sorry. It's so simple. It's just the --

7 THE COURT: Exhibit 58?

8 MR. BECKER: Sixty-eight.

9 THE COURT: Sixty-eight?

10 MR. BECKER: Yes, ma'am.

11 THE COURT: Okay. Hang on. All right.

12 THE WITNESS: What we tried to do is look backwards
13 to August 8th and do a very simple summary of the value of
14 the assets in Ms. Boykin's probate and revocable trust,
15 the value of the assets in the marital trust and then the
16 value of A and of B.

17 We don't have on here the irrevocable trust because
18 that's not relevant to the estate tax nor was the
19 residuary trust A.

20 BY MR. BECKER:

21 Q Okay. Do you recall, was Rigdon's estimate of the
22 value of the residuary trust land at this time somewhere
23 between 4.4 to 7.3 million?

24 A I think that's it. It's not on here, but I'm pretty
25 sure that we were looking in that range.

1 Q In that range. So at this time, the estimated value
2 of the entire estate would have been somewhere between 24,
3 26 million. Would that will be about right?

4 A If not a little bit more, uh-huh.

5 Q Okay. Now, of course, at a certain point, you got
6 the date of death appraisal from Mr. Helms and you filed
7 the estate tax return. Was the gross value of the estate
8 on the estate tax return 15.7 million?

9 A Yes, sir.

10 Q So that was a lot lower than the projections you were
11 making back in March 2017?

12 A Yes. To compare it -- the 15.7 compared to the
13 22.234 on this example.

14 Q So these March estimates were too high; is that
15 right?

16 A Yes, thank goodness. Our estate tax went down.

17 Q Could you describe those March estimates as wishful
18 thinking?

19 A I don't know. I don't know they raised values.

20 Q Now, did Mr. Boykin ever discuss the idea or the
21 notion that there was a bubble regarding real estate
22 values in the Boykin area?

23 A Yes, sir.

24 Q Did that topic come up a lot?

25 A Yes, sir.

1 Q Did it come up at most trustee meetings?

2 A I'd say the majority of them.

3 Q Did it occupy a lot of time in those trustee
4 meetings?

5 A Not specifically the bubble, but selling all the
6 property and coming up with an investment plan. That was
7 the topic of most of the meetings.

8 Q In your work with Ms. Boykin over all this time, do
9 you have a sense of where this bubble is, where is the
10 land that has an inflated price?

11 A I tried to figure it out, but I don't know because we
12 had property all over that we couldn't sell for 4,500,
13 \$8,000. I don't know where the bubble is.

14 Q All right. What was the bubble price?

15 A 20,000 an acre.

16 Q 20,000?

17 A That was in my notes.

18 Q Did he state the basis of his belief that this bubble
19 existed?

20 A I believe it's because of horse --

21 THE COURT: Because of what, Ms. Thomas?

22 A Horse -- I'm blanking on what it would be. Horse
23 people would come in and buy property and they had horses
24 and they were paying top dollar for the property for their
25 horses.

1 Q Was this a stated reason of his that the trust should
2 sell 85 percent of its real estate as soon as possible?

3 A Yes, because the bubble was going to burst and if we
4 didn't sell it now, we wouldn't get the value.

5 Q Did Mr. Boykin commission a variety of appraisals in
6 order establish selling prices for some of the Boykin area
7 property that he wanted Mary Deas and Alice to buy?

8 A Yes.

9 Q Who did he choose for this assignment?

10 A I don't know if this is the correct name, but
11 Charleston Appraisals.

12 Q Do you know why he choose them?

13 A My recollection is he was working with them on
14 looking at the mill pond for conservation easement. And
15 that would be logical because that's the only thing I
16 associate them with is conservation easement appraisals.
17 And I think that's probably how he found them. I don't
18 know that for sure.

19 Q Did you ever talk with any of these appraisers that
20 he was working with?

21 A Yes, sir.

22 Q Did they understand the scope of what they were being
23 asked to do?

24 A They were a confused a little.

25 Q About what?

1 A Because they weren't doing a normal appraisal of a
2 piece of property. It was a made-up lines and they were
3 very frustrated with the concept that they were having to
4 do these made-up lines.

5 Q Okay. Were there any other problems that they spoke
6 of with you?

7 A About the appraisal process themselves?

8 Q About just the work they were being asked to do and
9 their ability do it.

10 A Well, one of them said he would do the appraisals if
11 he could only work with me and the others were very
12 frustrated with the time constraints and that Mr. Boykin
13 really wants things done on his schedule. And these guys
14 are conservation easement specialist and they do things
15 for their clients year end. So they took a lot longer
16 than he would have liked.

17 Q They were complaining that he was demanding?

18 A Yes.

19 Q Is that it? Okay. Were any of the appraisals that
20 he was commissioning with Charleston Appraisals helpful
21 for the estate tax appraisal process?

22 A No, sir.

23 Q Could they be harmful to the estate tax appraisal
24 process?

25 A Yes, sir.

1 Q And how would that be?

2 A These appraisals are not of specific lines. They're
3 not as of date of death. They include -- I believe they
4 included some of the property in the residuary trust A.
5 So the comparables are for a very small piece -- the
6 appraisals were a very small piece of property.

7 When we do an estate tax appraisal, we want to look
8 at it and say gosh, if we could put all this on the market
9 on one day on her date of death, you couldn't get that
10 much for it. You could get a lot more if you broke it up
11 and sold it..

12 So this was a broken up piece, and unfortunately, if
13 I'm in an audit, they're going to ask me do you have
14 appraisals on any of this property and I have to give it
15 to them.

16 Q All right. And also did you explain this to the
17 trustees and to Mr. Boykin?

18 A I don't remember.

19 Q Did Rigdon regularly represent that he had interested
20 parties who -- or could procure parties who would be
21 interested in purchasing some of the estate's property at
22 these bubble price?

23 A I don't know if it was at the bubble prices only. He
24 had groups of people that were interested in Sumter
25 Mountain, which I don't think is in the bubble, although I

1 don't know where the bubble is. And then there was
2 property that he thought we could sell next to some
3 neighbors in Camden that he thought we could get anywhere
4 from 4,500 to \$8,000 an acre and, unfortunately, that fell
5 through.

6 Q All right.

7 A Or it never materialized.

8 Q Okay. So did he ever produce a buyer for property in
9 the bubble price range?

10 A No.

11 Q Look at Exhibit 43. Now, this is an email from you
12 to Rigdon Boykin, Mary Deas and Alice and also copying
13 David Siddens. I want to call your attention to the part
14 in the middle where you say, Rigdon will do his magic and
15 use his connections to offer the following properties for
16 sale. Do you see that?

17 A I do.

18 Q What -- why did you use the phrase "he will do his
19 major and use his connections"?

20 A Well, Rigdon is one of the most charming people, and
21 in these meetings, boy, I believed and we all believed he
22 had these people. They could come in and they can really
23 fix our liquidity problems, our estate tax problems,
24 whatever they were.

25 So I was trying to show that I trusted him because he

1 really did make us believe that he was going to find these
2 people and bring top dollars. I'm sorry, maybe I
3 shouldn't have used that, but I believed in him.

4 Q Okay. This is dated November 3rd, 2016, correct?

5 A Uh-huh.

6 Q Had any of these properties been sold by March
7 of 2017 when you did that analysis we looked at in Exhibit
8 68?

9 A Somebody else may have to correct me on this. I
10 think the seven acres to Sue sold.

11 Q Okay.

12 A And I don't know about the one-and-a-half acres to
13 Ann. There was -- Rigdon was able to get someone in
14 Camden to purchase some real estate that was right next to
15 her property for a good price, good price. So one of
16 these probably, if not two, have sold -- were sold.

17 Q Any others?

18 A Not to my knowledge.

19 Q Okay. Let's look at Exhibit 44. And there in the
20 middle -- look at the middle of the page, the property
21 offered to Ann Shirley, it says they would offer property
22 to her at \$100,000 if Ann does not want to purchase them,
23 excuse me -- and it talks about a listing agreement on
24 Peck Woods with a woman name Jo; is that right?

25 A Correct.

1 Q Okay. And then there were other properties to
2 complete voting on listed in Item 4. Are you aware of any
3 of these properties that have been sold?

4 A When you say Item 4? I'm sorry.

5 Q Yeah, Paragraph 4, it says, other properties to
6 complete voting and then it lists a number of tracts --

7 THE COURT: Paragraph F.

8 BY MR. BECKER:

9 Q Paragraph F.

10 A I've got bad eyes. I don't know if any of these have
11 sold yet.

12 Q Okay.

13 A I've been kind of out of touch for last six months.
14 I don't know if they've sold.

15 Q In the early meetings, back in February of 2017, the
16 trustees were coming together and agreeing on properties
17 that could be sold, were they not?

18 A They were.

19 Q And they were establishing prices at which property
20 would be put on the market for sale?

21 A Correct.

22 Q But despite having done that back in February 2016,
23 not much of the property has, in fact, sold; is that
24 right?

25 A That's correct.

1 Q Now, let's -- if you will please look at Exhibit 47.
2 This is an April 13 email from David Siddens to Alice
3 Belger, Mary Wortley, Rigdon Boykin and a copy to you, a
4 summary of the Boykin estate trust meeting on 3/23/2017.
5 Did -- excuse me, we know that Ms. Boykin had established
6 a life insurance trust that had two million in cash; is
7 that right? And I'm going to tie this up in just a
8 second.

9 A That's the irrevocable trust, correct.

10 Q And the trustees of that trust were Rigdon and Mary
11 Deas?

12 A Correct.

13 Q At the time of this meeting, March 23rd, 2017, had
14 you ascertained how the estate would pay the estate taxes?

15 A Not yet. We had an idea that we would use some of
16 the money.

17 Q And as it says in Item No. 1, you presented a
18 worksheet to estimate the federal taxes and were
19 estimating they would be in a range from 4.1 to 5 million;
20 is that right?

21 A Correct.

22 Q Did you ask if the trustees of the irrevocable trust
23 would loan money to the estate to pay the taxes that would
24 be due on May 8th, 2017?

25 A Yes.

1 Q Did Mary Deas and Alice agree to that loan?

2 A Yes.

3 Q What was Rigdon's vote?

4 A He voted no.

5 Q Why did he vote no?

6 A I don't know.

7 Q Did he tell you?

8 A I don't remember.

9 Q Okay.

10 A I don't remember if it was just because he wanted to
11 make sure the money was there to support the family or if
12 this was again a strategy to force the sale of the
13 property.

14 Q Okay. But, at least, at this time, he was not
15 willing to allow any of those funds to be used to pay the
16 estate taxes?

17 A No, sir.

18 Q All right.

19 THE COURT: All right. Let me ask you this, the life
20 insurance trust, at this point, that was the irrevocable
21 trust, who were the trustees of that?

22 THE WITNESS: Rigdon and Mary Deas.

23 THE COURT: Okay. I mean, you had to pay the taxes.
24 I guess I don't really understand that.

25 THE WITNESS: The tax -- it was designed to pay

1 estate taxes.

2 THE COURT: Exactly.

3 THE WITNESS: But it could mandate it be used to pay
4 the estate taxes or you have to pay estate taxes on the
5 money that you're going to use to pay the estate taxes.

6 THE COURT: Exactly.

7 THE WITNESS: But the general plan for insurance
8 trust is to use the money either to loan it to the estates
9 or buy assets from the estate. This harps back to that
10 memo that he was concerned that was it mandated. Could
11 they use the money in the insurance trust to support the
12 beneficiaries instead of paying the estate taxes.

13 THE COURT: Well, y'all were doing some of both
14 before it was all over, weren't you?

15 THE WITNESS: I know we used it for paying to support
16 the beneficiaries during that time.

17 THE COURT: Right.

18 THE WITNESS: But we did not have to use it to pay
19 the estate taxes as it evolved.

20 THE COURT: Well, where else were you going to get
21 the money?

22 THE WITNESS: By sale of property.

23 THE COURT: So you think it was all part of just a
24 pressure tactic?

25 THE WITNESS: Yes, ma'am.

1 THE COURT: Okay.

2 BY MR. BECKER:

3 Q Ms. Thomas, if you'll look now on Exhibit 48, this is
4 a thread of emails I want to go through in reverse order.

5 So to get to the first one in the line, you look on --

6 actually, it starts at the bottom of Page 2 of Exhibit 48

7 with an email from you on April 13, 2017, to -- well, I don't know

8 know it was -- Rigdon Boykin was on it because he

9 responds, but your original email of April 13, 2017 begins

10 at the top of Page 3, and it says: I assume that we're

11 still meeting Tuesday morning. I'm leaving town right now

12 for the long weekend and have only the following as agenda

13 items. And then you list those. Is that right?

14 A That's correct.

15 Q And then if you look at the top of Page 2, there's a

16 reply email from Rigdon Boykin to you copying Alice, Mary

17 Deas, David Siddens and James Cagle. Who is he?

18 A I don't remember.

19 Q Would he be married to May Boykin?

20 A Must be. I don't know.

21 Q You've also copied William Tetterton?

22 A Okay.

23 Q And he says: Karen, the central issue facing the

24 trustees has been left off of this agenda. Then he goes

25 on to talk what about what Alice believes, and he says the

1 trust will be worth 20 to 26 million.

2 It should generate a minimum of 600,000 for the
3 benefit of the income beneficiaries, and then in that
4 third paragraph down, actually, the fourth one, he says, I
5 would like Alice and Mary Deas explain to us on Tuesday
6 how they are going to accomplish this miracle.

7 I would like to understand how their plan for the
8 trust assets will protect the income and remainder
9 beneficiaries from a crash in timber price and a bubble
10 burst in the price of land in Kershaw County. So far, all
11 I've heard is no. Is that what it says?

12 A Yes, sir.

13 Q Let me just ask you before we go further -- well,
14 I'll get to that later. Turn to the top of Page 1 of
15 Exhibit 48. You said Rigdon -- on April 17 at 3:47 p.m.,
16 Rigdon, the other trustees are not ready to talk about the
17 below items and they will not be added to tomorrow's
18 agenda. The trustees need more time to consult with
19 each's counsel. And what did he do in response?

20 A He canceled the meeting.

21 Q And when you say cancel, did -- were litigation
22 counsel involved by that time?

23 A Yes.

24 Q All right. Now, flip back to Exhibit 45.

25 This is an email from you to Alice Belger, Mary

1 Wortley, Rigdon Boykin and a copy to David Siddens. Who
2 was Mr. Siddens?

3 A Mr. Siddens is a tax lawyer in Columbia, and he was
4 Alice's individual lawyer.

5 Q Okay.

6 A He had been with us from the very -- well, close to
7 the very beginning representing Alice in her individual
8 capacity and participated in all of these meetings.

9 Q Okay. So he was representing her in her capacity as
10 a beneficiary?

11 A Correct.

12 Q Is he a -- Mr. David Siddens, is he a specialist in
13 tax?

14 A Or estate planning, one of the two.

15 Q Okay. Did the two of you discuss whether
16 Ms. Boykin's estate could qualify for 2032(a) and 6166?

17 A We did. We shared a bunch of war stories about how
18 it worked and felt this was a perfect situation for it.

19 Q So Mr. Siddens also agreed with you and Mr. Bailey
20 that 2032(a) and 6166 were appropriate for this state and
21 trust?

22 A Correct.

23 Q Did you send this email to the trustees and copy Mr.
24 Siddens?

25 A I did.

1 Q In it, you're saying, Attached is a memo outlining
2 the issues related to the estimated tax payment due on
3 Monday, May 8th. And this was May 2nd, 2017 when you were
4 sending it?

5 A Yes, sir.

6 Q Basically, we have 2.6 million in cash and have
7 discussed using 1.8 million of it as an estimated tax
8 payment. We could go higher, but I do not recommend it
9 going higher than two million. We could go lower if Alice
10 was considered to run a business prior her death with
11 70 percent of her assets. If that is the case, we may
12 only want to mail in 1,380,000 at this time. You also
13 say, The issues outlined are attached in the memo. Mary
14 Deas and Alice will need to make a final decision on how
15 much to mail in on Monday.

16 Did you write this memo and email it to the trustees?

17 A Yes, sir.

18 Q Had you previously discussed this in prior trustee
19 meetings?

20 A I attempted to.

21 Q You attempted to, but you were unable to?

22 A Each time I brought it up, Mr. Boykin said this
23 estate did not qualify and he was going to report me to
24 the IRS for committing fraud if I continued with this.

25 Q Does this memorandum set forth your professional

1 opinion on why section 66 -- 6166 would be applicable for
2 this estate?

3 A I'm not sure I was saying this was an opinion as to
4 why it would be applicable, it was more that I assume
5 we're going to apply now and here are the rules and the
6 risks and opportunities.

7 Q All right. And at the end of the memo, you state
8 there is also a much more complicated code section that
9 may be considered for eliminating taxes on woodlands, code
10 section 2032(a). However, it is complicated and not
11 useful in most cases if timber will be cut in the next 10
12 years. We can investigate it later.

13 A Yes.

14 Q Had you wanted to investigate it sooner?

15 A Yes, but 6166 was necessary before we had to make the
16 payment of estate taxes, which was nine months from date
17 of death.

18 Q Okay.

19 A When we filed the estate tax return, we had to make
20 the element for 2032(a).

21 Q Okay. So --

22 THE COURT: And what was the down side of not making
23 the election? What possible down side would there have
24 been in making the election if it turned out you weren't
25 really entitled to the election?

1 THE WITNESS: Right. For 6166, I have never found a
2 down side because one, I've never been rejected. And if
3 we were rejected, other folks have said they waived the
4 penalties --

5 THE COURT: So the biggest deal would have been the
6 penalties?

7 THE WITNESS: Right.

8 THE COURT: In your professional lifetime, you've
9 never heard of it.

10 THE WITNESS: I've never had it happen to me. Done a
11 lot of these.

12 THE COURT: Yeah, I understand. Now, I understand
13 that 2032 has a lot of different moving parts, as you put
14 it, but I don't understand why in the world there was any
15 hesitation about getting that other one at a very low rate
16 to fund taxes and on a lower valuation.

17 THE WITNESS: I didn't either. This was a very scary
18 thing for me to have to present to them because he
19 consistently stated he was going to report me to the IRS
20 for fraud.

21 THE COURT: Going to report you to the IRS for fraud?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: Have you ever had a client do that before
24 when you've given tax advice?

25 THE WITNESS: I've never had a client threaten to sue

1 me.

2 THE COURT: Does it turn out that the IRS has accused
3 you of any fraud about the return that you did file?

4 THE WITNESS: If he could find a contact in the IRS
5 to communicate with, I want to know that contact. I mean,
6 how do you contact the IRS, so...

7 THE COURT: All right.

8 THE WITNESS: I'm sorry. Go ahead.

9 BY MR. BECKER:

10 Q Let's look at -- if you'll turn to Exhibit 50?

11 A Fifty. I thought -- oh...

12 Q And this is another email thread conversation, so
13 let's start with --

14 THE COURT: Mr. Becker, let me just say this. We're
15 at 3:15 now.

16 MR. BECKER: Yes, ma'am.

17 THE COURT: Ms. Thomas has been on the stand a long
18 time. We have taken a lunch break. I've got the memo.

19 MR. BECKER: Okay.

20 THE COURT: That very lengthy memo.

21 MR. BECKER: Yes.

22 THE COURT: I feel -- although I have not digested it
23 completely, I feel like we're marching over ground that's
24 going to be covered there. Am I right?

25 MR. BECKER: We are and I'm not covering everything

1 in that memo.

2 THE COURT: I'm just trying to speed you up a little
3 bit because I don't want the end of the day to come and
4 all we've had is Ms. Thomas.

5 MR. BECKER: Well, I don't either, and I'm on Page 10
6 of 16 and this part will go much faster than the last.

7 THE COURT: All right, sir.

8 MR. BECKER: Yes, ma'am. Thank you.

9 BY MR. BECKER:

10 Q Let's -- I know you're very familiar with this email
11 conversation, so instead of me reading about it, do you
12 want to just summarize what it says?

13 A I don't know which one is more effective. This was
14 when the ladies made the decision as personal
15 representatives that it was in the best interest of the
16 estate and the trust and the beneficiaries to use the
17 6166.

18 We started the process and I did not communicate
19 immediately their decision to Rigdon, and so when I did,
20 he got very upset with me, stated that he had discussed
21 the pros and cons in detail with Whit and May and they
22 agreed with that that it should not be applied and then he
23 fired me. And this was again where he said he was going
24 to report me for fraud, but that was a frequent thing
25 after this.

1 Q Look in the middle of Page 2 where he says, It is
2 clear -- right above the date of on May 4, 2017. It is
3 clear from your email below that the decision has been
4 made for some time and I will just have to wait and
5 explain my concerns to the IRS?

6 A Well, the decision was probably made within 24 hours
7 before that, since my memo didn't go out to them:

8 THE COURT: Let me ask you something about this
9 paragraph, Ms. Thomas.

10 THE WITNESS: Yes.

11 THE COURT: I believe -- this is Mr. Rigdon Boykin
12 speaking. I believe the 6166 election is being used by
13 the personal representatives to strengthen their argument
14 to not sell the property in the estate. How would that --
15 I don't understand that statement. 6166 is not the 2032
16 10-year restriction.

17 THE WITNESS: Yes.

18 THE COURT: It doesn't contain anything like that,
19 does it?

20 THE WITNESS: But it gives me time to pay the estates
21 taxes --

22 THE COURT: Oh, I get --

23 THE WITNESS: -- and so that's why --

24 THE COURT: But he's saying here that it's being used
25 by the PRs to strengthen their argument not to sell

1 property in the estate.

2 THE WITNESS: Well, if I --

3 THE COURT: I don't understand the logic of that?

4 THE WITNESS: His explanation to me was if I didn't
5 have this lengthy time to pay it, then they would have to
6 quickly put the property on the market and sell to it get
7 the cash.

8 THE COURT: There's nothing in the code that
9 restricts anything --

10 THE WITNESS: Oh, no.

11 THE COURT: -- this is just an easier and more
12 expensive way to get the money, but he wanted the pressure
13 to be on to have to sell immediately.

14 THE WITNESS: And I really truly felt he must have
15 misunderstood or been confused between 2032(a) and 6166
16 because 6166, you have no restrictions. You can prepay
17 the tax at any time.

18 THE COURT: Right.

19 THE WITNESS: You can take your full time, and this
20 just gave us so much flexibility. But he was insistent we
21 not do it.

22 THE COURT: Okay.

23 BY MR. BECKER:

24 Q And is this the email on Page 1 in which he fired
25 you?

1 A Yes, sir.

2 Q Okay. Let's move on to Exhibit -- well, actually, I
3 want to move to the May 2017 timeframe. We're there, but
4 I want to ask you about whether in the early part of 2017,
5 did you recommend to the trustees that they retain
6 separate counsel?

7 A When there was talk of litigation, yes.

8 Q When did that talk of litigation come up?

9 A I don't know a specific date. It seems to be it was
10 early in the year, maybe January, February.

11 Q Who was talking about litigation?

12 A Rigdon.

13 Q So he was saying that he intended to sue?

14 A Well, that wasn't -- well, let me back up. We
15 discussed in the very first meeting that the probate judge
16 and the probate code have lots of options for the family
17 to go to the court and have disputes resolved. That's
18 what they're there for, families have disputes. And it's
19 a relatively easy process.

20 So we talked about having a declaratory judgment. I
21 may have been the one to say let's go to a local judge,
22 put our issues up and let the judge direct. If you look
23 at notes and memos after that, Mary Deas and Alice
24 continue to say let's wait to see what the judge says.
25 We'll wait for her opinion. We were all talking at that

1 point about the judge at the probate court.

2 Mr. Rigdon Boykin and I talked about it and we even
3 talked about whether or not mediation would be helpful in
4 this case. My personal opinion, which I relayed to him,
5 was I didn't think it would be helpful.

6 I felt like there were strong opinions on either
7 side, and Alice Boykin believed so strongly in what her
8 parents had told her every single day about how to
9 administer this trust, I didn't think a mediator would be
10 effective for her.

11 She needed to hear it from someone in authority about
12 whether or not she had to follow her daddy's Will. I also
13 didn't think Rigdon would believe a mediator if he was
14 told he was wrong, that he needed to hear it from somebody
15 of authority. Mary Deas, balanced, she would listen to
16 someone else.

17 So those were the discussions we had in early 2017
18 about litigation and I don't think any of us envisioned
19 this.

20 Q Okay. Was the litigation that you were recommending
21 designed purely to remain in the Probate Court to receive
22 declaratory relief on certain administration issues?

23 A That's what I thought we were talking about.

24 Q Okay.

25 A These issues took up so much time at each meeting

1 that we weren't getting past it, and that's what the code
2 is designed, to go to the judge and ask the judge to help
3 us get past this.

4 Q Did you ever advise or recommend that any trustee
5 should seek to have the court declare that as the sole
6 disinterested non-beneficiary co-trustee of the residuary
7 trust that Rigdon Boykin is entitled to exercise
8 preeminent authority among the trustees?

9 A No.

10 Q Or alternatively, that he should be appointed as a
11 special fiduciary to administer the trust?

12 A Oh, no.

13 Q Do you believe that such a declaration would comport
14 with the terms and purposes of the Will?

15 A No.

16 Q Do you believe that such a declaration would comport
17 with South Carolina law as you understand it?

18 A Well, South Carolina law would allow the judge to do
19 this, but I don't think that this is what was envisioned
20 by Mr. Boykin, Mr. Whit Boykin in this situation.

21 Q Based on your experience in administering this trust,
22 do you believe it would be appropriate?

23 A For him to be?

24 Q Yes.

25 A No.

1 Q Did you ever advise or recommend that any trustee
2 should seek to have the court modify the terms of the
3 trust to require the trustees to favor the prudent
4 investor rule over the language in the Will that requests
5 the trustees to preserve certain treasured tracts where
6 possible?

7 A No.

8 Q Do you believe that such a modification would comport
9 with the terms and purposes in the Will?

10 A No. The Will tells you, gives authority to the
11 trustees to make all the decisions that they have under
12 the prudent investor act, but they qualify it. He says do
13 what I'm asking you to do for this real estate, so that
14 pulls, at least, all of that real estate completely out of
15 the normal trust administration.

16 Q And does the Will give the trustees authority to sell
17 the treasured tracts?

18 A Absolutely.

19 Q Okay.

20 A Mr. Royal drafted it properly. He didn't make it
21 mandatory. He made it precatory and let the trustees and
22 beneficiaries at the time consider the facts and
23 circumstances and override his intent.

24 Q Right. It just takes three votes to do it?

25 A Three trustees and three out of the four income

1 beneficiaries, I believe.

2 Q Okay. Let's look at Exhibit 51?

3 THE COURT: Fifty-one or 61.

4 MR. BECKER: Fifty-one.

5 THE COURT: All right. Fifty-one. All right.

6 BY MR. BECKER:

7 Q And it may be that we can move over this quickly.

8 Let me just look at this. The only reason I ask you to

9 look at this, these are meeting minutes of May 12, 2017.

10 Does that first paragraph there -- second paragraph up at

11 the top, does that clarify what you understood Rigdon

12 Boykin's plan for this trust to be?

13 A You said the second paragraph?

14 Q No. It says Rigdon was asked to express his concerns

15 for the trust administration?

16 A Okay. Yes, we're back to the bubble. Yes, this was

17 his mantra from the very beginning and in most of the

18 trustee meetings, this was his presentation.

19 Q Did it ever change while you were involved?

20 A No.

21 Q Now, in May 2017, did Mr. Boykin also indicate in a

22 trustee meeting that he had a prospect who was potentially

23 interested in purchasing the mill pond for approximately

24 4 million dollars?

25 A Yes, he did.

1 Q Was this the first time that you recall Mr. Boykin
2 saying anything about a potentially interested purchaser?

3 A Yes.

4 Q Did he reveal the identity of that purchaser?

5 A No.

6 Q Based on what -- the statements you heard Mr. Boykin
7 make in that trustee meeting, who or what did you
8 understand the potential purchaser to be?

9 A A charity that he worked with in New York.

10 Q Okay. Was it important to Mary Deas Wortley to know
11 who that potential purchaser was?

12 A Yes.

13 Q Was that also important to Alice Belger?

14 A I don't remember because I'm not even sure that
15 Alice, at that point, said she would entertain it or not.
16 I just don't remember.

17 Q All right. Now, in the summer of 2017, was there a
18 hiatus or a pause of in-person trustee meetings during the
19 summer of 2017?

20 A There was.

21 Q Okay. What led to this?

22 A A lot of things. One -- well, I was a lot of the
23 fault of it. Right after this meeting, my daughter
24 graduated from Clemson in engineering and wanted to do a
25 family trip.

1 We were gone for a couple of weeks. We had -- other
2 people had weddings. We had trial -- we had six to eight
3 people to try to coordinate meetings. And, at least, two
4 of y'all were litigators who were under the court
5 schedule. Normal vacations for folks.

6 I had a little scare with skin cancer. My law
7 partner had a big scare with cancer and had to go to MD
8 Anderson. So there was a lot of things I was doing in my
9 office to help him out.

10 We did lot of things by emails, but, eventually,
11 sweet Mary Deas had to gently nudge me and say okay,
12 Karen, we need to get back in. And this was some time in
13 the fall. But, yes, there were a lot of different things
14 going on for people's scheduled, including my own fault,
15 but we did a lot by email.

16 Q All right. Did the business of the trust continue
17 during this time?

18 A They did. I mean, I talked to Rigdon on the phone
19 regularly.

20 Q Did you continue working on estate tax issues with
21 the co-personal representatives of the estate?

22 A That was a big part of the summer, which was nice in
23 not having the meetings because I was able to work with
24 the appraiser at Milliken because they had just begun to
25 get started.

1 We had started doing an estimate of the estate taxes
2 without their numbers. So he and I worked the summer and
3 the fall. He gave me the last report the day it was due.
4 So it was a tight schedule.

5 Q Did the trustees conduct business during this time by
6 email?

7 A Yes, they did.

8 Q In your view, did the pause in in-person meetings
9 during the summer of 2017, did it impair the
10 administration of the trust in any way?

11 A I don't think so, but then, again, I was part of it.

12 Q In your view, did that hiatus or pause of in-person
13 meetings during the summer of 2017 represent any kind of
14 breach of fiduciary duties by any trustee?

15 A It shouldn't have, no.

16 Q And do you recall that Rigdon Boykin commenced this
17 litigation on August 23rd, 2017?

18 A I don't know the date because it just seemed like it
19 had already commenced because things were so tense as of
20 May, and that was another reason that we didn't meet is
21 because of Mary Deas and Alice felt like they needed some
22 time with their litigation counsel to kind of figure
23 things out.

24 And since I had been fired, I needed to get in touch
25 with Mr. Rosen to make sure it was okay for me to continue

1 to receive Rigdon's calls and talk with him without Mr.
2 Rosen being there. So we had a lot to do that summer.

3 Q But in any event, meetings did recommence October 13,
4 2017; is that right?

5 A Yes, sir.

6 Q Take a look at Exhibit 52.

7 A Okay.

8 Q By this time -- and I'm going to point your attention
9 to the first numbered paragraph involving payment of
10 trustee fee. Describe what was going on with that agenda
11 item.

12 A Well, we were working on the estate tax return at
13 this time and getting to the end since it was due November
14 the 8th. From the very beginning, I had stated that all
15 three needed to be paid for their services, and if we
16 could come up with a dollars amount, I could put it on the
17 estate tax return, get an estate tax deduction, which was
18 a 40 percent savings.

19 They didn't have to pay it then, I just needed to put
20 it on the estate tax return. So it was to come to the
21 trustees with a recommendation that they get paid. And
22 using four different bank fee schedules, I gave them an
23 average of what if a bank was running it, what it would be
24 paid.

25 Q All right. And what did you recommend?

1 A \$100,000 a trustee.

2 Q For all the time they had spent so far?

3 A Yes, getting it started -- not the annual trustee
4 fee. This was like if it was in a probate estate, just a
5 PR fee, just an administrative fee for all the work they
6 had done to date.

7 Q And did that issue come to a vote among the trustees?

8 A I had called a vote. Mary Deas and Alice said they
9 agreed and Rigdon voted no.

10 Q And Bill stressed this vote was final. Was that Bill
11 Bundy?

12 A That is.

13 Q Why did Rigdon vote no?

14 A I couldn't tell you.

15 Q All right. Let's jump ahead to Exhibit 53?

16 A Okay.

17 Q I believe now the estate tax return was filed on
18 November 7th or 8th, 2017; is that right?

19 A It was the 8th.

20 Q It was the 8th. The day it was due?

21 A The day it was due, yes. We got the numbers that
22 day.

23 Q And there was a meeting the next day; is that right?

24 A Correct.

25 Q And these are the minutes of that meeting?

1 A Correct.

2 Q Did you give everyone a file with the estate tax
3 return and all the attachments?

4 A You're speaking --

5 Q Yes.

6 A It was a bankers box, at least, one banker's box, may
7 have been two. I didn't want to -- I couldn't physically
8 copy and deliver that to y'all.

9 Q Yeah. And we don't need go through it, but it's
10 listed here. Was this a summary of the discussion
11 regarding the mill pond option agreement at that time?

12 A I assume so, yeah. I didn't read it.

13 (Pause.)

14 Yes, yes, it is.

15 Q At that time, was Rigdon agreeable to continue
16 \$100,000 a year payment?

17 A Correct.

18 Q To whit and May?

19 A Correct.

20 Q And did he ask if Alice and Mary Deas were willing to
21 give up their money?

22 A It could have been one of the meetings. There was a
23 discussion which I disagreed with because of the income
24 tax issues that May -- not May, Mary Deas and Alice were
25 saying we want Whit and May supported, and if it means not

1 receiving a distribution, then we will forgo our
2 distribution so they can receive theirs.

3 Q Without three trustee votes, could that option --
4 agreement on the mill pond proceed?

5 A On the mill pond, no. I think since it's real
6 estate, I needed three votes.

7 Q Okay. Now, did -- would this option agreement
8 contradict your advice that you had given earlier
9 regarding the general estate tax and estate valuation
10 process?

11 A It's pretty close. The issue would be if I -- when I
12 get in an audit, this would be evidence that the values
13 that we presented on the estate tax return were not
14 accurate.

15 Q So was this option agreement helpful or hurtful?

16 A It won't be help to me on the estate tax audit, just
17 looking at that narrow issue.

18 Q All right. Let's move ahead to Exhibit 65.

19 I don't have questions about the specifics of those,
20 those meeting minutes, but there was a meeting that day.
21 It was held in my office; is that correct?

22 A That's correct.

23 Q And you attended along with Bill Bundy, myself and
24 the three trustees, and then Jimmy LaFraige also presented
25 there; is that correct?

1 A That's correct.

2 Q By this time, had there been a change in Mr. Boykin's
3 attitude, Rigdon Boykin's attitude toward you?

4 A Yes, sir.

5 Q Describe what that was.

6 A It was hurtful because of his disrespect of me and
7 his demeanor and disrespect of me in meetings. I never
8 caught this over the phone when we were dealing over the
9 summer. I know he was angry about the 6166 and he made
10 threats about that, but we had always seemed to have a
11 decent working relationship even when we argued, so it
12 hurt.

13 And I asked him after the meeting why he was treating
14 me with such disdain, and he told me I was just wearing
15 too many hats. But I think it was because of 6166
16 election.

17 Q Did he also say that you needed to be careful?

18 A He did, but it was a regular, you need to be careful,
19 you need to notify your insurance carrier. Yes, you know,
20 just typical. That was an illegal vote. Notify your
21 insurance carrier. You're going to get sued, that type of
22 thing.

23 Q Did you imply that he was planning to sue you for
24 malpractice in some way?

25 A I did. I did. But he threatened us a lot.

1 Q All right. Now, in 30 years of practicing law in
2 this field, have you dealt with strong forceful lawyers
3 and clients and trustees?

4 A Yes, sir.

5 Q How does the treatment you were getting from
6 Mr. Boykin beginning in this timeframe compare to the
7 other 30 years of experience?

8 A And it wasn't just to me, but it's the worst I've
9 ever had in 30 years. I've never had someone so
10 disrespectful of me or other professionals or their
11 co-trustees.

12 I would regularly or my staff would -- I would leave
13 a trustee meeting and before I could get back to my
14 office, one of the ladies would call regularly to say
15 please tell Karen thank you for letting me speak, for
16 controlling the meeting so that my voice could be heard
17 and for protecting me.

18 So I regularly got those calls or, at least, my staff
19 did because you have the conversations, so the staff would
20 let me know when I got back to my meetings.

21 But this has been challenging. I've never been
22 threatened ever to be sued nor have I been sued, but I get
23 constant threats if he doesn't like my recommendation or
24 our vote. And this threat to report me to the IRS for
25 fraud, I just -- I've never, never heard of that. So yes,

1 it was very challenging and hurtful relationship at the
2 end.

3 Q Okay. Please look at Exhibit 54. Did you preside at
4 this meeting?

5 A I tried to.

6 Q Okay. Was this the last meetings --

7 A This was the last meeting I attended, yes.

8 Q -- with all the trustees? You say you tried to
9 preside. Why could you not do so?

10 A There was the one that I don't know why he turned to
11 me and just told me to quit talking. I was actually
12 agreeing with him on the presentation and he told me to
13 stop talking, that I was out of line being in there and
14 borderline crossing the line. So it took me by surprise
15 and I believe you took over running the meeting.

16 Q Item 1, the valuation of the trust assets, it looks
17 like Mr. Boykin was asking there in the middle of that
18 agenda item, Rigdon asked that the trustees agree that the
19 value of all assets in the trust be considered 20 million
20 dollars?

21 A Yes, sir.

22 Q That would be the gross value not net --

23 A Yes.

24 Q -- of the estate taxes?

25 A I don't know. We didn't clarify that.

1 Q Okay.

2 A I think if it was using my schedule, it was the net
3 value because it had the debt in it.

4 Q All right. But we don't know for sure whether that
5 number was gross or net of debts?

6 A I don't know.

7 Q Okay. Look at, if you will, Item 2 of the investment
8 plan. Was there yet another discussion of the investment
9 plan from each of the trustees there?

10 A Yes.

11 Q Okay. And we don't really need to go into the
12 details of that. If you'll look at that Item 3, also, on
13 Page 2. Excuse me, I meant to say 11. Look at Item 11 on
14 Page 2. Was there a discussion of the funding of future
15 distributions?

16 A There was.

17 Q Can you explain that discussion was?

18 A Well, I agreed with Rigdon we could assume that the
19 value of the trust was 20 million, and at that point, he
20 said that since it's just 20 million, he can no longer
21 agree to the distributions that we had voted on -- or they
22 had voted on back in August of 2016 of \$100,000 a
23 beneficiary.

24 There just wasn't enough to justify that kind of
25 distribution. This was, I'm sorry to say, the date after

1 the distribution was supposed to be made. I was asked by
2 the CPA to bring up the payment -- the regular payment to
3 this meeting and just shift it from the trust that was
4 protected from generation skipping taxes to another trust.
5 We could now that we made the 6166 election. So that's
6 why the payment wasn't made. It was brought up to shift
7 it from one trust to the next.

8 So the other trustees thought that the Whit and May
9 needed continue to receive their distribution. I called
10 for a thinking that only two out of three trustees needed
11 to make a decision about continuing this distribution and
12 the women voted to continue the distribution.

13 Rigdon voted no and again, he said -- told me that it
14 was an illegal vote and that I needed to contact my
15 carrier because I presented this vote to the trustees.

16 Q All right. And days later, did he reverse his vote
17 on this issue?

18 A He did.

19 Q Okay. Look at Exhibit 55. And you don't need to go
20 through it, but this is an email from him to Alice, Mary
21 Deas, you, also including me, Mr. Bundy and Mr. Tetterton
22 in which he reverses his vote completely; is that right?

23 A That's correct.

24 Q After threatening to sue you for bringing it up?

25 A Yes, sir.

1 Q All right. Now, by April of 2018, did you have
2 concerns about the estate tax return and a potential
3 audit?

4 A I did. My advise always to clients is if you can lay
5 low while we file the estate tax return, it will be easier
6 on audit if you haven't sold any property that you don't
7 need to sell, especially at prices that are different than
8 what we reported it at, so if you can just lay low, we
9 might can skim through without an audit and we know then
10 what the estate tax bill would be, but I got very nervous
11 seeing in writing and in this litigation context his
12 version of the value of all of the land.

13 So my recommendation was for me to contact the IRS
14 and try to get ahead of this litigation and get them to do
15 the audit before any of this became public record or
16 before we sold any property.

17 Q All right.

18 A I've not been successful with that. They haven't
19 started it.

20 Q All right. But you did ask for a closing letter
21 that's called?

22 A That's correct.

23 Q And did you believe that Rigdon's efforts, even in
24 this trial to allege a higher value for the real estate
25 might negatively impact your audit chances?

1 A Two things. I believed that it would because they
2 can ask me for audit information. I also didn't know if
3 he would contact the auditor and tell the auditor that the
4 values were low because of his threat on the 6166 that it
5 was fraud.

6 Q And if he did that, would that be negative for the
7 trust?

8 A I believe so.

9 Q And could Rigdon's proposed valuations be used to
10 justify higher valuation and thus, more estate tax?

11 A Absolutely.

12 Q Ms. Thomas, based on all of your experience with the
13 trustees of this trust, do you believe that Rigdon Boykin
14 had any consideration or concern for the Testator's
15 apparently desires for the trustees to retain the
16 treasured tracts for future generations of Boykin family
17 members?

18 A Absolutely not.

19 Q Did Rigdon's view of the Will differ from that of
20 Mary Deas and Alice?

21 A Yes.

22 Q Based on all your interactions with these trustees,
23 do you believe that Mary Deas Wortley and Alice Belger
24 were willing and wanted to follow the terms and purposes
25 of the Will and to do so in good faith?

1 A Yes.

2 Q Can you say the same thing about Rigdon Boykin?

3 A No, sir.

4 Q Do you believe that the desire to follow the Will
5 motivated Mary Deas and Alice in their conducts and their
6 decisions as trustees?

7 A Absolutely.

8 Q Did they rely on your advice regarding the
9 interpretation of the will in doing so?

10 A Yes. But they came with their own thoughts on it.

11 Q Ms. Thomas, based on all of your experiences with the
12 trustees of this trust, do you believe that Rigdon Boykin
13 was sincerely willing to work cooperatively with his
14 co-trustees?

15 A Not on major issues. Minor ones, fixing property,
16 fixing the dam, he's wonderful, but his over -- he just
17 wants to sell all this property and disregard the terms of
18 the Will.

19 Q In your experience, was he ever willing to change his
20 viewed based on developing facts and professional advice?

21 A On minor things, yes.

22 Q But on the major ones?

23 A Huh-uh.

24 Q Is that a no?

25 A No.

1 Q In the early trustee meetings and throughout, did
2 Rigdon Boykin appear to favor the needs of Whit and May as
3 opposed to the income and remainder beneficiaries?

4 A That's who he was trying to protect and who we talked
5 about.

6 Q Under the Will and -- do you know -- did he say he
7 was favoring them because they do not have children of
8 their own?

9 A He did, which I found a little bit odd in that Whit
10 and May and Mary Deas and Alice are equal income
11 beneficiaries. There should not be anything different
12 among the income beneficiaries.

13 Q Right.

14 A The fact that they don't have children, I don't know
15 how that affects their lifetime benefits.

16 Q Right. Under the will and the law of South Carolina,
17 did you consider that to be a valid basis to favor these
18 two beneficiaries over all the others, the fact that they
19 don't have children?

20 A No.

21 Q What was Rigdon Boykin's attitude towards the needs
22 and desires of the remainder beneficiaries?

23 A We never discussed them.

24 Q Did he ever advocate for anything in particular for
25 the remainder beneficiaries?

1 A Not that I recall.

2 Q Did he appear to have communicated with the remainder
3 beneficiaries to determine what their wants and needs were
4 with respect to the trust administration?

5 A He stated with, at least, one of Mary Deas' sons that
6 he communicated with him and that son agreed with Rigdon's
7 position.

8 Q One of his sons?

9 A Mary Deas' sons.

10 Q Mary Deas' son agreed with --

11 A I don't remember if he said it was one or both.

12 Q Okay. Now, let me ask you just a few questions again
13 going back to his investment plan and strategy. From the
14 beginning, it was the 85/15 split. 85 percent sell --
15 invest in financial assets, only 15 percent in real
16 estate, right?

17 A Yes, sir.

18 Q While you were actively involved in the trust
19 administration from August 2016 through January 2018, did
20 Rigdon Boykin ever produce any other investment plan and
21 strategy for this trust?

22 A No, sir, that's his plan.

23 Q Did he appear to have considered the time, effort and
24 the appraisal process that would be necessary to prepare a
25 comprehensive and well considered plan for administering a

1 trust with 5900 acres of land and timber assets?

2 A No, he just said sell it.

3 Q Did he appear to have carefully considered the large
4 variety and types of lands owned by the trust?

5 A Only there's the bubble and there's the other, so
6 there were two different types. Well, and he also gave --
7 often gave us lectures on right of return for farmland --
8 versus timberland. So he did talk about farmland versus
9 timberland, but in the context of we still need to sell
10 all of this. The rate of return is as great as the stock
11 market.

12 Q Did he ever prepare and present a budget or an
13 estimate of income and expenses going forward?

14 A No, sir.

15 Q With his 85/15 plan for selling land and investing in
16 stocks, did he appear to have carefully considered the
17 potential productivity of the land in terms of income and
18 capital appreciation or both?

19 A Only with the rate of returns, but it still came back
20 to we got to sell it all.

21 Q All right. Did he appear to seriously consider the
22 time that it would take to dispose of 5900 acres of land?

23 A No, sir.

24 Q Did he appear to carefully consider whether selling
25 5900 acres concentrated in three relatively rural South

1 Carolina counties as quickly as possible would have an
2 impact on the price of the land to be sold?

3 A No, sir.

4 Q What was his position toward financial assets, such
5 as stocks and bonds?

6 A I don't think he gave us any details. He said sell
7 it all and then -- I don't know that he was pleased with ---
8 Mr. Bunch and wanted to look for other investors.

9 Q Did he ever acknowledge that financial assets like
10 stocks and bonds also have risks?

11 A We didn't talk about it. We just have to sell it all
12 and put it in the stock market.

13 Q Even if those might have had risks that were equal to
14 or greater than owning land and timber?

15 A Yes, sir.

16 Q Ms. Thomas, based on your observations of these
17 trustees, do you believe that Rigdon Boykin was willing to
18 incur only those costs that were reasonable in relation to
19 the trust property and the purposes of the trust?

20 A No, sir.

21 Q Can you elaborate on that?

22 A Well, one, here we are, which I think could have been
23 resolved simply by the trustees going --

24 THE COURT: You're going to have to speak a little
25 louder, Ms. Thomas.

1 THE WITNESS: I think lawsuit is one indication --

2 THE COURT: Well, yes, the expenses that all have
3 incurred are certainly not something that helps the estate
4 or the trust at all.

5 THE WITNESS: No, ma'am. I don't know -- I don't
6 know what the issue was with the survey that caused a lot
7 of this initial voting problems. There was a survey done
8 for the portions of either Sumter Mountain or these
9 properties at Charleston appraisals and he hired it. I
10 had no idea if there was a vote to do that, but the other
11 trustees felt like it was a waste of trust monies to pay
12 this large surveyor fee.

13 BY MR. BECKER:

14 Q All right. Did he often incur expenses for the trust
15 without seeking prior authorization from the trustees?

16 A The Charleston appraisal and that particular survey
17 are the only ones I can think of besides this.

18 THE COURT: Mr. Becker.

19 MR. BECKER: Yes, ma'am. I'm on my last page.

20 THE COURT: I understand that. I feel like we're
21 getting repetitive again.

22 MR. BECKER: Okay. Let me then end this way. I've
23 got just about four more questions.

24 THE COURT: Mr. Becker, I'm not kidding you. I'm
25 concerned now. We haven't even gotten to

1 cross-examination of Ms. Thomas and it's almost 4 o'clock.

2 MR. BECKER: All right. I won't ask those questions
3 then. Thank you, Your Honor.

4 THE COURT: Thank you. Now, Madam Court Reporter,
5 you need a break?

6 THE COURT REPORTER: Could I have just five minutes?

7 THE COURT: Absolutely. 10 minutes. We'll be back
8 together at five after.

9 (Whereupon, a short break was taken.)

10 THE COURT: Mr. Duffy.

11 MR. DUFFY: Thank you, Your Honor.

12 CROSS-EXAMINATION:

13 BY MR. DUFFY:

14 Q Ms. Thomas, good afternoon. For the record, I'm Liam
15 Duffy. We met just a moment ago. Ms. Thomas, you were
16 here this morning for your colleague, Mr. Bailey's
17 testimony, weren't you?

18 A Yes. I did slip in and out.

19 Q And did you hear him say that according him Ms. Alice
20 Boykin had relayed that she had expressed some regrets
21 about convincing her husband to appoint Rigdon as a
22 trustee, do you recall that?

23 A That's what he said, yes.

24 Q Do you know who the best man at Rigdon Boykin's
25 wedding was?

1 A I do not.

2 Q Would it surprise you to learn that it was Mr. L.W.
3 Boykin, II?

4 A It would not. Rigdon is charming and wonderful. I'm
5 sure they were great friends.

6 Q Have you heard anything about the relationship?

7 A No.

8 Q Okay.

9 A Well, sorry, I did hear a lot how their family grew
10 up with the family and how Mr. Boykin was so good to him.
11 I'm sorry. I did hear a lot about that.

12 Q I'll ask you about that in a minute. And, of course,
13 Whit Boykin, Sr. I'm talking about, Mr. Big Whit?

14 A Yes, I understand.

15 Q He selected Rigdon as a trustee of his residuary
16 trust; right?

17 A Yes, he did.

18 Q And also the irrevocable life insurance trust?

19 A He didn't draft it.

20 Q That would have been Ms. Boykin?

21 A Yes.

22 Q And Mrs. Thomas, if I understand correctly, your
23 involvement with the Boykin family began in August of
24 2016; correct?

25 A Except for a little bit -- I worked at Nelson Mullins

1 with George. So you will see in some of the old files my
2 handwriting in actually dealing with Ms. Langley's issues
3 with Boykin then.

4 Q And those are the issues -- you actually were
5 reminded of that once you started?

6 A Yeah.

7 Q So fair to say other than whatever your involvement
8 was when you were at Nelson Mullins, you don't have any
9 personal knowledge?

10 A None at all.

11 Q And of course, you've reviewed Mr. Boykin's Will?

12 A Yes.

13 Q Okay. And Item 10 has been a topic of a lot of
14 conversation, of course, in this case. Are you familiar
15 with Item 10?

16 A Is that the one with the precatory language?

17 Q Correct, and certain pieces of property. And you
18 just answered my question, but the language in there I
19 desire but I do not direct, that's precatory language?

20 A Correct.

21 Q Because I heard you say earlier, I think you
22 referenced the directions in Mr. Boykin's Will. I just
23 want to make sure it's clear.

24 A I still think it's the most mandatory precatory
25 language I've ever seen.

1 Q And that's a bit of an oxymoron, isn't it?

2 A I mean, Lord knows that man wanted it done that way
3 if he put all these restrictions and rules on how it can
4 be --

5 Q Well, mandatory can't be precatory --

6 A It looks a little -- well, anyway, go ahead.

7 Q Would you agree that precatory is --

8 A It is precatory. And he set the rules for how you go
9 against his intentions.

10 Q All right. And there's some other areas in the Will
11 where there's actually mandatory language used, correct?
12 For example, that the trustee shall pay net income. That
13 would be mandatory, right?

14 A Yes. And that the trustees, if they want to sell one
15 of those parcels, they have to have appraisals and three
16 trustee votes and three out of four beneficiaries. That's
17 why I get into a little bit more than precatory.

18 Q And you've heard the term family legacy property?

19 A Yeah, I've heard it.

20 Q Not in the Will, though, right?

21 A No.

22 Q And the trustees talked very early on in the
23 administration of this trust about liquidity problems,
24 didn't you?

25 A Yes.

1 Q And I think you stated that you disagreed with Rigdon
2 in the first meeting vehemently and told all the trustees
3 that if they wanted to sell the named family tracts that
4 would be fine, but there was a procedure set up in the
5 Will, right?

6 A Absolutely.

7 Q And you sort of touched on that procedure a minute
8 ago, but you advised them if they all agreed to sell the
9 listed property in Item 10 that they needed to follow that
10 procedure?

11 A Yes.

12 Q And that procedure I'm referring to is they've got to
13 obtain two appraisals. There's got to be a majority
14 consent of the beneficiaries and that's the order, so to
15 speak, in which they have to be sold, right?

16 A And the three trustees have to agree.

17 Q And the order listed under the Will, under Item 10 of
18 the Will, that would be the swamp tract, then Broadview
19 Plantation and Mill Way. Does that sound, right?

20 A Sounds, right. I don't remember if those were the
21 last or the first sold, but he did set up an order for it.

22 Q If I told you that it was the swamp tract, then
23 Broadview and then Mill Way, you wouldn't have any --

24 A I would trust you.

25 Q Okay. And to your knowledge, the swamp tract hasn't

1 been sold, has it?

2 A No.

3 Q And since the swamp tract hasn't been sold and it is
4 the first one on that that's to be sold, then,

5 theoretically, none of the other tracts that come after

6 the swamp track should have been sold if that procedure,

7 that order were followed; is that right?

8 A Yes, that's his wishes.

9 Q But would you agree that if it's the first one to be
10 sold and it hasn't been sold, then the ones that come
11 after that --

12 A Probably haven't been sold. Nothing has been sold to
13 my knowledge. I don't think -- I'm not sure where you're
14 going with this because nothing has been sold.

15 Q We'll get there. I think you were aware of a sell of
16 about 6.77 acres to a Sue Zimky?

17 A Yes.

18 Q Okay. You -- does that ring a bell?

19 A It does.

20 Q And that was for \$100,000.

21 A Yes. It could have been more than that, but it was
22 around that.

23 Q Above \$10,000 an acre?

24 A It was good --

25 Q Are you aware that 6.77 acres that was sold to Sue

1 Zimky is part of a yellow house tract?

2 A Yes.

3 Q Are you aware the yellow house tract is part of
4 Broadview Plantation, which is listed after the swamp
5 tract in the Will?

6 A Yes. But you remember it is across from the big
7 parcel. It's a little narrow thing attached to her
8 property and not the big property.

9 Q And I'm just trying to understand. So if the
10 6.77-acres is part of the yellow house tract, which is
11 part of Broadview Plantation, which is number two on the
12 list to be sold and part of that has been sold, but the
13 swamp traffic hasn't been sold, then that procedure they
14 described, that hasn't been followed, has it?

15 A It has been followed.

16 Q Well, how has it been followed if it's number two on
17 the list?

18 A They did everything appropriate to sell that little
19 parcel. It was a teeny little sliver of land related to
20 this lady, not attached to the farm. So if you're trying
21 to say because they did that, they violated the terms of
22 the document, they did not.

23 The three trustees agreed to sell it. They got
24 approval of the beneficiaries, and as your keep pointing
25 out, this is precatory, this is his intent. So if they

1 decide, as under the terms of the document to sell this
2 property, they can do it.

3 Q Okay. So. They can circumvent the order listed?

4 A It's precatory.

5 Q Okay. All right. We're in agreement then?

6 A Okay. Then stop.

7 Q And the sale of 6.77-acres for \$100,000, that's one
8 of only two pieces of property that's been sold by the
9 trust in the last two years; is that right?

10 A Again, I haven't been involved in the last six or
11 eight months, so I don't know.

12 Q Okay.

13 A They sold timber, but I don't think they sold land.

14 Q Were you aware there was another sale of land, I
15 think about \$30,000 sale of land? Are you familiar with
16 that?

17 A No, I don't. I'm sorry.

18 Q Ms. Thomas, are you aware that the trustee meetings,
19 I believe beginning in May, on May 12th, 2017, going
20 forward have all been audio recorded by Ms. Belger and Ms.
21 Boykin -- Mr. Boykin, rather, Mr. Rigdon Boykin and,
22 perhaps, others?

23 A I know all of those, I think, from then on, I don't
24 know if it was before that, it could have been, except for
25 the introduction to the November 9th one. I asked that

1 none of the aggressive or positions on the estate tax
2 return be recorded. So if it was recorded, it was against
3 my request.

4 Q And you're also aware then that the meetings have
5 also been transcribed and reduced to writing?

6 A I've not seen them, but I'm assuming they have.

7 Q I think you or, perhaps, others seem to have always
8 disseminated some form of notes or minutes or summary
9 following those meetings; is that fair to say?

10 A Yes, I tried very hard to.

11 Q Okay. And fair to say that those transcriptions or
12 audiotapes or summaries or e-mails about the meetings
13 would reflect, as you've stated, some scarring or robust
14 discussions about trust issues?

15 A Yes.

16 Q There's been some passionate discussions?

17 A Absolutely, as it should be.

18 Q And if there was this sort of disrespect or disdain
19 that you were experiencing and expressing to the Court
20 earlier, that, too, would have been reflected in those
21 minutes or those transcripts or those audiotapes; is that
22 right?

23 A It wasn't in the minutes. I don't think I would put
24 that in the minutes. It might have.

25 Q Let's put it this way, the audiotapes are the best

1 evidence of what happened?

2 A Except for nonverbal actions.

3 Q Sure. Body language?

4 A Yes.

5 Q But to the extent we've got evidence of what happened
6 at the meetings, the transcriptions would be the best
7 evidence and they would reflect what happened; is that
8 right?

9 A Sure. I don't know if it's the best evidence, but
10 it's an audio of what happened.

11 Q Second of being there, perhaps. Is it fair to say
12 that Rigdon had or has strong feelings about what he feels
13 is best for the trust and what he feels is best for the
14 beneficiary?

15 A He has very strong feelings, yes.

16 Q And the beneficiaries of the trust -- and I say the
17 trust, I'm sort of referring now to the residuary trust,
18 which is really what we're talking about. That would
19 include both the living beneficiaries, whether they're
20 Whit and May and Alice and Mary Deas or their living
21 children, but it would also include other remaining
22 persons, right?

23 A Unidentifying remaining --

24 Q Correct.

25 A Yeah.

1 Q That's fair to say. Okay. And at this point, we
2 have no way of knowing or we don't know who the exact
3 remaining person will be when the trust terminates?

4 A Absolutely not. We could have any of them pass away.

5 Q Right. And the trustees have an equal obligation to
6 those not yet identified; right?

7 A Yes. But under South Carolina law, the ones that are
8 convened represent the ones that are not convened.

9 Q Correct. I've become familiar only by virtue of this
10 case. But I appreciate you pointing that out.

11 Ms. Thomas, is it also fair to say that it would be
12 probably be apparent from the trustee tapes or
13 transcriptions that Rigdon takes his obligations as a
14 trustee pretty seriously?

15 A So do the women.

16 Q How about Rigdon?

17 A Oh, he does. I'm not disagreeing. He's very
18 passionate about it, very passionate about it. He takes
19 it very seriously.

20 Q Not something he takes --

21 A But I don't want to dismiss the women thinking it's
22 just as serious just because they're quieter.

23 Q All right. And didn't you they Rigdon spoke lovingly
24 about Whit and May and Alice and Mary Deas?

25 A Absolutely.

1 Q And how much time he spent with them while they were
2 growing up?

3 A Uh-huh.

4 Q Bragged about them. And said nice things about Mary
5 Deas and her husband, too, right?

6 A Absolutely. Even though she's a democrat he said.

7 Q I'm not going to touch that. Didn't he seem to you
8 like a big brother or father, I think it what you said?

9 A Absolutely. He was so proud -- he is still, but he
10 seemed so proud of them.

11 Q And Rigdon, he's had experience serving as trustee
12 before; is that right?

13 A In New York, yes.

14 Q And I think you said that he had a way of
15 prioritizing matters that made sense for administration of
16 the trust?

17 A Absolutely?

18 Q Can you tell me about that?

19 A Because when we started in August, so much was thrown
20 on the family. One, they were grieving. But what came
21 about was so many issues that he is a retired lawyer, boy
22 he could help me dispense with immediately. We've got all
23 this land, so we have all these title issues. I'm
24 normally begging clients to do title searches. I didn't
25 have to do that with Rigdon, he understood that

1 immediately and got on getting the title searches done.
2 There was a lease to building a Hawthorne Pharmacy, a lot
3 of issues there. He was on it.

4 In looking at the title searches, I think that's
5 where it came about, we found that there was a problem
6 with the title on property that was supposed to go to
7 Jenny, who was not a beneficiary of the trust. Any other
8 trustee would have not known what to do.

9 Rigdon did the right thing, said let's go ahead and
10 clear up the title. Finish that. So it's little things
11 like that boy, he was easy to work with, fun to work with.
12 We argued, but that's good. It made me better and we got
13 these things done.

14 Q That was the sparring you talked about?

15 A Yeah, it was fun. It was fun with him.

16 Q And since there are so many different parcels of real
17 estate, varying types in this trust, there's a lot for the
18 trustees and professional advisers to keep up with?

