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The State of South Carolina
In The Court of Appeals

Appeal from Horry County Court of Common Pleas
Benjamin H. Culbertson, Circuit Court Judge

Case No. 2020-001291

Julie Irving,

Respondent,

v.

Jeanne Poafpybitty, Donald Matthew Rothgeb, and Steven Taylor Rothgeb,

Defendants,

Of whom Jeanne Poafpybitty, Personal Representative of the Estate of Donald M. Rothgeb is the Appellant.

RECORD ON APPEAL – VOLUME I R0001-0500

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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Dated: August 30, 2021
Myrtle Beach, SC

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	
COUNTY OF HORRY	)	**CASE NO: 2014-ES-26-00498**
	)	
JULIE IRVING,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	**ORDER**
	)	
JEANNE POAFPYBITTY, PERSONAL REPRESENTATIVE OF THE ESTATE OF DONALD M. ROTHGEB,	)	
	)	
DEFENDANT,	)	
	)	
AND	)	
	)	
JEANNE POAFPYBITTY, DONALD MATTHEW ROTHGEB AND STEVEN TAYLOR ROTHGEB,	)	
	)	
DEFENDANTS.	)	

PROBATE COURT
HORRY COUNTY, S.C.
2016 JUN 13 AM 10:48
MARIANNE JUDGE
PROBATE JUDGE

This matter came before the Court upon Plaintiff's Motion for Temporary Restraining Order, pursuant to Rule 65(b), South Carolina Rules of Civil Procedure. Plaintiff asserts that Court intervention is necessary to address current circumstances, and insure against potential losses, where future legal remedies and the award of a money judgment, could be an insufficient remedy.

The case involves Estate administration, with a probated will. The Estate has four (4) equal beneficiaries, the Decedent's wife Jeanne Poafpybitty, and his three children from a prior marriage. Plaintiff is one of the three (3) children beneficiaries. Plaintiff's two brothers, also beneficiaries, have both filed pleadings, signaling their approval of Plaintiff's Motion and a related Complaint.

R0001

The Decedent's Estate includes numerous parcels of real property, in addition to his personal residence, some of which are encumbered by mortgage. The Estate did not commence with much money or other financial liquidity. The Court file includes a September 2015 interim accounting showing that some of the Decedent's real properties have already been sold, and, that some financial liquidity has been achieved. The accounting speaks to the Estate's June 2015 cash position, but does not record the Estate's cash position in September 2015, and the Estate's current cash position is not known to the record. The case, at present, involves what next steps to take in administration.

In her Complaint, Plaintiff seeks what she describes as a fair and prompt closure of Estate administration. The following allegations, contained in three (3) filed affidavits, concern Plaintiff who argues that, following almost two and a half years of administration, there is no good reason for the Estate to remain open:

1. Beneficiaries Julie Irving and Matthew Rothgeb report that it has been difficult for them to secure financial information from the Estate. Matthew Rothgeb reports once being told by the Personal Representative that no Estate real properties had been sold, at a time when such real property had been sold.

2. As part of Estate distributions, Jeanne Poafpybitty has asked Plaintiff to sign off on a plan, whereby Jeanne Poafpybitty would be distributed the Decedent's personal residence as part of her equal quarter share of the Estate. Based upon a new real estate appraisal, however, Jeanne Poafpybitty wishes to be charged only $95,000.00 for distribution of this residence; a residence which has value of $191,200.00 on two previously sworn Estate inventories, filed by Jeanne Poafpybitty. Local real estate appraiser, Russell Burgess, Jr., has offered, by affidavit, that the new $95,000.00 appraisal employs unreasonably large financial

adjustments, which artificially depress the concluding value, and is not designed to determine actual present fair market value of the Defendant's residence. The Estate refused to recognize potential conflict between the values in its previous Probate Court filings and the distribution proposals now desired by Jeanne Poafpybitty.

3. While the Personal Representative has Estate financial access, which permitted her expenditure of $29,000.00 to reroof the same Estate residence she wants to acquire, and which provides her with resources for legal advice, the Estate has refused Plaintiff's call for financial distributions, so that other beneficiaries could seek professional advice in evaluating distribution proposals the Estate wants them to approve.

4. The Estate informs of its intentions to make specific property distributions, (different properties to different beneficiaries) whether or not the Estate beneficiaries consent.

5. Late in the 2015 personal income tax filing season, the Estate troubled at least one beneficiary, by informing that his own tax filing requirements could change, owing to what the Estate proposed, itself, to file with the IRS in April 2016.

6. Plaintiff cites concern about how future delay, and contest, adds to Estate expenses; expenses which three out of four beneficiaries want to limit. Any additional expenses associated with Jeanne Poafpybitty's continuing administrative actions become financed, three quarters, by these objecting beneficiaries, when the Estate expends resources which would otherwise be available as distributions to these three quarters beneficiaries.

The record of this case shows that the Personal Representative was served with pleadings in this matter (including Plaintiff's Motion and personal affidavit) more than three (3) weeks

prior to the May 27, 2016 hearing. On the Personal Representative's behalf, no responses to Plaintiff's Motion, including no opposing affidavits, have been filed.

Plaintiff asked, at hearing, that her affidavit and two other sworn affidavits, timely submitted on her behalf, be recognized as uncontested. Counsel for the Personal Representative argued that his client has acted properly in the past, and that the Personal Representative agrees to treat all beneficiaries fairly. The Personal Representative also has no objection to a prompt closure of Estate administration.

Among the Personal Representative's arguments, which oppose Plaintiff's Motion, is her reference to Item IV of the Decedent's March 16, 2011 will. In this item, the will provides the Personal Representative with "sole discretion" to designate the Estate's real and personal property which will comprise shares of equal value for the four (4) equal beneficiaries. This provision, the Personal Representative asserts, permits her past actions in administration, and permits her proposed future actions to specifically distribute Estate assets, as she considers them to be appropriate.

In her Motion and Complaint, Plaintiff seeks prompt Estate closure, and the avoidance of potentially conflicting interests. Plaintiff seeks an up to date financial accounting, and an Order temporarily restricting the Estate's further expenditures and distributions.

At hearing, the Estate's counsel argued that there exists no authority for the Court to take the actions which Plaintiff seeks. Section §62-3-703 of the South Carolina Probate Code, requires a Personal Representative to act expeditiously and efficiently in administering Estate matters, consistent with the best interests of the Estate and its successors (beneficiaries). Section 62-3-704 (d) speaks of court supervision of a Personal Representative's duties, and §62-3-1001 (b) permits interested parties, such as Plaintiff, to seek judicial assistance in compelling proper

action of the Personal Representative. Section 62-3-703 also describes §62-7-804 of our Trust Code, where fiduciaries are instructed to conduct business as a prudent person would. Section 62-7-803 of the South Carolina Trust Code codifies a basic consideration, which this Court finds applicable to estates, that fiduciaries must act with impartiality, giving due regard to the respective interests of several beneficiaries. This provision is ever more important, when the fiduciary is also one of the several beneficiaries.

Whether or not the Personal Representative's embrace of a new residence appraisal is proper, the result does conflict, significantly, with prior estate filings, and the requirements of Section 62-3-708 of the South Carolina Probate Code, describing supplemental/corrective inventories, have not been observed.

Notwithstanding the language of Item IV of the Decedent's will, which grants the Personal Representative discretionary distribution authorities, the Court recognizes that the rights of Estate beneficiaries, and the requirements of Court administration, call out for prompt and careful action in this case. With the approach of nearly two and a half years of administration, there is no reason to further delay the proper closure of this Estate. A final accounting and distribution of remaining Estate assets, now, and in kind, is not contrary to any instructions from the Decedent. Whatsmore, all parties now appear to agree about achieving Estate termination.

Potentially, there exists continuing financial contests among the parties. The Court is satisfied that the best way to resolve any such contests is among the beneficiaries, themselves. Ms. Poafpybitty's further participation, both as beneficiary and as estate administrator, runs the risk of expensive conflicting interest, which, at this late date, and with this Estate's history, will not serve the best interests of all, and will not further any reasonable goal of the Decedent's testamentary instructions. Specifically, the Court has not found, in Item IV of the Decedent's

will, anything more than confirmation of the Personal Representative's traditional authority, which authority must also be tempered by fiduciary duty and obligations to beneficiaries. If the Estate continues to try and read more than this, to be part of the Personal Representative's powers, it becomes clear how continuing conflict could be on the horizon for all involved with this Estate.

The Court finds that Plaintiff has carried the burdens associated with her Motion, to demonstrate how, without assistance of the Court in this matter, there is a risk of nearly endless conflict that could not reasonably be addressed by some future monetary judgment. Equitable considerations compel the Court to act in this case.

Having considered the parties' respective filings and arguments, the Court has determined to exercise its authority to assist the Personal Representative and the parties, in concluding what has the chance to become a much greater and unreasonably expensive contest than it already appears to be. The Court has determined to rule as follows:

1. The Personal Representative is instructed to file a proposed Final Accounting by Friday June 3, 2016, together with proposed final distributions, an Application for Settlement and a notice to Estate beneficiaries of their Right to Demand a Hearing, according to the South Carolina Probate Code.

2. Counsel for the Estate shall, together with the filings described in paragraph 1., above, file billing records outlining, in detail, what they have done thus far in service to the Estate, and details, separately, to the extent, if any, that they have provided services to Jeanne Poafpybitty as an individual beneficiary.

3. Except as further described in this paragraph, and in paragraph 4. b., below, and except, specifically, those necessary and ordinarily expenses for routine maintenance,

mortgage servicing, HOA assessments, utilities and taxes associated with real property holdings, the Personal Representative shall, until further order of this Court, refrain from any additional Estate expenditures and any additional distributions of the Estate's real and personal property which presently exists. As specific additional exception to the above instructions, the Estate is authorized by this Order to proceed towards closing of sale for that certain parcel of real property known as Unit D, 2210 Andover Drive, Myrtle Beach, SC, TMS# 191-28-01-074, which parcel is currently under contract for sale, presently scheduled to close on or about July 1, 2016.

The Personal Representative is instructed to pursue closing of the Andover Drive property sale, and is further instructed to distribute net sale proceeds from this closing in four (4) equal portions, one (1) each, to the Estate's four (4) equal beneficiaries.

4. In the event of continuing concerns by any beneficiary, to Estate accounting and termination proposals, which are to be filed by the Personal Representative, the beneficiary may timely file his or her demand for hearing, according to statute. Such hearing shall, thereafter, be calendared, but the parties are instructed, prior to such hearing, to participate in mediation, the specific details of which are to be coordinated among the parties and their respective counsel, with the following particulars:

a. All party beneficiaries may participate with counsel of their own choosing, and shall, individually, bear their own mediation expenses.

b. The Estate may pay for the services of a mediator selected by the parties.

c. With consent of all beneficiaries, the firm of Davis and Boyd, LLC, presently engaged to assist the Estate and its Personal Representative, may participate as separate counsel for beneficiary, Jeanne Poafpybitty.

5. Regarding the issue of security, described in Rule 65 (c) of the South Carolina Rules of Civil Procedure, the Court recognizes that, until actual final Estate termination, Plaintiff has substantial undistributed financial interests. These interests will remain as security for payment of any costs and damages, should the Personal Representative, whose actions are now restricted by this Order, ever in the future demonstrate that she has suffered any costs and damages, by having been wrongfully restrained.

6. Regarding continuing litigation in this matter, the parties have consented, until further notice, to continue Jeanne Poafpybitty's obligation to Answer Plaintiff's Complaint, and trial on the merits of Plaintiff's case, previously calendared for July 11, 2016.

7. At hearing, Plaintiff spoke of her Complaint's request to be reimbursed, in this action, for attorneys fees and costs. The Court will consider same, as part of further proceedings in this matter.

AND SO IT IS ORDERED.

Carroll D. Padgett, Jr., Chief Associate Probate Judge

Dated: June 13, 2016

STATE OF SOUTH CAROLINA COUNTY OF HORRY IN THE MATTER OF THE ESTATE OF: Donald M. Rothgeb Julie Irving, Plaintiff, *vs.* Jeanne Poafpybitty, Personal Representative of the Estate of Donald M. Rothgeb, Defendant, *and* Jeanne Poafpybitty, Donald Matthew Rothgeb and Steven Taylor Rothgeb, Defendants.	)	IN THE PROBATE COURT for HORRY COUNTY CASE NO.: 2014-ES-26-00498 **ORDER ADDRESSING MOTIONS AND SCHEDULING ORDER**

PROBATE COURT
HORRY COUNTY, SC
2016 NOV 10 PM 2:16
KATHY G. WARD
PROBATE JUDGE

THIS MATTER CAME BEFORE THE COURT on a hearing requested by the Plaintiff that had been scheduled for October 28, 2016. The Court met with the Parties' counsel in chambers, and the Parties agreed to forego a formal hearing. Present in Chambers were Clifford H. Tall, Esq., on behalf of the Plaintiff, and Reese Boyd III, Esq. and Bret H. Davis, Esq., on behalf of the Defendant Jeanne Poafpybitty, who is the Personal Representative of this Estate. Based on the Court's review of the matter with counsel, and the status of various pending issues in the case, the Court makes the following Order in connection with the matter:

R0009

HCPC ORDER POAFPY Mtns Sched 11-10-2016.pdf

1. The Matter is presently set for trial in the Probate Court on November 28, 2016. However, the Court finds, based on the discussion with the Parties in conference, that the Parties will not be prepared to try the case at that time. Therefore, the trial setting with respect to November 28, 2016, is hereby CONTINUED. The Parties have informed the Court of their intention to depose the Plaintiff and the Personal Representative on November 14, 2016. They are instructed to proceed on that date and also to make themselves available for any additional depositions on November 28, 2016, as may be necessary. The Parties will cooperate to set any additional dates, prior to trial. Regarding any Party's desire to depose Defendant Steven Taylor Rothgeb, who currently resides outside the United States, the Court approves of and authorizes such deposition to be taken by use of telephone or video conferencing.

2. Within ten (10) days of the date of this Order is entered, the Estate shall advise the Plaintiff of dates and time(s), as reasonable, when the interior of the Decedent's residence may be inspected by the Plaintiff's appraiser or other expert witness. The Personal Representative shall have the opportunity to have her appraiser or expert witness present to view the inspection by Plaintiff's expert. Counsel for the Personal Representative requested, and the Court agrees, that counsel for any party shall not

participate and will not be present for the said inspection of the interior of the Decedent's residence.

3. The Parties are directed to disclose all witnesses that they will call at trial of the Matter to their opposing counsel on or before December 6, 2016.

4. All discovery in the Matter is to be completed by December 31, 2016, excepting any depositions that have not had a reasonable opportunity to be scheduled for those witnesses named by the December 6, 2016 deadline. However, and in any case, all depositions must be completed in the matter by January 13, 2016.

5. The Court is currently holding February 10, 17, and 24, 2017, open on its calendar, as possible dates for trial of this Matter. As soon as the Parties have confirmed their availability, they are asked to advise the Court of same, and the Court will set the Matter for a date certain trial on one of those dates.

6. No less than ten (10) days prior to the final hearing of this Matter, the Personal Representative, through her counsel, is directed to provide updated closing proposals and accountings reflecting any changes in final distributions that may have occurred since the Estate submitted its original proposals for the Estate's closure on June 3, 2016.

7. The Court approves of the Parties' proposal to allow the Personal Representative to disburse a partial distribution from Estate proceeds in

the amount of $70,000, to be divided equally among the four heirs of the Estate ($17,500 each), and that such amounts will be credited against the final distributions payable to each heir. This measure is in recognition of delays described in Paragraph 8, below, where a similar distribution was anticipated, following a property sale.

8. The Parties discussed, and the Court understands, that the sale of the Andover Drive property has been delayed due to problems experienced by the tenant and proposed Purchaser. In light of the above partial distribution, the Court finds that mandatory distributions of the Andover Drive property sale net proceeds are no longer necessary, and that Paragraphs 3 (two paragraphs under the same number heading), on Pages 6 and 7 of this Court's Order of June 13, 2016, are hereby stricken upon the Personal Representative's disbursement of the interim distribution discussed in Paragraph 7, herein above.

9. Following discussion with the Parties on the issue, there will be no further obligation to mediate this case, prior to the trial of the case.

10. Except as specifically modified by the terms of this Order, the Court's Order of June 13, 2016 in this matter remains in full force and effect.

The Court reserves ruling on all other open issues in this Matter, including the Parties' competing requests for attorneys' fees, and the Defendant Personal Representative's objections to the hearing that the Court set for October 28. The Court

instructs the Parties to advise as to their availability for trial in February on the dates set forth herein, so that a date certain for trial in this Matter may be set.

AND IT IS SO ORDERED.

Executed this 10th day of November, 2016.

The Honorable Carroll D. Padgett, Jr.
Chief Associate Judge of Probate

Conway, South Carolina

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	
COUNTY OF HORRY	)	**CASE NO: 2014-ES-26-00498**
	)	
JULIE IRVING,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	**ORDER**
	)	
JEANNE POAFPYBITTY, PERSONAL REPRESENTATIVE OF THE ESTATE OF DONALD M. ROTHGEB,	)	
	)	
DEFENDANT,	)	
	)	
AND	)	
	)	
JEANNE POAFPYBITTY, DONALD MATTHEW ROTHGEB AND STEVEN TAYLOR ROTHGEB,	)	
	)	
DEFENDANTS.	)	

PROBATE COURT
HORRY COUNTY, SC
2018 MAR -2 PM 3:32
KATHY G. WARD
PROBATE JUDGE

This matter came before the Court upon Plaintiff Julie Irving's Complaint and Motion. Ms. Irving is one (1) of four (4) equal devisees listed in the Last Will and Testament of Donald M. Rothgeb, who died in early 2014. Mr. Rothgeb is Ms. Irving's father. Two (2) other equal devisees are also children of the Decedent, and are Ms. Irving's brothers, Matthew Rothgeb and Steven Rothgeb. The fourth equal devisee is Ms. Irving's stepmother, the Decedent's surviving spouse, Jeanne Poafpybitty. In 2014, Ms. Poafpybitty accepted the position as Personal Representative of the Estate, having been named to so serve in Donald M. Rothgeb's Last Will

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and Testament. Ms. Irving had been listed by her Father to serve as substitute Personal Representative or Successor Personal Representative.

Ms. Irving's pleadings cite as chief concerns, delays, generally, in proceeding with and concluding estate administration and also, specific actions of Ms. Poafpybitty which allegedly breached the Personal Representative's fiduciary duties. Although not represented by counsel, Ms. Irving's brothers filed Answers and joined in Ms. Irving's allegations and prayers.

The Court has been made aware, generally, about times of harmony among the parties and also of issues involving significant disharmony. Among Ms. Poafpybitty's defenses in this case is the allegation that Ms. Irving has acted, without legal basis, out of a desire to seek vengeance against the Personal Representative, her stepmother. In a review of presentations by the parties, the Court has been aware of competing claims, as to the opponents' motivations. The Court has also reviewed many events and facts that no party disputes as having been part of the record of this Estate administration.

At Motion Hearing on May 27, 2016, the several parties appeared before the Court. The Court is mindful of §62-3-607 of the South Carolina Probate Code, which provides the Court with broad equitable authority to restrain the actions of a Personal Representative, so as to

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protect the interests of parties to Estate administration. All parties were given fair opportunity to share about Estate administration which was, in May 2016, more than two (2) years ongoing. Following the May 27, 2016 Hearing an Order dated June 13, 2016, was issued, and contained the following directions:

1. An up to date financial accounting, which would be filed by the Personal Representative,

2. Temporary restrictions on Estate expenditures and distributions,

3. An arrangement for some interim financial distributions to all devisees, in recognition of very small previous/interim distributions,

4. An opportunity for the parties to mediate their respective positions.

Following a period of further communications between the parties, and the Court, Ms. Poafpybitty filed an Answer to the Complaint which included Denials of allegation, Affirmative Defenses and Counterclaims against Ms. Irving. According to Ms. Poafpybitty's Answer, the Personal Representative, at all times in her service to the Estate, acted in a manner consistent with relevant fiduciary obligations and duties to interested parties. Ms. Poafpybitty asserts that she consistently acted in good faith, and that the legal proceedings brought by Ms. Irving were

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without merit and were, themselves, actionable. Claiming that Ms. Irving has abused the legal process by commencing improper proceedings, Ms. Poafpybitty's Counterclaims sought financial awards against Ms. Irving.

In the following paragraphs are summaries of substantial issues presented by Plaintiff and Defendants, and also conclusions reached by the Court.

A. COMMUNICATIONS AMONG THE PARTIES FOLLOWING THE FIRST ANNIVERSARY OF ADMINISTRATION.

The parties describe events which occurred following the first anniversary of Estate commencement, when only the Estate had legal counsel of record. Accepted, as trial exhibits, were a March 7, 2015 email letter from Steven Rothgeb to Ms. Poafpybitty[1], and the responses which followed.

After review of communications between Steven Rothgeb and Ms. Poafpybitty and Ms. Poafpybitty's March 8, 2015 email to Ms. Irving[2], the Court has reached the following findings of fact, which have contributed to conclusions that follow in this Order:

[1] Plaintiff's Exhibit 20
[2] Plaintiff's Exhibit 2

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1. Steven Rothgeb's letter of March 7, 2015, was respectful and cordial. In a polite manner, it inquired about basic Estate administration issues. Steven Rothgeb asked for sharing about "financial records and activities regarding Dad's various assets, starting with a summary of activities that have taken place since the lawyer was hired until now." He reported how there had not been success in securing information, when inquiries were previously made directly to the lawyers which Ms. Poafpybitty had engaged.

2. The Decedent's Estate included twelve (12) parcels of real property, many of which were actively leased to tenants. Following a year of administration, the type of financial inquiry forwarded by Steven Rothgeb was well within what the Personal Representative should have expected, and should have been prepared to reasonably to address.

3. Presentations at trial display how Ms. Poafpybitty expressed annoyance at receiving Steven Rothgeb's March 7, 2015 inquiry[3]. Among her responses to this inquiry was that she had not recently given out details to Estate devisees, "...because there are no details to

[3] Plaintiff's Exhibit 20 (paragraph 3)
Plaintiff's Exhibit 2 (paragraph 7)

give.[4]" Nonetheless, Ms. Poafpybitty offered, in her own March 8, 2015 written response, a commitment to getting information together, and sending it out within a week.[5]

4. A trial Exhibit shows that on March 19, 2015, Ms. Poafpybitty forwarded, to Steven Rothgeb, by email, summary tables which contained a description of rental property locations, floor plans, HOA dues and 2014 realty taxes.[6] Presumably, this was Ms. Poafpybitty's follow-up for her written commitment to share financial information, in response to Steven Rothgeb's March 7, 2015 written inquiry. The email shared Ms. Poafpybitty's impressions that Ms. Irving has been acting out, because of money concerns[7] and then included, "Well there isn't going to be any money today or tomorrow so I guess we all just need to get a grip.[8]" Ms. Poafpybitty repeated her position, shared with devisees, on February 17, 2015[9], that two mortgage debts needed be paid, before Estate closure and distributions.

5. Ms. Poafpybitty's tables, described above, did not outline, rental income, property sales activities, mortgage payments, almost $4,000.00 in legal expenses and other financial

[4] Plaintiff's Exhibit 2 (third paragraph)
[5] Plaintiff's Exhibit 2 (last paragraph)
[6] Defendant's Exhibit 10
[7] Defendant's Exhibit 10 (third paragraph)
[8] Defendant's Exhibit 10 (third paragraph)
[9] Defendant's Exhibit 10 (second paragraph)

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details which appear clearly to be the subject of Steven Rothgeb's March 7, 2015 written inquiry[10].

6. After reviewing what Ms. Poafpybitty had forwarded, and being disappointed with the absence of details, Ms. Irving and her brothers sought legal counsel. Attorney Jack M. Scoville wrote to the Estate, introducing himself on April 8, 2015.[11]

B. WHETHER, ACCORDING TO DECEDENT DONALD M. ROTHGEB'S INSTRUCTIONS, TWO MORTGAGE DEBTS HAD TO BE FULLY PAID, BEFORE ESTATE ADMINISTRATION COULD CONCLUDE.

Another significant issue regarding Estate administration were the terms used by the Decedent in Item I of his Will. Whether or not there was fair dealing between the Personal Representative and devisees, and whether or not there was reasonable communications from Ms. Poafpybitty to devisees (all of which are issues addressed in this litigation and addressed by this Order), the parties also have significant focus on what is included at Item I of the Decedent's Will.[12]

[10] Defendant's Exhibit 10 and legal accountings filed with the Court in July 2016
[11] Plaintiff's Exhibit 25
[12] Defendant's Exhibit 5

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After review of the parties' presentations about terms in Item I of the Decedent's Will, the Court has reached the following findings of fact, which have contributed to conclusions that follow in this Order:

1. In February 2015, Ms. Poafpybitty communicated her view that, because the Estate had two (2) outstanding mortgage debts, the Decedent's Will required full satisfaction of these debts, before final Estate distributions could be made[13]. In the interim period, properties would be sold, and income of the Estate should be accumulated, so that these debts, of a combined $221,008.43, could be extinguished.

2. Accepted as a Trial Exhibit was attorney, Jack M. Scoville's letter to the Estate of April 8, 2015[14]. Mr. Scoville introduced himself as having been retained by all of the Decedent's children, and he expressed the following concerns:

a. Because the Decedent's Will, at Item I, specifically provides that devisees, who take mortgaged property, are to take such properties, subject to the outstanding mortgage, what is the justification for Ms. Poafpybitty delaying Estate closure, and selling off income producing assets, so as to pay off the mortgages?

[13] Plaintiff's Exhibit 19
[14] Defendant's Exhibit 25

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b. Ms. Poafpybitty continues to occupy, without compensation to anyone, a residence which is owned by four (4) Estate beneficiaries.

c. Status of financial accounts once owned by the Decedent.

d. Accountings for Estate activities during more than a year of administration.

e. Status and distribution opportunities regarding the Decedent's personal effects.

3. Mr. Scoville's April 8, 2015 letter was responded to by letter of an Estate's attorney, Bret H. Davis, dated May 13, 2015[15], which letter references telephone communications between law offices since April 8, 2015. In his letter, Mr. Davis, on behalf of Ms. Poafpybitty, addressed Mr. Scoville's listed concerns as follows:

a. The Estate agreed to preparing and sharing an interim financial accounting.

b. While reserving the right of a Personal Representative to sell income

[15] Plaintiff's Exhibit 21

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producing assets, if she believes it is prudent, the Estate agrees that real properties, which are subject to outstanding mortgages, will be taken by devisees, subject to any such related mortgages.

c. The Estate offered what it considered justification for Ms. Poafpybitty's continued occupancy of the Decedent's last residence, without payment of rent.

d. The Estate explained that the Decedent's financial account was held, with Ms. Poafpybitty, as surviving joint owner, and therefore, would not be shared with Estate beneficiaries.

e. The Estate addressed opportunities for sharing of the Decedent's personal effects.

4. In light of item 3. b., above, an impression exists that the Estate may have withdrawn its early proposal to extinguish mortgage debt, by continuing to sell off the Decedent's real properties? The issue remained puzzling, however, as an Estate Motion for accounting extension, filed on September 25, 2015, cited as one justification, "Personal

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Representative requires additional time for the sale of Estate properties and working with opposing counsel[16]".

5. At trial, during testimony, in February 2017, Estate counsel, Mr. Davis, addressed language in Item I of the Decedent's Will, to the concept of a devisee taking property subject to an existing outstanding mortgage. Mr. Davis' view, notwithstanding the Estate's May 13, 2015 letter agreement with Mr. Scoville's position, is that the Will's reference to taking property subject to outstanding mortgage, was only appropriate if a specific mortgaged property, was specifically devised to a particular person[17]. This remained the Estate's position, even though the Will contains no language which limits mortgage assumption opportunities, only when there are specific devisees.

6. It is now reasonable to consider that if a plan to distribute two (2) real property parcels, subject to mortgage, had been earlier adopted by the Estate, this plan, which is consistent with terms used in the Decedent's Will, could have saved all parties a great deal of stress, time, effort and expense. It is further reasonable to consider whether the Estate and Personal Representative had adopted its plan, to sell real properties and extinguish mortgage

[16] Estate's 9-25-2015 Motion
[17] Mr. Davis' testimony

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debts, in good faith. As Ms. Irving shared with the Court, the longer Estate administration takes, the longer Ms. Poafpybitty has all of her personal residence expenses, including mortgage and utilities, paid for by the Estate. This expense-free residence for Ms. Poafpybitty continues, while Ms. Poafpybitty, who has access to more than $63,000.00 in survivorship bank account funds, informs other devisees to "get a grip", and deal with delays in Estate financial distributions. Also, according to statute which calculates compensation for Personal Representatives (§61-3-719 of the South Carolina Probate Code) this compensation is generally higher, when more Estate real property is sold during administration. Ms. Poafpybitty's final accounting, dated February 14, 2017, at page 3, shows this higher proposed compensation to her.

C. DISTRIBUTION AND VALUATION OF THE DECEDENT'S LAST RESIDENCE.

The parties describe events surrounding Ms. Poafpybitty's proposal for distribution of the Estate's several real properties, including the Decedent's last residence.

After review of what the parties presented, regarding the Estate's proposal to distribute the Decedent's last residence, 1529 Crooked Pine Drive, Surfside Beach, SC, the Court has

reached the following findings of fact, which have contributed to conclusions that follow in this Order:

1. Among the trial exhibits was a letter dated October 6, 2015, from attorney Jack M. Scoville, representing all of the Decedent's three (3) children[18].

2. Mr. Scoville's letter acknowledges Ms. Poafpybitty's insistence that she acquire full ownership of the Decedent's residence from the Estate[19]. Although, according to testimony, there had been a period of marital separation, this is the residence where both the Decedent and Ms. Poafpybitty resided as man and wife. Ms. Poafpybitty has, since the Decedent's 2014 passing, continued to live in the residence. The Estate, during this period, has been paying for mortgage debt installments, insurance, taxes and utilities, associated with this residence. Ms. Poafpybitty has not been financially contributing to the Estate, regarding these items and for any rental value of the residence.

[18] Plaintiff's Exhibit 3
[19] Plaintiff's Exhibit 3 (first paragraph)

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3. A proposal in Mr. Scoville's October 6, 2015 letter was accepted by the Estate. All of the Decedent's real properties would be professionally appraised[20]. Presumably, the new appraisals would assist with final estate distributions.

4. The Court has reached the following findings of fact about the proposal \ contained in Mr. Scoville's October 6, 2015 letter:

a. Mr. Scoville's letter proposal does not establish that whatever the result of upcoming real property appraisals, all parties would be bound, without review or question, by the specific appraisal results.

b. Mr. Scoville's letter proposal does not include any resolution of Estate administration issues, such as proper Estate accountings, proper Estate expenses and Personal Representative compensation.

c. Items 4. a. and 4. b., above, are particularly important, as, from time to time in Court proceedings, Ms. Irving has been criticized by the Estate for not settling matters and not following through with proposals which, the Estate asserts, had their source from Ms. Irving's own counsel, Mr. Scoville.

[20] Plaintiff's Exhibit 3 (third paragraph)

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d. The Court finds that nothing contained in Mr. Scoville's letter of October 6, 2015, gives evidence of an Estate settlement agreement. Any hostility shown by the Estate towards Ms. Irving, because she continued to question appraisal values, Estate accountings, Estate expenses and proposals for fiduciary compensation, is an unjustified response to inquiries of an Estate's interest party.

5. A trial exhibit dated December 9, 2015 displays that Ms. Poafpybitty, through her attorneys, forwarded to Ms. Irving a proposal for the distribution of Estate real properties[21]. Mr. Scoville had been disengaged by the Decedent's children at this time, so the Estate was free to communicate directly with Ms. Irving. Included in the Estate's proposal was that Ms. Poafpybitty receive the Decedent's last residence, at a value of $95,000.00[22]. This figure is less than half of the residence value listed in two sworn inventory forms, previously filed with the Court by Ms. Poafpybitty.

6. Some values for Estate real properties on Ms. Poafpybitty's distribution proposal, other than the Decedent's last residence, also differed from the values presented on the Estate's filed inventories. According to Court presentations, all of the differing values were

[21] Plaintiff's Exhibit 9
[22] Plaintiff's Exhibit 9

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associated with the work of Appraiser James Cromartie, who was engaged by the Estate in 2015. No party has objected to real property values, other than the value listed, by Ms. Poafpybitty for distribution of the Decedent's last residence.

7. Ms. Irving's response to receiving Ms. Poafpybitty's distribution proposal was to ask for a copy of Mr. Cromartie's residence appraisal[23]. The appraisal work had not been forwarded by the Estate with its December 9, 2015 proposal. When Ms. Irving was given opportunity to review Mr. Cromartie's appraisal, she noted what Mr. Cromartie described to be the "deplorable condition[24]" of the Decedent's last residence. Among the most serious troubles was mold infestation, associated with rain water leaks in the structure.

8. Notwithstanding Mr. Cromartie's appraisal opinion, Ms. Irving was convinced, from her own personal knowledge of her father's residence, that Ms. Poafpybitty's distribution proposal did not reasonably reflect fair value of her father's residence. Ms. Irving was especially convinced of her opinion, as it was revealed that Ms. Poafpybitty had spent some $29,000.00 of Estate resources for a new roof and mold remediation work at the Decedent's

[23] Plaintiff's Exhibit 26
[24] Defendant's Exhibit 1

residence. Court presentations included a receipt dated November 19, 2015 for mold remediation work[25].

9. Ms. Irving and Ms. Poafpybitty's counsel continued a series of communications, with the Estate proposing that Ms. Irving and other parties participate in additional negotiations. Ms. Irving offered a counter proposal, that yes, the parties should meet, but without counsel, and without the expense of counsel[26]. Ms. Irving highlighted how Ms. Poafpybitty, with her Personal Representative position, had full access to Estate funds and legal counsel, and how three quarters of the funds expended for Ms. Poafpybitty's legal counsel were coming out of distribution shares for Ms. Irving and her two brothers. Ms. Irving also proposed that the Estate make interim financial distributions to all devisees to assist with the devisees' own evaluations and counsel[27]. Both of Ms. Irving's written proposals were not accepted by Ms. Poafpybitty.

10. Following the parties' communications, in February, 2016, where the Estate emphasized Ms. Poafpybitty's discretionary powers, and her inclination to exercise these powers in distribution matters, Ms. Irving allowed a period of time for further Estate responses. Estate

[25] Plaintiff's Exhibits 10 and 11
[26] Plaintiff's Exhibit 4
[27] Plaintiff's Exhibit 6

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counsel reported that a final distribution plan would soon be prepared[28]. Thereafter, Ms. Irving hired new counsel, and filed this action, to secure what she termed fair and prompt Estate closure.

11. On June 3, 2016, the Estate filed accounting and distribution proposals, in response to proceedings on May 27, 2016. Ms. Poafpybitty stood by her proposal for a $95,000.00 charge to her, for her personal acquisition of the Decedent's last residence. Ms. Poafpybitty also proposed to accept a charge, to her, of the $29,000.00 in Estate funds, which funds had been used in 2015, to repair the Decedent's residence.

12. Following many communications between the parties, and the Court, the Court issued an Order dated November 10, 2016, with written input from counsel representing both Ms. Irving and Ms. Poafpybitty. A number of procedural and discovery issues were addressed, and new hearing dates were established.

13. In its Order of November 10, 2016, this Court granted the Estate's request that appraiser James Cromartie could be present, when another real estate appraiser, Russell Burgess, examined the interior of 1529 Crooked Pine Drive, Surfside Beach, South Carolina, on

[28] Testimony of Julie Irving

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behalf of Ms. Irving[29]. During hearing on May 27, 2016, the Estate argued that Mr. Burgess was mistaken regarding his May 18, 2016 appraisal affidavit. Mr. Burgess had not examined the residence interior, and his criticism of Mr. Cromartie's $95,000.00 property appraisal could not, the Estate argued, be accurate.

14. Arrangements were made for Mr. Cromartie to be present when Russell Burgess visited the Decedent's last residence in late 2016. Both Mr. Burgess and Mr. Cromartie attended the trial in this matter, and both offered testimony.

15. At trial, Russell Burgess testified about his written appraisal, describing the Decedent's residence as having $193,900.00 in value[30]. It is clear to both parties, and to the Court, that the residence has a new roof and, according to workmen receipt and Ms. Poafpybitty's own testimony, the trouble with mold has been corrected. What, then, did Mr. Cromartie have to say about the value of the Decedent's last residence, now that it was in repair? According to Mr. Cromartie, he had not been engaged by the Estate to offer his opinion of current value, and at trial he offered no valuation. In fairness, however, to Mr. Cromartie, he

[29] Terms of Court Order
[30] Plaintiff's Exhibit 8

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shared that he would remain concerned about a residence which once had the mold problem he observed in 2015.

16. Mr. Cromartie stands by his $95,000.00 appraisal, made at a time when, in 2015, he says the Decedent's last residence was in very poor condition. Since the time of repair to this residence, and even while the Court made specific arrangements for Mr. Cromartie to be present for Russell Burgess' 2016 residence inspection, Mr. Cromartie, at trial, did not have his own current appraisal of value to offer[31].

17. The Court has reached specific findings of fact regarding Mr. Cromartie, and his 2015 appraisal of the Decedent's residence. At hearing on May 27, 2016, the Estate argued about how Mr. Cromartie's appraisal was certified and proper. In its June 3, 2016 distribution proposal, the Estate stood by this 2015 appraisal. As late as October 2016, Ms. Poafpybitty, in affidavit filed with this Court[32], outlined the very poor condition of this residence which she wished to acquire, at the appraised price of $95,000.00. According to Ms. Poafpybitty's October 26, 2016 affidavit, the Decedent's last residence was "...in very poor condition, with a roof that

[31] Mr. Cromartie's testimony
[32] Plaintiff's Exhibit 22

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had been leaking and which in turn had caused a mold infestation in the house…[33]" Based upon trial presentations, this was not an accurate description of the Decedent's last residence, when it was proposed by Ms. Poafpybitty for distribution to herself in December 2015 and June 2016.

18. The Court finds it to be unreasonable for Ms. Poafpybitty to have made distribution proposals for an admittedly repaired residence, by making continuing reference to the Decedent's last residence while it was in an unrepaired condition. This position is contrary to Ms. Poafpybitty's fiduciary duty, and in taking this position, Ms. Poafpybitty could well have anticipated that it would generate conflict, if not outright litigation. At a time when Ms. Poafpybitty initially proposed a $95,000.00 residence valuation, a position she continued to support, following into 2016 litigation and the issuance of Court Order, the residence was no longer the deplorable property which Mr. Cromartie reported about. At trial, Ms. Poafpybitty failed to acknowledge how her continuing use of Mr. Cromartie's initial appraisal, to justify a $95,000.00 final distribution proposal, has sparked very expensive conflict[34].

19. Subject to substantial criticism from the Estate, Ms. Irving took what she

[33] Plaintiff's Exhibit 22
[34] Testimony of Jeanne Poafpybitty

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considered to be corrective action. Ms. Irving's own appraiser, Russell Burgess, has offered the only professional valuation of the Decedent's last residence, following its repair. This is repair which was directed by Ms. Poafpybitty, and was paid for by Estate funds in Ms. Poafpybitty's control. The Estate engaged Ms. Poafpybitty's own professional appraiser to view the repaired residence, and to observe Mr. Burgess' work. However, the Estate asked for no assistance, and received no assistance from its appraiser's testimony[35], regarding the repaired distribution value of the home which Ms. Poafpybitty had, in 2015 and 2016, wished to acquire for herself.

20. In its Order of June 13, 2016, the Court cited §62-3-708 of the South Carolina Probate Code. This section sets forth the duty of a Personal Representative, which has still not been carried out in this case, even following issuance of the June 13, 2016 Order. The Court finds that significant conflict has arisen in this case because, in 2015, Ms. Poafpybitty began advocating for a valuation of the Decedent's last residence, at a price which was less than half of what Ms. Poafpybitty, herself, had sworn to, in two separate Probate Court inventories filed by the Estate.

21. Section 62-3-708 of the Code requires Ms. Poafpybitty to file with the Court a

[35] Mr. Cromartie's Testimony

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supplementary, amended or corrected inventory, if she learns, during administration, that a valuation in a previously filed inventory was erroneous. Ms. Poafpybitty has continued, to this day, in failing with her inventory valuation duties.

22. In response to this Court's Order of November 10, 2016, the Estate filed an accounting and proposal for final distribution of Estate assets dated February 14, 2017. According to the Court's November 10, 2016 Order, these documents were due for filing, ten days before the February 17, 2017 Hearing. These documents abandon the June 3, 2016 proposal listing $95,000.00 as the value of the Decedent's personal residence, and abandon Ms. Poafpybitty's desire to retain this residence for herself. The February 14, 2017 Estate accountings list $193,900.00 as the value of Donald M. Rothgeb's last residence. One other issue, regarding the new February 14, 2017 final Estate proposals; there is a place on standard Court forms for the Personal Representative's signature, under oath. These documents are not signed by the Personal Representative. Did Ms. Poafpybitty agree with the details of what was filed?

23. In testimony at trial, Ms. Poafpybitty offered specific disagreement with the

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residence valuation contained in February 14, 2017 accountings signed by one of her attorneys, and also the residence valuation contained in her own two previously filed sworn inventory forms. With numbers, it may appear that the Estate has now accepted Ms. Irving's charge of fiduciary misconduct. A property inventoried by the Personal Representative at more than $193,000.00 was once actively proposed by the Personal Representative for distribution to her at only a $95,000.00 value. There is now, however, a disconnect between what Ms. Poafpybitty's counsel has filed with the Court, and what Ms. Poafpybitty, herself, has offered in testimony at trial, regarding convoluted valuations.

24. The Court finds that, notwithstanding the stress of litigation, and the Personal Representative's disappointments with how beneficiaries have responded to her actions, Ms. Poafpybitty, as Personal Representative, has continuing obligations to prepare and file accurate inventory and accountings with the Court. Ms. Poafpybitty explains that, due to what she considers to be unfairness presented by Ms. Irving, Ms. Poafpybitty no longer wants to receive her husband's residence, and she feels justified in failing to sign, or to stand by, valuation positions which the Probate Code requires her to establish.

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D. INCOME TAX REPORTING BY THE ESTATE.

The parties describe how issues involving the Estate's income tax reporting was shared among them.

After a review of what the parties presented, regarding Estate income tax issues, the Court has reached the following findings of fact, which have contributed to conclusions that follow:

1. During a time when Ms. Irving and Ms. Poafpybitty were addressing their differing property valuation issues, described above, Ms. Poafpybitty reached out to Ms. Irving on another issue. On March 31, 2016, Ms. Irving was asked to provide her personal social security number, associated with income tax filings for the Estate's 2015 income tax return[36].

2. Prior to March 31, 2016, Ms. Irving had already filed her own personal 2015 income tax returns, and in her April 2016 email response, Ms. Irving asked whether the providing of her social security number for Estate income tax filings, would result in Ms. Irving to file amended personal tax returns?[37]

[36] Plaintiff's Exhibit 18
[37] Plaintiff's Exhibit 13

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3. No income tax or social security number filing issue had been previously raised in the spring of 2015 regarding the Estate's first tax filings, for calendar year 2014. The new 2016 income tax issue was puzzling to Ms. Irving who became concerned about potentially having to amend her 2015 personal tax filings, as a result of something the Estate might now share with her, and with the government, only two (2) weeks before the April 15, 2016 income tax filing deadline. The Estate had not raised any income tax coordination issue, prior to this time, and Ms. Irving, a small business owner, was concerned that her filings with income tax authorities should always be timely, accurate and, if possible, never amended[38].

4. Ms. Poafpybitty and the Estate did not share with Ms. Irving whether, as a result of what the Estate now wished to do with its own income tax filings, Ms. Irving may, herself, need to file an amendment to Ms. Irving's previously filed personal income tax returns.

5. The issue of income tax planning and coordination between the Estate and Ms. Irving is troubling. According to the Internal Revenue Code, both an Estate and an individual have the same April 15, 2016 due date for reporting 2015 income (including rental receipts for the Decedent's several investment real properties). A precedent was set by the Estate, when, for its

[38] Testimony of Julie Irving

2014 income, no coordination and no communication with Estate devisees took place. Ms. Irving's April 2016 inquiry about the Estate's first tax alert, sent to her on March 31, 2016, was reasonable. "Yes, Ms. Irving you may, indeed, need to amend your own personal tax filings", the Estate could have explained. Whatsmore, the Estate could have offered some measure of contrition, for having waited so long, in the 2015 tax filing season, to raise a very important issue with devisee, Ms. Irving, especially when no such tax issues had been presented to devisees for the Estate's first tax year; 2014.

6. The Court finds, in these matters, no timely or responsive information being provided to Ms. Irving, about an important tax issue which was squarely under the control and knowledge of the Personal Representative and the Estate. During trial, the Estate, through counsel, offered that an Estate does not have obligation to provide tax advice to beneficiaries[39]. These matters have less to do with advising about Ms. Irving's taxes, than it does with being reasonable in sharing information, and responding to basic and direct beneficiary inquiries. Rather than offer candor, transparency and responsiveness, Ms. Poafpybitty chose another path, which the Court has found to be disturbing. During hearings and in Court pleadings, Ms. Irving

[39] Testimony of Mr. Davis

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has been repeatedly described as being difficult and uncooperative. Among the reasons cited by Ms. Poafpybitty for this description, is that Ms. Irving declined to promptly offer her personal social security number, when it was first requested of her on the last day of March 2016.

7. Had the Estate recognized and communicated, early in 2016, that its 2015 income tax filings would likely impact the devisees' own personal income tax filings, there may have been another result than what has occurred in this administration. There also may have been another, more positive result, had the Estate decided to timely share about its tax reporting plans. Was the April 15, 2016 date all that critical? After all, both Estates and individuals can take advantage of opportunities to seek extensions of tax filing deadlines. A review of presentations offered to the Court reveal no timely Estate discussion or proposal for extending tax filing deadlines. Waiting to first address these important tax issues, until two weeks before an important filing deadline, was a mistake by Ms. Poafpybitty and the Estate.

8. As additional findings regarding income tax filings, the Court has been made aware of the following:

a. The Estate, ultimately, did file its 2015 income tax return, in a manner that did

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not require Ms. Irving's social security number, and did not impact on any devisees' personal income tax filings[40]. These Estate's 2015 income tax filings resulted in net losses, which losses may be transferred, at a future date, to Estate devisees, and be included, then, on the devisees' future personal income tax returns[41].

b. Ms. Irving, in connection with proper and timely Estate income tax filings, is willing to share, with the Estate, her social security number.

E. **NUMEROUS OTHER EXAMPLES OF ACTIONS BY, AND COMMUNICATIONS FROM, THE PERSONAL REPRESENTATIVE AND THE ESTATE UNDER MS. POAFPYBITTY'S DIRECTION.**

The parties describe events involving, generally, Ms. Poafpybitty's performance as Personal Representative.

After review of what the parties presented regarding, generally, the Personal Representative's performance in Estate Administration, the Court has reached the following findings of fact, which have contributed to conclusions that follow in this Order:

1. In presentations before this Court, Ms. Poafpybitty has insisted that her

[40] Plaintiff's Exhibit 18
[41] Testimony of CPA Parker

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administrative efforts have been consistently diligent, prompt and have been supportive of what she believes the Estate beneficiaries have desired. At trial, Ms. Poafpybitty testified about being unaware of what reasonable grounds Ms. Irving could have had for taking the actions Ms. Irving has taken. According to Ms. Irving, these presentations by Ms. Poafpybitty have not been credible, in light of evidence provided to the Court record. Prior portions of this Order outline much of this evidence, which the Court has accepted.

2. In response to Steven Rothgeb's financial inquiries in March, 2015, Ms. Poafpybitty offered the following, in her March 8, 2015 written reply: "Anything I need to pay for my own comes out of my personal account, that's the way it's always been.[42]" Following a time when financial Estate accountings were actually produced, the devisees could see that mortgage payments, real estate tax, insurance payments and utility payments, associated with Ms. Poafpybitty's personal residence, were all borne by the Estate funds, and not personally assigned to Ms. Poafpybitty.

3. In compliance with directives of this Court, during a Motion Hearing on May

[42] Plaintiff's Exhibit 2 (paragraph 5)

27, 2016, Ms. Poafpybitty filed a final Estate distribution proposal, together with final accountings on June 3, 2016. Through litigation discovery, Ms. Irving inquired as to whether Ms. Poafpybitty's distribution proposals, in late 2016, included property values which had been listed in the June 3, 2016 final accountings. Rather than offer a direct and open response, to Ms. Irving's discovery request, the Estate, under Ms. Poafpybitty's direction, offered objection, claiming that Ms. Irving's request was ambiguous and unclear[43]. No doubt, as Court presentations display, the parties have been engaged in a spirited contest. This does not, however, relieve Ms. Poafpybitty of her fiduciary duty to the Estate's interested persons. No matter what the contesting issues are, it is an exercise of bad faith for the Estate to refuse direct and transparent replies to basic Estate administration questions, especially when, as here, Ms. Poafpybitty and her team argue that property valuation and distribution authority lie solely within Ms. Poafpybitty's discretion. The subject discovery request sought, reasonably, to inquire about Ms. Poafpybitty's position for current distribution values, these being among the most contested of administration issues. Rules which support the discovery process, exist so that parties may fairly prepare for hearings and Court presentations. Following a period of litigation,

[43] Plaintiff's Exhibit 10

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and Mr. Burgess' December 2016 real property appraisal, did Ms. Poafpybitty form a different opinion from what the Estate had previously listed in its June 3, 2016 Court filings? Could Ms. Irving prepare for litigation on valuation issues, by learning about Ms. Poafpybitty's potentially changed position, following Mr. Burgess' work? The Estate's discovery response prevented a reasonable sharing on valuation issues. Defendants' response to Plaintiff's seventh request for Admissions was unreasonable.

4. Three days before trial, on February 14, 2017, the Estate filed a final accounting proposal, described in this Court's Order of November 10, 2017. Listed as an Estate expense was the sum of $50,000.00 for legal services. At trial, during testimony in February 2017, Estate counsel testified that Estate legal expenses were likely in excess of $70,000.00. Whether this calls into question, veracity of the Estate's February 14 filing, or whether this speaks to the Estate presenting large additional billings for the work of two attorneys, and at least one paralegal, who attended trial at Ms. Poafpybitty's direction, the record is not presently clear.

5. Following an October 28, 2016 communication, in Chambers, with the Court and counsel, a number of procedural issues were established, including that Thailand resident, Steven Rothgeb, could participate by phone or video conferencing, if any party wished to depose

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him. On October 29, 2016, Ms. Poafpybitty shared, by email, with Steven Rothgeb, the amount of $17,500.00 in new Estate distributions, which number was established with counsel and Court on October 28[44]. Ms. Poafpybitty also shared her concerns about mounting litigation expenses. Further, Ms. Poafpybitty shared a misleading notion that Steven might want to plan for travel back to the United States, in order to give his deposition. Ms. Poafpybitty suggested that Steven's deposition was probably going to be requested, and that his international travel would likely be required.

6. Following the disclosure of legal billing records filed with the Court in July 2016, Ms. Irving noted that the September 2015 interim Estate accountings, filed with this Court by Ms. Poafpybitty, reported $4,950.00 less than a third of the actual amount in legal billings at that time[45]. In responsive argument, the Estate refers to this discrepancy as an error which Ms. Irving and her counsel wish to unfairly highlight.

F. LEGAL REVIEW.

The Court has reviewed presentations, not only during two full days of Trial, but also during Motion hearing and through correspondence and other communications with counsel.

[44] Plaintiff's Exhibit 29
[45] Plaintiff's Exhibit 23 (page 2) and Exhibit 24

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The Court has provided full opportunity for such presentations, by each party, as each party wished to provide. The Court has exercised its judicial discretion, so as to respect the wishes of Donald M. Rothgeb, as he expressed them in his Last Will and Testament.

The Court has recognized both the discretionary authority of the Personal Representative, and the fiduciary guidelines which govern this authority. In addition to authority of the Personal Representative, the Estate devisees have legal expectations and rights. These expectations and rights are not unlimited, but these do include the right to expect a diligent and reasonable administration of assets which, one day, will be distributed to the devisees. Administration which is unduly prolonged, and administration without the clear sharing of relevant information, is an administration which may create conflict and prompt litigation.

Following are references to statutes and case law, which the Court finds are important in this case:

1. Section 62-3-703 (a) of the South Carolina Probate Code.

A Personal Representative has the duty to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. She shall use

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the authority conferred upon her by this code, the terms of the will, and any order in proceedings to which she is party for the best interests of successors to the estate.

2. Section 62-7-804 of the South Carolina Probate Code.

The Personal Representative, regarding affairs of a Decedent's Estate, shall exercise the same reasonable fiduciary care, skill and caution as is required of Trustees in the South Carolina Trust Code.

3. Sections 62-2-601, 62-3-701 and §62-3-715 (20) of the South Carolina Probate Code.

In review of matters in controversy, the intention of a testator, as expressed in the testator's Will is controlling.

The Personal Representative's duties have, as their object, benefits to the Estate. Item I of Mr. Rothgeb's Will uses the term, specifically "...taking into consideration the best interests of the beneficiaries hereunder." A Personal Representative, acting reasonably for the benefit of the interested person, may properly prosecute or defend claims, or proceedings... for the protection of the estate and of the Personal Representative in the performance of her duties.

4. Cartee v. Lesley, 209 S.C. 333, 350 S.E. 2d 388 (1986), Page v. Page, 243

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S.C. 312, 133 S.E. 2d 829 (1963). In any discretionary action, a Trustee must eliminate all selfish interest and exercise the reasonable care, prudence and diligence in the management of Trust assets as a reasonably prudent man would do with relation to his own affairs.

5. §§62-3-20 and 62-3-21 South Carolina Probate Code.

While there is compensation available to the Personal Representative, and entitlement to receive necessary expenses, and attorneys fees, there is also opportunity for interested persons to review the propriety of a Personal Representative's claims in this regard.

6. Section §62-1-111 of the South Carolina Probate Code.

A Court may exercise discretion to award costs and expenses, including reasonable attorneys fees, as justice and equity may require.

7. Blackmon v. Weaver, 366 S.C. 245, 621 S.E. 2d 42 (2005); Church v. McGee (S.C. App. 2011); Maydwell v. Maydwell, 135 Tenn 1; 185 S.W. 712 (1916); Floyd v. Floyd, 365 S.C. 56, 615 S.E. 2d 465 (2005).

The Court recognizes that a testator's selection of a Personal Representative shall be respected, and not lightly set aside. The Court retains, however, the authority to review a

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Personal Representative's actions, and if necessary, take corrective actions, for the protection of the Estate and its interested persons.

G. SUBSTANTIVE FINDINGS.

In its conclusions, upon review of the evidence and the facts, the Court has found the following:

1. The Decedent, Donald M. Rothgeb, loved all of the devisee/family members deeply. His clear intention was to treat all equally.

2. Though the Decedent gave his wife, Jeanne Poafpybitty, as Personal Representative, certain latitude with the division of his assets, that privilege is not absolute, especially where the Court determines, as it has in this case, that there has been an abuse or obstruction of what the Decedent had intended.

3. The Court finds, in this case, that Ms. Poafpybitty has intentionally inhibited and delayed the closing of this Estate, and unreasonably prolonged the division of assets. Though this Estate is substantial in value, the Court finds that it could have been, and should have been, settled much earlier. The concept of diligent administration supports this conclusion.

4. The Court finds Ms. Poafpybitty to have unreasonably withheld information

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pertinent to the beneficiaries, and requested by them. What information was provided, was often incomplete and/or confusing, both before and after retention of counsel by the beneficiaries.

5. Based upon all of the evidence and testimony, the Court finds that Ms. Poafpybitty, a 25% beneficiary, used her position, as Personal Representative, to manipulate at least one substantial asset, if not more assets to her, using her position to unjustly enrich herself, at the expense of the other beneficiaries. The Court finds that Ms. Poafpybitty's testimony and presentations, describing what she considered to be faithful performance, were neither sincere nor credible.

6. A review of what has been presented is convincing that Ms. Poafpybitty has not acted reasonably, for the benefit of all devisees. Ms. Poafpybitty has not, in this litigation, been defending or prosecuting an action in the Estate's best interests. Ms. Poafpybitty's goal has been the surviving spouse/beneficiary using her Personal Representative status to improve her lot in the Estate. In particular, Ms. Poafpybitty's decision to launch expensive Counterclaims against Ms. Irving was a wasteful exercise of fiduciary power.

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H. SOME MEASURE OF RESTRAINT IN RULING AGAINST DEFENDANTS.

In exercise of its discretion, the Court observes, that while it has ruled substantially in favor of Ms. Irving's Complaint, the following is a list of items desired by Ms. Irving, but not provided for in this Order:

1. Seeking sanctions against the Estate's counsel, Ms. Irving has claimed that counsel violated this Court's Order of June 13, 2016, by accessing tens of thousands of dollars in additional legal expenses, and in failing to disclose these expenditures, by being improperly selective in the Estate's disclosure of financial records, when these records were requested by Ms. Irving.

2. Ms. Irving has sought some form of compensation to the Estate, associated with Ms. Poafpybitty's continued, and largely exclusive, rent-free residence in a property where the Estate has, since 2014, paid for mortgage servicing, real estate tax, insurance and utilities.