19 A Yes.

20 Q You sort of alluded to that a moment ago?

21 A Yes.

22 Q You talked about obtaining title searches?

23 A Yes.

24 Q Obtaining insurance on various properties?

25 A Yes.

1 Q How about drafting --

2 A Oh, and he was very helpful. The revocable trust had
3 specific devises of property to children. And so instead
4 of me having to encourage let's go ahead and get it over
5 with, he had my back. Let's go ahead and get this thing
6 done. He had all the utilities moved over to them, make
7 sure any rent gets pushed over to them. That kind of
8 thing. That's why it was so wonderful to be able to work
9 with him.

10 Q Save the trust some fees from you having to do it
11 instead?

12 A Probably.

13 Q And how about drafting the negotiating leases?

14 A I think he worked with William Cox on that.

15 Q All right. But that's another thing Rigdon had to
16 do; is that right?

17 A Rigdon and Alice did a lot of that.

18 Q And handling tenant issues?

19 A Yes. Because Mary Deas was probably in Ohio, I
20 think, so the two of them did a lot of the leases meeting
21 with Joe, that kind of thing, Alice and Rigdon.

22 Q And how about dealing with property, buildings, road
23 maintenance repair and all that?

24 A Well, based on the e-mails, they kind of shared
25 duties or they both did something, but he was very

1 instrumental in that, too, just like Alice.

2 Q Okay. I think in the May 12, 2017 trustee meeting,
3 you said that Rigdon always leaves with the longest to-do
4 list?

5 A He does, and he doesn't write it down. I don't know
6 how he's able to remember it, but he does. That's why I
7 said he was magical. He came in optimistically, we can
8 get this thing done. And he left with a very long to-do
9 list. But he volunteered to do it and he went away with a
10 very long to-do list.

11 Q And you already mentioned Mary Deas, she lives in
12 Ohio, right?

13 A Uh-huh.

14 Q And Alice, she helped the trust matters?

15 A Absolutely.

16 Q But she maybe doesn't necessarily have the same skill
17 set as Rigdon as a retired lawyer, is that fair to say?

18 A That's true. But I tell you what, Alice -- I've
19 never seen anybody like Alice, want to be -- make a
20 perfect decision. She doesn't want to make a mistake. So
21 Alice will take something like this and study it to make a
22 decision. So she took a little bit more time than Rigdon,
23 obviously, because she had never been a trustee, but she
24 found her voice. Probably took her three or four months
25 to get a groove on and understand all these issues, but

1 she worked at it.

2 Q Okay.

3 A She still works at it and wants articles on tax
4 issues and everything to understand it.

5 Q All right. Well, speaking of tax issues --

6 MR. DUFFY: Your Honor, if I may, I've got copies for
7 everybody?

8 THE COURT: That's fine.

9 BY MR. DUFFY:

10 Q Ms. Thomas, I'd like to hand you just a couple of
11 exhibits I'll ask you about. We've talked a lot about IRS
12 6166 and 2032(a) --

13 THE COURT: All right. Just a second. The other
14 side has got copies of these, Mr. Duffy?

15 MR. DUFFY: Yes, Your Honor.

16 THE COURT: 179 is a memo to Karen from Jennifer
17 regarding the 6166 qualifications on the Estate of Alice
18 Boykin. Petitioner's 179, any objection?

19 MR. BECKER: No, Your Honor.

20 THE COURT: All right. Admitted.

21 (WHEREUPON, Petitioner's Exhibit No. 179 was admitted
22 into evidence.)

23 THE COURT: All right, Petitioner's Exhibit 131 --

24 MR. DUFFY: Your Honor --

25 THE COURT: I'm just going to get them in right now.

1 MR. DUFFY: Some of these are already -- I just
2 wanted to short circuit. Some of these have already been
3 in from the first trial.

4 THE COURT: All right. Are they -- 131 is already
5 in?

6 MR. DUFFY: Yes, Your Honor.

7 THE COURT: All right. And 12 is already in?

8 MR. DUFFY: Yes, Your Honor.

9 THE COURT: But 179 is not in, right?

10 MR. DUFFY: Correct, Your Honor. And just to be
11 clear, 176 through 179 are contained in this packet here.
12 Those were the remaining exhibits that were not yet moved
13 into evidence.

14 THE COURT: All right. All I've got is 179. 176 and
15 all that underneath is?

16 MR. DUFFY: Yes, Your Honor, it is.

17 THE COURT: I don't see it.

18 MR. DUFFY: It's there's about six or seven pages
19 back. It goes 131, 176. They're slightly moved around.

20 THE COURT: All right. 177. I see Exhibit 12 and I
21 see Exhibit 131, 91, then 177, 178 and 179, right?

22 MR. DUFFY: Yes.

23 THE COURT: All right. Right now, you're on 179?

24 MR. DUFFY: Yes, Your Honor.

25 THE COURT: Are these already in? Have they been

1 admitted into evidence?

2 MR. DUFFY: Your Honor, all except 176, 177, 178 and
3 179.

4 THE COURT: All right. Well, give them to the court
5 reporter and let's get them in then.

6 I take it without objection, Mr. Becker?

7 MR. BECKER: I was able to review these, but --

8 THE COURT: Just what I don't want to have happen.

9 So right now where we are, 177, 178 and 179, any
10 objection?

11 MR. BECKER: No, Your Honor.

12 THE COURT: All right. Admitted.

13 (WHEREUPON, Petitioner's Exhibit No. 177, 178 were
14 admitted into evidence. 179 previously admitted.)

15 BY MR. DUFFY:

16 Q Ms. Thomas, do you recognize this exhibit that's been
17 marked as Petitioner's Exhibit 179?

18 A I do.

19 Q And that is memorandum, it looks like, from Jennifer
20 to you?

21 A Jennifer McLeod in my office. She's a tax lawyer.

22 Q Okay. And this memo appears to be undated, but is it
23 fair to say it would have been drafted prior to May 2017?

24 A Yes.

25 Q Because that's when the election was made?

1 A Yes.

2 Q And the Estate of Alice Boykin currently owes 2.77
3 million approximately in estate taxes; is that right?

4 A That's the remainder, yes.

5 Q And I think I've seen you state in writing the
6 general concept of this type of estate is to value the
7 assets as reasonably low as possible, sell only what's
8 needed in the short term, right?

9 A Uh-huh.

10 Q That's a yes?

11 A Yes, I'm sorry, yes.

12 Q And the PR of Ms. Boykin's estate, that's Alice
13 Belger and Mary Deas Wortley, and this memo provides some
14 research about 6166 to determine whether the estate might
15 qualify under that section?

16 A Not necessarily whether the estate would qualify, but
17 I asked Jennifer to go out and get me the law on 6166,
18 what factors we needed to look for Ms. Boykin, what are
19 good factors, what are bad factors.

20 Q Okay.

21 A And I don't get to object to this, but this is the
22 kind of thing I don't like having for an IRS auditor to
23 review.

24 Q Understood. And my understanding -- and this I think
25 serves as a good primer on this topic, but my

1 understanding is that in order to qualify, Ms. Boykin
2 would have had to have been engaged in active trader
3 business; is that right?

4 A No.

5 Q Okay.

6 A Active trading in the internal revenue code is
7 defined in multiple ways. You'll find that there are
8 multiple factors that she has to show that she is actively
9 involved in this. We can even go back and see what
10 Mr. Whit Boykin, if he was involved.

11 It also depends on what she did before she got on
12 Social Security versus after Social Security. This is not
13 a simple area for you to look at these factors under here
14 and say she doesn't qualify.

15 Q Okay. And let me ask you about -- well, I think it's
16 pretty well established that Mr. Rigdon Boykin, his
17 position was that it would not qualify; is that correct?

18 A Correct.

19 Q And I think Rigdon also disagreed that deferring the
20 taxes would be in the best interest of the trust, is that
21 fair to say?

22 A Oddly enough, he thought that not paying the estate
23 tax bill now was --

24 Q Well, let me ask you this --

25 A I don't understand that.

1 Q Ms. Thomas, let me ask you this, under 6166, I think
2 you said there are no drawbacks or no negatives, but you
3 do have to give the IRS a lien or post a bond --

4 A You do not.

5 Q You do not?

6 A It is not mandatory. And I actually requested that
7 we get with the IRS. I've had estates where there's no
8 bonds or no lien, but it is not mandatory.

9 Q And is there a requirement that you prepay all the
10 taxes if you dispose of, at least, 50 percent of the
11 business?

12 A There is. They will give you the extension if you
13 still have up to 50 percent. And after that, they're
14 going to say you've got enough money, you can pay your
15 taxes.

16 Q Once you've gone below that threshold, okay. And the
17 estate taxes, of course, are owed on the Estate of Alice
18 S. Boykin, that's correct, isn't it?

19 A Well --

20 Q Owed by the Estate of Alice Boykin?

21 A Say it again.

22 Q The estate taxes are owed by the estate?

23 A Yes, but the marital trust is the part of the estate
24 for this.

25 Q And that was my question. Ultimately, the trust is

1 going to be footing the bill; is that right?

2 A Absolutely.

3 Q So to the extent that Rigdon Boykin is a trustee of
4 the residuary trust, but not a personal representative of
5 the estate, he may not have a vote or have to sign the
6 election on the estate return, but he does have an
7 interest as far as his trust, which he is a trustee of, so
8 to speak, is going to have to pay the bill, correct?

9 A The marital trust will have to pay the bill, correct.

10 Q Okay. All right. And 2032(a) is a higher standard
11 than 6166?

12 A Much higher standard, yes.

13 Q All right. So to the extent Rigdon had a belief that
14 the estate shouldn't elect 6166, then attempting to
15 qualify under the heightened standard under 2032(a) is
16 something he also wasn't willing to do?

17 A No.

18 Q Okay. Ms. Thomas, if I could, I want to ask you
19 about something that you said you all struggled with, you,
20 being the trustees and you, under the Will and that is the
21 voting requirements?

22 A Absolutely.

23 Q You all struggled with how to handle disagreements;
24 did you not?

25 A For just minor things. I'm telling you, if we're

1 getting a quote for \$1,000 and we're getting a quote for
2 \$1,200 and we have to have all three involved with getting
3 with quotes, and all three involved. Minor things like
4 that were slowing us down at times.

5 Q And I think you said here today in court, but you've
6 also told the trustees on numerous occasions that if it
7 related to real estate, it required unanimous vote, right?

8 A It did. Because we should in the future, whoever is
9 involved in this, treat this like a business, like you
10 would with a business plan where you've got decisions
11 that -- minor decision that any one or two people can make
12 up to a certain dollar amount. And that's what I
13 suggested going forward there be some kind of management
14 plan put in place.

15 Q And Ms. Thomas, that takes me to Exhibit 176, which
16 is just a few pages into that.

17 A 176?

18 Q Yes, ma'am, if you'll look at that.

19 A Is it after 131?

20 Q It is -- yes.

21 A I'm sorry, I'm trying to find it.

22 Q And it's an e-mail. Do you see that e-mail --

23 THE COURT: All right. What are you looking at,
24 Ms. Thomas.

25 THE WITNESS: 176. I found it finally.

1 THE COURT: Which one?

2 THE WITNESS: 176. -

3 BY MR. DUFFY:

4 Q Do you have that in front of you at this time?

5 A Yes.

6 Q This is an email dated February 21st, 2017 from you

7 to, looks like, all the trustees and David Siddens; is

8 that right?

9 A Correct, uh-huh.

10 Q And at the bottom, very bottom right, you see KT290,

11 that's just indicating that it came from your files; is

12 that fair to say?

13 A Where do you see that?

14 Q Below the exhibits sticker.

15 A Oh, it must be.

16 Q And in this email, you tell the trustees that you

17 found no law or guidance as to the phrase with respect to

18 any real property by unanimous vote means?

19 A Correct. Now, I didn't spend two weeks looking for

20 it because I didn't think that would be prudent. But I

21 didn't find it anywhere.

22 Q And based on that uncertainty, it looks like you set

23 forth three options that the trustees or three

24 recommendations that the trustees ought to consider; is

25 that correct?

1 A Yes.

2 Q And those options are number one, that the trustees
3 determine among themselves a realm of administrative
4 decisions regarding real estate that can be made by
5 majority vote versus unanimous vote, right?

6 A Correct.

7 Q And the second option was, as you alluded to earlier,
8 request an interpretation from the Probate Court; is that
9 right?

10 A Correct.

11 Q And the third option is continue to require unanimous
12 consent for all matters respecting real property, right?

13 A Correct.

14 Q Have the trustees to your knowledge ever determined
15 amongst themselves a realm of, I like to say, what's in
16 the majority vote bucket and what's in the unanimous
17 bucket?

18 A Not to my knowledge, no. They may have now, but when
19 I was involved, no.

20 Q And they, of course, haven't requested an
21 interpretation of this from the Court; is that right?

22 A No.

23 Q So neither one nor number two on your list has ever
24 occurred?

25 A Nope. They choose number three.

1 Q Okay. And let me ask you to look at Exhibit 178,
2 which is right behind there. Does this appear to be a
3 true and correct copy of an email you sent to Alice Belger
4 and, looks like, Mr. Walter Bundy?

5 A It does. Let me read it if you don't mind.

6 Q Absolutely.

7 A Yes, that looks to be my email; yes.

8 Q Is it dated July 18th, 2017?

9 A Correct.

10 Q And I guess it starts at the bottom with an email
11 from -- or, perhaps, I'm sorry, the second page with an
12 email from Rigdon Boykin to Alice Belger, Mary Wortley and
13 Steven Bush and Patricia Boykin. Who is Steven bush?

14 A He's the -- and I'm not going to say -- I may say it
15 wrong. I think he's the engineer who deals with the dam.

16 Q And it appears to me that in that email, Rigdon is
17 talking about the issue of keeping the pond -- the water
18 level in the pond a certain height, is that a fair
19 summary?

20 A Yes.

21 Q And then you flip back to the first page, which is
22 the next email in sequential order, and it says -- well,
23 you have Alice forwarding it to you asking for advice.
24 And then there's an email at the very top from you to
25 Alice that's starts, Alice, in looking back at my memo, do

1 you see that?

2 A I do, yes.

3 Q Okay. And in your e-mail with Alice, you're saying,
4 I know this is water, but I still consider it about real
5 estate?

6 A I do.

7 Q Meaning?

8 A It's so weird. I mean, what's real estate and what's
9 not?

10 Q Right. So, again, you're meaning there that it's
11 unanimous vote, it's real estate, got to take three,
12 right?

13 A Right. Now, reasonable people can disagree with me,
14 but it seemed to be on real estate.

15 Q Okay. And if you'll look at the next exhibit, No.
16 91.

17 A I'm sorry, did you 91?

18 Q 91, yes, ma'am.

19 A Oh, sorry, here it is.

20 Q Do you have it?

21 A I do.

22 Q And I'd like you to look at the email on the bottom
23 of the first page. It looks to be a June 6th, 2017 email
24 from Mr. Becker to Mary Deas with a copy to Karen, that's
25 you, Ms. Thomas, Alice Belger and Walter Bundy and Reeve

1 Fowling (phonetic); is that right?

2 A That's right.

3 Q If you would look down at the third paragraph on that
4 email from Mr. Becker. Do you see where it says I also
5 think?

6 A I do.

7 Q And it goes on to say in the second sentence of that
8 paragraph after he was suggesting that a great many things
9 be done by group email thread. He said, Remember that it
10 only takes a vote of maybe two trustees, i.e. you and
11 Alice, to approve most actions, except for the sale and
12 lease of land. Do you see that?

13 A Yes, got it.

14 Q And then jumping up to your response, you agree with
15 him that a good many decisions should and could be made by
16 group emails?

17 A Yes. And just to let you know, it became important
18 to document all the decisions, so an email was a good way
19 to document the decisions and the votes.

20 Q Sure, I understand that.

21 A Yes.

22 Q What I'm trying to understand is why is it that
23 you've -- well, let me put it this way, Mr. Becker is
24 saying, except for the sale or lease of land, it takes
25 two, right?

1 A That's what he says, yes.

2 Q But that conflicts with your guidance or your
3 interpretation, does it not, that everything regarding
4 real estate requires three?

5 A And I don't know if he was intending it to be just --
6 I don't know what his intent was.

7 Q Okay. You never discussed that after this email with
8 him and said, hey, I've given different advice --

9 A No.

10 Q -- I've told them things like dropping the water
11 level on a pond or fixing a step, that takes three?

12 A There were times that -- well, all of us disagreed
13 with each other. There were times that Mr. Becker and
14 Mr. Bundy and I disagreed. So I don't know that we ever
15 talked about it, quite frankly.

16 Q Okay. Let me ask you about one other disagreement.
17 Exhibit 177 is the following exhibit. Do you have that?

18 A I do. Thank you.

19 Q And this again starts at the bottom with an email
20 from Rigdon to you and this, of course, is July 2017,
21 correct?

22 A Yes.

23 THE COURT: Which one is this?

24 MR. DUFFY: This will be 177, Your Honor.

25 BY MR. DUFFY:

1 Q And Mr. Boykin, Rigdon Boykin states -- well, first
2 of all, he's asking you to send some of the memos
3 referencing your bills, asking about the hunting leases
4 and then he goes on to say, And lastly, you, on a number
5 of occasions, told me the trust should pay my legal fees.
6 Apparently, James Becker does not agree with your view of
7 the law. Please give me your authority for this
8 proposition. Do you see that?

9 A I do.

10 Q Did I read that right?

11 A Yes.

12 Q And then you write back at the top of the email; is
13 that correct?

14 A That's correct.

15 Q All right. And sort of halfway down, you say,
16 Rigdon, I will get the list of land sales to you soon. I
17 don't know what you're referencing for the proposition,
18 but I think this is more for Richard to assist you with at
19 this point. Bill Bundy and James Becker both disagree
20 with me. So that would be another thing that you
21 disagreed on, the legal fees, right?

22 A Yes. Yes.

23 Q So you had told the trustees of the trust would pay
24 legal fees; is that correct?

25 A No.

1 Q That's not correct?

2 A I said that each trustee deserved their own counsel.
3 And I did think that reasonable attorney's fees should be
4 paid for each one of them to seek counsel.

5 Q Okay.

6 A The other trustees disagreed with me. They said it's
7 not fair to the beneficiaries of the estate for Rigdon to
8 use their pot of money not his to bring a lawsuit against
9 the estate. So they disagreed with me. I thought that he
10 could reach out to -- well, he did, to four or five of my
11 colleges and ask for advice and we could resolve this
12 easily.

13 Q Okay.

14 A But it didn't happen.

15 Q Bear with me just a minute, Ms. Thomas?

16 A Sure.

17 (Pause.)

18 BY MR. DUFFY:

19 Q Ms. Thomas, isn't it true that Rigdon has proposed on
20 various occasions that the trust be split as a resolution
21 to impasse?

22 A He did, and we talked about it in the first meeting,
23 that was a possibility.

24 Q You and Rigdon talked about it?

25 A Is it five of us? Rigdon, me, Mary Deas and Alice.

1 Whatever the family agrees to, they're proceedings under
2 the Probate Code that we can go to the judge and say this
3 is what the family agrees is the best thing for the
4 family.

5 Q And you thought that might be a reasonable solution?

6 A Absolutely. In the beginning, I didn't realize this
7 was going to happen.

8 Q Have you seen in writing some of Rigdon's proposals
9 regarding the splitting of the trust?

10 A Not to my knowledge, quite frankly. I don't
11 remember.

12 Q But you would agree there's an impasse here that
13 needs to be resolved?

14 A There is an impasse. We've got one group trying to
15 respect the terms of the Will and one person not. And if
16 the family agrees on how to go forward, the court is there
17 to help.

18 Q Well, that impasse is partly created by the fact that
19 there's a unanimous vote requirement for real estate?

20 A Exactly.

21 Q I want to ask you about the valuation of the -- well,
22 let me ask you this. You talked about the need early on
23 to use estimates for land and timber prior to obtaining
24 appraisals. Y'all didn't have them and you used
25 estimates, right?

1 A Absolutely. We needed some numbers to start with.

2 Q By January 2018, you had all the appraisals; isn't
3 that right?

4 A No.

5 Q January 2018?

6 A Eighteen, yes. That was after the estate taxes. I
7 thought you said '17, sorry.

8 Q That's all right. Most of the appraisals came in
9 February or March of 2017; is that -- or is it after that?

10 A Right. We had -- in early 2017, we had Jimmy
11 Carter's commercial appraisals.

12 Q Okay.

13 A We had by March the timber valuations. So by March,
14 we only had a sliver of the properties appraised, the
15 commercial properties, and the timber, we didn't have all
16 of the real estate underlying the timber and the farm
17 land. We didn't have that until the fall, October or
18 November of 2017.

19 Q Of 2017?

20 A Correct.

21 Q So by January 2018, all the appraisals are in?

22 A Yes. We filed with the estate tax return.

23 Q All right. And do you recall there was a meeting on
24 or about January 9th, 2018?

25 A Oh, yes.

1 Q And I think you alluded to that earlier. And in that
2 meeting, you stated that 20 million dollars was a very
3 reasonable estimate for end of the year value of the trust
4 for 2017; isn't that right?

5 A Absolutely.

6 Q In fact, I think you said it was a fairly
7 conservative value?

8 A I did. I agreed with Rigdon. I don't think he heard
9 me because he was talking over me, but I did agree with
10 him.

11 Q And we talked -- I think you did with Mr. Becker
12 earlier about whether that was a gross number or whether
13 it was net of expenses. Do you recall that discussion?

14 A I do.

15 Q All right. And if -- I know January 2018 was a long
16 time ago, but if -- to determine whether that was a net or
17 gross, the transcripts of the trustee meetings of the
18 tapes, that would be the best indication of what actually
19 transpired, correct, on that topic of discussion?

20 A That and the documents that we had in front of us.
21 Rigdon disagreed with my numbers, which was fine because
22 they were all estimates, and I really don't think we need
23 to get into the weeds in determining whether or not it's a
24 17-million-dollar trust or an 18-million-dollar trust or a
25 21-million-dollar trust because it was kind of flexible in

1 that meetings.

2 But what the goal was, I thought, from Rigdon was
3 let's come up with a reasonable number so we don't have to
4 go and reappraise all these properties because that would
5 be expensive.

6 Q A lot of time, a lot of money involved?

7 A Absolutely, yeah.

8 Q And I think you stated earlier that Rigdon's plan, as
9 you understood it, was to rebalance 85 percent in liquid
10 investments and 15 percent in real estate; is that right,
11 and that you hadn't seen any sort of concrete written
12 plans or models or anything done by him; is that right?

13 A No.

14 Q Are you aware of some work he did in April of 2018 in
15 connection with Jane Peacock in developing some models and
16 some projections or scenarios?

17 A We all did with Jane at that time to come up with
18 figuring out what was in what pot. We were also looking
19 at what the income could be and the distribution could be.

20 Q Okay. And those would have given some information
21 about what the trust might do on your X scenario versus Y
22 scenario and all that?

23 A All we had was the timber 10 and 15-year plan. We
24 had the historical -- we had what Jane estimated could be
25 from timber. So not quite. We didn't have an investment

1 plan just from that. We didn't even have the values of
2 the assets.

3 Q And I'm not -- by April of 2018?

4 A '17.

5 Q I'm talking about April of 2018?

6 A Oh, I wasn't involved at all. I don't think I was
7 involved in '18.

8 Q So you haven't seen those documents then?

9 A No, that would have been after Mary Deas and Alice
10 presented theirs.

11 Q Well, we'll let the record reflect the answer on
12 that.

13 A I don't know. But that would be typically, that he
14 would not produce one and ask them to produce one and then
15 tear down theirs and then come back.

16 Q Let me ask you this. Do you know the date they
17 presented --

18 A I have no idea. All I know is the history of it.

19 Q So you're just saying that would be typical?

20 A Typical.

21 MR. DUFFY: I think that's all I have for you, if
22 you'll give me a minute to confirm.

23 THE COURT: All right. Mr. Tetterton?

24 CROSS-EXAMINATION:

25

1 BY MR. TETTERTON:

2 Q Good afternoon, Ms. Thomas.

3 A I'm sorry.

4 Q Good afternoon.

5 A Good afternoon. It's almost the end of the
6 afternoon.

7 Q I think I've met just one time before, right? Of course,
8 course, you know I represent Whit and May?

9 A Yes, sir.

10 Q I want to clear up one thing just to get it out on
11 the record. Did you ever represent to Rigdon Boykin that
12 the trust did not ever want to do the 2032(a)?

13 THE COURT: I can't even hear that question, Mr.
14 Tetterton.

15 THE WITNESS: Me either.

16 THE COURT: Speak up.

17 BY MR. TETTERTON:

18 Q Did you ever represent to Rigdon Boykin in an email
19 that you did not want to do the 2032(a)?

20 A I have no idea, but if you have an email there.

21 Q All right.

22 MR. TETTERTON: May I approach?

23 THE COURT: Yes.

24 THE WITNESS: I mean, it's a complicated section.

25 BY MR. TETTERTON:

1 Q I'm sorry.

2 A It's a complicated section.

3 Q I understand that. In that email dated February 2nd,
4 2017 --

5 MR. BECKER: Could you share that?

6 MR. TETTERTON: I'm sorry.

7 THE WITNESS: Oh, we never planned on using it
8 because he wouldn't agree to it.

9 BY MR. TETTERTON:

10 Q I'm sorry in.

11 A He never would agree to 2032(a). We had to have his
12 a consent.

13 Q Ma'am, your statement was, If you recall, we did not
14 ever want to do the 20 -- you call it 23(a), but it's
15 actually 32(a), right?

16 A Yes.

17 Q Misprint. We did not ever want to do the 2032(a)
18 that would commit the trust to stay in a business. That
19 was your comment, right?

20 A It's cut off. I'm not quite sure.

21 Q Sorry?

22 A Mine is cut off, so I'm not quite sure.

23 Q I'm reading that one sentence there.

24 A Okay.

25 Q That one sentence is correct as I read it; is it not?

1 THE COURT: Mr. Tetterton.

2 MR. TETTERTON: Ma'am?

3 THE COURT: I need to see what you all are talking
4 about here.

5 MR. TETTERTON: I'm sorry, Judge.

6 THE WITNESS: I'm not sure I understand what you're
7 trying to say. That is a year-and-a-half after she died
8 and we couldn't have done it anyway.

9 BY MR. TETTERTON:

10 Q Ms. Thomas, so there won't be any confusion, please
11 look at your email dated February 2nd, 2018, and read to
12 me the one, two, three, four -- the second paragraph,
13 second line, starting with "although"?

14 A Okay.

15 Q Doesn't it say, Although we never planned on using
16 the 2023(a) that you just wanted to see if it qualified?

17 A We never want -- we never wanted -- I believe you. I
18 believe you. I've not seen the full sentence, but I
19 believe what you're saying.

20 Q Okay. And let's go to the paragraph starting with
21 "if you recall". If you recall, we did not ever want to
22 do the 2023(a) that would commit the trust stay in a
23 business. I just want to clear that up.

24 A Look, there is absolutely no way we could have made
25 that decision because he wouldn't allow us to discuss it.

1 What he told me is he wouldn't allow it, so how could we
2 even investigate doing it?

3 Q But you're just saying you never planned on doing it
4 anyway?

5 A Well, I couldn't.

6 THE COURT: I think I can read this and understand
7 what's being said, Mr. Tetterton. We don't need hash
8 this.

9 MR. TETTERTON: No, ma'am, I'm not. Thank you.

10 BY MR. TETTERTON:

11 Q So Ms. Thomas, if I understand, I'm trying to get my
12 head wrapped around what happened in this trust. Now, you
13 came on board in August of 2016?

14 A Yes, sir.

15 Q You met with George Bailey?

16 A Yes, sir.

17 Q At that time, he represented to you he had three
18 problems. Liquidity, right?

19 A That's my recollection of what he said. He maybe
20 said I had multiple problems, but I had liquidity, yes.

21 Q Heavy in real estate?

22 A Heavy in real estate.

23 Q And the challenge that -- there's two -- or three
24 challenges, the third challenge was personnel and other
25 fiduciaries, right?

1 A Correct.

2 Q And shortly after that, he advised you to seek the
3 advise of a probate court judge?

4 A Not shortly after that.

5 Q Sometime after that?

6 A I don't know that he advised me. We talked about how
7 could we resolve this efficiently, quickly, with a lot
8 of -- not the stress of litigation on the parties.

9 Q So the --

10 A And that is a good way to proceed.

11 Q So the seed was planted with these three trustees
12 that eventually y'all were going to court on some issues?

13 A No. Rigdon brought that up from the very beginning,
14 we'll just go to court, we'll just go to court. But we
15 could go to court. Going to court is not scary. That's
16 what the court is here for. We recommend going go to
17 court to get a declaratory judgment or to have guidance
18 from the probate judge. That's what she's there for.

19 Q But the seed was planted way back in 2016 that the
20 court was there for y'all to resolve --

21 A The probate court was there as an option. You know
22 that. You know the court well.

23 Q And that was brought up by George Bailey in his
24 emails to you. In fact, his email said you should go to
25 court because the court would mostly likely decide in

1 favor of Mary Deas and Alice? Do you remember that email?

2 A No, sir. But if you've got a copy of it, I'd like to
3 see it. Do you have a copy of it?

4 Q It's been introduced into the record.

5 A May I see it? If you're going to say that I told you
6 that.

7 Q Give me a minute. I'm not sure we can find a copy of
8 it.

9 A It could have easily been that I said that she would
10 agree with the interpretation of the Will.

11 THE COURT: Let me see.

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

13 THE COURT: I don't think this is the one he's
14 talking about. This is one from George Bailey.

15 Are you talking about the one from George Bailey
16 that's Exhibit No. 181?

17 MR. TETTERTON: Yes, ma'am.

18 THE COURT: All right. It says in total and I can
19 read and we've been over this several times. This is from
20 George Bailey to Alice Belger, with a copy internally to
21 Karen, who worked under him at that time.

22 I have been thinking and it will probably be a good
23 thing if Rigdon takes you to court, that way a judge will
24 decide and we think the judge will decide with you and MD.
25 Don't get upset and keep your cool. Going to court does

1 not have to be a nasty experience.

2 You are all not accusing one another of doing
3 anything wrong. You just have a disagreement about the
4 direction of the trust. Just let the judge decide who is
5 right and who is wrong. You don't want it to escalate
6 into name calling and accusations which will destroy a
7 relationship and cost a fortune and take forever.

8 That is not an email from Ms. Thomas giving this
9 advice. This is an email from Mr. George Bailey. And
10 that is what Mr. George Bailey had to say about it as I
11 understand what I'm reading.

12 MR. TETTERTON: Yes, ma'am. And my question is
13 wasn't the seed planted in the trustee's minds at that
14 time that they could go to court.

15 THE COURT: What kind of question is that?

16 THE WITNESS: We've been --

17 THE COURT: She doesn't know what's planted in their
18 mind.

19 THE WITNESS: We talked about that from the
20 beginning.

21 BY MR. TETTERTON:

22 Q All right. Y'all talked about from the beginning
23 that y'all could go to court, somebody was going to have
24 to end going to court.

25 A Not this type of litigation, the normal family

1 probate proceedings to go in and ask the judge to help us
2 interpret these particular things.

3 Q Ms. Thomas, at the first meeting, did you explain to
4 the fiduciaries -- the three trustees their fiduciary
5 duties as trustees?

6 A The first meeting, no.

7 Q When did you --

8 A The first meeting was all about what in the world do
9 we have here and mama just died.

10 Q At that time, did George Bailey explain to you the
11 net value of the assets of the trust?

12 A No.

13 Q Did he tell you anything about what the trust was
14 worth?

15 A No. How could he know?

16 Q Ma'am, I don't know.

17 A If he did, it was a range because none of us knew at
18 that time. None of us knew at that time.

19 Q But you did at some time shortly after that explain
20 the duties of the trustees to the trustees?

21 A Yes.

22 Q Was it -- throughout this whole scenario, was it that
23 the trustees was primarily interested in taking care of my
24 client, Whit and May?

25 A They were.

1 Q And how would they -- how were y'all planning on
2 finding the money to make income distributions?

3 A Well, there's timber and there's timber sales and
4 there was a two-million-dollar trust, a two-million-dollar
5 brokerage account and two million dollars worth of life
6 insurance.

7 Q So y'all were going to use the money out of the
8 irrevocable trust to pay the income beneficiaries and some
9 of the expenses of the estate, right?

10 A Say it again.

11 Q Y'all were going to use some of the money out of the
12 insurance money to pay the estate taxes?

13 A That's what the trustees voted on to -- since it was
14 not required to be paid estate taxes, that's what they
15 voted on in, I want to say, August.

16 Q Did the trustees ever come up with a plan in the year
17 of 2017 how they were going to fund the obligations of the
18 trust?

19 A I'm not sure what you're getting at. They
20 consistently voted to pay \$100,000 to the beneficiaries.
21 So you're still asking me about the beneficiary
22 distribution?

23 Q I'm asking about the expenses of the trust?

24 A They had a plan.

25 Q Well --

1 A They had a timber plan to sell the timber, then from
2 day one, we started talking about which parcels of real
3 estate could be sold to provided liquidity.

4 Q And did you look at Jim LeFraige's plan on selling
5 the timber?

6 A I'm sure I did. I gave to it you in our meeting.

7 Q In that plan, he gave you a 10-year -- 10-year --
8 expected income from the sale of timber; did he not?

9 A He did, a 10-year and a 15-year.

10 Q And did you look at that plan to see whether or not
11 that money would fund the obligations of the trust?

12 A No, sir, I didn't know what the obligations of the
13 trust at that time were.

14 Q Okay.

15 A We didn't even have values.

16 Q Well, let's go to the problems inside the trust?

17 A Sir?

18 Q I said let's go to the problems that created the
19 disagreements among the trustees. Wasn't some of the
20 problems that caused the disagreements was that Alice
21 would commit to something and not hold to it. She would
22 withdraw her consent to sell property later on?

23 A She did that once in January. There was some
24 confusion of -- it may have been mine, on whether or not
25 she consented to the vote. I had a discussion with her,

1 probably by email, and she reversed and said I agree, go
2 ahead with my vote.

3 Q And --

4 A And from then on out, she wanted to wait to hear what
5 the judge had to say.

6 Q Alice wanted to review the timber appraisal of Molly
7 Creek. And she said she would review it and get back with
8 y'all. Did she ever do that after she --

9 A I don't remember. I'm sure she did. I just don't
10 remember one way or the other.

11 Q Alice wanted to review the Jimmy Carter's appraisal
12 of Grant Hill. After she reviewed it, did she ever get
13 back to you.

14 A I'm sure she did.

15 Q And what did she say?

16 A I have no idea. You're talking about a
17 year-and-a-half ago.

18 Q Did Alice consider selling St. Johns and the Yates
19 property once the appraisal was in?

20 A I have no idea.

21 Q Wasn't that a general --

22 A Look, this is a year-and-a-half ago. I don't
23 remember which parcel is which. Rigdon calls it one
24 thing, the document calls it another, Jimmy LeFraige calls
25 it another.

1 There was a whole list, spreadsheets of assets which
2 we voted on the prices that we agreed to sell them for,
3 and I don't have that spreadsheet in front of me. I'd be
4 glad for you to give it to me.

5 Q I guess what I'm asking, wasn't it Alice's theme to
6 get the appraisals, tell the other two trustees I want to
7 review them and get back with the trustees and she never
8 did that?

9 A No, it was her thing to always study. She never
10 wanted to make a quick decision. She wanted to get the
11 appraisals, study them. She would actually go and
12 research the comparables, study them more than anybody and
13 come back and she would give her opinion on whether or not
14 she thought this was a reasonable price, an educated
15 decision.

16 Q And didn't the trustees ask you to demand a deadline
17 or ask for a deadline for Alice to comply with when she
18 would make up her mind?

19 A At one time, we set a deadline, let's get together
20 and make a decision. I think that was also when Bill
21 Bundy started in it and he started helping her with the
22 decisions.

23 Q The reason the two trustees, Mary Deas and Rigdon
24 asked you to get Alice to make a deadline -- or give Alice
25 a deadline because she never could come back with her

1 opinion on what she wanted to sell the properties for?

2 A I disagree with your opinion.

3 Q Well, why did you give her a deadline?

4 A Because it's always nice to have a deadline.

5 Q Beg your pardon?

6 A It's always nice to have a deadline or you never do
7 the documents. We wanted to have things decided by
8 trustee meetings. But you've prefaced this why is this
9 trust was falling apart, it's not because of Alice wanting
10 to study the appraisals. It's because they have a
11 fundamental disagreement on how these things should be
12 administered.

13 Q Ms. Thomas, did Alice ever agree to sell a piece of
14 property and withdraw that consent later on?

15 A I just told you she did. And then she agreed that
16 was wrong.

17 Q And did that cause some frustration with Rigdon?

18 A Everything causes frustration with Rigdon.

19 Q That particular attitude caused a lot of frustration
20 with Rigdon?

21 A I'm sure it did.

22 THE COURT: Asked and answered, Mr. Tetterton. You
23 know, we don't have a jury here.

24 MR. TETTERTON: I understand.

25 THE COURT: I can read these documents and have read

1 them many times. I've heard this particular colloquy in
2 the examination of Ms. Belger, in the examination of
3 Mr. Rigdon, in the examination of this witness a couple of
4 times now, so.

5 MR. TETTERTON: I'll go to specific points, Your
6 Honor. Thank you.

7 BY MR. TETTERTON:

8 Q Did the trustees, including Alice agree to sell her
9 sister, May, 15 acres at \$15,000 an acre?

10 A That's my recollection.

11 Q Beg your pardon?

12 A That's my recollection.

13 Q And did Alice withdraw that consent to sell her
14 sister 15 acres at \$15,000?

15 A That's my recollection.

16 Q Did she say why she did it?

17 A That no assets should be sold from the trust even to
18 Alice, her own self, or any other family members. She
19 wanted to hear from the judge.

20 Q And we all agree that Rigdon did offer Mary Deas and
21 Alice an opportunity to buy Mill Pond and Mill Way?

22 A Absolutely.

23 Q And first, they agreed upon it, then they withdrew
24 their consent?

25 A I don't know that they agreed upon it. I wasn't

1 involved in that. I know they wanted to -- they were open
2 to it, but they had no numbers.

3 Q You spent a lot of time talking to Jane Peabody,
4 didn't you?

5 A Peacock?

6 Q I'm sorry, Peacock, yes. I'm sorry. And didn't she
7 often relate to you that there's not enough money in the
8 trust to pay the bills?

9 A Never said that to me.

10 Q Never said that to you?

11 A No.

12 Q Did you ever discuss with her --

13 A There's plenty of money to pay the bills. Why would
14 she say that?

15 Q She said it in her deposition. I don't know.

16 A Okay. We had to move money around sometimes.

17 Q So as I see the end result of the whole thing, y'all
18 had a -- Rigdon had a lot of experience in the financial
19 word; did he not?

20 A In New York, he sure did. At least, that's what he
21 told me.

22 Q In the 2032(a) trust, did y'all ever consult with
23 Whit about whether or not he would consent to it? The
24 only thing I've heard here today was May would not consent
25 to it. But I'm never heard whether Whit was consulted.

1 A I'm not quite sure I understand your question. We
2 never even -- Rigdon wouldn't consent to it, so there's no
3 reason to talk to any other beneficiary.

4 Q It takes the consent of all four beneficiaries?

5 A Of which.

6 Q Of the 2032(a)?

7 A Which is why we never went forward with it. Because
8 it -- it required Rigdon's consent and he wouldn't
9 consent, which is why you'll see in these records that we
10 never could go forward with it without his consent. And
11 he said he was not going to consent and, furthermore, he
12 would report me to the IRS for fraud.

13 Q Talking about reporting, that's the 6166 where he
14 threatened to report you, right?

15 A On that incident, yes.

16 Q And wasn't there some disagreement about whether or
17 not Alice Boykin was actually in the timber business that
18 gave rise to Rigdon's concern about whether or not it
19 qualified?

20 A Only in Rigdon's mind.

21 Q Beg your pardon?

22 A That's in Rigdon's mind that she wasn't in the timber
23 business. She had 6,000 acres. She was on Jimmy
24 LeFrainge's website as the model timber forester. She did
25 the actions. It was worth trying for it. It's in the

1 best interest of beneficiaries to try for 6166.

2 Q Are you aware of the fact that from 2009 to 2016, she
3 only average \$120,000 a year from the sale of timber?

4 A Yes, I remember that. I also remember that she knew
5 she was dying and she wanted to save the timber for the
6 family.

7 Q So there was some pretty good disagreements about
8 whether or not she was in the timber business?

9 A No, there was never a disagreement about that. Only
10 for Rigdon.

11 Q I'll move on.

12 A Please.

13 Q What was the value of the trust -- how was the value
14 of the trust and assets finally established if they ever
15 were finally established.

16 A Are you kidding?

17 Q Net asset value of the trust, yeah. Was it ever
18 established?

19 A I'm confused because you seem to be --

20 Q You had to pay estimated taxes on the gross asset
21 value of the trust?

22 A We paid estate taxes on the appraised value and it
23 was filed in November with all the final appraisals.

24 Q Were some of the disagreements among the trustees
25 about the net asset value of the trust?

1 A I don't recall that. I don't know where you're going
2 with that. If you could ask it in a different way, I
3 might could help you.

4 Q Was that one of the disagreements the trustees had
5 about how to value the trust?

6 A We were trying to get professional appraisers.

7 Q Did they all --

8 A Rigdon disagreed with just about all of them that
9 came in.

10 Q All the what?

11 A All the appraisals that came in.

12 Q Even the ones from Charleston that he got?

13 A Oh, if he gets it, they don't, but with Jimmy
14 Carter's and he didn't disagree with the other man he got.
15 There was another Jimmy or something that he -- he never
16 seemed to complain about those.

17 Q Didn't the trustees agree to sell to Garrens,
18 G-A-R-R-E-N-S, family some property? Do you remember that
19 one?

20 A The trustees agreed that Rigdon could approach them,
21 I think it was Rigdon, and offer to sell them -- I'm going
22 back in memory, may have been 10-acres, may have been
23 20-acres and it was at a set price. And, apparently, they
24 weren't interested.

25 Q And that price of \$20,000 an acre was not --

1 A And they declined to buy it. That must have been
2 where the bubble was.

3 Q There was a piece of commercial property on Mill
4 Street that Alice put a price of \$50,000 on. Are you
5 familiar with that piece of property?

6 A You mean Ms. Alice Boykin in her lifetime?

7 Q No, Alice Belger?

8 A No, I'm not.

9 Q You're not familiar. You're not familiar with the
10 fact that it was appraised for \$18,000?

11 A I don't know what you're talking about, I'm sorry.

12 Q Wasn't it part of the tension among the trustees,
13 particularly Rigdon and little Alice was because she had
14 property appraised an opinion of property too high?

15 A Sorry, sir, I didn't understand your --

16 Q Wasn't some of the discussion and disagreement
17 between little Alice and Rigdon was she thought the
18 property was worth more than it actually appraised at or
19 what he thought it was worth?

20 A Actually -- and it was the oddest thing. We've got
21 Rigdon arguing it's a bubble, we needed to sell it all for
22 \$20,000 an acre. Alice was saying sell it for 3,500 or
23 4,000 an acre and he says that's too high.

24 Q And I believe --

25 A So that was the oddest thing in trustee meetings and

1 I can't figure this out.

2 Q I believe I understood you to say a while ago it
3 would be better and more profitable to break the property
4 up and sell it in horse farms?

5 A That was Rigdon's idea, if you sell it as a horse
6 farm, where the bubble at 20,000 an acre.

7 Q And that's what that was when they sold it to Sue
8 Zimky for \$10,000 an acre?

9 A I believe that was property right beside her driveway
10 where Rigdon told her that he would pull a mobile home
11 park in if she didn't buy it.

12 Q Did the trustees ever have a plan for
13 diversification?

14 A When?

15 Q Any time?

16 A They did, once we had all the information.

17 Q What was that plan for diversification?

18 A Well, it's a very long plan.

19 Q Was it to sell timber and put it in the stock market?

20 A Sir?

21 Q Was to it sell timber and land and put it in the
22 stock market?

23 A Put the proceeds of the sales in the stock market?

24 Q Yes, ma'am.

25 A I'm assuming it was. I haven't seen it. It's a very

1 long investment plan that Milliken helped them devise.

2 THE COURT: Wait a minute. Hold it. What plan are
3 we talking about. You used the word the trustees. Are
4 you talking about the two sister's plan? Are you talking
5 about Mr. Boykin's plan? Or what plan are you talking
6 about? As I understand it, the trustees have never agreed
7 on a plan.

8 MR. TETTERTON: That's what I'm going to finish up.

9 THE COURT: I think I got that. Otherwise, they
10 wouldn't be here.

11 BY MR. TETTERTON:

12 Q My question would be, Ms. Thomas, wasn't some of the
13 frustration caused to Rigdon was the fact that Mary Deas
14 and little Alice never came up with an investment
15 strategy?

16 A No, that couldn't have been. But let me tell you
17 why, he consistently asked from January on when they did
18 not agree to purchase the property for an investment plan.
19 We had no values, no estimate of estate taxes, no idea
20 what the obligations could be.

21 We couldn't have pulled together a balance sheet much
22 less a profit and earning statement. So I'm not sure how
23 they could have come up with an investment plan with
24 absolutely no information. In response, he would give us
25 investment plan on his, just sell everything, 85 percent

1 goes into the stock market. That was his investment plan.

2 Q Were you in favor of the timber management plan by
3 Mary Deas and Alice?

4 A I have no ability to be in favor or not in favor of
5 that. I can't analyze it.

6 Q And I think you agreed with Mr. Duffy that these
7 trustees have reached an impasse?

8 A I don't know how they can work together. It's a very
9 sad situation.

10 Q And how would you recommend to the Court it be
11 resolved?

12 A That a third trustee be appointed to replace Rigdon.

13 Q So you think this whole problem with this trust
14 management is Rigdon's fault?

15 A Yes, sir.

16 Q And that little Alice, by withdrawing her consent for
17 sale of the property, taking her good time to review and
18 not coming back, not meeting the deadline y'all have given
19 her --

20 A No, I don't agree with your interpretation of the
21 actions. It was a learning experience for all of the
22 trustees. Rigdon started this on day one by saying he
23 would not respect their father.

24 He made disparaging remarks about their parents in
25 the first meeting, about their marriage and he hoped

1 father died. He started this. Would not allow Whit and
2 May to return their phone calls, so they could not
3 communicate with their sister and brother. So it was I
4 think it's in the best interest of this family for him to
5 be removed and the family try to repair the relationship.

6 Q Do you think they have a plan to diversify at this
7 time?

8 A Mr. Tetterton, I haven't seen their plan, but they
9 have a plan that follows the terms of the Will.

10 Q And would you not recommend to the Court that this
11 trust be split?

12 A No, sir.

13 Q With whit --

14 A That's not what Mr. Boykin asked.

15 Q With Whit and May getting theirs for their lifetime
16 and Mary Deas and Alice getting theirs for their lifetime?

17 A Why? Who's going to manage theirs. You've already
18 told me they can't manage their affairs, so why not leave
19 it the way their daddy set it up so we've got trustees
20 managing it for the whole family.

21 Q And wasn't the attitude Alice Belger all throughout
22 your representation of the trust that she wanted to hold
23 onto her daddy's property for future generations?

24 A That's what her daddy told her to do. That's what
25 her mama told her to do. That's what the document says to

1 do. That's when a trustee accept the position of trustee.
2 They are accepting the terms of the document or they
3 shouldn't accept the position of trustee.

4 Q And only sell land and timber just to meet the
5 expenses?

6 A No, that's not what I said or they said.

7 MR. TETTERTON: Thank you. I have nothing further.

8 THE COURT: All right. Mr. Becker.

9 MR. BECKER: Nothing further from me, Your Honor.

10 THE COURT: All right.

11 Ms. Thomas, you may step down. Thank you very much.

12 MR. BECKER: Do you want me to call another witness?

13 THE COURT: I want to understand something here. I
14 asked y'all as this day started where we were going with
15 this. It's not acceptable to me that it took all day long
16 to have Ms. Karen Thomas finish her testimony. All right.

17 The way this thing is going now, there's no way it
18 can conclude tomorrow and I'm not satisfied with that. So
19 I want to understand right now what we can do to get this
20 matter moving in some reasonable way. This was not
21 reasonable.

22 MR. BECKER: Okay, Your Honor. We -- we have -- what
23 we have planned is, as I said before, a very short set of
24 excerpts from the deposition of Mr. Rigdon Boykin. We
25 have Wayne Belger, who will -- his testimony, on direct, I

1 don't think it would take more than 30, 40 minutes, if
2 that long. We're bringing him to testify because we
3 understand that you have concerns about the operation of
4 the mill pond.

5 THE COURT: Yes. And with the pictures I've seen
6 now, there isn't any more mill pond.

7 MR. BECKER: Well, Your Honor, it was drained --

8 THE COURT: That's what it looks like now. And that
9 introduce an entirely different set of considerations now
10 that it's completed drained as to what one would do --
11 I've had the very same thing happen to a rather large mill
12 pond, and it changed considerably the way we managed it
13 because there wasn't any water in it left.

14 That gives you a whole different set of options about
15 what you do to rebuild the dam, what you do to get rid of
16 unwanted vegetation, what you do about plucking
17 selectively some of the stumps and everything else. So
18 this all by itself introduces a completely different
19 scenario from what we have before Florence came through?

20 MR. BECKER: Well, if --

21 THE COURT: I don't know yet what I'm going to be
22 told about what happened to the swamp tract as a result of
23 this because it drains right into that one, what happened
24 to things like the alligators and all the other live
25 things that were in this pond.

1 MR. BECKER: Right.

2 THE COURT: But it introduce some different
3 considerations about this. And frankly, spending all day
4 long ya, ya, ya, about emails that I can read. Y'all are
5 going to give me a proposed order.

6 Well, you will recite all these pieces of material
7 that are in evidence and use whatever you need to support
8 your points of view, and to have a whole day in a nonjury
9 proceeding where I can read given to going over things
10 that are not enhanced by what we just heard is frustrating
11 to me.

12 MR. BECKER: Well -- and I will just that with the
13 next two witnesses, they're only about documents to
14 introduce.

15 THE COURT: Well, I know the propensity for all of
16 you to --

17 MR. BECKER: I understand your concern and your
18 frustration.

19 THE COURT: Okay. You got a Boykin expert, you got a
20 Belger and what else?

21 MR. BECKER: No, ma'am. We have -- in fact, we have
22 just two more. We're not going to call Mr. Bundy. We are
23 going to call Mr. Wayne Belger to discuss the management
24 of the mill pond.

25 THE COURT: Right. I think that's very pertinent for

1 me.

2 MR. BECKER: And Daisy hospital back.

3 THE COURT: She stood for the next generation.

4 MR. BECKER: And we do have the video excerpts, which
5 might take 15, 20 minutes. We could do those before we go
6 home tonight?

7 THE COURT: No. I'm not going to treat the court
8 reporter to that nor, in that regard, the general South
9 Carolina people in here. I'm not going to make you do
10 that.

11 MR. BECKER: I can't control what happens on cross,
12 but I can -- I can --

13 THE COURT: Mr. Becker, I respect you more than I can
14 possibly say and I know -- I'm at the end of long day, so
15 I don't want to be testy just to be testy, but what I am
16 concerned about doesn't have a thing to do with the
17 cross-examination, even though some of it was a little bit
18 repetitive given what we've already heard. I am concerned
19 about how lengthy some of the direct presentations were.

20 MR. BECKER: I understand that, and these tomorrow
21 are not nearly like what we went over today.

22 THE COURT: I understand. And having said that,
23 Ms. Thomas and Mr. Bailey, are two very important
24 witnesses who had a lot to do with the administration of
25 the matter, particularly in the early stages, so their

1 testimony is important, but to have just two of them for
2 the whole day is --

3 MR. BECKER: Well, Your Honor.

4 THE COURT: -- beyond, beyond.

5 MR. BECKER: It went back over 30 years. I thought
6 it was important to anchor the testimony with some of
7 those documents. I'm sorry we dwelled on some of them too
8 long.

9 I do believe that you'll see tomorrow that things
10 will move along much more quickly. We've just got two
11 more witnesses.

12 THE COURT: Okay.

13 MR. BECKER: And I understand they just have one, so
14 I'll see if -- I can't imagine that we could not finish
15 this trial tomorrow.

16 THE COURT: Okay.

17 MR. BECKER: That's where I see it today.

18 THE COURT: I'll believe it when I see it.

19 Let's do this. Let's be back here tomorrow morning
20 at 9:00 if the court reporter can make it.

21 Ma'am, could you make it?

22 THE COURT REPORTER: Yes, that's fine.

23 THE COURT: Can y'all make it?

24 MR. DUFFY: Nine o'clock, Your Honor.

25 THE COURT: All right. Is that acceptable?

1 MR. DUFFY: Yes.

2 THE COURT: I understand people have got personal
3 things they have to do, as well.

4 MR. DUFFY: Your Honor, one other thing I'm somewhat
5 hesitant to remind you, but you did ask me to remind the
6 Court before we leave today we had the issue of our
7 pending motion on the rebuttal witness.

8 THE COURT: All right. Let's deal with that. Where
9 is the motion?

10 MR. DUFFY: The motion has been filed with the Court.

11 THE COURT: How about grab it and put a copy of it up
12 here right now.

13 Have a seat, Mr. Becker.

14 MR. DUFFY: Your Honor, what I've got here is our
15 motion and Mr. Becker's opposition as well as our reply to
16 that.

17 THE COURT: Hang on.

18 (Pause.)

19 THE COURT: Well, actually, it's late and what you
20 say Mr. Becker is that they had Helm's information and
21 he's going to review Helm's is what I get, and they say --
22 I mean, you say that they had Helm's report way yea along
23 ago, that they waited three months after any reasonable
24 interpretation of their deadline to identify Harrison.
25 You didn't have a chance to depose him.

1 Their reply is that Helms -- essentially, they're
2 saying Helms changed his testimony from what they thought
3 he was going to say and relied on a different standard
4 than a retail standard and therefore they ought to be
5 allowed to refute that with having Harrison speak.

6 MR. BECKER: Well, they never deposed Helms even
7 though he was identified as a witness early on. They had
8 copies of his report back in July, but I also...

9 THE COURT: Well, I get all that.

10 MR. BECKER: Okay.

11 THE COURT: I give you all that. They're saying they
12 were surprised that he ended up -- when he took the stand,
13 he took a different position than he had taken in his
14 report with respect to the use of wholesale -- it's of big
15 debate on what kind of valuation used, and they say that
16 he changed horses from a wholesale value to a retail value
17 or maybe it's the other way around. Anyway, he changed
18 the standard he was using for valuation. What do you say
19 to that?

20 MR. BECKER: No, I don't agree with that. If you
21 look at the summary table in his report behind tab C, he's
22 estimated total wholesale value and estimated total retail
23 value.

24 THE COURT: Yeah, I remember that. Hand that up for
25 a minute. I remember that.

1 MR. BECKER: It's been it from the beginning. That's
2 the summary. Those are the two columns.

3 THE COURT: Okay. I got you.

4 MR. BECKER: So that...

5 THE COURT: Okay. Mr. -- who is the proponent of
6 this motion, you, Mr. Duffy?

7 MR. DUFFY: Yes, Your Honor.

8 THE COURT: Mr. Duffy, your biggest argument is
9 you're surprised, but Becker's right, this is Helms'
10 report, and he's got both these values in here and they've
11 been in there since April when this report was issued.

12 I mean, I'm not a huge stickler of just a few days
13 have passed, but this is three months after the deadline,
14 in medius res the trial, in medius the gap of the time of
15 resumption, and that's on an issue that was in the report
16 from the get-go. How were you surprised?

17 MR. DUFFY: Well, Your Honor, we recognize -- I don't
18 know that we got that report in April. I will say we did
19 have it in July. There's no question.

20 THE COURT: Right. Okay. Let's say July.

21 MR. DUFFY: I think the testimony of Mr. Helms about
22 the wholesale value versus the retail value, of course,
23 Mr. --

24 THE COURT: Well, you cross-examined him in a fair
25 amount of detail about all that.

1 MR. DUFFY: Well, I guess I should add, as well,
2 petitioner's valuation, which was sort of this comparable
3 spreadsheet that you looked at, that had a value for
4 Mr. Helms' retail and Mr. Rigdon Boykin's value. Of
5 course, we submitted to the Court a valuation comparison
6 that compares Mr. Helms' wholesale with the petitioner's
7 report. We did not expect that he would be anchored by
8 the wholesale value so much as the retail value.

9 I think the other point is, Your Honor, that -- well,
10 we spent a lot of time looking for an expert in this case
11 and I think you know that there's been some disagreement
12 about whether Mr. Boykin was entitled to use trust
13 resource to pay for his attorneys --

14 THE COURT: Well, both sides have got that problem
15 because I have not approved any payments yet, so that's a
16 problem you have and that's a problem the other side has
17 as well.

18 MR. DUFFY: Well, Your Honor, I'm not sure the other
19 side agrees with that. I think they've taken the position
20 that they have a quote of two, which it's advisers or
21 experts --

22 THE COURT: So far no payments have been made to
23 either side in connection with all of this as I understand
24 it. Correct me if I'm wrong.

25 MR. DUFFY: I think you're right with respect to the

1 counsel at these tables, Your Honor. I know, for example

2 --

3 THE COURT: Well, I don't think any payments have
4 been made about any of the rest of this, has it, Mr.
5 Becker, out of the trust.

6 MR. BECKER: No, ma'am. I have not been paid out of
7 the trust.

8 THE COURT: Mr. Duffy, everybody is kind of -- I know
9 it's like tough and I feel for you, but I didn't feel I
10 could kind of in medius res begin to approve expenses, so
11 I think both parties are in the same pickle, which is
12 these things are expensive to try. You are not any
13 different from the other side in that regard.

14 MR. DUFFY: Fair enough, Your Honor. The only other
15 point I would just like to make on the record if it's
16 quite all right is that Mr. Harrison's testimony as
17 presented in our reply brief is directly limited to,
18 focused at, targeted on Mr. Helms' testimony in the
19 defense's case, so it is rebuttal testimony in our view
20 and we think that that -- to some degree under the case
21 law obviates or vitiates the surprise element given it's
22 rebuttal testimony.

23 We also think and believe the law supports that given
24 that this is a nonjury case, it is the Court sitting in
25 equity and that, ultimately, the issues for the trustees

1 and the Court what is in the best interest of the
2 beneficiaries and the trust to the extent that Mr. Helms
3 has issues with his report, whether they are mathematical
4 or theoretical, the trust and the beneficiaries and the
5 Court do nothing but benefit from understanding both sides
6 of that coin and understanding the varying perspectives
7 and opinions.

8 So, Your Honor, we would ask at a minimum we be
9 permitted to make a proffer of evidence -- I think it's
10 been covered by our briefs informally, but for the record
11 I'd like to request that.

12 THE COURT: So you want me to sit here and listen to
13 a proffer?

14 MR. DUFFY: Well --

15 THE COURT: Even though I'm not going to admit it?
16 I'll allow you to submit something that you fashion if I
17 decide not to admit it -- and I haven't made that decision
18 yet.

19 I'm not going to sit here and listen to a proffer by
20 way of live testimony. I won't do it that way. I think
21 there's some equally easy ways that can be done.

22 MR. DUFFY: Your Honor, if I might offer, one
23 alternative could be give leave to take Mr. Harrison's
24 deposition and have that submitted as part of the record
25 as well. That would be our fall back position on this

1 issue.

2 MR. BECKER: Your Honor, may I speak just a moment?

3 THE COURT: Of course.

4 MR. BECKER: I wonder -- I don't see that the value
5 of these -- all of these trust assets why it needs to be
6 even an issue for further testimony from either side.
7 We're talking about estimates of what the value is.

8 THE COURT: Correct, and we're also -- the central
9 question that is in front of this Court right now is the
10 contention by each side that there's an impasse among the
11 trustees and the trustees for the other side should be
12 removed. That's the central focus of this controversy.

13 MR. BECKER: And --

14 THE COURT: And the values have to do with questions
15 about management. They may also have to do with some
16 projections have been made about splitting the trust or
17 rewriting the trust.

18 I can tell you that I would have a lot of concern
19 about approving any such approach as that in light of what
20 the South Carolina Supreme Court has said in the Estate of
21 Donald Russell and in the Estate of James Brown, just to
22 name two, where the court has taken the position that if a
23 person is competent and they make a plan for their estate,
24 whether it's harsh to carry it out or not, if they're
25 competent and if the plan is a legal one, then it's not in

1 the court's province to rewrite, and when the then
2 Attorney General attempted to settle the Brown case by
3 rewriting the terms of Mr. Brown's estate plan and trusts
4 and benefit different beneficiaries and so forth, the
5 court turned that down, said no to that.

6 And, quite frankly, if the valuations have any
7 relevance, it's more to the investment plans and the
8 settlement talks than it is to the central legal question
9 in front of me, which is what to do about the trustee
10 impasse.