3. Ms. Irving may be concerned about the Court approving all payments for estate legal services from 2014 until May 2016. During this period, Ms. Irving believes she has identified how Estate counsel have been assisting Ms. Poafpybitty, while Ms. Poafpybitty has been engaged in fiduciary misconduct.

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4. Regarding payment of her own legal expenses and costs, Ms. Irving has asked for these to be assessed, solely against Ms. Poafpybitty's Estate distribution share. As set forth, below, the Court has decided to have the Estate, itself, pay these expenses and costs. This means that the distribution shares of all devisees (including Ms. Irving) will be assessed with some of what Ms. Irving has expended for legal services.

5. In reaching its decision, the Court has exercised broad discretion, and has considered that, notwithstanding the Court's own findings of improper conduct by Ms. Poafpybitty, there has been some measure of service provided to the Estate. In this case, while the Court has authority to issue a decision with terms that are much more punitive to the Defendants than this decision provides for, the Court is satisfied that it has struck a proper balance.

I. CERTAIN ITEMS WHICH THE COURT IS AWARE OF.

So as to be clear on the issues, the Court lists, here, its awareness of the following issues that were highlighted in Ms. Poafpybitty's defense:

1. Ms. Poafpybitty, at one point during administration, decided to accept the

quarter-share devise which her husband provided for her under his Will. She decided not to pursue an Elective Share of a surviving spouse, which could have secured a one-third share distribution.

2. Ms. Poafpybitty has claimed survivorship status for a financial account of Donald M. Rothgeb in the amount of $63,374.80. Funds from this survivorship account were made available, by Ms. Poafpybitty through loan/advancement to the Decedent's relatively illiquid Estate, during the first part of Estate administration, and then were reimbursed to Ms. Poafpybitty.

3. At Trial, Respondent Matthew Rothgeb did not testify in support of his 2016 affidavit, which affidavit was examined during the May 27, 2016 Motion Hearing. Such affidavit claimed that Ms. Poafpybitty had actively mislead Matthew Rothgeb about the sale of Estate real properties. At trial, Ms. Poafpybitty denied the claim.

4. Throughout Estate administration, Ms. Poafpybitty has permitted Respondent Matthew Rothgeb to continue residing in a modest home owned by the Decedent, and Ms. Poafpybitty did not require Matthew Rothgeb to pay any rental sum to the Estate for this privilege. No party has raised objection to this matter.

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5. Soon after the Decedent's death, Ms. Poafpybitty permitted, without charging any rental sum, Respondent Steven Rothgeb to reside in the Decedent's last residence, with Ms. Poafpybitty, for some nine month period of time. No party has raised objection to this matter.

6. The Court has fully examined Item IV of the Decedent's Will, and the discretionary authority listed, therein, pertaining to the Personal Representative.

7. As can be seen, below, this Court now proposes that all of the Decedent's real properties be distributed, equally, to four (4) devisees, as co-owners. The Court is aware about the potential of future conflict among co-owners, but is satisfied that, given a failure in previous attempts to settle matters, this Order may provide motivation for these family members to work with each other. The parties will be on equal footing, now, to find some future resolution.

J. THE COURT'S SUBSTANTIVE ORDER.

The Court, following a review of what the parties have presented, stands by terms of its previous two Orders in this matter, and, further, rules as follows:

1. Defendants' Counterclaims are denied.

2. Plaintiff's Motion for Sanctions is denied.

3. In final distributions to the parties, there shall be no adjustment associated

with the value Ms. Poafpybitty may have received, in having the Estate pay for a variety of expenses associated with her almost exclusive use of the Decedent's last residence up until the present time. No continuing exclusive use of this residence by Ms. Poafpybitty shall be free from adjustments and compensation to other co-owners, following issuance of this Order.

4. The Court approves all parties' fees and costs, which have, to date, been presented for Court review, subject, however, to the following:

a. Fees and costs from attorneys for Defendants shall be paid by the Estate, through the billing date of May 25, 2016. Except as provided for, below, such additional billings will be the personal responsibility of Jeanne Poafpybitty. To the extent that fees and costs from attorneys for the Defendants after the date of May 25, 2016, have already been paid by the Estate, these fees and costs shall either be reimbursed to the Estate, or they shall be subject of adjustments, so that Ms. Poafpybitty's final Estate distribution shall be assessed, and these additional fees and costs will be treated as Estate distributions to her.

b. Regarding fees and costs of Ms. Irving, they shall be paid by the Estate. Billings for these items, up to date, shall be filed together with this Order.

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5. The Personal Representative's commission shall be fixed at the sum of $10,000.00. The balance of this commission, as set forth in the Estate's February 14, 2017 accounting, shall be paid, in equal portions, unto the Decedent's three children.

6. The Residuary Estate assets, including real properties, shall all be distributed in equal quarter shares among the Estate's four devisees, share and share alike, as tenants in common, and deeds of distribution, consistent with this ruling, shall be prepared, executed and recorded, together with amended closing documents, as set forth below.

7. Ms. Poafpybitty and her counsel are ordered to prepare and file amended closing documents with the Court, within thirty (30) days of the service of this Order upon Ms. Poafpybitty's counsel. Reasonable compensation shall be paid by the Estate for legal services in this regard.

K. FURTHER PROTECTIVE MEASURES.

As an additional measure, to insure protections for the Estate and its devisees, the Court has decided to exercise its discretion and, appoint a Special Administrator/Receiver, to perform the remaining duties as Personal Representative, to the extent that any such duties remain to be performed sixty (60) days from the issuance of this Order. Ms. Poafpybitty will be relieved of

her fiduciary duties, in connection with this appointment. In any prolonged future of this administration, Ms. Poafpybitty has demonstrated that she cannot reasonably continue to serve as fiduciary, and the Court will not allow continuing risks associated with her future service as Personal Representative.

AND SO IT IS ORDERED.

Carroll D. Padgett, Jr., Chief Associate Probate Judge

Dated: March 2nd, 2018

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STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	
COUNTY OF HORRY	)	**CASE NO: 2014-ES-26-00498**
	)	
JULIE IRVING,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	**ORDER REGARDING POST TRIAL MOTIONS**
	)	
JEANNE POAFPYBITTY, PERSONAL REPRESENTATIVE OF THE ESTATE OF DONALD M. ROTHGEB,	)	
	)	
DEFENDANT,	)	
	)	
AND	)	
	)	
JEANNE POAFPYBITTY, DONALD MATTHEW ROTHGEB AND STEVEN TAYLOR ROTHGEB,	)	
	)	
DEFENDANTS.	)	
	)	

PROBATE COURT
HORRY COUNTY, SC
2018 NOV -7 P 1:36
KATHY G. WARD
PROBATE JUDGE

This matter came before the Court at hearing on June 29, 2018. Present were counsel for Defendant Jeanne Poafpybitty, Bret H. Davis, Esq. and Reese R. Boyd, III, Esq. Also present was counsel Clifford H. Tall, Esq. and his client, Plaintiff Julie Irving. Affidavit filed with the Court includes acknowledgments that Defendants Donald Matthew Rothgeb and Steven Taylor Rothgeb were served with pleadings and hearing notice. These other Defendants did not attend the hearing.

The purpose of the hearing was to review the parties' several Motions, as well as memoranda which were filed, containing arguments and citations regarding the motions.

In her Motions, Defendant Jeanne Poafpybitty (hereinafter "Defendant") sought reconsideration of the Court's Order of March 2, 2018 (hereinafter "Court Order"), and also sought a ruling for Mistrial or a New Trial. In her Motion, Plaintiff Julie Irving (hereinafter

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"Plaintiff") sought clarifications regarding the appointment of a Special Administrator, the award of fees and costs and the Court's Order obligating Defendant to commence residence rental payments to the Estate. The residence in question, 1529 Crooked Pine Drive, Surfside Beach, SC (hereinafter "Crooked Pine residence"), was a marital home for the Defendant and the Decedent, Dr. Donald M. Rothgeb, which was titled, only, in the Decedent's name. The residence was, according to the Decedent's Will, not specifically devised, but was part of the Decedent's residuary Estate, devised equally to four beneficiaries.

Regarding Defendant's Motions, the Court has taken substantial time to again carefully review record of this case and consider all of the pleadings, evidence, testimony and demeanor of the Personal Representative and her witnesses. Given the volume of pleadings and a full day of argument, the Court offers, here, substantial detail in its Order which confirms prior Orders in this matter. Following is the Court's summary.

I. Defendant's Motion for Reconsideration and her supporting Memorandum.

A. The Court acknowledges Defendant's arguments in seeking reconsideration of the Court Order, based upon the following allegations:

1. The Court Order improperly reforms the Decedent's Will.

2. The Court Order improperly seeks to impose rental fees upon Defendant.

3. The Court Order improperly requires Defendant to bear her own attorneys fees and costs after May 25, 2016.

4. The Court Order is improper regarding Defendant's claim for fiduciary commission.

5. The Court Order improperly distributes real property.

6. The Court Order improperly appoints a Special Administrator.

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7. The Court Order is inconsistent with facts of the case.

8. The Court erred in granting fees and costs to Plaintiff.

9. The Court failed to properly consider Defendant's claim of consistent good faith compliance with fiduciary duties.

10. The Court gave inadequate attention to Defendant's Counterclaims and defenses.

11. The Court ordered remedies are exceedingly harsh towards Defendant.

B. Following is the Court's analysis of Defendant's Reconsideration allegations:

1. Improper Will Reformation. Defendant highlights that the Decedent's Will provided her with specific discretion, as part of her administrative duties, to determine the makeup of all real property distributions.[1] The Court Order, in restricting or eliminating this administrative discretion is, according to Defendant's Motion, an improper reformation of the Decedent's Will.[2]

Administrative discretion, granted to a Personal Representative in a Will, should be honored and respected, but it is subject to important legal standards, and also to potential judicial review and judicial action. Judicial actions, in light of certain findings of fact in this case, do not amount to reforming the Decedent's Will, but rather are actions to support the Decedent's intent and the law's requirement, that all beneficiaries be treated fairly.

a. Legal Standards.

i. Decedent's Intent. Defendant is correct that rules of construction, in reviewing fiduciary service, shall promote a Decedent's intent as expressed in his Will. A substantial part of Decedent's intent, according to Defendant's Motion, is that Defendant was specifically selected to serve as Personal Representative, and given financial and administrative

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discretionary authority. The Personal Representative's authority, however is not absolute. Legal standards are addressed in this Order, and the Court also observes Item IV of the Decedent's Will which, itself, qualifies Defendant's discretionary authority, by directing Defendant to create distribution shares for each beneficiary which are equal in value.

ii. A Personal Representative's Fiduciary Obligations.

Notwithstanding a Personal Representative's selection by the Decedent, and the granting of discretionary authority, a fiduciary must act prudently, expeditiously and efficiently for the best interests of the Estate and its beneficiaries. The Personal Representative has a duty of loyalty to Estate beneficiaries, which requires her to avoid personal conflicts of interest with Estate property issues.

iii. Court Authority for Remedies. According to section 62-3-607, the Court may, upon a proper showing, restrain a Personal Representative's administrative actions.[3] According to section 62-7-105 of the South Carolina Probate Code (which addresses the related field of Trust administration) the terms used in the Decedent's document prevail over state statutory provisions, except, however (emphasis added), regarding a number of issues, including a fiduciary's duty to act in good faith, a requirement that document terms promote the interests of the beneficiaries and the Court's power to take necessary action to promote justice.[4] Of note in this section 62-7-105, is where subsection (b) (4) describes judicial authority for document modification and where subsection (b) (11) describes other judicial authority to promote justice. Not every judicial remedy to correct a fiduciary's wrongdoing, constitutes document reformation. The Defense, at page 3, paragraph 3, of its Reconsideration Motion, mistakenly reads the Court Order and its citation of Probate Code §62-2-601.[5] The Court does not attempt to reform the Decedent's Will, nor to justify any such reformation. It is a proper remedy for the

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Court to remove financial and administrative authority from a Personal Representative, such as Defendant, who has committed abuse of this authority and breach of trust. This remedy promotes justice, supports terms of the Will and promotes the Decedent's essential intent to treat all of his beneficiaries fairly. This judicial remedy does not improperly reform the Will.

b. Findings of Fact which Justify Judicial Remedies. In this matter, the Court observes the following which, if the Personal Representative was acting with proper fiduciary care, would not have occurred:

i. Pages 5, 6 and 7 of the Court Order describe how Defendant, even after consulting with her attorney's office,[6] violated her duties to keep the beneficiaries reasonably informed. Defendant, herself, made commitment to deliver Estate financial information, but did not follow through, and to the present day, Defendant asserts that she has properly communicated.[7] Defendant's 2015 failures prompted the beneficiaries to employ their own attorney, Mr. Scoville. Following these events, the Defense criticized Plaintiff for engaging Mr. Scoville.[8]

ii. Pages 7, 8, 9 and 10 of the Court Order describe how it took the efforts of Attorney Scoville, before Defendant would acknowledge the Decedent's written intent, expressed in his Will, that Estate real property could be distributed to beneficiaries without the time, trouble and expense of selling Estate properties to raise funds for paying off two mortgage debts.[9] In reviewing this issue, the Court has considered the entire case record, including Defense explanations recorded on pages 37 and 38 of the June 29, 2018 hearing transcript.[10] In evaluating the record, and these explanations, the Court has also considered the following:

A. All of the language in item I of the Decedent's

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Will.[11]

B. Defense arguments about extraordinary discretionary authority, recorded in page 18, lines 15-20 of the May 27, 2016 hearing transcript.[12]

C. Recognition that, according to her Decedent's Will Item I interpretation, and Defendant's administrative practices, Defendant has, for years, avoided taking expense responsibility for a residence that she has used for her own, and that she wished to personally own outright. This included having the Estate pay for all residence expenses, including Defendant's personal utilities charges. Instead of making a personal residence distribution, and assuming responsibility for the personal residence mortgage and other expenses, Defendant took improper personal advantage which shifted financial burdens on to all Estate beneficiaries.

D. Taking all of the above into account, a significant aspect of Defendant's fiduciary failings can be recognized. She was not free to ignore clear terms contained in the Will, and act only upon other terms which personally benefited her own interests. The standards set forth in §62-7-802 (a) and §62-3-713 of the South Carolina Probate Code have not been met.[13] Plaintiff's corrective actions were justified.

iii. Pages 15 and 16 of the Court Order describe how, on December 9, 2015,[14] Defendant attempted to secure personal ownership of an Estate residence, without disclosing that she had used $27,849.00 in Estate finances (previously referred to as "some $29,000.00" in the Court Order) to improve this desired residence. Following Plaintiff's inquiries, Defendant acknowledged and accounted for these $27,849.00 Estate expenditures on January 29, 2016.[15] However, even allowing that Defendant's November 2015 $95,000.00

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appraisal may have been accurate when it was issued, Defendant would not acknowledge that Estate expenditures of $27,849.00, for post appraisal residence repairs created significant additional value. This additional value belonged to the Estate, and not personally to Defendant or to any other single residence distributee.

A separate professional appraisal, presented during trial, establishes that the repaired Crooked Pine residence was worth approximately twice as much as what Defendant claimed in her December 2015 distribution proposal.[16] Following 2016 communications with Plaintiff, Defendant insisted upon a valuation contest that is outlined in the Court's Order of March 2, 2018.[17] Defendant, as Personal Representative, used Estate financial resources for her participation in this extensive valuation contest.[18] The Defense continues, today, trying to justify this valuation contest (see discussion at paragraph I. B. 3. c., below), even while there is disconnect between the Estate's February 14, 2017 sworn accounting, Ms. Poafpybitty's personal disagreement with this sworn accounting and continuing Defense efforts to impeach Mr. Burgess who established the value contained in the Estate's own sworn accounting.[19] All of these findings demonstrate that Defendant, as Estate Personal Representative, has abandoned her asset valuation obligations. She has chosen not to be a fiduciary leader upon whom the Court, the Estate and its beneficiaries may rely.

iv. Another fair review of Defendant's fiduciary care may include examination of how Ms. Poafpybitty has responded to Plaintiff's legal actions in this matter. As more prominently discussed in paragraph I. B. 3., below, this Court rules that the Defense efforts have not proceeded within the standards described in Section 62-3-720 of the South Carolina Probate Code.[20] This is another example of Defendant's fiduciary failings.

c. The Court's Remedies. Given the findings of fact, in this matter, the

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Court Order is a proper response under §62-3-607, 62-1-111, 62-7-1001 and 62-7-1004 of the South Carolina Probate Code,[21] to protect the Estate and its beneficiaries. Such action has not reformed the Decedent's Will, a Will which established an equal value distribution of assets to four named beneficiaries.

2. Imposition of Rental Fees. Repeatedly throughout the record of this case, as if Defendant refuses to acknowledge the Court's careful consideration of her arguments, Defendant reminds the Court that the Crooked Pine residence was Defendant's marital home with the Decedent.[22] Defendant highlights in pleadings, how she agreed to maintain peace and not insist, during Dr. Rothgeb's lifetime, that he place Defendant's name on Deed to this residence.[23] Given her arguments, and Defendant's exclusive control of this residence, it is reasonable to ask whether Defendant, herself, wished to reform Dr. Rothgeb's Will. Defendant may have wished that, appropriately, the Crooked Pine residence should have been specifically devised 100% to her. Nothing in the record disputes that Dr. Rothgeb had the authority, and exercised his authority to devise his personal residence equally to four beneficiaries. Requiring Defendant to compensate her fellow beneficiaries for her use of this residence, after four (4) years of her having had expense free residence control, is not an abuse of judicial discretion.

3. Defendant bearing her own attorneys fees and costs. Among Defendant's concerns are the provisions of section 62-3-720 of the South Carolina Probate Code, and how the Defendant believes these provisions were not properly addressed by the Court Order.

a. The Court declares, here, its acknowledgement that section 62-3-720 is appropriate for consideration in every case where an Estate administrator is defending a claim, demand or suit. An Estate administrator may indeed be reimbursed, according to the statute, for necessary expenses that are reasonable and are expended in good faith. This is so, under the

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statute, even where the administrator's defenses do not achieve a result which was sought through her defense efforts.

b. In this case, the Court took into account the qualifying factors of "necessary", "reasonable" and "good faith", for reimbursements described in section 62-3-720 of the South Carolina Probate Code, and also the guidance recently provided by the South Carolina Supreme Court in Sullivan vs. Brown 2016-002337 (S.C. 2018), (see discussion in paragraph IV., below).

c. A review of Defense efforts, in responding to Plaintiff's legal actions, may begin with proceedings on May 27, 2016. At hearing, under Rule 65 of the South Carolina Rules of Civil Procedure, the Court agreed that Plaintiff had met burdens of her Motion. After almost 2.5 years of Estate administration, there was no reason not to conclude probate and close the Estate process. At hearing, the Defense offered that 90% of what Plaintiff sought was agreeable to the Estate.[24] It is reasonable to ask, then, what has prompted the continuing litigation and lavish Estate legal expenditures which have followed from this point. Defendant asserts that it is due to Plaintiff's controlling and continuing demands.[25] The Court disagrees, and finds the following examples of Defendant's wrongful efforts to disparage Plaintiff, and blame Plaintiff for conflict in this administration:

i. The Estate claims that Plaintiff has been so unreasonable and contrary in these proceedings that, not even Plaintiff's brothers would join in hiring Plaintiff's current attorney. In making this argument, Defendant ignores Answers in this lawsuit, where Plaintiff's brothers have specifically joined Plaintiff in her litigation prayers.[26] Plaintiff's brothers have also worked through the offices of Plaintiff's current attorney, to make July 5, 2016 demands and to record acknowledgment of recent pleadings/hearing notice. One brother,

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Stephen Rothgeb, coordinated with Plaintiff's attorney by forwarding his affidavit in support of Plaintiff's Motion for Sanctions.[27]

ii. As the Estate continues to criticize Plaintiff for acting in what it says is a controlling and unreasonable fashion, Estate Counsel, nonetheless shared a sympathetic opinion during hearing on June 29, 2018. In describing Plaintiff's receipt of Defendant's December 9, 2015 distribution proposal, Estate counsel allowed, "...that would make me a little suspicious also."[28] This Estate acknowledgment is telling. The Personal Representative made distribution proposals which were alarming, and which, as it turns out, cannot be justified. Plaintiff, as beneficiary, has followed up with her natural suspicions, and these turned out to be accurate. In this contest, about which party best supports the Decedent's intention for fairness to all four beneficiaries, the Court Order recognizes Defendant's continued failings, and Defendant's decision, nonetheless, to unreasonably defend these failings. Defense efforts to continue blaming Plaintiff's behavior, for the conflicts in this matter, have been unconvincing.

iii. Among the Estate's criticisms of Plaintiff is how Ms. Irving responded during a telephone conversation with Estate counsel on February 12, 2016. The Estate highlights this conversation as an effort by the Estate to resolve conflict. While the Estate claims that Plaintiff's lack of cooperation during this conversation is example of Plaintiff's difficult and controlling nature, Plaintiff testified about being uncomfortable in this conversation. Perhaps Ms. Irving's participation on February 12, 2016 may have been influenced by the following:

A. Defendant's previous 2015 failure to provide information, as Defendant wrote that she would. (See paragraph B. 1. b. i., above.)

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B. Defendant's previous 2015 mocking of Plaintiff's attempt to secure Estate information.[29]

C. Defendant's December 2015 attempt to acquire the Crooked Pine residence, at half the sworn inventory price, without Defendant offering reasonable explanation. (See paragraph B. 1. b. iii., above.)

D. Defendant's January 2016 second attempt to acquire the Crooked Pine residence at a highly discounted price. (See paragraph B. 1. b. iii., above.)

E. Defendant's previous failure in responding to Plaintiff's writings which asked the Estate to consider Defendant's conflict of financial interests.[30]

F. Defendant's previous failure in responding to Plaintiff's writings which asked for financial distributions, and asked that Defendant cease a practice where Defendant used funds belonging to all four beneficiaries, while Defendant sought to negotiate what clearly appeared to be a personal matter for Ms. Poafpybitty.

d. The defense in this matter, includes repeated and continuing efforts to submit inadmissible heresay, regarding the actions and opinions of attorney Jack Scoville. During trial, the heresay issue was apparently resolved, with Defense counsel agreeing to limit his presentations to what is contained in two exhibit letters from Mr. Scoville. Following trial, however, Mr. Scoville is cited by the Defense for all manner of positions which cannot be found within contents of these two exhibit letters.[A]

e. Following trial in this matter, without notice or request for permission, the Defense has filed numerous additional documents, which numerous additional

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documents had not previously been submitted as trial exhibits. No rules of evidence have been observed by the Defense regarding these filed numerous additional documents. The Court now decides, in reply to Plaintiff objections, that no such numerous additional documents, which were not previously offered as accepted trial exhibits, will be recognized as part of the record in this case.

f. The Court has considered Defendant's assertions on pages 18 and 19, of her Reconsideration Memorandum,[B] as compared to the Court Order at page 37, sub-paragraphs 2., 3. and 4.; page 38, sub-paragraphs 5. and 6.[C] While the Defense may not agree with terms of the Court's decision, the Defense seems to proceed without acknowledging that the very Court Order it wishes to have revised, did indeed make specific findings of bad faith fiduciary wrongdoing.

g. The Court is aware of how, in 2016 and 2017, Defendant employed James Cromartie as a professional witness. Mr. Cromartie had been previously engaged, in 2015, as a real estate appraiser. While witness Mr. Cromartie was employed to examine repairs, and appraiser Burgess' 2016 activities, at the Crooked Pine residence, and while witness Mr. Cromartie was brought for testimony at trial, the Defense did not ask Mr. Cromartie to offer opinion about the repaired residence fair market value. If there was, in 2016, a continuing contest, why didn't the Estate ask Mr. Cromartie to offer his professional valuation of the repaired Crooked Pine residence? It was neither reasonable, nor credible, for the Defense to explain, at hearing on June 29, 2018, that it wished to achieve a cost savings for the Estate by limiting Mr. Cromartie's professional assignment.[D] Presumably, while the Estate insisted on a continuing valuation contest, the Estate's only real estate professional witness was unwilling or unable to support the Estate's June 3, 2018 distribution proposals, which proposals Plaintiff has

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challenged in her Court proceedings. The Estate decided to continue an expensive legal fight, just the same. Wrongfully, the Estate also considered it acceptable to file with the Court, an accounting, under oath, with numbers which the Personal Representative did not believe to be accurate. (See paragraph I. B. 1. b. iii., above.)

h. The Court has observed wrongful responses by the Defense, during discovery in this matter.[E]

i. The Court has observed that the Defense has made passionate arguments which cannot be supported with facts in this case:

i. Page 41 Line 21 of the June 29, 2018 hearing transcript records that, were it not for Plaintiff's troublemaking, the Estate would have been concluded according to Defendant's December 9, 2015 distribution schedule. Page 192, lines 3, 4 and 5 of this transcript also claims innocence and tolerance on Defendant's part.[F] Distribution of a repaired Crooked Pine residence to Ms. Poafpybitty at a distribution price which is approximately half of its $193,900.00 value is unfair. Plaintiff's litigation efforts have prevented this.

ii. Consider the extreme characterizations listed on pages 10 and 11 of Defendant's Reconsideration Memorandum.[G] Perhaps a small editorial error, but perhaps one which underscores the Estate's vision; Defendant's arguments, here, are all listed under the heading "FACTUAL BACKGROUND."

iii. Giving no weight to the Court Order's findings at paragraph A., pages 5, 6 and 7, (see paragraph B. I. b. i., above) the Defense argues that there are no facts to support criticism of 2015 communications from the Personal Representative.[H] Giving no weight to Ms. Poafpybitty's March 8, 2015 offer to provide information, in response to

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written inquiry from an Estate beneficiary, the Defense claims it "important to note" that Plaintiff failed to file a statutory demand notice. No such statutory demand notice would be required in expecting a Personal Representative to follow through with her own written accounting commitments. Section 62-7-813 of the South Carolina Probate Code would require Plaintiff to file no such statutory demand notice, which the Defense now claims to be important.[I]

iv. The essence of Plaintiff's Complaint is that, in April 2016, it was past the time for Defendant to file accountings, distribution proposals, and to properly conclude administration. The Defense Reconsideration Motion describes the Court Order as most confusing. The Defense expresses concern that Plaintiff's Complaint may not be appropriate, according to §62-3-1001 of the Probate Code.[J] Subsection (a) and (b) of this code section describe a procedure which Plaintiff did follow to a successful conclusion. Defendant's concerns, here, are misplaced.

4. Defendant's Claim for Fiduciary Compensation. After considering the record in this case, and the findings of bad faith breach of fiduciary duties, the Court hereby confirms the Court Order, and its ruling about fiduciary compensation.

5. Improper Distribution of Real Property. Among the most significant of Defendant's arguments is her claim that, due to internal family conflict, the Decedent specifically provided Defendant with special discretionary authority so as to avoid circumstances where the four Estate beneficiaries would ever co-own real property. As a first point, nothing in Dr. Rothgeb's Will prohibits real property distribution to co-owners. Secondly, while discretionary distribution authority has been abused, and while mediation opportunities have been refused, the Court has reasonably determined to adopt an available remedy which is permitted by the Will.

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6. Improper Appointment of a Special Administrator. In her Complaint, Plaintiff sought Estate closure, and not any continuing administration with removal of Defendant. The Court Order provides for a Special Administrator, not for purposes of continuing any administration, but as an enforcement device. Defendant has shown herself to be beyond trust, if there is, in spite of the Court Order, any continuing Estate administration. The Court has its own legal authority and discretion to appoint a Special Administrator, so as to insure fairness for all.[K] Defense arguments about surprise, related to this remedy, is not persuasive. Both parties argued, during trial, about the merits of our state's most important cases on the issue of fiduciary removal. Both sides had contemplated this possibility and both sides have been heard. Given all of the facts of this case, and taking particular account of what appears in paragraph I. B. 3., above, it cannot be reasonably argued that Dr. Rothgeb's intent, and the Estate's best interests, support any more exercise of fiduciary authority by Ms. Poafpybitty.

7. Supporting Facts in the Record. The Court herein declares that items listed in paragraph I. B. 1. b. and I. B. 3., above, record facts which support judicial intervention as described in the Court Order.

8. Plaintiff's Award of Fees and Costs. Section 62-1-111 of the South Carolina Probate Code authorizes the Court to award attorneys fees and costs according to its sound discretion. The Court has again reviewed the record in this case. Plaintiff has brought a meritorious case, and an award of fees and costs, as the Court has outlined, is measured and appropriate. Regarding how this award relates to what Sullivan describes as the Common Fund Doctrine, see paragraph IV, below.