11 MR. BECKER: Yes, ma'am. So I wonder why it's even
12 needed.

13 THE COURT: I mean, that is in aid of agreeing with
14 you. Here's what I'm going to do. At the most -- and I
15 want to cogitate about that this evening, at the most, I
16 would allow some supplement to the record by means of
17 deposition with full cross-examination and reservation not
18 like the normal discovery deposition, but a deposition
19 which objections are made and then the rulings are
20 reserved for me. That can be done and that's the way,
21 frankly, in this day and age of electronics to do a
22 proffer rather than the old days where the judge sat there
23 forever and ever and listened to a proffer.

24 That's what I would do if I admit the testimony. I
25 want to sleep on that and I will and I'll make a final

1 ruling on that tomorrow morning, but in no event will it
2 necessitate live testimony tomorrow or live
3 cross-examination tomorrow. So let me just give some
4 thought to that and I'll present that ruling tomorrow
5 morning.

6 MR. DUFFY: Thank you very much, Your Honor.

7 MR. TETTERTON: Thank you, Your Honor.

8 MR. BECKER: Very good.

9 THE COURT: Now, Mr. Becker, I'm going to give you
10 back your Helms' material.

11 And Mr. Duffy, you may need these materials.

12 All right. Court will be in recess.

13 (There was an overnight recess.)

14 (September 28, 2018.)

15 THE COURT: Ladies and gentlemen, let me deal at the
16 beginning with this Harrison matter.

17 If I just went on the basis of what the rules
18 require, this thing is clearly way past the deadline. It
19 is a reaction to information that was in the hands of the
20 petitioner well before the time for offering new witnesses
21 had passed.

22 It does not relate to any new development about this
23 matter that has suddenly cropped up. For example, one new
24 development as serious as this one, and the mill pond has
25 changed rather dramatically from the asset it was when

1 these proceedings started. And we're going to have to
2 have a discussion about that today. And if this new
3 witness related to that, that might be something
4 different, but it doesn't relate to that. It relates to
5 the continuing disagreements by the petitioner with how
6 the respondents value the assets.

7 It doesn't even relate to petitioner's plan. Petitioner
8 Petitioner doesn't really have anything like the kind of
9 investment plan that the defendants have put forward
10 because -- I'm not saying he has to, but his position is
11 diversify trumps everything, and therefore the sell of the
12 vast majority of the assets given the requirements of the
13 beneficiaries and so forth and the market is the way to
14 go.

15 This doesn't relate to that. It's simply relates to
16 a continuing disagreement about a witness that was one of
17 the advisers to the estate in addition to being someone
18 who testified in litigation.

19 We've got some people who wear two hats. They were
20 advisers to the estate for purposes of prorating the value
21 of the estate and the trust and then there are folks that
22 were hired to advise each party in the course of
23 litigation.

24 Mr. Helms is someone who has been involved with
25 valuing this estate and wearing both hats. So again, this

1 is not some desire to refute what Mr. Helms says. It's
2 something that was well within the petitioner before this
3 matter closed by way of a scheduling order normal rules of
4 the road.

5 So my inclination is to simply say the door is
6 closed. What I'm going to do is listen to the rest of
7 this testimony and before I make a final ruling on
8 Harrison see what else comes in and what possible
9 pertinence this would have. But, you know, the
10 overarching questions that we've got to deal with today
11 are what do we do about the trustees and the impasse, if
12 anything, or what does the Will and the trust terms allow
13 us to do about that?

14 And what, in the final bottom line, are the parties
15 seeking, and what provisions of the operative testamentary
16 and trust documents are governed -- what they can ask the
17 Court to do?

18 Those are the questions, after we conclude testimony,
19 may need a little ventilation by representatives of each
20 of the parties in this matter as we decide how the Court
21 should proceed about an order and final rulings.

22 All right. Having said all that, anything further
23 from y'all before we go forward?

24 MR. DUFFY: Nothing from us, Your Honor. Thank you.

25 THE COURT: Mr. Becker?

1 MR. BECKER: Nothing from us, Your Honor.

2 THE COURT: Mr. Tetterton?

3 MR. TETTERTON: Nothing.

4 THE COURT: Very good. All right. Then I suppose
5 the ball is still in Mr. Becker's court.

6 So Mr. Becker, you may proceed.

7 MR. BECKER: Thank you, Your Honor.

8 Your Honor, we call Wayne Belger to the stand.

9 THE COURT: Come around, Mr. Belger.

10 WAYNE BELGER, after being duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION:

13 BY MR. BECKER:

14 Q Let's put that microphone down and be sure to step up
15 and speak into it.

16 THE COURT: Yes. Mr. Belger, this thing is a little
17 bit directional, but --

18 THE WITNESS: I'm a little bit hard of hearing, too.

19 THE COURT: Well, you and I are in the same boat, but
20 I've got my hearing aids tuned up real good today.

21 THE WITNESS: I don't have any hearing aids.

22 THE COURT: You don't have any? Well, we'll try to
23 speak where you can hear us and you do the same.

24 THE WITNESS: Yes, ma'am.

25 BY MR. BECKER:

1 Q Good morning, Mr. Belger.

2 A Good morning.

3 Q Would you please state your full name for the record,
4 please, sir?

5 A Robert Wayne Belger.

6 Q And Mr. Belger are you related to Alice Boykin
7 Belger?

8 A She's my wife.

9 Q Family members sometimes refer to her as Little
10 Alice; is that right?

11 A That's correct.

12 Q When were you and Alice married?

13 A September 10th, 1994.

14 Q That's about 24 years ago?

15 A Correct.

16 Q And you have one daughter?

17 A Correct.

18 Q And what is her name?

19 A Alice Boykin Belger or Allie.

20 Q She goes by Allie?

21 A Allie.

22 Q And how old is Allie?

23 A Twenty-one.

24 Q And what is she doing?

25 A She's at Clemson University studying ag business.

1 Q What year is she?

2 A Third year.

3 Q Junior?

4 A Junior.

5 Q What does she plan to do when she graduates?

6 A Her intent is to come home and help us with the
7 family farm.

8 Q All right. Are Alice and Allie beneficiaries of the
9 L.W. Boykin, II residuary trust?

10 A They are.

11 Q Is Allie your only child?

12 A She is.

13 Q How long have you lived in the Boykin area,
14 Mr. Belger?

15 A Since 1994.

16 Q And what is your educational background?

17 A Graduated from Lugoff-Elgin High School, spent a
18 short stint at Mid-Carolina and electrical apprenticeship
19 through the IVW.

20 Q And what is your current occupation?

21 A I'm a farmer.

22 Q Are you -- what is the name of your farming business?

23 A It's Belger Farms Company.

24 Q And what is the business of Belger Farms, what kinds
25 of crops do you have?

1 A Well, we have several legs. One, we're row crop
2 farmers, corn, wheat, cotton, soybeans. I have a few
3 cattle. I have a fairly extensive manure business that
4 stretches out through South Carolina, about 9,000-acres,
5 that I don't farm, but other farms they're we apply manure
6 on, on up into the edge of North Carolina in the Cordova
7 community, which is right off the Pee Dee river. We have
8 a small trucking business that we've used to support the
9 farm. We're pretty much billing that business back into
10 the farm and not using it as a transportation company
11 anymore.

12 Q Okay. Anything else?

13 A About it.

14 Q Okay. Approximately how many acres do you farm?

15 A We farm around 3,000 acres roughly.

16 Q In how many states?

17 A North Carolina and South Carolina. We have about 200
18 acres in Boykin. The bulk of the farm is in Kershaw, Lee
19 and Sumter Counties and about 900 acres in North Carolina.

20 Q How many years have you been in the farming business?

21 A Since 1982. I think that's 36 years.

22 Q Does your wife, Alice, work in the business with you?

23 A She does. She handles a lot of things with FSA
24 office and, also, does our billing.

25 Q Okay. And do you assist her at times in performing

1 her duties as a trustee of the residuary trust?

2 A Sure. We're a family. We're husband and wife. We
3 work as a team.

4 Q Did you know Mr. L.W. Boykin, II before he passed
5 away?

6 A Briefly. I don't think anybody that lives in Kershaw
7 didn't know Mr. Whit. I deer hunted hundred with him
8 several times up on Sumter Mountain. So I don't -- I
9 mean, not personally, but I think everybody in the county
10 knew Mr. Boykin.

11 Q After he passed away, did you know his widow, Alice
12 Shoolbred Boykin?

13 A I did.

14 Q I think that's pronounced Shoolbred; is that right?

15 A Shoolbred, correct.

16 Q Now, family members refer to her as Big Alice; is
17 that right?

18 A Correct.

19 Q And while Big Alice was living, did you assist her in
20 any way with farming and managing the Boykin family --

21 A I did. Around 1991, she approached us about farming.
22 We sharecropped with her for several years.

23 Q Did that assistance increase after you and Little
24 Alice were married?

25 A It certainly did.

1 Q As part of your work assisting Big Alice with her
2 affairs, did you have any official responsibility with
3 respect to the Boykin mill pond dam?

4 A Later on, as she got later in years, yes. We worked
5 with Jimmy Moore. Jimmy Moore had worked with my
6 father-in-law, Whit, and Ms. Boykin, I would guess, 50 or
7 60 years. And he was the go-to man for managing the mill
8 pond. And that's where I learned most what I -- you know,
9 the experience I had was from Jimmy. And I think that's
10 been passed down from generation to generation, the
11 Boykins managing the mill pond.

12 Q How old is the mill pond, Mr. Belger?

13 A It was originally -- the best information I have is
14 from the early 1700s.

15 Q That old?

16 A Yes, sir. And the -- yeah, 1730, 1750, I'm not sure
17 exactly.

18 Q Are you the designated operator for the dam with the
19 South Carolina Department of Health and Environmental
20 Control?

21 A I am.

22 Q Have you had that position for a number of years?

23 A I acted as the dam operator prior to Ms. Boykin's
24 passing.

25 Q Okay. All right. Let me -- let's take a look --

1 Could we get the -- I think you call them the gallery
2 lights dim?

3 THE COURT: Can you see, Mr. Belger?

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Good. Let me get -- hang on a minute.

6 THE WITNESS: That's right. They gave me a laser. I
7 can shoot right through that cup.

8 THE COURT: Okay.

9 MR. BECKER: Your Honor, they tell me that's where
10 they normally project images in this courtroom and they
11 dim those lights on the side walls in order to make that
12 possible.

13 THE COURT: I think they're trying.

14 THE BAILIFF: He went to get the key for the lights.

15 THE COURT: They've got to have a key to do it.

16 THE BAILIFF: He's doing it now.

17 THE COURT: There we go.

18 BY MR. BECKER:

19 Q All right. I'd like you to just sort of orient us
20 for a discussion of the mill pond, Mr. Belger.

21 A Okay.

22 Q Show us first downtown Boykin on this image?

23 A This area right in here is where the gristmill, the
24 Boykin grill, the broom factory and the mill pond
25 steakhouse, the restaurant is right there.

1 Q Okay.

2 A That's Rosa Lee's cottage is right there. Swift
3 Creek Church and then Aunt May's house and that's Millway.

4 Q All right. Now, can you show us the head waters of
5 the Swift Creek?

6 A Sure. That's Swift Creek. It runs all the way back
7 out, crosses 521, Black River Road and goes all the way
8 out into Lee County on Trebble Branch is where the head
9 waters start.

10 Q All right. And where -- I know there are two gates
11 that let water out of the Mill Pond. Show us where they
12 are and what they're called.

13 A That's what we call the little flood gates. If you
14 come down here right behind the Mill Pond Steakhouse,
15 there's the big flood gates, and then there's the small
16 canal that runs behind the gristmill that also can be used
17 to release water.

18 Q Okay. So is there a -- up where the little flood
19 gates are, does that water run down and, ultimately,
20 connect back with the Swift Creek?

21 A It does. It doesn't show it very good on this map,
22 but you can kind of see Swift Creek where it runs through
23 there. And that comes by Peggy McCoy's place and then
24 eventually comes back into Swift Creek.

25 Q Okay. So there are, in effect, two branches of the

1 Swift Creek right there?

2 A Correct.

3 Q Now, I understand that there is what we call an old
4 dam and a new dam?

5 A Correct.

6 Q First of all, tell me about the old dam.

7 A Well, the old dam, if you can see right in there,
8 that line of trees, that was the original dam that was put
9 in in the early 1700s. Some time during the 60s, 521 and
10 261, which both merge right in Boykin and cross the dam --
11 and I've been told it was '62 or '64 is what I believe
12 Ms. Boykin told me that. The South Carolina Department of
13 Transportation abandoned this road and moved 261 below the
14 dam and moved 521 way up in this area. So 521 used to
15 come right in front of Millway and 261 came right through
16 there. Both of those roads merged onto the dam.

17 At that time, when they abandoned 261 and 521, that
18 was when the -- that roadbed became the dam for the Mill
19 Pond, and the old dam was abandoned.

20 Q Okay. So what functions today as the dam for the
21 Mill Pond is actually an old highway embankment; is that
22 right?

23 A Correct. It's roughly -- it's kind of an unusual
24 roadbed. I mean, I don't know where a lot of secondary
25 highways are, but the roadbed on 261 and 521 is concrete.

1 It's eight inches thick and 18 feet wide from -- nine feet
2 from center to center. And you can kind of see the white
3 marks going along the old roadbeds. So that's concrete
4 and that's on top of the dam. And I think it serves a
5 major purpose in protecting the infrastructure of the dam.

6 Q That wouldn't be normal on a regular dam to have that
7 concrete go across, would it?

8 A No, sir.

9 Q Okay. Show us briefly the property downstream of the
10 dam in this photograph?

11 A Well, the one I can tell you, the trust property
12 follows that creek line on down, and then that's the
13 Boykin Fire Department, a little bit right in there. And
14 that follows down -- the trust property runs downstream
15 where it ties into Ann DuPont Shirley's property, and I
16 can't remember the property owners on the left-hand side.
17 It used to be the Jim Alexander place, but it sold.

18 Q All right, sir, and show us the location of the Great
19 Egret Rookery?

20 A Most of it -- the big Egrets roost right around the
21 little flood gates. The Ibis, they kind of move all
22 around the pond from year to year. But lately the Ibis
23 and Cattle Egrets have nested right in this little patch
24 right here. They have a nested all the way up the creek,
25 I reckon 10 or 12 years ago, so they move around. The

1 Great Americans and Snowies, they pretty much congregate
2 each year right in this little section right by the little
3 flood gates.

4 Q All right. Now, let me ask you to take a look at
5 Exhibit 61.

6 MR. BECKER: And, Your Honor, that will be in your --

7 THE COURT: Has he got the box up there?

8 MR. BECKER: I don't --

9 THE COURT: Well --

10 MR. BECKER: There we go.

11 THE WITNESS: Use these tabs?

12 BY MR. BECKER:

13 Q Yeah, these tabs. Now, Mr. Belger, we're going to go
14 through a few documents. We're not going to spend a lot
15 of time on them, but I just want to get them in the
16 record. That is a letter from DHEC to Alice Boykin
17 setting forth a new emergency action plan template for the
18 Boykin Mill Pond dam. Do you see that?

19 A I do.

20 Q Have you reviewed it?

21 A I have.

22 Q Did you review it with Ms. Boykin when she received
23 it?

24 A Well, Ms. Boykin had passed in 2018, so it was
25 reviewed --

1 Q Oh, that's right, excuse me. But as the pond
2 manager, did you review it?

3 A I did.

4 Q Did you consult with the trustees?

5 A I consulted with Alice and Mary Deas on it.

6 Q Yeah. And look at the last couple of pages where it
7 provides a -- let's see, the last -- beginning with the
8 four pages, it provides a dam owner/operator information
9 update?

10 A That's correct.

11 Q Are you listed there down below the information for
12 the owner as the dam operator?

13 A I am.

14 Q All right.

15 A When that letter came, it still had Ms. Boykin listed
16 as the owner, so that was transferred over. The
17 information was updated to the three trustees and I remain
18 as the dam operator.

19 Q All right. Now, let's talk a minute. This emergency
20 action plan template, as it says on the first page,
21 DHEC -- at the end of the first paragraph, the Department
22 envisions this document to serve dual roles, both as an
23 emergency action plan, as well as a user's manual for dam
24 owners; is that right?

25 A That's correct.

1 Q And that emergency action plan part includes
2 information that can be useful for identifying and
3 responding to an arising emergency situation at a dam?

4 A Correct.

5 Q And we'll get into this, but it's -- in the next
6 document, but it also identifies areas downstream of the
7 dam that might be potentially inundated in the event of a
8 bad event?

9 A That's correct. DHEC did a survey after the 2015
10 flood to identify any downstream properties that could be
11 impacted. I think that was done statewide.

12 Q Okay. Now, I believe you said when you got it,
13 you -- did you and Alice Belger review it?

14 A We did.

15 Q Did you distribute it to the trustees of the trust?

16 A I think Alice carried a copy to Jane Peacock for
17 Rigdon and I called Mary Deas and left a copy for her at
18 Aunt May's house, her house, cottage.

19 Q After that, did you and Alice carefully review the
20 contents and requirements in the plan?

21 A We did.

22 Q Did the two of you coordinate your response to DHEC
23 for responding to this letter?

24 A We did.

25 Q Okay. Exhibit 61?

1 A Yes, it was basically updating the contact's --

2 Q Information?

3 A -- information.

4 Q And did you send that final version of the emergency
5 action plan to DHEC?

6 A Hand delivered it to DHEC.

7 Q Okay. Do you maintain a copy according to
8 instructions in the Belger Farms office?

9 A I do.

10 Q Take a look at Exhibit 62. Is this the Boykin Mill
11 Pond dam emergency action plan that you just described?

12 A This is the updated one.

13 Q Is it the one that is on file with DHEC?

14 A It is.

15 Q All right. I'd like to have you look at Pages 22
16 through 25 of the emergency action plan.

17 A Okay.

18 Q And they are actually in landscape orientation. I've
19 got them on the screen here, too.

20 Can we focus in on that top one there? All right.

21 The emergency action plan says that the properties
22 designated as contained within the inundation boundary,
23 that is inside the blue lines on the maps; is that right?

24 A That's correct.

25 Q So what is that area pictured in blue downstream of

1 the dam?

2 A Well, I think that -- what you're showing is the
3 whole creek bed. The inundation map is actually next.

4 Q Okay. We'll get to those.

5 A Okay.

6 Q But just for Judge Toal's benefit, orient us here,
7 where is the Mill Pond dam?

8 A Right there where the star is at.

9 Q Okay. That yellow star?

10 A That's correct.

11 Q Okay. So all that other land is downstream of the
12 dam on the Swift Creek, right?

13 A That's correct.

14 Q All right. Let me just ask you, have you and Alice
15 Belger carefully reviewed these maps that we'll be going
16 through?

17 A Absolutely. She was born and raised on most of them.

18 Q Who are the other property owners with property in
19 the inundation boundary?

20 A You have Ann Dupont Shirley comes down -- it's hard
21 to show on this map. Peggy McCoy has the old hospital
22 property right in that area. And then I would say most of
23 that is Ann DuPont's.

24 It comes on down. I can't quite make out where
25 Icehouse Road is, but the State prison farm, Wateree

1 Correction Institute will follow through the bottom half
2 of it. Again, the Alexander property is on the right-hand
3 side of that and the trust property is -- I think there's
4 over 100 acres of trust property, timberland that's
5 downstream.

6 Q Okay. Does Lindsay Guy own some property down below?

7 A Lindsay Guy is actually on the -- I don't think
8 Lindsay shows up in this map.

9 Q Okay. Now, the emergency action plan also refers to
10 identified at-risk structures; does it not?

11 A That's correct.

12 Q Those would be buildings like a home, barn, shed,
13 cabin, anything like that?

14 A Any property.

15 Q Okay. How would you know if there are any identified
16 at-risk structures within the inundation zone?

17 A DHEC had marked them with a yellow dot that would
18 show any -- any structures that are inundated or in the
19 inundated zone.

20 Q Now, according to this emergency action plan that you
21 received from DHEC, are there any identified at-risk
22 structures inside the inundation boundary?

23 A No, sir, we're very fortunate not to have any homes
24 or anything --

25 Q All right.

1 A -- in the area.

2 Q All right. Now, DHEC has also provided us larger
3 blow-ups of the area that's marked by zones one, two, and
4 three on that map. Let's look through those.

5 A Okay. That shows that a little bit better here.
6 This is all Ann DuPont Shirley's. These are irrigated
7 fields and she comes -- the trust property comes right
8 along in here, pretty much follows the creek. So that
9 would be mostly Ann DuPont Shirley's on that side.

10 Q Okay. Show us the blue lines that designate the
11 inundation boundary.

12 A That's the blue lines that follow right around 261,
13 cross 261, come up and then go back around. That's Peggy
14 McCoy's. It comes back out to Red Bank Road following
15 right on around.

16 Q So this is the first zone of that map with three
17 zones --

18 A Correct.

19 Q Is that right?

20 A Correct.

21 Q Are there any yellow dots within the inundation
22 boundary in zone one?

23 A No, sir.

24 Q All right. Show us Peggy McCoy's property again.

25 A That's Peggy McCoy's right there.

1 Q Are those the structures on her property?

2 A They are.

3 Q Are they in the inundation boundary?

4 A No, sir, they're not.

5 Q Okay. All right. Let's move on to zone two. Again,
6 just show us those blue lines designating the inundation
7 boundary in zone two.

8 A Come right on around, follow -- that's what we used
9 to call the Alexander property. This starts coming into
10 the prison farm in this area. This is Ann Shirley's place
11 right in here. That's also outside of the inundation
12 area, but it is in, I think, a 100-year or 500-year county
13 flood zone. And that's why, just being good neighbors, we
14 notify her, as well as all downstream owners if we're
15 releasing a large amount of water from the pond.

16 Q Okay. Are there any yellow dots within the
17 inundation boundary in zone two?

18 A No, sir.

19 Q All right. Let's move on to zone three. Just point
20 out the area.

21 A This is prison farm property. This is what DHEC
22 identified, which is the remnants of Icehouse Road. It's
23 on State Farm property. And that's the only road that
24 they identified as possibly being inundated by the flood.
25 And it's the interior road from the prison farm,

1 basically, a farm field road.

2 Q All right. Did you and Steve Bush go down and
3 inspect that road?

4 A I did not. Steve Bush sent an engineer out and
5 Thomas Littler that works for the state prison system, met
6 him at our office and they rode down to the prison farm
7 and looked at the road structure and everything there.

8 Q All right. All right, sir. Now, that's all I have
9 on that document. Let me ask you, had there been prior
10 flooding events at the Boykin Mill Pond?

11 A Something that's been around for two or 300 years,
12 yes, sir, there's always been high water events.

13 Q Now, we have photographs and I think we're going to
14 be showing those in a little bit, but have those events
15 occurred generally in 1947, 1990 and 2015?

16 A After the 2015 flood, I think it was Henry Boykin,
17 who was a cousin to my wife's family, brought me two
18 photos that he had in his archives that shows a flood that
19 was -- he believed between 1945 and 1947.

20 Q Okay.

21 A So based on what he's told me, we knew there was one
22 at that time.

23 Q And you were around in the Boykin area in 1990, were
24 you not?

25 A That's correct.

1 Q When you had a flood that year?

2 A Oh, yeah. We farmed and it was what everybody called
3 the 100-year flood at that time. That was the year right
4 after Hugo.

5 Q All right. And you were here in the October 2015
6 event, which that was what, a 1,000-year rainfall event?

7 A That's what they called it. I thought when I saw a
8 100-year flood, that would be enough, but now they say we
9 had a 1,000-year flood.

10 Q Now, was the Boykin Mill Pond dam overtopped in
11 October 2015?

12 A It was.

13 Q So water actually went over the top of the dam?

14 A Came over the top of the dam right below the big
15 flood gates.

16 Q Did the dam breach or burst?

17 A No, sir.

18 Q Were any of the structures that you've identified
19 downstream of this dam, were any of them flooded in
20 October 2015?

21 A Not to my knowledge.

22 Q Let me ask you to take a look at Exhibit 63. Based
23 upon the work that you've done with Steve Bush in
24 preparation for this testimony, did you come to the
25 conclusion -- you and Mr. Bush come to the conclusion that

1 you could request a lower hazard classification for the
2 Boykin Mill Pond dam?

3 A Based on the information that DHEC's engineer's
4 provided in their emergency action plan and the
5 requirements for a class three dam, which is one that
6 poses little risk to downstream properties, Steve Bush, as
7 well as Dan Creed thought it would be proper to ask for a
8 lower classification.

9 Q All right. Now, who is Steve Bush?

10 A Steve Bush is an engineer that Ms. Boykin hired
11 in 2015 right after the flood.

12 Q And he submitted an affidavit that's been put in
13 evidence; is that right?

14 A I believe that's correct.

15 Q And who is Dan Creed?

16 A Dan Creed is second engineer that has worked with
17 Steve Bush.

18 Q All right. Now, the exhibit we're looking at, Trial
19 Exhibit 63, that is a letter to John McCain of the dam
20 safety program with DHEC. And it was sent by Alice Belger
21 as trustee of the Boykin trust; is that right?

22 A That's correct.

23 Q Who drafted this letter for her?

24 A Correct.

25 Q All right. And this has been sent it. Was it based

1 on his recommendations and analysis?

2 A Correct...

3 Q And it's been sent in to DHEC?

4 A It was hand delivered to DHEC.

5 Q Now, does the emergency action plan provide any
6 protocols or procedures for identifying and responding to
7 an arising emergency situation?

8 A It does. DHEC does a tremendous job of notifying
9 pond owners, you know, especially since -- after 2015,
10 they've established what's called a red alert system where
11 there's any impending weather or bad weather coming that
12 they think could impact areas, they send out alerts. And
13 we -- you know, being farming in the area and all, we
14 watch the water levels ourselves. I mean, we're very
15 familiar with the water shed that fills into the Mill
16 Pond, as well as, you know, how it affects and where the
17 water comes in.

18 We also have to pay a lot of attention to the river
19 because the strategy with the Mill Pond is to stay ahead
20 of bad weather or a lot of rain. If the river rises --
21 we're on the low side of the river, so if Duke Energy
22 decides to turn a lot of water loose, it's in our interest
23 to be ahead of them. Because what happens is the water
24 from the river is a lot stronger than the water coming out
25 the Mill Pond. So it floods into the timber and then we

1 have -- the Mill Pond has -- the water coming out of mill
2 of pond hits that water, so it takes a lot of time or
3 could take a lot of time for that water to exit. So we
4 try to stay ahead of any bad weather or storms that we
5 think could impact it.

6 Q Does that action plan and management plan that you
7 follow per DHEC based on monitored rainfall quantifies and
8 the alerts you receive, does it require you to regularly
9 adjust the dam's spillway gates to maintain a safe and
10 appropriate water level in the Mill Pond?

11 A It certainly does.

12 Q Okay. If circumstances require, do you have to
13 release water from the Mill Pond?

14 A We do. And that's -- if we're releasing a lot of
15 water, we contact the downstream landowners.
16 Specifically, Peggy McCoy, a lot of times, she'll call me
17 before I call her. She's real sensitive to what goes on.
18 Ann DuPont, we generally talk to her son or stepson, I
19 think it's Bubba Shirley. If it's a lot of water, we'll
20 call Lindsay Guy, but we most definitely community well
21 with the prison farm.

22 Q All right. Now, as a result -- I think we've said
23 this, as a result of October 2015, 1,000-year rainfall
24 event and flooding, the Mill Pond overtopped?

25 A That's correct.

1 Q Did the dam sustain any damage?

2 A It did. On the south side of the large flood gates,
3 we have one retaining wall that abuts to the back of the
4 structure, it fell over, fell over into the concrete
5 footing. And then we had -- where the overtopping was,
6 which if you're standing on the pond looking at the dam,
7 on the right-hand side, we had some underwash. -- When I say
8 underwash, it came over the top of the dam and eroded
9 probably 35, 40 feet of topsoil and dirt off the top --
10 the backside of the dam or the down side of it.

11 Q All right. So are there going to be some structural
12 repairs to the dam that are going to be required by DHEC?

13 A Ms. Boykin -- yes, right after that she sent us to
14 work very quickly on getting that wall put back up and,
15 also, back filling the dirt. And then when DHEC sent an
16 engineer around, they had looked at the wall we had put up
17 and they felt like it needed what they called wing walls
18 on the backside of it. That's what we had scheduled to do
19 in the next 10 days. That's one of the reasons the pond
20 is the level it is now is for the contractors to get in
21 and do the work that's scheduled for them to get done. We
22 have a timeline on that work for in early 2019.

23 Q Yeah, the deadline for that is -- completing that
24 work is March 19, 2019; is that right?

25 A That's correct.

1 Q And you say you're going to get all that concrete
2 work done?

3 A I saw the bid where the trustees approved Bubba
4 Shirley to come in and do the excavating work and the
5 concrete work. Once that's done, Steve Bush will oversee
6 that project while it's going on and then he'll submit a
7 plan to DHEC that it's been done properly and then that
8 will be back filled.

9 Q You expect that work will get done before the end of
10 that year?

11 A That's what -- I hope. We've been pushing for it now
12 for two years.

13 Q Okay. Does the remediation work required by DHEC
14 also include a tree removal plan?

15 A It does. DHEC, after the 2015 flood, for several
16 reasons, one, I think for ease of inspection and to
17 closely monitor the dams, when inspectors come out,
18 they're not having to dig through brush and briars. They
19 have a plan -- or we've established a plan through Steve
20 Bush to have the necessary trees removed off the dam by
21 2026.

22 Q Are there two components to that tree removal plan,
23 one for trees under four inches in diameter and another
24 phase for trees above four inches in diameter?

25 A That's correct. The trees that are four inches and

1 less, that work has already begun. I would say it's over
2 half the way done on the upstream side of the dam. Daniel
3 Gardner is the folks that are cleaning that off.

4 Q Okay. And you have contractors identified to do the
5 other phase of the tree removal?

6 A Coleman Trapp has looked at it and give the trustees
7 a price for removing the stumps and the trees that are
8 greater than four inches.

9 My understanding is that we -- I've talked to Steve
10 Bush now that the pond is lowered. Steve Bush is going to
11 come in and mark the trees that have to be removed off the
12 dam.

13 Q All right. And what is the timeframe that's imposed
14 by DHEC for completing the tree removal plan?

15 A 2026.

16 Q Okay. So that's -- 2026, that's what?

17 A Eight years.

18 Q Eight more years from now?

19 A That's right.

20 Q Now, does the dam have liability insurance?

21 A It does. My understanding it's currently insured by
22 Steve Van Horn. I think the trustees received notice that
23 Steve Van Horn underwriters at some point would not be
24 able to insure it. Farm Bureau, to my knowledge, has come
25 out and looked at the pond, did an inspection on it and

1 have also insured the pond, the pond dam.

2 Q All right. Take a look at Exhibit 64, Mr. Belger.

3 Is that a certificate of insurance from Farm Bureau
4 insurance?

5 A It is.

6 Q Is Rick Hickson the agent you work with at Farm
7 Bureau?

8 A He is.

9 Q Okay. Once we receive -- the trustees received
10 notice that Auto Owners would not renew their liability
11 policy on the dam, what would Mary Deas and Alice do?

12 A They immediately got insurance on the pond dam.

13 Q All right. Did they -- do you work with Farm Bureau
14 in your business?

15 A I do. Farm Bureau handles all of our insurance on
16 our farm properties.

17 Q Do they --

18 A Have for probably 30 years.

19 Q Do they regularly ensure rural farm and timberland?

20 A When we talked to them about the pond dam after 2015,
21 they said they were very versed in pond damns and the
22 liabilities and all that goes along -- after the 2015
23 flood, they were well versed in pond damns.

24 Q Did you assist Mary Deas and Alice in speaking with
25 Mr. Hickson about replacement and liability insurance

1 coverage?

2 A I called Mr. Hickson and asked him to come down to
3 see if that would be something he would be interested in
4 insuring.

5 Q Did he and his underwriters personally inspect the
6 dam?

7 A He did, my understanding, but I think the underwriter
8 was scheduled to come inspect the dam on Thursday before
9 Hurricane Florence came in and had, you know, a lot going
10 on. But my understanding is Rick inspected -- Rick is
11 very familiar with the property. I think at one time,
12 Ms. Boykin had Farm Bureau insurance with them at one
13 point in time.

14 Q Do you recall what the premium is going to be for
15 this policy of insurance?

16 A I do not.

17 Q Okay.

18 A I mean, I don't know exactly.

19 Q Is it lower than what the trust was paying through
20 Steve Van Horn's agency?

21 A I don't know exactly --

22 Q Okay.

23 A -- what it is.

24 Q All right. Let me ask you to -- we'll go through
25 some photographs now. Mr. Belger, what is -- what are we

1 looking at here?

2 A That was the downstream picture of the big flood
3 gates that Henry Boykin gave me after the 2015 flood. And
4 I think that was around 1945, 1947.

5 Q Okay. So those -- that's looking downstream from
6 where the big spillway is now?

7 A That's correct. That was before 261 and 521 were
8 separated out.

9 Q All right.

10 Next, please?

11 MR. TETTERTON: Do you have the number?

12 MR. BECKER: Excuse me?

13 MR. TETTERTON: Do you have the number of these
14 exhibits?

15 MR. BECKER: I have not intended to introduce these
16 into evidence, but I'll be glad to do it.

17 MR. TETTERTON: I'm just --

18 MR. BECKER: Yeah, go backwards.

19 BY MR. BECKER:

20 Q I think -- how many pictures did we have of the '47
21 flood event?

22 A The one you showed earlier of downstream and that one
23 that shows the big flood gates prior to 521 and 261 being
24 removed. You can see the railing in the background of the
25 highway.

1 Q Okay. All right. Are those all the pictures we have
2 of the '47 flood event?

3 A Yes, sir.

4 Q All right. Let's move on to the next one, please.
5 Now, this is a series of photos. Is this the 2015 flood
6 event?

7 A It is. And that shows -- I think there was some--
8 concern a mud flap had broke loose and flooded under the
9 pond. Actually, what happened, it was an island that
10 broke loose and you could see the trees and stumps and the
11 root balls that blocked the passage of water under the
12 bridge.

13 Q That may be one reason it overtopped?

14 A It was. I mean, once that island broke loose and
15 wedged itself under the bridge, it stopped I'd probably
16 say 80 percent of the water flow that was coming through
17 the pond at the time.

18 MR. BECKER: Let's move on to the next.

19 Q Is this also in 2015?

20 A It is. That there is some of the men we had out
21 there pulling the roots out from under the bridge.

22 MR. BECKER: Next one. There you go.

23 Q Also, the same event there?

24 A It is.

25 Q Were you involved in some of that debris removal?

1 A Yes, I was.

2 MR. BECKER: Next, please.. Next.

3 Q Does that get us back to where we started?

4 A Looks like it.

5 MR. BECKER: Is that the last one? Okay. I think
6 that's it.

7 Q This next set of photographs, I believe is there to
8 demonstrate the removal of the four-inch trees along the
9 dam?

10 A That's correct. I sent those pictures to Mary Deas.
11 She stays very involved with what goes on on the pond. So
12 with her being in Ohio, I try to send her photos and stuff
13 so she can see what's going on and what the contractors
14 are doing.

15 Q All right. Point out with the laser pointer what's
16 going on with that four-inch tree removal?

17 A Anything that -- well, one, it does not take a permit
18 to remove the four-inch trees or smaller brush. So this
19 is the big floods gates would be in this area and that's
20 where they come down. You can see the concrete roadbed
21 right there, and then that's rest of the width of the dam.

22 Q All right. And point out those trees where it's been
23 removed there on the left.

24 A Right there.

25 Q Okay.

1 MR. BECKER: Next photograph, please.

2 Q Show us the old dam in that photograph, please.

3 A You can see this area right in here and it ties back
4 in so the old dam -- I think there might be a better
5 picture --

6 Q Yeah.

7 A That's the old dam right in there.

8 MR. BECKER: Next picture.

9 Q Have all the four-inch or less trees been removed in
10 that photograph?

11 A The section that's been completed is from the large
12 flood gates to the small flood gates on upstream and
13 they're now working on the upstream side of the pond dam
14 from the little flood gates to 261.

15 MR. BECKER: Okay. Next.

16 THE WITNESS: And that can show you more of the
17 four-inch trees being cut out.

18 Q Yeah.

19 THE COURT: What are you going to do about the larger
20 trees, Mr. Belger?

21 THE WITNESS: We had a plan --

22 THE COURT: I mean, that's -- that's a -- anytime is
23 no good if you have a big one.

24 THE WITNESS: That's correct. And right now, Coleman
25 Trapp has submitted a bid to remove those trees.

1 THE COURT: And that includes the stumps?

2 THE WITNESS: Yes, ma'am, and back filling.

3 THE COURT: Okay.

4 THE WITNESS: The way to determine that is there's a
5 formula, from the crest of the dam when the pond is lower
6 than four foot out, they measure out and any trees that
7 are in that area has to be removed.

8 So I talked to Steve Bush recently now that the pond
9 is down for the construction work that's going on, the
10 concrete work and all, and Steve is going to try to get a
11 man out to go ahead and mark those trees so we can get
12 that addressed.

13 BY MR. BECKER:

14 Q I think that's it.

15 A That's another picture. You can see the old dam
16 right in there. These trees will for sure that's going to
17 have to be removed. There's some question that those --
18 the old trees that are far enough off the dam may not have
19 to be removed because they won't impact the current dam.

20 Q Next?

21 A That's a picture of the little flood gates.

22 Q Next?

23 A That's a picture of the big flood gates. We have
24 nine gates and the big flood gates. And that's one of the
25 gates raised there about -- those gates are right about 10

1 feet tall. That's just showing one of the little flood
2 gates. I think these are pictures I sent to Mary Deas in
3 advance of Hurricane Florence. That shows both of the
4 little flood gates raised up.

5 THE COURT: All the gates are operable?

6 THE WITNESS: Yes, ma'am. It's a pretty simple
7 system. We have a hijack and one man sits there and jacks
8 it up. That's a picture of one of the big gates opened up
9 prior to the storm.

10 THE COURT: How many of the gates did you open up
11 with this last storm?

12 THE WITNESS: I had three open two days before the
13 storm was supposed to impact the coast. I got a text
14 messages from Julian Burns, who's our chairman of county
15 counsel. Julian Burns sent me a text message that the
16 county was expecting historical flooding. I believe they
17 expected the Wateree River to crest at 32 feet, and in his
18 text message, he said that would impact Highway 521 and
19 261 in low areas.

20 So I had already contacted Mark McCowen at the prison
21 farm a day ahead of this. Mark was having trouble getting
22 one of his gates up at the prison.

23 THE COURT: He's got gates like you?

24 THE WITNESS: He had wooden gates.

25 THE COURT: Oh, man.

1 THE WITNESS: And I think they wound cutting them.
2 But it's important for us to release water in a
3 responsible manner and that way, it doesn't impact pond
4 owners downstream.

5 So we already started getting way ahead of it. I got
6 the text message from Julian Burns that the river could
7 crest at 32 feet, you know, my main duty as a pond
8 operator is life and property and integrity of the dam.
9 So we already had to take the pond down for the
10 construction work that was going to start the first two
11 weeks in October. So I made the decision to go ahead and
12 take the water on down to the creek.

13 BY MR. BECKER:

14 Q Now, Mr. Belger, have you lowered the pond level down
15 to the creek on other occasions?

16 A Oh, yeah. A lot of times we get mud flaps around
17 August that floated around in the pond. One of the
18 main -- the only way for us to get them out other than
19 taking a tractor and getting them out is to raise the
20 floodgate and let the water carry them out. On several
21 occasions, we've had cypress needles get stuck in a
22 floodgate, so you have to let the pond drain all the way
23 down to get the cypress needles out. There's nothing
24 uncommon to have it drained.

25 Q How cause that affect the wildlife?

1 A Well, from my experience, I haven't seen where it
2 affects it. We always try to keep water on the pond prior
3 to March. That's when the Rookery gets active, the birds
4 start coming back in about the time to plant corn. So we
5 strive to keep water on the pond because that's a
6 necessity. They like to have water under their nest.

7 THE COURT: What happens to the gators when you put
8 it down?

9 THE WITNESS: I carried Mary Deas out on the pond two
10 days ago and there was a mighty big one sitting right out
11 there. So, you know, the flood of 2015, I think they
12 just -- that's a big creek system, it's a big water shed
13 out there, a lot of deep holes and I believe they just
14 hunker down and eat a lot of fish until the water comes
15 back up.

16 BY MR. BECKER:

17 Q Any affect on turtles or anything like that?

18 A Not unless the alligator eats them.

19 Q Okay.

20 THE COURT: When you bring it down, do you give any
21 consideration, do anything to control all of the growth
22 that you -- the considerable amount of growth that's in
23 that pond that really makes it not manageable.

24 THE WITNESS: There was -- I think my father-in-law,
25 Whit Boykin, there was I think some thoughts that if you

1 lower the pond in the winter time and you had a cold
2 winter that it would help kill some of it.

3 In 2015, we had a pretty cold winter after the flood
4 and it was down. And from what we saw was a bloom in
5 vegetative growth. The birds -- you know, it's two-fold.
6 The birds are real good, but they bring a lot of water to
7 the pond. When they start hatching out, they multiply by
8 two or three, so they've created more of a management --

9 THE COURT: For algae blooms and things of that
10 nature?

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Are you doing anything more proactive
13 than just lowering the water?

14 THE WITNESS: Before 2015, Ms. Boykin was real active
15 in putting triple load carp. We found out after years of
16 spending money on carp at \$3 a piece that we had aquatic
17 weeks -- there's three types of weeds we monitor on the
18 pond. One is aquatic weeds, those are the ones below the
19 surface. Then you have the lily pads and what I call saw
20 grass, it almost looks like a pompous grass and stuff like
21 button bushes that come and duck weed.

22 The invasive weeds, there was a survey done on the
23 pond back, gosh knows, Clemson helped establish it that
24 helped us identify invasive weeds and what were native
25 weeds. The invasive weeds was what we strive to get

1 removed, a lot of the lily pads are invasive. So we have
2 a program on everything above the surface. We use a lot
3 of phosphate, a roundup product, I think is Rodeo.

4 THE COURT: Yeah.

5 THE WITNESS: That's approved for surface water
6 application.

7 THE COURT: I'm familiar.

8 THE WITNESS: And then --

9 THE COURT: The grass-eating carp won't do a thing.

10 THE WITNESS: You know, the bigger they get, the
11 slower they get, but then some of the weeds we have,
12 there's a multi-floor, looks like a coon tail, they said
13 it was like feeding a three-year-old broccoli. They just
14 don't like it. So we got involved with some of the
15 Clemson extension specialists and started using a 24-D
16 product that works pretty well.

17 The plan that we had with Ms. Boykin working with us
18 and establishing was to do 10 acres at a time. And Mary
19 Deas, everybody, Whit, a lot of people -- I mean,
20 everybody helped scrape the pond at times.

21 After the flood of 2015, it did not get sprayed after
22 that for two years. Recently, Ms. Boykin -- Alice -- Mary
23 Deas was real concern about getting back to a spray
24 program.

25 She ran into what I would call a little bit of

1 opposition from one of trustees on whether or not it was
2 permitted, whether or not we were allowed to spray, and I
3 know it took two days to get -- that I spent on it getting
4 notifications and documents from DHEC and Clemson
5 Extension that we did not have to have, you know, an
6 additional permit other than a private applicator's
7 license to manage the weeds --

8 THE COURT: Right. That's my understanding as well.

9 THE WITNESS: That's right. So once that --

10 THE COURT: I'm stockpiling some of that stuff.

11 THE WITNESS: Yes, ma'am. Once Mary Deas got okayed
12 on that, she bought a sufficient amount of roundup for
13 24-D and my employees went out and sprayed.

14 THE COURT: Applied it.

15 THE WITNESS: And, you know, I think in some of these
16 photos, you can see that it's working, but we have to be
17 responsible with what we kill at the same time. You don't
18 want to take -- deplete all the oxygen out of water for
19 the fish and wildlife.

20 MR. BECKER: All right. I believe we've got a few
21 videos which will help illustrate what he's telling you,
22 Judge Toal. Let's play one of those.

23 BY MR. BECKER:

24 Q Go ahead and narrate that, Wayne.

25 A That's right before Florence. I sent that picture to

1 Mary Deas just to show her the -- and to document it for
2 myself, as well, the release of the water, and you can see
3 old dam -- that's where the old dam comes out right there.

4 That's all Mary Deas's dock. I was just showing her
5 there where the water level was behind Aunt May's, and
6 that's up in the head waters of the pond, or beginning of
7 the head water.

8 THE COURT: You sure have got a lot of trees going up
9 in those head waters. Have you ever given any
10 consideration of any removals up there and pluck some
11 things of that nature to give you a little bit more of a
12 --

13 THE WITNESS: Well, actually, we think the trees,
14 from my experience, one, provide a buffer from a flash --
15 from of a lot of water coming down at one time.
16 Generally, if we have a high water or a lot of water from
17 up in Lee County or something, it takes -- the water, when
18 it hit those trees, it disperses out. It acts like a
19 little barricade for them, so it slows that flow of water
20 down.

21 You know, I think that, you know, it protects the
22 pond -- there's no high banks on it really.

23 THE COURT: Uh-huh.

24 THE WITNESS: Other than on the Millway side. The
25 Gillis tract, which is about 100 acres on the left-hand

1 side of the creek is mostly Black Gum Tupelo, and I think
2 it helps filter the water, keeps the water clean and
3 serves the purpose. It would be hard to log it or
4 anything.

5 The Laney track or the gun club track, it has a
6 little high ridge of pine timber on it. The trustees
7 manage it for timber on that side. The other side of the
8 pond, on the Millway side of it, there's some high banks
9 that goes around and they do manage the timber.

10 THE COURT: Any trouble with beavers?

11 THE WITNESS: Not with alligators, they're too slow.
12 Alligators -- you know, the pond down below us, Millwood
13 Plantation, at one point, was dealing a lot with beavers
14 stopping up their flood gates in the water, but from what
15 we've seen come summertime when the alligators wake up, we
16 do get beavers come in the pond. You can see where
17 they've been all around the trees in the wintertime. They
18 don't stay long.

19 MR. BECKER: Okay. I think we have just few more
20 short videos. I believe this is one Mr. Tetterton sent
21 you, Judge Toal, but we thought it would be good if Mr.
22 Belger could narrate this for you.

23 THE COURT: Right. I watched them all.

24 Go ahead, Mr. Belger.

25 THE WITNESS: That just shows the dam from the little

1 flood gates to the big flood gates. And best I could
2 tell, it shows where the four-inch trees and smaller had
3 been removed from the top of the dam.

4 THE COURT: Do you contemplate any provisions or
5 repairs of the old road that tops over here?

6 THE WITNESS: I think the road surface good. I mean,
7 there's one spot, if you come back, he's already passed
8 it, where DOT had put asphalt had put on the top of it.

9 THE COURT: Yeah, I saw that.

10 THE WITNESS: That was something I reckon when the
11 road was used, they had patched the top of it. The
12 roadbed, the concrete, it's solid. There's a little bit
13 of asphalt patching right there to the right and that was
14 done, I guess, at the time DOT was maintaining the road.

15 THE COURT: How thick is the concrete?

16 THE WITNESS: It's eight inches thick and 18 foot
17 wide. And it's like most secondary highways, it has a
18 little bit of asphalt on either side of it. I reckon it's
19 put down as a shoulder of the road, and you can kind of
20 notice on this side, the old dam gets closer to 261.

21 The closer you get to the big flood gets, it's a
22 wider area. You can see whole dam right in the
23 background, and I think all those trees that are on the
24 crest of the dam on the pond side, you know, all of those.
25 I'm sure those are coming out.

1 You know, the ones that are further out in the water
2 10 or 12 feet, I think they're going to measure, you know,
3 see which ones of those that need to come out. Most of
4 those are Cypress and pond Tupelo. There's a few pines on
5 there, a few gum trees. That shows the old dam pretty
6 good.

7 MR. BECKER: I think there's just few -- just a
8 minute left on that when Your Honor --

9 BY MR. BECKER:

10 Q Oh, explain what that is, Wayne, right there.

11 A On the right-hand side of that where you see that --
12 looks like love grass growing or that grass. That was
13 where the water topped the dam in 2015, and it was
14 compacted back, the statement by Steve Bush Engineering,
15 that it was hydro-seeded back with the grass covering.

16 THE COURT: I take it the lowering meant knowing what
17 was happening in the --

18 THE WITNESS: No, ma'am.

19 THE COURT: What is the Wateree crest at? I know 32,
20 but that would be beyond any human imagination.

21 THE WITNESS: Yes, ma'am.

22 THE COURT: So it didn't end up going that high?

23 THE WITNESS: No, no, the storm -- Florence never did
24 come -- if we were in Conway or along Society Hill or on
25 the Pee Dee River --

1 THE COURT: It would be a different story.

2 THE WITNESS: It would be a different story.

3 MR. BECKER: I've got just one or two more short
4 videos.

5 THE WITNESS: I think that's a pretty good -- you can
6 see where the spraying --

7 THE COURT: Yeah.

8 THE WITNESS: Or sprayed areas.

9 THE COURT: Yeah.

10 THE WITNESS: And what we do is we go in and spray an
11 area because it's pretty tough taking a boat through
12 there. It's like pushing a boat through a field.

13 THE COURT: I've been there.

14 THE WITNESS: Yes, ma'am. So it's cut up in sections
15 so when the spraying starts next year, those sections are
16 open and you can spray to the right or left of them, and
17 you can see where the spraying went on there, up the
18 creek, as well. That on the backside, that's behind
19 Millway, that part of the pond we have a lot of grass
20 growth.

21 THE COURT: Yeah.

22 THE WITNESS: In the wintertime, it's clear of water.
23 In the summertime as things green up, it comes back. As
24 you can see, they started -- you just have to peck away at
25 it, in other words.

1 THE COURT: Well, it would be ideal if you could get
2 closer to that high bank there at the middle way, right?

3 THE WITNESS: Well, it's a narrow strip. It comes
4 out, there's a cow pasture right in there that used to be
5 an old boat landing, and most of that, it looks like -- a
6 lot of that's lily pads. That area right in there
7 generally where the Ibis and Cattle Egrets, Little Blue
8 Herons, that's generally where they hang out pretty much
9 in this corner right here, and it's an old pond. It's
10 been there a long time. It's steady -- the older it gets,
11 a lot of sedimentation.

12 THE COURT: Right. And maintenance is the key to
13 that.

14 THE WITNESS: Yes, ma'am. I think that picture for
15 us I was showing Mr. Becker was it shows the spraying,
16 before the spraying started, that was a solid green area.

17 THE COURT: Yeah.

18 THE WITNESS: And that right up in that corner there,
19 that's a little island that's been there as long as I can
20 remember. This part right in here was part of the island
21 that broke loose in 2015. This is an island of Tupelos
22 over here. That's the grass we try to work on right in
23 there, and that's a picture of the little flood gates.
24 And what we wanted when we spray, we want to keep where
25 the flood gates are at opened because what's has to move

1 all that dying vegetation. That's a good shot of the old
2 dam --

3 THE COURT: And the new dam.

4 THE WITNESS: Yes, ma'am. And that's the new dam or
5 the old roadbed. That's the old dam right there. That's
6 part of that island.

7 THE COURT: Yeah.

8 THE WITNESS: I think that's a good shot of the top
9 of the concrete going down the new dam over there.

10 THE COURT: Yeah. Do you access anything through
11 there?

12 THE WITNESS: Ma'am?

13 THE COURT: Do you access anything through there with
14 any vehicles?

15 THE WITNESS: By the little floodgates, there's a
16 driveway that comes in there. We don't drive on the old
17 bridges anymore.

18 THE COURT: Uh-huh.

19 THE WITNESS: That's one of -- I know Mary Deas has
20 had some discussion about putting those bridges back in
21 fair shape just for walking, but we don't drive them. And
22 is they don't the concrete on them, that's asphalt.

23 THE COURT: Yeah.

24 THE WITNESS: And the foundation of those were built
25 pretty solid back they were built. And that goes back

1 into the swamp area of going back out to 261. And that's
2 the area right in there now that they're working on
3 removing the four-inch trees and smaller. That's the
4 areas where the groves are at of the Snowies and Great
5 Americans. A lot of this area right in here comes up
6 every year. It dies back in the wintertime and it will
7 come back up, and you can see it all over the water, up
8 underneath the trees back in there. And that water stays
9 anywhere from like a foot-and-a-half to two-foot deep.

10 THE COURT: It's a big flap up in there?

11 THE WITNESS: It's just flooded timber. Half of the
12 Mill Pond is flood timber, you know, it varies from a foot
13 and-a-half to six inches. It goes all the way back out to
14 521. I think that's just an overhead shot. That shows
15 the Mill Pond Steakhouse. One thing I do know Mary Deas
16 is talking now that the pond is drained, there's three
17 window sills on the back of the Mill Pond Steakhouse.

18 THE COURT: They go out.

19 THE WITNESS: They do, they rot. But they can't be
20 accessed because there's a canal that runs to the
21 gristmill. So now that the pond is down, I know she's
22 already talked to Mark Price about getting those windows
23 fixed, as well, as doing some -- I think they've already
24 got prices to do the flooring and the foundation work
25 there.

1 I think what they found out, they had a company, they
2 told me called Crawlspace Medics that came in and
3 inspected the foundation of the subflooring. From what I
4 understand, they found some old termite damage. They
5 found some power post beetles and some mildew, mold, and
6 my understanding from Mary Deas the last day or so that
7 they've got an estimate between 12 and \$15,000 to go ahead
8 and get that replaced and repaired before putting a new
9 floor in the kitchen.

10 Now that the pond is drained and they can get on the
11 back sides of the ladders, where before it was such a
12 narrow strip of land or just a sliver of land on the back.
13 Now, they can get back and replace those three window
14 sills.

15 That's just a shot, that's right out from the little
16 floodgates that show the -- I think those are Great
17 Americans and probably a few Golden, I reckon, Great
18 Americans or Golden Eagles.

19 That's a shot out from the little floodgates, I
20 believe. I think they just wanted to show that the
21 vegetation has been there on the Mill Pond for a long
22 time.

23 I'm not sure when that picture was taken, but
24 probably within the last eight or ten years. But that
25 shows that same vegetation that grows up every year in the

1 Mill Pond that we deal with. It's not a new problem. I'd
2 say a problem. It's something we deal with all the time.

3 BY MR. BECKER:

4 Q Who's in that photograph there?

5 A I believe that's Mr. Beth Tetterton on the left and
6 that's William Tetterton on the right.

7 MR. TETTERTON: You right.

8 THE WITNESS: Very good photo.

9 MR. TETTERTON: Thank you.

10 THE WITNESS: I like to have it.

11 MR. TETTERTON: Thank you.

12 THE WITNESS: I think that's another photo of
13 Mr. Tetterton's that shows out from the little floodgates
14 that show the grass and the weeds on that side of it.

15 THE COURT: And one of our friends in the foreground.

16 THE WITNESS: Yes, ma'am.

17 MR. BECKER: We do need to give credit where credit
18 is due, Judge Toal. These are Mr. Tetterton's photographs
19 and they're available for purchase on his wife's website.
20 If you're inspired by them, anyone in the courtroom, too,
21 can buy them. They're at his website.

22 MR. TETTERTON: They're not copyrighted, are they?

23 MR. BECKER: I checked into that. This is fair use.

24 Judge Toal, unless you have any other questions, I
25 have no questions.

1 THE COURT: Just a second, let me review my notes
2 just one moment.

3 (Pause.)

4 THE COURT: I have nothing. The witness is passed.
5 Mr. Duffy.

6 MR. DUFFY: No questions for this witness, Your
7 Honor.

8 MR. TETTERTON: Just briefly, Your Honor.

9 THE COURT: Mr. Tetterton?

10 CROSS-EXAMINATION:

11 BY MR. TETTERTON:

12 Q Wayne, looking at this photograph right here.

13 A Yes, sir.

14 Q Where did that come from?

15 A The green?

16 Q No, where did the photograph come from?

17 A Google earth is what it says on there.

18 Q When was that taken?

19 A Liam, I couldn't tell you when it was taken.

20 Q Does that show at one time Boykin Mill Pond
21 encompassed all of this where the green is?

22 A No, sir, I believe what that shows is if this picture
23 was taken in the wintertime that this water would be
24 clear. You'd see clear water in here. I think what
25 you're looking at is lily pads that come up in the

1 summertime and go down in the wintertime. If it's this
2 area here?

3 Q Yeah.

4 A And this area behind the house. If you were to take
5 that picture and look at the pond in the wintertime.

6 Q None of that would be there?

7 A Very little of it. Those lily pads die down about
8 the first good freeze we get.

9 Q I'm concerned about the year 2015 flood. Did you
10 lower the pond prior to it compacting the floodgates?

11 A We did.

12 Q And what caused the damage to the floodgates?

13 A What happened was something we couldn't -- I say we
14 couldn't. We monitor closely now. The pond was down to a
15 level that you saw earlier today in 2017.

16 Prior to that during the several nights of rainfall,
17 there were several ponds upstream of us that the
18 landowners didn't manage them as well as we thought they
19 should have managed them and those ponds busted, and when
20 those dams broke, it was a chain effect and it came down.

21 We watched the water in the pond turn from black to
22 red where it had washed out earth and dams, and the water
23 rose real quick and when it did, there was an island right
24 in this area right here, mostly button bushes and cypress
25 trees. And when the water rose, it rose really quick and

1 when it came up, it broke that island loose and carried it
2 downstream.

3 Q And that's still a possibility today, is it not, that
4 if we have a big rain event that that could break loose
5 some more of those islands?

6 A Yeah, I think that's part of taking the pond down
7 like we did this time. If you saw all the stumps, it
8 would be hard for an island to push down through all them
9 stumps.

10 Q But it did in 2015?

11 A When the dams broke above us.

12 Q And there's no control over that, is there, how much
13 water --

14 A I think DHEC -- you know, we got a code red the
15 second day. DHEC does a very, very good job now of
16 identifying upstream pond owners. I personally called
17 Sidney Tiddle that lives upstream from us and talked with
18 him. He was not able to release any water out of his
19 pond. I think he had a beaver problems. I look at Sandy
20 Pintayo's pond, which is also on the Carter Hill branch.
21 There's really four ways for the water to come into the
22 Mill Pond.

23 Q Pintayo is on 521, I believe?

24 A 521. I mean, you either get water that comes in
25 through the yellow house ditches that used to flow freely

1 into the Mill Pond.

2 John Forte at some point with Pine Grove, you can't
3 see it, but there's a ditch system that comes in there
4 that drains a bunch of farmland, and John Forte built a
5 pond on that ditch bank.

6 I think Mr. Boykin has built several ponds upstream,
7 as well. Mr. Bundy has several ponds upstream. I noticed
8 on the second day that we got the code red alert, and I
9 talked to DHEC and said, look, I've talked to some of
10 these pond owners. I've looked at their pond. They
11 haven't released any water.

12 And they have the enforcement now, from what I
13 understand, to where if a pond owner is not releasing his
14 water in a regulated way -- you know, we shouldn't have
15 what happened in 2015 again.

16 I think everybody understands the responsibility now
17 of owning a pond, and that's just like us working with
18 Mark McCowen, Mark let us know that he was having problems
19 with his floodgate. That's how we monitored how much
20 water we were going to release to him so we didn't put a
21 lot of water on him at one time.

22 Q That's Peggy McCoy's house right there?

23 A That's correct.

24 Q And when you release water, water comes out of that
25 small floodgate and goes down that part of Swift Creek?

1 A That's not part of Swift Creek. It flows into it.

2 Q Okay. It's a tributary that flows into Swift Creek?

3 A Correct.

4 Q And if you release too much water, then it floods up
5 into Peggy McCoy's stables and barns.

6 A No, sir.

7 Q Never have done that?

8 A Not to my knowledge.

9 Q Didn't do it in Hugo when Bruce Jackson lived there?

10 A You know, Hugo, I was not involved with the pond
11 during Hugo. A lot of things happened in Hugo, but I'm
12 not aware of it.

13 MR. TETTERTON: Let's go backwards and let's go the
14 bridge, please.

15 Q While she's doing that, some of those islands have
16 increased in size in the last several years; have they
17 not?

18 A Sir?

19 Q Have some of those islands increased in size?

20 A Well, I think there's a new island that's upside the
21 dam that broke loose in 2015.

22 Q Some of the other islands out there, haven't they
23 increased in size? Where the trees are?

24 A There's grass growing around them, yes. I mean,
25 grass builds dirt.

1 Q All right. Is that the bridge that was impacted when
2 the 2015 flood came?

3 A It is.

4 Q And that's asphalt on top of that bridge?

5 A That's correct. There's creosoted pylons that I
6 reckon DOT built it with. It's kind of an unusual bridge.
7 It has two by fours turned up edge-wise that are
8 underneath the asphalt.

9 Q And that's asphalt on top of that bridge?

10 A That's correct.

11 Q How would you describe the condition of that asphalt
12 on the top of that bridge?

13 A I wouldn't drive my truck on it.

14 Q When the dam overtopped in 2015, did it wash out some
15 of the toe of the dam on the backside, downstream side?

16 A Sure.

17 Q Would water overtopping a dam and washing out the
18 toe, the downstream side, would that eventually compromise
19 the integrity of dam?