9. Evidence of Defendant's Good Faith Fiduciary Compliance. The

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Court herein declares that items listed in paragraph I. B. 1. b. and I. B. 3., above, address, clearly, the Personal Representative's failings with good faith fiduciary compliance.

10. Defendant's Counterclaims and Defenses. The Court believes it has carefully examined all of what Defendant has provided for consideration.

a. Defense regarding the Personal Representative's exercise of authority in good faith. The Court has considered this Defense, and has found that the Personal Representative has violated her fiduciary duty, and used her authority, in bad faith, for selfish personal gain.

b. Defense regarding Estoppel and Unclean Hands. The Court has considered this defense, and has not found facts which would estop Plaintiff from bringing her case, nor facts which would bar Plaintiff from receiving judicial relief. To the extent that this defense is associated with Defendant's repeated claims that Plaintiff has been bound by a previously negotiated estate settlement agreement, the Court herein responds with reference to paragraph C. 4. on pages 14 and 15 of the Court Order.[L]

c. Defense regarding Rule 12 (b) (6). The Court has considered this defense, and denies same. Reference is made, herein, to Defendant's argument on pages 17 and 18 of the May 27, 2016 trial transcript, page 190 of the June 29, 2018 hearing transcript and to page 4 (last paragraph) and page 5 (first paragraph) of this Court's Order dated June 13, 2016.[M] Legal authority supporting Plaintiff's claim is set forth throughout the Court Order of March 2, 2018, and in this ruling.

d. Defense Regarding §15-36-10 of the South Carolina Code. The Court has considered this Defense, and Defendant's use of terms such as "frivolous", "baseless", "unjustified" and "preposterous"[N] to describe Plaintiff's legal actions. A basic examination of

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this Court's June 13, 2018 Order would have informed Defendant that these types of characterizations would not likely have been successful, nor welcomed for serious evaluation from a fiduciary who continues to have clear duties to Plaintiff, even during a times of litigation. Nonetheless, Defendant chose to offer these very aggressive responses, which have required Plaintiff to reply. Financial reimbursements for Plaintiff's reply efforts are justified, and Defendant could have easily anticipated this result. As to the substance of this Defense, the Court has found that Plaintiff's pleadings were meritorious - the Personal Representative abused her fiduciary authority to selfishly improve her own personal financial interests. This, the Court has found, fully aware that Defendant, early in this administration, had decided not to seek a marital elective share and file against the Decedent's Will; a Will which named Defendant to serve as Personal Representative for the best interests of all parties.[o] What ever may have motivated Defendant to refrain, early on, from taking aggressive action against the Decedent's Will, does not later on justify breach of fiduciary duty.

e. Regarding Counterclaim for Attorneys Fees and Costs. The Court has considered this Defense, and has exercised its authority under §62-1-111 and §62-7-1004 of the South Carolina Probate Code (see paragraph I. B. 1. c., above) to craft a remedy which the Court considers reasonable, given the Court's findings of facts and the applicable law.

f. Defense Regarding Abuse of Process. The Court has considered this Defense and concludes that the Personal Representative has not met her burden of proof. The Court again makes reference to paragraph C. 4. of its March 2, 2018 Court Order, which addresses Defendant's continuing claims of prior Estate settlement and Plaintiff's wrongful noncompliance with same. (See paragraph I. B. 10. b., above.) In addition to other findings and discussions the Court has shared with the parties, the Court offers, here, its observation that

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Defendant's distribution schedules, forwarded to Plaintiff on December 9, 2015 and January 29, 2016, both include the term "PROPOSED DISTRIBUTIONS". It is neither reasonable, nor credible, for Defendant to continue complaining that Plaintiff questions about Defendant's differing "proposals" were legally foreclosed by terms of any specific, previously negotiated and binding, Estate Settlement Agreement. A proper fiduciary would not continue complaining, as Defendant has done in her Court pleadings. Reference is made, herein, to paragraph G. 6. (last sentence), page 38 of the Court Order of March 2, 2018.[P]

11. Judicial Remedies being too harsh.

a. As a first observation regarding Defense claims in this regard, the Court makes reference to paragraph H. pages 39 and 40 of the Court Order. No party wishes to have a ruling entered against them, especially a party, such as Defendant, who continues denying any wrongdoing.[Q] Plaintiff has sought much more severe penalties than those which the Court has provided, and Plaintiff, with other beneficiaries, have also experienced stress and added expense of this challenging Estate administration. Not all burdens of this conflict have been placed upon Defendant. In exercising its discretion, the Court has struck what it considers to be a proper balance. This balance includes allowing, for a period of over four (4) years, Defendant to have been relieved of personal residence expenses regarding the Crooked Pine residence. The Court is aware that this residence was devised to all four Estate beneficiaries, and how Defendant has controlled same, as if Dr. Rothgeb had devised it exclusively to Defendant.

b. In Paragraph I. B. 3. and I. B. 4., above, the Court has properly addressed Defendant claims that she should be awarded attorneys fees/costs and that she should receive commission for her services.

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II. Defendant's Motion for Mistrial or New Trial.

A. The Court Acknowledges Defendant's Arguments in seeking a Mistrial or New Trial, based upon the following:

1. Defendant cites Plaintiff's efforts at Ex Parte communications with the Court, following trial, and Defendant's concerns as to whether this may have influenced the Court or the outcome of trial.

2. Defendant cites concerns, claiming Plaintiff publication regarding Court email on social media, and whether this may have influenced Defendant's opportunity for fair hearing.

3. Defendant cites concerns about her receiving adequate time, and fair hearing, on evidence that supported her defenses in this case.

B. Following is the Court's analysis of Defendant's Mistrial/New Trial Claims:

1. Ex Parte Communication Efforts Following Trial. Defendant cites as prejudicial, Plaintiff efforts following trial, to write directly to the trial Judge. These efforts were inappropriate, they were immediately recognized by the Court as inappropriate and they were immediately shared with all counsel in this matter. Also shared with counsel were the Court's prompt response to these efforts. The Court took clear steps to neither read, nor to consider, any Ex Parte communication efforts by Plaintiff. No prejudice to any party occurred, due to the Court's response. The Court Order was issued without any input associated with Plaintiff's Ex Parte communication efforts. Nothing presented by the Defense Motion suggests otherwise.

2. Publication on Social Media. Following the Court's May 26, 2017 email to counsel, outlining the Court's decision in this matter, Defendant's counsel forwarded to

the Court what they say is Plaintiff's social media posting. The posting contents are described in Defendant's Mistrial/New Trial Motion. If this posting was indeed the work of Plaintiff, it is clearly inappropriate. What is true, also, however, is that nothing associated with this social media posting was considered by the Court in issuing its May 26, 2017 email decision, or the Court Order which followed. Nothing presented by the Defense Motion suggests otherwise.

3. Adequate Time and Fair Hearing. In describing concerns about how its case could have been more effectively presented, the Defense claims that it was improperly rushed and pressured by the Court, and that this lead to an incomplete trial presentation. The Defense asserts that its case presentation could have been enhanced by consideration of 100 or 200 additional exhibits which were not made part of the trial record. The Court is also aware that the Defense has just recently revealed one portion of its affirmative trial strategy, where the Defense purposely decided not to submit these additional trial exhibits.[R] The Court responds to Defendant's claims with the Court's own awareness of how the trial Judge made reasonable efforts to accommodate the trial presentations of all parties in this matter. The trial transcript, at pages 475, 526, 531, 533 and 535 is also instructive.[S]

Regarding timing, the record does not support any claim of undue judicial pressure to any party associated with any party's trial presentations. Whatsmore, the record displays how, unlike the circumstances of many other cases, this trial included two days which were separated by a full week continuance, during which continuance, each party had substantial opportunity to prepare. Further, the parties by consent, were given weeks of time following trial, to prepare and forward their written closing summations. The Court does not agree with Defense claims that there was inadequate time or any unfairness provided to Defendant by the Court in this trial.

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The standards for granting relief sought by Defendant's Motion have not been met. State vs. Wasson, 229 S.C. 508, 386 S.E. 2d 255 (1989) and Aakjer vs. Spagnoli, 291 S.C. 165, 352 S.E. 2d 503 (Ct. App. 1987).[T]

III. Plaintiffs Motion for Reconsideration.

A. The Court acknowledges Plaintiff's Motion seeking follow through with the appointment of a Special Administrator. In response to Defendant's Reconsideration Motion, the Court has provided, above, its reasoning as to how a Special Administrator may best assist with this Estate administration. Within five (5) days of the service of this Order, the parties may submit for the Court's consideration, the names of local counsel they consider appropriate for appointment as Special Administrator in this matter.

B. The Court acknowledges Plaintiff's Motion seeking clarification of legal fees and costs awarded. Based upon recent filings, the Court hereby awards the amount of $110,479.20 to Plaintiff from the Estate, for reimbursement of legal fees and costs. Such reimbursement need not necessarily be in the form of cash which may require sale of Estate assets. The details of such reimbursement shall be left to the discretion of the Special Administrator or the parties, with leave to later approach the Court for further assistance.

C. The Court acknowledges Plaintiff's Motion seeking clarification of Ms. Poafpybitty's obligation to contribute towards expenses of her residence occupancy since March 2, 2018. As part of any Estate distribution to beneficiary Ms. Poafpybitty, the Estate shall deduct from Ms. Poafpybitty's share, three quarters of the fair market rental value of the Crooked Pine residence, and such rental amount shall be equally distributed to shares for the other three Estate beneficiaries. During this Estate administration, beneficiary Donald Matthew Rothgeb has enjoyed exclusive use of a modest value residence which had been devised to all four

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beneficiaries. Defendant and other beneficiaries have all not sought expense adjustments for this beneficiary's residence use. The Court declines, here, an order for any such expense adjustment, which no party has sought.

IV. In the Matter of the Estate of Marion M. Kay; Sullivan v. Brown, 2016-002337 (S.C. 2018) and its relevance to the Estate of Donald M. Rothgeb.[U]

The recently decided case of Sullivan v. Brown includes guidance from the South Carolina Supreme Court on a number of issues which present themselves in our case. In Sullivan, a Personal Representative acted to resolve distribution conflicts. The Court examined entitlement to Personal Representative commissions, attorneys fees and expense reimbursements. Also examined was a concept known as the Common Fund Doctrine.

A. Judicial discretion was addressed in Sullivan with the following items, and following is the Court's applications:

1. Good Faith Fiduciary Services. To the extent that the new Sullivan case shares some similarities with this Estate conflict, a distinguishing mark is how this Court has found bad faith on the part of Dr. Rothgeb's Personal Representative. This finding, described above with substantial detail, justifies a result that is different than what the Supreme Court found for Mr. Sullivan, the Personal Representative of Ms. Kay's Estate.

2. Fiduciary Compensation. The new Sullivan ruling preserves a Probate Court's discretionary authority to determine proper fiduciary compensation. Especially in light of findings set forth in paragraph I. B. 9., above, this Court believes its March 2, 2018 Order complies with the Supreme Court's Sullivan guidance.

3. Legal Fees and Costs. This Court's reading of the Supreme Court's Sullivan decision is consistent with what appears, above, in paragraph I. B. 3. The new

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Sullivan decision expands the more limited ruling of the Court of Appeals about the application of §62-3-720 of the South Carolina Probate Code. Even with an expanded vision of what a Personal Representative may receive, in fees and costs, the new ruling nonetheless preserves a Probate Court's discretion regarding the terms "necessary". "reasonable" and "good faith", in determining entitlement to fees and costs. This Court has exercised its discretion, in a manner which is consistent with South Carolina law, including the new Sullivan decision.

4. Common Fund Doctrine. Defendant, in this case, has issue with how Plaintiff's fees and costs have been assessed against Dr. Rothgeb's Estate, as a whole. As clarified in the Sullivan ruling, under the Common Fund Doctrine the litigation expenses of Plaintiff may be assigned to others who have benefited from Plaintiff's work. In our case, Plaintiff's brothers have benefited with the Court ruling, in a manner similar to Plaintiff, and these brothers have also signaled their encouragement for the work of Plaintiff's counsel. They have also utilized services of Plaintiff's counsel in communicating with the Court, their support of Plaintiff's efforts.[V]

Defendant expresses concern, based upon Sullivan, for applying the Common Fund Doctrine in the Rothgeb case. The doctrine, Defendant asserts is inapplicable here, because Defendant's interests, as a beneficiary, are adverse to Plaintiff's interests. In situations where beneficiaries are adverse to one another, Sullivan restricts the doctrine's use. While recognizing, as the Sullivan case recognizes, that caution should be exercised when applying the Common Fund Doctrine, this Court decides now to confirm its decision to assess Plaintiff's costs against the Estate.

This Court holds Defendant mostly responsible for the expenses incurred by Plaintiff's corrective actions in this case. Instead of granting Plaintiff's request to assess all of her fees and

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costs, solely against Defendant, the decision in this matter actually relieves Defendant of substantial burdens, and shares these with all beneficiaries. A decision recognizing adversity, in the manner proposed by Defendant, would work an inequitable hardship in all cases where the party, who is responsible for legal conflict, is both a beneficiary and an Estate administrator.

With assignment, in this case, of Plaintiff's fees and costs, Plaintiff's brothers are required to contribute towards the benefits they have received, and Defendant's penalty is much lighter than it could have been, according to the Court's finding of facts.

The Court's Order of March 2, 2018 is hereby confirmed, and is enhanced by specific terms set forth above.

AND SO IT IS ORDERED.

The Honorable Carroll D. Padgett, Jr.
Chief Associate Probate Judge

Dated: November 7th, 2018

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Estate of Donald Rothgeb
c/o Julie Irving
157 Mattox Avenue
Colonial Beach, VA 22443

Re: Estate of Donald Rothgeb

Prior Balance $98,324.00

2018				
July				
	20	Review Estate email to Court	0.5	
	24	Email to client	0.2	
August				
	1	Review email from Estate counsel	0.1	
	1	Review email from client; Email to client	0.3	
	2	Review email from Estate counsel	0.2	
	2	Email to Estate counsel and client	0.3	
	26	Review email from client	0.1	
	27	Review client email	0.1	
	29	Email with client	0.2	
	30	Email communications with Estate counsel, client and research assistant	0.9	
September				
	6	Review Court email; Telephone conference with client	0.3	
	7	Email to client and research associate	0.3	
	10	Review Probate Code	2.5	
	12	Begin draft of Court Order	3.2	
	15	Draft Court Order; Review case file for footnotes	6.1	
	20	Review emails from client; Emails to client; Draft Court Order	1.4	
	23	Draft Court Order and assemble footnotes	2.7	
	26	Revise Court Order	1.5	
	27	Review and respond to Estate counsel email	0.6	
	28	Draft Court Order	3.5	
October				
	1	Revise Court Order	1.5	
	2	Review email from client	0.2	
	3	Review emails from client; Email to client; Email to research associate	0.6	
	4	Edit Court Order	0.7	
	5	Edit Court Order	1.2	
	6	Assemble footnotes	1.5	
	7	Revise Court Order	2.5	
	8	Review emails from client; Emails to client	0.7	
	9	Revise Court Order and footnotes	1.5	
	10	Revise Court Order and footnotes	1.9	
	11	Revise Court Order and footnotes; Review email from client	2.7	
	12	Complete draft Order; Correspondence; Deliver draft Order	1.7	
		Total Hours at $275.00	**41.0**	**$ 11,275.00**
		Court Reporting	**$ 829.20**	
		Office Supplies	**$ 51.00**	
		Total Costs		**$ 880.20**
		Total Fees and Costs		**$ 12,155.20**
		Total Balance Due		**$ 110,479.20**

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ELECTRONICALLY FILED - 2020 Sep 16 4:20 PM - HORRY - COMMON PLEAS - CASE#2018CP2606416

THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM HORRY COUNTY
Probate Court

Carroll D. Padgett, Jr., Chief Associate Probate Judge

Case No. 2018-CP-26-06416

In the matter of the Estate of Donald M. Rothgeb

Julie Irving..... Respondent-Plaintiff,

vs.

Jeanne Poafpybitty, Personal Representative of the Estate of Donald M. Rothgeb.....Appellant-Defendant,

and

Jeanne Poafpybitty, Donald Matthew Rothgeb and Steven Taylor Rothgeb.....Defendants.

ORDER DENYING APPEAL, AFFIRMING DECISIONS OF THE PROBATE COURT

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Jeanne Poafpybitty, Personal Representative of the Estate of Dr. Donald M. Rothgeb (hereinafter, "Appellant") asserts that the Horry County Probate Court committed reversible error in issuing two Orders, dated March 2, 2018 and November 7, 2018, regarding trial which was held on February 17, 2017 and February 24, 2017.

The Trial Court found Appellant in breach of fiduciary duties, with her efforts using Estate resources for personal financial gain, at the expense of the Estate and its other beneficiaries. Breach of duty was also found with unreasonable delay in Estate closure, in Appellant's communications with Estate beneficiaries and with Appellant's litigation efforts, that were not in the Estate's best interests. As remedy for Appellant's breach of duties, the Trial Court ordered Estate termination, approved of and disapproved of certain financial claims, ordered equal distribution of remaining Estate resources among four equal beneficiaries, and ordered appointment of a special administrator to oversee any administration which potentially might remain after 60 days of the Court's final order. This Court affirms the Probate Court's decisions.

Facts

Dr. Donald Rothgeb died on January 26, 2014, testate, and his Will named his surviving spouse, Jeanne Poafpybitty ("Appellant"), as the Estate's Personal Representative. Julie Irving ("Respondent"), Steven Rothgeb and Donald Matthew Rothgeb ("Matthew") are Dr. Rothgeb's children from a prior marriage, and the Will names these three children, and Appellant, as equal quarter share beneficiaries.

The Probate Estate held twelve parcels of Horry County real property, including full title to Dr. Rothgeb's personal residence, and many rental units which had been owned for investment.

Two real properties were encumbered by mortgage debt. The Probate Estate did not include liquid cash assets.

More than a year after Dr. Rothgeb's death, Steven Rothgeb wrote to Appellant who, as Personal Representative, had been managing the Estate's rental properties. Steven's letter informed that he was unable to secure information, when he had inquired with Estate counsel. Steven's letter, characterized by the Trial Court as respectful and cordial, asked for financial records and about Estate activities since the beginning of administration. The Trial Court found these inquiries to be reasonable, and to be what Appellant should have been prepared to address.

In response to Steven Rothgeb's February 24, 2015 letter, Appellant sought advice of Estate counsel, and agreed to provide information. Appellant acknowledged an absence of prior information sharing, "because there are no details to give". Appellant's initial response also included a mocking of Respondent's sincere interest in receiving Estate details.

On March 19, 2015 Appellant forwarded descriptions of real properties, a listing of monthly HOA and annual tax obligations, and a listing of property locations. Appellant did not share financial records or describe Estate activities. Appellant did not share about Estate income or expense distributions, but did share her views about mortgage debt obligations, together a forecast – "Well there isn't going to be any money today or tomorrow so I guess we all just need to get a grip".

Disappointed with the sharing Appellant had forwarded in response to Stephen Rothgeb's letter, Respondent, and her brothers, engaged attorney Jack Scoville, who wrote to the Estate on April 8, 2015. Mr. Scoville, thereafter, had the Estate agree to recognize, and act upon, a portion of Dr. Rothgeb's Will, which permitted prompt real property distributions, allowing beneficiaries

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to take title, subject to outstanding mortgage debt. This eliminated delays associated with property liquidations and mortgage debt payoffs. Mr. Scoville also secured a commitment for Estate income and expense sharing, that had previously not been provided by Appellant.

In contrast to the record summary described in four paragraphs, above, Appellant claims, under oath, with criticism of Respondent's behavior, that "exactly one year and one day" following Dr. Rothgeb's death, Respondent hired Attorney Scoville, because it appeared that she was not getting her fair Estate share. The Trial Court has written of its concerns, regarding Appellant's sincerity and credibility, in proceedings.

In late 2015, after information sharing between the parties, Mr. Scoville wrote to suggest appraisal of Estate real properties, to be used as part of final distributions and Estate closure. Mr. Scoville's letter of October 6, 2015 contained no details about the appraisal process, nor how the parties would proceed following the new appraisals. The three children beneficiaries, thereafter, disengaged attorney Scoville, and prepared to receive final distribution proposals from Appellant.

The first of Appellant's distribution proposals was forwarded on December 9, 2015. It included terms where, for only a $95,000.00 credit against her 25% Estate distribution share, Appellant would take title to Dr. Rothgeb's personal residence.

Appellant's $95,000.00 residence distribution proposal was forwarded to Respondent with no copy of any supporting appraisal, and no explanation of how this $95,000.00 value related to the $191,200.00 value, Appellant had previously declared for this same residence, in two separate sworn Probate Court inventory filings.

Respondent suspected that Appellant was intending to secure an unwarranted financial bargain, and arranged to receive from Appellant, a copy of the appraisal report which had been

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commissioned for Dr. Rothgeb's personal residence. As it happened, appraiser James Cromartie had observed serious disrepair with Dr. Rothgeb's personal residence, and this, he says, justified the discounted $95,000.00 value.

During further proceedings, Respondent learned that, between the time of Mr. Cromartie's disrepair appraisal, and Appellant's $95,000.00 distribution proposal, Appellant used more than $20,000.00 in Estate resources to rehabilitate Dr. Rothgeb's residence. It was not in a disrepaired state, when Appellant made her December 9, 2015 $95,000.00 distribution proposal.

Respondent communicated further with the Estate, and Appellant revised her written distribution proposals on January 29, 2016. She now listed Estate repair expenses, to be part of a credit for her 25% Estate distribution share, with a revised distribution credit, now totaling $118,000.00.

Respondent, who was knowledgeable about her Father's residence, and was aware that it had mortgage debt of nearly $130,000.00, still considered Appellant's January 2016 revised distribution proposal to demonstrate Appellant's unreasonable financial bargain hunting. Prior to any litigation, Respondent forwarded settlement proposals, all of which the Estate refused. Among these proposals was that Appellant negotiate with beneficiaries, but without, what Respondent considered to be, the conflicting cost of Estate counsel. Payment for Estate counsel, when made from Estate resources, essentially meant that Respondent, and her brothers (75% interest holders), would be paying 75% of the bill for lawyers, who were working to secure the best personal value for Appellant, as a 25% beneficiary.

In February 2016, Respondent and Appellant's counsel had telephone communication, where issues of the parties were discussed. This ended with counsel proposing action to conclude

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administration according to terms which Appellant considered to be appropriate. Weeks later, in April, 2016, Respondent filed suit, seeking to terminate administration, together with a motion for restraint, alleging breach of fiduciary duties.

The parties attended motion hearing on May 27, 2016, where Appellant, who had filed no responsive pleading, did not object to Estate closure, but did raise concern about Respondent's call for removing Appellant's fiduciary authority. The Trial Court granted Temporary Restraining Order, and established Respondent's financial inheritance as security, for payment of any costs and damages, should Appellant ever demonstrate that she had suffered, by having been wrongfully restrained. Further, the Court gave instructions for final accountings, as well as mediation and trial, should disagreements continue.

In June, 2016, Appellant filed Estate closing documents, including, among other items, her proposal to acquire Dr. Rothgeb's repaired personal residence at a price of $118,000.00. This is the same price proposed by Appellant, prior to suit in January, 2016. Presumably, Appellant was prepared to defend this acquisition price as being reasonable. Appellant, as part of her $118,000.00 acquisition, agreed to personally assume the residence outstanding mortgage, which in June 2016, had a balance of more than $127,000.00. Respondent and her two brothers again objected to Appellant's residence acquisition price, as well as other items, including Appellant's proposal to have the Estate pay for years of her personal utilities and cable bill expenses. The children filed demands for hearing.

Thereafter, the parties proceeded with discovery, mediation preparation and further communications with the Probate Court. Appellant filed countersuit, claiming that Respondent had abused the legal process, and was acting to seek revenge against Appellant, her stepmother.

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Appellant maintained, at all times, she had performed with proper fiduciary care, and asserted that Respondent was estopped from taking legal action, based upon prior Estate negotiations.

In November, 2016, the Trial Court permitted Respondent's appraiser, Russell Burgess, to inspect the interior of Dr. Rothgeb's personal residence, and also permitted Appellant's appraiser, Mr. Cromartie, to be present for the inspection. Mr. Cromartie's prior appraisal work, had previously been in 2015, prior to residence repairs which had been made by Appellant with Estate resources.

The parties presented their competing positions, with exhibits, witnesses and arguments during two days of trial in February 2017. On February 15, 2017, just prior to trial, Appellant filed revised Estate closing proposals, including a final accounting, under oath.

According to her closing revisions, Appellant no longer sought title to Dr. Rothgeb's personal residence. She proposed that it be distributed, instead, to her stepchildren. Whatsmore, Appellant decided not to make any trial presentation which would defend/ justify her actions, in January, 2016 and June, 2016, where Appellant listed $118,000.00 as a reasonable price for Dr. Rothgeb's repaired personal residence she wished to acquire. Appellant now listed $193,900.00, as the value for Dr. Rothgeb's personal residence, the amount contained in appraiser Burgess' report, which had been shared with the parties, weeks before trial. In sworn trial testimony, Mr. Burgess presented his findings. During trial, Appellant did not support the valuation for Dr. Rothgeb's personal residence, contained in her February 14, 2017 sworn filing. The Trial Court saw Appellant's actions as abandonment of Appellant's fiduciary duties, in setting values for Estate assets.

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In spite of her decision not to defend the $118,000.00 valuation, which appears to have sparked conflict and litigation, Appellant, nonetheless, called appraiser Cromartie to give trial testimony. Mr. Cromartie described his 2015 pre-repair appraisal of Dr. Rothgeb's personal residence, but when asked to opine regarding the repaired residence value, he had no opinion to offer. The Estate, Mr. Cromartie explained, had not hired him to appraise the residence, again, following its repair, and in connection with Mr. Cromartie's November 2016 post-repair inspection; an inspection which was arranged for through Court Order.

Appellant's court presentations included explanation that, in order to achieve cost savings, the Estate decided not to ask its appraiser, James Cromartie, for an opinion of Dr. Rothgeb's residence, following Estate repairs. The Court's Order of November 7, 2018 describes this explanation as neither reasonable nor credible. The case record includes written communication to the Court, from Appellant's counsel, just prior to trial. In this communication, also expressing concern about Estate expenses, the Trial Court was told to anticipate a trial with valuation testimony from Mr. Cromartie and Respondent's appraiser, which counsel advised would assist with case resolution.

The absence of a repaired residence valuation, from Appellant's appraiser, made an impression on the Trial Court. According to Trial Court conclusions, Mr. Cromartie either could not or would not support Appellant's $118,000.00 property acquisition price. Appellant's fiduciary breach is associated with her abandonment of basic obligations to be clear with values, and her failure to avoid self dealing.

In connection with findings of fiduciary breach, the Trial Court ordered remedies, as follows:

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1. The balance of Estate assets, following approved fees and costs, shall be distributed, in equal shares, unto the Estate's four beneficiaries, and Estate administration would terminate.

2. Fees and costs of Appellant's counsel shall be paid by the Estate, through May 25, 2016. Any further such fees and costs shall be the personal responsibility, only, of Appellant, except that the Estate may pay for reasonable legal services associated with the Ordered Estate closure.

3. A Personal Representative's fee of $10,000.00 is approved, and $30,000.00 of additional fiduciary compensation, which had been proposed by Appellant, shall be distributed, equally, unto Dr. Rothgeb's three children.

4. Respondent's attorney fees and costs shall be reimbursed by the Estate.

5. In making final distributions, there shall be no final adjustments associated with more than four (4) years of Appellant's nearly exclusive use of a personal residence owned by the Estate. This includes no financial adjustments requiring Appellant to reimburse the Estate for personal expenses, such as electric and cable utilities, taxes and insurance for the residence. Following issuance of the Trial Court Order, Appellant, should she have continuing use of Dr. Rothgeb's personal residence as her own, shall be responsible for reasonable expense reimbursement to the Estate, as if she were a tenant.

6. Appellant's fiduciary authority shall terminate, with appointment of a Special Administrator, should proceedings continue beyond sixty (60) days from Trial Court Order.

Appellant and Respondent both filed post trial motions, the parties made post trial hearing presentations, and the Trial Court issued its Order of November 7, 2018, upholding its earlier rulings.

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Standard of Review

Appeals from the Probate Court are governed by provisions of the South Carolina Probate Code, as set forth in S.C. Code Ann. §62-1-308(d) (Supp. 2013). If the proceeding in the Probate Court is in the nature of an action at law, the appellate court may not disturb the Probate Court's findings of fact, unless a review of the record discloses that there is no evidence to support these findings. Neely v. Thomasson, 365 S.C. 345, 618 S.E. 2d 884 (2005). If, however, the Probate Court proceeding is equitable in nature, an appellate court may make factual findings according to its own view of the evidence. Matter of Howard, 315 S.C. 356, 434 S.E. 2d 254 (1993). This Court finds guidance in these issues, through the Horry County case of Ex Parte Wheeler v. Estate of Green, 381 S.C. 548, 673 S.E. 2d 836 (S.C. App. 2009).

The main purpose of the action, as reflected by pleadings and proof, and also the relief sought from the Probate Court, may establish whether a suit is legal or equitable in nature. Gordon v. Drews, 358 S.C. 598, 595 S.E. 2d 864 (Ct. App. 2004). A claim regarding breach of fiduciary duty is an action at law, and the trial judge's findings, if supported by evidence, will be upheld. Jordan v. Holt, 362 S.C. 201, 608 S.E. 2d 129 (2005). This Court observes that Respondent's Complaint, in this matter, alleged breach of fiduciary duties, which the Trial Court found to be so, based upon evidence presented. As such, this Court has decided to uphold the Trial Court's findings. This Court has reviewed a voluminous record, in this matter, and determined that the Trial Court has not abused its discretion in reaching its findings, and in issuing its decisions, including remedies.

This Court is mindful, however, of Appellant's assertion that this case sounds substantially in equity, and that the appellate court should make findings according to its own views of the evidence. This Court recognizes that a breach of fiduciary duty may sound in equity, if the relief

sought is equitable in nature. Bivens v. Watkins, 313 S.C. 228, 437 S.E. 2d 132 (Ct. App. 1993). In this case, involving allegations, and findings, of breach of fiduciary duties, Respondent sought Probate Court intervention, for property distributions which Appellant would not make, but which were permitted under Dr. Rothgeb's Will. The Trial Court also exercised equitable discretion, particularly under S.C. Code Ann. §62-1-111 (Supp. 2013), to address ten of thousand of dollars in costs and expenses.

Recognizing the equitable elements in this case, and how the Wheeler case addressed the breach of fiduciary duties, when these elements exist, this Court records, here, certain findings from the record, following its own review.

Law and Analysis

I. Fiduciary Obligations. A Personal Representative is a fiduciary, with duty to settle and distribute a Decedent's Estate, expeditiously and efficiently, according to terms of the probated Will, and consistent with the Estate's best interest. S.C. Code Ann. §62-3-703 (Supp. 2013). In taking discretionary actions with assets in her custody, a fiduciary must eliminate all selfish interest and exercise the reasonable care, prudence and diligence that a reasonably prudent person would do with relation to her own affairs. Cartee v. Lesley, 209 S.C. 333, 350 S.E. 201 388 (1986), Page v. Page, 243 S.C. 312, 133 S.E. 201 829 (1963). This Court has reviewed the Record and Trial Court's findings of fiduciary breach. This Court has reached findings, as follows:

a. The Trial Court, in paragraph 18, page 21 of its March 2, 2018 Order, summarized how Appellant unjustly sparked expensive conflict by using fiduciary authority, attempting to personally acquire, at more than a $70,000.00 discount, an Estate residence which had been restored with tens of thousands of dollars in Estate resources. Aggressive defenses, including

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countersuit, were launched by Appellant, because Respondent challenged Appellant's faithfulness, when Appellant continued using the once disrepaired condition of Dr. Rothgeb's personal residence, in calculating final distributions.

Appellant proposed a distribution of a restored, not a disrepaired, Estate residence. A final distribution value, based upon a prior state of residence disrepair, did not make sense to Respondent, and the Trial Court agreed that it demonstrated unfair self-dealing.

As it so happened, when given the chance at trial, Appellant backed away from any effort to defend and justify her discounted residence acquisition proposal. However, following trial, and now into her most recent appeal efforts, Appellant seeks to establish Trial Court error, by highlighting the importance of pre-repair troubles, of a restored residence, which she tried to acquire for her own.

b. Until challenged by separate counsel, hired by Estate beneficiaries, Appellant ignored that part of Dr. Rothgeb's Will which permitted prompt real property distributions, allowing Estate distributees to acquire distribution titles, subject to any outstanding mortgage debt.

Unreasonably, prior to this challenge, Appellant maintained that only one administrative option was available. The Estate had no choice but to engage in costs, efforts and delays, associated with marketing Estate properties, where sale proceeds would be used to extinguish all mortgage debt, prior to Estate closure. Appellant's only acknowledged option, carried with it opportunities for greater fiduciary compensation when she sold real property. Also, the longer the real property marketing period during Estate administration, the longer Appellant could enjoy occupancy of Dr. Rothgeb's residence, at the Estate's expense.

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c. As outlined on Pages 6 and 7 of the Trial Court's March 2, 2018 Order, Appellant did not follow through with her March 8, 2015 written commitment to inform beneficiaries of Estate financial information which the beneficiaries sought. Financial information was later forwarded, but only following beneficiaries' action to hire their own attorney, who demanded answers.

During litigation discovery, in 2016, Appellant offered unreasonable objection to Respondent requests. As described, above, Appellant's ideas for valuing Dr. Rothgeb's personal residence was a significant part of the parties' conflict. In discovery, prior to trial, Appellant refused to share her valuation ideas. Later, at trial, Appellant behaved as though her prior and current valuation ideas, for Dr. Rothgeb's repaired personal residence, had no relevance to the parties' contest.

d. In Estate administration, Appellant has maintained a spirited defense, claiming that she has always acted as a fiduciary should act, in the Estate's best interests. The Trial Court ruled that Appellant had not defended her case in the Estate's best interests. It has listed, on pages 8 through 14 of its November 7, 2018 Order, analysis of how Appellants' defense efforts have missed the standards, set forth in S.C. Code Ann. §62-3-720 (Supp. 2013). Ultimately, Appellant, herself, remains responsible and accountable for defense efforts made on her behalf. Williams v. Williams, 335 S.C. 386, 517 S.E. 2d 689 (1999).

As discussed below, this Court has also observed defense efforts through Appellant's appeal. The statutory standards which permit reimbursement of defense expenditures, require, not only good faith defense efforts, but also defenses which are necessary and reasonable. According to the Trial Court, Appellant had litigated with a goal of improving her personal lot in the Estate. Appellant's claim of good faith actions is not supported by the record.

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II. Trial Court Remedies. Administration of a Probate Estate is guided by the Decedent's intent, as expressed in his written Will. S.C. Code Ann. §62-2-601 (Supp. 2013). In this case, Dr. Rothgeb selected Appellant to serve as Personal Representative, and gave her fiduciary authority to be exercised for the best interests of the Estate and its beneficiaries. While Item IV of Dr. Rothgeb's Will provides sole discretion for Appellant to designate personal and real property for Estate distributions, this Item also requires that each beneficiary receive approximately equal shares of the Estate.

The Trial Court properly recognized that Dr. Rothgeb's selection of Appellant should be respected, and that Appellant's judgment shall not, for insignificant reasons, be set aside. The courts retain, however, authority to review a Personal Representative's fiduciary performance, and to take necessary corrective actions for protection of the Estate and its beneficiaries. This is judicial authority to further the decedent's intent. Blackmon v. Weaver, 366 S.C. 245, 621 S.E. 2d 42 (2005); Church v. McGee, 391 S.C. 334, 705 S.E. 2d 481 (Ct. App. 2011); Floyd v. Floyd, 365 S.C. 56, 615 S.E. 2d 465 (Ct. App. 2005); Maydwell v. Maydwell 135 Tenn 1, 185 S.W. 712 (1916). Following are findings of this Court:

a. Given the fiduciary misconduct of Appellant in this case, the Trial Court is within its discretion to restrain Appellant's further exercise of authority. This Trial Court action, to preserve the Estate, did not reform Dr. Rothgeb's Will, as Appellant claims. The Trial Court was not obligated, in furtherance of Dr. Rothgeb's intentions, to again and again, allow Appellant to try and exercise fiduciary authority.

b. The Trial Court did not abuse its discretion, according to S. C. Code Ann. §62-1-111 (Supp. 2013) to award costs and expenses. This Court acknowledges Appellant's concerns, according to S.C. Code Ann. §62-3-720 (Supp. 2013), seeking reimbursement of Appellant's legal

expenses. This Court holds, also, that the Common Fund Doctrine expressed in the case of Sullivan v. Brown (In re Estate of Kay) 418 S.C. 400, 792 S.E. 2d 907 (Ct. App. 2016) is not applicable to how the Trial Court treated Appellant. In light of Appellant's behavior, and of S.C. Code Ann. §62-1-111 and §62-3-712 (Supp. 2013), the Trial Court acted within its statutory discretion.

This Court has reviewed what the Trial Court has observed in reaching its decision, and this Court has also observed the following, regarding legal efforts with Appellant's appeal:

(i) Without addressing admissions of her own trial strategy, where she decided to withhold documents from submission, Appellant continues to blame others for the absence of exhibits, she now asserts should have become part of the Record. Further, in spite of continuing claims of Trial Court and Respondent error, Appellant has proffered no record items, where an appellate court may now examine any proposed exhibits, which Appellant considers to have been wrongfully excluded.

(ii) Appellant offers continuing concerns about the once deplorable condition of Dr. Rothgeb's residence. This she does, without addressing Trial Court findings that, following substantial repairs with Estate resources, Appellant used fiduciary powers to try and personally acquire this residence, for a price associated with its pre-repair troubles.

(iii) Appellant invites this Court to examine Respondent's citation of an old Tennessee case, as example of how flawed the Trial Court's Order has been. This, Appellant does, without acknowledging how our South Carolina Court of Appeals favorably cited Maydwell v. Maydwell, 135 Tenn. 1, 185 S.W. 712 (1916), in resolving a fiduciary removal case from our own Pawleys Island community. Floyd v. Floyd 365 S.C. 56, 615 S.E. 2d 465 (Ct. App. 2005). Maydwell, cited by the Trial Court, together with other South Carolina fiduciary removal cases,

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holds that substantial conflict resolution, and fair treatment for the Estate and its beneficiaries, is so important, that fiduciary removal can be proper, even when there is no fiduciary misconduct.

(iv) Appellant continues to cite, what she claims is the opinion of interested party, Attorney Jack Scoville, although no record of this opinion exists. Appellant never called Mr. Scoville as a witness, and the Trial Court previously instructed Appellant for violating rules of heresay, when counsel wrongfully attempted to enhance the record of Mr. Scoville's contributions to this case. Mr. Scoville's letter of October 6, 2015 does not support, as Appellant claims, her January 22, 2020 argument before this Court.

(v) Without addressing Trial Court findings, of her failure to establish any binding agreement, Appellant continues arguing that Respondent has violated a previously negotiated global settlement, when Respondent questioned Appellant's 2015 and 2016 Estate closing proposals. No record shows that Respondent had ever surrendered her beneficiary rights to challenge Estate accountings; accountings which the Trial Court ultimately found to have demonstrated fiduciary misconduct. The Trial Court observed unjustified Estate hostility towards Respondent, and ruled that a proper fiduciary would not continue arguing about a pretrial settlement, which the evidence does not display.

Under the circumstances, this Court agrees with the Trial Court. Appellant has continued with defenses which are beyond the standards outlined in S.C. Code Ann. §62-3-720 (Supp. 2013), and Appellant's claim of good faith defenses has not been demonstrated. Dr. Rothgeb's children should not experience additional financial suffering, which would be the case, if the Estate was made to reimburse Appellant for greater defense expenses, than the Trial Court has permitted.

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c. Given the fiduciary misconduct of Appellant in this case, which sparked unreasonable expense for all parties, the Trial Court's limited award of financial compensation to the Personal Representative is not an abuse of judicial discretion.

d. This Court finds that Appellant, who continues with concerns about harsh Trial Court treatment, has actually received substantial considerations in her favor. The Trial Court Order of March 2, 2018 outlines, in pages 39 through 42, a good measure of accommodations to Appellant, in spite of her deliberate misconduct. The Trial Court answer, about a surviving spouse's one-third elective share petition, also was well within its direction. In her arguments, Appellant chose neither to acknowledge nor address this Trial Court answer.

e. The Trial Court Order for Special Administrator is cited, as error, because this remedy, Appellant claims, was not part of Respondent's court presentations, and Appellant was not given fair notice of the issue. Respondent's Complaint sought termination of Estate administration, where Appellant's fiduciary authority would end. In addition to specific items contained in her Complaint, Respondent sought "such additional relief as the Court deems just and proper", which the Trial Court granted. Hearing transcript, and also Appellant's pretrial communications with the Trial Court, citing fiduciary removal cases, record Appellant's awareness that the Personal Representative's removal was among the contested trial issues. The Trial Court did not abuse its discretion in ruling to appoint a Special Administrator, for protection of the Estate and its beneficiaries.

III. Trial Court Error. In deciding this case, it was error for the Trial Court to cite S. C. Code Ann. §62-7-804 (Supp. 2013). As set forth in S. C. Code Ann. §62-7-102 (Supp. 2013), Article 7 of our Probate Code pertains only to Trusts and Trustees, and not to the administration of Estates. This is so, even while S. C. Code Ann. §62-3-703(a) (Supp. 2013) references Code §62-7-804 for

a standard of care, associated with Personal Representatives. Notwithstanding this error, the record of this case supports Trial Court findings, that Appellant substantially breached her fiduciary duties to the Estate and its beneficiaries.

Conclusion

In this Court's view, according to preponderance of evidence contained in the Record, Appellant substantially breached her duties as Personal Representative, in order to achieve selfish goals. The Trial Court had proper grounds for these findings, and acted within its discretion to order Estate conclusion, with distributions and settlement of costs. The Trial Court's Order for a Special Administrator was also within the Court's discretion, as a proper action to protect the Estate and its beneficiaries. The decisions of the Probate Court are therefore AFFIRMED.

AND IT IS SO ORDERED.

_____
Honorable Benjamin H. Culbertson

Dated: _____

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Horry Common Pleas

Case Caption: Jeanne Poafpybitty , plaintiff, et al VS Julie Irving

Case Number: 2018CP2606416

Type: Order/Other

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF HORRY)
) CASE NO. 2014-ES-26-00498
IN THE MATTER OF ESTATE OF)
DONALD M. ROTHGEB)
)
JULIE IRVING,) SUMMONS
PLAINTIFF,)
)
vs.)
)
JEANNE POAFPYBITTY, PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF DONALD M. ROTHGEB,)
DEFENDANT,)
)
AND)
)
JEANNE POAFPYBITTY, DONALD)
MATTHEW ROTHGEB AND STEVEN)
TAYLOR ROTHGEB,)
DEFENDANTS.)

2016 APR 25 AM 8:44

TO THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

Clifford H. Tall

Clifford H. Tall
SC Bar No.: 005463
Clifford H. Tall, P.A.
4702 Oleander Drive
Myrtle Beach, SC 29577
(843) 497-9777
Attorney for Plaintiff, Julie Irving

Horry County, South Carolina
Dated: April 25, 2016

STATE OF SOUTH CAROLINA COUNTY OF HORRY JULIE IRVING, PLAINTIFF, vs. JEANNE POAFPYBITTY, PERSONAL REPRESENTATIVE OF THE ESTATE OF DONALD M. ROTHGEB, DEFENDANT, AND JEANNE POAFPYBITTY, DONALD MATTHEW ROTHGEB AND STEVEN TAYLOR ROTHGEB, DEFENDANTS.	IN THE PROBATE COURT CASE NO: 2014-ES-26-00498 COMPLAINT TO SECURE FAIR AND PROMPT CLOSURE OF ESTATE ADMINISTRATION

2016 APR 25 AM 8:44

COMES NOW Plaintiff, and brings action as follows:

1. This case involves an active Estate, currently under administration in the Horry County Probate Court. The decedent, Donald Rothgeb, was Plaintiff's Father, and his will, accepted by the Court, lists four (4) equal beneficiaries. Plaintiff is one of those four (4) beneficiaries.

2. Jeanne Poafpybitty, Defendant, is the Estate's Personal Representative, and Defendants, Donald Matthew Rothgeb and Steven Taylor Rothgeb, Plaintiff's brothers, are two (2) of the four (4) equal beneficiaries. Jeanne Poafpybitty, is also one of four (4) equal beneficiaries.

3. In this Complaint, Plaintiff maintains that there is no good reason for the Estate to remain open. It's time, Plaintiff asserts, to move on and finish administration.

4. As a beneficiary, Plaintiff is concerned about Estate costs. Plaintiff asserts that a lot of time and energy, and additional cost, can be expended, if this suit goes on to allege that Jeanne Poafpybitty has not done a good job in recognizing that she is obligated to keep a proper balance. There are things which Jeanne Poafpybitty may want, as any beneficiary would want, so as to secure personal Estate advantages. There are things, also, that Jeanne Poafpybitty should refrain from doing, to secure personal Estate advantages, because it would conflict with her Estate duties to all beneficiaries as Personal Representative.

5. Rather than engage in what could become an almost endless debate about whether, in this case, Jeanne Poafpybitty has kept a proper balance as Personal Representative and as Estate beneficiary, Plaintiff asserts that it is proper to now close Estate administration. Plaintiff believes it is way past time for this administration to end, with a proper accounting and final asset distributions. Plaintiff cites §62-3-703 of the South Carolina Probate Code, for this position.

6. Plaintiff asserts that what now stands in the way of timely Estate closure, are only personal differences between Jeanne Poafpybitty, as beneficiary, and other beneficiaries. Plaintiff has no problem with differences among beneficiaries. Plaintiff asserts that it's proper, however, for beneficiaries to work out their differences, among themselves.

7. Together with the filing of this Complaint, Plaintiff has also filed a Motion for Temporary Restraining Order.

8. The concern of Plaintiff's Motion is that there has already been some actions, and there exists strong temptation for Jeanne Poafpybitty, as beneficiary, to take other action, to try and settle differences with her equal co-beneficiaries, by using powers that are granted to Jeanne Poafpybitty through the office of Personal Representative.

9. Following in paragraph 10., below, are examples of actions which concern Plaintiff.

Especially when the only differences which exist between the parties, are differences in personal preferences among co-beneficiaries, Plaintiff seeks the Court's assistance, here, because being aware of the actions described in paragraph 10., below, and having heard that Jeanne Poafpybitty intends to use her Personal Representative powers to settle personal preferences among beneficiaries, Plaintiff believes that Jeanne Poafpybitty cannot serve as a proper "King Solomon" in these matters*. Plaintiff asserts that Jeanne Poafpybitty is too much personally involved, and besides, there is ample opportunity for four (4) equal beneficiaries to work out the details, among themselves, with each having a meaningful say about what happens.

10. Following are examples of what Plaintiff is already aware of:

a. On two occasions, the latest of which was July 2015, Jeanne Poafpybitty filed a sworn document, declaring $191,200.00 as the value of the Decedent's personal residence. A few short months later, Jeanne Poafpybitty informs that she'd like to 100% own this residence, as part of her equal ¼ Estate beneficiary share, but she only wants to be charged $95,000.00 as the price for her distribution. Plaintiff doesn't mind if Jeanne Poafpybitty wants to hunt for a property distribution bargain, but Plaintiff doesn't want Jeanne Poafpybitty to use Personal Representative powers to get it, and this includes hiring the Estate attorney to pursue Jeanne Poafpybitty's proposed bargain hunting. No doubt, Jeanne Poafpybitty may believe that some new appraisal establishes grounds for a new value, but two filed Estate inventory values remain.

b. Without first informing other Estate beneficiaries, Jeanne Poafpybitty took more than $29,000.00 of Estate funds, and put a new roof on the same Decedent's personal residence which she now wants to 100% own, and acquire at a deep bargain price.

c. Without first informing other Estate beneficiaries, Jeanne Poafpybitty went

*Can we all imagine how the famous Bible story would have been different, if King Solomon, himself, had a personal interest in securing custody, so that he could raise the baby?

about selling real properties which the Decedent owned, at his death. When one of the other Estate beneficiaries asked Jeanne Poafpybitty if she had sold any real properties, she denied having done so, even though she had sold Estate properties. Jeanne Poafpybitty has powerful authority, as Personal Representative, but Plaintiff asserts that this does not include the right to be untruthful with beneficiaries.

d. Plaintiff's requests for information about Estate activities in 2015, went largely ignored, until Plaintiff hired a local attorney, who became forceful in securing information that Plaintiff could not get the Estate to deliver. Plaintiff has since concluded work with this local attorney (an attorney other than the undersigned), and now seeks a peaceful Estate resolution.

11. At present, Plaintiff believes that the Estate should close. Jeanne Poafpybitty, apparently, is in favor of continuing administration, unless her personal views, about how to divide real properties, are agreed to by all beneficiaries.

12. While Jeanne Poafpybitty holds all cash money of the Estate, and while Jeanne Poafpybitty advises that she has Court and statutory authority to force her views upon other beneficiaries, Plaintiff doesn't think it's fair for the Beneficiaries to debate with the Personal Representative. Jeanne Poafpybitty now rejects two sworn inventory values of $191,200.00 for a residence that she now believes is worth only $95,000.00. These differences can be worked out between the several co-beneficiaries, and the Estate should not be put to additional expense which hurts all of the beneficiaries, when the Personal Representative wants to use Estate resources to support Beneficiary, Jeanne Poafpybitty's, own private beneficiary goals.

13. Plaintiff's Motion, filed with this Complaint, asks the Court to step in. Plaintiff seeks a level the playing field. If Plaintiff's Motion is granted, Jeanne Poafpybitty will no longer be able to hire the Estate attorney to help her argue that the true value of the Decedent's residence is

actually half of what the Estate has already declared in two sworn to filed inventory forms. Plaintiff is agreeable to have a debate, if the parties must, but Plaintiff believes that Jeanne Poafpybitty, as a ¼ beneficiary, should have no more resources, and no more voice, than any other 1/4 beneficiary, in deciding how remaining Estate assets will be specially distributed among equal Beneficiaries.

WHEREFORE, Plaintiff seeks an Order of Court, granting the following relief:

1. The Personal Representative shall promptly file an accurate and up to date Estate accounting.

2. In connection with remaining assets of the Estate, less resources required for reasonable final administrative expenses, such remaining assets shall be equally distributed unto the four (4) equal beneficiaries.

3. In the event that the Personal Representative is persuasive, mindful of her duties under §62-3-703 of the South Carolina Probate Code, that equal final Estate distributions should not occur, the Court should not permit the Personal Representative to use Estate resources to negotiate for what Jeanne Poafpybitty, the Beneficiary, will insist is best for Jeanne Poafpybitty's own private interests.

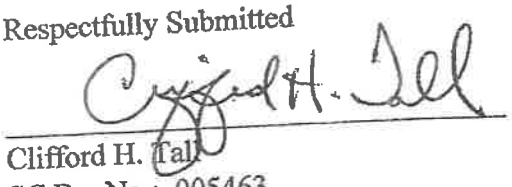
4. The co-beneficiaries shall be ordered to mediate their continuing differences, if any, with all beneficiaries bearing their own individual mediation costs.

5. The Personal Representative shall make reasonable interim financial distributions to all beneficiaries to assist all in following item 4., above.

6. The Plaintiff shall be reimbursed for her attorneys fees and costs in this action.

7. All such additional relief, as the Court determines to be just and proper.

Respectfully Submitted



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SC Bar No.: 005463
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Myrtle Beach, SC 29577
(843) 497-9777
Attorney for Plaintiff, Julie Irving

Dated: April 25, 2016

STATE OF SOUTH CAROLINA	**IN THE PROBATE COURT**
COUNTY OF HORRY	**CASE NO: 2014-ES-26-00498**
JULIE IRVING,	
PLAINTIFF,	**MOTION FOR TEMPORARY RESTRAINING ORDER TO PREVENT PREFERENTIAL ESTATE DISTRIBUTIONS**
vs.	
JEANNE POAFPYBITTY, PERSONAL REPRESENTATIVE OF THE ESTATE OF DONALD M. ROTHGEB,	
DEFENDANT,	
AND	
JEANNE POAFPYBITTY, DONALD MATTHEW ROTHGEB AND STEVEN TAYLOR ROTHGEB,	
DEFENDANTS.	

2016 APR 25 AM 8:45

Comes Now Plaintiff, Julie Irving, one of four (4) equal Estate beneficiaries, and with specific reference to the allegations contained in Plaintiff's Complaint, a copy of which is attached hereto as Exhibit "A", and with the support of Affidavit, attached hereto as Exhibit "B", respectfully seeks, pursuant to Rule 65 (b) of the South Carolina Rules of Civil Procedure, a Temporary Restraining Order which prohibits the Estate from making preferential Estate distributions, and otherwise taking action to waste Estate resources, all of which conflicts with duties owed by the Estate to all beneficiaries. Respectfully, Plaintiff asserts the following:

1. It is now well past time for this Estate administration to conclude.
2. Given what has already occurred in Estate administration, there is a real risk

that without prompt Court intervention, there could be wild, inappropriate, Estate spending, with the prospect of nearly endless and costly legal debate, where passionate arguments continue on, and creating substantial losses that can not, through legal remedies, be fairly and reasonably later addressed. Among Plaintiff's concerns are as follows.

3. The Estate Personal Representative has, twice, under oath, filed Inventory forms listing $191,200.00, as the value of an Estate residence known as Lot 408, Deerfield Plantation, with TMS # 191-08-04-038.

4. Wells Fargo (formerly Wachovia) Mortgage Corporation presently holds a first mortgage lien on the property, with a current balance of almost $130,000.00.

5. In spite of how the facts set forth in paragraphs 3 and 4, above, describe the subject residence as having substantial documented value, the Estate has recently communicated a very different picture to Estate beneficiaries, which it wishes to support with a new appraisal.

6. Jeanne Poafpybitty, the Personal Representative, has signaled her intention to secure full ownership of the subject residence for herself, as part of her equal ¼ beneficiary share of the Estate residuary.

7. As part of her intention, described in paragraph 6., above, Jeanne Poafpybitty, the Personal Representative, now insists that all beneficiaries agree to $95,000.00 as the true value of the subject residence. According to the Estate's proposed property distribution plan, when 100% of the subject residence is designated for sole ownership by Jeanne Poafpybitty, beneficiary, there will be only a $95,000.00 value assigned to Jeanne Poafpybitty's beneficiary share distribution.

8. The Estate has communicated its intention to follow through with distribution and valuation plans, as set forth in paragraphs 6. and 7., above. The Estate says it will follow through with these plans, whether or not the other Estate beneficiaries consent.

9. Plaintiff understands how, as beneficiary, Jeanne Poafpybitty would like to receive a residence which she, herself, previously valued at $191,200.00 on two sworn Estate Inventories, and then be charged with only having received $95,000.00 in value. No doubt, a transaction, such as described above, would appeal to every alert self interested beneficiary.

10. Plaintiff asserts that Jeanne Poafpybitty's plan, described above, works as a large financial preference to Jeanne Poafpybitty, as beneficiary. In fairness, however, such a distribution plan should not be proposed by an active Personal Representative, who has fiduciary obligations to all beneficiaries, and who should, as part of her duties, avoid financial preferences in distributions. In all fairness, Jeanne Poafpybitty in her Estate Administrator's capacity, is conflicted out of even making such a bargain hunting proposal. A proper personal representative would recuse herself on the issue.

11. Plaintiff seeks Court assurances that the Estate act fairly towards all beneficiaries. Specifically, Jeanne Poafpybitty's desire for any specific asset, and at any specific price (especially when her price is less than half of the listed Estate inventory value), are all issues to be best addressed by beneficiaries, personally, among themselves. Plaintiff seeks Court action to insure that, in any action where a Personal Representative desires to aggressively pursue her own private interests, as Estate beneficiary, the Personal Representative should not have access to Estate resources to support her own private beneficiary desires.

12. In this particular case, the Personal Representative has threatened to use Estate resources in order to gain her own, conflicting, private beneficiary preferences.

WHEREFORE, Plaintiff prays for a Court Order granting the following relief, which will allow Jeanne Poafpybitty to pursue her own private beneficiary preferences, but not at the cost of other parties being charged, or threatened, while Jeanne Poafpybitty attempts to act – confusing her Estate administrative authority and obligations, with her own private preferences. Plaintiff has no issue with Jeanne Poafpybitty pursuing her own private preferences, so long as Jeanne Poafpybitty, like all other beneficiaries, personally bears the costs her private beneficiary pursuits. Plaintiff seeks the following temporary relief to insure fairness:

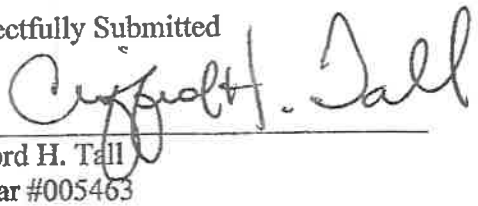
a. An Order of Court, requiring the Personal Representative to provide an updated, and complete, financial accounting.

b. An Order of Court, prohibiting the Personal Representative from spending Estate resources to settle what are essentially beneficiary differences, in how the Estate will ultimately be finally distributed.

c. An Order of Court, requiring all beneficiaries to mediate final distribution issues, with no beneficiary having access to Estate funds to satisfy their own private mediation expenses, and the Estate, itself, spending no money, and having no role, in what is, essentially, a settlement which should occur among four (4) equal beneficiaries.

d. An Order of Court, prohibiting the Personal Representative, temporarily, from making any additional property distributions, pending results of the beneficiary mediation described above.