20 A No, it did not.

21 Q It wouldn't back up and start washing out underneath
22 the concrete?

23 A It was, but DHEC sent inspectors out and engineers
24 and looked at it.

25 Q But my question is, if it did overtop and started

1 washing out the toe of the dam and compromising the toe,
2 washing out the toe, the downstream side, if it wasn't
3 corrected and stopped, it would eventually wash out
4 underneath the concrete; would it not?

5 A I mean, I'm guessing, yeah.

6 Q Because the toe is the first thing that goes first,
7 right?

8 A Well, it depends if you have trees toppling over, you
9 could have pike. I mean, there's a lot of effects you
10 could have, but overtopping, yes. I mean, you know, it
11 has the potential to wash dirt away.

12 Q And --

13 A But I think you have to take into consideration,
14 Mr. Tetterton, that's not an ordinary dam. That dam is 20
15 something feet wide.

16 Q But it --

17 A It's not a normal earth and dam.

18 Q When it started topping in 2015, it started washing
19 out the toe?

20 A Yes, sir.

21 Q And you had to go in there and do some back filling;
22 did you not?

23 A We did.

24 Q And you put some grass in there?

25 A We did.

1 Q And if we go out there and look at it today, we can
2 see where your back fill is washing away?

3 A It has surface erosion on it.

4 Q It's washing away.

5 A From rain waters.

6 Q It's eroding?

7 A Sure.

8 Q On the toe of the dam?

9 A On the backside, not the toe. The toe is at the foot
10 of the dam. The downhill slope, I think, is what you're
11 referring to.

12 Q The toe is from the top of the dam down to the bottom
13 of the dam?

14 A The toe of the dam -- you're talking the downside
15 slope --

16 Q Slope, yes, sir.

17 A The toe is actually the foot of the dam, where it
18 foot of the dam meets the surface, I believe.

19 Q The downstream side is eroded as we speak?

20 A Correct. Correct.

21 Q I noticed in McCain's letter, he said it was not
22 likely that 261 would be impacted?

23 A I didn't say that, that's what DHEC's engineer said.

24 Q That's what I read. It's not likely that 261 would
25 be impacted?

1 A That's right.

2 Q He didn't take it out of the realm of possibility,
3 did he?

4 A No, sir. I mean, we could have an earthquake or
5 nuclear bomb, I don't know.

6 Q Or you could have a substantial rain event?

7 A We've seen 1,000-year flood that I think was
8 historical and Biblical proportions and it did not crest
9 261 or come anywhere close to topping 261.

10 Q Back behind the small floodgate?

11 A Small floodgates?

12 Q Yes, sir.

13 A Uh-huh.

14 Q On the upstream side, where my photograph was put in
15 there, that was taken about three years ago. I'll tell
16 you that now.

17 A Okay.

18 Q There's a small dock there, right?

19 A Ms. Boykin put that dock in or started putting that
20 dock in right after Hugo, around 1989.

21 Q And all that's overgrown now?

22 A Sir?

23 Q All that is overgrown; is it not? The dock is
24 overgrown with weeds.

25 A She never finished it. I mean, the dock was in the

1 mud. We couldn't have built a dock if there was water
2 there. It was a walkway for her to get out to look at the
3 birds because she couldn't take a boat in there.

4 So she was building a dock out to where she could
5 walk out to the Rookery and look at the birds, but you
6 couldn't take a boat out there to start with. That's why
7 she built the dock -- or was starting to build the dock.

8 Q Where the Rookery island is, you know where I'm
9 talking about?

10 A Yeah.

11 Q Can you navigate around the back side of that island
12 when you have water level where it is normally?

13 A No, not in a pontoon boat, not in a John boat. You
14 might in a kayak or a canoe.

15 Q Isn't one of the real concerns about the Rookery is
16 you don't want a land bridge from the land out to where
17 the Rookery actually is to keep predators from going up
18 into the nest and eating the eggs?

19 A I think the alligators take care of the raccoons and
20 all that. I think the alligators is what eats the
21 raccoons and predators. I think it's a symbolic
22 relationship they have with the alligators.

23 Q But you wouldn't want --

24 A Alligators eat a few of them birds just at the end of
25 the day.

1 Q When they fall out of their nest?

2 A Yes, sir. They pay each other off. They eat the
3 raccoons.

4 Q But you don't want a land bridge going from the land
5 out to the Rookery trees, do you?

6 A It hasn't affected them so far.

7 Q Was the Rookery down this year from the last two or
8 three years?

9 A Was it down?

10 Q Yes. Numbers?

11 A You know, I think they come up and down every year.
12 I think hurricanes, things that happen off the African
13 coast and everything else affects it. But they come back
14 every year.

15 Q You've described a considerable amount of work it
16 takes to restore Boykin Mill Pond to where it was a long
17 time ago. That's a pretty extensive process; is it not?

18 A You're talking about the 1700s?

19 Q No, I'm talking about going back and spraying the
20 weeds?

21 A I think spraying the weeds this year, Mary Deas
22 bought the herbicides and I think she spent, I think 5 or
23 \$600 in herbicides.

24 Q And labor?

25 A I supplied the labor. Actually, my wife supplied the

1 labor.

2 Q So you're saying --

3 A And I think altogether, they might have had 12 or
4 \$1,300 in it. But it's a passion of love for them. It's
5 not about -- I don't think they charged anybody, the trust
6 or anybody to go out there and spray that pond. Nobody
7 ever has that I know.

8 Q Does it have to be sprayed annually?

9 A Yes, sir, it needs to be.

10 Q So you're saying it's going to only costs the trust
11 \$1,300 a year just to start spraying.

12 A Well, I'm saying that's what it cost this year. I
13 can't tell you what Round-Up is going to be next year or
14 what the price of Treflan is going to be.

15 Q And that was only to do strips through there this
16 past year, wasn't it?

17 A We tried do 10 acres or less, 20 acres at the most.

18 Q How many acres is that pond?

19 A Gosh knows, open water, probably less than 100 open
20 waters.

21 Q So a 100 times \$1,000. Finally resolve the weed
22 problem would be about \$100,000?

23 A Would be about 10,000.

24 Q Beg your pardon? I'm sorry, \$500?

25 A Yeah.

1 Q And then if you had to hire labor?

2 A Well, we got a lot of labor. But like I said, I
3 don't think it's costing the trust anything. Alice and
4 Mary Deas are doing that on their own.

5 Q I understand. But you're not concerned about any
6 more of those mud flaps breaking loose and going down and
7 compromising that --

8 A I'm concerned about anything that might compromise
9 and that's why we stay on top of it.

10 Q And there's a possibility that mud flaps may dislodge
11 and go back downstream and compromise the floodgates
12 again?

13 A No. Mud flaps are like Jell-O pudding. When mud
14 flaps hit that bridge, or them floodgates, they fly. They
15 go right through it just like Jell-O. When an island
16 breaks loose that's got trees and all, that's a different
17 story.

18 Q All right. And there's some islands that could break
19 loose and go down and compromise that floodgate and that
20 bridge again as it did in 2015?

21 A Sure.

22 Q That's a possibility?

23 A That's a possibility.

24 MR. TETTERTON: Thank you.

25 THE COURT: Anything further?

1 MR. BECKER: No, ma'am.

2 THE COURT: All right. Thank you, Mr. Belger. You
3 may come down.

4 THE WITNESS: Thank you.

5 THE COURT: Do we want the lights back up,
6 Mr. Becker?

7 You just leave that up there. I think that's going
8 to be used with other witnesses. Thank you, sir.

9 THE WITNESS: Yes, ma'am.

10 MR. BECKER: Your Honor, we have just one more
11 witness. Would you like to take a break?

12 THE COURT: Yes, that's a great idea. Let's take a
13 10-minute break.

14 (WHEREUPON, a short break was taken.)

15 THE COURT: All right. Mr. Becker.

16 MR. BECKER: Your Honor, Ms. Elderidge will call our
17 next witness.

18 THE COURT: All right. Very good.

19 MS. ELDERIDGE: Your Honor, we would like to call
20 Daisy Heimbach to the stand.

21 THE COURT: Very good. Come on around.

22 DAISY HEIMBACH, after being duly
23 sworn, testified as follows:

24 THE COURT: All right. You may proceed.

25 DIRECT EXAMINATION:

1 BY MS. ELDERIDGE:

2 Q Good morning, Ms. Heimbach.

3 A Good morning.

4 Q May you please state your name for the record?

5 A Originally, I'm Mary Deas Boykin Heimbach.

6 Q Thank you very much. Can you briefly describe your
7 educational and professional background?

8 A Sure. I graduated from the University of Virginia in
9 1994, Deans list. I had a degree in clinical science. I
10 shortly thereafter went to Washington, D.C. and got a job
11 with civil board trust, which is an organization dedicated
12 to preserving our nation's heritage by buying back some
13 more of the land.

14 I then went to the United States Senate and worked
15 for the Armed Services committee on the personnel
16 subcommittee. I decided after several years of many long
17 years there, I had an opportunity to go to the American
18 Force and Paper Association and I worked there in the
19 communications department as a researcher.

20 I then seg-wayed into the field of development
21 because I thought it was a very portable -- a portable
22 profession and I became director of the annual fund at
23 Georgetown University Law Center.

24 I then was promoted to director of stewardship for
25 Georgetown University. And at that time, I had my first

1 daughter and made the decision to put my career on pause
2 for a little while and raise my girl.

3 Q And Ms. Heimbach, who is your mother.

4 A Mary Deas Boykin Wortley.

5 Q And who is your maternal grandfather?

6 A Alice Shoolbred Boykin -- oh, my grandfather,
7 Whitaker Boykin, II.

8 Q While we're on it, who is your maternal grandmother,
9 as well?

10 A My material grandmother is Elizabeth Carrison. Alice
11 was actually my step-grandmother, but, in reality, she was
12 a true blood grandmother to me.

13 Q Thank you. Are you related to Alice Boykin Belger?

14 A Yes, she is my aunt.

15 Q Ms. Heimbach, did you spend time with your
16 grandfather when you were growing up?

17 A I did. We spent a lot of time with my grandfather.
18 We came back to Boykin as often as possible, so I was
19 lucky. I've always idolized my grandfather and that
20 carries on to this day.

21 Q And how did your grandfather view the family land
22 when you were growing up?

23 A To granddad, land in general was the best investment
24 there was. If he had two nickels to rub together, he used
25 it to buy land. He survived the depression and he thought

1 that was the safest investment there would be.

2 In terms of Boykin family land, Boykin was the center
3 of the universe. I cannot recall ever a time ever in my
4 childhood when my grandfather came to see us in any of our
5 homes. It was always us coming to Boykin because that was
6 coming home.

7 Q Did you spend time with Ms. Boykin when you were
8 growing up?

9 A Yes, on all of those trips. That was part of the
10 family, indeed.

11 Q And how did she view the family land?

12 A She and my grandfather were very in line. She was
13 just as proud of the legacy and family heritage as my
14 grandfather was. And she worked to build upon everything
15 that he had.

16 Q Now, did your grandfather try to revitalize the
17 downtown Boykin properties when you were growing up?

18 A Prior to your death, I think it was actually my
19 grandfather that had initiated the restoration of the
20 gristmill, and I don't think that had quite been
21 accomplished before he passed away, so my grandmother then
22 picked up the torch and continued with that.

23 Q And how did she continue on?

24 A Well, my grandmother was a force of nature and very
25 charismatic and intelligent woman. We heard yesterday,

1 and it's very true, but she decided that downtown Boykin
2 was going to become a tourist destination, and renovating
3 the gristmill was part of that.

4 She actually went on QVC selling grits, Boykin Mill
5 grits, and I think she was pretty surprised at the number
6 of orders that came in and it took a while to fulfill
7 them.

8 She had big ideas and she was good at implementing
9 them. There were a lot of people who doubted the
10 applicability of her ideas. Nobody believed a steakhouse
11 in downtown Boykin would be viable, but there it is today
12 after decades.

13 When she started the parade, nobody thought anyone
14 would come to a corner elbow of South Carolina to see a
15 quirky Christmas parade, but I think that is one of my
16 favorite parts of the legacy that she left us.

17 You feel when you're there that everyone around has a
18 connection to the dogs and to the place. I don't know why
19 I'm so emotional. I've never testified under oaths
20 before. I think it's a profound feeling.

21 Q Absolutely. And now, Ms. Heimbach, did your
22 grandmother also secure grants to restore the Swift Creek
23 Baptist Church?

24 A Yes, she did. That was part of her restoration of
25 downtown Boykin. She worked to restore matching grants

1 from the government to restore Swift Creek Baptist Church
2 and have it listed on the national register. That's the
3 church where I was married and where we listen to gospel
4 choirs every Christmas.

5 Q Do people still get married at that church?

6 A They did for a long time. Not only did she believe
7 in -- she also thought there could be a wedding cottage
8 industry. There was a lot of money to be made on the
9 wedding business, so she created Rosa Lee's cottage as a
10 multi-use building. Part of that was for people who
11 wanted to come and facilities and so they would have Rosa
12 Lee's cottage where the brides could get dressed and ready
13 for the wedding.

14 So yes, for a long time, it was very popular place to
15 get married. I understand, once we were encumbered by
16 this trust situation that there were reservations about
17 using many parts of downtown Boykin as we had before, and
18 I think there was -- I could be wrong, but I believe there
19 hasn't been a wedding and we haven't been able to use the
20 buildings for those same purposes.

21 Q Thank you.

22 A For liability, somehow liability concerns is my
23 understanding.

24 Q What were your grandfather's wishes with respect to
25 the disposition of his family land?

1 A My grandfather was a sixth generation Boykin from the
2 original settler in the mid-1700's. It was a legacy he
3 was very proud of and he mostly definitively wanted his
4 death not to be -- to be a continuation of the
5 responsibilities to carry that legacy on.

6 Q And Ms. Heimbach, do you want to honor his wishes
7 with respect to the family land?

8 A Most definitively.

9 Q Wonderful. Now, Ms. Heimbach, have you ever served
10 as a trustee?

11 A I have.

12 Q What trust was that?

13 A My father died in 1999 and I was appointed his
14 personal representative and the trustee of his trust.

15 Q Okay. Who were the beneficiaries of that trust?

16 A My father's second wife was the income beneficiary
17 and my brothers and I were the remainder beneficiaries.

18 Q What were your responsibilities in administering that
19 trust?

20 A The typical duties of any trustee. I first had to
21 settle some considerable debts that, unfortunately, he had
22 accrued, paying medical bills, paying back taxes. Once we
23 had the estate somewhat settled, I had to make income
24 distributions to my father's second wife, as well as
25 accountings of the status of the trust.

1 I had to help with quit-claim deed. We had a
2 complicated situation with two different properties and
3 she had a life estate, but it was not in the residence she
4 was actually currently occupying. But really, you just
5 had to balance the benefits of all beneficiaries and try
6 to -- try your best to follow the terms outlined in the
7 Will and in the trust.

8 Q Okay. So is it fair to say that as a beneficiary and
9 as a trustee, you've seen all sides of the trust
10 administration process?

11 A I have. And I can appreciate the difficulty because
12 my father's second wife was not an easy person to get
13 along with and was rather limited, so I understand that
14 there can be a lot of push and pull and different opinions
15 as to how things should be managed.

16 Q Ms. Heimbach, turning to your involvement with this
17 trust. Have you read your grandfather's will?

18 A Yes, I have.

19 Q Have you been copied on e-mails or other
20 correspondence regarding trust?

21 A Yes, I have.

22 Q Have you discussed the trust with any of the other
23 remainder beneficiaries?

24 A I've discussed it with Allie and with both of my
25 brothers, yes.

1 Q Okay.

2 A With this litigation going on, it's hard to have any
3 conversation with any of your family members that does not
4 somehow include what the legacy has been that they have.

5 Q And based on your discussions with the remainder
6 beneficiaries, what are your collective desires with
7 respect to administration of this trust?

8 A We all think my grandfather's wishes should be
9 honored.

10 Q Have the trustees generally made you aware of when
11 they decide to sell property or take any other major
12 actions?

13 A I don't know that I would say all of the trustees. I
14 speak and communicate mostly with my mother, and yes, she
15 has definitely consulted with me on those and I've also
16 had discussions with Alice.

17 Q Thank you. Have you discussed this litigation with
18 any of the other remainder beneficiaries?

19 A All of them.

20 Q Have you discussed this litigation with your mother
21 or aunt?

22 A Frequently.

23 Q Have you discussed this litigation with your
24 attorneys?

25 A Yes.

1 Q Have you taken affirmative steps to inform this Court
2 of your wishes and desires regarding the administration of
3 the trust?

4 A I believe so. I filed an affidavit prior to phase
5 one of the trial.

6 Q And have you reviewed any of the pleadings and filing
7 in this case?

8 A Yes.

9 Q Just off the top of your head, do you recall which
10 ones or just a few of them?

11 A Well, one of the things that was most egregious to me
12 is that they were seeking punitive damages for my mother
13 and my aunt for mismanagement of the trust. I felt that
14 was especially vindictive that they are accusing them of
15 mismanagement, and I mean, that's -- that's why we're
16 here. That's the one that sticks out the most.

17 Q Okay. Did you attend phase one of the trial of this
18 case?

19 A All of it, along with my daughter.

20 Q So both days?

21 A Ninth generation. Yes.

22 Q Thank you. Have you reviewed the two proposed
23 investment plans?

24 A Yes, I have. I had the benefit of both components of
25 those plans, presented them to the court.

1 Q Okay. What is your understanding of Mr. Rigdon
2 Boykin's proposed investment plan?

3 A It's very simple. Rigdon believes that all but
4 15 percent of the trust assets in real estate should be
5 sold as quickly as possible and 85 percent should be
6 retained in a stock portfolio.

7 Q And what is your understanding of the Wortley Belger
8 investment plan?

9 A I think they have a much more reasonable and balanced
10 approach. I think my mother and Alice both recognize that
11 the trust is land heavy and diversity would benefit all
12 the beneficiaries, but I think they have a responsible
13 plan in place to diversify and sell real assets that are
14 not identified in the trust or will to be kept. As it's
15 reasonable to do so not to flood the market with a lot of
16 real estate and not to sell the things that my grandfather
17 asked us specifically not to sell.

18 Q Which of these two plans do you prefer?

19 A My mother and Alice's.

20 Q Why is that?

21 A I feel like it respects the wishes and balances the
22 interest of all beneficiaries. I feel my mother and Alice
23 do intend to increase income. They understand that, you
24 know, although income beneficiaries under the Will are
25 actually only entitled to, you know, net income. They

1 understand that's a little low for what some of the needs
2 or desires of income beneficiaries are and they agreed to
3 give them more than that.

4 I think they are very reasonable in how they want
5 to -- they want to satisfy everyone's needs, but they most
6 importantly want to stay true to what my grandfather
7 wanted to do.

8 Q Now, based on your discussions with the other
9 remainder beneficiaries, is this the plan they prefer, as
10 well?

11 A Yes.

12 Q And what is the basis for your belief?

13 A I've discussed it with them. I think my brothers, in
14 particular, feel very strongly that my grandfather's Will
15 was very clear in what he wanted to be done. And I think
16 proposing the sale of 85 percent of our assets is
17 absolutely contrary to what my grandfather wanted. And
18 starting with the sale of some of the most treasured
19 family tracts is egregious.

20 Q And were you present during Karen Thomas' testimony
21 yesterday?

22 A I was.

23 Q For the duration of it?

24 A All of it.

25 Q Okay. Did you hear her testify that Mr. Boykin told

1 her that two of your brothers were on his side regarding
2 the administration of the trust?

3 A I recall she said that one or both, but yes, she did
4 indicate that he had told her that one of my brothers was
5 on his sides.

6 Q Based on your conversations with your brothers, was
7 that an accurate representation?

8 A No, it wasn't. I've talked with my brothers since
9 the beginning of all of this, and they have always
10 believed that my grandfather's will should be followed,
11 the terms of his Will. And Rigdon's place has never
12 honored those terms.

13 I think both of my brothers also submitted affidavits
14 prior to phase one and it's very clear in both of those
15 affidavits that their support was completely for my mother
16 and Alice because they believed that they were honoring
17 the terms of the trust and Will.

18 Q Okay. Ms. Heimbach, based on your experience serving
19 as a trustee of your father's estate and your involvement
20 as a beneficiary of this trust, what do you understand a
21 trustee's duties to be?

22 A I think primarily a trustee has the duty to exercise
23 in good faith and to execute the terms of the Will and
24 trust as written in the Will and trust.

25 I think they have a duty to be impartial and treat

1 all beneficiaries equally and not favor some over the
2 others. And I think that trustees definitely have an
3 obligation not to incur excessive expenses in the
4 administration of the trust.

5 Q And do you believe your mother and aunt have
6 administered the trust in good faith?

7 A Yes, I do. I absolutely do. I think they have --
8 fought very hard to respect their father's wishes and to
9 make sure that they are doing what he asked them to do
10 both personally and through instrumenting his estate
11 planning.

12 Q Okay. And based on your observations of them, what
13 is the basis of your belief?

14 A Their plan and everything they've always -- I mean,
15 all of it. I mean, based on my belief in terms of how
16 they're executing it, I think they have made an effort in
17 good faith along those three lines that I believe a
18 trustee should do.

19 I think they have tried to balance the interest of
20 all the beneficiaries. I think they have listened to Whit
21 and May in their desire for income, and I think they have
22 actually offered to forego some of their own income in
23 order to accommodate their wishes even know, in my
24 opinion, that's not fair.

25 They shouldn't be asked to do that. I think they

1 have not incurred excessive expense. And so yes, I think
2 they are being true to the obligations of the trust and
3 their executing responsibilities.

4 Q And based on your observation of Mr. Boykin, do you
5 believe he has administered the trust in good faith?

6 A I don't. I recall that it was at my grandmother's
7 funeral, my mother and I were talking at the reception at
8 Millway, when my mother first told me that Rigdon was
9 insisting that all of the property would have to be sold.
10 And we were hours from putting her in the grave, and I
11 think that from that point on and probably before that
12 point, Rigdon never considered any option that did not
13 have that foundation at its core.

14 I think at times, it's been very difficult to watch
15 how -- the efforts -- I think that the efforts he has
16 undergone in putting forth his agenda and his plan have,
17 at times, been detrimental to the beneficiaries, as well
18 as frustrating for his trustees.

19 For example, we heard about a lot of them yesterday.
20 I don't understand how in good faith a trustee could
21 withhold money that was intended to be paid for taxes just
22 to make things more difficult. I don't understand how
23 they could elect not to exercise or look into tax saving
24 opportunities that are identified by tax specialists.

25 I do not think -- there have been times -- at one

1 point, he ran to the bank and froze the bank account so
2 that our check to the IRS would bounce. I just don't
3 understand how any of those actions are in the benefit of
4 the beneficiaries. I think they were all efforts to help
5 him pursue his course of action, which my brothers and I
6 have talked about this a lot. This is coming from a place
7 that he thinks he's right and we don't think he's right.
8 And it's been hard to watch this all play out.

9 Q And Ms. Heimbach, are you aware that Mr. Boykin --

10 A Wait, I would also like to add, another thing that
11 was very horrible to watch, and one thing I did not agree
12 with and that I think has definitely contributed to the
13 difficult situations here.

14 At times, Rigdon has been dishonest with my mother
15 and co-trustees. For example, with the sale of the Mill
16 Pond, he told my mother that there was a rich widow from
17 Bedford who was associated with a charity there and that
18 she was --

19 MR. DUFFY: Your Honor, I'm going to object. We've
20 been listening to a lot of hearsay.

21 THE COURT: This isn't hearsay if it's a quote of
22 your client, and so that's the first thing. But the
23 second thing is she has not been -- she has been asked on
24 what she bases her analysis that Mr. Rigdon Boykin has not
25 acted in good faith as a trustee.

1 She is offering these pieces of information as I
2 understand it not for the truth of the matter asserted,
3 but as a foundation to explain her evaluation of his
4 performance. So on that basis, I will overrule the
5 objection.

6 You may continue.

7 THE WITNESS: Thank you. There was no rich widow who
8 was associated with a charity in Bedford who had helped
9 another family out of a similar situation. It turned out
10 the party Rigdon was talking to about the sale was a gold
11 mine. And mother, her cottage, her little piece of Boykin
12 part of that deal.

13 I mean, this is literally someone who would share a
14 home with her as well as dictate her access to her own
15 property. So withholding the through identity of the
16 buyer in that situation in order to try and force my
17 mother to sell, I found that as pretty egregious and
18 hurtful and, again, not in good faith.

19 BY MS. ELDERIDGE:

20 Q And Ms. Heimbach, do you believe that Mr. Boykin,
21 based on your observations of him, has ever shown any
22 interest in administering the trust in accordance with
23 your grandfather's wishes?

24 A No. I mean, I know that as of my grandmother's
25 funeral, his plan was to sell everything, except, perhaps,

1 for 15 percent. I'm not sure what that 15 percent were
2 because first, he wanted to sell her most treasured
3 tracts.

4 Q Ms. Heimbach, do you believe that your mother and
5 aunt have acted impartially towards all the beneficiaries
6 as trustees?

7 A Yes, I think the only beneficiaries that they have
8 potentially -- whose interest they have potentially put
9 behind the others are their own.

10 Q And do you believe that Mr. Boykin has acted
11 impartially toward all the beneficiaries as a trustee?

12 A No, I don't. He clearly has a very close
13 relationship with Whit and May and he has advocated for
14 them the most strongest and, I would argue, exclusively.
15 He has never once had a conversation with me or contacted
16 me to ascertain my feelings about the administration of
17 the trust or viability or anything else. He's never once
18 has been honest with me about this.

19 Q Are you aware that he has ever reached out to your
20 cousin, Alice Belger?

21 A No, he has not. According to Alice, he has not.

22 Q Are you aware of any instances where he has reached
23 out to your brothers?

24 A In July of 2017, he e-mailed both of my brothers in a
25 joint email and it wasn't to ask how they felt, it was --

1 he was presenting -- he was presenting what he believed --
2 he said this is why I'm doing and it this is why it's the
3 best way forward. He never was seeking their input or
4 their thoughts. He was simply saying my way is the best
5 way and here's why.

6 Q Ms. Heimbach, do you believe Mr. Boykin favors any of
7 the beneficiaries over the others?

8 A Whit and May. I understand that he -- I don't mind
9 him advocating for them. I think it's good to have him
10 advocate for them, but I think that there needs to be a
11 balance among all the beneficiaries.

12 I think the suggestion that my mother and Alice, if
13 they really want to protect it, they can each spend 1.5
14 million dollars they don't have to buy it. I mean, that's
15 not treating their interest as beneficiaries equally with
16 the other income beneficiaries at all. So no, I don't
17 think that there's been any partiality at all.

18 Q Do you believe that the cost that your mother and
19 aunt have incurred in their role as trustees have been
20 reasonable?

21 A Yes.

22 Q Okay.

23 A I'm not aware of anything that they have spent that's
24 unreasonable, and I know Alice, especially, at times, has
25 objected to certain expenditures like surveys, perhaps,

1 she thought were excessive.

2 Q And based on your observations of Mr. Boykin and your
3 experience in this litigation otherwise, do you believe
4 that the cost Mr. Boykin has incurred are reasonable?

5 A No, I don't. I think we're all sitting here today
6 because of him. I think he brought this litigation. He
7 brought it about and as far as I understand, the legal
8 fees have accrued to almost a million dollars. That is
9 certainly not reasonable.

10 Karen Thomas, yesterday, started to -- she addressed
11 part of this in her testimony and I know the rest of it's
12 in the letter she wrote the Court, but when he chose not
13 to comply with the tax savings, first of all, in
14 the 2012 -- in the 2012 tax split, that cost -- she
15 testified yesterday it was a \$312,000 cost to both the
16 gift tax and then, also, to my generation, to the
17 generation skipping tax.

18 What she didn't also then have time to address
19 yesterday in her testimony, but what she did address in
20 the letter is that if the 2032(a) election had been
21 applied for and achieved, then that would have been an
22 additional \$400,000 in tax savings to the current gift
23 taxes, and then an additional \$400,000 in tax savings to
24 my generation through the generation skipping tax.

25 So if you had that all together, that's 1.4 --

1 slightly over 1.4 million dollars of extra taxes that we
2 are potentially paying because Rigdon has failed to comply
3 with the advice of certified tax specialists and for the
4 benefit of the beneficiaries of this trust. That, in
5 addition to a million dollars in legal fees, is egregious
6 and most definitely not reasonable.

7 Q And Ms. Heimbach, did Mr. Boykin consult with you or
8 any of the other remainder beneficiaries before bringing
9 this action?

10 A No, he didn't. And I would like to say, my brothers
11 and I have all had a positive relationship with Rigdon in
12 the past. My brothers especially have been very close to
13 him, and that is why it's hard for any of us to come up
14 here and address this situation.

15 I think this whole -- this lawsuit has spread so much
16 ill will and bad feelings, as well as expenditure of money
17 and time, and it is hard to come up and testify and write
18 letters to a judge against someone who you love and who in
19 the past you have trusted, but we can't sit by and let
20 this happen simply because we love Rigdon. It's nothing
21 about him, but we disagree with how he is trying to
22 administer this trust by disregarding my grandfather's
23 wishes, at least.

24 Q Ms. Heimbach, based on your relationship with your
25 grandfather and your understanding of his wishes and your

1 reading of his will, what do you believe are the most
2 important qualities for a trustee of this trust?

3 A I think my grandfather was very clear in his Will
4 about who he wanted as trustees and I think there are good
5 reasons for that. In his own administration of his
6 companies and his finances throughout his life, he relied
7 on experts. He had accountants and timber managers and
8 tax attorneys and lawyers, and those -- he knew you could
9 hire all of those and have the benefit of those -- the
10 benefit of that advice. That was not what he was looking
11 for in a trustee.

12 He stipulated in his will he wanted family members to
13 serve as trustees, and that's because he assumed that they
14 would bring to the table the same values he had. That was
15 a love of the land, a respect for the heritage and a
16 desire to keep the legacy going.

17 Q Based on your relationship with your grandfather, do
18 you believe that -- and your understanding of his will, do
19 you believe that your mother and aunt are qualified to
20 serve as trustees?

21 A I absolutely do. I think he looks down and would be
22 proud of how hard they have fought to uphold his wishes.
23 I think my mother brings to the table -- she has always
24 been prized in the family as the peacemaker.

25 She is level-headed and she is simple minded, and she

1 is innately fair, and I think Alice is an incredible
2 resource as our resident historian. She knows everything
3 that's happened in the family regarding every parcel of
4 land since my grandfather died and before and components
5 of business.

6 And not only do they bring those individual aspects
7 to the table, but my grandmother both kind of apprenticed
8 both of them. She, in her lifetime, involved them in
9 workings of the family business and decisions of what was
10 happening and she was preparing them to pass the
11 administration onto them. And they are following in her
12 footsteps administering this trust the way my grandfather
13 would and the way my grandmother did.

14 Q Ms. Heimbach, do you believe that the trustees of
15 this trust are at an impasse?

16 A Yes, I do.

17 Q Why do you believe this?

18 A I think Rigdon thinks he's right in throwing out the
19 Will, and I think he -- I think my mother and Alice
20 believe very strongly that the Will should be followed.
21 And I think especially Rigdon refuses to say collaborate
22 or compromise or consider any option that does not put
23 forth his own agenda.

24 Q And based on your conversations with the remainder
25 beneficiaries, what would the remainder beneficiaries like

1 for this Court to do to resolve this impasse?

2 A. We are ready for all of this to be over and we're
3 ready for family healing to begin, and I think with Rigdon
4 as trustee, it would be the same old.

5 I think threats of lawsuits and lack of compromise,
6 lack of cooperation and lack of respect, and I don't
7 think -- I do not think there's a way to work with Rigdon
8 as a trustee.

9 MS. ELDERIDGE: Ms. Heimbach, those are all the
10 questions I have for you, unless the Court has any other
11 questions.

12 THE COURT: The witness has passed.

13 Mr. Duffy.

14 MR. DUFFY: Thank you, Your Honor.

15 CROSS-EXAMINATION:

16 BY MR. DUFFY:

17 Q Good morning, Ms. Heimbach.

18 A Good morning.

19 Q Ms. Heimbach, are you familiar with the specific
20 tracts that are named in your grandfather's Will?

21 A Many of them, not all of them. I mean, I know the
22 swamp tract, the Laney tract, the Broadview tract, the
23 yellow house tract, but it's long and complicated and I am
24 not a trustee. While I have been apprized of many of
25 these and my mother has driven me around explaining

1 different lines in history of property, no, not all of
2 them.

3 Q How old were you when your grandfather passed?

4 A He passed in 1999 and I was born in '71, I was -- I
5 mean, '89, pardon me. I was 21.

6 Q You said '77 to 89?

7 A I was born in '71.

8 Q Okay.

9 A Oh, wait and he -- yeah, I was in college. You asked
10 me how old I am today, I have to do the math. I feel
11 young at heart.

12 Q You were a teenager?

13 A I was in college.

14 Q And you said you're generally familiar with the terms
15 of the Will and the tracts identified in there, but not
16 intimately familiar with them; is that fair to say?

17 A No, I have read the order that he wanted them sold,
18 and I know that Millway and the Mill Pond were the
19 absolute last things that he wanted sold, and I know the
20 yellow house was up there because that's the house my
21 mother was born in. I know a few extra tracts were added
22 because they were abutting properties. But again, if you
23 show me a map or show me a list --

24 Q No, it sounds like you have -- so no problems -- and
25 I think you said yellow house, but that's part -- it's

1 called Broadview Plantation in the will; is that right?

2 A Sure. Yes.

3 Q Are you aware of that part of Broadview Plantation
4 has already been sold by these trustees?

5 A If that's the part to Sue. Is that the part to Sue?

6 Q I believe so.

7 A Yes.

8 Q And that's part of Broadview and that's part of
9 yellow house tract, right?

10 A Yes, and I think is a perfect example of how my
11 mother and Alice have been willing to compromise.

12 Q And I want to ask you about that. Your testimony
13 earlier, I think, was something to the effect that Rigdon
14 has never even entertained any option that didn't start
15 with a foundation of selling all of the land. Is that
16 your testimony?

17 A Yes -- well, no, he believes in retaining 15 percent
18 in real estate.

19 Q So he would never entertain any option that didn't
20 start with the premise of selling 85 percent of the land?

21 A To my understanding, he has not so far.

22 Q So it's your testimony that you're not aware of any
23 efforts by Mr. Boykin that would have involved compromises
24 or solutions that would have not included that you sell
25 85 percent of the land?

1 A Correct. And I think that's -- that's exactly what
2 all of your testimony has been to date. This is Rigdon's
3 plan. Rigdon's plan has never changed since day one.

4 Q Well, let me ask you this. Are you familiar with the
5 facts that Mr. Boykin has on numerous occasions presented
6 options and documentation of options of splitting the
7 trust to try to resolve the impasse?

8 A Yes, but we don't find that acceptable.

9 Q But that is a solution that would not have involved
10 the foundation of selling 85 percent of the land, right?

11 A It's not true to my grandfather's wishes and I think
12 in terms of watching how he has administered or tried to
13 administer the trust as a whole, if he were given full
14 authority over half of the trust, in our opinion, it would
15 be mismanaged and he would be selling large amounts of it.
16 And what he would ask for would be, I'm sure, many of the
17 treasured tracts.

18 Q Well, Ms. Heimbach, my question was this is an
19 example of an option that did not involve the foundation
20 of selling 85 percent of the land, isn't that true?

21 A Okay, yes, that's true. Splitting the -- completely
22 splitting the trust.

23 Q And you have no idea what tracts he proposed to be in
24 one trust versus another trust under that proposal, do
25 you?

1 A No, I know that he values the Sumter Mountain because
2 of timber and, also, although they want to sell it, and I
3 know he wants to get top dollars for the Mill Pond, just
4 because somebody wants to buy it doesn't mean you have to
5 sell it.

6 Q But you don't know whether he suggested putting
7 Sumter Mountain in a tract for Whit and May or Sumter
8 Mountain in a tract for Mary Deas and Alice or the same
9 with the Mill Pond or any other property? You don't know?

10 A I've seen iterations, but I don't know that they -- I
11 think there were some proposals at one, this would be your
12 trust and this would be ours.

13 Q So you just testified --

14 A But it was deemed by our lawyers that that would
15 never be -- it would not protect the remainder
16 beneficiaries especially and it would not accomplish what
17 my grandfather had stipulated in his will.

18 Q So you have seen iterations of that proposal? You do
19 know that he had proposed splitting the trust?

20 A Yes. But what would he do? Would he -- so I'm
21 asking -- but I would surmise that as a whole -- if the
22 whole trust was to be kept intact and he wanted to sell it
23 all and then split it in half, he would no longer change
24 his position and want to hold onto the tracts that my
25 grandfather asked, that he would be selling them, just as

1 he would if it was part of the main trust.

2 Q Now, let's go back to the list of the properties in
3 the will. You mentioned the swamp tract, right?

4 A Yes.

5 Q That's the first one on the list?

6 A I don't know the order.

7 Q And your testimony was that you certainly shouldn't
8 start with the ones that are named in the will as far as
9 selling them, right?

10 A I think we all know the ones that are most treasured.
11 And I think that, you know, on the table before dealing
12 with some of the outlying properties, I mean, there are a
13 lot on the market right now, but he has always wanted to
14 sell the Mill Pond. And from my conversations with my
15 mother at the funeral, he said that the home farm was an
16 underproductive assets. It did not generate enough money
17 to be kept. And it's my understanding from everything
18 I've seen, I know that's the way -- I feel that's the way
19 he feels about it.

20 Q And I understand you want to talk about everything
21 you think Rigdon has done wrong. I'm just trying to get
22 an answer to my question. The swamp tract is the first
23 one listed in the will; is that right?

24 A I don't know the order, but I know it's listed --
25 definitely listed in the will.

1 Q So we shouldn't start with selling that one because
2 it's one of the quote, unquote, treasured tracts, right?

3 A You shouldn't start with selling that one?

4 Q Or any of the ones that are listed in will. That's
5 your testimony, isn't it?

6 A Yes.

7 Q Were you aware that at certain points in time in 2016
8 and '17, your mother and your aunt had agreed to list and
9 sell the swamp tract?

10 A Yes, but that was to family. That was to the Roses.
11 That is -- granddaddy's sister was Pete Rose, and so that
12 would be keeping it in the family.

13 Q Well --

14 A I think when my great grandparents died and my
15 grandfather was given Millway, they gave Aunt Pete the
16 swamp tract, and so for the Roses to purchase the swamp
17 tract, it would be keeping it in the family.

18 Q Ms. Heimbach, am I correct, that there's not a
19 provision in the will that distinguishes between selling
20 the land to family and selling it to other parties?

21 A My grandfather highly valued family.

22 Q Is that provision in the will of your grandfather?

23 A Not that I recall.

24 Q Thank you. You talked about an email that Rigdon
25 sent to your brothers in July of 2017?

1 A I think it was July 24th. And I'm sure you have
2 copies because you subpoenaed all my mother's e-mails and
3 we sent it to her, too.

4 Q Well, your mother's not a party -- I mean, she's a
5 party in the case, so we didn't send a subpoena to her.

6 A You have all of her e-mails.

7 Q In that email, didn't Rigdon actually encourage your
8 brothers to listen to the audiotapes of the trustee
9 meetings and told them, you know, you might be surprised.
10 It's not as you might have been told. They've actually
11 been civil and we've gotten some work done?

12 A This is after the fact. Rigdon had already decided
13 what his plan was. Again, in the email -- I say it again,
14 as prior to making any decisions or the beginning of the
15 administration of this trust, he was not factoring in our
16 interest or our intent. And in that email, he did
17 attach -- by then, all of this legal action had commenced.
18 And so, he attached some affidavits and some other
19 documents that I believe were part of this litigation, and
20 he did say review all this. You know, he believes
21 strongly in what he's doing, and I believe that he believe
22 strongly in what he's doing.

23 He -- never before taking a course of action, did he
24 seek our input. It wasn't until he was firmly down that
25 path and then he said this is the path I am going down and

1 this is why it's the best path.

2 Q And you've never reached out to Rigdon either, have
3 you?

4 A No. It wasn't my duty. I'm not a trustee.

5 Q Ms. Heimbach, you're aware of the conditions of the
6 buildings in downtown Boykin?

7 A Yes, I am.

8 Q How would you describe them?

9 A I think they could use a lot of work. I think --
10 coming down my whole life, I think things in Boykin get
11 done a certain way, and sometimes they're not done. You
12 know, there can be a bit of deferred maintenance. My
13 grandfather and my grandmother both -- we've already
14 addressed it, didn't like to spend money. And they had to
15 really spend it before they did, and I think some of the
16 buildings in downtown Boykin have certainly -- that's how
17 they've been managed.

18 And I think at this point, there is some deferred
19 maintenance and it needs to be taken care of. My
20 understanding, this litigation and the pending tax return
21 has also put a hold on some improvements. Nobody wanted
22 the assessments to go up for tax purposes. So in terms of
23 how they are right now, yes, especially right now, they
24 are definitely to a point that they're a lot of buildings
25 that need some work.

1 Q And we've talked -- you have and some other witnesses
2 have about your grandmother -- or your step-grandmother's
3 desire to turn Boykin into sort of a handler or a
4 destination for folks to come visit?

5 A Wanted to put it on the map, tourist destination.

6 Q Are the gristmill and the store and the grill, are
7 they currently operating and prosperous as businesses to
8 your knowledge?

9 A He gristmill, no. I don't know why that's not
10 operating. Again, my understanding is some of these
11 things stopped operating, if they had, because of the
12 litigation and because of a lot of the disagreements that
13 were happening as a result of the administration of the
14 trust.

15 The restaurants has been in operation since it
16 started. The broom factory has been there in operation
17 since my grandmother first met Sue and convinced her to
18 come down.

19 I've given many people Boykin brooms for Christmas
20 presents. The grill, I believe is open for weekends. We
21 typically go there for breakfast or maybe it's weekday
22 meals, and then occasionally for dinners. I know it's not
23 all the time.

24 Q Not a very profitable enterprise, right?

25 A It's probably not very profitable, but --

1 Q And those --

2 A -- it creates more income than the empty buildings
3 that they initially were.

4 Q Right, and those buildings were all owned by the
5 trust and you agree there's obligations of the trust to
6 maintain them and keep them open and run them and all
7 that?

8 A I do.

9 Q Ms. Heimbach, you accused Rigdon at one point of
10 intentionally freezing a bank account to try to interfere
11 with IRS taxes. You have no personal knowledge
12 whatsoever --

13 A I talked to my mother the day it happened --

14 Q -- of those circumstances, do you?

15 A I talked to my mother the --

16 THE COURT: All right. Let's both settle down for a
17 minute. You ask a question, let the question be
18 completed, and then you answer.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: All right. And the question is about the
21 freezing of the bank accounts. This is something that was
22 referred to in Ms. Karen Thomas' letter, which was
23 admitted into evidence, and in her testimony yesterday.
24 And he's asking you about the freezing of the accounts.

25 So ask the question again.

1 BY MR. DUFFY:

2 Q You have no personal knowledge whatsoever of that
3 event; is that correct?

4 A The personal knowledge I have is how upset my mother
5 was the day it happened when I talked to her after she had
6 jumped through all sorts of loops to have the bank account
7 reopened so the check wouldn't bounce.

8 Q Okay. Ms. Heimbach, do I understand your testimony
9 correctly that you believe Mr. Boykin is seeking punitive
10 damages against your mother and your aunt?

11 A I believe that might have been Whit and May. It was
12 part of the original pleadings. I noticed they were
13 dropped as part of these, but they were part of the
14 original pleadings.

15 Q So those are not currently part of this case; is that
16 correct?

17 A Not currently, but I read them as they were initially
18 filed.

19 MR. DUFFY: No more questions. Thank you, Your
20 Honor.

21 THE COURT: Any reply?

22 MS. ELDERIDGE: No, Your Honor.

23 THE COURT: Very good.

24 Thank you very much. You may step down.

25 THE WITNESS: Thank you.

1 THE COURT: Mr. Becker.

2 MR. BECKER: Your Honor, at this time, Respondents
3 Wortley and Belger move to admit into evidence Wortley
4 Trial Exhibits 1 through 68.

5 THE COURT: Very good. That's the notebook we've
6 been dealing with.

7 Mr. Duffy?

8 MR. DUFFY: No objection, Your Honor, other than 56,
9 which was my objection to Ms. Thomas' letter.

10 THE COURT: And we went over that and ruled upon and
11 it and your objections are reserved and preserved as they
12 were stated and ruled upon.

13 Mr. Tetterton.

14 MR. TETTERTON: No objection.

15 THE COURT: Very good. All right. Admitted.

16 (WHEREUPON, Respondent Wortley Exhibits Nos. 1
17 through 68 were admitted into evidence.)

18 MR. BECKER: Your Honor, we, also, in lieu of playing
19 Mr. Boykin's video deposition excerpts, the parties have
20 agreed that we would submit to you the printed transcript.
21 The designations by Respondent Wortley and Belger are
22 yellow. The excerpts designed by Mr. Duffy and
23 Mr. Tetterton are in green.

24 THE COURT: Very good. Or you can submit the whole
25 thing as far as I'm concerned. We don't have a jury in

1 here. I'll read every shred of paper submitted, as you
2 know I do.

3 MR. BECKER: Well, we'll be glad to do that, too,
4 Your Honor. Here are the excerpts. I've got three
5 copies. I'll leave one with the court reporter.

6 THE COURT: All right.

7 MR. BECKER: And we will supplement with the full
8 deposition transcription.

9 THE COURT: Any objection, Mr. Duffy, Mr. Tetterton?

10 MR. DUFFY: None.

11 THE COURT: Very good. Well, I think that's helpful.
12 We will have this, which is what the parties have kind of
13 assembled as the things they think are most important for
14 me to look at and I'll have the whole deposition in case I
15 need to refer to anything else for clarity. So that's a
16 good solution.

17 MR. BECKER: At this time, Your Honor, Respondents
18 Wortley and Belger and the intervenors rest.

19 THE COURT: Very good. All right. The parties have
20 rested.

21 Mr. Duffy.

22 MR. DUFFY: Your Honor, our first witness in rebuttal
23 would be Mr. Rigdon Boykin. We do have some exhibits we'd
24 like to display through that projector.

25 THE COURT: Certainly. Do you need a couple of

1 minutes to get set to do this? Here we are at 11:40. I'm
2 glad to take a slight recess for you to get set. I'm glad
3 to go to lunch early and come back. Thank you very much
4 to all of you, we're on track.

5 What I would anticipate, you have Mr. Boykin and
6 that's it for your live rebuttal witnesses. We have the
7 issue of Mr. Harrison, of course.

8 MR. DUFFY: That's it.

9 THE COURT: All right. Mr. Tetterton, what do you
10 have by way of rebuttal?

11 MR. TETTERTON: Other than just admitting the drone
12 video, Your Honor.

13 THE COURT: Drone video and any other -- obviously,
14 you have some documents and materials?

15 MR. TETTERTON: No live witnesses. I would have no
16 live rebuttal witnesses.

17 THE COURT: Got you. And then intervenors?

18 MR. REIBOLD: I just want it to be clear that as long
19 as we're preserved on our motions, post-trial motions,
20 before they begin their reply, I'm fine going --

21 THE COURT: What I plan to do is there. Let the
22 cases, both cases be completely submitted and then hear
23 anything by way of post-trial or motions at the end before
24 the case is reviewed by me.

25 It's kind of an oddball thing for post-trial motions

1 to come in when it's a nonjury matter, but yes, for
2 protection of the record, those may be recited into the
3 record, and then what I would like is to have closings by
4 all of you.

5 I think we've got the time to do it. It would
6 preclude what we discuss later on about how further
7 submissions are made in terms of argument, proposed orders
8 and the like, but I think it would be well to have
9 somewhat of a summary. It doesn't need to be a lengthy
10 thing, it doesn't need to be highly organized, but it will
11 be an opportunity for each of the contested parties to
12 focus in on what you're asking the Court to do, so I guess
13 that's what I'm asking you to do.

14 Mr. Becker, does that suit?

15 MR. BECKER: That does, Your Honor.

16 THE COURT: All right. It's up to you, Mr. Duffy.
17 You have Mr. Boykin. Do you wish to take a little recess
18 and get things set or do you want to go early and then
19 just do the whole thing when we get back?

20 MR. DUFFY: Your Honor, my preference would probably
21 be to do an early lunch and that way, we can get set up.

22 THE COURT: That's suitable.

23 All right. Let's regroup at 1:15. I think that
24 ought to give you plenty of time to have lunch.

25 MR. REIBOLD: Your Honor, very briefly with respect

1 to post-trial motions.

2 THE COURT: Yes, sir.

3 MR. REIBOLD: If you would rather us submit, send
4 everything in writing.

5 THE COURT: Exactly. And that may be a solution
6 there. I don't require -- particularly if it's nonjury,
7 they can be regarded as submitted as of the time, of
8 course.

9 So that's fine if that's the way you want to handle
10 it, but again, what would then be in the balance would be
11 some shorts closings from each of the attorneys.

12 MR. BECKER: On that topic, Your Honor.

13 THE COURT: Yes.

14 MR. BECKER: I'm assuming you don't want us to spend
15 a lot of time rehashing the evidence you've heard,
16 although correct me if I'm wrong, would you?

17 THE COURT: I don't mind you, Mr. Becker, making some
18 reference to the evidence that's been heard, particularly
19 those things that you think are particularly significant
20 to the relief that is sought by your clients, so I'm not
21 going to put a horse collar around you.

22 I just want something that gives me a nice global
23 picture and gives the record a global picture of how you
24 view the case and what you want the Court to do.

25 MR. BECKER: Very good.

1 THE COURT: Is that enough to give you kind of a
2 favor of what can be done?

3 MR. BECKER: Yes.

4 THE COURT: Very good. All right. Then I'll see
5 everyone at 1:15.

6 MR. DUFFY: Yes. Thank you.

7 THE COURT: All right. Very good.

8 (WHEREUPON, a lunch break was taken.)

9 (WHEREUPON, Court's Exhibit No. 1 was marked for
10 identification only.)

11 (WHEREUPON, a lunch break was taken.)

12 THE COURT: All right. Mr. Duffy.

13 (WHEREUPON, Petitioner's Exhibit Nos. 182 through 211
14 were marked for identification only.)

15 MR. DUFFY: Your Honor, if you would give us just a
16 moment. We're just trying to make sure we have all the
17 exhibits.

18 THE COURT: Certainly.

19 MR. DUFFY: We want to make sure everybody has what
20 we need before we start and streamline it.

21 THE COURT: Certainly.

22 MR. REIBOLD: And we need to locate Mr. Becker.

23 THE COURT: We won't start without him. No worries.

24 MR. DUFFY: Your Honor, I do apologize.

25 THE COURT: It's okay.

1 MR. DUFFY: We're shooting for Friday at 1:15.

2 THE COURT: It's okay. It's okay. No worries. Take
3 your time, Mr. Duffy. Relax.

4 MR. DUFFY: Thank you.

5 (Pause.)

6 MR. DUFFY: Your Honor, we would like to call Rigdon
7 Boykin to the stand in our rebuttal, please.

8 THE COURT: Very good.

9 Mr. Boykin, come around, sir.

10 MR. DUFFY: And before we -- well, I'll wait for you
11 to swear him.

12 THE COURT: You've already been sworn so you're under
13 oath.

14 RIGDON BOYKIN, after being duly sworn,
15 testified as follows:

16 MR. DUFFY: Your Honor, if I may before I begin, I'd
17 like to hand the Court and the court reporter some
18 exhibits that we just provided to opposing counsel I'll be
19 asking Mr. Boykin about.

20 THE COURT: All right.

21 MR. DUFFY: Your Honor, if I may just explain briefly
22 what we've got here before we get into it, Your Honor.
23 Exhibit 180, which is on the top, is a revised version of
24 the petitioner's valuation. This was sent to the Court
25 previously by email, and the only difference as I

1 understand -- the only material difference as I understand
2 it is that this was done as a comparison to the
3 petitioner's valuation and Mr. Helms' wholesale valuation
4 whereas the prior version was compared with Mr. Helms'
5 retail evaluation.

6 THE COURT: All right, sir. This is Petitioner's
7 Exhibit 180, a revision of a previous exhibit?

8 MR. DUFFY: That's correct, Your Honor, it's a
9 revision of, I think, Exhibit 172.

10 THE COURT: Very good.
11 Without objection, Mr. Becker?

12 MR. BECKER: No objection.

13 THE COURT: No objection, admitted.

14 MR. DUFFY: Thank you.

15 (WHEREUPON, Plaintiff's Exhibit No. 180 was marked
16 for identification and received into evidence.)

17 DIRECT EXAMINATION:

18 BY MR. DUFFY:

19 Q Mr. Boykin, before we get into all the exhibits, if
20 you would, you became trustee -- let's put it this way,
21 when Ms. Boykin passed away in August of 2016, what did
22 you see as the biggest issue facing the trust?

23 A The biggest issue was the pieces of property and
24 assets held by the trust generated a very minimal amount
25 of income, and that income was so low that if we did the

1 kinds of maintenance that should be done on the downtown
2 Boykin area, the commercial buildings, everything else,
3 there would be virtually no money left for distributions
4 to anyone. And the way I looked at it, the trust would go
5 down in value every year if we made any minimum
6 distributions.

7 Q All right. Where did the \$100,000 per year income to
8 each beneficiary, where did that figure come from then?

9 A When I became a trustee of the increased assets, in
10 essence, that were in the residuary trust by virtue of
11 everything pouring over from the marital deduction trust,
12 it was clear that there would be almost no net income.

13 The will says you should distribute net income, at
14 least, yearly, and it was clear to me that there would be
15 virtually no net income to distribute. So we had a
16 discussions about that at the very first -- I think it was
17 at the very first meeting. It could have been at the
18 second meeting.

19 And I said we have a problem here because there is
20 not enough income to provide for the needs of the four
21 income beneficiaries, and because of that, I told them I
22 was willing to utilize what is known as the power to
23 adjust.

24 This is not an issue that surprised me when Alice
25 died. We had known this issue was around for quite some

1 time. So I was very familiar with the power to adjust
2 because we use it -- we switched to using it almost
3 totally in a larger trust that I'm a trustee of that is
4 administered out of New York, although it is a New Jersey
5 trust.

6 So I told them that I would be willing as the only
7 disinterested trustee because it's my understanding, at
8 least, up there, that only a disinterested trustee could
9 utilize the power to adjust.

10 So, for example, in New York, there are two trustees,
11 me and the person who is also an income beneficiary. He
12 does not participate in that decision at all. That's a
13 decision that I do yearly, and we have set it in that
14 trust -- it's a large trust, so we have set it at sort of
15 what's the minimum that is considered reasonable up there,
16 at least, and that was three percent of previous year's
17 ending value of the trust assets.

18 Q Okay. And you've talked about net income and those
19 concerns you had about that. Those concerns persist to
20 today?

21 A Yes. And, in fact, it's even more concerning today
22 because all along, I have been asking how are we going to
23 generate the money that would be required to fix all of
24 downtown Boykin, fix the dam, fix the pond, fix all of
25 these various things and still make distributions to the

1 income beneficiaries?

2 I have spent hundreds of hours presenting and working
3 with Jane Peacock to come up with projections of what
4 income was going to be for, for example, 2017, 2018. And
5 I can't tell you how much time I've spent on that trying
6 to figure out where were we going to get the income to do
7 this, and those exercises I did did not go and catch up on
8 the deferred maintenance that's been going on for years.

9 And so I was delighted to hear that they had finally
10 come up with a plan to address this, to tell me how they
11 were going to generate the income.

12 Q And the plan you're talking about, is that the plan
13 that was produced by Mr. Helms?

14 A Yes.

15 Q Okay.

16 A Yes. And we sat here and we listened to Mr. Helms.
17 I mean, I know more about site indexes than I want to know
18 now, but I ended up coming out of that puzzled. How does
19 he get a positive return after paying maintenance costs,
20 even a low income beneficiary distribution, how does he
21 come up with still a 1.2 percent appreciation to a
22 principle on average over the 15-year period.

23 Q That was what he was saying, that under his plan, the
24 trust would grow over time 1.2 percent?

25 A Yes, on average.

1 Q Okay.

2 A It wasn't -- I don't think, at least, it was. And so
3 I cogitated on that for a while because I couldn't figure
4 out how the heck -- was I wrong on all these things I had
5 spent time on with Jane Peacock or was something screwy?
6 Maybe I missed something.

7 So I went and I asked a local CPA here in town to
8 prepare -- to go through the Helms' model and give me some
9 rates of return of various elements of it so I could try
10 and figure out what in the heck was going on, and he took
11 it, he spent a weekend on it. He said there's something
12 screwy here, I've got to spend more time on it. He spent
13 another week on it, and he came and he said there's a big
14 whopping error in there.

15 Q All right. Let's talk about that. Let me hand
16 you -- these are the exhibits I just handed to the Court.
17 But if you'll look at Exhibit 210, which is the one that's
18 printed on the long bonded paper. Do you see that?

19 THE COURT: All right. Any objection, Mr. Becker?

20 MR. BECKER: Well, Your Honor, this is hearsay. I
21 understand you -- that this is a nonjury trial, but if
22 this is work product of some CPA that he's been to see and
23 he's here to testify about an expert CPA secondhand, I'd
24 sure -- I wish we had the CPA. I mean...

25 THE COURT: Who is the CPA who did this, Mr. Duffy?

1 MR. DUFFY: I believe his name is Rick -- well, Your
2 Honor, just for the record, Exhibit 210 is merely a screen
3 graft of Mr. Helms' 15-year-cash-flow model revised as of
4 July 5th.

5 THE COURT: Oh, okay.

6 MR. DUFFY: And we've got it up on the screen.

7 THE COURT: So we're not in the projection by the CPA
8 yet?

9 MR. DUFFY: Correct. That may be the next exhibit,
10 Your Honor.

11 THE COURT: Let's me deal with this, Mr. Boykin.

12 THE WITNESS: Sorry.

13 THE COURT: So Petitioner's 210, Mr. Becker, is
14 simply material that Mr. Helms has already testified to.
15 Any objection?

16 MR. BECKER: If this is nothing more than a screen
17 print --

18 THE COURT: That's what he says and I have no reason
19 to doubt it.

20 MR. BECKER: No objection.

21 THE COURT: Okay. It's in.

22 Go ahead, Mr. Duffy.

23 MR. DUFFY: Thank you, Your Honor.

24 (WHEREUPON, Petitioner's Exhibit No. 210 was
25 previously admitted into evidence.)

1 BY MR. DUFFY:

2 Q And Mr. Boykin, you testified that you asked Mr. --
3 was it Mr. Tiller was the CPA?

4 A Yes, it was. He --

5 Q Tell us what the Court is looking at and what it
6 means and how to read it.

7 A That is a portion of Mr. Helms' plan. And it,
8 basically, includes the lines that have anything to do
9 with sales of assets, whether it be timber or land.

10 Just one second, Your Honor, I'll have to get my
11 glasses.

12 And the -- what has been done on this is we click on
13 the cell, which is the total for net income for the first
14 year. And when you do that, in the formula box up at the
15 top where it says FX equals sum G85 dot, dot G106,
16 basically, what that is doing is it's summing up all of
17 those cells in that row to reach a total.

18 THE COURT: Right, 1.73525041, right?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Okay.

21 THE WITNESS: But the problem is in doing that, there
22 was one cell he missed.

23 THE COURT: All right, sir.

24 THE WITNESS: He missed 107. That sum should have
25 been G85:G107.

1 BY MR. DUFFY:

2 Q Mr. Boykin, is it your testimony that that value,
3 107, is omitted from the chart?

4 A Yes, it was -- I mean, he put the values of 107 on
5 the chart, but in doing his model, he omitted to include
6 that particular cell.

7 THE COURT: So what you're saying is that figure
8 rather than 1,735,350,41 ought to be less \$224,856.88?

9 THE WITNESS: Exactly.

10 THE COURT: All right.

11 THE WITNESS: Exactly.

12 BY MR. DUFFY:

13 Q And Rigdon, is that -- is it just that first, my
14 understanding is the columns indicate the years on the
15 15-year cash flow?

16 A Correct.

17 Q Is that a problem with just the first year or does it
18 continue?

19 A No, it's for every single year he had that problem.
20 And it's, apparently, a fairly common error in some of
21 these that you had a cell later on and you forget to -- or
22 you add a row later on and you forget to include that in
23 your formula.

24 THE COURT: So you're saying every year, it ought to
25 be about 1.5 million dollars rather than 1.7 million

1 dollars?

2 THE WITNESS: 1.5.

3 THE COURT: If you take out the 225 --

4 THE WITNESS: Yes, ma'am. Yes, ma'am.

5 THE COURT: It ought to be about -- each year that
6 cell --

7 THE WITNESS: It should be about \$225,000.

8 THE COURT: It should be \$225,000 less than what is
9 shown on the bottom lines for that income for the various
10 --

11 THE WITNESS: Yes, ma'am.

12 THE COURT: All right.

13 THE WITNESS: And to tell you the truth, when he came
14 and told me there was this problem, I didn't believe him
15 because Mr. Helms has a big reputation for doing this kind
16 of work.