Respectfully Submitted



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Clifford H. Tall, P.A.
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(843) 497-9777
Attorney for Plaintiff,
Julie Irving

Dated: April 25, 2016

EXHIBIT "A"

COMPLAINT

PROBATE COURT
2016 APR 25 AM 8:45

STATE OF SOUTH CAROLINA COUNTY OF HORRY JULIE IRVING, PLAINTIFF, vs. JEANNE POAFPYBITTY, PERSONAL REPRESENTATIVE OF THE ESTATE OF DONALD M. ROTHGEB, DEFENDANT, AND JEANNE POAFPYBITTY, DONALD MATTHEW ROTHGEB AND STEVEN TAYLOR ROTHGEB, DEFENDANTS.	IN THE PROBATE COURT CASE NO: 2014-ES-26-00498 COMPLAINT TO SECURE FAIR AND PROMPT CLOSURE OF ESTATE ADMINISTRATION

PROBATE COURT
2016 APR 25 AM 8:45

COMES NOW Plaintiff, and brings action as follows:

1. This case involves an active Estate, currently under administration in the Horry County Probate Court. The decedent, Donald Rothgeb, was Plaintiff's Father, and his will, accepted by the Court, lists four (4) equal beneficiaries. Plaintiff is one of those four (4) beneficiaries.

2. Jeanne Poafpybitty, Defendant, is the Estate's Personal Representative, and Defendants, Donald Matthew Rothgeb and Steven Taylor Rothgeb, Plaintiff's brothers, are two (2) of the four (4) equal beneficiaries. Jeanne Poafpybitty, is also one of four (4) equal beneficiaries.

3. In this Complaint, Plaintiff maintains that there is no good reason for the Estate to remain open. It's time, Plaintiff asserts, to move on and finish administration.

4. As a beneficiary, Plaintiff is concerned about Estate costs. Plaintiff asserts that a lot of time and energy, and additional cost, can be expended, if this suit goes on to allege that Jeanne Poafpybitty has not done a good job in recognizing that she is obligated to keep a proper balance. There are things which Jeanne Poafpybitty may want, as any beneficiary would want, so as to secure personal Estate advantages. There are things, also, that Jeanne Poafpybitty should refrain from doing, to secure personal Estate advantages, because it would conflict with her Estate duties to all beneficiaries as Personal Representative.

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about selling real properties which the Decedent owned, at his death. When one of the other Estate beneficiaries asked Jeanne Poafpybitty if she had sold any real properties, she denied having done so, even though she had sold Estate properties. Jeanne Poafpybitty has powerful authority, as Personal Representative, but Plaintiff asserts that this does not include the right to be untruthful with beneficiaries.

d. Plaintiff's requests for information about Estate activities in 2015, went largely ignored, until Plaintiff hired a local attorney, who became forceful in securing information that Plaintiff could not get the Estate to deliver. Plaintiff has since concluded work with this local attorney (an attorney other than the undersigned), and now seeks a peaceful Estate resolution.

11. At present, Plaintiff believes that the Estate should close. Jeanne Poafpybitty, apparently, is in favor of continuing administration, unless her personal views, about how to divide real properties, are agreed to by all beneficiaries.

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13. Plaintiff's Motion, filed with this Complaint, asks the Court to step in. Plaintiff seeks a level the playing field. If Plaintiff's Motion is granted, Jeanne Poafpybitty will no longer be able to hire the Estate attorney to help her argue that the true value of the Decedent's residence is

actually half of what the Estate has already declared in two sworn to filed inventory forms. Plaintiff is agreeable to have a debate, if the parties must, but Plaintiff believes that Jeanne Poafpybitty, as a ¼ beneficiary, should have no more resources, and no more voice, than any other 1/4 beneficiary, in deciding how remaining Estate assets will be specially distributed among equal Beneficiaries.

WHEREFORE, Plaintiff seeks an Order of Court, granting the following relief:

1. The Personal Representative shall promptly file an accurate and up to date Estate accounting.

2. In connection with remaining assets of the Estate, less resources required for reasonable final administrative expenses, such remaining assets shall be equally distributed unto the four (4) equal beneficiaries.

3. In the event that the Personal Representative is persuasive, mindful of her duties under §62-3-703 of the South Carolina Probate Code, that equal final Estate distributions should not occur, the Court should not permit the Personal Representative to use Estate resources to negotiate for what Jeanne Poafpybitty, the Beneficiary, will insist is best for Jeanne Poafpybitty's own private interests.

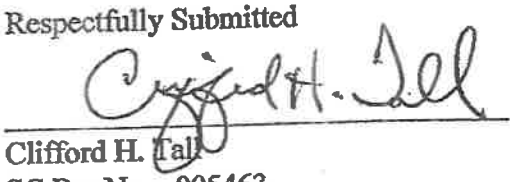
4. The co-beneficiaries shall be ordered to mediate their continuing differences, if any, with all beneficiaries bearing their own individual mediation costs.

5. The Personal Representative shall make reasonable interim financial distributions to all beneficiaries to assist all in following item 4., above.

6. The Plaintiff shall be reimbursed for her attorneys fees and costs in this action.

7. All such additional relief, as the Court determines to be just and proper.

Respectfully Submitted



Clifford H. Tall
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4702 Oleander Drive
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(843) 497-9777
Attorney for Plaintiff, Julie Irving

Dated: April 25, 2016

EXHIBIT "B"

AFFIDAVIT

2016 APR 25 AM 8:45

STATE OF SOUTH CAROLINA	**IN THE PROBATE COURT**
COUNTY OF HORRY	**CASE NO: 2014-ES-26-00498**
JULIE IRVING,	
PLAINTIFF,	**AFFIDAVIT OF JULIE IRVING**
vs.	
JEANNE POAFPYBITTY, PERSONAL REPRESENTATIVE OF THE ESTATE OF DONALD M. ROTHGEB,	
DEFENDANT,	
AND	
JEANNE POAFPYBITTY, DONALD MATTHEW ROTHGEB AND STEVEN TAYLOR ROTHGEB,	
DEFENDANTS.	

2016 APR 25 AM 8:45

I am involved, I believe, in a contest, because I want fairness for my Father's Estate.

I don't know how much cash the Estate has, following its sale of property, and its September, 2015 accounting. The Estate has not informed me.

The Estate has asked me to sign off on its plan to transfer my Father's residence, 100% to beneficiary Jeanne Poafpybitty, and to charge her only $95,000.00 for the transfer. This is the same residence which Jeanne Poafpybitty, as Personal Representative, has twice listed as having $191,200.00 of value on sworn Estate inventories.

I am prepared, if it is true, that two sworn inventory forms, filed by Personal Representative, Jeanne Poafpybitty, are very wrong. I am prepared, if it is true, that Jeanne

Poafpybitty, the beneficiary, is right – the Personal Representative, Jeanne Poafpybitty, has got it wrong, and the beneficiary, Jeanne Poafpybitty, has got it right – my Father's residence is really only worth less than half of the Estate inventories' value, and it is proper to transfer this residence 100% to beneficiary, Jeanne Poafpybitty, and charge her only $95,000.00 for a distribution of what the inventories call a $191,200.00 residence.

While I am prepared for the truth, I have thought long about how I should figure out what is correct, and what is not.

The Estate has refused my request to distribute substantial cash to all of the beneficiaries. The Estate attorney, Mr. Davis, has refused my request that he recognize what I think Jeanne Poafpybitty should also recognize – there is a large conflict of interest involving Estate distribution proposals.

I have asked why the Estate, and its attorney, and its Personal Representative, care if Jeanne Poafpybitty, the beneficiary, receives 100% title to my Father's residence, and if, in connection with Jeanne Poafpybitty receiving 100% of the residence, she has only a $95,000.00 charge, instead of a charge equal to the inventory value of $191,200.00.

The Estate and its attorney have refused my request that these distribution issues be left to the several beneficiaries to work out, among themselves. I have requested, to no positive reception, that the Estate attorney, the Personal Representative and the Estate, itself, all recognize conflicts, so that no beneficiary receives a preferred treatment.

I am very aware, that any time the Estate spends $400.00, my brothers and I, who are three (3) of four (4) remaining beneficiaries, get charged with $300.00 of the bill.

I continue to hear from the Estate attorney, Mr. Davis, that Jeanne Poafpybitty's distribution plan for Father's residence, will move forward, whether or not I consent to it. I don't want to fight with the Estate and its attorney, especially knowing that when more Estate money is spent, my brothers and I contribute ¾ towards paying the bill, by having our ¾ beneficiary shares become financially diminished.

I am prepared for Jeanne Poafpybitty to fight for an Estate distribution bargain, if she wants it. I am not prepared, however, if Jeanne Poafpybitty wants to secure Estate distribution bargains for herself, then she also gets to use, for her personal goals, Estate resources which waste my inheritance.

Jeanne Poafpybitty, and her Estate team, have made it difficult for me to get information about what Jeanne Poafpybitty has done with Estate resources. Without notice, Jeanne Poafpybitty has spent over $29,000.00 of Estate money to replace a roof on my Father's residence, which is the same residence she now wants to own 100%.

I have brought a suit, to try and forward my ideas for some fairness. The Estate has refused my specific request, that, in order to help all of us be fair in final distributions, the four (4) beneficiaries be given quarter shares of all remaining Estate assets. The Estate has also refused my alternate request –

1. If quarter share final distributions are unacceptable to Jeanne Poafpybitty, then
2. Distribute substantial remaining cash to all beneficiaries, and let these beneficiaries, with assistance of their own legal counsel, (and with each, personally, paying for their own settlement expenses) work out how to partition/sell/distribute remaining properties, and

3. Jeanne Poafpybitty should stop using Estate resources, such as an Estate attorney who is essentially ¾ paid for by other beneficiaries, when the only issues which remain are issues involving the personal distribution preferences of four (4) equal beneficiaries.

I continue to remain prepared for Jeanne Poafpybitty's personal beneficiary bargain hunting efforts. By all means, let her try and get what she thinks is best for her. I have filed suit, however, to stop unfairness, which I believe happens when Jeanne Poafpybitty withholds distributions from others, and when she, as Personal Representative, freely uses Estate money and asks the Estate (and its resources) to support her personal bargain hunting, at the Estate's expense.

I have given a lot of thought to the issues in this case. I am very aware of the irony, that while I seek to limit additional Estate expenses, the filing of my suit may cause the Personal Representative to spend more, in an aggressive Answer to my suit.

I would not have filed suit, if I didn't think that it would lead, ultimately, to the best result for all.

I am informed that the Court often encourages mediation, so that litigation issues may become resolved. I am prepared for fair settlement efforts, and do not seek any prolonged legal battles.

Peacefully, I hope that Jeanne Poafpybitty may hear me, and what I consider to be my very diplomatic prayer – please, Ms. Poafpybitty, stop using Estate resources, as part of your efforts to secure what you think is best for you, personally, in final Estate distributions.

As beneficiaries, Jeanne Poafpybitty, my brothers and I, have clear capabilities to work out details among ourselves, without any one of us trying to force any others of us to consent to one

plan or another, and without Jeanne Poafpybitty asking other beneficiaries to help finance her own personal bargain hunting efforts. Yes, Ms. Poafpybitty has been appointed to serve as Personal Representative, but this should not permit her to use the Estate for her own personal gain.

Julie Irving

SWORN to me this
4th day of April, 2016.

JESSICA H. CATLETT
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES DEC. 31, 2018
COMMISSION # 7698355

Jessica H Catlett
Notary Public for Virginia
My Commission Expires: 12/31/2018

R0127

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	
COUNTY OF HORRY	)	**CASE NO: 2014-ES-26-00498**
	)	
JULIE IRVING,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	**MOTION FOR ALTERNATIVE FINANCIAL RELIEF**
	)	
JEANNE POAFPYBITTY, PERSONAL REPRESENTATIVE OF THE ESTATE OF DONALD M. ROTHGEB,	)	
	)	
DEFENDANT,	)	
	)	
AND	)	
	)	
JEANNE POAFPYBITTY, DONALD MATTHEW ROTHGEB AND STEVEN TAYLOR ROTHGEB,	)	
	)	
DEFENDANTS.	)	

Comes Now, Plaintiff Julie Irving, and pursuant to Section 62-3-1001 of the South Carolina Probate Code, and in recognition of the Court's Order of June 13, 2016, moves for relief as follows:

1. By Court Order dated June 13, 2016, the Personal Representative of the Estate was instructed to pursue the closing of sale of real property held by the Estate in Horry County, South Carolina, located at 2210 Andover Drive, Unit D, TMS# 191-28-01-074 ("Andover Property") and distribute three quarters of the net sale proceeds to Ms. Irving and her two brothers, the decedent's three children. Attached hereto, as Exhibit "A", is the first page of the sales contract, as once provided to Ms. Irving by the Estate.

2. The sale proceeds distribution, described in paragraph 1., above, addressed in

some measure, Ms. Irving's concern that an inordinate amount of time has occurred with the Personal Representative's administrative plans, without meaningful financial distributions to beneficiaries.

3. Prior to this Court's June 13, 2016 Order, the Personal Representative enjoyed full access to Estate finances, and according to allegations, used same for her own personal support.

4. Following this Court's June 13, 2016 Order, the Personal Representative continues to enjoy occupancy of a personal residence, owned and financially supported by the Estate. She makes little or no personal financial contributions for this residency.

5. Following this Court's June 13, 2016 Order, the Personal Representative has not concluded any closing of sale for the Andover Property, and has made no financial distributions to the decedent's children, including Ms. Irving. According to inventory and accounting Court filings of the Estate, net sale proceeds from the Andover Property liquidation would have netted $66,600.00 for the Estate, with $49,950.00 (3/4 of the total) being distributed to Ms. Irving and her brothers.

6. Ms. Irving acknowledges the possibility that forces beyond the Personal Representative's control may have interfered with the Andover Property sale, and has asked the Estate to explain. The Estate has not responded to Ms. Irving's Andover Property sales inquiry.

7. Whether there are, or are not, good reasons for the Andover Property failure to sell, Ms. Irving and her brothers are under the same financial stress they have long been experiencing, due to a lack of reasonable administration and closure of Estate administration.

8. When the Estate last informed Ms. Irving, in June, 2016, the Estate held in

excess of $182,000.00 in one Estate account, and intended to distribute, according to plans filed with the Court, more than $174,000.00 to Ms. Irving and her brothers. What present cash holdings the Personal Representative has on hand are unknown to Ms. Irving, as the Estate has decided not to respond to Ms. Irving's August 2016 written request that bank records, for the Estate, be made available to Ms. Irving.

9. Regarding prospects for a resolution of issues among the parties, the Personal Representative has rejected consideration of Ms. Irving's concerns about the final financial proposals of the Estate. These concerns include, among others, the Estate's proposals as follows:

a. The Estate still insists on providing a $96,200.00 financial preference to the Personal Representative, by charging her only $95,000.00 for a residence which two Court inventories list at a value of $191,200.00. In fairness to the Estate, although it has yet to comply with the Probate Code, and again amend its inventory, the Estate stands by a subsequent appraisal which the Estate has paid for. This is the same subsequent appraisal which expert witness Russell Burgess has observed, contains financial adjustments which "...are so unreasonably large, that they artificially depress the concluding value".

b. The Personal Representative seeks a $42,638.00 fiduciary fee.

c. The Estate lists, as reasonable, administrative legal fees in excess of $27,000.00.

d. Ms. Irving seeks reimbursement for her legal expenses, due to the Estate's withholding of information, to delays in administration and to financial preferences which the Estate has allowed for the Personal Representative.

10. All parties being entitled to their respective legal positions and expectations,

Ms. Irving is, nonetheless, now in a place which is not what the Court intended for her on June 13, 2016.

11. Ms. Irving and her brothers have not received financial assistance, which the Court intended by an interim cash distribution, from their Father's Estate. Further, Ms. Irving, in spite of her polite inquiries, has not received reasonable financial information from the Estate.

12. Ms. Irving asserts that the Estate's withholding of cooperation, described above, represents a pattern of administrative behavior, where the Personal Representative's duties are ignored, and where the Personal Representative uses her insider status to frustrate beneficiaries, and to secure a personal advantages for herself (including litigation advantages), all at a substantial cost for those to whom the Personal Representative owes fiduciary duty.

WHEREFORE, Ms. Irving respectfully requests Court Order to provide the following relief:

1. As alternative financial relief, where Andover Property sale proceeds of approximately $49,950.00 would have been made available to Ms. Irving and her two brothers, that the Court order the Personal Representative to distribute $50,000.00 from the Estate's financial resources, for interim distribution, equally, unto Ms. Irving and her two brothers, Donald Matthew Rothgeb and Steven Taylor Rothgeb.

2. That the Estate be instructed to provide Ms. Irving with continuing copies of all financial accounts held by the Estate and its Personal Representative, from the dates of June 1, 2016 until Estate conclusion.

3. That the Estate be instructed to inform Ms. Irving of the current status of the Andover Property sale, and a history of what has occurred with this sales contract since June 2016.

4. That the Estate be instructed to inform the Court of any circumstances, given the Estate's evaluation of financial concerns raised by Ms. Irving, where and when the Estate would be willing to participate in mediation.

5. That Ms. Irving be awarded costs of this Motion from the Personal Representative's share of the Estate.

The undersigned hereby informs the Court of his view that reasonable communications were forwarded by his office to counsel for the Estate, in an effort to resolve the issues in this matter, prior to filing this Motion.

Respectfully Submitted,

Clifford H. Tall
SC Bar No.: 005463
Clifford H. Tall, P.A.
4702 Oleander Drive
Myrtle Beach, SC 29577
(843) 497-9777
Attorney for Plaintiff, Julie Irving

Dated: October 17, 2016

CERTIFICATE OF SERVICE

I, Clifford H. Tall, attorney for Plaintiff, Julie Irving, do hereby certify that I have served Defendant's counsel in this action with a copy of the Motion for Alternative Financial Relief, by hand delivering, a copy of the forgoing to the following party at the following address:

Reese R. Boyd, III
Davis & Boyd, LLC
1110 London Street, Suite 201
Myrtle Beach, SC 29577

Clifford H. Tall

Dated: October 17, 2016

Exhibit "A"

AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE (RESIDENTIAL/CONDO)

1. PARTIES: This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), VIRGINIA PEOPLES ("Buyer"), and

Seller(s), THE ESTATE OF DONALD ROTHGEB BY: JEANNE POAFPYBITTY ("Seller").

(A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.
(B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.
(C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing.
(D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to cause this Contract to be binding on all Parties.
(E) "Business Day" - a 24 hour period (Monday/Tuesday/Wednesday/Thursday/Friday) beginning at 10 AM and counted from 10 AM of the first Business Day following the appropriate date (Effective Date, Closing Date, stated date, Notice Delivery date). Business Days shall not begin, end, or include any Saturday, Sunday, or Federal legal holiday.
(F) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.
(G) "Time" - all time stated shall be South Carolina local time. **Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods.**

☐ BUYER ☐ SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

2. PURCHASE PRICE: $ 72,000.00

Payable by transfer of Good Funds via ☐ Finance or ☒ a combination of Finance and Cash USD or ☐ Cash USD.
Verification of Cash available for Closing is ☐ attached ☒ not attached ☐ to be Delivered before _____
The sale of Buyer's real property ☐ is ☒ is not a contingency for Purchase and terms ☐ are ☐ are not attached.

3. PROPERTY: Seller will sell and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain the Property and any personal property conveying in same operable condition, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, and lease issues prior to signing Contract. Leasing issues and items see Adjustments (e.g. tenants, rents, deposits, documents, alarm systems, satellite equipment, roll carts).

Address 2210 ANDOVER DRIVE UNIT D Unit # D

City MYRTLE BEACH State of South Carolina

Zip 29575 County of HORRY

Lot _____ Block _____ Section/Phase _____ Subdivision SOUTH BAY LAKES

Other _____ Tax Map 1912801074

Parties agree that no personal property will transfer as part of this sale, except described below and/or ☐ in attachment(s):
AS IS

4. CONVEYANCE/CLOSING/POSSESSION: "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before March 1, 2016 ("Closing Date") with an automatic extension of 5 business days for an unsatisfied contingency through no fault of either party. Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded

[VP] BUYER [____] BUYER [VP] SELLER [____] SELLER HAVE READ THIS PAGE

John R Beale Inc., PO Box 15587 Surfside Beach, SC 29587
Phone: 843.997.3968 Fax: . John Beale

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R0135

STATE OF SOUTH CAROLINA	IN THE PROBATE COURT
COUNTY OF HORRY	CASE NO: 2014-ES-26-00498
JULIE IRVING,	
PLAINTIFF,	AFFIDAVIT OF JULIE IRVING
vs.	
JEANNE POAFPYBITTY, PERSONAL REPRESENTATIVE OF THE ESTATE OF DONALD M. ROTHGEB,	
DEFENDANT,	
AND	
JEANNE POAFPYBITTY, DONALD MATTHEW ROTHGEB AND STEVEN TAYLOR ROTHGEB,	
DEFENDANTS.	

Being first duly sworn, Julie Irving declares as follows:

I'm writing in support of the Motion filed by my attorney on October 17, 2016. I am appreciative of the Court's assistance in this matter. I am aware of the Estate's position that my reaching out, now, to the Court is wasteful. I believe that this reaching out has been important to all. It has also produced some results that I did not achieve, prior to the Motion.

Within just days of filing my Motion, the Estate responded in writing, to important issues I have raised with the Estate, time and again, but where the Estate did not offer reasonable reply. Not long after the last hearing in this matter I addressed with the Estate, the following issues that were of concern to me:

Affidavit Julie Irving POAFPY 10-26-2016.pdf

1. How would sale of an Estate real property on Andover Drive be completed? Due to very little in Estate distributions, in more than 2.5 years, I have had to personally finance my efforts which led to the June 13, 2016 Court order. Sale of the Andover Drive property, according to Court order, would have provided to me some financial relief for very expensive legal action, which I maintain was necessary to insure that the Estate would be fair to my brothers and me.

The Estate has not responded with updates to my inquiries about this sale until after the filing of my Motion. The Estate now reports that the buyer has an extension until the end of December 2016, to complete the sale. I know of no reason for me to have had this information kept from me, by the Estate. It was not provided, until after I filed a Motion.

2. In the spring of 2016, after I already filed my personal 2015 1040 income tax return, the Estate asked me to provide personal tax information, which would have resulted in a tax form K-1, for the Estate's 2015 income taxes. I was polite in describing my concern about having to amend my own tax return, because of what appeared to be late Estate filings. I am aware that even if late, an Estate can file a tax return that does not require beneficiaries to add amounts on to their own personal returns.

As if I never raised concerns with the Estate, the Estate continued to ask for my personal tax information. It was as if the Estate believed that it never heard me to say that my personal tax return had been filed, and that I am nervous about making personal tax return amendments.

Nonetheless, I wanted to know that Estate income taxes were properly filed. No further word on this, until after my Motion was filed.

3. Responding to the Estate's offer to allow additional questions for review, I

asked, on August 19, 2016, for continuing copies of Estate bank statements. Only after the filing of my Motion did the Estate partially respond, as it had previously offered.

The purpose of my Motion is to secure some financial relief to me and my brothers, and I believe that in May 2016, all parties anticipated there being more than $65,000.00 in net sale proceeds for distribution to all. I planned to use my distribution to finance the legal expense of review which I've commenced with my attorney and appraiser.

Among the Estate's positions, now, is that my attorney and I had not done enough to get the Estate's cooperation, before deciding to file a Motion.

On October 13, 2016, I was traveling to Myrtle Beach and was in the State of North Carolina from my home in Colonial Beach, Virginia.

The Estate sent word, at that time, that it was cancelling the October 14, 2016 mediation in Myrtle Beach. The Estate reported that we are at an impasse on the main issues. The Estate said it would follow up, on October 13, with more detail of its reasons for cancelling mediation. The follow up did not come, until after the filing of my Motion.

Three separate emails were sent by my lawyer, recently, on the issue of whether during an upcoming deposition, I could participate by long distance telephone. Only the third inquiry got a response where the Estate acknowledged my inquiry. These type of experiences have meaning, when the Estate insists upon cooperation.

I don't want to cause additional effort and expense, and I am willing to continue participation as the Court directs.

Julie Irving

SWORN to me this
26th day of October, 2016

Notary Public for Virginia
My Commission Expires: 12/31/2018

JESSICA H. CATLETT
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES DEC. 31, 2018
COMMISSION # 7686355

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE PROBATE COURT for HORRY COUNTY
Julie Irving, Petitioner, *vs.* **Jeanne Poafpybitty**, Personal Representative of the Estate of Donald M. Rothgeb, *and* **Jeanne Poafpybitty, Donald Matthew Rothgeb, and Steven Taylor Rothgeb,** Respondents.	)	Case No.: **2014-ES-26-00498** **PERSONAL REPRESENTATIVE'S MOTION TO QUASH AND FOR PROTECTIVE ORDER**

PROBATE COURT
HORRY COUNTY, SC
2016 OCT 20 PM 3:57
KATHY G. WALL
PROBATE JUDGE

PLEASE TAKE NOTICE that the Respondent Personal Representative, Jeanne Poafpybitty, by and through her undersigned attorneys, hereby moves this Honorable Court for an Order pursuant to Rule 11, Rule 12(f), and Rule 45(c), South Carolina Rules of Civil Procedure, quashing the Motion for Alternative Financial Relief, filed by the Petitioner herein on or about October 17, 2016, and the hearing thereon now scheduled for October 28, 2016, and imposing Protection for the Personal Representative against further such appearances, prior to the hearing on the proposals for distribution and settlement of the Estate now set for November 28, 2016.

This Motion to Quash and for Protective Order is based upon the following:

(1) The Motion for Alternative Financial Relief (the "Motion") is improper as counsel for the Petitioner engaged in no Rule 11

communications with the undersigned counsel prior to filing such Motion. Counsel first learned of the Motion when it was found placed in an envelope left on the receptionist's desk at their office on October 17, 2016.

(2) The Motion was hand-delivered to the undersigned counsel on October 17, 2016. The timing strongly suggests that the Motion is in response to the Personal Representative's cancellation of a mediation that had been scheduled for October 14, 2016. However, as evidenced by the enclosed correspondence attached as Exhibit "1" to this Motion to Quash, it was the dilatory and abusive tactics of the Petitioner and her counsel that led to the cancellation of the contemplated mediation, and nothing else. (*See* attached Exhibit "1".) In addition to the timing of the filing, the fact that the Motion poses, among other questions, "when the Estate would be willing to participate in mediation," (*see* Motion, at p. 5), again strongly suggests that the Motion was filed in retaliation for the Personal Representative's cancellation of the mediation contemplated for October 14, 2016. However, as Exhibit 1 and its attachments demonstrate, the Personal Representative, through counsel, has already demonstrated her willingness to participate in Mediation. It is, rather, in fact Ms. Irving who has failed to participate in good faith toward reaching a mediated compromise of her claims.

(3) The Court has already set a hearing on the Personal Representative's final proposals for settlement and distribution of the Estate's remaining assets for November 28, 2016. Petitioner's Motion for Alternative Financial Relief is a largely redundant effort which, in fact, raises an improper collateral attack on the Personal Representative's proposals for closing the Estate, filed June 3, 2016, by attacking the valuation placed on the Personal Representative's residence, the fees proposed to be paid to the Personal Representative, by attacking the fees proposed to be paid to the undersigned counsel for the Estate and their firm, all of which re-traces the arguments raised by the Petitioner in her underlying Petition (*see* Motion, at ¶ 9, p. 3), which is currently set to be heard by this Court on November 28, 2016. Forcing the Personal Representative to respond to these arguments in a "motion hearing," while also being forced to submit to deposition and otherwise prepare for a "final hearing" on essentially the same issues would be duplicative, unduly burdensome, and an abuse of process inflicted upon her by the Petitioner, Julie Irving.

(3) If the Motion is in fact a Motion to Compel, then it should be captioned and reformatted as such. To the extent the Motion is in nature such a document, then it is moot, as the documentation

requested of the Personal Representative in the Motion has been provided to the Petitioner's counsel. (*See* attached Exhibit "2".)

Petitioner's Motion, as presented, is an improper attempt by the Petitioner to reformat her claims and allegations on the merits of this matter, and have such matters heard and addressed by the Court in a concocted pre-trial setting, posing as some type of pre-trial undertaking, with the apparent (we are left to assume) ability to revisit the very same issues at the hearing the Court has set for this matter, on the merits, for November 28, 2016.