17 So I went and I said Ricky, I hope you're not going
18 to be insulted, but I'm going to go talk to a friend of
19 mine in Washington. This friend of mine does models for
20 the World Bank, Exxon, everyone. He said sure, it's real
21 simple. Just click on that cell and it will show you
22 right away that he did not sum all the lines.

23 The net of that is instead of having a 1.2 percent
24 return on average each year increase in the size of the
25 trust, you actually have a deficit in the size of the

1 trust so that over the 15-year period, the trust goes down
2 by about four million dollars. It starts off at
3 15 million something and it ends up being 11 million
4 something.

5 Q And, Mr. Boykin, you jumped ahead and answered my
6 question. The impact of this omission on the cash flow
7 projection, is that something that's reflected in Exhibit
8 211?

9 A Yes, it is.

10 Q And please describe for the Court how this document
11 came about, what it is and how to read it.

12 A Exhibit 211 is, basically, taken straight off of
13 Mr. Helms' exhibits, and that was his original bottom line
14 number, so to speak, and he starts at a value of
15 15,238,000 and that value grows by the annual return
16 percentage listed up under for each year.

17 So the ends -- the period with a growth in the
18 principle of the trust of 18 of, basically, three million,
19 almost exactly that the principle of the trust would
20 increase by three million, and that gives him compound
21 annual increase of 1.2 percent for a 15-year percentage
22 increase over the original year of 19.631 percent.

23 When you correct this for the error, we still have an
24 increase in the first year. That's because of a whole
25 bunch of things that are abnormal in that year. Vis-a-vis

1 timber sales and vis-a-vis how much money you're paying
2 out for various things.

3 So you have an increase in that first year if you
4 deduct that error of 1.9 percent or almost 2 percent.
5 However, the error in succeeding years creates negative
6 numbers, negative returns all the way across so that you
7 end up at the 15-year period with a compounded annual
8 decrease of .6375 percent for a total decrease in the size
9 of the estate principle of 12.5922 percent.

10 So from year -- from the beginning of the year
11 starting value of the trust using his wholesale value, a
12 value I totally disagree with, it's 15.763 million and you
13 end up with 18 -- I mean, excuse me, 13.8656 million. So
14 the trust decreases in size over the 15-year period almost
15 two million dollars.

16 Q And Mr. Boykin, if I understand correctly, you're not
17 building in assumptions or anything else into that, that's
18 just the mathematical calculation?

19 A This is just straight math, pure and simple.

20 Q So that covers the first and second categories of
21 rows on this spreadsheet. What is the third category here
22 that you've got and what does that mean and how did it
23 come about?

24 A The other thing that really bothered me about Helms'
25 report is all of a sudden in year six, this \$320,000 per

1 year shows up and it's for some hypothetical sale of an
2 environmental asset.

3 So he says well, you know, over time, you'll probably
4 will be able to sell carbon credits or you'll be able to
5 sell water or you can put in a mitigation bank. I'm going
6 to use a mitigation bank as an example and I put in
7 320,000 bucks a year from year six on.

8 Just coincidentally, year six is when the timber
9 sales start dropping off drastically. So I think it was a
10 way to make up for the fact that the timber sales were
11 decreasing a quite a bit starting in year six. But I also
12 wanted to know just how much was that 320,000 impacting
13 trust return. And I mean, I wanted to get a frame of
14 reference, so to speak, on what did this amount of money
15 mean. And so we deleted the mitigation credit.

16 Because it's so speculative and everything else, I
17 didn't see how you could actually do a valid business
18 model using something that was speculative as the devil in
19 there.

20 So we deleted that and when you run the numbers
21 taking, into account the error correction and the deletion
22 of the mitigation credit, you have a much bigger
23 difference. The trust goes down in value on a compounded
24 annual basis of negative 1.9333 percent, and the total
25 value of the trust decreases 25 percent from the starting

1 value of 15.2 million to an ending value of 11 point, say,
2 4 million. So the trust went down in value over that
3 15-year period, basically, close to four million dollars.

4 Q All right. And that's what this spreadsheet depicts?

5 A Yes.

6 THE COURT: All right. Petition's Exhibit 211,

7 Mr. Becker?

8 MR. BECKER: Excuse me, Your Honor, I was asking
9 Ms. Elderidge to get an exhibit for me. What is Exhibit
10 211? I'm sorry.

11 THE COURT: We've been talking about it for several
12 minutes now. It's his projection of what happens when you
13 correct the error he thinks exists in missing line 107 in
14 the previous Exhibit 210.

15 MR. BECKER: This is Mr. Boykin's calculation?

16 THE COURT: That's Mr. Boykin's projection from the
17 information he's been supplied with from what I
18 understand.

19 MR. BECKER: No objection, Your Honor.

20 THE COURT: Very good. Admitted.

21 (WHEREUPON, Petitioner's Exhibit No. 211 was admitted
22 into evidence.)

23 MR. DUFFY: Thank you, Your Honor.

24 BY MR. DUFFY:

25 Q So Rigdon, just to round out that, that gave you some

1 concerns, those two figures, did it not?

2 A Yeah, it did because the central issue for me right
3 from the very beginning of this trust is how are you going
4 to generate the amount of cash necessary to pay expenses.

5 One of the problems we've had in this trust right
6 from the beginning is that Alice had this dream of doing
7 the whole mill pond area, doing the crossroads, having it
8 as tourist destination, no question. And, frankly, it was
9 lot of the dream.

10 The real problem, however, is her eyes were a lot
11 bigger than her ability to finance and maintain it. This
12 was not Whit's dream. I mean, contrary to some of the
13 testimony before, most all of this did not exist when Whit
14 died, but I'm not faulting Alice for doing it.

15 I thought it was a great thing for Alice to try it.
16 The problem is there wasn't the skill set with her and the
17 people helping her to actually go and make this work. It
18 worked for a few years because, at the beginning, she had
19 a lot of assets available to her, the assets that were
20 available from the clear cutting and salvage cutting that
21 went on after Hugo.

22 She was working. She was making a good bit of money
23 as a real estate agent, and she was selling properties.
24 So it started off great and it could have been great if
25 they had gotten someone who had the ability to go and do

1 this out.

2 I mean, let's face it, the gristmill has not operated
3 other than maybe a day or two here or there for the last
4 three years probably. The broom store, we don't get any
5 rent on anyway, we never did. And, frankly, I didn't mind
6 because the broom store was a tourist curiosity.

7 The buses of people that came in a long time ago when
8 this all was going well loved talking to the broom lady.
9 And she would give -- she would regale them with stories
10 and everything else. So I didn't mind that she wasn't
11 collecting rent on that. But the store -- the store
12 has -- I would be surprised if the store has made any
13 money at all since -- for, at least, the last eight years
14 or so. It's very seldom open now. It's open a day here
15 or a day there. When Mary Deas comes down, it's open more
16 days.

17 But the only time it was -- it really started closing
18 down after Alice died. The main reason it was opened
19 before Alice died is it gave her a place to go and have
20 lunch every day and that was a big thing for her and it
21 was great, and that was okay to do that because Alice --
22 it was Alice's money, so to speak, that was doing all of
23 this.

24 And if she wanted to have the store to have a place
25 to go and eat lunch every day, that was great, more power

1 to her, but it's a different factor when the trust has the
2 store.

3 And Alice runs the store, now. She has -- she has an
4 LLC that has a lease on it, and there's a reason why very
5 often they're late on rent because they don't make any
6 money on the store. There's no way they could possibly
7 make money on that store the way it's sets up and being
8 open that seldom.

9 The Mill Pond Steakhouse makes money, no question.
10 And that's because we don't spend any money maintaining
11 it. I asked Mark Price how much had Alice spent over the
12 last 10 years maintaining the Mill Pond Steakhouse and he
13 said, maybe 3500 bucks. Well, anyone can go there and see
14 it's got problems, serious problems. I had a fellow look
15 at it, and he said minimum, just to do what you really
16 need do it, it would be 125,000. If you wanted to do
17 more, it's almost limitless, but it would require 125,000.
18 But this is just one place.

19 Helms said Millway has 200,000 -- 100 to 200,000 in
20 deferred maintenance that needs to be done urgently. And
21 this isn't my expert or anything. This is their person
22 who came and said this.

23 I was really surprised at the pictures and everything
24 else that he showed and said that had to be done. That's
25 two buildings, but then you have to add all of these other

1 buildings, the commercial properties that need roofs,
2 everything else on them.

3 I'm sitting there as a trustee and I'm saying holy
4 crow. How in the heck are we going to do this? And my
5 co-trustees say well, we're going to do it just like Alice
6 did it.

7 Well, if we do it just like Alice did it, you know, ~~but~~ something
8 some day the building is going to just fall in the ground.
9 You can't.

10 You take the pond. Well, we'll go into the pond
11 later.

12 Q Mr. Boykin, let's -- that's a good stopping point.
13 How about this, there were some issues -- you were here
14 for Ms. Thomas and Mr. Bailey's testimony yesterday?

15 A Yes.

16 Q And Ms. Heinbach this morning. And there were some
17 issues -- there were some statements you take issue with
18 in that testimony?

19 A Yes, there is. But I forgot I didn't answer your
20 first question, where did the 100,000 come from? Sorry.

21 Can I go back to that, Your Honor?

22 THE COURT: Yes, sir, but kind of answer the question
23 he asked.

24 THE WITNESS: Yes, ma'am.

25 So we came to the first --

1 THE COURT: I thought what you said kind of did
2 answer it because you said based on your other trust that
3 y'all thought that three percent of the assets a year is
4 about what you ought to distribute, am I right or wrong
5 about that?

6 THE WITNESS: You're right, Your Honor.

7 THE COURT: All right.

8 THE WITNESS: But I also told them that I didn't know
9 what the trust was worth.

10 THE COURT: Right. Okay.

11 THE WITNESS: And because of that, I was going to use
12 a very low valuation for the trust when I said
13 three percent. And I used a very low valuation because I
14 said -- and I told them all at the time when we find out
15 what the real value is, we will correct it.

16 THE COURT: I understand. The \$100,000, that's the
17 question you asked. It comes from the low valuation you
18 used and three percent of that per year would be the
19 \$100,000, right?

20 THE WITNESS: Per income beneficiary.

21 THE COURT: Per income beneficiary.

22 THE WITNESS: Of 400,000.

23 THE COURT: 400,000?

24 THE WITNESS: Yes, ma'am.

25 BY MR. DUFFY:

24 A That's correct, but it also goes to the concerns that
25 there was not enough return being generated to be able to

1 continue to do that even at a diminished -- totally
2 diminished level. And I thought it was irresponsible for
3 us to do that because if you kept on doing that year after
4 year after year, there would be no trust principle. It's
5 wouldn't take that long because these things start -- it's
6 a geometric progression after a while.

7 THE COURT: I understand.

8 BY MR. DUFFY:

9 Q Mr. Boykin, I want to ask you about your meetings
10 with Ms. Thomas and discussion about certain tax issues.
11 You heard her testify about 6166 and 2032(a)?

12 A Yeah. Probably in the October timeframe -- Alice
13 died in -- Big Alice died August 8th. About the October
14 timeframe, Karen Thomas brought up with me the possibility
15 of whether it was worthwhile to try and get a 2032
16 valuation and/or a 6166 valuation.

17 I told her at the time that this is my view of how
18 things had been operated on this property and land and
19 everything, and under my understanding of both of those
20 sections that the trust would not qualify for that. That
21 was one huge concern.

22 The bigger concern for me was that 2032 required you
23 to keep the land that was subject to it for 10 years. You
24 couldn't sell it. You couldn't do almost anything with
25 it.

1 And I was concerned about whether the tax tail should
2 wag the trust dog. Because it looks real good to save
3 400,000 at the front end, but it doesn't look so good if
4 saving that 400,000 is going to cost you, say, 200,000
5 each year going forward.

6 Q So you were concerned about the ultimate impact of
7 that on the trust and the beneficiaries living and future?

8 A Correct. Anyway, we had this discussion in the
9 October timeframe, and I went through with Karen why I did
10 not feel that the trust qualified -- or that Alice's
11 operation of these assets qualified for these two tax
12 provisions. And she agreed with me at the time.

13 Q She agreed with you at the time?

14 A Yes, she did. She said then, let's not apply for it.
15 And that's why -- and we had no further discussions that I
16 can recall. Now, maybe it was -- it may have been on an
17 email somewhere, I don't know. But I don't recall any
18 substantive discussions about 6166.

19 THE COURT: This is going to take all day long if we
20 go through each and every back and forth. I think what we
21 need to do is focus on the reasons why. I think I
22 understand the reason why you opposed the 2032(a), because
23 you had to retain it for 10 years and that was contrary to
24 where you thought they ought to be going with investment.

25 I do not understand the 6166. I don't see any

1 downside by way of requiring or anything else in getting
2 that method of using government money at a very low
3 interest rate to defer paying the estate tax.

4 Clearly, they qualified, and they did qualify for the
5 6166. Why did you think otherwise? I mean, she was in
6 the timber business. There wasn't any question about
7 that, and in the farming business.

8 Whether she made a whole lot of money in it is not
9 the test. The test is whether more than a certain
10 percentage of your assets, I think it's 35 percent, is in
11 farming or timber-type business. And seems to me it's an
12 absurdity to say she wasn't, at least, 35 percent,
13 Ms. Alice Boykin, in farming and timber production.

14 THE WITNESS: Yes, ma'am.

15 THE COURT: So why did you -- I mean, what was the
16 downside of agreeing to apply for that?

17 THE WITNESS: There were two issues, Your Honor. The
18 first issue is you only borrow money if you're going to
19 make more money off of it than your interest rate. That's
20 sort of a basic rule, so there has to be an arbitrage.

21 And it did not make sense for us to borrow money,
22 even at 1.9 percent, if we weren't going to take that
23 money and make more money that exceeded 1.9 percent on it.
24 And the way this whole estate is set up and the lack of
25 cash and everything, we really could not invest that in a

1 way that would make more than that because we had to use
2 that money. And so --

3 THE COURT: That doesn't make any sense to me.
4 You've got -- you've got to pay a whole bunch of taxes.
5 You have the ability to -- you were going to have to pay
6 the 1.390 or whatever it was when you make your first
7 estimate.

8 You're going to have to pay that, but you could defer
9 paying the rest of it at one point something percent
10 money. Yeah, they had some insurance proceeds, but they
11 had a whole lot of other things they were looking down the
12 gun barrel at that the insurance proceeds may have to be
13 used for, one of which was some of the estimated taxes. I
14 don't get it, the arbitrage and all this kind of business
15 that, they haven't the money to pay these things
16 completely, but not to completely deplete all their cash.
17 That's what this is set up for, is people who are in
18 farming and timber and are land poor and don't have much
19 cash.

20 THE WITNESS: Your Honor, I --

21 THE COURT: I don't see any downside to that. I
22 don't understand that.

23 THE WITNESS: I understand. When I looked at it, I
24 could -- we were going to have use that money for other
25 stuff if we kept it.

1 THE COURT: Well, you were one trustee. You had a
2 tax adviser who was giving her the opinion that this was a
3 good thing to do and you had two other trustees that
4 wanted to do it.

5 What would have been the downside of, at least,
6 compromising a little bit and saying I don't think the
7 2032 is wise, but the 6166, if that's what the rest of you
8 in your judgment think is a good idea.

9 I mean, the difference financially is so minuscule,
10 even if you take your arbitrage argument, when you have
11 scarcity of cash this -- I don't get why this became such
12 a big issue, why you couldn't just concede on that.

13 THE WITNESS: And, perhaps, I was an error, Your
14 Honor.

15 BY MR. DUFFY:

16 Q Mr. Boykin, why don't we move onto something else.
17 You heard, I think it was Ms. Thomas that said that at
18 some point, you did not allow Whit and May to return phone
19 calls of Mary Deas and Alice. Is that true?

20 A No, I never told Whit and May they could not return
21 the calls of Mary Deas, Alice, whoever. And, in fact, at
22 one point, I remember May even asked me at one time, Is
23 there any problem with me going and seeing Alice? I said,
24 No, you ought to go see Alice. And I think they met at my
25 guesthouse while all the turmoil was going on.

1 Q You've also heard the accusation that you had some
2 intent to freeze a bank account in an effort to interfere
3 with some IRS payment. Is that true?

4 A No.

5 Q Can you tell us what happened?

6 A Yes. Yes. After not hearing anything about 6166 or
7 anything else from the October period until, I think it
8 was about May 2 of '17 when we got a memo from Karen
9 saying that here are our options and I think we ought to
10 be using the 6166 because Rigdon had said in the past he
11 did not want to use the estate -- the insurance trust to
12 pay estate taxes.

13 I called her up and I said, Hey, I'm upset that this
14 is coming up after me not hearing anything about any
15 consideration of this for months and I'm being hit with it
16 five days before the tax is due.

17 And second, I will go and arrange for all the money
18 in the insurance trust to be deposited in the residual
19 trust so that it can be lent to the marital trust and used
20 to pay taxes.

21 We went to the bank to set that up. The insurance
22 trust -- bank was going to make a check or the wire
23 payable to the marital deduction trust B, and the Heritage
24 Bank said we cannot do that. And I said, Why? And they
25 said, Because the funds are coming out of -- the funds are

1 being directed to do into marital trust B account. We
2 don't have marital trust B account here.

3 I said, What account do you have? And they said, We
4 have -- I don't remember what the name of it was. And
5 they said, We have known for awhile that these accounts
6 were set up in nicknames by Alice. However, the new
7 banking rules that had gone in several years earlier
8 require us to have the correct names on accounts and the
9 -- and to know exactly where money is coming from that go
10 into accounts, as well.

11 Q So --

12 A And we have asked for a long time to get these
13 cleaned up. And this is such a large amount of money, we
14 cannot -- we can't do it unless it's cleaned up. And it
15 took Mary Deas and me -- I can't tell you what a fire
16 drill we went through to get those names and all changed
17 and Karen went through to get those names changed.

18 Q Was the nickname Mill Pond trust?

19 A I have no idea what it is today.

20 Q Okay.

21 A I didn't even know it was in a nickname until the
22 bank told me.

23 Q Okay.

24 THE COURT: Why did you go to the bank to begin with?
25 The check had been written to the Internal Revenue

1 Service, as I understand it. On what authority were you
2 going to the bank and who did you go with on the May 5th
3 to talk to the bank about these accounts?

4 THE WITNESS: Your Honor, this didn't arise from the
5 IRS check. It arose from my depositing into the marital
6 deduction trust account the roughly two million dollars
7 that was in the insurance trust. And they said --

8 THE COURT: And on whose authority were you doing
9 that?

10 THE WITNESS: I was --

11 THE COURT: You were one of three trustees, so --

12 THE WITNESS: Mary Deas and I are the only trustees
13 of irrevocable insurance trust.

14 THE COURT: Right. And were y'all both involved in
15 doing this or did you do by yourself to the bank?

16 THE WITNESS: Well, Mary Deas was in Ohio.

17 THE COURT: Well, did she know you were going to the
18 bank --

19 THE WITNESS: Absolutely, yes. Yes. I told everyone
20 I was going in. There was no mystery that I was doing
21 this.

22 THE COURT: Well, why did you -- I don't understand
23 why you got into it with the bank about these nicknames in
24 the accounts. There would have been a time to straighten
25 that out, but what was going to happen is the check to the

1 IRS was coming out of these accounts, whether they were
2 informally named or named the right way or not, the day
3 you made that deposit. That's why you were making the
4 deposit so that the check would clear when went to the
5 IRS. Am I right?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: Well, why confuse the issue with the bank
8 by getting into all this name thing at all? The bank
9 wouldn't have known A from B about that.

10 THE WITNESS: Yes, the bank did, Your Honor, because
11 the check -- or the money says it's coming out and it's
12 supposed to go into marital deduction trust B.

13 THE COURT: The check was written that way?

14 THE WITNESS: The wires and everything were, yes,
15 ma'am.

16 THE COURT: And who instructed the wiring authority
17 to wire them in that way?

18 THE WITNESS: I didn't know there was any other name
19 for the bank account. I had no idea. I had never dealt
20 with this account, ever.

21 THE COURT: Okay.

22 BY MR. DUFFY:

23 Q Mr. Boykin, you've never called the IRS on anybody,
24 have you?

25 A No.

1 Q Okay. You wouldn't do that?

2 A No.

3 THE COURT: Have you threatened to do that? That's
4 what Ms. Thomas said.

5 THE WITNESS: Yes, yes.

6 THE COURT: She is a lawyer of longstanding, tax
7 attorney of longstanding. That would be the most
8 horrifying thing that could ever happen to someone in that
9 kind of business if someone went to the IRS and said they
10 had committed fraud, and she says that you threatened many
11 times to send -- to go to the IRS and tell the IRS that
12 she was committing fraud by recommending that the trust
13 take a 6166 election and the 2032(a) election. Did you do
14 that? Did you say that to her?

15 THE WITNESS: I said that to her once, yes, Your
16 Honor.

17 THE COURT: Why would you do that, Mr. Boykin?

18 THE WITNESS: Because I thought -- A, I was madder
19 than the devil.

20 THE COURT: Well, that has caused a lot of problems
21 with a lot of what these relationships are, of getting
22 angry and saying things that should not be said. That
23 should never be said, should it?

24 THE WITNESS: No, ma'am.

25 THE COURT: I mean, if you've got a disagreement with

1 the tax specialist, that's one thing, but threatening them
2 with professional destruction when they're not committing
3 fraud, they're simply giving their best advice. And it
4 differs from yours, but that doesn't mean it's fraudulent,
5 does it?

6 THE WITNESS: No, ma'am.

7 THE COURT: Well, that's one of the biggest problems
8 about this whole thing is this kind of thing where you
9 feel you're so right and nobody else is right and when
10 they don't agree with you, then you make those kind of
11 threats.

12 THE WITNESS: Your Honor --

13 THE COURT: You're a smart person, but that is
14 terrible behavior with people that you've got to be in a
15 relationship with.

16 THE WITNESS: Your Honor, I agree. That was totally
17 wrong.

18 THE COURT: Have you ever apologized to Ms. Thomas?

19 THE WITNESS: And I only did it that once.

20 THE COURT: Well, I don't care how many times it was
21 done. She -- her portrayal of the relationship to you and
22 how it deteriorated was where you bullied her and
23 threatened her professionally when all she was doing was
24 giving her advice about things. And I'm wondering whether
25 you've ever apologized to her about that?

1 THE WITNESS: I think so, Your Honor. I don't recall
2 a specific time. I don't.

3 THE COURT: All right. Mr. Duffy.

4 BY MR. DUFFY:

5 Q And Mr. Boykin, I just -- I guess there's one more
6 issue that I think Ms. Thomas touched on that gave some
7 concern I want to ask you about. Have you ever suggested
8 to your cousin, Whit Boykin, that he adopt a child in an
9 effort to gain some leverage?

10 A No. In fact, I was very concerned that -- Whit is a
11 very giving person. He loves everyone, and he is taken
12 advantage of quite a bit by friends or people that want
13 something, and I was extremely concerned that Whit would
14 hear about this provision because other people talk about
15 this everywhere in Camden, and that he would go and think
16 a solution for him to have more money is to go and father
17 a child or adopt a child.

18 I had, at least, two talks with Whit that went into
19 that in great detail because I didn't want someone to talk
20 Whit into something like this and Whit thinking it was
21 going to be a fantasia.

22 Because what I explained to Whit is the income that
23 he is getting as an income beneficiary is going to be the
24 same whether he has no children, 10 children or adopt 10
25 people. It isn't going to change because he has children.

1 So if he thinks this is a way to get more money,
2 long-term, it isn't going to do it. It's just going to
3 get him bigger in the hole in terms of what money he had
4 available to spend.

5 Q And Mr. Boykin, did I hear you say that you were also
6 concerned about other people maybe taking advantage of
7 him?

8 A Yes.

9 THE COURT: Did you ever tell Ms. Thomas that you
10 were going to suggest that in anger or in any other kind
11 of fashion when you were talking?

12 THE WITNESS: No. To be quite honest, Your Honor, I
13 was sort of shocked because, at the time, I did not focus
14 on the fact that this was a very unusual adoption
15 provision because most adoption provisions that I'm used
16 to are the ones that say -- that deal with minors that you
17 adopt. And Karen told us, which surprised the fool out of
18 me, that this would even apply to adopting a 20, 30,
19 40-year-old person, which absolutely astounded me.

20 And I said, you know, I can't believe this is true.
21 Would you do a memo and let me know if this really --
22 could happen in South Carolina. And she said, Yes, we
23 have a lot of jokes about it, yes. But I never used it
24 as -- I never told someone if you don't do this, Whit is
25 going to adopt a child or whatever. Because that was just

1 going to get Whit in more trouble or anyone in more
2 trouble because if it increased the amount of money they
3 would get from the trust, that's another story, but it
4 didn't.

5 BY MR. DUFFY:

6 Q Mr. Boykin, is it fair to say that during the
7 administration of the trust there are times you've been
8 frustrated?

9 A There's no question there was a lot of frustration.
10 I think -- I mean, I think Karen was -- was not happy with
11 my saying I would go to the IRS or tell the IRS if they
12 asked me that I didn't think it qualified. I told -- all
13 through that, Karen and I still had an good relationship
14 or, at least -- I mean, all you have to do is look at the
15 e-mails, look at the trust hearing transcripts. And the
16 trust transcripts are based on actual -- actual tape
17 recordings of the trust meetings.

18 We started -- once Alice hired Bill Bundy, it became
19 clear that there was a lot of amnesia developing
20 everywhere and I started -- I started taping all the
21 meetings to make sure that I had a record of what was
22 going on at these meetings so that I wouldn't get accused
23 later on of doing something that hadn't been agreed to.

24 Because when Mr. Bundy came on, I started getting
25 accused of making decisions for monetary expenditures that

1 I thought had been agreed to at trustee meetings, and
2 that's why I started taping them all because -- I mean, to
3 get a letter from them -- I think Mr. Rosen got the letter
4 from them saying, you know, Rigdon spent this money on
5 this survey, and we're going to reserve our right to sue
6 Rigdon to recover that money --

7 Q Did that frustrate you?

8 A -- because he hadn't been authorized.

9 Q That frustrated you?

10 A I absolutely thought it had been authorized. That's
11 why I started taping trustee meetings.

12 Q Okay.

13 A Because -- I mean, maybe my memory was faulty, but
14 whoever's memory was faulty, those transcripts would tell
15 the tale.

16 Q And Mr. Boykin, do you believe that the will and the
17 law of South Carolina imposed duties on you as a trustee?

18 A Sure, it does. And I'm in a -- I'm in a little bit
19 of an unusual position because I am the independent
20 trustee, so to some degree, I have -- and I'm told this by
21 Jim Harden that I have to make sure that any transactions
22 which affect a trustee beneficiary are fair and that I
23 have a special duty to do that.

24 It's just like he said, I am the only person who can
25 authorize a distribution under the power to adjust because

1 it wouldn't -- apparently, the law feels it's not right
2 for a trustee beneficiary to utilize that power.

3 Q And in keeping with those duties imposed by the
4 documents and by the law, do you feel you've made your
5 best efforts to comply with the duties of the trustee?

6 A I feel I tried really, really hard to do this,
7 especially given the fact that there was no money. And
8 I -- that's why right at the beginning, first meeting --
9 everyone in the world knew that the treasured properties,
10 the properties named in the will were going to be an
11 issue.

12 And the other problem is those are the properties
13 that have the highest value on a per acre basis of all of
14 the various assets other than the commercial and
15 development land of Peck Woods.

16 And that's why -- at least, in the background I come
17 from, trust should try and have no more than 15 percent of
18 their assets in real estate related assets. And so I knew
19 15 percent was going to be a problem, so I offered to
20 May -- I mean, to Mary Deas and Alice the ability to buy a
21 piece of land if they wanted.

22 Q Right. Right. I think the Court knows that story.
23 So my question was it's your duties as a trustee under the
24 law, those have guided your actions at all times, right?

25 A Yes. Yes.

1 MR. DUFFY: No further questions.

2 THE COURT: Mr. Becker.

3 MR. BECKER: Your Honor, do you have your copy of the
4 Wortley/Belger trial plan and strategy, Wortley Exhibit 2?

5 THE COURT: Which exhibit?

6 MR. BECKER: Wortley 2, trial exhibit 2.

7 THE COURT: I think I do. Hang on one second.

8 All right. Look up here and see if this -- something
9 like that -- that's giving an earlier iteration. Wait a
10 minute. I got it. I got it.

11 MR. BECKER: Thank you.

12 CROSS-EXAMINATION:

13 BY MR. BECKER:

14 Q All right. I want you to take a look at that,
15 Mr. Boykin.

16 Now, Mr. Boykin, Petitioner's Exhibit 210 and 211
17 were not produced to us until just a few moments ago; is
18 that correct?

19 A Yes.

20 Q So how long have you known that you suspected an
21 error in Mr. Helms' planning spreadsheet?

22 A A few weeks ago.

23 Q Would it have been helpful in fulfilling your duties
24 as a trustee to help correct an error if it, in fact, is
25 one as soon as you knew about it?

1 A I wanted to -- when I found what I thought was an
2 error, I wanted to find out whether there were other
3 errors and other problems with Mr. Helms' study, so that's
4 when I went and saw Mr. Harrison and asked Mr. Harrison to
5 do through the whole plan because I wanted to know if this
6 was just one error or was it a whole bunch of errors. And
7 that's why I went and asked him to do that. I had -- this --
8 error surprised the fool out of me.

9 Q Okay.

10 A Because -- and I didn't know whether it was just one
11 place or not. Mr. Harrison is an expert in these kinds of
12 models and all.

13 I was also worried that they may have -- that we may
14 have just screwed up and this was an omission that was
15 here, but was made up somewhere else in the model. And
16 that was one of the things that I wanted Mr. Harrison to
17 check on.

18 Q Okay. So --

19 A And see what other problems. Maybe there were
20 problems on the other side of it --

21 Q You --

22 A -- to where it didn't matter because he had made
23 errors that put in expenses that shouldn't be there.

24 Q All right. Well, let's talk about line 107?

25 A Yes.

1 Q Which is the one that was left off, right?

2 A Yes, that's my understanding.

3 Q That's -- and so we're -- you've never actually gone
4 into the native excel spreadsheet sheet yourself, have
5 you?

6 A Yes, I did. Because I wanted to make sure -- when I
7 talked to my friend in Washington, I asked him to lead me
8 through the excel spreadsheet and tell me how I could
9 demonstrate for myself that there truly was an error, and
10 he showed me how you click on --

11 Q Okay.

12 A -- this particular cell and it gives you the formula.

13 Q All right.

14 A And that the formula had screwed up.

15 Q All right. Let's look, if you will open the
16 Wortley/Belger trial plan, investment plan strategy,
17 Exhibit No. number2, and you'll look at tab H?

18 A All right.

19 Q And you will turn to Page 3 of 4 on tab H, behind tab
20 H. And you look down at line 107?

21 A Yes.

22 Q And, in fact, there are 15 columns and your exhibit
23 210 doesn't show all 15 columns, does it?

24 A No.

25 Q All right. So --

1 A 210? Just a second.

2 Q Well, it's --

3 A Let me see. One, two, three, four, five, six, seven,
4 eight, nine, 10, 11. Yeah, we wanted to make sure people
5 could see it, so we only went out --

6 Q And that's not --

7 A Printed the screen shot that we could see, but that
8 error is contained all the way out.

9 Q I understand.

10 A Which you can see from the exhibit you just gave me.

11 THE COURT: Okay. Wait --

12 MR. BECKER: Right.

13 THE COURT: Let's answer the question that's asked
14 and then we can get another question.

15 Go ahead.

16 BY MR. BECKER:

17 Q Okay. So the line 107, the line that is in question
18 and has been omitted from the summing function in the
19 excel spreadsheet is one for eight percent selling costs,
20 example given, commissions and other costs, and
21 four percent contingencies, right?

22 A Yes.

23 Q So would you agree that that line is designed to
24 compute eight percent on sales of real estate and timber
25 that we would -- that the trust would incur and it sold

1 land and timber?

2 A Correct.

3 Q And then four percent of that is contingencies,
4 right?

5 A Yes, that's what it says.

6 Q And this is an estimate about what might happen in
7 the future over 15 years, correct? That's what this
8 spreadsheet is, right? It's trying to estimate what will
9 happen over the course of 15 years, so it's by its nature
10 a guess about what will happen in the future; is it not?

11 A I understand the purpose of a model is to project
12 what will happen under certain circumstances.

13 Q Right.

14 A And I think that's what they're trying to do here.

15 Q Thank you. We agree on that. So it's possible that
16 the trust can sell some land without incurring
17 commissions; is that correct?

18 A There's no question, yes.

19 Q And you, in fact, are a big proponent of selling
20 trust land directly so that we do not incur a sales
21 commission, correct?

22 A I think it's more the fact that I believe that's the
23 low hanging fruit. You should try that first. If it
24 doesn't succeed, then put it on the market.

25 Q And it's also possible that the contingency, the

1 fluff in the model that's built into that four percent
2 contingency factor may be less than that; is that correct?

3 A Or it could be higher.

4 Q It could be higher. It could be either one?

5 A Yes.

6 Q Because we're really just guessing what could happen
7 over 15 years?

8 A That's what people do in models.

9 Q In fact, in this line, those expenses decrease
10 throughout the 15-year period, right?

11 A They decrease especially at the end of the period
12 because at the end of the period, he is assuming you're no
13 longer selling any land and timber sales go down
14 drastically as you go out in the years. So it should go
15 down.

16 Q By that time, you've sold all the land you're going
17 to sell and you would have invested it in the stock
18 market, right?

19 A Yes. But so little would have been sold and invested
20 in the stock market, that still doesn't make it.

21 Q Well, we don't have a plan -- we don't have a model
22 that demonstrates that, do you, Mr. Boykin? You haven't
23 produced one?

24 A I think this does. He assumes a certain return in
25 the stock market.

1 Q Well, and that's the other thing I wanted to point
2 out. He's got certain projections here about how much
3 we'll make from selling timber, how much we'll make from
4 investing in the stock market.

5 I believe his assumption of return in the stock
6 market is about four percent, maybe five. I could take
7 the time to go find it specifically if you want me to, but
8 do you recall that it's in the four to five percent range?

9 A Yes, I do.

10 Q And you contend, do you not, that you could make
11 eight to nine percent in the stock market?

12 A No, I don't. What I --

13 Q You said --

14 A What I said is all I can do is based on experience
15 with the assets that I'm managing in this other trust.
16 And that -- that trust has averaged a return of 7.3
17 percent for the last 19 years. And that is including
18 having a loss in one year, that was 2008, of 28 percent.
19 It was disaster year.

20 Q Well, so if Mr. Helms could have -- when we talk
21 about these excel spreadsheets, he could increase his
22 estimated return from stock markets, from stocks and bonds
23 by two to three percent and eliminate the deficit that
24 appears on line 107, couldn't he?

25 A Not necessarily because the amount of assets that

1 were -- that one or two percent is on the entire asset
2 value. The amount of assets that would be in the stock
3 market are just a small fraction of that. So an increase
4 of one or two percent of, say, four million isn't the same
5 as an increase of one or two percent on 15 million, which
6 is your starting value.

7 Q Well, you heard Mr. Helms say, did you not, that his
8 plan was conservative and he expected that the trust would
9 exceed his estimates; is that correct? Didn't you hear
10 that?

11 A I really don't know.

12 Q Okay.

13 A I personally believe his -- I don't recall hearing
14 it. I do think that he used conservative numbers in a lot
15 of places. In fact, that did give me some pause for
16 concern because I was concerned that instead of using --
17 instead of using a diversified portfolio that he might be
18 recommending that the trust and, therefore, since it was
19 plan you're going to follow, it would be too conservative
20 in the investment of those assets and generate what I
21 would regard as a subpar return.

22 Q Well, the point I want to see whether you will agree
23 with or disagree with is that assuming the error you point
24 out is accurate and that his model has failed to account
25 for these expenses of selling assets and contingencies

1 that begin in year one of \$224,856 and conclude in year 15
2 at \$11,774, that if -- if, in fact, the performance of
3 this model is better in terms of selling prices for land,
4 selling prices for timber, return in the stock market,
5 that that will make this mistake in the model if, indeed,
6 it exist, and I'm not suggesting it doesn't, I just
7 haven't been able to confirm it myself, that this mistake
8 in the model will be obviated by higher returns over the
9 15 years on selling land, selling timber and return in the
10 stock market? Do you agree or disagree with that as a
11 general proposition?

12 A That if his assumptions are wrong, it could be better
13 or worse, yes.

14 Q No. If he, in fact -- if this is a conservative
15 estimate -- if he conservatively estimated income from
16 selling land, selling timber and return on the stock
17 market and if, in fact, the model performs better in all
18 three of those categories that he's included right here on
19 paper, then it could mitigate, if not erase --

20 A No question.

21 Q -- everything in line 107?

22 A Exactly. No question.

23 Q Line 107 might, in fact, turn out to be -- the
24 failure to include it might be negated completely by
25 better performance in the model?

1 A Yeah, and it could be the reverse, as well if it
2 wasn't better performance.

3 Q That's true.

4 A Now, the --

5 Q Okay. You also had a problem with line 100, did you
6 not?

7 A Just one second. Let me see what 100 is.

8 THE COURT: Conservation.

9 BY MR. BECKER:

10 Q That is income from the conservation.

11 A Yes.

12 Q What you take issue with is starting in year six,
13 there's \$320,000 per year of income from selling the
14 conservation -- or monetizing the conservation values from
15 the Mill Pond, right?

16 A I don't think it was limited to the Mill Pond. I
17 think that number was a number he said that the trust --
18 that the trust had a lot of land that might be able to
19 sell environmental benefits off of. And I think his
20 examples were carbon tax, which would come from trees. It
21 would come from selling water. And, frankly, I do think
22 water sales will be possible, just not in the next 10
23 years, probably 20 years.

24 Q Okay. Well --

25 A And a mitigation bank.

1 Q All right. Exactly, mitigation bank?

2 A Yes.

3 Q Now, you were at the trustee meeting where Steve
4 Nichols of New Kirk Environmental came and spoke to the
5 trustees, were you not?

6 A Absolutely.

7 Q Now, Steve Nichols is one of the preeminent experts
8 in converting -- creating mitigation banks and
9 conservation values and things of that nature. Would you
10 agree with that?

11 A I think he is probably the -- in the top two or three
12 in South Carolina.

13 Q All right. And he distributed --

14 MR. BECKER: May I approach, Your Honor?

15 THE COURT: Yes.

16 BY MR. BECKER:

17 Q He distributed at that meeting this comparison, which
18 has previously been marked as Wortley Trial Exhibit 11, in
19 which he compared the likely value of going with the gold
20 mine plan, the goal mine option agreement that you were a
21 proponent of, which he categorized and explained in the
22 first column called permittee responsible plan. And he
23 compared that with two other options. One, a mitigation
24 bank in the middle column and three, a conservation
25 easement in the third column. Do you recall that?

1 A Yes, sir.

2 Q And with the mitigation bank alternative that he said
3 the trustees could employ for the Mill Pond. Did he not?

4 A He said they could apply for one. You wouldn't know
5 until after you spent a couple hundred thousand bucks
6 whether you would actually get it approved or not.

7 Q Do you recall that he said it was high likelihood of
8 doing so and he would be willing to do it?

9 A No.

10 Q For a share of the revenue?

11 A I don't recall that.

12 Q All right. Well, you did --

13 A But we have the transcript of his meeting.

14 Q Yeah, I know we do. You did get the 200,000 right
15 because he said it would cost 200,000 for him to do it on
16 a non-contingency basis. But what did he say the expected
17 revenue would be from it under value, 2.7 million to 4.688
18 million?

19 A Right.

20 Q Right?

21 A And that was revenue that would be received starting
22 probably around four years out, he said, and it would be
23 received for the next -- a portion of that would be
24 received for the next 10 years or so, could be longer,
25 depending upon what the demand was, and he said he hadn't

1 presented valued that to bring it back to the present,
2 what that value was.

3 Q Because no one can predict the future with certainty,
4 correct?

5 A He just hadn't done it.

6 Q Right, but the -- what's the mid point of 2.7 and
7 4.7. It's about 3.7 million dollars, right?

8 A I don't have a calculator. I'll take your word for
9 it.

10 Q Well, there's about a 2 million dollar difference
11 between those two numbers, so let's take half of two
12 million and add it to 2.7 and you get 3.7 million dollars,
13 don't you?

14 A Got it.

15 Q All right. If you divide 3.7 by 10, you get \$350,000
16 a year, right?

17 A Yes.

18 Q So assuming you get the mid point of what
19 Mr. Nichols, an expert in this field, one of the top two
20 or three in this state, is estimating you could make from
21 turning the Mill Pond into a mitigation bank. You get
22 3.5 million dollars a year for 10 years, right?

23 A No, I don't think that was his testimony.

24 Q And 350,000, excuse me?

25 A I'm sorry, it wasn't his testimony. I don't think

1 that's what he said at the meeting with us. At the
2 meeting with us, he said that a Mill Pond is not a great
3 asset to use for a mitigation bank because you don't get
4 as many credits per acre for something like that as you
5 would for wetlands where you were doing something to the
6 wetlands to remediate them and keep them wetlands and all
7 that. So the higher end value that he did -- and there's
8 a transcript.

9 I believe the transcript is in the record, Your
10 Honor.

11 THE COURT: Mr. Becker, what is in the record? I
12 have notes all over the place on my version of Wortley
13 Trial Exhibit 2. We went over all this.

14 MR. BECKER: Yeah.

15 THE COURT: We went over Mr. Newkirk's projection
16 about this and so forth.

17 MR. BECKER: Okay.

18 THE COURT: We're plowing the same ground again.

19 MR. BECKER: Well --

20 THE COURT: He disagrees with some of this. And he's
21 come up with this spreadsheet that indicates the
22 disagreements he has, but we're not going to hit the goal
23 line if we keep on at this pace.

24 MR. BECKER: I'm going to move ahead, Your Honor.

25 BY MR. BECKER:

1 Q Mr. Boykin, you were very concerned that the trust
2 would not have enough -- would not be able to meet its
3 expenses, it wouldn't have enough money to distribute
4 income; is that right? There wouldn't be enough to cover
5 the expenses of running the trust and distribute income to
6 the income beneficiaries?

7 A And I was especially if you used three percent of
8 what I think is the true value of the trust.

9 Q Well --

10 A But even using 2.65 percent of a much, much lower
11 value, I am concerned we don't have the money after that.

12 Q But as this trial began, your plan provided for
13 \$180,000 per income beneficiary?

14 A Yes, it did.

15 Q It did, okay.

16 A And --

17 Q All right. You wanted to actually increase
18 distributions to the income beneficiaries while you had
19 these concerns that it couldn't generate income to pay its
20 expenses?

21 A The basis for the 180,000 was a plan I put forward.
22 I put out a -- it's in one of the -- I think it's attached
23 to an affidavit, actually, where I compared if we
24 continued operating just as we had in the past with
25 selling land over a four or five-year period what the

1 differential would be.

2 Even under my plan as depicted in that affidavit, we
3 would lose money for the first four years because we
4 didn't have enough cash in the market to generate the
5 kinds of returns we needed, but on the fifth year, it
6 starts generating a positive amount of money, about -- I
7 think it was close to \$300,000 per year even paying the
8 one point -- I mean, the 180,000 per year to each
9 individual beneficiary.

10 Q And that assumed, did it not, that you could sell
11 most of the trust land in five years and put it in the
12 stock market?

13 A It assumed a sale of, I don't know, 80 percent or so
14 of the land, yes.

15 Q Okay. In five years?

16 A Yes.

17 Q All right. Now, you said that you objected to 6166
18 because you didn't believe that the trust could invest at
19 a rate more -- that would exceed what it was paying on the
20 money it was borrowing from the government, right? Didn't
21 you just say that to Judge Toal?

22 A Yes, I did.

23 THE COURT: He just said that.

24 BY MR. BECKER:

25

1 Q Well, didn't the trustees just recently vote to
2 invest a million dollars of the 3.6 million dollars this
3 trust now has in cash in CDs at rates from two percent to
4 almost 2.6 percent?

5 A Yes.

6 Q So that exceeds the rate they're borrowing from the
7 government by investing in CDs today, doesn't it?

8 A That's correct, but we have also paid \$56,000. We
9 probably paid, in essence, for the same period where it
10 wasn't invested like \$100,000 in interest. And we didn't
11 make 100,000 in that period of time on that money.

12 MR. BECKER: No further questions, Your Honor.

13 THE COURT: Thank you.

14 Mr. Tetterton.

15 MR. TETTERTON: Your Honor, I have no questions.

16 THE COURT: You're good? All right.

17 Mr. Duffy?

18 MR. DUFFY: Nothing further, Your Honor.

19 THE COURT: Very good.

20 Thank you, Mr. Boykin. You may come down.

21 THE WITNESS: Thank you.

22 THE COURT: All right. What we have now -- does this
23 complete your rebuttal case, Mr. Duffy, with respect to
24 what I'm about to do with Mr. Harrison?

25 MR. DUFFY: Yes, ma'am.

1 THE COURT: All right. I think I've got a flavor of
2 what Mr. Harrison is going to discuss from the testimony
3 you just presented. And again, I've already put on the
4 record my concern that this is way too late, adds nothing
5 to what is, basically, a big disagreement as to how to
6 view an expert's testimony that's been in quite some time
7 and was put forward in a timely way.

8 In an abundance of caution, I will allow y'all to
9 depose Mr. Harrison after this matter concludes, the
10 hearing today. I will allow open cross-examination by
11 each of you and if there are objections, they will be
12 noted and I'll rule on them at a later time.

13 I would hope that both sides would exercise some kind
14 of discretion as to how detailed to get about something
15 that in the broad scope of things is part of an analysis
16 of two different points of view about what this trust is
17 going to produce over the next years based on what kind of
18 investment philosophy and policy and estimates to use. I
19 tried to very quickly with my rudimentary calculator I've
20 got up here to see exactly what happened about whether
21 that column in Helms' estimate includes or does not
22 include the eight percent commissions.

23 I must say that all the things are guesstimate
24 figures, not just the real estate commissions, but
25 everything else. You don't escape the problem of a

1 miscalculation by saying well, it was just an estimate.
2 They're all estimates.

3 But each of you can submit whatever you want to
4 either by way of examining Mr. Harrison or otherwise, what
5 your calculator reveals about whether some calculation
6 error was made. I don't consider it a big thing in the
7 broad scope of things because these things are all
8 guesstimates based on very different philosophies about
9 what the trust is worth and how it should be managed.

10 Now, having said that, we will regard the testimony
11 as closed upon the submission of the Harrison deposition.
12 And at that time, you would be entitled to make the
13 various motions for a directed verdict, et cetera. Those
14 motions are going to be considered to have been made by
15 both parties.

16 Now, there's a little risk in this because the
17 Supreme Court and the Court of Appeals are very particular
18 about preserving your position and making these things
19 timely, so I leave it to y'all to decide whether within 10
20 days if you need to have the outside limit if you can
21 actually submit and protect yourself on preserving
22 objections. I'm not giving you any advice about that.

23 That was a moving target when I served on the court
24 and it's still a moving target. So y'all have to decide
25 whether you now want to, at least, note it in the record

1 or not.

2 I turn first to you, Mr. Duffy, as the petitioner.
3 Do you want to note anything in the record at the present
4 time?

5 MR. DUFFY: I think, Your Honor, I'm happy to move
6 forward with the agreement between Mr. Reibold and I,
7 excuse me, to submit those motions within 10 days.

8 THE COURT: Very good. All right. I think that
9 covers it.

10 And now, what we will do -- let's be sure that all
11 our exhibits are taken care of. I have a bunch of
12 photographs here that have now been labeled with numbers
13 by Petitioner and I suppose that's what -- something that
14 Mr. Tetterton handled for us.

15 MR. TETTERTON: Yes.

16 THE COURT: And I've taken all these photographs are
17 admitted unless I hear otherwise.

18 Mr. Becker?

19 MR. BECKER: No objection.

20 THE COURT: No objection. Very good.

21 Have you given the court reporter a packet of these
22 photos?

23 MR. DUFFY: She has them, yes, Your Honor.

24 THE COURT: They're admitted.

25 Any other housekeeping matters with respect to the

1 exhibits?

2 (WHEREUPON, Petitioner's Exhibit Nos. 182 through 210
3 were admitted into evidence. Exhibit 211 was
4 previously admitted into evidence.)

5 MR. TETTERTON: Your Honor, just one thing. We
6 withdraw our request and demand prayer for punitive
7 damages, Your Honor.

8 THE COURT: All right. Very good. That's withdrawn.
9 That motion is granted without objection?

10 MR. BECKER: No objection.

11 MR. TETTERTON: One other thing, if the Court would
12 allow me to amend my affidavit for attorney's fees and
13 submitted that to the Court and a copy to the parties.

14 THE COURT: That will be granted without objection.
15 That doesn't mean I'm going to grant the fee, but, at
16 least, that means you can submit an up to date request for
17 the same, of course.

18 MR. BECKER: Could I clarify one thing, Your Honor?

19 THE COURT: Yes, sir, Mr. Becker.

20 MR. BECKER: Did your -- with the deposition of
21 Mr. Harrison going forward --

22 THE COURT: Yeah.

23 MR. BECKER: -- could we also be granted permission
24 to provide any updated response from Mr. Helms about if we
25 correct the model and --

1 THE COURT: I would grant that. I see them nodding
2 their head, so I would say granted without objection.

3 MR. BECKER: Okay. Thank you, Your Honor.

4 THE COURT: All right. Anything further on the
5 housekeeping matters? Did we take care of the video on
6 the drone?

7 MR. TETTERTON: I don't think. Everybody's been
8 provided that, Your Honor. I'd like go ahead and submit
9 that into the record.

10 THE COURT: All right, sir. And if you will just be
11 sure the court reporter has the thumb drive or whatever
12 you want to use. Of course, I have mine and I converted
13 it and uploaded it on my computer, and it's been very
14 helpful.

15 MR. TETTERTON: I have one copy. I'll bring it over.

16 THE COURT: Anything further?

17 MR. DUFFY: Your Honor, I just want to make sure. I
18 made a comment a moment ago about our agreement to submit
19 post-trial motions within 10 days from today. I should
20 get some clarity.

21 Are we talking about 10 days from today or should we
22 wait until -- I guess we come to an agreement however you
23 like, but my understanding is the record will be open
24 until Mr. Harrison's testimony via deposition is allowed
25 in --

1 THE COURT: I think that's probably the safest way to
2 proceed is to let the record stay open until -- because
3 you're going to want, perhaps, comment on those materials.

4 So I will not adjourn these proceedings at the end of
5 today, Madam Court Reporter. I will simply recess the
6 proceedings and they'll adjourn at some future time when
7 I'm advised by parties.

8 And my guess is, by that time, you'll probably have
9 those motions in writing and there won't be any question
10 for their submitted time.

11 MR. BECKER: I think that gives us plenty of time,
12 Your Honor.

13 THE COURT: Okay. That's good.

14 Anything further?

15 MR. BECKER: Your Honor, just one other item we
16 alluded to or Mr. Tetterton, I guess. Does the Court have
17 a preference on -- of course, the issue of attorney's fees
18 is an issue in this case. It's been before the Court
19 before. We're just inquiring whether the Court has a
20 preference on how to go about handling that, whether it's
21 submission of an affidavit or otherwise?

22 THE COURT: We would probably -- we won't cover that
23 until -- what we'll -- here's how I'd like to handle that.
24 I'd like to handle that by dealing with proposed orders on
25 the substance of the issue. And in those proposed orders,

1 you can submit, each side, to request for attorney's fees,
2 expert's cost and the other things that you have in mind.
3 I would then have the whole thing in front of me by the
4 time I prepare the final order. I think that's the best
5 way to do it. Your proposed orders will contain almost
6 everything.

7 If at the end when I issue the order, there is some
8 sort of post-trial motion to change my final order to
9 reflect the supplemental fee, that can be done. It can be
10 a rule 58 situation, but I think it's best for us to get
11 all the fees as they're then going in when you get your
12 proposed orders in.

13 MR. DUFFY: That suits us.

14 THE COURT: And then I have everything I need to make
15 a decision in that regard.

16 MR. DUFFY: That suits us, Your Honor.

17 THE COURT: Mr. Becker.

18 MR. BECKER: Your Honor, in looking at that Glasscock
19 factors, one of them is -- for awarding attorney's fees,
20 one of them is beneficial results.

21 THE COURT: Well, now, Glasscock? Oh, you're talking
22 about Glasscock on the attorney's fees. I thought you
23 meant punitive damages, those are out of way.

24 MR. BECKER: Yes, ma'am. You know, one of the
25 factors you have to -- the trial court must consider --

1 THE COURT: Is the result necessarily obtained.

2 MR. BECKER: Yes, ma'am.

3 THE COURT: Yes, I understand. That's why I want all
4 that in.

5 MR. BECKER: Well, I was thinking that we won't know

6 --

7 THE COURT: I will. I'm the one making the order.

8 MR. BECKER: Well -- all right. So I was thinking we
9 might argue differently depending upon the way the case
10 turns out, but, of course, you will know.

11 THE COURT: Well, it may very well be that the easier
12 thing to do is to reserve the matter of attorney's fees
13 for after the substantive award has been made.

14 MR. BECKER: I think that would be easier. We really
15 know we wouldn't be working with a moving target at that
16 point.

17 THE COURT: My guess is that your objections are not
18 going to change very much for either side, depending on
19 who prevails or thinks they prevail or halfway prevailed
20 or whatever that comes down to. I imagine both of you are
21 going to be fined based on what has been spent or what has
22 been billed, but I could be wrong.

23 MR. BECKER: I would imagine our clients will need
24 some help.

25 THE COURT: Yeah, well.

1 MR. BECKER: From --

2 THE COURT: Here's what I say. I say you are to
3 submit your affidavits for up to date attorney's fees when
4 you send in the proposed orders. I'll give some
5 consideration as to whether it's more orderly to deal with
6 that, to hold those motions for attorney's fees until
7 after I have issued the substantive order and we can
8 schedule a hearing on that. I want to be sure that y'all
9 get all the change you need to fully explore that issue
10 and not get it clouded up in the merits.

11 MR. DUFFY: Yes.

12 THE COURT: All right. So submit so I have some idea
13 what they are, but let's have an understanding amongst
14 each other that defer a final ruling on those matters
15 until the substantive order is issued. Does that suit
16 everybody?

17 MR. DUFFY: Yes, thank you, Your Honor.

18 THE COURT: All right. Now, we are at almost
19 3 o'clock and both parties -- all parties, I guess we
20 should say, are prepared to give us a final summation, if
21 I I'm not mistaken. I'm going to take a five-minute
22 recess to let the court reporter catch her breath and
23 y'all, too, and then we'll proceed to final arguments.

24 (WHEREUPON, a short break was taken.)

25 THE COURT: All right. You may proceed, Mr. Duffy.

1 MR. DUFFY: Thank you, Your Honor. I'm going to use
2 the podium if that's all right.

3 THE COURT: Of course.

4 MR. DUFFY: Given that this is, of course, a nonjury
5 case, Your Honor, we weren't sure whether we were going to
6 give closing arguments, so you'll have to forgive me if I
7 refer to my notes now and again.

8 THE COURT: Absolutely.

9 MR. DUFFY: As we make sure we're prepared.

10 THE COURT: Yes, this is a technical matter with a
11 lot of angles to it.

12 MR. DUFFY: And we'll try to keep it brief, as well,
13 Your Honor.

14 THE COURT: Sure.

15 MR. DUFFY: Your Honor, despite the feelings that
16 Ms. Wortley and Ms. Belger and, certainly, some of the
17 children that testified here today and yesterday may have
18 for Rigdon Boykin, the fact of the matter is Rigdon Boykin
19 is not an intermeddler third party.

20 He's not a disgruntled or estranged beneficiary.
21 What Rigdon Boykin is, Your Honor, is a trustee who was
22 handpicked by his cousin, Mr. L.W. Boykin, II, to watch
23 over the assets of his estate and to ensure the fair and
24 proper treatment of not only his children and his
25 grandchildren, but his unborn lineage, as well.

1 Big Whit, as he was called, the best man in Rigdon
2 Boykin's wedding, he didn't simply suggest, Your Honor,
3 that the other named trustees under his will, which was,
4 of course, his wife, Ms. Boykin, and his first daughter,
5 Ms. Wortley, he didn't suggest that they consult with
6 Rigdon or ask his professional opinion or just seek his
7 insight relating to trust business and trust matters, what
8 he did was he named him in his will as a trustee and
9 empowered Mr. Boykin with a vote along with all of the
10 attended powers and responsibilities under the law.

11 Now, when we first appeared before you in January of
12 this year, Your Honor, you astutely picked up right away
13 on various issues facing the trustees, including disparate
14 interest between near term and far term beneficiaries,
15 discord over the appropriate beneficiary distribution and
16 deadlocked disagreement about the meaning of governing
17 instruments and applicable law and, ultimately, over the
18 future management of the trust.

19 Now, Rigdon Boykin is here today, Your Honor, because
20 of a deeply-held belief in what his cousin, Mr. L.W.
21 Boykin, II's will and the law required of him as a
22 trustee.

23 He's here today because he believes he has a duty and
24 an obligation to preserve the trust for current and future
25 generations and because he has very great concerns as you

1 heard about the ability of the trust to do that given its
2 current course. And those concerns are what mandated
3 departure from Item 10 containing Mr. Boykin's hopes. And
4 that, of course, Your Honor, is the central issue in this
5 case.

6 Mr. Boykin is here today, quite frankly, Your Honor,
7 because he's asking the Court to provide resolution and
8 provide a pathway forward for these trustees and for this
9 trust given the undisputed and overwhelming fact that the
10 Boykin family here has reached an impasse.

11 I'm not sure I could count how many witnesses
12 testified to that fact, Your Honor. But what's become
13 clear since August of 2016 is that these two sides of this
14 disputes have both become very firmly entrenched in their
15 positions.

16 Your Honor, Mr. Boykin, Rigdon Boykin's anchor point,
17 so to speak, is what you heard again and again. . 85/15,
18 something to that effect. Ms. Wortley and Ms. Belger's
19 anchor point, so to speak, is to never sell the named
20 properties in the will.

21 And, in fact, it's more than just the named
22 properties that they're unwilling to sell. The will
23 names, I believe, Your Honor, six or seven tracts total,
24 swamp track, Broadview Plantation, Gillus tract, Laney
25 tract, Mill Pond, perhaps, a few others. But Mr. Helms'

1 category of quote, unquote the family legacy property,
2 that contains 11 tracts totaling 2,444 acres.

3 And in Mr. Helms' projections, Your Honor, on day
4 one, the trust holds 2,444 acres of family legacy
5 property. On year 15 of his projection, the trust holds
6 the same, 2,444 of quote, unquote family legacy property.

7 So, Your Honor, there's been, as far as we've seen, no
8 willingness to come off of that anchor point of never
9 selling the willed property.

10 And Your Honor, of course, you will remember that
11 several of these tracts weren't even in Mr. Boykin's
12 possession when he wrote his will and when he passed away.
13 So in other words, Your Honor, our view, petitioner's
14 view, deeply-held belief is that the respondents, Ms.
15 Wortley and Ms. Belger, have taken precatory language,
16 morphed it in their minds into mandatorily restrictive
17 language and then cast that restriction or restrictive net
18 over an even broader swath of property than is even listed
19 in Mr. Boykin's will.

20 And on the other hand, of course, you've got Rigdon
21 Boykin's anchor position, which is that a prudent investor
22 of assets, which is what a trustee must be, would not
23 retain more than 15 percent of land of one general type in
24 one general location in order to achieve a risk
25 diversified portfolio.

1 Ms. Heinbach testified that Rigdon Boykin was
2 unwilling to entertain any solutions whatsoever that
3 didn't include the 85/15 starting preface, but the
4 testimony and the evidence belie that from August of '16
5 to September of '17, when this lawsuit was initiated,
6 Rigdon Boykin tried persistently to build consensus and to
7 provide the three trustees with an avenue toward
8 resolution with the need for court intervention.

9 In fact, we've heard a lot about Mr. Boykin's
10 unwillingness to compromise, but if you look at the anchor
11 positions, on one hand 85/15, on the other hand, not
12 selling the property named in the will, Rigdon Boykin has
13 been the only one willing to come off of that anchor
14 position.

15 First, he proposed that Ms. Wortley and Ms. Belger
16 could purchase the tracts of land that they love so much.
17 Now, of course, the money that they're paying for that
18 purchase to the trust, ultimately, when the trust is
19 distributed, their children will be beneficiaries of those
20 funds.

21 After that, he proposed splitting the trust. And not
22 just splitting the trust, splitting the trust with all of
23 the land named in the will, and the additional tracts that
24 they regard as so important abutting or adjoining would be
25 in the split trust for Ms. Wortley and Ms. Belger. That

1 was the resolution, a pathway forward that Mr. Boykin
2 provided that did not include his anchor position. In
3 other words, he was willing to compromise, has been
4 willing to compromise on that.

5 Of course, as we know, Your Honor, those efforts
6 proved unsuccessful and thus, Mr. Boykin armed with his
7 view and conviction of the duties and obligations imposed
8 on him by the will and by the code, Mr. Boykin did the
9 only other thing he knew, which was to bring this matter
10 to the Court for resolution.

11 Now, despite all the negative things, Your Honor,
12 that you've heard yesterday and today about Mr. Boykin,
13 there's no question that he loves his family and his
14 cousins very much and that he, in fact, has supported many
15 of them financially at times when they needed help and
16 been very generous and gracious in so many ways. And yes,
17 you did hear from Ms. Heimbach that the current remainder
18 do not agree with Mr. Boykin. I think that fact is
19 undisputed.

20 But the fact of the matter is, that Mr. Rigdon
21 Boykin's charge, just like the charge of Ms. Wortley and
22 Ms. Belger, is to not only look after the income
23 beneficiaries or the current living remainderman, but also
24 it extends far beyond that to those beneficiaries who may
25 not even be identified at this point in time.

1 Your Honor, Mr. Boykin has spent thousands of hours
2 since August of 2016 working for the benefit of this trust
3 and its beneficiaries, not for his own personal gain or
4 agenda.

5 Mr. Boykin does not have an axe to grind. And I can
6 assure you, he takes no pleasure or pride in this
7 litigation or doing anything other than what he firmly is
8 convinced is in the best interest of the trust. And, Your
9 Honor, for better or worse, Mr. Boykin has simply done
10 what he believes the law and the will mandate of him,
11 regardless of the potential for hurt feelings.

12 Your Honor, you asked us to consider the requested
13 relief that we've asked for in this case. And as you
14 know, this is a matter that began as an action for
15 declaratory judgment under the trust code which provides
16 that pathway forward for trustees when they reach an
17 impasse or they have a deadlock or they don't know what to
18 do in the face of disagreement. And, of course, Your
19 Honor, our view, as expressed many times to this court, is
20 that under the trust, the Court has a variety of tools and
21 remedies available to it to try to resolve this dispute.

22 The first one, Your Honor, splitting the trust. I
23 have mentioned this several times today. Mr. Boykin has,
24 of course, raised this. And Ms. Thomas testified that she
25 discussed it and thought it was a good idea.

1 Certainly, I understand there are concerns about
2 splitting the trust. The other side views it as
3 unnecessary and somehow inconsistent with Mr. Boykin,
4 L.W.Boykin's intent. Well, Mr. Boykin's intent was for
5 his wife, Ms. Boykin, his daughter, Ms. Wortley, and for
6 his cousin, Mr. Rigdon Boykin to serve as trustees.

7 What splitting the trust would do, ordering a
8 splitting of the trust would allow the parties to control
9 their destiny in that regard, in that they can negotiate
10 the various parcels to go in each trust.

11 If they don't like Mr. Boykin's solution, they can
12 come up with their own, but it would keep these trustees
13 in their roles with Mr. Boykin as a trustee of a trust for
14 his cousins, Whit and May Boykin, and Mary Deas and Alice
15 Belger as trustees of their own trust. We believe that's
16 one option available to the Court that is consistent with
17 the Testator's intent. We do not believe it's
18 inconsistent in any way.

19 Your Honor, other remedies available that we would
20 ask the Court to consider would be to start with a blank
21 slate. Remove all three trustees and appoint independent
22 nonfamily member trustee to replace them, one or more, to
23 serve in that capacity.

24 Of course, one of the other issues that we would ask
25 the Court to resolve is one that's led us here today,

1 which is the unanimous voting provision of the will. I
2 believe Ms. Thomas, Mr. Boykin, the documents in evidence
3 are clear that -- they're clear that the will is unclear
4 about what can be done by majority vote and what can be
5 done by unanimous vote. I believe that the trustees,
6 whether they're the currently slate of trustees or a new
7 slate of trustees, need guidance on that issue, Your
8 Honor.

9 And likewise, Your Honor, we believe, perhaps, most
10 importantly and, perhaps, most crystallizing debate today
11 and throughout this case is that this trust, again,
12 regardless of who manages it, this trust needs guidance on
13 the meaning and effect of Mr. Boykin's precatory language
14 as contrast with the law of South Carolina which embodies
15 the requirement to act as a prudent investor.

16 Your Honor, that is the relief we're seeking. To
17 bring it back around, you'll recall our petition seeks
18 those three things. It seeks declaratory judgment,
19 guidance from the Court on the way forward.

20 It seeks modification from the trust, some sort of
21 clarity about how to proceed under the language of the
22 will, and it seeks removal of trustees. And, Your Honor,
23 we believe that those are the ways forward.

24 We certainly think that splitting the trust is a
25 viable option and one that the Court can consider. And,

1 Your Honor, that is what our client is seeking, simply a
2 way forward for this trust, a way forward for the
3 beneficiaries, both here and to be determined, and a way
4 forward for the family. Thank you.

5 THE COURT: Thank you, Mr. Duffy.

6 Mr. Tetterton.

7 MR. TETTERTON: Thank you, Your Honor.

8 Your Honor, I would also echo a lot of things
9 Mr. Duffy said, but I think, without a doubt, we have all
10 understood and do understand here now that this trust has
11 unfortunately reached an impasse. And I think you asked
12 me to tell you what my clients, Whit and May, would like
13 and what they would like to see happen. And I think
14 throughout this whole case, this Court has come to learn
15 that Whit and May deserve special attention because,
16 unfortunately, they don't have the capabilities that some
17 of their other family members have.

18 You know, basically, Your Honor, they only want
19 primarily this. They want this trust to be prudently
20 managed as it should be for the benefit of themselves,
21 Mary Deas, their sister, Alice, and for their future
22 family members.

23 What they're asking for, Your Honor, is that this
24 trust, these trustees make a concerted effort, and I say
25 concerted, that means by cooperating to minimize the risk

1 and maximize the growth of this trust.

2 Whether or not the evidence that you've heard in this
3 courtroom, Your Honor, will support the idea that these
4 trustees working together have strove to minimize the risk
5 and maximize the growth, I think, Your Honor, that could
6 be -- that's an interpretation you're going to have to
7 make.

8 And the central question is going to be where are
9 these assets going to be invested? Are they going to be
10 invested under the prudent investment act? Are they going
11 to invested based on two distinct theories?

12 Now, as Mr. Duffy said, back in 1989, Mr. Writ Boykin
13 made a choice. He had a cousin at that time, Rigdon
14 Boykin, who understood at that time as we found out during
15 the course of this case had a tremendous amount of
16 experience.

17 He was a lawyer. He had financial experience. He
18 had skills and he had expertise that other family members
19 did not have. So on one hand, we have Rigdon Boykin with
20 all the special skills that I think the trust could
21 encumber him to exercise those skills in administering
22 this trust. And then later on -- and Mr. Writ Boykin
23 chose Rigdon. That was his choice.

24 He knew Rigdon -- I think the testimony was that
25 Rigdon helped raise his children, put them through the

1 steps to become better acclimated to their challenges.
2 And so he made a choice back then based on what he
3 considered Rigdon to be at the time, and that was to be a
4 good trustee.

5 Then later on, Alice Belger comes into the picture.
6 Of course, before that, Mary Deas is already co-trustee
7 with Rigdon. And I think the testimony was, Your Honor,
8 they worked very well together. I think you heard that
9 Rigdon helped Mary Deas with her children. They didn't
10 have a whole lot of problems. And then, of course, Big
11 Alice appointed Little Alice as one of the trustees of the
12 residuary trust.

13 But then that's where we have a tremendous contrast,
14 Your Honor. We have a lawyer with tremendous
15 international financial experience on this hand. And on
16 this hand, we have someone whose educational pursuits were
17 in photography, very limited portfolio and who had deep in
18 her heart a desire to hang on to family property.

19 During this time, I think Mary Deas was willing to go
20 along with just about anything that sounded reasonable,
21 but, at that time, we had two distinct theories and they
22 were this. Alice Belger wanted to -- and it's replete in
23 the record, in her depositions. I'll ask the Court to
24 read carefully her depositions. In her depositions, it
25 came out after considerable discussion with her that she

1 wanted to hold onto daddy's property and fulfill daddy's
2 wishes.

3 Well, again, daddy's wishes were for herself, Whit,
4 May and Mary Deas to live comfortably the rest of their
5 lifetime based on about a 20, 25 million dollar trust.
6 And that's important in order for them to maintain their
7 father's wishes and to live comfortably during their
8 lifetime, they're going to have to grow this trust.
9 Whether or not they have done that, I don't see where they
10 have done that by cooperating.

11 Rigdon became frustrated. What was the source of his
12 frustration? And I'm thinking, Your Honor, you know, the
13 differences in philosophies about how to manage his trust
14 and someone who has a tremendous amount of international
15 financial experience on this side and someone who has
16 limited experience, skills, expertise on this side, that
17 was a terrible form, terrible way to start this trust in
18 my opinion. I think that's what happened, but they had to
19 deal with it. They had to learn to do it with each other.

20 Rigdon became frustrated -- and all this -- the
21 record is replete with this. Some of his frustrations
22 were caused by them not making a decision about them
23 buying the treasured property.

24 Mary Deas -- not necessarily Mary Deas, but Alice's
25 philosophy was, her attitude was we want to maintain

1 downtown Boykin, Millway and the Mill Pond at any costs.
2 Rigdon, trying to be a good steward, said here, I'll let
3 y'all buy that, trying to compromise, trying to preserve
4 that for them. He was frustrated when, at first, they
5 agreed to do that and then they decided not to. They
6 withdrew their consent.

7 He was also frustrated when Alice, Mary Deas and
8 Rigdon agreed to sell their sister, May, 15 acres for
9 \$15,000 on a piece of property that joined hers. Later
10 on, Alice Belger withdrew her consent to sell her sister
11 the property. Rigdon became frustrated.

12 Rigdon became frustrated when they tried to decide
13 which pieces of property they were going to sell and what
14 prices they were going to sell them at. And if you read
15 the records very carefully, you'll see that many times,
16 Alice would agree to something and then withdraw her
17 consent, to the extent that Karen Thomas asked and David
18 Siddens asked in their summaries -- or their agendas and,
19 also, their summaries of the meetings, we have got to give
20 Alice a deadline.

21 What she will would do is -- this is the way she did
22 this. I want to see the appraisals. I want to review the
23 appraisals. I want to look at my comps. And then I'll
24 get back with you with what I decide do that. That never
25 happened. That caused Rigdon to have frustration. Of

1 course, it caused Mary Deas to have frustration. Because
2 a lot of times during this period of time, Mary Deas and
3 Whit would agree -- I mean, Rigdon would agree on what
4 price it should be sold at.

5 A good example is -- a couple of good examples,
6 number one, they were offered \$160,000 for a run down
7 commercial building down here that used to be the Pontiac
8 place. They turned it down. Alice turned it down. Did
9 not want to sell it. Now, they probably could not get
10 \$160,000.

11 Alice Belger put \$50,000 as her bottom line price on
12 the Mill Street price. Appraisal came in at \$18,000. So
13 those kind of -- and the record is replete with that, go
14 back and look at all the e-mails between and summaries of
15 the meetings. That gave rise to the frustrations caused
16 by -- that was causing Rigdon to become frustrated and
17 angry. The lack of cooperation by Alice that eventually
18 filtered over into Mary Deas not wanting to cooperate.

19 And all during this time, Rigdon had one thing in
20 mind. How in the world are we going to produce income?
21 Now, if you remember, it started with George Bailey.
22 We're heavy in real estate and we have no liquidity.

23 So from the get-go, in August 2016, the focus on this
24 trust was to get liquidity. You can't get liquidity by
25 just selling real estate like your mother did. That's

1 what I think caused this whole problem, was Little Alice
2 and later on, Mary Deas wanted to do just like Big Alice
3 did, and I think you read Frazier's deposition, he says, I
4 gave Big Alice several alternatives about how to manage
5 her timber.

6 She would not listen to me. She wanted to keep the
7 property as multiple use, recreational, hunting, fishing,
8 whatever, but they did not want to sell the trees until
9 they absolutely had to. Your Honor, I suggest here that's
10 the attitude Alice Belger took and has today. She does
11 not want to turn loose, no matter what kind of liquidity
12 this trust has.

13 So the record is replete with Little Alice
14 stonewalling and, particularly, after she had two other
15 lawyers that she dismissed and took her latest lawyer, the
16 stonewalling became more evident.

17 If you look at the deposition of Ms. Peacock. I
18 quote, We have to scrape the bottom of the barrel to pay
19 our bills. Another email, We have no money to pay our
20 bills. This comes from the accountant. So even when she
21 was trying to tell the trust that they needed some
22 liquidity, they were not able to meet the bills, pay the
23 bills.

24 Again, that is reflected -- Alice Belger's failure to
25 cooperate in selling the properties at the appraised value

1 or the property they had agreed to sell it. She had a
2 right in her position. She had a right to maintain her
3 position.

4 Rigdon had a right to maintain his position.
5 Unfortunately, we have two diverse personalities and they
6 had two different ideas, one being a real close family
7 member, Alice, through her daddy and her mother, and a
8 cousin who had different ideas.

9 So what it evolved into, Your Honor, was an "as-is"
10 situation, "as-is" meaning that we're going to do it just
11 as Big Alice did it. When we need money, we'll sell
12 timber and maybe some land. And Rigdon's idea, which was
13 to sell at highest and best use and maintain and achieve
14 liquidity. And I'll tell you, Your Honor, all through
15 this whole case liquidity has been a problem. The
16 question is was then during the administration of this
17 trust, it is today, where is the money coming from?

18 And undoubtedly, everyone of these trustees
19 understands the expenses of this trust. First of all,
20 maintenance on Boykin. We've heard testimony that it was
21 Alice Boykin's dream to make downtown Boykin a tourist
22 attraction.

23 I think Your Honor has visited downtown Boykin, and I
24 can tell you, Your Honor, that I've been down there
25 several times. I've been living here all my life and it's

1 not like Ms. Alice had dreamed of. It is falling down
2 around their ears, and I don't see how they can, without
3 adopting, at least, part of Rigdon Boykin's strategy,
4 investment strategy how they are going to generate enough
5 income to do maintenance just downtown.

6 You have expenses of the trust. You have trustee's
7 fees. And I'm not so sure they have been paid to this
8 date, but I understand from Karen Thomas that she
9 recommended that they spend \$300,000, \$100,000 each to pay
10 the trustees for the work they've done in the past. I
11 don't know where they're going to get that money from.
12 They're going to have trustee fees in this future. Income
13 beneficiary fees -- distribution, annual distribution,
14 which is the money coming from?

15 If you look at the two plans, of course, like you
16 said -- like I asked Mr. Helms, a model is like a
17 prediction of a hurricane, it's just a model and just a
18 projection and prediction. But right now as we stand here
19 today, there's been very, very little timber or land sold.
20 I think the first year, they sold \$150,000 worth. As we
21 stand here today, there is absolutely no diversification
22 of assets and here we are two-and-a-half years into this
23 trust.

24 I wouldn't be able to calculate the income that could
25 be generated by putting it in liquidity, in the stock

1 market or whatever, but what little bit I know about the
2 stock market is it has done very well. But that never was
3 really addressed.

4 For instance, Ansel Bunch, if you read his
5 deposition, he says -- and they relied on Ansel Bunch.
6 Mary Deas had about a \$90,000 blue chip stock portfolio
7 with Ansel Bunch.

8 Little Alice had a blue chip stock portfolio with
9 Ansel Bunch, but they relied on his expertise and neither
10 one of them really asked him for their advice about how to
11 take future monies and put it into the stock market.

12 They never reached out to a financial adviser, not
13 one time, but they both had access to Ansel Bunch. And
14 they both agreed that this money was doing well for them
15 in the stock market. I think in his deposition, he said
16 that if you wanted growth, you could do eight or nine
17 percent.

18 If you wanted quick return, you do five or six
19 percent. What I'm trying to say is they have done
20 nothing, zero. And I think that is because Little Alice
21 wants to maintain the status quo and do "as-is" rather
22 than trying to invest.

23 Ansel Bunch says he does not recommend keeping all
24 your eggs in one basket. That's not what I'm saying. He
25 said I do not recommend timber as being a good investment.

1 So we get to around August of 2017 and this trust is
2 not going anywhere. There have been no diversification.
3 They were short on cash, short of liquidity and nobody had
4 a definite plan for the future. Whit and May had no idea
5 what to expect of this trust or these trustees so they
6 could plan for the future.

7 Your Honor, they were in their early 50s and they're
8 going to live probably another 20 or 30 years. They want
9 this trust to be able to be managed prudently so it will
10 grow. Have we seen that from these trustees? No, ma'am,
11 we haven't, and they're concerned about the future of this
12 trust. Has there been a change of circumstances since
13 Mr. Whit, 29 years ago, wrote this will? Yes, there has.

14 You've asked us what we want, Your Honor. Here's
15 what we want, as I mentioned earlier. We want this trust
16 to be prudently managed by competent trustees who can
17 cooperate with each other to look at the big picture, put
18 their personal emotional feelings aside, forget about --
19 as best you can about the past, but remember we have four
20 immediate income beneficiaries.

21 We have a number of grandchildren that eventually
22 need to be -- the best interest of those beneficiaries
23 need to be considered. That's what we're asking.

24 And I heard Mr. Duffy say, perhaps, that all three
25 trustees would be removed. Your Honor, in my pleadings, I

1 had alleged that there was a failure to cooperate by Alice
2 and Mary Deas, and I think that's significantly impaired
3 the administration of this trust.

4 They failed to manage this trust in good faith
5 because I think they let their emotions override their
6 ability to use whatever skills they had or recognize
7 skills and expertise that Rigdon had.

8 They failed to be impartial because they had
9 children, and they looked at Whit and May like well, you
10 don't have children and we're going to look after our
11 children. And I think George Bailey in his testimony on
12 my cross-examination said that is definitely a conflict.
13 If there is definitely a conflict, you cannot be
14 impartial.

15 Conduct detrimental, I think that is replete in this
16 record, Your Honor. You know, there's just the lack of
17 basic ability to plan for the future, and I was a little
18 taken aback when Rigdon got frustrated because he kept
19 asking for an investment strategy, asking for an
20 investment strategy.

21 Finally, after suit was filed, they go hire John
22 Helms to give them an investment strategy. Never one
23 concrete investment strategy prior to that, other than
24 their investment -- not a good credible investment
25 strategy. It was hold on to what we've got, do like mama

1 did. Need money, sell property. That's exactly what Jim
2 LaFraige said, and there was an unwillingness to
3 compromise on any of this.

4 So, Your Honor, I'm going to suggest to the Court
5 that you carefully consider removing all three trustees.
6 I'm going to ask that this Court appoint competent
7 trustees based on their experience, their ability, their
8 skills and their background. And I would ask that this
9 Court not appoint a family member, who I think these
10 emotions run too deep.

11 I think Ms. Heimbach suggested that this case needs
12 to be over with and this family needs to start a healing
13 process, and I don't think that can happen if a family
14 member is made a substitute trustee.

15 I think it's going to have to be somebody who is
16 totally impartial, somebody who understands the duties of
17 good faith, impartiality, compromise, cooperation, and I
18 think at that time when this Court makes that decision,
19 then we can start back.

20 So that's what we would ask. And then, of course, we
21 didn't ask necessarily to be put in this position, Whit
22 and May didn't, Your Honor. They were pulled into it.
23 And because of that, they had to hire me. Of course, I'd
24 ask for attorney's fees. Thank you.

25 THE COURT: All right. Mr. Becker.

1 MR. BECKER: Your Honor, this morning you asked us --
2 you said that there were three questions on your mind, and
3 if we wrote it down correctly, you asked -- you said those
4 what does the will allow us to do about this impasse?
5 Second, what relief are the parties seeking? And
6 the third, what relief is the Court allowed to grant?

7 I'm going to go through each one of those questions.
8 What does the will allow us to do about the impasse?
9 Well, the will -- the will does not speak directly to the
10 fact of an impasse, but what it does do is establish
11 beyond any reasonable doubt upon a simply reading of the
12 plain language of that document that this Testator wanted
13 his trustees to preserve the family land and the family
14 legacy.

15 And as you mentioned yesterday, no court of this
16 state, according to our Supreme Court in the James Brown
17 and the Donald Russell estate cases, is allowed to rewrite
18 the Testator's will. No court can ignore the Testator's
19 wishes. But that is exactly what they are asking you to
20 do.

21 Mr. Duffy said in naming Rigdon Boykin as a trustee,
22 he didn't -- he didn't ask him to consult with his other
23 trustees. He empowered him with a vote, and that's one
24 among three votes, equal votes.

25 But instead of asking this Court to rule on the will,

1 he asked in his pleadings that he be granted preeminent
2 authority to supersede those other two votes. He's asking
3 you there to rewrite the will.

4 Mr. Duffy said that Mr. Rigdon Boykin was charged
5 with a duty and obligation to preserve the trust, the
6 trust that included a request of his trustees to preserve
7 family legacy land.

8 And what does Mr. Boykin do? He tells his cotrustee
9 at the funeral of her mother that they were going to have
10 to sell all of that land. That is a violation of the
11 trust that the Testator placed in him to ignore the plain
12 language of his will. That is what they are asking this
13 Court to do.

14 Remove all three trustees and appoint independent
15 nonfamily members. Well, the will says the trustees must
16 be family members. So here again, they're asking you to
17 throw the will overboard.

18 They're asking you to modify the unanimous voting
19 requirement if a sale of treasured tracts is considered.
20 Mr. Boykin set forth very clearly in his will that he
21 wanted all three trustees to agree that such was necessary
22 before they did it.

23 Here again, they want you to modify Mr. Boykin's
24 will. And they want you to declare that the precatory
25 language is superseded by the prudent investor act of the

1 South Carolina trust code when, in fact, the South
2 Carolina trust code says that the will trumps the code if
3 they differ. They want you to rewrite his will in every
4 way they can imagine.

5 Mr. Tetterton said we want you -- what we want is the
6 trust to be managed for Whit and Mae's benefit. That's
7 what he said. We want the trust to be managed for their
8 benefit. He also is ready to rewrite the will because he
9 says what the goal should be is minimize risk and maximum
10 growth. And yet, Mr. Boykin, in his will, said that it
11 did not matter to him if in preserving the treasured
12 tracts of his family's legacy, the trust assets would be
13 underproductive. They want you to forget that direction,
14 that language in the will.

15 They want you to adopt Mr. Boykin's plan of throwing
16 out the will and investing 85 percent of the assets in the
17 stock market, assuming -- simply assuming that over the
18 long haul it will earn more than land and timber.

19 For them, Your Honor, it's all about the money.
20 That's all they care about. But L.W. Boykin, II cared
21 about more than money. He cared about family. He care
22 about heritage. He care about land and preserving all of
23 them. It was about more than money, and the law of this
24 state compels trustees to preserve that trust in
25 fulfilling their duties as trustees.

1 They want you to rewrite the will. Mary Deas
2 Wortley, Alice Belger and all four of the remainder of
3 them want this Court to preserve that will so that their
4 father's and grandfather's intent and his legacy may be
5 honored and preserved.

6 The will does not speak directly to this kind of
7 impasse. The trust code does. The trust code says that
8 where there is a lack of cooperation among cotrustees that
9 substantially impairs the administration of the trust, you
10 may remove a trustee.

11 The trust code says that because of unfitness,
12 unwillingness or persistent failure of the trustee to
13 administer the trust effectively, the court may remove a
14 trustee.

15 Now, what relief are these parties seeking, Your
16 Honor? These two trustees and all four remainderman.
17 We're asking that you grant judgment against the
18 petitioner on his third and fourth causes of action and
19 against the petitioner and the respondents on their claims
20 to remove Mary Deas Wortley and Alice Belger as trustees.
21 We're also asking that this Court remove Rigdon Boykin as
22 a trustee.

23 Let me briefly discuss those. The petitioner's third
24 cause of action. He's asking you in that cause of action,
25 again, to rewrite the will. Where the will says the

1 trustees have equal votes, he wants to be declared the
2 super trustee with preeminent authority, to exercise veto
3 power over his cotrustees.

4 He does not want to cooperate with them no matter
5 what. If he can't get his way, he wants preeminent
6 authority. The trust code doesn't allow that, never
7 mentions that word. The will does not provide for that.
8 He wants you to appoint him a special fiduciary so that he
9 can administer the trust as king of the residuary trust so
10 that he can ignore the Testator's intent. He can throw
11 the family legacy overboard.

12 Based on the language that he put in his will, I
13 would imagine that if L.W. Boykin, II is aware of what
14 Mr. Boykin is trying to do with his will, he would be
15 severely disappointed. He, like his wife, would regret
16 his decision to name him as a trustee.

17 In the fourth cause of action, as I mentioned, they
18 want you to install the prudent investor rule, that part
19 of our code 62-7-933, and give it preeminent authority
20 over the will. Again, they're asking you to rewrite the
21 will even though the plain language of the trust code says
22 that the will trumps the code. Again, rewrite the will.
23 You should deny -- you should grant our motions for
24 directed verdict on their third and fourth cause of
25 action.

1 Now, let me deal with the competing claims for
2 removal of the trustees. They have suggested that Mary
3 Deas and Alice should be removed as trustees. They've
4 claimed essentially that because they want to follow their
5 father's will and honor his intent that they are -- they
6 should be removed. Because they don't want to -- because
7 for them, it's not all about money, it's not all about
8 maximizing growth and providing income to the income
9 beneficiaries, they're not fit.

10 They shouldn't be trustees. That's not what
11 Mr. Boykin said in his will. He said it doesn't matter to
12 me if in maintaining my legacy you will invest in
13 underproductive assets. And that assumes that they will
14 be less productive than investment in the stock market,
15 which we saw from Cheryl Holland that that's not
16 necessarily a valid assumption.

17 It's certainly not true based on the last 28 years of
18 financial history that investments in land, farm and
19 timber have a return almost equal to those in the stock
20 market with much less volatility and much less risk.

21 And there's been a suggestion that because Mary Deas
22 and Alice are not a New York lawyer and haven't managed a
23 New York trust and don't have a fancy education that they
24 are somehow incompetent and unfit. We have seen that
25 these -- you've heard people take the stand who have no

1 dog in this fight.

2 Karen Thomas, George Bailey, others take the stand.
3 These are competent and strong women. They are capable.
4 The suggestion that they are somehow unfit is -- it's
5 almost offensive, if not offensive.

6 They have -- in every action they've taken, they've
7 relied on the trust instrument. In code section 62-7-1006
8 tells you that when a trustee has acted in good faith in
9 reliance upon the trust instrument that there is no breach
10 of trust. There is no basis for considering that they
11 have done anything that breaches the trust that the
12 Testator placed in them.

13 You've heard Karen Thomas say that she gave them the
14 advice about what the will meant and that's the advice
15 they followed. That section of the code, I suggest,
16 prevents -- if nothing else prevents their removal as a
17 trustee.

18 Finally, Your Honor, Mr. Boykin -- there is -- there
19 must be some motive that we may never understand, but it
20 is clear that from the beginning, he has been willing to
21 ignore Mr. Boykin's wishes regarding the land that he
22 worked so hard to build and preserve during his lifetime,
23 that Mr. Boykin is just intent on ignoring that. That is
24 a breach of trust, of the Testator's trust that his
25 trustee would honor his wishes. That is what has created

1 this impasse, Your Honor, more than anything else. His
2 continued insistence that we throw the will overboard is
3 what's created the impasse. His cotrustees have wanted to
4 remain true to that.

5 Now, he's complained that there's liquidity problems.
6 How are we going to have enough money to do what we need
7 to do? Well, there aren't liquidity problems. This trust
8 has 3.6 million dollars today, and imagine how that money
9 could have been spent, say, for example, in fixing up
10 downtown Boykin if we had not been engaged for months this
11 expensive litigation?

12 How much money would have been available to invest in
13 property maintenance and providing income to the income
14 beneficiaries if we had not been engaged this litigation?
15 When Mr. Boykin could not impose his will upon his
16 cotrustees, he commenced this expensive litigation
17 depleting funds from the trust while complaining that it
18 doesn't have appropriate liquidity, it can't earn the
19 income that it needs; and yet, with the other hand, he's
20 promoting that all four income beneficiaries should be
21 paid \$180,000 a year on the hope that he can sell a lot of
22 the land in five years and invest it in the stock market
23 and win the lottery.

24 You've heard numerous examples, testimony from lots
25 of people that he ignores the advice of professionals. He

1 is not a tax expert; and yet, he ignored the advice of
2 three of them that had been involved in this trust and
3 interfering with Mr. Bailey's proposals in 2012, in
4 ignoring Ms. Thomas' proposals regarding 2032(a) and 6166.

5 You heard him just today in looking at Mr. Helms'
6 plan, the line he takes out is the 320,000 of expected
7 income from monetizing the conservation evaluation. Well,
8 he's not a conservation expert, Steve Nichols is.

9 He doesn't like the fact that that money is in the
10 model, so we're just going to ignore the expert in the
11 field. You heard him say he's one of the top two or
12 three.

13 Well, he suggested yes, you can make money from doing
14 this. It may take some time. We took the mid point. We
15 put it in the model, and Mr. Boykin wants to throw it out.
16 He won't accept the advice of professionals who advise the
17 trust.

18 This is the kind of behavior that creates the impasse
19 and prevents efficient administration of the trust. It
20 demonstrates an unwillingness to consult, an unwillingness
21 to cooperate, to administer the trust effectively. That
22 is the behavior that is causing the impasse in the
23 administration of the trust, and you can cure that by
24 removing Mr. Boykin as a trustee.

25 Thank you, Your Honor.

1 THE COURT: Thank you, Mr. Becker.

2 All right. Let's talk about a few things on a
3 practical basis about how to proceed. Let me look at a
4 calendar here. All right. I have no doubt that what
5 you're going to want transcripts -- have you already got
6 the transcript of the other proceeding?

7 MR. TETTERTON: Only day two, Your Honor. We have
8 not gotten day one of the trial.

9 THE COURT: Are you going to need that to prepare
10 your proposed orders? The answer is probably yes, ma'am?

11 MR. BECKER: Well, I'm going to consult with my
12 lawyer.

13 THE COURT: All right.

14 MR. DUFFY: I think we may need the first day, Your
15 Honor.

16 THE COURT: And I assume you would need these two
17 days, as well?

18 MR. DUFFY: Yes, Your Honor.

19 (Whereupon, there was an off-the-record discussion).

20 THE COURT: Well, 60 days would take us to right
21 after Thanksgiving, November the 28th, to get a
22 transcript, so what I'm going to project to you folks is
23 to have a simultaneous submission of briefs to me by
24 December 12th. That ought to give you plenty of time to
25 get these transcripts, to take the deposition of Mr.

1 Harrison and to do whatever else needs to be done to get
2 matters in a posture where you can simultaneously submit
3 to me proposed orders that would reflect the relief that
4 you have asked for.

5 Now, that will be preceded by some other things you
6 can be doing, which is getting Harrison out of the way and
7 going on and getting your motions for a directed verdict
8 and things of that matter in. I don't know how much
9 you're going to need every line of the transcript to do
10 that, but I think it would be well to get all of that.

11 MR. BECKER: We will.

12 THE COURT: Then as I say, on -- what did I just say,
13 December 12th. Let me write it down, so I don't forget.

14 You'll also accompany those proposed orders with your
15 up to date request for fees and costs and things of that
16 nature, realizing that I will take these proposed orders
17 and I will try to actually them expeditiously.

18 I try to get these things out as quickly as I can. I
19 will then do that. I will then schedule a hearing on any
20 post-order motions, rule 58s or whatever they happen to
21 be. I will also combine that with a hearing on costs and
22 fees and that sort of thing.

23 My goal would be to wrap this up before the year is
24 out. I know the litigants here who agonized with this
25 matter for so long, it may seem like forever that it would

1 be December before you have an answer, but in the larger
2 scope of things, I think that is mechanically about as
3 hard as I can push it.

4 We have a great shortage of court reporters in South
5 Carolina at the present time because of funding, and that
6 is one of the drivers in the time it takes. She's not
7 trying to be difficult, but she's so overwhelmed with the
8 amount of cases she has got transcript requests for, I
9 understand precisely what she's talking about. And thank
10 goodness, we do have one of the best who is taking this
11 record, so I know it will be expedited as much as it can
12 be.

13 Let me just say one further thing. My heart breaks
14 for this family. I am from a very large family of my own.
15 I had the duty of administering the trust under my
16 father's will beginning with his death in 1989, the same
17 year that Mr. L.W. Boykin, II died. And moving forward
18 when my mother died in the early part -- the late part of
19 2006.

20 There are five of us, and we're in a family business
21 with 14 principles, and it was long road to hoe. And I
22 can report to you that we never fell out, not with each
23 other as siblings.

24 In my group that owned the 45 percent of the business
25 and not in the large group of two different families, one

1 with seven children and one with two with a lot of our own
2 children now, the grandchildren and some great
3 grandchildren. We never fell out.

4 We had some real ups and downs. The mining business
5 is much like farming. It has its good times, and it has
6 its share of bad times, as well. We weren't able to end
7 up selling the assets of everything we all thought it was
8 worth, but we preserved the business for over 30 years and
9 were able to bring it to the point where it finished its
10 job in supporting all of the Woods and in their death.

11 In my family's case, I educated every child, every
12 grandchild before we began distributing assets. It wasn't
13 easy. It put a lot of burden on those of us who weren't
14 realizing any kind of immediate benefit from the family
15 business and family assets that our ancestors had so
16 carefully accumulated.

17 There's something more in life than just the assets.
18 No matter whether you feel like the land is everything, as
19 one side of the family does, or you feel like that prudent
20 investment and income realization is most important.

21 No matter what your view is about how to manage the
22 legacy that your parents have left you, the most important
23 thing above all is family. That's the most important
24 thing, and I'm just praying and hoping for all of you that
25 there will come a time when the family can heal. I don't

1 think there is on either sides of this trustee terrible
2 disagreement or impasse.

3 I don't think there is an underlying sinfulness or
4 desire to hurt or hate. I think it's a profound
5 disagreement about how to manage and it manifest itself
6 sometimes in tough ways because people don't nearly often
7 enough say I was wrong or I'm sorry, and that applies to
8 everybody in this controversy. But maybe this time until
9 December will give you a little more time to think about
10 how the family might come together. I pray for that.
11 This matter is recessed. Thank you very much.

12 (Whereupon, the proceedings were adjourned)

13 (WHEREUPON, Respondent's Exhibit No. 1 was marked for
14 identification only.)

15 (Whereupon, the proceedings were concluded.)
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Kershaw County, South Carolina, on the 27th and 28th days
of September, 2018.

November 29, 2018

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA
2 IN THE COURT OF COMMON PLEAS
3 COUNTY OF KERSHAW

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

6 RIGDON H. BOYKIN, AS SOLE DISINTERESTED
7 CO-TRUSTEE OF THE LEMUEL WHITAKER BOYKIN, II
8 RESIDUARY TRUSTS A AND B,

9 Petitioner,

10 vs. Case No.: 2017-CP-28-831

11 MARY DEAS WORTLEY, INDIVIDUALLY, AS
12 CO-TRUSTEE OF THE LEMUEL WHITAKER BOYKIN, II
13 RESIDUARY TRUSTS A AND B, CO-TRUSTEE OF THE
14 LEMUEL WHITAKER BOYKIN MARITAL DEDUCTION TRUSTS
15 A AND B, AND AS CO-PERSONAL REPRESENTATIVE OF
16 THE ESTATE OF ALICE S. BOYKIN; ALICE B. BELGER,
17 INDIVIDUALLY, AND AS CO-TRUSTEE OF THE LEMUEL
18 WHITAKER BOYKIN, II RESIDUARY TRUSTS A AND B,
19 AND AS CO-PERSONAL REPRESENTATIVE OF THE ESTATE
20 OF ALICE S. BOYKIN; LEMUEL WHITAKER BOYKIN, III;
21 AND MARY CANTEY BOYKIN,

22 Respondents.

23
24 DEPOSITION OF WILLIAM H. HARRISON, JR.
25

26 DATE TAKEN: Friday, November 30, 2018

27 TIME START: 10:04 a.m.

28 TIME END: 2:11 p.m.

29 LOCATION: Haynsworth Sinkler Boyd, P.A.
30 134 Meeting Street
31 Charleston, South Carolina

32 REPORTED BY: SHERI L. BYERS
33 Registered Professional Reporter
34 EVERYWORD, INC.

1 APPEARANCES:

2 ATTORNEYS FOR THE PETITIONER:

3 ROSEN, ROSEN & HAGOOD, LLC
4 BY: LIAM D. DUFFY, ESQUIRE
151 Meeting Street, Suite 400
Charleston, South Carolina 29401
5 lduffy@rrhlawfirm.com
843.577.6726
6

7 ATTORNEYS FOR THE RESPONDENTS
8 LEMUEL WHITAKER BOYKIN, III AND
MARY CANTEY BOYKIN:

9 TETTERTON LAW FIRM, LLC
10 BY: WILLIAM S. TETTERTON, ESQUIRE
608 Lafayette Avenue
Camden, South Carolina 29020
11 wstmail@bellsouth.net
803.432.1496
12

13 ATTORNEYS FOR THE RESPONDENTS
14 MARY DEAS WORTLEY AND ALICE BELGER:
(via videoconference)

15 HAYNSWORTH SINKLER BOYD, P.A.
16 BY: JAMES Y. BECKER, ESQUIRE
1201 Main Street, 22nd Floor
Columbia, South Carolina 29201
17 jbecker@hsblawfirm.com
803.540.7706
18

19
20 ALSO PRESENT:

21 RIGDON H. BOYKIN
22 ALICE B. BELGER (via videoconference)
23
24
25

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25	to 3 Percent	

1 The deponent reserves the right to read and
2 sign the deposition transcript.

3 - - - - -

4 (PETITIONER'S EXH. 1, Curriculum Vitae, was
5 marked for identification.)

6 (PETITIONER'S EXH. 2, Wall Street Journal
7 Article, Thousands of Southerners Planted Trees
8 for Retirement. It Didn't Work., was marked for
9 identification.)

10 (PETITIONER'S EXH. 3, Wall Street Journal
11 Article, Man Who Steered Timber Subsidy Program
12 Calls it His Biggest Regret, was marked for
13 identification.)

14 (PETITIONER'S EXH. 4, Wall Street Journal
15 Article, Stressed Southern Timber Growers Get
16 Hit Again, was marked for identification.)

17 (PETITIONER'S EXH. 5, Harrison Analysis
18 Charts, was marked for identification.)

19 (PETITIONER'S EXH. 6, Properties List, was
20 marked for identification.)

21 (PETITIONER'S EXH. 7, Boykin - 2032(a)
22 Elections, was marked for identification.)

23 (PETITIONER'S EXH. 8, 15-Year Silvicultural
24 Recommendations for The L.W. Boykin II Estate,
25 was marked for identification.)

1 (PETITIONER'S EXH. 9, L.W. Boykin II Estate
2 Silvicultural Activity Report, was marked for
3 identification.)

4 (PETITIONER'S EXH. 10, Will Precatory
5 Property, was marked for identification.)

6 (PETITIONER'S EXH. 11, Trustee Meeting
7 Transcript, was marked for identification.)

8 (PETITIONER'S EXH. 12, U.S. South Stumpage
9 Prices (Real), was marked for identification.)

10 (PETITIONER'S EXH. 13, Trustees' Statement
11 of Purpose and Investment Policy, was marked for
12 identification.)

13 (PETITIONER'S EXH. 14, William Harrison
14 References and Sources, was marked for
15 identification.)

16 (PETITIONER'S EXH. 15, Effect of Correcting
17 Formula to Include Row 107 in the Sums Contained
18 in Row 108, was marked for identification.)

19 (PETITIONER'S EXH. 16, Effect of Correcting
20 Formula to Include Row 107 in the Sums Contained
21 on Row 108 and Effect of Deleting the
22 Conservation Revenue of \$320,000 from Year 6 to
23 15, was marked for identification.)

24 (PETITIONER'S EXH. 17, Effect of Correcting
25 Formula to Include Row 107 in the Sums Contained

1 on Row 108 and Effect of Deleting the
2 Conservation Revenue of \$320,000 from Year 6 to
3 15 and Effect of Changing the Income Beneficiary
4 Distribution from 2.63 Percent to 3 Percent, was
5 marked for identification.)

6 - - -
7 WILLIAM H. HARRISON, JR., being first
8 duly sworn, testified as follows:

9 - - -
10 EXAMINATION
11 - - -

12 BY MR. DUFFY:

13 Q. Mr. Harrison, good morning.

14 A. Good morning.

15 Q. My name is Liam Duffy. As you know, I
16 represent the petitioner Rigdon Boykin in this
17 matter. Do you understand we're here today to take
18 your deposition in this case?

19 A. I do.

20 Q. And do you understand that the trial of
21 this case has actually concluded and that we're to
22 take your deposition to be included as part of the
23 supplemental trial record?

24 A. I do.

25 Q. Okay. And before we get started, there's

1 some rules I've got to go through. My understanding
2 is -- have you been in a deposition before?

3 A. I have.

4 Q. Okay. Well, in any event, I'm going to go
5 through some quick rules. If you would, bear with
6 me. First, be aware that you're now and throughout
7 the course of the deposition testifying under oath,
8 just like if you were in court, as if you were in
9 front of Judge Toal. Do you understand that?

10 A. I do.

11 Q. And when you give me an answer, I'm going
12 to assume you understood my question. If you need
13 clarification, I ask that you would ask me, if that's
14 all right.

15 A. I will.

16 Q. And you're doing a great job verbalizing
17 your answers for the court reporter, but that will
18 help everybody if we can not talk over one another
19 and to verbalize yes or no.

20 A. Sure.

21 Q. Thank you.

22 I also should warn you that you're
23 prohibited from having substantive discussions about
24 the substance of your testimony when we take a break,
25 and Mr. Becker or anybody else may ask you about that

1 when we come back from the break.

2 A. Okay.

3 Q. So just be aware of that.

4 And of course, at any time if you need a
5 break, let me know, and we'll be happy to take one.

6 I'm hoping with our exhibits premarked here that
7 we'll be able to get through this quickly, but it is
8 not a marathon, and you're welcome to a break at any
9 time.

10 A. Thank you.

11 Q. All right. Mr. Harrison, would you please
12 state your full name for record.

13 A. William Henry Harrison Jr.

14 Q. Where do you currently reside?

15 A. Charleston, South Carolina.

16 Q. Okay. And your address?

17 A. 17 Lockwood Drive.

18 Q. Okay. And what is your current occupation?

19 A. My current occupation is that of a
20 professor at University of South Carolina. My actual
21 title is lecturer. I've been there since 1996.

22 Q. Okay.

23 A. I'm sorry, 2006.

24 Q. 2006. Okay. And I'm going to have you
25 reach for that notebook right there to your right,

1 which concludes all of the exhibits that have been
2 sent to all counsel. And if you would please, turn
3 to Exhibit 1.

4 A. Okay.

5 Q. Is that your current CV? Or does it appear
6 to be a near current CV?

7 A. It is a near current CV. The university
8 has us update these about every six months.

9 Q. Well, that's certainly more than most
10 folks, I think.

11 All right. Why don't we start -- I would
12 like to talk about your education and employment
13 background. Why don't we start chronologically with
14 your education, which looks like it begins on page 3
15 of Exhibit 1.

16 Where did you attend undergraduate school?

17 A. At The Citadel.

18 Q. And what did you study there?

19 A. I was a physics major.

20 Q. Okay. It looks to me like you went there,
21 you graduated 1972?

22 A. That's correct.

23 Q. Okay. And how about after The Citadel,
24 what did you do?

25 A. In 1976, I was accepted under a fellowship

1 with University of South Carolina in the -- in South
2 Carolina's new Master's of International Studies
3 program. I started that fellowship, and it ended
4 when I had better opportunities, both career and
5 education, in 1976 when The Wharton School in
6 Pennsylvania accepted me for admission to their
7 master's of business administration program.

8 Q. Okay. And that's the business school at
9 the University of Pennsylvania?

10 A. That's correct.

11 Q. And it looks like you attended -- you
12 graduated from Wharton in 1978; is that correct?

13 A. That's correct.

14 Q. And once you got your master's degree from
15 Wharton, what did you do after that?

16 A. I was hired by Bank of America in their
17 world banking division in 1978. And until 1980, '81,
18 I'd have to go back and check my resume, I was in the
19 world banking division's project finance group,
20 international project finance group.

21 So I did development finance, project
22 finance, big infrastructure projects around the
23 globe. Primarily in the Middle East but some also in
24 South America, some also in Asia.

25 Q. Okay. And looks like you were involved

1 with Bank of America during the Iranian hostage
2 crisis; is that right?

3 A. I was. It was an interesting time.

4 Q. I'm sure. So that takes us to 1980. What
5 would have been your next position after Bank -- it
6 looks like you were assistant vice president at Bank
7 of America?

8 A. Right.

9 Q. And then after that?

10 A. While I was in -- oddly, while I was in
11 Argentina with Bank of America, I had a headhunter
12 that reached me and asked me if I would be interested
13 in a position in a fledgling company that was growing
14 in the burgeoning public real estate syndication
15 industry, and had a series of conversations abroad,
16 came back and interviewed.

17 The opportunity was so great, I accepted.
18 I went to work in San Francisco with Century
19 Partners, one of the largest public real estate
20 syndicators in the country.

21 My initial position was a strategic adviser
22 to the president, with help in fund modeling, product
23 diversity, portfolio diversity. We were working with
24 Wall Street investment banks to model portfolios of
25 real estate properties. Primarily, apartments,

1 shopping centers, some office buildings, and also
2 hotels.

3 And so I did portfolio analysis for my
4 initial year and a half with the president, and then
5 I was promoted to vice president of acquisitions.
6 And for the next four to five years, I was -- I call
7 myself a lone ranger in a group of seven or eight of
8 us that fanned out around the country, and we
9 negotiated and acquired office buildings, apartments,
10 shopping centers.

11 Q. And you would do that on behalf of your
12 clients who were whom?

13 A. Well, my employer were the Century Partners
14 companies, which were a subsidiary at that time of
15 the Fox & Carskadon company, which was a California
16 real estate company. I actually worked for Century
17 Partners who were the fund sponsors.

18 So as I had, as we did, a fiduciary
19 obligation to our funds and our investors. So from
20 time to time, I'm acquiring properties for a number
21 of different funds. Generally, we would have a
22 couple, sometimes three funds a year, and we would go
23 out and acquire the properties for those funds. Once
24 the properties were full, they were fully vested,
25 we'd would move on to the next one.

1 Q. Okay. And that was in -- sounds like you
2 were with Century Partners, based on page 2 of your
3 CV, from 1980 to approximately 1985?

4 A. That's correct.

5 Q. And I see San Francisco and Atlanta, what
6 was the split there?

7 A. Originally, I was in San Francisco and
8 acquiring properties generally on the West Coast,
9 although we were national in scope. We were growing
10 so fast, we needed an East Coast presence and looked
11 inside the organization to key people who might be
12 good candidates to move to the East Coast.

13 It was pretty well determined at the time
14 that Atlanta or Charlotte would be the likely place
15 for us to locate. And I spoke Southern, so I was a
16 logical choice for doing it.

17 So when we opened an office in Atlanta, I
18 would be hard pressed to tell you just what year that
19 was now, I and three others from San Francisco moved
20 down and opened that office. And we started
21 acquiring properties then on the East Coast.

22 Q. Okay. And after Century Partners, where
23 did you go and why?

24 A. In 19--- late '85, early '86, I saw the
25 opportunity to get involved on the development side

1 of our business. I was making an awful lot of people
2 wealthy, and I basically, I think, had learned the
3 expertise required to develop property rather than to
4 be an acquisitions expert buying them for funds.

5 So myself and a partner from California
6 created a company called South Colony Corporation,
7 and our mission, our initial goal was to develop a
8 round of apartment projects in Atlanta in an area
9 called Winward, which was owned by Mobil Oil company.

10 And we actually put two pieces of property
11 under contract and began our -- both our entitlement
12 process, as well as raising -- beginning process of
13 raising money from equity investors.

14 And in 1986, the shadow of the '86 Tax Act
15 started arising on the horizon and in Congress, and
16 the industry began to shut down in anticipation of
17 what the tax act was going to do. And, in fact, when
18 the tax act was passed, we all know the history. The
19 commercial real estate industry, the investment
20 industry, the syndication industry, the tax shelter
21 industry collapsed and took the savings and loan
22 industry with it. So it was not unlike what happened
23 in 2006 to 2008.

24 Q. Okay. So that -- you said that company
25 that you started was South Colony?

1 A. I'm sorry, I didn't finish.

2 Q. Okay.

3 A. So in 2006, my partner and I were faced
4 with the prospect of both of us having left our
5 previous employment, created a company. What were we
6 going to do with it because our business model had
7 just collapsed. Good situation or bad situation
8 decision, it might be a decision if I had to make it
9 over again, I would probably do that, but we decided
10 we had expertise in residential land development and
11 construction. My partner was the construction
12 expert.

13 And so we shifted and we began to build and
14 develop residentially in Atlanta. Single-family
15 homes, although I did over my career there, did some
16 multifamily stuff, townhomes. Our concentration was
17 more in the luxury. I can't call it a zero lot but
18 tight lot concept. And I spent 11 years in south
19 colony doing that.

20 Q. 11 years, that takes us to approximately
21 1996.

22 A. Correct.

23 Q. Okay. And what did you do after that?

24 A. By 11 years in that residential building
25 and development business, as we like to say, I had

1 all the fun I could stand and I began to wind our
2 partnership interest down. As I was doing that and I
3 was planning on making a career change back into
4 commercial real estate, because I enjoy commercial
5 real estate, a family friend contacted me based on a
6 friend he had in Charleston who was looking for a
7 development partner. His name the Frank Brumley.

8 And I met Frank, and the long and the short
9 of it is Frank offered me the opportunity to come to
10 Charleston and do development work and also some
11 commercial brokerage work with Frank, which I did. I
12 accepted that position. And I actually -- we agreed
13 to it in '95, but it took me a whole year to wind
14 down all of the partnership interests I had,
15 liquidate all of the inventory, and I moved to
16 Charleston in May of 2006.

17 Q. In 2006 or was it 1996?

18 A. I'm sorry, I'm mixing up.

19 Q. I'm looking at your resume here.

20 A. You're right. I'm mixing up my decades.

21 Yes, it was '96.

22 Q. 1996. Okay. And I've also seen on here
23 that you were vice president at Trammell Crow
24 Company?

25 A. Right.

1 Q. Is that right?

2 A. Yeah. There's a little bit of a circuitous
3 route there, but Frank Brumley and his partner George
4 had acquired Daniel Island from the Guggenheim
5 Foundation. A huge project and everybody in
6 Charleston is aware of Daniel Island and the scale of
7 that project.

8 And Frank and his brother George were
9 looking for a joint venture partner for it. It was
10 going to be -- I don't know what it is, but I know at
11 the time the build out was going to be in excess of
12 500 -- between 500 million and a billion dollars. So
13 they needed truly deep pockets to do this.

14 And after a series of false starts, they
15 were introduced to the Trammell Crow Family Holdings
16 out of Dallas, which is the family holdings of
17 Trammell Crow Sr. himself, who was the grandfather of
18 the real estate development industry in the United
19 States.

20 And it became a marriage made in heaven.
21 The Brumley family, the Daniel Island Company, and
22 the Trammell Crow organization got along famously.

23 In that period of time, the Trammell Crow
24 Family Holdings, who were the largest shareholder in
25 the public Trammell Crow Company, obviously, had a

1 keen interest in Charleston and persuaded the
2 Trammell Crow public company to have a look at
3 Charleston as an investment base, a development base.

4 And I was approached by the Trammell Crow
5 Company, and I accepted the position as a senior vice
6 president of development.

7 So for the next -- from the late, let's
8 see, '90s to 2003, I was the senior vice president
9 for development. And it was a region that is kind of
10 a morphous region, but it was everything south of
11 Charlotte and Atlanta. Until we got to D.C. environs
12 and we got to northern Florida environs.

13 Q. Okay. And so was your role with Trammell
14 Crow, was it an acquisitions role or what was --

15 A. Well, it was acquisitions and development.
16 Trammell Crow is a developer.

17 Q. Okay.

18 A. Now, their business model changed and I did
19 several other functions. I'd love to say that they
20 panned out. For instance, we spent two years
21 negotiating with the Medical University of South
22 Carolina to be their real estate services
23 corporation. It didn't pan out, but also -- I did a
24 lot of work in that regard, though. Stuff we did do
25 was primarily development, and we chased a lot of

1 deals.

2 Q. Okay. Then on your CV, I'm seeing that
3 you -- looks like you have The Harrison Company
4 beginning in 2003. Can you describe that a little
5 bit for us?

6 A. In late 2002 -- well, 2001, we went through
7 the big recession. It wasn't a big -- a big
8 recession in certain parts, but in commercial real
9 estate we had a recession. Less so in residential.

10 And Trammell Crow came under the scrutiny
11 of Wall Street. People would question whether or not
12 Trammell Crow should have ever been a public company
13 because it's a development company, and their cash
14 flows are completely unpredictable.

15 So Trammell Crow's stock was not
16 performing, and a decision was made at that time they
17 needed to pare back. And at the height of the
18 Trammell Crow empire, at that point I think there
19 were 153 offices scattered in the metro markets
20 across the United States, some abroad, and the goal,
21 strategic goal, was to pare it back to 75.

22 I was number 77. So I thought I had made
23 the big cut, but somewhere in mid to late 2003, they
24 decided to close the Charleston office. And what
25 they did is they made me, let's just say, a strategic

1 partner, rather than employee of the Trammell Crow
2 Company.

3 So in doing that, I needed an entity from
4 which I would do my strategic partnering with, and I
5 created The Harrison company.

6 Q. So were you doing the same sort of work?

7 A. I was doing the same work, I just wasn't
8 drawing a salary for it.

9 Q. Okay. And you that did for approximately
10 how long were you doing work as part of The Harrison
11 Company?

12 A. Well, The Harrison Company stayed in
13 existence until I decided 2012, '13 that I would just
14 retire it from a registered company standpoint. Made
15 some other career decisions where I realized I really
16 didn't need it anymore.

17 So it stayed in existence until 2012, '13.
18 It still exists now as a d/b/a, but it is no longer
19 an LLC filed with registrations at the state.

20 Q. Okay. You're no longer doing business
21 under that name?

22 A. I would because it's still a d/b/a if there
23 was some logic for doing it, but currently I'm not.

24 Q. And that I guess takes us to what you are
25 currently doing, you're a professor at the Darla

1 Moore School of Business?

2 A. Yeah. In 2006, University of South
3 Carolina contacted me and asked me if I would be
4 willing to teach their students the real estate
5 craft, all its various aspects. And this is
6 something I had, you know, wanted to do for quite a
7 few years. My plan had been maybe I'd, you know, go
8 to the local university and teach night classes or
9 something.

10 But it was an interesting proposition.
11 They didn't have a department head, and they needed
12 somebody to come up and immediately run it. Even
13 though I had no academic experience, I thought it was
14 a challenge. At the time I thought it would be a
15 good -- it would look very good on my resume, if I'm
16 going to be doing consulting work, to have a
17 university position. And so that was the primary
18 reason I took it.

19 Long story short, I loved it. In 2009 --
20 in 2009, the real estate development opportunities
21 that I had collapsed again. If you're in this
22 business, they will collapse from time to time.
23 Lehman Brothers declared bankruptcy in
24 September 2008, and the rest was history. You
25 couldn't get a real estate project, development

1 project funded, acquired to save your life.

2 And so everything with all my strategic
3 partners that we had in process ended. And I think
4 the last project, we shut it down in January 2009,
5 which happened to be here in Charleston.

6 Q. And now are you teaching full-time?

7 A. I am.

8 Q. Okay.

9 A. We call it full-time.

10 Q. Okay. And let's talk a little bit about
11 some of the courses you teach and what that entails.

12 A. Okay.

13 Q. So what are the classes you are teaching or
14 have taught?

15 A. The broadest course I teach, have taught is
16 investment principles, and this is stocks and bonds,
17 portfolio theory, some derivatives. It's just an
18 introduction to the various theories of real estate
19 development and -- excuse me, of financial
20 securities. It's really more heavily concentrated in
21 portfolio theory, modern portfolio theory and risk
22 analysis.

23 But my real estate courses are real estate
24 principles, and real estate principles, this is a new
25 student to real estate. They have majored in real

1 estate, and really you teach them what a real estate
2 is but there's a particular emphasize on why real
3 estate isn't what we think it is. The fact that
4 there's not an efficient market for real estate. And
5 that part of what's applicable here is because
6 there's not an efficient market, we have to invent a
7 whole new industry which we call the appraisal
8 industry.

9 So as part of that course, we get into the
10 whole concepts of appraisal and what is this
11 relationship between appraisal and evaluation.

12 The other half of that course is once they
13 understand that, I begin to teach them the mechanics
14 of income valuation. Now, when a property creates an
15 income stream, how does that reduce back to a current
16 value.

17 Now, the next course I teach is
18 investments, real estate investments and finance, and
19 it puts meat on that skeleton I taught them in about
20 valuation. And in that course, I teach them how to
21 evaluate, we're sitting in a very nice office
22 building in Charleston. If it came up for sale, an
23 investor was interested in it, what's it worth? How
24 will you do that? And we actually take them through
25 that.

1 And the final course I teach, which is
2 global real estate capital markets returns to that
3 big-picture concept again of what is a real estate
4 market, what is its relative efficiency or
5 inefficiency, how capital moves around the globe, why
6 and when it chooses real estate as an opportunity to
7 invest, and then how the major players in the global
8 real estate capital markets, which are insurance
9 companies, pension funds, sovereign wealth funds,
10 private equity funds look at real estate from a
11 portfolio standpoint.

12 And it is portfolio theory, modern
13 portfolio theory, which has driven the investment in
14 the -- let's say the higher tiers of real estate
15 investment really for about the last 15 or 20 years.

16 Q. And I heard you reference that several
17 times now, modern portfolio theory. What is that in
18 your words, or how do you teach that perhaps in a
19 nutshell?

20 A. Well, in a nutshell, it's pretty tough. It
21 probably takes six to eight weeks, but modern
22 portfolio theory relies on the principles of
23 diversification and that diversification really has
24 two components.

25 The first component is diversification is,

1 generically, we know it, don't put all your eggs in
2 one basket. That's a truism we tend to quote that
3 makes sense on a certain level, and the first part of
4 that is why does that make sense.

5 So that's the first part of modern
6 portfolio theory. The second part is the modern
7 portfolio theory is the more interesting part, and it
8 has to do with correlations amongst classes of
9 assets, how do stocks relate to bonds, which relate
10 to real estate, which relate to natural resource
11 investments, which relate to derivatives.

12 And so modern portfolio theory says that if
13 you're smart and careful, you can build a portfolio
14 of varied assets that have either lower risk for the
15 same return or higher return for the same risk. And
16 it has to do with correlations, low correlations
17 between classes of assets.

18 I hope that's not over your head, but I
19 could go on forever, if you'd wish.

20 Q. That's all right. I think I understand.

21 So I guess my question is, based on that
22 description, is there -- does your teachings with
23 your classes involve some discussion of the prudent
24 investor rule or variation on that?

25 A. They do.

1 Q. Okay. Is that in connection with modern
2 portfolio theory?

3 A. Its connection comes really from the
4 expectations of an adviser or a trustee. Back in
5 '92, '94, there was some changes to the -- you could
6 say the prudent investor rules, and that whole
7 concept of the prudent investor rule has changed.
8 That really kind of changed the obligations and the
9 perspectives and the liability of trustees and
10 advisers.

11 And the old regulations, the old what we
12 used to call the prudent investor rules were risk
13 avoidance. And that was the theory that drove
14 investor -- investment advisers who had a fiduciary
15 obligation to their clients.

16 So modern portfolio theory says it
17 shouldn't be risk avoidance, it should be risk
18 management. And there you get into that second part
19 of the puzzle I'm talking about, which is the
20 correlation among assets. In a modern portfolio, you
21 can put risky assets. Putting risky assets in a
22 conservative portfolio can be a good thing because of
23 this whole correlation concept.

24 It may seem a little nonsensical, but
25 that's why it took some financial geniuses to figure

1 out this whole concept of modern portfolio theory 50
2 years ago.

3 So one of the requirements of -- I may have
4 the act's name wrong, but it's the Uniform Prudent
5 Investor -- Prudent Investor Act, I think, or Prudent
6 Investor Rules. I think that's the '94 act for the
7 first time mandated that a trustee follow the
8 premise, I mean, it states it specifically, of modern
9 portfolio theory.

10 And if you don't follow the tenets and the
11 premise of modern portfolio theory, you're putting
12 yourself in a situation for, let's say, claims of
13 negligence by your clients.

14 Q. Okay. And let me ask you this question,
15 are you -- do you have any degrees or certifications
16 other than the ones that we talked about? You know,
17 obviously, you have an undergraduate degree and
18 graduate degree, but are you a broker?

19 A. I'm a real estate broker. I've been
20 brokered in California. I'm sorry, not brokered in
21 California. I had a license in California. Brokered
22 in Georgia, brokered in South Carolina. You know,
23 with my new role these days, I keep those -- I keep
24 the licenses, but I keep them inactive.