The Personal Representative, Jeanne Poafpybitty, is more than fully prepared, and more than completely willing to answer before this Court on whatever claims Ms. Irving has raised, but she should only have to do that once. To force her to do otherwise is redundant, duplicative, a waste of Estate resources, an abuse of process by the Petitioner, Julie Irving, and unduly burdensome on Ms. Poafpybitty. On that basis, the Personal Representative respectfully requests that the Court issue an appropriate protective order, or such other relief as it may deem appropriate, striking the pending Motion for Alternative Financial Relief from the Court's docket, or otherwise consolidating all remaining issues for the Court's consideration in this matter, for a single hearing.

This Motion to Quash and for Protective Order will be supported by any exhibits, pleadings, affidavits, memoranda, or other documents as may be presented at or before the hearing of this matter, and/or such case law, statutory law, or other legal authorities as the Personal Representative and her counsel may present to this Court.

Respectfully Submitted,

Reese R. Boyd, III, Esq. (SC Bar #: 7151)
Bret H. Davis, Esq.
Davis & Boyd LLC
Post Office Box 70517
Myrtle Beach, SC 29572
(843) 839-9800
(843) 839-9801 (*fax*)
reese@davisboydlaw.com

Attorneys for Respondents Personal Representative, Jeanne Poafpybitty

Dated: October 20, 2016
Myrtle Beach, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 20th day of October, 2016.

Deborah K. Evans
Deborah K. Evans, Litigation Paralegal
Davis & Boyd, LLC

Exhibit "1"

PROBATE COURT
HORRY COUNTY, SC
2016 OCT 20 PM 3:57
KATHY G. HARD
PROBATE JUDGE

BRET H. DAVIS, JD*, CPA
*Licensed in SC and NC

DAVIS & BOYD, LLC
ATTORNEYS AND COUNSELORS AT LAW

REESE R. BOYD, III

1110 London Street, Suite 201
Myrtle Beach, SC 29577

Mailing Address:
Post Office Box 70517
Myrtle Beach, SC 29572

Telephone: (843) 839-9800
Facsimile: (843) 839-9801
www.davisboydlaw.com

October 18, 2016

PROBATE COURT
HORRY COUNTY, SC
2016 OCT 20 PM 3:57
KATHY D. WARD
PROBATE JUDGE

via email (ctallpa@sc.rr.com) and U.S. Mail

Clifford H. Tall, Esq.
4702 Oleander Drive
Myrtle Beach, SC 29577

Re: Estate of Donald M. Rothgeb
Case No.: 2014-ES-26-00498

Dear Cliff:

When I first undertook to join Bret Davis in representing the Personal Representative on this file, in light of your client's litigious posture and filings, I was cautiously optimistic we could work together and that the family would be able to resolve this matter informally and promptly, and without undue additional expense. I obviously failed to appreciate the Shakespearean dynamic at play, as recent events have thoroughly dispelled any notion or prospect of reasonable resolution.

I see you repeatedly complaining about the size and expense of the Estate's "routine" administration under the Personal Representative's guidance, and yet at the same time engaging in filings and posturing (such as your recent "request for a bill" to the mediator, who politely and reasonably demurred) – which all serve only to increase the moment of this dispute, unnecessarily, and to increase legal fees for all sides – again unnecessarily.

I want to take a moment to briefly respond both to your email of October 11, 2016, and your recent "Motion for Alternative Relief." It would appear, aside from being redundant, extra-procedural, and otherwise defective in additional manner that I will address, your Motion is a direct (and immediate) response to our cancellation of the previously contemplated mediation on October 14, 2016. Please allow me to remind you of a few key points in that regard:

(1) Soon after our motion hearing on your motion for TRO, on May 27, 2016, we filed on behalf of the PR our proposals for final distribution and settlement of the Estate. Our Application for Settlement with supporting documentation was filed on June 3, 2016.

(2) Soon thereafter I began to contact you to request your feedback on our proposed closing, to identify what issues of disagreement there may be, so that we could "narrow the gap" as much as possible prior to any mediation.

(3) On July 29, 2016, I wrote you to confirm prior communications detailing my request (and our agreement) that should mediation be necessary, we would work to identify the issues requiring the assistance of a mediator ahead of time. Specifically, you agreed to review our proposals for closure and final distribution and respond with specific objections or alternative proposals that your client might have (see attached Exhibit "A").

(4) On September 22, 2016, having received nothing further from you, I again followed up via email to confirm prior verbal communications, requesting guidance and specific issues or objections to address with my client as we approach the scheduled Mediation date of October 14, 2016.

(5) On September 30, 2016, you returned a call in response to my voicemail to discuss the matter, and you laid out in that call several broad areas of disagreement with our proposals for distribution. I again requested a specific response to our closing proposals, so that I could review those with my client, prior to the scheduled mediation on October 14.

(6) On October 3, 2016, you wrote to advise that you would be forwarding an outline of where your client was concerned with our proposals, and confirming the suggestion of Bob Barnett as mediator (see attached Exhibit "B").

(7) On October 5, having heard nothing further as to the specifics of your client's position, I wrote to confirm our position on the pending mediation, and to confirm that I did not intend to go to mediation without having had an opportunity to work through a specific proposal or alternative from your client, with my client, the Personal Representative (see attached Exhibit "C").

(8) On October 11, 2016, three days prior to the contemplated mediation

scheduled for October 14, 2016, I received the first specific response to our proposals for distribution in the form of your email of that date, which is attached as Exhibit "D" to this letter. Immediately upon receipt of your email, I phoned our client to discuss these various issues with her. Among the issues raised, for example, your insistence that the Personal Representative pay your legal fees in excess of $20,000 (not having seen your billings, I am simply quoting your email), and that the Personal Representative forego her fee as the PR, notwithstanding the countless hours of labor that she has expended maintaining and managing the assets of this Estate, were simply "non-starters" for our client, Ms. Poafpybitty.

(9) Unfortunately, at this late juncture (three days prior to the mediation), there was no opportunity to discuss these issues at length with my client and prepare for a potentially successful mediation. I spoke with Bob Barnett at some length on this subject on October 12, 2016, and he agreed, frankly, that under the circumstances mediation would very likely be a waste of time.

All of this goes to say that – to the extent your client by way of your "Motion for Alternative Relief" seeks to sanction or punish my client for canceling the Mediation, such "Motion" is not only wholly without merit, it is frivolous and abusive.

I regret that you engaged in no Rule 11 communication prior to filing your Motion, or perhaps this costly exchange could have been avoided.

It appears – in the most courteous light possible – that at the very best your Motion is a "pre-hearing" or a "pre-bite" at the apple for what is, in effect, a merits hearing on your objections to our proposals for distribution, masquerading as some type of "Motion."

If you want to proceed with a hearing on your "Motion" next week, then I would suggest we make that the merits hearing on your objections to our proposals for distribution. In either case, the Personal Representative should not be subjected to the redundant hearings, and the Estate should not bear that expense.

In either case, I will file a Memorandum in Opposition to your "Motion" in due course, but please accept this indication of my intention to seek relief from the Court with respect to the same.

Should you wish to discuss the matter, please advise.

Yours sincerely,

Reese R. Boyd, III

RRB/pw

Enclosures

From: Reese Boyd III <reese@davisboydlaw.com>
Subject: **POAFPY / Re: Estate of Donald M. Rothgeb**
Date: July 29, 2016 12:53:08 PM EDT
To: "Clifford Tall, P.A." <ctallpa@sc.rr.com>
Cc: "Bret H. Davis" <bdavis@davisboydlaw.com>, Becky Weaver <bweaver@davisboydlaw.com>, Deborah Evans <devans@davisboydlaw.com>

PROBATE COURT
HORRY COUNTY, SC
2016 OCT 20 PM 3:57

Cliff:

Pleasure speaking with you yesterday. Just following up on our phone calls / teleconference. Wanted to confirm the items that we discussed. Here is a brief re-cap based on my notes:

Medidation Dates:
I will discuss the matter with Bret when he is back in the office next week - if he wants to handle the mediation in my absence then we can possibly put August 19, back on the table. Obviously, we have to discuss with our client how she would like to handle, since each party will be paying their own way for this mediation. Also, I have checked the calendar and we are also available on Sept. 6, 7, and the entire week of September 12. I'll also tentatively hold those dates for now until we speak again. Also, for the record, I proposed August 29 to you on Wednesday of this week, not "weeks ago."

Issue Identification/Development of Mediation Plan:
We agreed in our call yesterday that - if Mediation is indeed necessary - all parties will be served if we identify ahead of time exactly what issues need to be mediated. To that end, you agreed to review our proposals for the closure / final distributions on the Estate, and get back to me with what specific objections, or alternative proposals, your client may have. If we can through this process narrow, resolve - or even better - fail to identify - any issues that require the services of a mediator, then all the parties will be better off.

Sale of Andover Drive:
As we discussed, I understand their have been some delays with the buyer beyond anyone's control, but as far as we know we still have a sale. We will update you as we have an updated proposed closing date.

Tax question:
Also, while we did not discuss it, I have inquired of Clark Parker's office twice regarding whether or not the Estate's filings can be adjusted, without substantial burden, to avoid any K-1 distributions that would require beneficiaries to amend prior returns. To date, I do not have an answer from Clark on that, but I will continue to inquire.

Documents Produced:
While we did not discuss yesterday, as I believe I have communicated previously, we have produced to you all documents that were specified in the Court's Order. If you disagree, please advise.

If I have missed anything from our discussions, in your opinion, please advise. Thank you.

My regards,

Reese Boyd

Reese R. Boyd, III
Attorney at Law
Davis & Boyd, LLC
1110 London St., Suite 201
Myrtle Beach, SC 29577
(843) 839-9800
(843) 839-9801 (*fax*)
(843) 455-9889 (*cell*)
vCard : LinkedIn

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On Jul 28, 2016, at 3:17 PM, Clifford Tall, P.A. wrote:

> Reese:
>
> August 29 was available, when it was first proposed, weeks ago. It's no longer suitable.
>
> Are you sure that Bret, without your assistance, couldn't work with us on August 19?
>
> Best regards,
> Cliff

Clifford H. Tall, Esquire
4702 Oleander Drive
Myrtle Beach, SC 29577
Tel: (843) 497-9777
Fax: (843) 497-9779

IRS Circular 230 Notice: Intending that this office comply with Internal Revenue Service pronouncements, please be advised that any advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code and other applicable tax law, or (ii) promoting, marketing or recommending to another party any transaction, arrangement or other matter addressed herein.

CONFIDENTIALITY NOTICE: This transmission contains confidential and/or legally privileged information from Clifford H. Tall, P.A. intended only for the use of the individual(s) named on the transmission. If you are not the intended recipient(s), you are hereby notified that any disclosure, copying or distribution of this information or the taking of any action in reliance on the contents of this facsimile transmission is strictly prohibited. If you have received this transmission in error, please notify us by telephone immediately, by collect call if necessary.

From: Reese Boyd III <reese@davisboydlaw.com>
Subject: **POAFPY / Checking in...**
Date: September 22, 2016 3:24:01 PM EDT
To: "Clifford H. Tall" <ctallpa@sc.rr.com>
Cc: "Bret H. Davis" <bdavis@davisboydlaw.com>, Deborah Evans <devans@davisboydlaw.com>
Bcc: reese@davisboydlaw.com, jeannep@mullenwylie.com

Cliff:

Just checking in on the status of the Donald M. Rothgeb Estate matter.

As I understood our most recent discussions, you were going to review our proposed closing documents, and discuss with your client, and advise as to what any specific objections, or requested changes to same, would be. I believe our proposed Closing Docs were forwarded to you by hand delivery or or about June 10.

We are holding October 14, 2016, for mediation in the matter, as you are aware. However, we had both agreed that it would be in the interest of all heirs to narrow the issues as much as possible prior to such mediation (and, frankly, if we can sort out all matters between you and me as counsel in advance, avoid the need for mediation altogether). I am still very willing to work on that approach; however, I need a response from you in order to move forward.

Please let me know where you stand, as October 14 is fast approaching, and I will be on vacation the week of October 3.

Thank you,

Reese

PROBATE COURT
HORRY COUNTY, SC
2016 OCT 20 PM 3:57
KATHY S. HARD
PROBATE JUDGE

Reese R. Boyd, III
Attorney at Law
Davis & Boyd, LLC
1110 London St., Suite 201
Myrtle Beach, SC 29577
(843) 839-9800
(843) 839-9801 (*fax*)
(843) 455-9889 (*cell*)
vCard : LinkedIn

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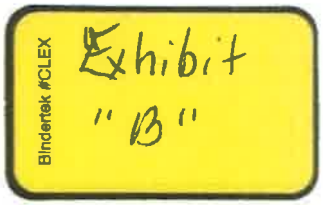

From: "Clifford Tall, P.A." <ctallpa@sc.rr.com>
Subject: **Estate of Donald M. Rothgeb**
Date: October 3, 2016 10:46:15 AM EDT
To: "'Reese Boyd III'" <reese@davisboydlaw.com>
Cc: "'Bret Davis'" <bdavis@davisboydlaw.com>

Dear Reese:

Thanks for our telephone talk, last week. I hope you'll have a restful vacation.

I've spoken to Bob Barnett, an attorney you and I discussed as mediator. Bob is available to assist us on 14 October.

I'm copying Bret with this email, and would like your and his input, to confirm Bob Barnett's selection.

In the meantime, I'll forward to you my client's outline of where she is concerned about the final accounting proposals. I'll be happy to continue communications towards a resolution of the parties' differences.

Thanks again.

Cliff Tall

Clifford H. Tall, Esquire
4702 Oleander Drive
Myrtle Beach, SC 29577
Tel: (843) 497-9777
Fax: (843) 497-9779

PROBATE COURT
HORRY COUNTY, SC
2016 OCT 20 PM 3:57
KATHY G. WARD
PROBATE JUDGE

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Exhibit "C"

From: Reese Boyd III <reese@davisboydlaw.com>
Subject: **Re: Estate of Donald M. Rothgeb**
Date: October 5, 2016 6:06:18 PM EDT
To: "Clifford Tall, P.A." <ctallpa@sc.rr.com>
Cc: "'Bret Davis'" <bdavis@davisboydlaw.com>
Bcc: reese@davisboydlaw.com

Cliff:

Just following up on your below email from earlier this week. My vacation was unexpectedly canceled by our friend Matthew, so I have been in the office some this week.

PROBATE COURT HORRY COUNTY, SC 2016 OCT 20 PM 3:57 PROBATE JUDGE

As you know, you have our proposals for distribution, filed in June. In our call, it appears those are unacceptable. According to my notes, you have given me several broad areas of disagreement, as follows:

- your client wants to be reimbursed for her legal fees, but you did not advise an amount

- you are challenging my client's entitlement to PR fees

- you believe the fees charged by this firm in the admin of the Estate are excessive

- your client claims the PR should have paid rent to continue to live in the marital residence

While I appreciate your discussion of these issues with me, other than my notes I have no writing suggesting your position on the closing of the Estate.

Based on the above, it would appear to me that mediation will be a waste of time. However, we have agreed to attempt a mediation, and will certainly make a good faith effort to honor that position.

However, I would appreciate a written position in response to our proposed settlement of the Estate, and the basis for your position on each point, sufficiently prior to mediation so that I may review with my client, and we can discuss and determine if we want to offer some alternative in lieu of mediation, prior to the said mediation.

To be clear, I do not intend to travel with my client to mediation to hear the specifics of what your client is asking for the first time.

As I understand matters, the rental issue has been raised and dispensed with (though, apparently not with finality) on more than one occasion, most recently in a conference with Jack Scoville on behalf of your client. You know - as we discussed - that Matt has been living in an Estate property for

years - since long before the decedent passed - and has never to my knowledge paid any rent at all. Further, Steven was also living in an Estate property for, as I believe to be the case, approximately nine months or more, also without paying rent. More to the point, however, I have been doing this for a long time, and I've never been involved in a case, as I recall, where a surviving spouse began to pay rent to continue to reside in the marital residence upon the passing of the husband decedent, as your client apparently would seek here. The starting point of any discussion would be the other parties' agreement to also reimburse the Estate for their rental payment obligations in arrears - which would appear to me to be a non-starter on many fronts.

There are other aspects of your client's apparent position that are simply - frankly - based on my notes from our call, also non-starters, but if you will give me a specific alternative proposal, and do your best to attach a dollar value to your position (ie, provide me with an alternative distribution for settlement based thereon), then I will at least have something concrete to discuss with my client, and let her make an informed decision as to what she wants to do. As we have agreed, all parties will be paying their own fees with respect to their individual counsel for this mediation, and their pro-rata share of the mediators' fee, which means that all parties will incur meaningful costs in connection with this mediation, and I certainly do not want it to be a waste of anyone's time.

I have reached out to Gene Connell but he has not yet returned my call. I will hope to speak with him by tomorrow, but I will also try to reach out to Bob Barnett tomorrow. Whoever we utilize for this mediation, I would suggest that we enter into an Agreement to Mediate PRIOR to the mediation so that that document does not itself become the subject of disagreement at the outset of the proposed mediation.

Thank you,

Reese

Reese R. Boyd, III
Attorney at Law
Davis & Boyd, LLC
1110 London St., Suite 201
Myrtle Beach, SC 29577
(843) 839-9800
(843) 839-9801 (*fax*)
(843) 455-9889 (*cell*)
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On Oct 3, 2016, at 10:46 AM, Clifford Tall, P.A. wrote:

> Dear Reese:
>
> Thanks for our telephone talk, last week. I hope you'll have a restful vacation.
>
> I've spoken to Bob Barnett, an attorney you and I discussed as mediator. Bob is available to assist us on 14 October.
>
> I'm copying Bret with this email, and would like your and his input, to confirm Bob Barnett's selection.
>
> In the meantime, I'll forward to you my client's outline of where she is concerned about the final accounting proposals. I'll be happy to continue communications towards a resolution of the parties' differences.
>
> Thanks again.
>
> Cliff Tall
>
> Clifford H. Tall, Esquire
> 4702 Oleander Drive
> Myrtle Beach, SC 29577
> Tel: (843) 497-9777
> Fax: (843) 497-9779
> IRS Circular 230 Notice: Intending that this office comply with Internal Revenue Service pronouncements, please be advised that any advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code and other applicable tax law, or (ii) promoting, marketing or recommending to another party any transaction, arrangement or other matter addressed herein.

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Exhibit "O"

From: "Clifford H. Tall, P.A." <ctallpa@sc.rr.com>
Subject: **Estate of Donald M. Rothgeb**
Date: October 11, 2016 10:36:57 AM EDT
To: <reese@davisboydlaw.com>

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PROBATE COURT
HORRY COUNTY, SC
2016 OCT 20 PM 3:57
KATHY C. HARD
PROBATE JUDGE

(REDACTED)

(REDACTED)

Cliff

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Exhibit "2"

PROBATE COURT
HORRY COUNTY, SC
2016 OCT 20 PM 3:57
KATHY E. WARD
PROBATE JUDGE

From: Reese Boyd III <reese@davisboydlaw.com>
Subject: **POAFPY / Estate of Donald M. Rothgeb**
Date: October 18, 2016 12:52:05 PM EDT
To: "Clifford H. Tall" <ctallpa@sc.rr.com>
Cc: "Bret H. Davis" <bdavis@davisboydlaw.com>
Bcc: reese@davisboydlaw.com, devans@davisboydlaw.com, bweaver@davisboydlaw.com
▶ 2 Attachments, 813 KB

Cliff:

Please allow the attached documents to supplement the prior information that we have provided to you in connection with the above Estate.

The attached PDF contains an update on the status of the closing for the Andover Drive property. The realtor advises that the potential buyer continues to work through with credit / identity theft issues that have prevented them from closing on the property, but that they believe these can be worked out and the Buyer remains committed to buying the property. Right now, I don't believe there is anyone else that has expressed interested in the property and so the contract has been extended. See attached extension through 12/31.

Also attached, in a separate, second PDF, is a notice of Continuance from the Court. I believe that you received that as well, but wanted to confirm.

Reese

Reese R. Boyd, III
Attorney at Law
Davis & Boyd, LLC
1110 London St., Suite 201
Myrtle Beach, SC 29577
(843) 839-9800
(843) 839-9801 (*fax*)
(843) 455-9889 (*cell*)
vCard : LinkedIn

PROBATE COURT
HORRY COUNTY, SC
2016 OCT 20 PM 3:57
KATHY D. WEBB
PROBATE JUDGE

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Begin forwarded message:

Bank Stmts ....pdf (736 KB)

STATE OF SOUTH CAROLINA)
) **IN THE PROBATE COURT**
COUNTY OF HORRY)

ESTATE OF DONALD M. ROTHGEB

CASE NUMBER: 2014-ES-26-0498

PROBATE COURT
HORRY COUNTY, SC
2016 SEP 12 PM 3:56
KATHY G. WARD
PROBATE JUDGE

ORDER OF CONTINUANCE

The above matter is scheduled to come before the Court on October 6, 2016, for a Demand for Hearing. Based upon the Attorneys' request and scheduled Mediation,

IT IS HEREBY ORDERED that the above-referenced hearing is hereby continued until **November 28, 2016 at 3:30 P.M.**

Executed this 12th day of September 2016.

The Honorable Carroll D. Padgett, Jr.
Chief Associate Judge of Probate

Conway, South Carolina

#160PC HCPC Form

PROBATE COURT
HORRY COUNTY, SC
2016 OCT 20 PM 3:57
KATHY G. WARD
PROBATE JUDGE

R0163

REALTOR® EQUAL HOUSING OPPORTUNITY

ADDENDUM/AMENDMENT TO

☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☒ OFFER OR ☐ COUNTEROFFER] OR

☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: _____

COVERING THE ☐ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: _____

Further described or commonly known as:

Address 2210D ANDOVER DRIVE Unit # D

City MYRTLE BEACH State of South Carolina

Other _____ TMS 1912801074

The undersigned Parties hereby agree as follows: #4 ON "AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE (RESIDENTIAL/CONDO, BOTH SELLER AND BUYER AGREE TO EXTEND THE "CLOSING DATE" TO ON OR BEFORE DECEMBER 31, 2016.

2016 OCT 20 PM 3:57
PROBATE COURT
HORRY COUNTY, SC
RECORDED
PROBATE

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at _____ ☐ AM ☐ PM on _____ unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: Virginia Peoples VIRGINIA PEOPLES Date: 06/30/2016 Time: 11 am

WITNESS: _____ Date: _____ Time: _____

BUYER: _____ **Date:** _____ **Time:** _____

WITNESS: _____ **Date:** _____ **Time:** _____

SELLER: Mary Rothgeb ESTATE OF DONALD ROTHGEB **Date:** 06/30/2016 **Time:** 1:00

WITNESS: _____ **Date:** _____ **Time:** _____

SELLER: _____ **Date:** _____ **Time:** _____

WITNESS: _____ **Date:** _____ **Time:** _____

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[_____] BUYER [_____] BUYER [_____] SELLER [_____] SELLER HAVE READ THIS PAGE

John R Beale Inc. PO Box 15587 Surfside Beach, SC 29587 Phone: 843.997.3968 Fax:
John Beale

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2210D

R0164

Wells Fargo Everyday Checking

Account number: **1305516021** ■ August 9, 2016 - September 9, 2016 ■ Page 1 of 4

WELLS FARGO

EODCKCDTMI 010933

ESTATE OF DONALD ROTHGEB
JEANNE E POAFPYBITTY PREP
1529 CROOKED PINE DR
MYRTLE BEACH SC 29575-5251

Questions?

Available by phone 24 hours a day, 7 days a week:
Telecommunications Relay Services calls accepted

1-800-742-4932

TTY: 1-800-877-4833
En español: 1-877-727-2932
華語 1-800-288-2288 *(6 am to 7 pm PT, M-F)*

Online: wellsfargo.com

Write: Wells Fargo Bank, N.A. (367)
P.O. Box 6995
Portland, OR 97228-6995

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A check mark in the box indicates you have these convenient services with your account(s). Go to wellsfargo.com or call the number above if you have questions or if you would like to add new services.

Online Banking	☐	Direct Deposit	☐
Online Bill Pay	☐	Auto Transfer/Payment	☐
Online Statements	☐	Overdraft Protection	☐
Mobile Banking	☐	Debit Card	
My Spending Report	☐	Overdraft Service	☐

Activity summary

Beginning balance on 8/9	$172,529.16
Deposits/Additions	2,597.50
Withdrawals/Subtractions	- 6,180.36
Ending balance on 9/9	**$168,946.30**

Account number: **1305516021**
ESTATE OF DONALD ROTHGEB
JEANNE E POAFPYBITTY PREP
South Carolina account terms and conditions apply
For Direct Deposit use
Routing Number (RTN): 053207766

Overdraft Protection
This account is not currently covered by Overdraft Protection. If you would like more information regarding Overdraft Protection and eligibility requirements please call the number listed on your statement or visit your Wells Fargo store.

PROBATE COURT
HORRY COUNTY, SC
2016 OCT 20 PM 3:58
KATHY S. [illegible]
PROBATE JUDGE

R0165

EODCKCDTMI 010933 1NNNNNNNNN NN 1 NNN 001 003 367 085393 20180216:1

WELLS FARGO

Transaction history

Date	Check Number	Description	Deposits/ Additions	Withdrawals/ Subtractions	Ending daily balance
8/10	725	Check		235.23	
8/10	724	Check		196.00	172,097.93
8/11	720	Check		30.00	
8/11	721	Check		161.00	
8/11	723	Check		262.00	171,644.93
8/15	729	Check		173.51	
8/15	726	Check		137.41	
8/15	727	Check		138.00	171,196.01
8/16	^728	Hartford Fire IN Checkpymt 160816 00728 84866477		59.15	171,136.86
8/17	722	Check		212.00	170,924.86
8/19	733	Check		30.00	
8/19	732	Check		80.00	
8/19	730	Check		103.00	170,711.86
8/26	734	Check		3,175.00	167,536.86
8/31	736	Check		927.88	166,608.98
9/1	735	Check		75.00	166,533.98
9/6		The Hartford Ntaarplvra 84866476 Rothgeb Donald		183.18	166,350.80
9/8		Deposit	2,597.50		168,948.30
9/9		Monthly Check Return/Image Stmt Fee		2.00	168,946.30
Ending balance on 9/9					168,946.30
Totals			**$2,597.50**	**$6,180.36**	

The Ending Daily Balance does not reflect any pending withdrawals or holds on deposited funds that may have been outstanding on your account when your transactions posted. If you had insufficient available funds when a transaction posted, fees may have been assessed.

^ ***Converted check:*** *Check converted to an electronic format by your payee or designated representative. Checks converted to electronic format cannot be returned, copied or imaged.*

Summary of checks written (checks listed are also displayed in the preceding Transaction history)

Number	Date	Amount	Number	Date	Amount	Number	Date	Amount
720	8/11	30.00	726	8/15	137.41	732 *	8/19	80.00
721	8/11	161.00	727	8/15	138.00	733	8/19	30.00
722	8/17	212.00	728	8/16	59.15	734	8/26	3,175.00
723	8/11	262.00	729	8/15	173.51	735	9/1	75.00
724	8/10	196.00	730	8/19	103.00	736	8/31	927.88
725	8/10	235.23						

** Gap in check sequence.*

085394

Monthly service fee summary

For a complete list of fees and detailed account information, please see the Wells Fargo Fee and Information Schedule and Account Agreement applicable to your account or talk to a banker. Go to wellsfargo.com/feefaq to find answers to common questions about the monthly service fee on your account.