25 Q. Okay.

1 A. I'm not practicing commercial real estate,
2 but I am a commercial real estate broker. I am also
3 a CCIM is which is a designation. The CCIM is -- you
4 know, different commercial real estate practitioners
5 may choose to argue, but most people recognize the
6 CCIM as the top designation in commercial real estate
7 and investment. It's the commercial -- certified
8 commercial investment manager.

9 Q. Okay.

10 A. It's a very difficult, probably the
11 toughest designation to get in real estate.

12 Q. Okay. And are you a licensed real estate
13 appraiser?

14 A. No.

15 Q. Okay. And I guess one thing I want to
16 understand from you is, what is the difference in
17 your view or in your words between a real estate
18 valuation and a real estate appraisal?

19 A. Well, an appraisal is a -- a real estate
20 appraisal is a valuation done under the auspices and
21 the license and the professional standard of a person
22 called an appraiser. So they both are the same
23 techniques.

24 Let's say the standard of care will likely
25 be -- well, is higher for a licensed appraiser, if

1 they're actually putting their designation on the
2 line.

3 There is a standards of practice that have
4 evolved over the last 60, 70, 80 years, which we
5 call, I call it USPAP, Uniform Standards of
6 Professional Appraisal Practice.

7 You're going to be tired of the acronyms by
8 the time we get through this.

9 But as you can imagine, that document has
10 grown from maybe a hundred pages when it was created
11 75 years ago. If somebody told me the USPAP manual
12 now was a foot thick, I wouldn't be surprised. But
13 it governs the practice of appraisal. Not valuation,
14 appraisal. It is the mechanics.

15 And of course, it gets in -- it has to get
16 into the fiduciary obligations of that appraisal.
17 And that's really the reason we have standards.

18 Q. And so what are some of the techniques you
19 say that are the same between -- obviously, an
20 appraisal is a regulated -- or an appraiser is a
21 regulated profession, right?

22 A. Yeah. Appraisal is a regulated valuation.

23 Q. Okay. And so what are the common
24 techniques that you're describing?

25 A. Well, appraisal and valuation are really

1 the same thing when you understand -- and you don't
2 want a lesson in market theory and inefficiency, but
3 we have to create this industry called the appraisal
4 industry, which is fairly unique to real estate
5 because an efficient market doesn't exist. However,
6 we need to know valuations constantly. We have to
7 have some source at any time of saying what is real
8 estate worth where there is no market out there to
9 prove it because there's no common good.

10 So A long time ago we had to invent this
11 industry called the appraisal industry to do that,
12 but that's a hypothetical.

13 So the appraisal industry having to create
14 valuations based on a hypothetical market that really
15 doesn't exist had to create standards of valuation to
16 try to predict what the market values are. So in
17 essence, an appraiser does what the market is doing
18 because if he's trying to predict the market he has
19 to value properties the same way market would value
20 property.

21 So in doing so, they've come up with really
22 three different standard methodologies of appraisal.
23 We call it the sales comparison approach, the cost
24 approach, and the income approach. So all appraisals
25 fall into one of these three categories.

1 Q. And have you yourself performed real estate
2 valuations in your years of experience?

3 A. Probably a thousand.

4 Q. Okay. So not necessarily appraisals
5 because you're not a licensed appraisal?

6 A. Right. I've never performed an appraisal
7 per se because I'm not a licensed appraiser. It is
8 illegal in South Carolina to call it an appraisal
9 unless you are properly licensed to do so.

10 Q. In doing these valuations, have you used
11 the sales approach, the income approach?

12 A. All of them.

13 Q. And what's the third one?

14 A. Income approach.

15 Q. Okay.

16 A. I'm sorry. It's the sales approach, the
17 cost approach, and the income approach.

18 Q. All of those are incorporated into the
19 valuations that you have done over your years of
20 experience?

21 A. Yes.

22 Q. Okay. And who would you have -- who would
23 you have performed those real estate valuations for
24 in your career?

25 A. Well, let's see, beginning of my career, my

1 first job coming out of the Army was land development
2 with the developers of Palmetto Dunes at Hilton Head.
3 So there you are doing the cost approach, which is
4 you are building a model of what you think the end
5 product is going to be from a cost and land approach
6 up.

7 Later in my career, later in those early
8 years, I was put managing a home building operation,
9 which I really didn't know what I was doing, but I
10 had to learn it. And from that standpoint, you begin
11 to learn sales comparison approach, as well as cost
12 approach.

13 Sales comparison approach is -- and it is
14 primarily used on the residential side. It is used
15 on all sides, but residential side depends
16 predominantly on the sales comparison approach.

17 If you have a house in a subdivision, you
18 want to know what it's worth, you find other houses
19 in that subdivision, as best you can, or similar
20 houses close by that have sold recently. You then
21 look at each of your comps, which are the houses that
22 have recently sold, and then adjust those comps to
23 them make them look like the subject. And in that
24 process, you have created the value for the subject.
25 So that's the sales comparison approach.

1 The cost approach is once -- particularly,
2 when I went into business for myself under a South
3 Carolina corporation, I built and developed
4 neighborhoods and hundreds and hundreds of homes. So
5 there you're doing it primarily by the cost approach
6 from the ground up, but you also have to say what
7 will it sell for, okay, and you get the what will it
8 sell for from cost comparisons in the market.

9 And then in all my years with Bank of
10 America, Century Partners, The Harrison Company,
11 there I'm doing primarily commercial income approach.
12 There you're looking at the income that a piece of
13 property throws off.

14 Ms. Belger and the family owns farmland.
15 That farmland, in theory, can produce an income
16 stream that goes out for years. One of the methods
17 of evaluating her farmland is to determine what kind
18 of income stream it will create, either from rental
19 or ownership, and you capitalize that income stream.
20 There's a challenge in capitalizing, but that will
21 give you a value.

22 So these are the three approaches, and I'm
23 sure I've done hundreds and hundreds by each of the
24 approaches.

25 Q. Okay. It sounds like you've done real

1 estate valuations both for commercial buildings or
2 commercial properties as well as raw land; is that
3 fair to say?

4 A. I have. I have.

5 Q. We talked a lot about your real estate
6 experience, Mr. Harrison, but do you have experience
7 in dealing with timber and farmland investments in
8 particular?

9 A. I do. I do.

10 Q. Would you describe that experience for the
11 judge.

12 A. Well, my family history is not unlike that
13 of the Boykins. And as Rigdon and I have been
14 through this, it is almost uncanny how my family's
15 situation has mirrored that of the Boykins for the
16 last 50 years.

17 My family have had property in Upstate
18 South Carolina for back to the Revolutionary War.
19 And we own -- my most recent ancestors owned
20 7,000 acres of land in Greenwood County and McCormick
21 County. Mostly in Greenwood County.

22 They were planted, and my grandfather
23 converted those plantings to timber after the
24 recession and before the last round of boll weevil.
25 And so our acreage became timberland for the most

1 part. Created a sawmill right after the depression
2 that became a viable business that my father and my
3 uncle ran. It is called Millway Lumber Company. Our
4 family home place is the same as the home Boykin's
5 home place, which is Millway.

6 Q. Are you saying it's got the same name?

7 A. Yeah, it's got the same name. Millway
8 Lumber Company.

9 And so, oh, God, I love the timber, wood
10 products business. I mean, my father believed in
11 hard work, so eight, nine years old, I was stacking
12 lumber, and by the time I was old enough to hold a
13 chainsaw, I was in the woods cutting trees. And I
14 did that all the way through college.

15 And, you know, conversation around the
16 dinner table is timber, land and timber, my whole
17 life.

18 We also had an unfortunate situation, just
19 as the Boykins have right now, of differences in
20 family perspectives of what ought to be done with the
21 land. Ours was a rather complicated situation in
22 that we had both a growing lumber company, as well as
23 family holdings all somewhat dependent on the same
24 land.

25 And there were issues with that. My father

1 and my uncle owned for the most part the lumber
2 company, but all six sons owned the land. And
3 because of the issues that created, the solution
4 eventually was to find a judge, and we did, a state
5 judge, who agreed to call -- I call it bifurcate the
6 trust. I think it has another name for it.

7 But the judge, realizing the difference in
8 the interests between the parties, took the
9 7,000 acres and actually at one point it was 9,000
10 acres and carved it up according to value to each of
11 the six sons, and they became the trustee and they
12 then were responsible for their own decisions on what
13 was done with the property. And as it worked out, it
14 worked out famously.

15 Q. And do you currently own any of that
16 timberland?

17 A. My brother and sister own, it depends on
18 who's counting, 11- to 12,000 acres of that.

19 Q. So do you have any personal experience with
20 the process of actively managing timber for income
21 generation?

22 A. Yes. My brother, sister, and I and my
23 father were trustees of his trust. You know, when we
24 divided it back in the 1980s, that 1200 acres came to
25 my father, and my father made my brother and sister

1 and I trustees along with him. And my father was
2 good about bringing us into the business. Me,
3 probably more than the rest, because I had an
4 interest in it.

5 So I stayed involved in that until my
6 father's death in 2007. In 2007, my brother and
7 sister and I made a decision to discontinue the
8 trust, and we created a family LLC. So we rolled all
9 the timberland into a family LLC, and I became the
10 managing member. So since 2007, I am a timber
11 manager.

12 Q. And what sort of activities does that
13 involve, you know, taking care of the family
14 timberland from your perspective?

15 A. Well, it is everything that anybody that
16 owns timber -- it just almost a mirror image of what
17 the Boykins and Ms. Belger deal with. If you have
18 timber of any size, you're making a mistake if you
19 don't hire a professional management to do it. So we
20 have two professional managers for our 11-,
21 1200 acres.

22 And so they're responsible kind of for the
23 day in/day out monitoring what's going on in your
24 properties, monitoring the timber markets, monitoring
25 your growth, managing your various sites, determining

1 when it is time to cut, clear, poison, et cetera, et
2 cetera. I don't even pretend to be an expert at that
3 level.

4 And then they make the decisions on best
5 time to harvest and how to take care of the various
6 tracts. Then that's when I get involved with the
7 contracts and dealing with the assets from that
8 level.

9 The other part that I have to get involved
10 with is understanding the timber economy. We're now
11 an LLC. We're not in a trust, and we can liquidate
12 that at any time. We don't have any fiduciary
13 obligations to anybody.

14 All three of us made a decision when we
15 made the family LLC that this is a business
16 investment, and we made sure all three of us
17 understood that, you know, the emotional attachment
18 that we once had to the land is over, and that it is
19 now an asset.

20 Q. And is that an asset you guys manage in
21 sort of a plantation style, as I've heard it call?

22 A. We manage it extremely intensively, yeah,
23 plantation style.

24 Q. All right. Mr. Harrison, sort of turn to
25 this case that you're here to testify about today.

1 If you would, tell me when were you first contacted
2 by somebody regarding this Boykin trust case.

3 A. It was in August. I can't remember the
4 exact date, but I was fly fishing in Wyoming, and I
5 got a cell phone bleep when I went over a mountaintop
6 and turned out to be this guy named Rigdon Boykin
7 from Camden -- excuse me, from Boykin.

8 And I don't know, it was probably a couple
9 of days before I got cell phone service again, but I
10 called him back and he gave me about a three-minute
11 explanation of the history that the trust had in
12 terms of valuation of the trust properties. And he
13 described it enough and I realized that I probably
14 had some -- I probably could be of help because it
15 was touching a lot of things in which both I was
16 interested in and had some knowledge of.

17 I told Rigdon at that time I couldn't
18 promise him whether I could get involved or not. I
19 needed to get back. And then when I got back to
20 South Carolina, we'd talk further, and I'd come over
21 and visit. And I did that, I don't have the date but
22 I have to guess it was probably the latter part of
23 August.

24 Q. Okay.

25 A. At that point after I met Rigdon there in

1 Boykin, we had a handshake, and I agreed to take on
2 this assignment.

3 Q. Well, what is it specifically that you were
4 asked to do or assigned to do?

5 A. Well, it's kind of morphed over time. I
6 think the original assignment was to look at what we
7 call the Helms plan. Now, I know it has several
8 names, but I think we all know what the Helms plan
9 is. The material that was put in my hands initially
10 was the big book.

11 Q. And is that what is marked as Wortley trial
12 Exhibit 2 of the a spiral-bound notebook.

13 A. I should probably step back. The exhibit
14 that was first put in my hands were the spreadsheets
15 that Helms did that are a part of that. And I had
16 told Rigdon I'd have a look at the spreadsheet, give
17 him my quick impression of that model. And, you
18 know, after I gave him the quick impression of the
19 model, he could decide whether he wanted me to
20 proceed or not. So I think that was the first
21 document Rigdon got me.

22 And so I had some -- I don't know, I spent
23 two or three hours looking at that, you know, just a
24 model of how he created it. It was a pretty
25 impressive model.

1 And then the next step after I agreed to go
2 ahead was Rigdon provided me the next exhibit, was
3 the book we're talking about.

4 Q. If you would flip to Exhibit 14 in that
5 notebook in front of you. Is that a document that
6 you prepared?

7 A. I did.

8 Q. And does this document purport to show all
9 of the references and sources that you've reviewed in
10 connection with your work on this case?

11 A. No, not all of them. All of them that I
12 thought had particular import. You don't have enough
13 space in the book at this point probably to put
14 everything I have looked at. But I tried to list
15 anything that I looked at that I thought had -- that
16 I remember thinking had relevance to this.

17 Q. Okay. And it looks like it's got in the
18 top half references and sources and then down at the
19 bottom there's two entries for delivered analysis and
20 reports; is that correct?

21 A. Correct.

22 Q. Okay. And those are models that you
23 developed?

24 A. Correct.

25 Q. Okay. And we'll get into those later. I

1 just wanted to make sure that that list was a general
2 description of some of the things you have reviewed
3 and found relevant.

4 A. (Nods head.)

5 Q. Is that a yes?

6 A. Yes. I'm sorry, yes.

7 Q. Okay. And approximately how many hours
8 would you say you've spent reviewing documents,
9 developing models, or performing other work in this
10 case?

11 A. Knowing that I was -- well, I was
12 anticipating this question. Last night, I updated my
13 time sheets, printed them out, grabbed them out of
14 the printer, brought them with me this morning, and
15 they didn't print. I don't know what the deal is,
16 but I'm going to have to do this by recollection.

17 Q. Sure.

18 A. I think my total hours are somewhere in the
19 160 hour range, 165 maybe.

20 Q. Okay. So you've spent a great deal of time
21 then reviewing the materials provided in this case
22 and developing models?

23 A. I would say this is the second most
24 intensive model I've ever been involved in.

25 Q. Okay. And, Mr. Harrison, in addition to

1 reviewing documents and developing models, did you
2 also attend any of the trial of this case?

3 A. I did.

4 Q. Okay. And that would have been in
5 September?

6 A. It was the last day of trial with Judge
7 Toal, I was there the entire.

8 Q. September 28th, does that sound right?-----

9 A. Mr. Duffy --

10 Q. I'll represent to you that was the last day
11 of trial.

12 A. If that was the last day, then that was the
13 date.

14 Q. Okay. And in addition to attending the
15 trial and reviewing documents, have you reviewed any
16 deposition transcripts or trial transcripts or
17 transcripts of trustee meetings?

18 A. I have.

19 Q. Okay.

20 A. I reviewed the -- some of Mr. Helms'
21 transcript from his testimony. I reviewed a -- I
22 reviewed the transcripts of the meeting -- trustee
23 meeting with Mr. Steve Nichols. I think I'm missing
24 something. Let me have a quick look at my list here.

25 Q. Well, is it fair to say you have reviewed

1 certainly some trial testimony and some trustee
2 meeting transcripts?

3 A. Yes.

4 Q. Okay. And you have met with Mr. Boykin,
5 Rigdon Boykin, a number of times to discuss this
6 trust and its issues?

7 A. I have.

8 Q. Okay. Have you visited and viewed the
9 properties that are the subject of this litigation?

10 A. I'd say there are 40 some-odd properties.
11 In terms of value, I think I've seen about 90 percent
12 of the value of the trust. There are 10 or 15
13 properties that are very low value properties or
14 maybe properties in which there is no question about
15 the relative accuracy of the valuations. I chose not
16 to -- in the interest of everybody's time and money,
17 because I thought it would have very little impact on
18 the bottom line, chose not to see those properties.

19 Q. Okay. But you've seen downtown Boykin, you
20 have seen what has been described as the legacy
21 properties?

22 A. Yeah. And I've seen more properties than
23 this, but what Mr. Helms called the legacy properties
24 and the 6 through 12 properties, 6 through 12-year
25 properties, I've seen all of those.

1 Q. Okay.

2 A. And some of the low-priority properties,
3 which were the one through five year.

4 Q. Okay. And I want to talk now a little bit
5 about Mr. Helms' model or plan, as I'll call it
6 throughout the deposition. But, Mr. Harrison, I
7 think you testified you reviewed that model at some
8 length; is that fair to say?

9 A. Yeah. I would say my first 50 hours were
10 probably spent understanding Mr. Helms' model.

11 Q. And Mr. Helms' model would be what's
12 contained in Wortley trial Exhibit 2, the spiral
13 notebook that we were talking about?

14 A. That's correct.

15 Q. Okay. And in your view does Mr. Helms'
16 model or plan include an assessment of the fair
17 market value of the Boykin trust properties?

18 A. Assuredly not.

19 Q. Okay. And I guess more specifically, we're
20 going to be talking mostly about what he has called
21 the legacy properties; is that fair?

22 A. Yeah. I understand a designation of his
23 legacy properties. I understand that that's not the
24 precatory language properties as an expansion of
25 that, but there is a group of properties in his

1 analysis that he called legacy properties.

2 Q. Okay. And if his -- in your view of his
3 model does not include a fair market value assessment
4 of the Boykin trust properties, is it instead a
5 special use valuation?

6 A. You got to be careful with the use of that
7 term special use valuation. Special use valuation
8 probably has a slightly different definition amongst
9 appraisers, and any time you are talking about a term
10 that's used by the IRS, you have to be particularly
11 careful, and then I know there's a special use
12 valuation that practitioners out there use in
13 general.

14 I would say the analysis that he had done
15 on the overall trust, in other words, what I'm
16 calling the Helms plan, to me, pretty closely
17 resembled what an IRS approach would be to a special
18 use valuation.

19 Q. And why is that? What is it?

20 A. That's my ultimate question is, what were
21 they trying to accomplish in doing this? I don't
22 know. I can speculate. And there are an awful lot
23 of things that seem to be coincidences that lead me
24 in a certain direction, but could be that, you know,
25 they're concerned about an IRS audit.

1 Q. Okay.

2 A. Could be.

3 Q. And have you, I'm sure, heard the term
4 highest and best use?

5 A. Sure. That's the standard evaluation that
6 when I first learned there's just a such a thing as
7 valuation, you start with that standard.

8 Q. And again, it may be difficult to describe
9 in a nutshell, but how would you describe for the
10 judge what the highest and best use is?

11 A. Highest and best use is a standard that's
12 used both in real estate theory and in valuation
13 practice, but it is also adopted as a cornerstone of
14 the appraisal industry. Remember the appraisal
15 industry is trying to reflect what we really do out
16 there in the valuation industry. Valuation industry
17 started first.

18 So the highest and best use is given a
19 piece of property and how it might be currently being
20 used today, the valuer has a problem. Are you going
21 to value the land as either vacant or improved as
22 the way in which it is being used, or if you were
23 willing to abandon that use, could it have more value
24 as a subsequent use.

25 So the valuation appraisal industry, really

1 since back in the founding, set the standard in which
2 we're going to value property is going to be highest
3 and best use. And that has specific standards.

4 There's, you know, the first real estate or
5 appraisal course you will ever take will say, okay,
6 those four standards are -- I teach this I should be
7 able to rattle it off my head -- physically possible,
8 legally permissible, financially feasible, and
9 maximally profitable. I think I got those four
10 right. So that's your standard.

11 Q. Okay.

12 A. And those standards haven't changed. Now
13 you can imagine the USPAP manual devote an inch or
14 two in the manual to each of those concepts.

15 Q. And does Mr. Helms' plan in your opinion
16 account for the highest and best use of the Boykin
17 trust property?

18 A. No. He has, obviously, chosen to -- I
19 don't want to say ignore, but the foundation of his
20 plan is something completely different other than
21 highest and best use. It doesn't even remotely
22 approach it.

23 Q. Have you heard of or seen before the
24 wholesale and retail methodology or concepts with
25 respect to real estate prior to Mr. Helms' use of

1 those phrases?

2 A. No.

3 Q. Okay. That's a new one for you?

4 A. Yeah. Yes, it is. Sorry.

5 Q. And, Mr. Harrison, are you familiar with
6 Mike Robinson?

7 A. I know him exceptionally well.

8 Q. Who is Mike?

9 A. Mike is founder/owner. I don't know if
10 Mike has any partners or not of Charleston Appraisal.
11 Mike is the gold standard of appraisers in this
12 region. I would dare say Mike has a reputation of
13 being the most respected appraiser in South Carolina,
14 and that may extend in areas of North Carolina and
15 Georgia.

16 I've known Mike -- I've known of Mike since
17 before I moved to Charleston 22, 23 years ago, and
18 I've known Mike closely and personally in the 22
19 years since. Mike was one of the first people I met
20 when I came to Charleston. Mike has been the close
21 adviser, confidant to most of the property-owning
22 families, sophisticated investors, and developers in
23 this whole region.

24 Mike is also probably the preeminent expert
25 on rural land valuation. Particularly, and I'm going

1 to use that term, kind of legacy, family property
2 valuation. And then when families go to create
3 conservation programs for their properties, Mike's
4 your go-to guy. I expect Mike has a Southeastern
5 reputation in those regards.

6 Q. Okay. And do you understand that
7 Mr. Robinson did perform some work on the Boykin
8 trust land?

9 A. I do.

10 Q. Okay. I think I saw an in Exhibit 14,
11 which is a list of documents listed from you, it
12 looks like there's about seven Charleston Appraisal
13 Services appraisals?

14 A. I think it's probably eight or nine.

15 Q. And you've reviewed those?

16 A. I have.

17 Q. So that would be the work product of
18 Mr. Robinson and his folks?

19 A. Yeah, seems like I also saw some other
20 appraisals from Mr. Robinson I didn't think were
21 necessarily that applicable to my exercise here.

22 Q. Okay. And do Mr. Robinson's or Charleston
23 Appraisal Services, Inc.'s appraisals include fair
24 market value assessment of those properties?

25 A. Yeah. That is their appraisal methodology.

1 Q. Okay. And does Mr. Helms' plan account for
2 the fair market value appraisal work done by
3 Mr. Robinson?

4 A. No.

5 Q. Okay. And we're going to get into your
6 valuation in just a moment, but -- you know, why
7 don't we look at that now, as a matter of fact.

8 Have you come up with what you believe to
9 be an accurate estimate of the underlying land values
10 of the Boykin trust property?

11 A. Yeah. Let's make sure we emphasize that
12 term estimate and accurate estimate.

13 Q. Sure. If you would, look at Exhibit 5 in
14 this notebook what's been marked as Petitioner's
15 Deposition Exhibit 5. Do you have that in front of
16 you?

17 A. I do.

18 Q. This is a little small, but it's got
19 reference lines, numerical reference lines down the
20 left and alphabetic reference lines above the top, so
21 perhaps we can refer to that to make sure we're
22 talking about the same things. But is this a
23 document that you created?

24 A. It is.

25 Q. Okay. Now, walk me through what this

1 document is and how to read it and what it's designed
2 to depict, if you would.

3 MR. BECKER: Liam, can I just ask a favor,
4 before we get into this, could we take a
5 three-minute break?

6 MR. DUFFY: That's fine. Absolutely.
7 We'll make it five.

8 MR. BECKER: Thank you.

9 MR. DUFFY: Sure.

10 - - -

11 (A recess transpired.)

12 - - -

13 BY MR. DUFFY:

14 Q. All right. Mr. Harrison, we are now
15 looking at Petitioner's Deposition Exhibit 5. Do you
16 have that in front of you?

17 A. I do.

18 Q. Okay. Is this a document that you created?

19 A. I did.

20 Q. Okay. And it reads at the top, Harrison
21 Analysis Boykin Real Estate Valuations and
22 Diversification Plan; is that right?

23 A. Correct.

24 Q. If you would, sort of take me through how
25 to read this document and describe for me what it

1 depicts.

2 A. Well, this document has morphed over three
3 or four months that I've been involved in this case
4 to kind of grow to grow along with the area of, I
5 guess, analysis.

6 But the first page was originally created
7 just so that I would understand and could have a
8 visual representation of the various tracts for
9 Helms' plan, the acreage sizes and how Helms broke
10 down -- how Helms broke down each of the tracts
11 according to its value on a wholesale basis and its
12 value on a retail basis.

13 Q. Okay. And it looks like on the left-hand
14 side you've got sort of a black grouping of columns,
15 which appear to be the various tracts owned by the
16 trust; is that fair to say?

17 A. That's correct.

18 Q. Okay. And they have reference number, a
19 name, and then a column that says "prior"?

20 A. Right.

21 Q. Is that priority?

22 A. Themes in his plan created three groups of
23 properties. Legacy group, which the presumption is
24 they would be held indefinitely. Properties that
25 were -- I think he called them maybe low priority

1 properties -- no, maybe they were high priority, for
2 sale properties, those are your properties 1 through
3 5. And then properties, maybe he called those low
4 priority sale properties, properties 6 through 12.

5 Q. And 1 through 5 and 6 through 12, those are
6 the years? Explain to me what those numbers mean.

7 A. Helms grouped all 44 or -5 of the
8 properties according to the plan into three
9 categories. Whether or not they would be held
10 indefinitely, which he called legacy. Whether or not
11 those properties were appropriate for immediate sale.
12 "Immediate" means in the first five years.

13 Q. One to five years?

14 A. And that's one to five. And then
15 properties that he thought there should be some
16 extended time before they were brought to market,
17 which would be year six through 12.

18 Q. Okay. So that would be the priority column
19 that's abbreviated prior, correct?

20 A. Exactly.

21 Q. Okay. So after the black columns, you get
22 into some sort of light green columns that looks like
23 acreage other, acreage timber, and acreage total.
24 What do those depict?

25 A. That is how the acreage is broken down on a

1 tract-by-tract basis by combination of Helms and
2 LaFrage, between what is timbered and what then is
3 not timbered is other.

4 You might first thought -- think that the
5 other is agriculture land, but I don't think that's
6 necessarily the case. But it is not timberland.

7 Q. Okay. So acreage other is non-timberland
8 on that particular property by row?

9 A. Yes.

10 Q. Acreage timber is the number of acres that
11 have timber on them per property?

12 A. Correct.

13 Q. And then the acreage total is obviously a
14 combination of those figures; is that right?

15 A. That's correct.

16 Q. And then at the bottom I see in red 5,998.8
17 acreage total. Is that the overall acreage of the
18 properties?

19 A. Well, there's a little bit of divergence
20 between LaFrage and Helms and my adding up their
21 respective numbers, but it's probably within five
22 acres of what various people are all saying is the
23 total acres, but that is the idea.

24 Q. Okay. And so these green columns, you
25 borrowed these figures from Helms and LaFrage or

1 you --

2 A. Helms and LaFrage.

3 Q. Did you go behind their math?

4 A. Yeah, that's what I did, is behind each
5 tract I went back and checked it, both on LaFrage's
6 reports as well as Helms' reports.

7 Q. Okay. So for the most part, though, then
8 those numbers -- this is not a disagreement with any
9 of the numbers, in fact, it's a borrowing of numbers
10 from the Helms model with maybe a slight deviation?

11 A. Yes. Yes.

12 Q. All right. And then after the green
13 columns that show the acreage of other timber in
14 total, there's a set of five columns in blue under a
15 heading Helms Wholesale. Do you see that?

16 A. I do.

17 Q. Okay. And walk me through, if you would,
18 what those columns depict.

19 A. Well, this is the breakdown on a
20 parcel-by-parcel basis of how Helms on a wholesale
21 basis valued the land in that parcel, the
22 improvements in the parcel, and the timber in the
23 parcel. Under the theory that the comp combined land
24 value plus improvements value plus the timber value
25 would equal to the wholesale value.

1 The fifth column there is you take that
2 wholesale value and divide it by its acreage, and you
3 come up with that number.

4 Now, if I had to do all this all over
5 again, I would take that column and instead of
6 expressing it in thousands, I'd -- I mean, yeah, I
7 would express it in dollars.

8 Q. Okay. So let me make sure I understand.
9 The values that are in input in all of the blue area,
10 the five columns there, land wholesale, improvements
11 wholesale, timber wholesale, and total wholesale, as
12 well as the wholesale per acre, those are dollar
13 values; is that right?

14 A. What's shown here is dollar -- yeah, they
15 are dollar values expressed in thousands.

16 Q. Okay.

17 A. So in other words, Millway, it's wholesale
18 land value. That's column 4I. It is 599.2. It is
19 \$599,200.

20 Q. Okay. So that then says that the -- land
21 wholesale value of Millway -- it looks like
22 Millway/Racetrack; is that right?

23 A. Correct.

24 Q. \$599,200 -- \$599,200 is the land wholesale
25 value?

1 A. Correct.

2 Q. Then you add in to that the improvement
3 wholesale value, which is \$273,000?

4 A. Correct.

5 Q. And then you also have to add in the timber
6 wholesale value which is \$417,800?

7 A. Correct.

8 Q. For a total wholesale value on tract A1,
9 Millway/Racetrack for 1.29 million?

10 A. Correct.

11 Q. And then you've divided it by the number of
12 acres to get \$1,700 per acre value?

13 A. Correct.

14 Q. Okay.

15 A. Now, understand that when I reduce it to
16 thousands, that 1700, if you expand it out, might
17 1651.

18 Q. There's a remainder that gets rounded?

19 A. Correct.

20 Q. Okay. I think I understand that then. And
21 that methodology carries through all the way to the
22 bottom, and you've got a number in red down there
23 which looks like 16,036.6, but is it in fact
24 \$16,036,600 total wholesale value?

25 A. That is correct.

1 Q. And that's, of course, borrowed from
2 Mr. Helms' numbers, right?

3 A. Yes. Yes. I made sure that I went back
4 and I checked these numbers against Helms' numbers
5 after I ran them. Part of this was just to make sure
6 in his addition and subtraction and so forth, he was
7 correct.

8 Q. Okay. So you not only trust but you
9 verified his numbers?

10 A. Yeah. I came up close enough to his
11 numbers, I'm satisfied with them.

12 Q. Okay.

13 A. If I'm a thousand dollars off, could be.

14 Q. Okay. And it appears to me to next columns
15 after the blue area are in light pink or red, and
16 they appear to be Helms' retail values; is that
17 right?

18 A. Correct.

19 Q. Same methodology here?

20 A. Correct.

21 Q. The numbers are in thousands, right?

22 A. Correct.

23 Q. So let's take Millway/Racetrack as an
24 example, and I'm looking at column O and line 4 where
25 there's 838.8?

1 A. Correct.

2 Q. \$838,800 land retail value on that
3 property?

4 A. Correct.

5 Q. And then you add in the improvement and the
6 timber values, and you get 1.68 million
7 approximately?

8 A. Correct.

9 Q. Okay. Which is roughly \$2,400 per acre
10 retail value?

11 A. Correct.

12 Q. Okay. And then if you run that total
13 retail column all the way down to the bottom, you
14 have a value in red which is actually \$20,458,900?

15 A. Correct.

16 Q. Okay. And, again, those numbers are from
17 Helms, which you have verified to a degree that
18 you're satisfied with their accuracy?

19 A. Correct.

20 Q. Now, I see a couple of columns in the
21 retail area where there is asterisks instead of
22 values. What do those depict?

23 A. Zero. Originally, I was not a hundred
24 percent sure of what the Helms and LaFrage -- well,
25 Helms was doing with his numbers. If you look at

1 Helms' property descriptions on a tract-by-tract
2 basis, he gets his columns mixed up. His rows and
3 columns are mixed up, and he's putting values in the
4 wrong columns.

5 After I created the report -- whenever I
6 saw that, I put a star basically not understanding
7 what it was. The numbers seemed to be, you're
8 looking for a value like \$436,000, for instance, in a
9 column, and it may show up as 1.635, and I couldn't
10 figure out what he's doing.

11 And what he's doing is the columns were
12 just mixed up, and that 1.635 was going to be a
13 dollar per acre rather -- which matched the column
14 down below.

15 Q. Okay.

16 A. So as I was going through that initially, I
17 put stars there.

18 Q. Okay. And on the far right of this first
19 page you also have in column AA, there's also a
20 comments section which looks to have, you know, five
21 or six entries. What's the story with those?

22 A. Those are just my notes as I was creating
23 this. I would say for our purposes right now,
24 there's nothing in there particularly important.

25 Q. Those don't have necessarily a meaningful

1 impact on the numbers that are reflected to the left?

2 A. It has a little bit of impact to me in
3 terms of my going back and if I had to recreate this
4 whole document a year from now, if I came up with the
5 same issue twice, it would be a note to me to remind
6 myself.

7 Q. Okay. So anything else on that first page
8 that we need to cover then?

9 A. No, I think we've got it.

10 Q. So it reflects -- just to recap, it's got
11 the in red in at the bottom, total acreage, total
12 wholesale value, and total retail value?

13 A. Correct.

14 Q. Okay. Let's turn to page 2 then, if you
15 will.

16 All right. Now, I see this page at the top
17 has a reference group by -- group by priority, and it
18 looks like the first set of cells, which are
19 highlighted on the far left in yellow, are all
20 priority L; is that legacy properties?

21 A. That is correct.

22 Q. And then below that in blue, you have
23 priority 6 through 12, that's the six- to 12-year
24 sales?

25 A. Correct.

1 Q. From Helms' model?

2 A. Correct.

3 Q. And then down in green at the bottom on the
4 far left, you have priority 1 through 5, that's,
5 again, Helms' one through five year grouping?

6 A. Correct.

7 Q. Okay. So then tell me, are these numbers
8 on this chart borrowed from the prior sheet that we
9 just looked at and just grouped in a different
10 manner?

11 A. That is correct.

12 Q. Okay. So then again, I'm starting at the
13 top with the legacy properties in yellow, which
14 appear to be rows 54 through 64. Again, you have
15 acreage other, acreage timber, and acreage total,
16 which add up to a total acreage of 2,444.4 acres; is
17 that right?

18 A. That's correct.

19 Q. Okay. That's the total acreage of legacy
20 properties; is that right?

21 A. Per Helms' plan.

22 Q. Okay. And then again, after that number,
23 you've got five columns in blue, which apparently
24 relate to Helms' wholesale value?

25 A. Correct.

1 Q. And I see in the bottom in red after adding
2 up all the land wholesale values, the improvement
3 wholesale values, and the timber wholesale values
4 that you get a grand total wholesale value for the
5 legacy properties of \$7,182,200?

6 A. Correct.

7 Q. Okay. Am I reading this correctly so far?

8 A. You are.

9 Q. All right. Moving on, you've got Helms
10 retail for the legacy properties only and again,
11 after you add up the land retail, improvements
12 retail, timber retail, you get a total retail value
13 on those nine or ten properties of 9.3 -- roughly
14 9.3 million; is that right?

15 A. That's correct.

16 Q. All right. Now, explain to me what's going
17 on with the column that -- or the columns, I should
18 say, that are labeled WHH fair market value estimate.
19 Is that WHH, William Harrison?

20 A. That is.

21 Q. So these are not numbers that were borrowed
22 from Helms; is that right?

23 A. That's correct.

24 Q. Okay. Explain to me what these depict and
25 how you arrived at these figures.

1 A. Well, after spending the time that I guess
2 I'd spent up to this point understanding Helms' model
3 and the various breakdowns of the properties, my next
4 step is, okay, we understand what Helms is saying
5 they're worth on a wholesale basis, which he
6 represented in his model is the value from which the
7 estate would be working.

8 I then set about to understand what I thought was the fair market value or were the fair
9 thought was the fair market value or were the fair
10 market values of the various parcels. By the time I
11 had spent the amount of time I had in this model
12 understanding the various properties, I realized that
13 the biggest divergence of value was going to be in
14 the legacy properties.

15 Some in the 6 through 12 properties and
16 relatively little, if any, in the low priority
17 properties or priority 1 through 5.

18 Q. Okay.

19 A. So my first and most important
20 determination of value, and that would give me an
21 idea of maybe how far off fair market value this
22 analysis was, was to begin my analysis of the legacy
23 properties.

24 Q. Okay.

25 A. Now, that analysis took me an awful lot of

1 time and it involves a lot of different steps to come
2 up with it. And if you go to next page.

3 Q. That's page 3 of Exhibit 5; is that it
4 right?

5 A. Right.

6 Q. Okay.

7 A. What this is is a summary. I mean, this is
8 not my valuation. This is the summary of the
9 indicators that I studied to give me my comfort level
10 in range of values based on a number of different
11 factors. But they include parcel size, road
12 frontage, probable wetlands, distance from Boykin, et
13 cetera, et cetera, et cetera, et cetera. So there
14 are a number of factors there.

15 Q. And just for the record, we are looking at
16 the page that has at the top legacy property land --

17 A. Value.

18 Q. -- value termination. That's a land only
19 value determination?

20 A. That is correct.

21 Q. Okay. So you're not accounting for timber
22 or anything else?

23 A. And thank you for that question. Let me go
24 back and just clarify at this point. I have not
25 taken any issue with any improvement values other

1 than when Mike Robinson's appraisal conflicted with
2 Helms' appraisal. I used Mike Robinson's appraisal
3 for improvements.

4 Q. Okay.

5 A. And I have taken no issue with Helms and
6 LaFrage's timber values. They're timber experts.
7 Okay. So the only real issue in this entire model in
8 which I have studied and found issue with their model
9 is the representation of the land values.

10 Q. And particular, as you noted I think
11 before, is more so with the legacy properties than
12 the six- to 12-year properties?

13 A. We will see it broken down a little bit,
14 but the majority of it you're going to see the
15 difference between what I think the properties in
16 whole are worth versus what Helms represents they are
17 worth is in the legacy properties.

18 Q. All right. Why don't we look at that on
19 page 3 then and figure out how you came to arrive at
20 a land value for those legacy properties.

21 A. Okay.

22 Q. So again, I'm looking at the far top left
23 here, you've got what appears to be all the legacy
24 properties in yellow; is that right?

25 A. That's correct.

1 Q. Okay. And again, you note that in their
2 priority column they're legacy properties, and the
3 next column, column E, appears to be acreage total?

4 A. That's correct.

5 Q. Okay. And those numbers, there's no
6 disagreement with Helms on those numbers; is that
7 right?

8 A. No.

9 Q. Okay.

10 A. To any substantial degree.

11 Q. Okay. Now, what is it that's depicted in
12 column F, which appears to be in light purple color?

13 A. That is a breakdown of properties that were
14 appraised by Mike Robinson. There were -- I'm sorry,
15 621 acres in two appraisals. And these appraisals
16 were created in response to the consideration the
17 trust was given to the Haile Goldmine option.

18 Q. Okay.

19 A. And the advantage of these appraisals for
20 me is that it appraised what I think are the
21 singularly most difficult properties in the entire
22 estate to value, things like the 167-acre lake, the
23 wetlands around it, the downtown Boykin stores and
24 properties and the corner there.

25 So what I did was to pull that appraisal

1 acreage, and you see the bottom of that light purple
2 column, 621 acres out of the overall acreage feature,
3 the tracts. Okay. So there's 20 acres in Millway
4 tract.

5 Q. Okay.

6 A. There are 20 acres in Millway tract that
7 Mike Robinson appraised separately.

8 Q. Okay. And so you -- am I correct in
9 reading this that Mike Robinson's appraisal of
10 621 acres, the acreage that composes that 621 acres
11 is made up of pieces of different property; is that
12 right?

13 A. That's correct.

14 Q. And those pieces are reflected in column --
15 excuse me, column F?

16 A. That is correct.

17 Q. Okay. And that, as you were saying, is 20
18 for Millway and Racetrack and would you go down that
19 column for me just so we understand?

20 A. Yeah. Gun Club, Boykin Gun Club, 374.2.
21 Boykin Mill Pond, 167.6. Capehart 59.2.

22 Q. Okay. So that's how you arrive at an --
23 you have an appraisal on those 621 acres; is that
24 what you're telling me?

25 A. I do.

1 Q. Okay. And then what is it -- I guess what
2 is it that's depicted in column G, which appears to
3 be a slightly darker shade of purple, I see 12.2 in
4 white?

5 A. That was a subsequent appraisal on the
6 second hardest properties to evaluate, and that would
7 be -- I'm going to call it Downtown Boykin.

8 Q. And that's part of the R1, Gun Club tract;
9 is that right?

10 A. There's 12 acres out of the Gun Club tract,
11 that's correct.

12 Q. Okay. All right. Now, explain to me once
13 you had those appraisals from Mr. Robinson on those
14 acreages, what did you do then? And what is it
15 that's depicted in the next columns?

16 A. So a great deal of my challenge in trying
17 to value the various tracts, not all by any means,
18 but I think the toughest thing for me was covered in
19 Robinson's appraisals, which gives me a value for
20 that.

21 So what I've got to determine is, okay, for
22 instance, on Millway tract, if there's 355 acres and
23 Robinson took, which I know is a wetland or near
24 wetland component of the Millway tract, what's left.
25 And there's 335 acres of generally highland.

1 Q. Is that value reflected in column K?

2 A. That's correct. That acreage is reflected
3 in column K.

4 Q. Okay. And it's a little skewed on my
5 printout, but it appears that column is titled
6 Acreage Balance?

7 A. That's correct. Yeah, it's skewed on mine
8 too.

9 Q. Okay. So that would be the acreage for
10 that tract, Millway/Racetrack that you do not --

11 A. An appraisal on.

12 Q. Okay. Because you have only gotten
13 appraisal for 20 acres from Mr. Robinson?

14 A. Correct.

15 Q. Okay. Keep going, if you would.

16 A. Likewise, Boykin Gun, the overall tract per
17 Helms is 538 acres. Robinson appraised 374.2 of that
18 in one appraisal and 12.2 in another, which leaves a
19 subsequent balance in Boykin Gun of 151.6 acres.

20 Q. Okay. So let me ask you this question
21 right here. For the 621 acres plus the 12.2 acres of
22 the legacy properties that you've got Mr. Robinson's
23 appraisal for, how do you go about -- do you accept
24 that as the land value for those pieces of property,
25 or do you come up with some per-acre calculation?

1 How does that work?

2 A. I'd say for the most part, I have. There
3 are some appraisals, and I'd have to go back and
4 check. No, I'm sorry, for these -- for these two
5 sets of appraisals and there actually are four
6 appraisals, I think, four appraisal documents, you
7 will see down below in lines 127 and 128 the per
8 appraisal one, per appraisal two, the acreage, and
9 then you will see a value number out beside that. I
10 don't want to get ahead of myself.

11 Q. Okay.

12 A. But I literally just pulled those values
13 down per the appraisal and entered them into my model
14 of what this is going to be worth.

15 Q. Maybe my question is directed about columns
16 H through J, which say Appraisal Option, and then
17 below that you've got excluding timberland only,
18 481 acres at \$2,067 an acre, 140 acres at \$2,500 an
19 acre, and then you've got a \$1.344 million total for
20 that 621 acres in light purple; is that right?

21 A. That's correct.

22 Q. And then that number is carried over to
23 line 127 as you were just pointing out?

24 A. That is correct.

25 Q. Okay. And then the same thing below in

1 white, 2.4 acres at 14,500 an acre and 9.8 acres at
2 12,000 an acre for a total of \$152,400?

3 A. That's correct.

4 Q. That would be line 128?

5 A. That's correct.

6 Q. Okay. I understand. So those are the
7 pieces that have appraisal values assigned to them?

8 A. That's correct.

9 Q. All right. Let's go back to coming up with
10 the balances -- coming up with the appraised land
11 values for the balances which is up above in the
12 right and then red and then white column, correct?

13 A. That's correct.

14 Q. All right. So once -- so I think I
15 understand that. Now, it looks like there is a comp
16 price per acre in red that you're applying to the
17 balance of the acreage; is that fair to say?

18 A. That's correct.

19 Q. How do you arrive at these comp values?

20 A. The comp values are -- I guess my next
21 challenge is to determine what this non-appraised
22 component of the legacy properties are worth. I'd
23 say this takes a fair amount of time, but it wasn't
24 the hard part of the analysis. Just this becomes a
25 bit tedious as you're looking at many different

1 comps. By "comps," we mean comparable sales. It's
2 just the industry jargon.

3 So I had to go out and find subsets of
4 comparable sales that expand anything from a tract as
5 small as -- we have a five-acre tract. No, we
6 actually have a 3.1-acre tract up to tract as large
7 as like Swamp tract, 416 acres, of what is still left
8 in the tract.

9 A good guide to this is Mike Robinson's
10 appraisals, subsequent appraisals on some of these
11 same tracts. Millway. He appraised both Millway and
12 Racetrack separately and as a composite appraisal.

13 There was another appraisal on -- I'm
14 trying to remember here whether it is Yellow House.
15 Maybe it was the Swamp tract. And by going back to
16 the appraiser's appraisals on larger tracts of land,
17 the appraiser himself comes up with comps. Okay. So
18 not only do you have the appraiser's value but you
19 also have his comps.

20 So it then gives me another set of data to
21 go back and look at based on whether I'm looking at
22 small properties, large properties, small properties
23 that look high and dry or large properties that look
24 wet. "Wet" meaning having a fairly substantial
25 portion of wetlands.

1 So my review of the appraiser's appraisals
2 and comps begins to create a shot pattern of values
3 based on those factors.

4 Then Rigdon Boykin had done a credible
5 amount of work researching comparable sales in this
6 whole Boykin region itemizing those sales, the date
7 of sale, carving out the land component of the sales,
8 listing them, then creating a map that I could
9 compare with the GIS and tax maps, then he had a
10 index of information on those comps on a
11 comp-by-comp-by-comp basis.

12 Q. And if you will look at Exhibit 6, which is
13 the next exhibit in your notebook, is that a
14 reflection of those comps that you're talking about?

15 A. That is.

16 Q. Okay. And that's Petitioner's Exhibit --
17 Deposition Exhibit 6. It was also previously marked
18 as Petitioner's Trial Exhibit 170. Do you see that?

19 A. Correct.

20 Q. Okay. All right. So you have reviewed
21 that in connection with coming up with your comp
22 values, as well as the comp values contained within
23 the appraisals themselves; is that right?

24 A. And the appraisals themselves, right. So
25 part of my coming up with the value starts with the

1 appraised value of similar properties for similar --
2 for instance, Racetrack and Millway are both very
3 high, well located, lots of frontage, very little
4 wetlands, some open land.

5 And that will give you an indicator, for
6 instance, with respect to the Carter Hill tract or
7 the Capehart tract, which are similarly located high
8 properties. Okay. So you start with appraisal, then
9 you go next to the appraisal comps, then you go to
10 let's just call them the Rigdon Boykin comps.

11 Now, by the time I go through those -- all
12 those comps, my shot pattern in terms of each group
13 of properties begins to substantially narrow.

14 Q. Okay.

15 A. Now, this is exactly what an appraiser
16 does. I mean, his process is -- well, I'm going to
17 call it more mechanical. The whole idea is to leave
18 less subjectivity about it, but essentially, they do
19 the same process. This is called comparable property
20 analysis.

21 Q. And that takes us back to page 3 of Exhibit
22 5, which we were just looking at, which has down at
23 the bottom I see Boykin Legacy Comparable Sales.

24 A. Right.

25 Q. It sounds like you're alluding to this, but

1 if you would, explain what this depicts.

2 A. Okay. Once I've done what I've described
3 here, and I'm sure I've got at least another 50 hours
4 in this, this represents a summary of my shot
5 pattern. If we come down to the chart called Boykin
6 Legacy Comparable Sales and you come to the very
7 bottom of that, you will see that I've got a
8 Conclusions column.

9 And I think that would be -- it's not going
10 to match up with your columns and rows because this
11 actually happens to be a jpg file that I essentially
12 pasted to this document.

13 Q. Okay. And it's a little bit blurry on
14 mine.

15 A. It is on mine too.

16 Q. Does it say assume significant road
17 frontage?

18 A. Yeah. The big assumptions, these are not
19 all the assumptions, is in terms of these tract sizes
20 is how much road frontage, how much wetlands, and the
21 fact that we are excluding timber value, including or
22 excluding timber value depending on what I'm doing
23 with the particular parcel.

24 Now, if you're down in small parcels that
25 have a retail value, if I'm selling a seven-acre

1 parcel close to downtown Boykin, that has a retail
2 value that I know with high confidence is at least
3 \$10,000 an acre.

4 Q. And that is represented in green under
5 residential retail in the five- to ten-acre size
6 range; is that right?

7 A. Correct. I know with very high confidence.

8 Q. And it looks like above that you have a
9 sampling of various properties in those categories?

10 A. That's exactly what those are.

11 Q. Okay. So you've have Ascot Drive, Ascot
12 Drive, and Myers Property A in that size range under
13 residential retail in green; is that right?

14 A. That's correct.

15 Q. And so are those the only properties in
16 that size range or the comps in that size range --

17 A. No, by no means. For instance --

18 Q. Let me finish my question, if you would.

19 A. All right. Sorry.

20 Q. -- to arrive at that \$10,000 per acre value
21 for that type and size of property?

22 A. No.

23 Q. Okay. And so what -- you reviewed other
24 properties?

25 A. Many other.

1 Q. Okay. And so these -- are they
2 representative of that type and size, or what is the
3 purpose of listing those?

4 A. I listed them because I thought they were
5 the single best representative of that size of
6 parcel.

7 Q. Okay. So you get a shot pattern for each
8 type, whether it is residential, retail, small tract,
9 midsize tract, or wholesale tract in red, and then
10 you take a representative of those to include on this
11 chart in A through F; is that fair to say?

12 A. That is. The chart A through F represents
13 what I would say when I create the shot pattern,
14 that's the center of the shot pattern.

15 Q. Okay. And so then does that give you
16 numbers based on the type or size, whether it is,
17 again, residential, retail, small tract, midsize,
18 large, or wholesale, that gives you a value that you
19 can then use for the un-appraised acreage balance on
20 the legacy properties; is that what you're doing?

21 A. Exactly.

22 Q. Okay. And that's for the land only; is
23 that right?

24 A. Exactly.

25 Q. Okay. And how about the comments in red on

1 those various properties in your sort of sampling
2 chart? I see approximately, for example, Myers
3 Property B in row 143 or 142, approximately \$6,200
4 excluding timber.

5 A. That is -- my comments, if any, are
6 necessary on that particular center of the shot
7 pattern sample property.

8 Q. Okay. And it looks like those relate to
9 whether or not the property has timber value on it
10 that would be included in your land -- in arriving at
11 your land value?

12 A. Yes. The toughest thing about this
13 particular exercise is since we're talking about land
14 values, raw land values, is to determine or back out
15 the timber values that may be in the appraisals or
16 may be in the sales prices.

17 Q. Okay. And so do I understand, am I reading
18 this chart correctly that the Boykin legacy
19 comparable sales down at the bottom are the inputs
20 for comp values that appear in the small black box in
21 columns -- at the top of columns O, P, Q, and R where
22 there's a bubble around that red?

23 A. That is correct.

24 Q. Okay.

25 A. In column L, where I'm going to now input

1 my estimate of acreage on that particular tract, the
2 remaining un-appraised properties, those values are
3 my inputs.

4 Q. Okay.

5 A. Those values come out of what was done
6 below.

7 Q. Okay. Which was arrived at through
8 reviewing, as you said, the comparables of the
9 appraisers and of Rigdon Boykin?

10 A. Right.

11 Q. And it looks like in --

12 A. And the appraisals themselves.

13 Q. Okay. And I also see some notes along
14 columns O and P. Rows 115 that have various
15 notations. Some say, "Per comps, county at 5,000,
16 per comps highly devisable," what is the significance
17 generally of those notes there?

18 A. When I -- at the bottom, under the chart at
19 the bottom that has Boykin Legacy Comparable Sales,
20 that is my big picture shot pattern based on these
21 parcel sizes that have significant road frontage, a
22 relative small amount of wetlands, and that either
23 depending on how I'm analyzing it include or exclude
24 timber value.

25 Okay. So what I've got now is a

1 hypothetical. That's what my whole shot pattern has
2 reduced it to. You could say I'm using the comps A,
3 B, C, D, E, and F, those center of the shot patterns
4 there because there are my indicators. But this is
5 I'm departing from the way in which a typical
6 appraiser would do this.

7 A typical appraiser, for instance, would
8 take Ascot Drive there, A and B. He would get all
9 the information on A and B. And he would take A, for
10 instance, he would research its sale, and then he
11 would start adjusting A back to the subject property
12 that he's appraising.

13 And when you open an appraisal, those will
14 be the big raw data of the comps and the comparable
15 sales and all the adjustments you go through.

16 If you're prepared to do that, you hire an
17 appraiser for all 46 of these properties to do it.
18 So what I've done is I have created a shot pattern of
19 typical properties in this value size access range
20 without property. In some respects, it's a
21 hypothetical because it's the center of the shot
22 pattern.

23 Then what I attempt to do is to apply that
24 center of the shot pattern to the remaining parcels
25 that are up here in the top of the chart.

1 And for instance, after weighing all the
2 information in the comps I have derived before, my
3 confidence level is extremely high that I can put in
4 Millway/Racetrack for those 355 acres that are left,
5 \$5,500.

6 Q. That's 335 acres that are left?

7 A. I'm sorry, yeah. I wish this was clearer.

8 Q. Okay. Thank you.

9 A. 335. \$5,500.

10 Q. All right. You're applying those same
11 values, those comparable sale values through that
12 column L in red?

13 A. That's correct.

14 Q. And do the notes along the right-hand side
15 of that table, those are various adjustments you
16 might make?

17 A. Could be adjustments or notes to myself or
18 notes to the reader of maybe why I came up with that
19 number. For instance, the Boykin Gun tract, there is
20 from the appraisal on the Boykin Gun tract for
21 374 acres, I know that a lot of the wetland was
22 stripped out of it. The whole purpose of that
23 appraisal was to determine wetland that could be used
24 as part of the mitigation for the Haile Goldmine
25 option.

1 Okay. So by looking at the swamp tract,
2 looking at the wetland that has already been carved
3 out, I'm able to make a determination, a rough
4 determination of the highland value on a per-acre
5 basis of the remaining property.

6 So my note to myself is rather than use the
7 5,500 I would make if I knew it was all dry, I've
8 used \$4,500 an acre because I know there is still
9 some wetlands remaining, and I can tell that from the
10 map in comparison to the appraisal.

11 Q. So for that property, the Boykin Gun Club
12 property, you have \$4,500 per acre for the remaining
13 un-appraised 151.6 acres?

14 A. That's correct.

15 Q. And you're saying you've actually reduced
16 that number per acre from 5,500, which would have
17 been borrowed from your comparable sales chart, based
18 on some of the makeup of the land?

19 A. Well, see that the Millway/Racetrack is
20 335 acres now. Note that I've assumed a two-tract
21 sale. There is a break point in values as the bigger
22 the parcel -- an appraiser will tell you this, the
23 bigger the parcel, there's some discount that goes
24 with that. Now, that's part of the art, and I'll
25 call it an art of the appraisal practice is figuring

1 out what those discounts are as you move up in value.

2 And I will truly tell you it's an art.

3 There's nothing in appraisal practice that can tell
4 them how much to reduce a parcel because of size. It
5 just comes from their experience in doing it.

6 Okay. So the Millway at 335 assumes that
7 it's been broken down into two more sellable,
8 immediately sellable tracts. I think they're 154 for
9 Millway, and I forget, 190 for Racetrack.

10 Okay. That will bring you a slightly
11 higher value than one 355-acre tract. I may be
12 telling you way more than you wanted to know at this
13 point. So as part of my adjustment, as well, I have
14 to consider tract size.

15 So the Boykin Gun tract remaining is
16 151 acres, which kind of falls within that
17 Millway/Racetrack pattern that I used 5500 acres for.

18 Q. That's the large tracts in purple down at
19 the bottom at the comparable sales?

20 A. That's correct.

21 Q. That would fall within the large tract?

22 A. That's what I've given --

23 Q. I think I got it.

24 A. What I think range is for those kinds of
25 tracts before I deduct for things like road frontage

1 or wet, et cetera.

2 Q. Okay. I guess what I'm trying to
3 understand is, you're not just assuming that every
4 tract that falls within that acreage range at the
5 bottom --

6 A. No.

7 Q. You're making adjustments --

8 A. Exactly. I'm sorry. That's exactly what
9 I'm doing in that column.

10 Q. Okay. All right. And so then let's get, I
11 guess, to the conclusion of that, which is you arrive
12 with a -- not only a per-acre value for the remaining
13 balance on each of the legacy properties, but then
14 you get a total value based on those comps?

15 A. Yes. Based on those comps and the
16 appraisal inputs -- well, I'm sorry, working your way
17 down the line, item 126, I come up with a total comp
18 value for the acreage I've used comp values for of
19 \$8,789,000.

20 Q. And that's a calculation or an addition of
21 all the entries in column M, correct?

22 A. That's correct.

23 Q. And basically what we arrive at is the
24 remaining un-appraised acreage on the legacy property
25 is 1,811.2 acres for a total value of \$8,789,395; is

1 that right?

2 A. That's correct.

3 Q. If I'm reading this correctly.

4 A. That's correct.

5 Q. Then it appears you add back in the 621

6 acres that you have appraisal numbers for at

7 \$1,344,227, that's in line 127, correct?

8 A. That's correct.

9 Q. And then you've got the 12.2 acres that
10 were appraised by Mike Robinson, and you have a value
11 of \$152,400 for that?

12 A. That's correct.

13 Q. So adding those three values gives you --
14 am I reading this correctly to say that gives you a
15 total fair market value in your estimation of the
16 legacy properties?

17 A. That's correct.

18 Q. And what is that number?

19 A. 10,286,000 and change.

20 Q. And that is depicted in line 129, correct?

21 A. That is correct.

22 Q. Okay. 2,044.4 acres at roughly
23 10.2 million?

24 A. That's correct.

25 Q. How does that compare with Mr. Helms'

1 wholesale value for the land?

2 A. His value was 3,812,000 and change.

3 Q. So the difference then is reflected in red
4 where there's a delta symbol, legacy delta land only?

5 A. That's correct.

6 Q. So you're saying that your fair market
7 value is roughly \$6.4 million more than Mr. Helms'
8 wholesale land value --

9 A. Correct.

10 Q. -- for the legacy properties?

11 A. Correct.

12 Q. How about compared to Mr. Helms' retail
13 value for the land only for the legacy properties?

14 A. Same process, I just subtracted his retail
15 value for land of 5,395,000 for delta, legacy delta
16 is what I'm calling it, land only of 4,891,000.

17 Q. Okay. I think I understand that. So now
18 that you've gone through that process, if we go back
19 to page 2, the preceding page on that Exhibit 5, and
20 we look at columns U through Y, which are red and say
21 WHH fair market value estimate; is that correct?

22 A. That is correct.

23 Q. Is this data that has been taken from page
24 3 that we just looked at?

25 A. That is exactly right. That is where those

1 numbers were derived.

2 Q. Okay. Now, let me understand because the
3 values we just looked at on page 3 you were telling
4 me are land only values?

5 A. That's correct.

6 Q. Okay. So then how do we arrive at a total
7 fair market value estimate for these properties?

8 A. Okay. Let's start with column U, and if we
9 take the values on a parcel-by-parcel basis that I've
10 come up with for fair market value and we divide it
11 by their acreage, we get a land retail value breaker.

12 Q. And that's your retail value; is that
13 right? You're using the same --

14 A. That's my fair market value.

15 Q. Okay.

16 A. All I'm attempting to do is compare here
17 with Helms' definition of retail. I guess -- I don't
18 want to digress, but I've had difficulty
19 understanding why Mr. Helms would have used the
20 wholesale concept to begin with. And after 167
21 hours, I still don't know.

22 Q. Okay.

23 A. He also put in his report retail. Well,
24 logic would tell me that I should be comparing my
25 retail with Mr. Helms' retail.

1 Q. Okay.

2 A. So that's why the note is there.

3 Q. Okay. And so in column U, we've got land
4 retail dollars per acre. That's your value per acre
5 for those properties?

6 A. Yes. But it also includes, you know, the
7 acreage that did get appraised.

8 Q. Okay. Right. So it's your value which
9 is --

10 A. It's a combination of my value and the
11 appraised value.

12 Q. Okay. And then you've got a total --

13 MR. BECKER: Excuse me, Liam, I must have
14 gotten lost, what exhibit are we on?

15 MR. DUFFY: We're on page of Exhibit 5.
16 Page 2 of Exhibit 5.

17 MR. TETTERTON: Top of the page.

18 MR. BECKER: I'm sorry. I'm just focused
19 on the wrong page. Excuse me.

20 MR. DUFFY: We're looking at column U, land
21 retail dollars per acre and the adjacent column
22 V, land retail dollars.

23 MR. BECKER: Thank you.

24 MR. DUFFY: Okay.

25 BY MR. DUFFY:

1 Q. And so, Mr. Harrison, does that column V
2 depict your total value for the land only for those
3 properties?

4 A. That is correct.

5 Q. Okay. And then where do you get the next
6 column W, which is improvement dollars or improvement
7 value?

8 A. Either from Mr. Helms' representation in
9 his plan of improvement value, or alternatively,
10 from -- if it was appraised, from Mr. Mike Robinson's
11 determination of improvement value. When there is a
12 conflict between the two, I used Mr. Robinson's
13 value.

14 Q. Okay. And then column X, timber value,
15 where did you get those inputs from?

16 A. Those inputs coming from Helms and LaFrage.

17 Q. Okay. So it looks like with column Y, we
18 end up with WHH fair market value. Is that an
19 addition of the total land value plus the improvement
20 value plus the timber value for that property?

21 A. That is correct.

22 Q. Okay. So, for example, for
23 Millway/Racetrack you've got 2.934 million; is that
24 right?

25 A. That is correct.

1 Q. Okay. And it says there in the far right
2 that you got the improvements value through
3 Charleston Appraisals' appraisal; is that what that
4 stands for?

5 A. That's correct.

6 Q. Okay. Now, I think I understand that. And
7 we just looked at page 3 which went through all of
8 the values on the legacy properties. Is the same
9 methodology applicable here to the six- to 12-year
10 properties where you applied comp values to
11 un-appraised land?

12 A. I did.

13 Q. Okay. So what -- ultimately, I guess the
14 upshot of all this, I run down column Y, which is
15 your fair market value appraisal for every single
16 property broken out by category, and I see a value in
17 a box down here, a cumulative total online 109; is
18 that right?

19 A. That's correct.

20 Q. And what is your fair market value
21 cumulative total based on the methodology you have
22 just described?

23 A. \$27,367,507.

24 Q. Okay. And if we turn to page 4 of Exhibit
25 5, which is the final page of that exhibit, it looks

1 like at the top it says Total Trust Fair Market Value
2 Determination.

3 A. Right.

4 Q. This appears to me to be a summary of the
5 prior pages we just looked at; is that a fair
6 assessment?

7 A. Yes. I would like to make a correction
8 here.

9 Q. Okay. What would that be?

10 A. At one point we were trying to make a
11 determination of the total trust value via a fair
12 market value analysis. And we got into some
13 complexities in terms of accounting, liabilities,
14 taxes, et cetera, et cetera, and a determination was
15 made to leave them off.

16 Down there at the bottom of the page where
17 you see the disclaimer, that is where that
18 information originally was and we stripped it out.
19 And I should have entitled this Total Trust Fair
20 Market Value of Real Estate Determination.

21 Q. Okay. So this does not take into account
22 cash accounts or --

23 A. That's correct, or any liabilities.

24 Q. This is just the land and timber on it?

25 A. Right.

1 Q. Okay. And that shows where you've got a
2 departure from Mr. Helms' retail and wholesale values
3 in line 176; is that right?

4 A. That's correct.

5 Q. For your total fair market value of
6 \$27,362,507; is that right?

7 A. That's correct.

8 Q. Okay. Anything else about that exhibit
9 that bears discussion?

10 A. You've done an excellent job in summing it
11 up.

12 Q. Give me just a moment, please.

13 Mr. Harrison, do you believe that the Helms
14 plan provides a true reflection of the value of the
15 assets of the trust today? We may have just answered
16 that by looking at your exhibit.

17 A. No.

18 Q. Okay. Do you believe that it accurately
19 projects the likely 15-year cash flows of the trust?

20 A. No.

21 Q. Why is that?

22 A. A variety of reasons. There are some minor
23 mistakes in calculations throughout the plan. Having
24 said that, this plan is so complex and complicated,
25 if there weren't any, I'd be shocked. However, there

1 are several big mistakes.

2 One was the failure to subtract sales
3 commissions and contingencies out of the total before
4 you came up with net operating income in any given
5 year, and that had a profound effect on both cash
6 flows and value of the estate at the end of the
7 period, end of the analysis period.

8 The other, which is in my opinion a highly
9 speculative, a highly risky, and quite frankly, just
10 inappropriate conclusion of conservation values in
11 his outer years six through 12 when his cash flows
12 otherwise are beginning to drop dramatically.

13 Q. And what is that opinion based on that that
14 is inappropriate?

15 A. My opinion is based on my more than
16 rudimentary knowledge of having worked with it
17 through the years.

18 Q. When you say "it," what are you referring
19 to?

20 A. Conservation concepts and techniques and
21 valuations and methodologies. I have had some
22 experience in working with them. Primarily, working
23 here in the Charleston region when you're doing
24 development and/or, you know, even property
25 acquisitions and sales that involve wetlands and

1 having to learn how the whole wetlands process works.

2 Some with respect to looking at
3 conservation values from our own family. We actually
4 took a look at conservation values about 10 years ago
5 so on some of our property. We have some real choice
6 upland hardwood lowlands on our properties, swamps.

7 But most of that opinion was gleaned from
8 reading Mr. Nichols' -- the transcript of
9 Mr. Nichols' presentation to the board.

10 Q. To the board, when you say that, you mean
11 to the trustees?

12 A. Yes, board of trustees. I'm sorry.

13 Q. And if you look at Exhibit 11 in your
14 notebook, I believe that this document was listed on
15 your references and sources, which is Petitioner's
16 Deposition Exhibit 14, but is this the transcript of
17 the meeting with Mr. Nichols that you're referring
18 to?

19 A. Doesn't look near as thick as the one I
20 read, but I'll take your word for it.

21 Q. Well, is it perhaps because it is four to a
22 page?

23 A. No. The one I was looking at is four to
24 the page. Do you mind if I check my notes?

25 Q. Sure.

1 A. Maybe it is just smaller print.

2 MR. TETTERTON: You want to go off the
3 record?

4 MR. DUFFY: Sure. We can go off the
5 record.

6 - - -

7 (Off the record.)

8 - - -

9 BY MR. DUFFY:

10 Q. All right. Mr. Harrison, is the transcript
11 of a trustee meeting for Mr. Nichols that you
12 reviewed dated April 3rd, 2018?

13 A. It is.

14 Q. Okay. And is it roughly 103 pages?

15 A. The one I'm looking at? Yes, it is.

16 Q. And that's Petitioner's Deposition Exhibit
17 11. Okay?

18 A. That's correct.

19 Q. And what is it in there that gives you
20 concern about the inclusion of conservation values as
21 part of a cash flow projection for this trust?

22 A. Well, in general, in order to really dig
23 into it on a quote-by-quote basis, I need to pull my
24 notes out and start reviewing some of the comments
25 that Mr. Nichols made, but in reviewing the entire

1 103 pages of transcripts, it's pretty clear that I
2 think anybody would read it as that this would be a
3 highly speculative venture with, in my opinion, not a
4 whole lot of probability for success or success for
5 which you would make an investment.

6 Even Mr. -- even Mr. Nichols states
7 somewhere in the document that -- he uses the term
8 this would be a very, very risky investment.

9 Now, be one thing if a group of us wanted
10 to take a speculative risk in property like this,
11 particularly maybe if it happened to be property that
12 if the mitigation bank was unsuccessful, we're happy
13 to use it as a duck hunting club. I mean, I can see
14 it and an awful lot of conservation values are put on
15 property for that reason. But as a business
16 enterprise, I mean, this isn't Las Vegas gambling,
17 but it's moving in that direction.

18 And that was my take from the -- from the
19 review of Mr. Nichols' presentation. Even
20 Mr. Nichols himself was trying to make sure that
21 everybody understood that from a business
22 perspective, this was a very, very risky investment.

23 He does say that if you're starting from
24 the premise, and perhaps this is why Mr. Helms
25 included it, if you're starting from the premise that

1 you're never going to sell the property forever,
2 then, you know, your options change. Because your
3 investment is relatively low, a couple \$300,000 with
4 no assurance you can get to the end of the regulatory
5 process and have what you think you're going to.

6 So that much is a gamble. But the values
7 would be such that if this bank was just mediocre,
8 only moderately successful or mildly unsuccessful,
9 while it might not work on a time-value-money basis,
10 and it might not give anybody an adequate term for
11 which they would normally do it, maybe over a 20-year
12 period, you know, you might say we planned on holding
13 it anyway, and we generated some income.

14 Q. Okay. And we'll talk a little bit more
15 about the effect of removing that \$320,000 a year
16 income stream on the overall financial status of the
17 trust later, but I want to ask you a couple of
18 questions before we get to that.

19 A. I might add, if you don't mind, on this, I
20 guess the most disconcerting thing was to read the
21 descriptions of the approaches that Mr. Helms and
22 others took towards creating -- they use the terms
23 reasonable and conservative throughout his
24 representation of the plan.

25 And at times, I do see he's taken

1 conservative approaches to value. Look what we did
2 on the valuation of trust versus fair market value.
3 To take that conservative approach and then suddenly
4 out in years six through 12 or 15, put in a value out
5 there that would be -- to say that would be -- that's
6 venture capital kind of investment.

7 It would not be the type of investment that
8 if you are considering the best interest of the trust
9 from the standpoint of their beneficiaries being a,
10 quote, prudent investor, I don't think you would even
11 dream about taking.

12 Q. Okay. And, Mr. Harrison, I want to talk to
13 you a little bit about timber markets. Are you
14 generally familiar with the historical and future
15 prospects for Southern Pine timber?

16 A. I am.

17 Q. And if you would turn to Exhibit 12,
18 please. Petitioner's Deposition Exhibit 12. Have
19 you seen this document before?

20 A. Yeah. This is a document that I use in my
21 own family planning.

22 Q. Is this chart something that you put
23 together?

24 A. No.

25 Q. Okay.

1 A. Well, I take that back. There are a few
2 lines on this chart that are mine, but the chart
3 itself, I picked this up probably three or four years
4 ago. I think it comes from University of Georgia,
5 but because I didn't get the reference on the bottom
6 when I made my master copy of it, I'm not a hundred
7 percent sure.

8 Q. Okay. But it's not something that was just
9 created by you out of thin air, you pulled it from
10 what you believe to be a reputable source?

11 A. Yeah, I think it's from one of my
12 consulting groups.

13 Q. And then the lines on there from 1991,
14 1998, and 2009, are those your markings?

15 A. They are.

16 Q. And if you turn to the second page of that
17 Exhibit 12, it appears to me to be the same chart
18 down at the bottom only in black and white. Is that
19 correct?

20 A. That's correct.

21 Q. Okay. And then what is it that this
22 document depicts and what is the significance of it?
23 What are these markings at the top?

24 A. Well, to understand current timber markets,
25 and we're talking about the South and in particular

1 South Carolina, to understand what's going on, the
2 only way to really understand what's -- why prices
3 are where they are, why yields on timber investment
4 have been what they were historically and where
5 they're likely to be in what you and I would call the
6 intermediate future, you got to understand what's
7 happened to the market over 30, 40, and 50 years.

8 So this is my attempt to tell a narrative
9 to help people understand the timber market as a
10 whole and particularly the Southern timber market,
11 and why we've got I think and every timber economist,
12 timber manager I've talked to except Mr. Helms, and I
13 haven't talked to Mr. Helms, thinks we got quite a
14 few years of depressed markets ahead of us.

15 Q. Is that the upshot of this document, is
16 your view there's a future that is not terribly
17 bright for the timber markets?

18 A. That is my upshot.

19 Q. And in addition to this document here, what
20 is that opinion based on? It sounds like you had
21 spoke to timber investors.

22 A. Oh, part of it is I study this for various
23 reasons. While I don't teach timber management at
24 the University of South Carolina, that's not our --
25 part of our territory, it is part of my academic

1 interest. You know, I have to and I need to
2 understand various aspects of land and real estate
3 markets, what they're doing and why capital moves
4 where it does. I have a particular interest in
5 REITs. In fact --

6 Q. And a REIT is a --

7 A. It's real estate investment trust. It's
8 actually a creation of the tax laws, but the REIT
9 industry has taken the real estate markets by storm
10 for the last 20 years and has taken the timber market
11 by storm in the last 20 years.

12 And the timber REITs have been darlings of
13 institutional investment for 20 years, and there's
14 reasons for that. And this narrative that's
15 eventually there explains why. It also begins to
16 explain why, as we saw two weeks ago, article shows
17 up, front page of the Wall Street Journal.

18 Q. What did that say?

19 A. Southern Landowners Who Thought They Were
20 Investing in Timberland for Retirement are
21 Rethinking.

22 Q. Is that Exhibit 2 in your notebook there? --
23 I know I'm jumping around on you a little bit.

24 A. That's okay.

25 Yeah. That's it.

1 Q. Okay. So you've reviewed that article as
2 well?

3 A. I have.

4 Q. And then how about exhibit -- that appears
5 to be a Wall Street Journal article dated October 9,
6 2018, that says, the title of it is Thousands of
7 Southerners Planted Trees for Retirement. It Didn't
8 Work.

9 A. That's correct.

10 Q. And then the subheading, so to speak, is
11 "Too much pine and not enough sawmills spell years of
12 depressed prices for plantations." Did I read that
13 correctly?

14 A. That's correct.

15 Q. Exhibit 3, have you reviewed that document
16 as well?

17 A. I have.

18 Q. And that appears to be a Wall Street
19 Journal article titled Man who Steered Timber Subsidy
20 Program Calls It His Biggest Regret; is that right?

21 A. That's correct.

22 Q. And how about Exhibit 4, what is that?

23 A. Stressed Southern Timber Growers Get Hit
24 Again. And that's -- oh, it's a reflection, if we
25 get in some discussions of timber risk versus their

1 returns, this is a particular risk that timber is
2 subject to, which is hurricanes.

3 Q. Okay. And this article --

4 A. And fire.

5 Q. And this article is dated October 27, 2018?

6 A. That's correct.

7 Q. And makes reference to Hurricane Michael
8 leaving at least \$1.6 billion in woodland losses
9 across three states?

10 A. That's correct.

11 Q. Okay. So you reviewed those as well in
12 connection with reaching your opinion about the
13 future prospects for Southern Pine timber market?

14 A. I have. I wouldn't say they really formed
15 much of my opinion. My opinion had been formed well
16 before these articles were out.

17 Q. Sure. Okay. And going back again to
18 Exhibit 12, which we were just looking at, which is
19 the chart of U.S. Southern stumpage prices,
20 particularly page 2, which contains your notations in
21 those boxes.

22 A. Right.

23 Q. The final box I see says, "2015 plus timber
24 glut, delta 15 to 25 years standing ST stock, five
25 plus years of excess inventory." What does that mean

1 for a layperson like me?

2 A. Normal inventory to production indexes
3 would be 15 years of inventory to annual production.
4 It gets a bit esoteric because real estate operates,
5 I mean, timberland operates under what's called a hog
6 cycle. Economists and commodities reference the hog
7 cycle, and timber is the ultimate hog cycle.

8 Where real estate cycles seven years, oil
9 cycle may be six months, timber cycles 28 to 30
10 years. So timber that was planted when prices were
11 extremely high, relatively speaking, back in the late
12 '80s and early '90s are now coming to maturity. And
13 they're coming to maturity at the very time that the
14 housing market collapsed, and the housing market has
15 been slow to recover. And as a result, we have a
16 huge overhang of timber in the South.

17 And you'll see various studies of how much
18 overhang that is and what is the possibility of our
19 pulling ourselves out of it. I subscribe to Forisk
20 Consulting's, they're economists, analysis of timber
21 prices, timber production, and likely recovery. And
22 the point they make in the last analysis that I
23 reviewed, which was in December, was timber inventory
24 went from 15 years to 25 years on either side of the
25 Great Recession. So there we were with an additional

1 10 years excess inventory.

2 Now, since that bottom, we've worked
3 perhaps half of that off, but we've worked it off
4 because the production industry, which are the
5 sawmills, have exploded in production. And lumber
6 prices themselves have gone through the roof. Lumber
7 prices are the highest I have ever seen them in my
8 lifetime, probably highest I ever will. I don't
9 think this is going to last.

10 But timber prices have dropped, and they've
11 dropped because there's that much difference between
12 supply and demand. And production, while it is
13 ramping up, isn't ramping up near as fast as it would
14 need to to start what we call demand pull on prices.
15 There's so much slack in the system, you can pull
16 production for a long time before the price line is
17 going to begin to move. So the question is, how
18 long?

19 Forisk analysis basically says maybe after
20 2026, maybe. And it's different in different places.
21 You got to be careful about aggregating what's going
22 on in the South to what may be happening in Camden,
23 South Carolina. There's a little bit of a good story
24 in Camden. I think it's Canfor, which is the
25 Canadian company that bought out the previous lumber

1 mill there, is expanding. So that's going to
2 slightly help the markets there. And South Carolina
3 is in better shape than most. But that doesn't mean
4 that by any means we're in good shape.

5 So maybe I'm editorializing too much, but
6 in short, that's my perspective. And my perspective
7 is based on the timber experts I know and respect who
8 truly take a steely-eyed look at the markets and say
9 this isn't going to be a fun ride for the next 10
10 years, and I hate it because a nice chunk of my net
11 worth is tied up in timberland.

12 Q. Okay. And you referenced earlier
13 institutional trust or institutional investors.

14 A. Correct.

15 Q. What is that that you're talking about?

16 A. The institutional investment community
17 discovered timber back in the late '80s and early
18 '70s. It became a darling of institutional
19 investment because of its cash flow potential. I'd
20 say it was a higher risk version of bonds.

21 It was a way in which they could -- we call
22 it reaching for yield in the investments world. But,
23 you know, when bond rates are relatively low, they
24 can't meet their actuarial standards, so they go
25 looking for investments with the next increment of

1 risk but the next increment of return. And timber,
2 they realized, started filling that need.

3 And so originally, it started out with the
4 insurance companies. John Hancock was one of the big
5 first players in it, that created both investments
6 for themselves, and they were so successful at it
7 they created separate accounts for foundations and
8 endowments, et cetera, et cetera, they wanted to
9 invest, and eventually they set up private funds.

10 You can actually buy into the John Hancock Timber
11 Fund.

12 Then with that interest came what we call
13 TMOs, Timber Investment Management Organizations,
14 they are an equivalent of an investment adviser or
15 over on the REIT side. We call REIT advisers.

16 And then third, with the explosion of
17 REITs, we saw in the late '90s, early 2000, the REIT
18 industry found timber. And the most interesting
19 thing there is after the REIT industry found timber,
20 the big wood products companies found REITs. And
21 companies like Louisiana Pacific, Georgia-Pacific,
22 Westvaco is going through that process right now,
23 realized that the -- there was a huge amount of
24 capital to be recovered by just taking all of their
25 timberland. Westvaco had, I forget how many millions

1 of acres timberland. Take it off the corporate
2 books, roll it into a REIT, and take the REIT public.
3 And they did it.

4 And it was hugely successful.
5 Unfortunately, the timber companies had been glad
6 they divested when they did because I think right now
7 we're on the verge of seeing those timber REIT prices
8 begin to drop pretty dramatically.

9 Q. And so in talking about these institutional
10 investors or endowment investors, I mean, in your
11 experience, what would be on a percentage basis the
12 amount that they might have invested in real estate
13 or timberland at any one time?

14 A. Well, when you look at -- when you start
15 with the concept of a diversified portfolio. Let's
16 say, if I'm a trustee, I'm a newly appointed trustee
17 to a fund, I have a fiduciary responsibility and
18 requirement that I be a prudent investor, those
19 uniform -- anyway, the 1984 Act that I tend to always
20 draw the blank on, Prudent Investor Act, Uniform
21 Prudent Investor Act, basically mandates modern
22 portfolio theory. Mandates it...

23 So then you start saying, okay, let's go to
24 those who are the state of the art out there in
25 creating these trusts endowments who are charged with

1 implementing investment by modern portfolio theory,
2 and let's look at asset allocation.

3 Now, there's a lot of interest in the
4 academic world in the last 20 years in just that.
5 There's been a whole lot of research that has proved
6 that what we call asset selection, which is, say,
7 Rigdon, he wants to choose -- you know, he knows the
8 oil and gas exploration industry. His portfolio
9 might be loaded up with Conoco or Ramco or ExxonMobil
10 or BP. Well, what we've discovered is that stock
11 selection process doesn't work.

12 Portfolio theory and asset allocation is
13 the single biggest decision that is responsible for
14 portfolio returns. The theory is, you can put the
15 Wall Street Journal on the wall and throw darts at
16 it, and your portfolio will perform better if you've
17 got the right asset allocation than picking stocks.

18 So I think I'm off track.

19 Q. Well, back to, my question was, a
20 percentage of the portfolio --

21 A. I'm sorry, I did get off track.

22 Q. -- land and --

23 A. Most of those endowments, and they are the
24 gold standard of asset diversification, because a lot
25 of the theory came out of those institutions.

1 Harvard, Princeton, Yale tends to be the most often
2 quoted. They have generally less than 30 percent,
3 typically more than 20 percent allocated to what they
4 call real assets. But real assets isn't real estate.
5 What they call real assets includes a bunch of other
6 investments that aren't really real estate.

7 So if we say maybe an average is
8 25 percent, that will usually be divided up into true
9 real estate, say, office buildings, shopping centers,
10 malls, REITs, et cetera, et cetera, maybe 15 percent,
11 and natural resource investments about 10 percent.
12 And that interestingly, they include timberland and
13 farmland in natural resource investments.

14 Q. So different types of, quote/unquote, real
15 estate investment; is that fair to say?

16 A. No. It's not really real estate. It's
17 real investments and all real investments means in
18 that jargon of asset allocation is you're investing
19 in hard assets. For instance, oil and gas
20 exploration is an investment in real assets. So it's
21 complicated.

22 But I guess the best way for me to describe
23 it is, you could get confused if you just are
24 thumbing through information about how much Yale
25 invests in real estate. At first blush, you say

1 see -- actually, I got my notes somewhere, but my bet
2 is -- well, I do know this figure. Your top 5
3 endowments in the world have to date 23 percent of
4 their portfolio in real assets. The real estate
5 component of that is probably 11 or 12 percent.

6 Q. So in those cases based on your experience
7 and knowledge, what would those institutional
8 investors do as a prudent investor with respect to
9 those holdings, especially if they exceeded
10 10 percent, for example?

11 A. Well, there's nothing that says exceeding
12 10 percent is not prudent. What modern portfolio
13 theory says is, if you're going to increase your
14 holdings in a given asset area, there needs to be a
15 confirmable bids model. And this is where trustees
16 get into trouble.

17 There needs to be a confirmable business
18 model that says, if we're going to increase our
19 allocation, for instance, to timberland over and
20 above the guidelines and maybe over and above what
21 our peers are doing, we've got to have a risk return
22 relationship with respect to the rest of our
23 portfolio to do that. If you don't, then you're
24 setting yourself up for issues.

25 Q. Well, let me ask you this question: Based

1 on your experience and knowledge, does the geographic
2 and asset class concentration of this trust
3 timberland pose an acceptable risk to a prudent
4 investor?

5 A. No, they wouldn't do it.

6 Q. And why is that?

7 A. It's too concentrated. Remember, there's
8 two types of diversification. One is the simple
9 diversification of not all your eggs in one basket.
10 And the reason behind that is what economists and
11 finance people call idiosyncratic risk. And we're
12 getting into the academic weeds again, but the way in
13 which you avoid specific idiosyncratic risk is
14 diversify.

15 And diversify says you pick -- if you were
16 in land and you were creating a diversified
17 portfolio, the best alternative is how far apart
18 could you spread your land. Tokyo, New York, Desert
19 Southwest, Northeast, Canada. So the more
20 geographical dispersion you get, the better because
21 you're eliminating some of the greatest risk that
22 come along with timber investment. Fire. If you got
23 all 6,000 acres in one fire zone and you do get the
24 100-year fire.

25 Look at Mr. Whit Boykin back in 1989. He

1 got five, six thousand acres and here comes Hurricane
2 Hugo and it's all in one place, and half his net
3 worth disappeared the next day.

4 Look what happened in Hurricane Michael and
5 some of those property owners in northern Florida.

6 Beetles are horrible about this. They tend
7 to infest. Because of mini-climates, they will begin
8 to infest a forest in a given area and take over the
9 forest. You go out to Wyoming and Colorado, I'm out
10 there every year, and you can look at hundreds and
11 hundreds and hundreds of square miles as the beetles
12 have eaten their way across the Pacific Northwest.

13 All of those are the big risks that you
14 have in timber ownership, and the more concentrated
15 you have that timber ownership, the more subject you
16 are to that risk.

17 MR. DUFFY: Okay. Jimmy, it is now 12:30.
18 We've got lunch. Actually we ordered it here to
19 try to expedite things, but I think I would like
20 to give our court reporter break, if she would
21 like one. I only have a few more exhibits with
22 Mr. Harrison. Why don't we go off the record.

23 - - -

24 (A lunch recess transpired.)

25 - - -

1 BY MR. BECKER:

2 Q. Mr. Harrison, you attended the final day of
3 the trial of this matter, I believe you testified to
4 that; is that correct?

5 A. That's correct.

6 Q. Okay. And are you aware of Mr. Rigdon
7 Boykin's testimony regarding certain errors or
8 omissions in Mr. Helms' model?

9 A. I am.

10 Q. And that was what you testified to earlier;
11 is that right?

12 A. Yes, that's correct.

13 Q. And more specifically, were you aware that
14 at trial there was an exhibit presented, which was
15 titled Petitioner's Trial Exhibit 211, which
16 purported to show the financial impact on the trust
17 of Mr. Helms' errors and omissions?

18 A. I am.

19 Q. Okay. Did you review that Petitioner's
20 Trial Exhibit 211?

21 A. Yes, I did.

22 Q. All right. I would like you to turn if you
23 would to Exhibit 15 in the notebook in front of you.

24 Do you have that ready?

25 A. I do.

1 Q. Okay. And in reviewing what was previously
2 Petitioner's Trial Exhibit 211, did you determine
3 that in fact it contained some miscalculation?

4 A. I did.

5 Q. Okay. And is Petitioner's Deposition
6 Exhibit 15, which is in front of you, designed to
7 correct that calculation, so to speak?

8 A. Yes.

9 Q. Okay. And this document appears to be
10 titled Effect of Correcting Formula to Include Row
11 107 in the Sums Contained on Row 108. Now, is this
12 document -- is this something that came from
13 Mr. Helms' model?

14 A. This document?

15 Q. Well, I guess the cells depicted on this
16 document.

17 A. That is my understanding, yes.

18 Q. Okay. And this isn't a document you
19 drafted, is it?

20 A. No, it's not.

21 Q. Okay. Do you know how this document came
22 about?

23 A. Yes. Would you like me to explain it?

24 Q. Yes, please.

25 A. As I was reviewing the document that was

1 presented for review at the trial, I noticed some
2 inconsistencies in the methodology about which the
3 line items were computed. I caught it, and called
4 Mr. Boykin and made it known to him. We discussed it
5 at some length.

6 He then called his accountant or CPA firm,
7 discussed it with them, and they prepared another
8 series of documents to correct their error.

9 Q. Okay.

10 A. And so I have seen these documents as it
11 has progressed up to this point here. I've had one
12 look at this document up to this point, but I think I
13 understand it at this point.

14 Q. Okay. If you could, my understanding from
15 attending the trial was that row 107 in Mr. Helms'
16 spreadsheet contained certain expenses; is that
17 right?

18 A. Yes. Those expenses were -- my
19 recollection, were sales expenses and contingencies.

20 Q. Okay. But those expenses were
21 inadvertently omitted from the ultimate calculation
22 of net income; is that correct?

23 A. That's correct.

24 Q. Okay. Now, does line 108 on Petitioner's
25 Deposition Exhibit 15 purport to show the effect of

1 including the expenses in row 107 on the ultimate net
2 income in line 108?

3 A. That is my understanding.

4 Q. Okay. And so those figures there in 108
5 would be the true and accurate figures based on
6 inclusion of all preceding cells in Mr. Helms' model?

7 A. Correct.

8 Q. Okay. And then is line 139 down in the
9 second sort of section there, line 139 appears to be
10 net value of all assets?

11 A. Correct.

12 Q. Do you understand this document, is this
13 intended to show the effect of correcting the formula
14 to include row 107 on the ultimate net value of the
15 assets over 15 years?

16 A. Yes.

17 Q. Okay. And it looks to me like looking in
18 the far right under total, that the net value of the
19 assets goes up 1.023 million roughly?

20 A. Yes, and I saw that. That's what it
21 purports to show.

22 Q. Okay. And do you recall what that increase
23 was previously in Mr. Helms' exhibit? I'm not sure
24 if you're aware or roughly.

25 A. No, I don't.

1 Q. Okay. Presumably, it would have been a
2 higher number, right?

3 A. Presumably, absolutely.

4 Q. All right. And then the next sort of final
5 section on Petitioner's Exhibit 15 shows line 140,
6 which appears to be the compound annual increase and
7 15-year percentage increase after you have corrected
8 this mistake; is that right?

9 A. That's correct.

10 Q. Okay. And it looks like the compound
11 annual increase is .43 percent and the total 15-year
12 percentage increase is just 7 percent, right?

13 A. That's correct.

14 Q. Okay. And if you would, turn to Exhibit
15 16, please. Now, to me, this looks to be a
16 continuation on Exhibit 15. Is that fair to say?

17 A. That's my understanding.

18 Q. Okay. And this document was likewise not
19 authored by you; is that right?

20 A. No, it wasn't.

21 Q. Okay. It came through the same procedure
22 you described before?

23 A. That's correct.

24 Q. And what is your understanding of what this
25 document is intended to depict?

1 A. This document takes into effect, not only
2 the error in calculation from row 107, but it also
3 removes the conservation revenue from Mr. Helms' plan
4 in years, I think, six through whatever the extension
5 on Mr. Helms' plan was. In other words, it removes
6 those conservation revenues.

7 Q. So it's got essentially two corrections
8 then to the existing model for Mr. Helms?

9 A. Correct. Correct.

10 Q. Okay. And is it your opinion that the
11 removal of the \$320,000 conservation revenue is
12 reasonable based on your prior testimony today?

13 A. It is prudent based on my testimony today.

14 Q. And again, it looks like in the second
15 section here, line 108 shows the effect of making
16 those changes on the net income from real estate and
17 timber operations? Same exhibit.

18 A. Yes.

19 Q. Okay. And then line 139 again, this shows
20 net value of all assets, but this time it accounts
21 for two changes rather than the one previous in
22 Exhibit 15, correct?

23 A. That's correct.

24 Q. Okay. And it appears the net value of all
25 assets after these two changes are made at the end of

1 15 years is a reduction of \$953,772.88; is that
2 right?

3 A. That's correct.

4 Q. Okay. And then lastly again, at the
5 bottom, row 140 shows the effect on the compound
6 annual increase in 15 percent year -- 15-year
7 percentage increase of making those two corrections,
8 and it appears to be a negative .43 percent compound
9 change and a negative 6 percent total 15-year change;
10 is that right?

11 A. That's correct.

12 Q. In looking at the prior exhibit, I saw that
13 the compound annual increase was .43 percent and then
14 this Exhibit 16 shows a negative .43 percent. The
15 same figure, just a negative. Is that -- do you know
16 if that's a mere coincidence?

17 A. Well, I saw the same thing myself and I
18 asked the question, and I was advised it was sheer
19 coincidence.

20 Q. And that's what Mr. Boykin told you?

21 A. Yes. He had asked the same question to the
22 CPA firm.

23 Q. Okay. And then finally on that topic,
24 Exhibit 17, if you will.

25 A. Excuse me.

1 Q. Which will be the final one in the notebook
2 in front of you.

3 A. Okay.

4 Q. Now, tell me in your understanding, what
5 does this document depict?

6 A. This document depicts the cumulative effect
7 of what we saw in exhibits 15 and 16 in terms of
8 removing, first of all, the subtraction error.
9 Second, the conservation revenues. And finally,
10 changing the beneficiary distribution from the
11 2.63 percent number that was in Mr. Helms' model to
12 3 percent.

13 Q. Okay. So it's making a third change on top
14 of the two previous ones we looked at?

15 A. Correct.

16 Q. Okay. And in your opinion, is that a
17 reasonable change for purposes of modeling for the
18 trustees to look at 3 percent as opposed to
19 2.63 percent distribution?

20 A. I think that's a reasonable assumption.

21 Q. Okay. And so again, the first section on
22 this Exhibit 17 appears to be the removal of the
23 conservation value or revenue; is that right? In
24 line 100 at the top.

25 A. Yes.

1 Q. Line 108 would, again, show the impact on
2 net income from removing the conservation value and
3 including the expenses contained in row 107?

4 A. Let me just check that to be sure. That's
5 my understanding as well. That's correct.

6 Q. Okay. And then the next, the third section
7 so to speak down in the middle of the page on
8 Petitioner's Exhibit 17, line 120, it looks like, it
9 says, "3 percent of net asset value payments to
10 beneficiary." So is that the third change that
11 you're describing is that line there?

12 A. This is on 139? Oh, no, on 120.

13 Q. 120.

14 A. That's correct.

15 Q. Okay. And if -- am I reading this
16 correctly to say that if there were a 3 percent
17 distribution of net asset value on an annual basis,
18 line 120 depicts the impact on the trust of making
19 those distributions after these changes are made?

20 A. Including the changes that were made.

21 Q. Yes.

22 A. That's correct.

23 Q. And ultimately, it looks like a reduction
24 in value or a total distribution rather at the end of
25 15 years of approximately 6.589 million?

1 A. One second. Yes, I'm sorry. Let me
2 rephrase this. This is the -- I'm not sure I stated
3 that properly before. On line 120 is the 3 percent
4 distribution value itself. It does not include
5 the -- while it includes the effect on the asset
6 value, it doesn't include the effect on the revenues.

7 Q. Okay.

8 A. So yes.

9 Q. And then line 139 shows the effect of these
10 three cumulative changes on the net value of all
11 assets?

12 A. That's correct.

13 Q. Okay. And that would be a reduction of
14 1.775 million over 15 years, right?

15 A. That's correct.

16 Q. Okay. And then the final line shows us,
17 again, line 140 shows us what is the effect of those
18 changes on the compound annual increase and 15-year
19 percentage increase?

20 A. That's correct.

21 Q. And what are those values?

22 A. It looks like on a compound basis under
23 this scenario, you're losing just shy of a percent a
24 year. Actually .82 percent per year on a compound
25 basis in terms of the principal value of your estate

1 or your trust, and cumulative, that's 12 percent over
2 that period of time.

3 Q. And do you understand that that percentage
4 is based on the net -- the wholesale net asset value?

5 A. That's correct.

6 Q. Okay. Now, assuming those changes on
7 Petitioner's Deposition Exhibit 17 were made, what
8 would be the effect of a 3 percent beneficiary
9 distribution either on the basis of Helms' retail
10 value or your fair market value on the overall trust
11 finances?

12 A. Well, since there's a substantial disparity
13 between my fair market value and Mr. Helms' wholesale
14 value, which he's using as the value of the estate,
15 of almost \$10 million, if you would make the simple
16 assumption that you got an additional 3 percent --
17 I'm sorry, additional half a percent distribution on
18 than \$10 million or .43 percent on that \$10 million,
19 that is going to be a substantial number.

20 And therefore, the estate value will have
21 dropped considerably more by the end of the period
22 than it would have otherwise.

23 Q. In other words, it would exacerbate that
24 decrease over time?

25 A. Yes. Because you're using 3 percent on a

1 much higher number, hence that 3 percent distribution
2 is considerably larger, hence that reduction in the
3 estate value from the distribution is bigger, and
4 therefore, the estate is smaller.

5 Q. Okay.

6 A. Hopefully, I explained that well.

7 Q. Absolutely. And, Mr. Harrison, do you
8 understand there has been some discussion by the
9 trustees about whether they should make certain
10 elections under the tax code to either avoid or defer
11 to specially treat tax payments?

12 A. I am.

13 Q. And what, in particular, is your
14 understanding of Internal Revenue Code Section
15 2032(a) as it relates to this trust?

16 A. As it relates to this trust, 2032(a) is a
17 special election that was instituted by the IRS
18 decades ago. I think it was during the farm crisis,
19 and it was an attempt to keep people, particularly
20 during the farm crisis, from losing the family farms
21 or their lands because of the extremely high estate
22 taxes, which back in that period of time were in
23 excess of 47 percent. And families were forced to
24 sell the farm in order to pay the IRS the estate
25 taxes on land value.

1 So what the special use -- special purpose
2 election did is that it allows for estate valuation
3 purposes the ability to evaluate the land if it is
4 timberland, farmland, if it qualifies, and its
5 continued use as farmland or timberland. In other
6 words, it is almost like saying it's an income
7 valuation based on what it can produce from
8 timberland, farmland, which may be substantially less
9 than its highest and best use value.

10 And so what that does is by electing that
11 particular option, if your family, like the Boykins
12 are, of substantially reducing the estate value
13 that's subject to estate taxes by taking that
14 election. There's a lot more to it, obviously, than
15 that, but that's the purpose of it.

16 Q. Do you have personal experience at all with
17 2032(a)?

18 A. I have some. I by no means, you know, put
19 myself as an expert on 2032 elections, but my
20 personal experience came from a similar situation.
21 Again, we just keep paralleling the Boykins here.

22 When my father died in 2007, we looked at
23 it. So that was kind of my first experience with it,
24 and we determined that for our purposes, we were able
25 to get my father's estate below the limitations

1 without going through that election.

2 Q. Okay. So you didn't ultimately choose to?

3 A. No. But that was my exposure to it until
4 this point.

5 Q. Understood. Okay. And have you done an
6 analysis of the impact of the proposed 2032(a)
7 election at the request of Rigdon Boykin as a trustee
8 versus a more immediate liquidation and reinvestment
9 of trust property?

10 A. I have.

11 Q. Okay. And is that model or that analysis
12 depicted on Petitioner's Deposition Exhibit 7?

13 A. Yes, it is.

14 Q. Okay. Now, if you would, similar to what
15 we did on Exhibit 5, if you would just walk me
16 through this document and how to read it and what
17 exactly it is that it depicts for the benefit of the
18 trustees.

19 A. Okay. It has several sections here by
20 page.

21 Q. Okay. Let's start with page 1.

22 A. All right. Page 1 helps me with the
23 assumption of what would the revenues be on this
24 property, and I'm going to call them silviculture
25 revenues be on this property, the elected property,

1 for a longterm hold period.

2 So by doing so, I'm attempting to establish
3 the income stream that that property is capable of
4 producing over -- initially, we did it over 14 years
5 because I do have silviculture data from Mr. Helms
6 and Mr. LaFrage going out to 14 years. But since the
7 term of the election requires a minimum ten-year
8 hold, we decided to go back and do the analysis over --
9 10 years rather than the 14.

10 Q. Okay. Now, before we get into the detail,
11 is it -- on page 1 along the left-hand column, I see
12 a number of tracts that appear to be parcels of
13 property owned by the trust?

14 A. That's correct.

15 Q. Okay. And it looks like there's two rows
16 for each tract Billy Fields rev. and Billy Fields --

17 A. Expense.

18 Q. Is that revenue and expenses?

19 A. That's correct.

20 Q. And these are not all the tracts owned by
21 the trust, are they?

22 A. No, they are just the tracts that were
23 specified in the 2032 election.

24 Q. So these are the tracts that are proposed
25 to be put into the 2032(a) plan, so to speak?

1 A. That's correct.

2 Q. All right. Carry on.

3 A. Okay. So along with the revenue and
4 expense, is the acreage that was proposed in the 2032
5 plan.

6 Q. Is that reflected in column C?

7 A. That is reflected in column C.

8 Q. Okay.

9 A. So what we have in years one through 14, in
10 other words, 2019 through 2032, are the expected
11 harvest and expenses that come out of Mr. LaFrage's
12 silviculture reports.

13 Q. So the harvests are reflected in the
14 revenue sections in black type; is that correct?

15 A. That's correct.

16 Q. Okay. And then the expenses are,
17 obviously, negative numbers in red; is that fair to
18 say?

19 A. That's correct.

20 Q. And those are borrowed directly from
21 Mr. LaFrage's silviculture projections; is that
22 right?

23 A. That's correct.

24 Q. Okay. And just so I'm clear about what
25 we're talking about, is that -- are those numbers

1 coming from what's marked as Petitioner's Deposition
2 Exhibit 8?

3 A. That is the case. There was a --
4 Mr. LaFrage several times updated his silviculture
5 report, and I pulled it from the most recent
6 silviculture report that is in the -- what I call the
7 Helms plan.

8 Q. Okay.

9 A. And I am presuming this is that same most
10 recent silviculture report.

11 Q. So Mr. Helms' plan includes the projections
12 for timber harvest from Mr. LaFrage?

13 A. Actually, there's a section in that report
14 that includes these same documents.

15 Q. Okay. Great. All right. So back to
16 Petitioner's Deposition Exhibit 7, that then -- these
17 numbers are not in the thousands, these are true and
18 accurate complete figures, correct?

19 A. That's correct.

20 Q. Okay. So then this, in my view, if I'm
21 reading this correctly, and tell me if I am, please,
22 this appears to show, for example, in column D, that
23 the total revenue projected by Mr. Helms and LaFrage
24 on timber sales will be \$504,000 -- 504,000 roughly
25 and \$4?

1 A. That's correct.

2 Q. And the expenses on those harvests will be
3 \$960?

4 A. That's correct.

5 Q. For a total net income of 503,044?

6 A. That's correct.

7 Q. And you carried that out over the 14 years
8 that you have data from Mr. LaFrage and Helms?

9 A. That's correct.

10 Q. All right. And that appears to me the
11 total election acreage that will be subject to the
12 2032(a) election by your analysis is 2,602.24 acres
13 in line 32?

14 A. That is correct, but there is a wrinkle to
15 that in that the -- all of that property that is in
16 that acreage is not completely owned by -- hopefully,
17 I'm getting my terms right, the residuary trust.

18 Q. Okay. Does that take us to page 2 of this
19 document?

20 A. That's correct.

21 Q. Okay. So we're now looking at page 2 of
22 Petitioner's Deposition Exhibit 7. Tell me what it
23 is that we're looking at here. I see WHH Fair Market
24 Value Determination 2032(a) Properties.

25 A. Correct. Okay. Here are your properties,

1 again, in the 2032. I have designated them yellow or
2 blue depending on whether they came out of the legacy
3 property portfolio or the year six through 12
4 property portfolio.

5 Per the analysis that was provided to me,
6 which I think came from the estate, there was a
7 representation of acreage in terms of percent
8 ownership, I think, by the residuary trust. And you
9 will see that it ranges anywhere from 80 percent to
10 100 percent.

11 So what I then did is for each of the
12 tracts, I took my fair market value of the land from
13 my previous analysis that we reviewed.

14 Q. Looked at Exhibit 5 to your deposition,
15 right?

16 A. If you say so, yes.

17 Q. Okay. And those figures are in column D;
18 is that right?

19 A. That's correct. That's my fair market
20 value for those tracts from my fair market value
21 determination. The previous exhibit we have
22 reviewed.

23 Q. And that's land only?

24 A. Land only.

25 Q. Okay.

1 A. All right. So there's my fair market value
2 of the land in that column D. Timber -- Helms'
3 timber, which is in column F, is also lifted straight
4 from that fair market value determination that I had
5 done previously.

6 Q. Is that column E rather than F?

7 A. Did I say F? I'm sorry. That is column E.

8 Q. Okay. I just want to make sure we're on
9 the same page. All right.

10 A. And what I'm calling retail stock, that is
11 stock that is existing on the property essentially
12 now.

13 Q. Okay.

14 A. Okay. To that, I add a fair market value.
15 Okay. And the -- I'm sorry, the total of those comes
16 up to my total fair market value for that particular
17 tract for land and timber.

18 Q. And that's column F?

19 A. That is column F.

20 Q. Okay.

21 A. Okay. So now, what I do is I go back and
22 take each of those columns and I multiply that column
23 by the percent ownership that shows up in column C.
24 And what I do from that is determine how much of that
25 overall tract in terms of land value and timber

1 value, and then consequentially, total fair market
2 value should be assigned based on the percentage
3 ownership.

4 Q. Okay. So let's take an example. So in
5 F41, Billy Fields, I see total fair market value
6 \$731,600?

7 A. Uh-huh.

8 Q. And then in column I, I see total fair
9 market value adjusted which is 585,280. Are you
10 telling me that that figure in column I is 80 percent
11 of the figure in column F?

12 A. If I did my numbers right, that's correct.

13 Q. Okay. Understood. All right. And how
14 about the columns or the cells that say INCL,
15 inclusive or included, what does that mean?

16 A. The number I'm using for Racetrack, those
17 values, were already included, if you go back to my
18 fair market value analysis, Racetrack and Millway and
19 their total of 355 acres were all lumped together
20 from an evaluation standpoint.

21 So if I'm going to reference back there,
22 where I have Millway 1 on line 43, those numbers on
23 my fair market value analysis include Racetrack.

24 Q. Okay.

25 A. So the other thing that is in the fair

1 market value is the Millway house. That's the home
2 and site, which is line item 44. Okay. So you will
3 see that added to my fair market value of the land.

4 Q. Got it.

5 A. All right.

6 Q. Okay.

7 A. Racetrack is included. So the sum of all
8 three of those line items goes back to relate to the
9 value, overall fair market value of Racetrack and
10 Millway under my previous analysis.

11 Q. Okay. And so it looks like you've done
12 that in yellow and blue for the 2032(a) properties
13 which come out of the legacy property category in
14 yellow --

15 A. That's correct.

16 Q. -- and the six to 12 year category in blue;
17 is that right?

18 A. That's correct.

19 Q. And what do you end up with down at the
20 bottom, you have a total?

21 A. So I have a total fair market value. My
22 analysis of the properties that would go into the
23 election at \$12,211,720.

24 Q. Okay. And so that's borrowing the numbers
25 that you've come up with through your methodology we

1 went through on Exhibit 5 in determining the
2 properties -- as to the properties going into the
3 2032(a) election, this is what their fair market
4 value is based on your previous exhibit?

5 A. That's correct.

6 Q. Okay. I think I understand that.

7 So then that takes us down to the line 58,
8 and I see a section that starts option number 1,
9 "Take 2032(a) election and hold designated properties
10 for 10 years."

11 A. Correct.

12 Q. Explain to me what this is designed to
13 show.

14 A. The expectations, not necessarily the
15 requirements but the expectations under 2032 election
16 is that the elector will subsequently hold the
17 property for a minimum of 10 years and continue its
18 use as timberland and farmland subject to a number of
19 limitations. Limitations being, I think 25 percent
20 of the value of the total estate has to be in real
21 estate and 50 percent of the value of the total
22 estate has to be in farming resources and real
23 estate.

24 So making the assumption that, in fact,
25 these properties were taken out of any consideration

1 for sale and, in fact, held for 10 years and that
2 they did get the benefit of the \$400,000 savings in
3 estate taxes that was represented in the information
4 that was sent to us on their analysis, what I did is
5 I did an internal of return in that present value
6 analysis on that scenario for those properties given
7 the silviculture revenue, the hunting lease revenue,
8 and the agricultural rents that were represented in
9 Mr. Helms' plan and in Mr. LaFrage's reports.

10 Q. Okay. At the top before you get to line 75
11 that has investment, I see some things up there at
12 the top, inflation factor, hunting lease rate per
13 acre, 2018 agricultural rents, are those some of the
14 figures that you've used in calculating this model?

15 A. That's correct.

16 Q. Okay. Where did those figures come from?

17 A. They came from the Helms plan.

18 Q. Okay.

19 A. A lot of those assumptions are there. Some
20 of those I got from Rigdon Boykin. For instance, the
21 lease rate, the hunting lease rates on the plan
22 overall for all 6,000 acres were pretty low. And
23 Rigdon had recently negotiated the hunting lease
24 rates for the legacy properties, and they're at \$16
25 an acre. So that's where that figure, for instance,

1 came from.

2 I had to do a little bit of estimation in
3 that there are agricultural rents that are aggregated
4 on the Helms plan that cover a variety of properties,
5 and because of Helms' tendency to throw everything in
6 big groups, it was impossible for me to carve that
7 total number out, which I think was over \$35,000, and
8 assign it to any particular property.

9 Mr. Boykin and I talked about it and it was
10 his estimation after he did some research into it
11 that if I used a figure of \$10,000, I would be,
12 according to him, within a thousand dollars of what
13 he thought the current agricultural rents were on
14 those legacy properties, so that's where that \$10,000
15 came from.

16 With respect to those \$10,000 of revenues,
17 there are also agricultural expenses associated with
18 those agricultural revenues. And I made the
19 assumption that the agricultural expense revenue
20 relationship that Helms had in his overall plan for
21 all the acreages would be the same expense revenue.

22 Q. And is that 39.39 percent reflected in line
23 69?

24 A. That is it.

25 Q. Okay.

1 A. So that's where that came from.

2 Q. Okay.

3 A. Helms grew what he called the legacy
4 properties in terms of the land value growth at
5 2 percent, so I used his number. He grew the land
6 values in the 6 through 12 properties at 3 percent.
7 I used his numbers.

8 Mr. Boykin looked up the 2018 property tax
9 per acre number for me at \$2.15. And there was an
10 unallocated expense per acre that Mr. Boykin and I
11 came up with based on total unallocated expenses that
12 showed up in the Helms plan of \$4 per acre.

13 Q. Okay. And that takes us to line 75. And I
14 see down here a number of revenues and expenses and I
15 don't know that we need to go through every single
16 cell on here, but explain to me what sort of the
17 takeaway of all these revenues and expenses is as we
18 get down toward the bottom of this first page. How
19 is this intended to be read?

20 A. Well, this is to be read in the context of
21 someone who is familiar with the discounted cash flow
22 model, internal rate of return or net present value
23 model where your investment, whether it's actual cash
24 or the contribution of property to an investment, in
25 other words, an in-kind investment is presumed to go

1 in at times zero. And generally, in time-value-money
2 speak, it goes in as a negative number.

3 So the decision, if this election would be
4 made, can be reasoned that the Boykins are choosing
5 Boykins -- and I apologize, Ms. Belger, I realize
6 there's a lot of names other than Boykin, but
7 presumption would be that they're making the decision
8 that they're going to invest 12,211,000 and change
9 into this 1230 election property.

10 Q. 2032(a) election --

11 A. 2032(a) election property.

12 Q. Okay.

13 A. I'm sorry.

14 Q. Got it.

15 A. So there on the top line is your investment
16 amount. For that, I'm going to presume you get
17 immediately, but you don't necessarily get it
18 immediately, but I'm a going to presume you get
19 immediately a \$400,000 credit.

20 Q. A return on your investment, so to speak?

21 A. Yes. That is the tax savings on the --
22 immediate tax savings on the estate plan.

23 Q. Okay.

24 A. That has the effect of netting your cost
25 into the investment 12 million two, less \$400,000 of

1 11,811,720.

2 Q. And that's in line 90?

3 A. That's correct.

4 Q. In year zero, your before tax cash flow,
5 11.8 million.

6 A. In other words, that's your investment in
7 this approach.

8 Q. Okay. And do the succeeding years 1
9 through 10 show the revenues on that investment or
10 the return on that investment?

11 A. In which line are we talking about?

12 Q. Line 90.

13 A. Yes. So in years 1 through 10, I'm really
14 just taking the data from the LaFrage harvest
15 silvicultural revenue expenses, the agricultural
16 revenue and expenses, the hunting lease revenue
17 property taxes, unallocated farm and temporary
18 expense, the Millway residence revenue and expense --
19 by the way, I didn't mention it, I got that number
20 from Mr. Boykin as well. -- to give us net operating
21 income.

22 Q. Do you understand that that Millway
23 residence revenue is \$12,000, is that based upon a
24 thousand-dollar-a-month rent?

25 A. This is based on Mr. Boykin's

1 representation that from his experience with that
2 property, it is almost a dead wash between the
3 revenues they get and the operating expenses they
4 receive from it. And if you were to figure out
5 capital expenditures, it would be negative. We
6 didn't do that.

7 So he said rather than our trying to split
8 hairs on this, you assume there's \$12,000 worth of
9 annual revenue and roughly \$12,000 worth of annual
10 expense, which is what I did.

11 Q. Okay. And then that brings us to line 87,
12 I think, or perhaps 86. So I cut you off, but carry
13 on and tell me how to understand this.

14 A. Well, this is what we would call net
15 operating income. This is classical investment
16 speak. You take your operating assets, you add up
17 the revenue that comes from those operating revenues,
18 and that's operating expense. And often that's the
19 line, as we say, we capitalize. So that is the
20 operating income that flows to the bottom line.

21 Q. And in between the net operating income and
22 the bottom line, you've also got liquidated land
23 value at 92 percent. What does that signify?

24 A. These next three line items which are 87,
25 88, and 89 actually refer to cash flows that you are

1 going to presume happen out in year 10. So those
2 line items reflect values that assume whether you
3 decide to sell or not or decide to liquidate your
4 timber or not. The way in which you underwrite an
5 investment is you actually make the decision to do so
6 so that you can compute values over that whole
7 period.

8 Q. So is it fair to say that 87 and 88, the
9 values in those lines at column 10 or year 10
10 5.51 million and 4.24 million, is that as if you were
11 assuming that land would be sold in that year?

12 A. That's correct. Whether or not they're
13 sold or not, it's kind of like whether or not in year
14 zero we say that they invest 12,211,000. I mean,
15 they didn't sell the property and reinvest it in
16 themselves.

17 Q. Sure.

18 A. That's the logic in which you would apply
19 in an investment decision.

20 Q. Understood. Okay. And those land values
21 are at 92 percent. Is that because there's an
22 8 percent expense associated with the sale of the
23 land or where is the --

24 A. The 8 percent was Mr. Helms' commission
25 number.

1 Q. Okay. And so what do we end up then at the
2 end of 10 years under this option one?

3 A. Well, at the end of 10 years, at the end of
4 10 years, you have a cash flow of \$94,524. In
5 theory, you sell your land for \$5,519,988. In the
6 legacy properties, I'm sorry. In other words, we're
7 saying that's what they're worth.

8 Now, under this model, if you do sell your
9 properties or you assume what your cash flow would be
10 should you sell your properties out there at the end
11 of year 10, you're going to have to pay a real estate
12 commission, so the valuation is reduced by 8
13 percent --

14 Q. Okay.

15 A. -- to reflect that. The same thing with
16 your liquidated land value on your six- to 12-year
17 properties at 92 percent.

18 Q. Okay.

19 A. So those columns 87 and 88 reflect that.

20 Then there's the issue of liquidated timber
21 value. A challenge for anybody evaluating something
22 like this is since the Boykins have not managed their
23 plantation in an intensive plantation style, stock is
24 regrowing stock. And so the challenge you have is
25 does stock remain constant or if you overharvest,

1 does stock decrease? Or if you under harvest, does
2 stock increase?

3 The most conservative way to assume this is
4 to assume that stock remains -- growing stock remains
5 the same. So what I've done is I've recaptured my
6 growing stock out at the end of year 10 of
7 \$3,652,212.

8 Q. Okay.

9 A. Which is 100 percent of current stock.
10 Now, if we add all that up, you will see you get a
11 cash flow under a hypothetical sale or liquidation in
12 year 10 of 13,514,000.

13 So at this point, now the calculator or
14 your spreadsheet takes over. You load your cash
15 flows in. You determine an internal rate of return.
16 And the internal rate of return, the best way to look
17 at that is that's the compounded return that the
18 investor should expect.

19 Q. Per year?

20 A. Compounded annually.

21 Q. Okay.

22 A. Of 3.75 percent.

23 Q. And that's in line 91?

24 A. That's correct.

25 Q. Okay. And what did line 92 and 93 show?

1 A. Line 92 is the average net operating cash
2 flow per year. And if you take that before -- well,
3 if you go back up to the net operating income. And
4 let's understand this is before tax. But if you took
5 line 86 and took those cash flows that would be
6 flowing out of the property, those are revenues
7 available to distribute to beneficiaries, and divide
8 them by 10, you'd see that your average NOI cash
9 flow, in other words, at this point, that is
10 distributable.

11 Now, I say distributable, and really what
12 happens is it distributes down the P&L statement to
13 maybe they got to pay income taxes out of it.

14 Q. Expenses?

15 A. Yeah. Maybe there's trustee fees, maybe
16 there's, you know, unpaid beneficiary fees. So what
17 we're doing is we're doing an analysis here at the
18 operating level and not challenging ourself with what
19 happens down below the operating line.

20 Q. Okay. And then finally, MPV in line 93,
21 that's net present value?

22 A. That's correct.

23 Q. At minimum trust return, explain that to me
24 just a little bit, if you would.

25 A. There's been a lot of discussion about the

1 3 percent minimum return. My understanding was that
2 was kind of the challenge that Mr. Helms had when he
3 created his original model is to attempt to hit that.
4 You know, he got reasonably close at 2.64 percent.

5 The challenge he's got is that timberland
6 only throws off so much revenue. There's not a whole
7 lot you can do with it. But if 3 percent was a
8 standard, and I found it interesting that Mr.
9 Boykin -- and we didn't have a conversation about
10 this, but Mr. Boykin adopted that same 3 percent
11 standard himself in terms of a minimum distribution.

12 If that is an acceptable minimal
13 distribution, you can make the point that that is the
14 investor's required return. That's their opportunity
15 cost.

16 So hence, that is the discount rate that
17 you would use in a cash flow if that is their --
18 that's their opportunity cost to compare a net
19 present value analysis of different scenarios.

20 Q. Okay.

21 A. And you will notice it's -- if you
22 discounted it 3.75 percent, the relationships are
23 going to stay the same.

24 Q. And the net present value at minimum trust
25 return that you've got here is 748,816?

1 A. That's correct.

2 Q. Okay. Anything else on that first page
3 of -- excuse me, the second page of Exhibit 7?

4 A. No. You did a real got job of taking us
5 through that.

6 Q. All right. How about the final page of
7 that exhibit, option number 2. No 2032(a) Election,
8 Assume Properties Liquidated EOY. Is that end of
9 year?

10 A. End of year two.

11 Q. Okay. End of year two, 10 years total.
12 Tell me what you've done here.

13 A. So what we need to do is create the
14 alternative for comparison purposes to the 2032 plan.
15 Okay. A hypothetical alternative investment would be
16 liquidate and put it in financial securities.

17 So what we're going to do is ask ourselves,
18 that is an option on the table, do we have the
19 ability to do that and how does that compare with
20 this decision to make the 2032 election, the 400,000
21 income with it, and hold the property for its revenue
22 stream for 10 years.

23 And enjoy perhaps the increase in land
24 values that may accrue over that 10-year period of
25 time. That's one investment.

1 The other investment option is to
2 liquidate. Now, the challenge in doing an analysis
3 like this, and this could go into the weeds real
4 quickly, and unfortunately, I think that's what
5 happened to Mr. Helms in his plan is he got far into
6 the weeds with his analysis, is you've got a number
7 of properties that you would be able to sell.

8 I disagree with Mr. Helms that there's any
9 particular challenge out there in the marketplace
10 right now of putting a number of properties on the
11 market and expecting somehow that you are competing
12 with yourself and you've got an extremely long
13 liquidation period. As a matter of fact -- I'm
14 sorry.

15 That you've got an extremely long
16 liquidation period to handle that. However, for our
17 purposes, the number of properties that would be
18 liquidated are small enough and diverse enough, Mr.
19 Boykin and I talked about it, my theory was you could
20 liquidate them in three years.

21 We talked about how to do that. And in
22 order to do that and load it into a model like this,
23 you have to make some decisions about, okay, which
24 one to sell first, and you don't know. There is no
25 way to know.

1 Mr. Boykin and I thought about it, and he
2 came up with a suggestion of why don't you just
3 assume that if it is going to take a three-year
4 liquidation period, let's assume on average you could
5 have liquidated it all at the end of two and a half
6 years.

7 Now, that is an assumption we've made for
8 simplicity purposes in this model. Otherwise, I've
9 got a model much more extended than this to phase in
10 the sales.

11 Q. Okay.

12 A. And I'll just represent, I know from doing
13 these kind of models that comparison purposes is
14 going to be pretty minor in terms of the results
15 you're going to get.

16 So for ease of modeling, we made the
17 assumption that at the end of the year two, that is
18 your effective liquidation time period for all the
19 properties.

20 Q. Is that why we see here in year two that's
21 where the investment begins in line 109?

22 A. That's correct.

23 Q. Okay.

24 A. And your investment begins and that in
25 effect is your time zero investment. That is when

1 your properties are liquidated.

2 Q. Understood.

3 A. Okay.

4 Q. Line 110 shows a net investment at
5 92 percent, is that again based on the 8 percent
6 commissions you're talking about?

7 A. That's correct.

8 Q. Okay.

9 A. In this scenario where the property truly
10 is liquidated in order to fund the investments, you
11 have to take your 92 percent off the top now rather
12 than on the other model, the 92 percent comes at the
13 end.

14 Q. Understood.

15 A. So if we start with the investment amount
16 11,467,000 and we take 92 percent of that, we come up
17 with a investable amount of \$10,550,000. And that's
18 your amount on line 118.

19 Now, in order to compare apples and apples,
20 you have to have your investment timeframe match;
21 otherwise, if we say this is an investment for eight
22 years and the previous investment was 10 years,
23 you're comparing apples and oranges.

24 Whether or not you liquidate in, say, 2019
25 versus 2021, there are those cash flows that in this