Fee period 08/09/2016 - 09/09/2016	Standard monthly service fee $10.00	You paid $0.00
How to avoid the monthly service fee	Minimum required	This fee period
Have any ONE of the following account requirements		
• Minimum daily balance	$1,500.00	$166,350.80 ☑
• Total amount of qualifying direct deposits	$500.00	$0.00 ☐
• Total number of posted Wells Fargo Debit Card purchases and/or payments	10	0 ☐
• The fee is waived when the account is linked to a Wells Fargo Campus ATM or Campus Debit Card		

R0166

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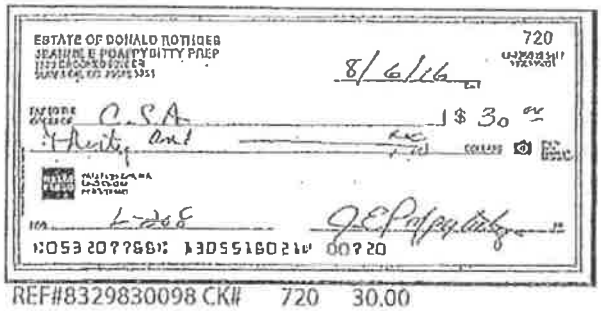
Check Images



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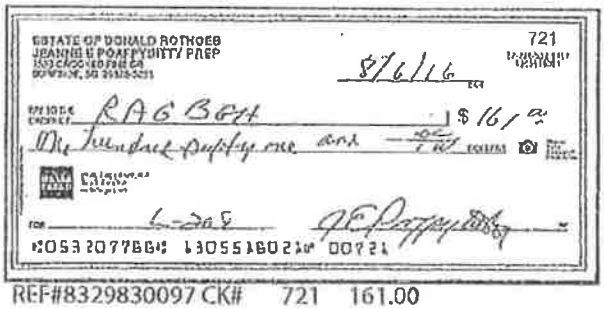

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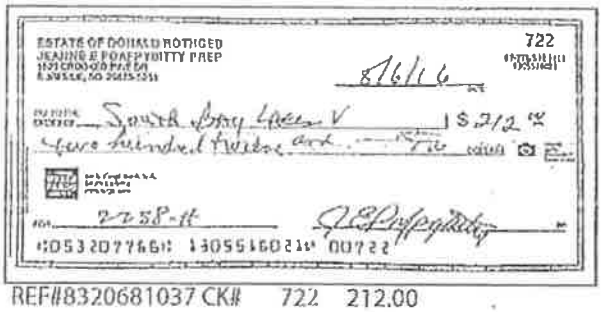

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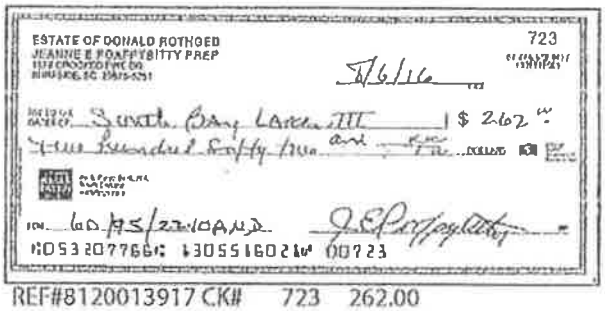

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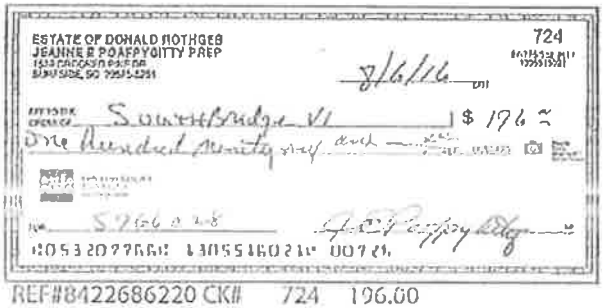

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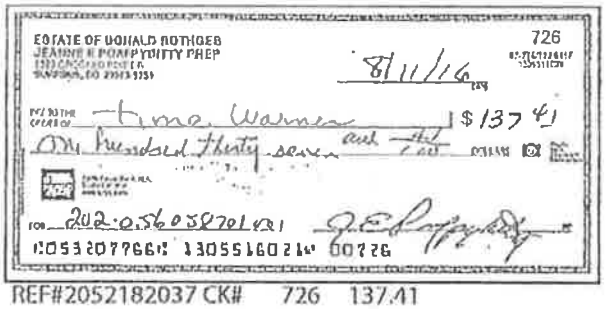

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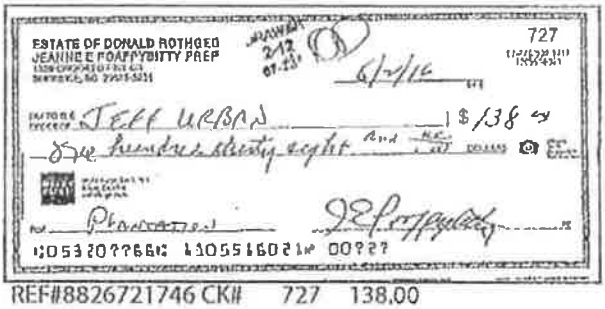

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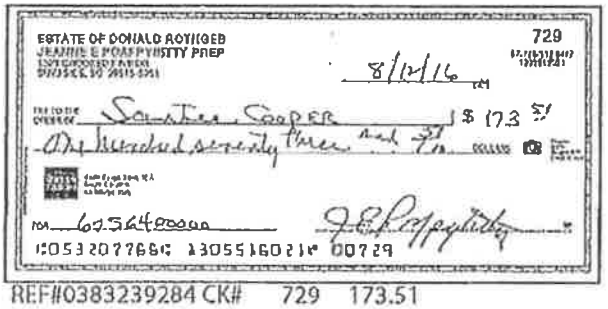

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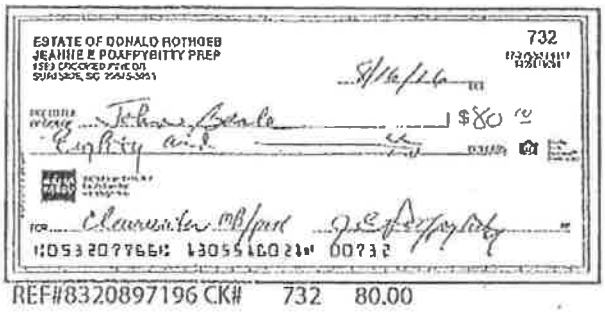
Check Images



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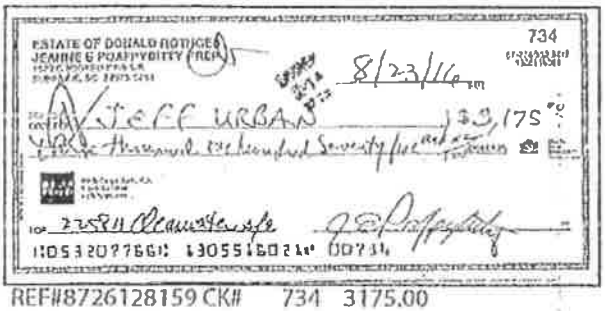
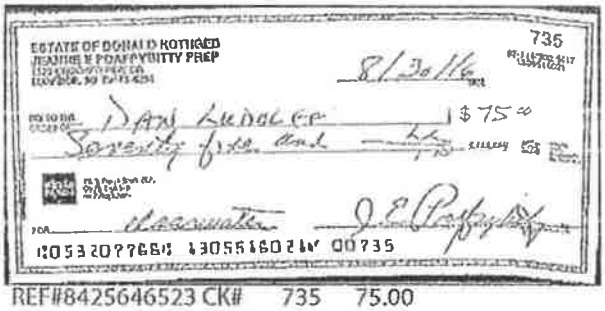
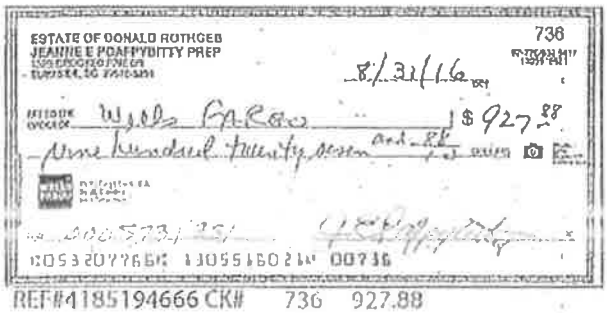


REF#8726128159 CK# 734 3175.00



REF#8425646523 CK# 735 75.00



REF#4185194666 CK# 736 927.88

0855398

R0168

Account Statement

Statement Date: September 20, 2016

681 5349958 1998
67,896 (CO681)
I-4

DONALD M ROTHGEB
1529 CROOKED PINE DR
SURFSIDE BEACH SC 29575-5251

Customer Service

Telephone
1-866-439-3557 (1-866-HE-WELLS)
Español: 1-866-297-4535

Online Banking
www.wellsfargo.com

Correspondence
Wells Fargo Bank, N.A.
P.O. Box 10335
Des Moines, IA 50306

Do not send payment to this address

Payments

By mail
Wells Fargo Bank, N.A.
PO Box 14529
Des Moines, IA 50306-3529

Overnight mail
Wells Fargo Bank, N.A.
Attn:Payment Services
2324 Overland Ave
Billings, MT 59102-6401

PROBATE COURT
HORRY COUNTY, SC
2016 OCT 20 PM 3:58
KATHY E. WARD
PROBATE JUDGE

Prime Equity Line

Donald M Rothgeb
Account Number: 681 5349958 1998

Activity summary

Approved line of credit		$132,000.00
Credit in use:		
Line	681 5349958 1998	$80,642.34
Total credit in use		$80,642.34
Available credit*		$0.00
Beginning balance owed**		$80,877.54
Ending balance owed**		$80,877.54

**Line of Credit Restricted.*

***These balances include unpaid finance charges and other unpaid fees and charges. The ending balance owed is not a payoff amount. If you want to pay off and close your Home Equity Line of Credit, please contact Customer Service for detailed payoff instructions. Payoffs attempted in other ways may not close the account, resulting in a delay of the release of your collateral.*

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R0169

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF HORRY)

ESTATE OF DONALD M. ROTHGEB

CASE NUMBER: 2014-ES-26-0498

PROBATE COURT
HORRY COUNTY, SC
2016 SEP 12 PM 3:56
KATHY G. WARD
PROBATE JUDGE

ORDER OF CONTINUANCE

The above matter is scheduled to come before the Court on October 6, 2016, for a Demand for Hearing. Based upon the Attorneys' request and scheduled Mediation,

IT IS HEREBY ORDERED that the above-referenced hearing is hereby continued until **November 28, 2016 at 3:30 P.M.**

Executed this 12th day of September 2016.

The Honorable Carroll D. Padgett, Jr.
Chief Associate Judge of Probate

Conway, South Carolina

PROBATE COURT
HORRY COUNTY, SC
2016 OCT 20 PM 3:58
KATHY G. WARD
PROBATE JUDGE

#160PC HCPC Form

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE PROBATE COURT HORRY COUNTY CASE NO.: 2014-ES-26-00498
IN THE MATTER OF THE ESTATE OF: Donald M. Rothgeb	)	
Julie Irving, Plaintiff, *vs.*	)	
Jeanne Poafpybitty, Personal Representative of the Estate of Donald M. Rothgeb, Defendant, *and*	)	**ANSWER AND COUNTERCLAIM OF THE DEFENDANT PERSONAL REPRESENTATIVE, JEANNE POAFPYBITTY**
Jeanne Poafpybitty, Donald Matthew Rothgeb and Steven Taylor Rothgeb, Defendants.	)	

PROBATE COURT
HORRY COUNTY, SC
2016 OCT 25 PM 4:27
KATHY G. WARD
PROBATE JUDGE

TO: Clifford H. Tall, Esq., Attorney for Plaintiff:

COMES NOW the Defendant in the above entitled action, Jeanne Poafpybitty, ("Defendant"), by and through her undersigned counsel, who, responding to the Complaint of the Plaintiff, Julie Irving, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE
(General Denial)

1. The Defendant denies each and every allegation contained in the Complaint that are not specifically hereinafter admitted. For each such allegation so denied, strict proof thereof is hereby demanded.

FOR A SECOND DEFENSE
(Answer)

2. The Defendant re-alleges and reiterates the allegations contained in the above paragraph, as if each were repeated here verbatim.

3. Upon information and belief, Paragraphs 1 and 2 of the Complaint are admitted.

4. Paragraph 3 of the Complaint states a conclusion of law which does not require a response; to the extent a response may be required, Paragraph 3 is denied, with strict proof thereof demanded.

5. Paragraphs 4, 5 and 6 of the Complaint are vague and ambiguous compound statements that contain inadmissible hearsay testimony, which Defendant would seek to strike. To the extent a response to the said Paragraphs may be required from the Defendant, Paragraphs 4, 5 and 6 of the Complaint are denied, with strict proof thereof demanded.

6. Paragraph 7 of the Complaint states a conclusion of law which does not require a response; to the extent a response may be required, Paragraph 7 is denied, with strict proof thereof demanded.

7. In response to Paragraph 8 of the Complaint, Defendant admits that she would like to have all beneficiaries come to an agreement concerning the Estate,

however, the remaining allegations of Paragraph 8 are denied, with strict proof thereof demanded.

8. Petitioner objects to Paragraph 9 of the Complaint inasmuch as it is ambiguous, unclear, confusing, and subject to multiple interpretations. Defendant hereby requests a restatement and clarification of Paragraph 9. Further responding to Paragraph 9, it states a conclusion of law which does not require a response; to the extent a response may be required, Paragraph 9 is denied, with strict proof thereof demanded.

9. In response to Paragraph 10(a) of the Complaint, Defendant admits that she filed the initial Inventory and Appraisement indicating the value of Decedent's personal residence was $191,200.00. However, after obtaining an appraisal on the property, which appraisal was undertaken after discussion and in consultation with the beneficiaries of the Estate, the property in question, due to its very poor condition, appraised at $95,000.00. The remaining allegations of Paragraph 10(a) are denied, with strict proof thereof demanded.

10. Paragraphs 10(b), 10(c) and 10(d) of the Complaint are denied, with strict proof thereof demanded.

11. In response to Paragraph 11 of the Complaint, Defendant admits that she would like to have all beneficiaries come to an agreement concerning the Estate, and is in favor of concluding the administration of this Estate; however, the remaining allegations of Paragraph 11 are denied, with strict proof thereof demanded.

12. Paragraph 12 of the Complaint contains inadmissible hearsay testimony, and misrepresents and mis-states the position of the Defendant, which Defendant would seek to strike. To the extent a response to the said Paragraph may be required, Paragraph 12 is denied, with strict proof thereof demanded.

13. Paragraph 13 of the Complaint states a conclusion of law which does not require a response; to the extent a response may be required, Paragraph 13 is denied, with strict proof thereof demanded.

FOR A THIRD DEFENSE
(Good Faith Exercise of the Personal Representative's Authority)

14. The Defendant re-alleges and reiterates the allegations and responses contained in each of the above paragraphs, as if each were repeated here verbatim.

15. In further responding to the Complaint, Defendant would state that at all times relevant to her service as the Personal Representative of the Estate, she has acted in a way and manner consistent with all relevant obligations and duties imposed upon her by law, by any and all trust or estate documents, and by any and all applicable court orders, including, without limitation, Defendant's fiduciary obligation to any and all parties. She has attempted to exercise her duties as the Personal Representative in a fair and reasonable, even-handed manner. Any allegation or inference to the contrary contained in the Complaint is hereby expressly denied by the Defendant, with strict proof thereof demanded.

FOR A FOURTH DEFENSE
(Estoppel and Unclean Hands)

16. The Defendant re-alleges and reiterates the allegations contained in each of the above paragraphs, as if each were repeated here verbatim.

17. Defendant asserts the defenses of estoppel and unclean hands as a complete and absolute bar to any and all relief sought by the Plaintiff in the Complaint.

FOR A FIFTH DEFENSE
(Failure to State a Claim)

18. The Defendant re-alleges and reiterates the allegations contained in each of the above paragraphs, as if each were repeated here verbatim.

19. The Complaint fails to state any claim against the Defendant upon which any relief may be granted by this Court. Therefore, pursuant to Rule 12(b)(6) of the S.C. Rules of Civil Procedure, this Court should dismiss the Petition.

FOR A SIXTH DEFENSE
(Frivolous Proceeding pursuant to S.C. Code Section 15-36-10)

20. The Defendant re-alleges and reiterates the allegations contained in each of the above paragraphs, as if each were repeated here verbatim.

21. Defendant has previously, through her counsel, made repeated attempts to avoid the expense upon the Estate, by communicating with the Plaintiff in an effort to reach an informal resolution to the latest claims raised by the Plaintiff, and reach agreement on a final distribution of the Estate's assets, but the Plaintiff has failed to cooperate in these efforts.

22. The Complaint is a baseless and unjustified filing, which lacks any substantive merits, and the claims raised therein should be dismissed. Defendant is further informed and believes that she is entitled to an award of her reasonable

attorney's fee incurred in connection with filing a response and otherwise addressing the Complaint, as further set forth herein below.

FOR A SEVENTH DEFENSE
(Reservation and Non-Waiver)

23. The Defendant re-alleges and reiterates the allegations contained in each of the above paragraphs, as if each were repeated here verbatim.

24. The Defendant hereby gives notice of her intent to assert any further affirmative defenses that the discovery process or her further research and investigation into the instant case may indicate are appropriate, available to her, and/or supported by the facts and/or the law of the case.

FOR AN EIGHTH DEFENSE and FOR A FIRST COUNTERCLAIM
(Demand for Attorney's Fees and Costs)

25. The Defendant re-alleges and reiterates the allegations contained in each of the above paragraphs, as if each were repeated here verbatim.

26. Having fully responded to the Plaintiff's Complaint, Defendant hereby requests that this Court inquire into the basis of the Complaint, and that if the same shall be found to be without merit or foundation, or substantially frivolous or intended to harass the Defendant in her administration of this Estate, that this Court would in such case use its broad equitable authority to direct that the attorney's fees incurred by Defendant, in connection with this matter, to be paid by the Plaintiff, and, if necessary, offset by the Defendant against those disbursement(s) from the Estate that the Plaintiff may otherwise be entitled to.

FOR A NINTH DEFENSE and FOR A SECOND COUNTERCLAIM
(Abuse of Process)

27. The Defendant re-alleges and reiterates the allegations contained in each of the above paragraphs, as if each were repeated here verbatim.

28. The Defendant has previously participated in multiple and ongoing discussions with the beneficiaries of this Estate in an effort to promote the prompt, fair and reasonable resolution and conclusion of the Estate's business. Plaintiff's claims to the contrary in this matter are wholly without merit.

29. Prior to the involvement of Plaintiff's current counsel, the Defendant Personal Representative dealt extensively through her counsel with prior counsel, Jack Scoville, Esq., and as a result of those efforts, was under the impression that a global plan for the administration of the Estate had been reached which was acceptable to all beneficiaries.

30. Defendant contends that, notwithstanding her over-arching efforts to accommodate the Plaintiff and reach a plan for the administration of the Estate that was agreeable to her, the Plaintiff has continued for some time to harbor ill will toward the Defendant, her step-mother.

31. The Plaintiff has used the filing of this legal proceeding for a purpose not intended by the Rules of Civil Procedure, that being vengeance upon her Step-mother, the Defendant Jeanne Poafpybitty.

32. Plaintiff has an ulterior purpose in filing this action, and that is to gain an objective that is not legitimate in the use of the process.

33. Plaintiff undertook a willful act in the use of civil process herein that was aimed at an illegitimate collateral objective.

34. Defendant Jeanne Poafpybitty has suffered and will continue to suffer damage that is directly and proximately caused by Plaintiff's abuse of process in these proceedings.

Having fully responded to the Plaintiff's Complaint, Defendant hereby requests that this Court inquire into the basis of the Complaint, and that if the same shall be found to be without merit or foundation, or substantially frivolous or intended to harass the Defendant in her administration of this Estate, that this Court would in such case use its broad equitable authority to direct that the attorney's fees incurred by Defendant, in connection with this matter, to be paid by the Plaintiff, and, if necessary, offset by the Defendant against those disbursement(s) from the Estate that the Plaintiff may otherwise have been entitled to.

WHEREFORE, having fully answered the Complaint, Defendant would respectfully request of this Court the following:

a) That the Plaintiff neither have, recover, nor be awarded any of the relief requested in her Complaint;

b) That this Court enter judgment in favor of the Defendant as to all claims that Plaintiff has alleged in this case, and as to all claims alleged against the Plaintiff;

c) That the Court grant to the Defendant her costs and attorneys' fees associated with her response to the Complaint, in particular, and more generally, her fees and costs in connection with this proceeding in its entirety; and

d) That the Court award the Defendant such other and further relief as this Court may deem just and proper under the circumstance of the case.

Respectfully submitted,

Reese R. Boyd, III, Esq.
Bret H. Davis, Esq.
Davis & Boyd LLC
Post Office Box 70517
Myrtle Beach, SC 29572
(843) 839-9800
(843) 839-9801 (*fax*)
reese@davisboydlaw.com

Attorneys for the Defendant,
Jeanne Poafpybitty

Dated: October 25, 2016
Myrtle Beach, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing **ANSWER AND COUNTERCLAIM ON BEHALF OF THE DEFENDANT, JEANNE POAFPYBITTY** was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 25th day of October, 2016.

Deborah Evans

Deborah Evans, Paralegal
Davis & Boyd LLC

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	
COUNTY OF HORRY	)	**CASE NO: 2014-ES-26-00498**
	)	
JULIE IRVING,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	**ANSWER TO COUNTERCLAIMS OF DEFENDANT, JEANNE POAFPYBITTY, BOTH AS PERSONAL REPRESENTATIVE AND AS INDIVIDUAL**
JEANNE POAFPYBITTY, PERSONAL REPRESENTATIVE OF THE ESTATE OF DONALD M. ROTHGEB,	)	
	)	
DEFENDANT,	)	
	)	
AND	)	
	)	
JEANNE POAFPYBITTY, DONALD MATTHEW ROTHGEB AND STEVEN TAYLOR ROTHGEB,	)	
	)	
DEFENDANTS.	)	
	)	

TO: Reese R. Boyd, III, Esq. and Bret H. Davis, Esq., Attorneys for Defendant:

COMES NOW the Plaintiff in the above entitled action, Julie Irving, ("Plaintiff"), by and through her undersigned counsel, who, responding to the Counterclaims of the Defendant, Jeanne Poafpybitty, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Plaintiff denies each and every allegation contained in Defendants' Counterclaims that are not specifically admitted through this Answer. For each allegation of the Counterclaims that are hereby denied, Plaintiff demands that Defendants provide strict proof thereof.

FOR A SECOND DEFENSE
(Answer)

2. Plaintiff realleges and repeats the responses contained in each of the above paragraphs of this Answer, as if set forth here, verbatim.

3. Regarding Paragraph 26. of Defendants' First Counterclaim, Plaintiff denies that her actions in this matter were prompted, or carried out, for any reason other than to pursue a lawful conclusion to proper estate administration. As such, she denies that her actions are without legal merit, without legal foundation, frivolous or intended to unlawfully harass Defendants, or that her actions were carried out to impede proper estate administration.

4. Regarding Paragraph 28. of Defendants' Second Counterclaim, Plaintiff admits the she participated in communications with the Estate and its Beneficiaries, prior to filing action in these matters. Plaintiff denies Defendants' implications, however, that she has now made claims which abandon any settlements among the parties, or that Plaintiff's action in this matter are unlawful, inappropriate or moot.

5. Regarding Paragraph 29. of Defendants' Second Counterclaim, Plaintiff admits that Attorney, Jack Scoville, participated in communications with Defendants' counsel, but denies that what Defendants refer to as a "global plan for the administration of the Estate" was concluded. Plaintiff is in no position to know, precisely, what impressions Defendants formed from Defendants' counsel communications, but Plaintiff asserts that not even Defendants are now willing to assert that Estate settlements were achieved by any prior counsel communications.

6. Regarding Defendants' allegations contained in Paragraphs 30., 31., 32., and 33. of their Second Counterclaim, Plaintiff is unaware of the meaning of Defendants' use of the term "over-arching efforts" to describe Defendants' accommodations, and further, Plaintiff denies that

she holds any personal feelings towards Defendants which have prevented a fair estate administration, or which have prompted any unlawful filing of legal proceedings. Plaintiff denies that her Court filings have any ulterior, illegitimate or unlawful purpose, and to the extent Defendants continue to allege to the contrary, Plaintiff demands strict proof of Defendants' allegations.

7. Regarding Paragraph 34. of Defendants' Second Counterclaim, Plaintiff denies any abuse of process alleged by Defendants, and demands strict of Defendants' allegations.

FOR A THIRD DEFENSE
(Failure to State a Claim)

8 Plaintiff re-alleges and repeats the responses contained in each of the above paragraphs of this Answer, as if set forth here, verbatim.

9. Plaintiff asserts that Defendants' Counterclaims fail to state any claim against Plaintiff upon which any relief may be granted by this Court. Therefore, according to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendants' Counterclaims should be dismissed.

FOR A FOURTH DEFENSE
(Reservation and Non Waiver)

10. Plaintiff re-alleges and repeats the responses contained in each of the above paragraphs of this Answer, as if set forth here, verbatim.

11. Plaintiff hereby gives notice of her intent to assert any further affirmative defenses that the discovery process, or her further research and investigation into the instant case, may indicate are appropriate, available to her, and/or supported by the facts and/or the law of case.

WHEREFORE, having fully responded to Defendants' Counterclaims, Plaintiff hereby requests that the Court deny same, and also consider that Defendant's allegations in her capacity of Personal Representative, demonstrates a failing of the Personal Representative to appreciate fiduciary duty and conflicts of interest, which should have been recognized and addressed as part of the Personal Representative's fiduciary duty.

Respectfully Submitted

Clifford H. Tall
SC Bar No.: 005463
Clifford H. Tall, P.A.
4702 Oleander Drive
Myrtle Beach, SC 29577
(843) 497-9777
Attorney for Plaintiff, Julie Irving

Dated: November 25, 2016

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have served opposing counsel in this action with a copy of the Answer to Counterclaims by mail to the following address:

Reese R. Boyd, III
Davis & Boyd, LLC
1110 London Street, Suite 201
Myrtle Beach, SC 29577

Brett Davis
Davis & Boyd, LLC
1110 London Street, Suite 201
Myrtle Beach, SC 29577

Victoria Tall

Date: November 25, 2016

STATE OF SOUTH CAROLINA	**IN THE PROBATE COURT**
COUNTY OF HORRY	**CASE NO: 2014-ES-26-00498**
JULIE IRVING,	
PLAINTIFF,	
vs.	**MOTION FOR SANCTIONS**
JEANNE POAFPYBITTY, PERSONAL REPRESENTATIVE OF THE ESTATE OF DONALD M. ROTHGEB,	
DEFENDANT,	
AND	
JEANNE POAFPYBITTY, DONALD MATTHEW ROTHGEB AND STEVEN TAYLOR ROTHGEB,	
DEFENDANTS.	

2017 FEB -7 PM 3:05
KATHY C. WARD
PROBATE JUDGE

TO: REESE R. BOYD AND BRET H. DAVIS, ATTORNEYS FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE that at such time and place as is set by the Court, Clifford H. Tall of Clifford H. Tall, P.A, will move the court for an order issuing sanctions against Defendant, Jeanne Poafpybitty, Personal Representative, for disobeying Court Orders.

Plaintiff asserts that the Personal Representative has willfully violated Court Orders dated June 13, 2016 and November 10, 2016, both issued by this Honorable Court, and both confirming that the Personal Representative shall not have authority to cause greater Estate expenditures (with limited exceptions), while the respective parties work on resolution of Estate administration.

Documents delivered to Plaintiff on January 13, 2017 reveal that, in violation of Court Orders, the Personal Representative wrote three (3) checks from the Estate's financial account

totaling Sixteen Thousand Dollars ($16,000.00) for legal expenses following issuance of Court Orders prohibiting such expenditures.

The Personal Representative had, on many prior occasions, resisted delivery of requested financial records; which records if earlier delivered, would have alerted Plaintiff to the Personal Representative's repeated violation of Court Orders.

The subject case involves, among other things, Plaintiff's claim of self dealing by the Estate Administrator. The Court Orders, described above, were upon information and belief, designed by the Court to recognize that this is an Estate with four (4) equal Beneficiaries, and that, after more than two (2) years of administration without reasonable distribution proposals, up until the Hearing on May 27, 2016, there was justification for the temporarily restricting the Personal Representative's continuing authority over Estate finances.

WHEREFORE the undersigned respectfully moves for enforcement of this Honorable Court's prior Orders, and for a Contempt Citation, with appropriate punishment against Defendant, Jeanne Poafpybitty, Personal Representative.

The undersigned certifies that after numerous good faith attempts at issue resolution, no helpful result can be anticipated through addition communication between counsel.

Respectfully Submitted

Clifford H. Tall
SC Bar #005463
Clifford H. Tall, P.A.
4702 Oleander Drive
Myrtle Beach, SC 29577
(843) 497-9777
Attorney for Plaintiff,
Julie Irving

Dated: February 7, 2017

CERTIFICATE OF SERVICE

I, Clifford H. Tall, attorney for Plaintiff, Julie Irving, do hereby certify that I have served Defendant's counsel in this action with a copy of the Motion for Sanctions, by hand delivering a copy, to the following address:

Reese R. Boyd, III and Bret H. Davis
Davis & Boyd, LLC
1110 London Street, Suite 201
Myrtle Beach, SC 29577

Erin Ensworth

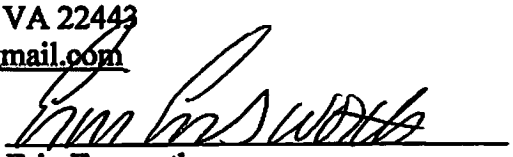
Dated: February 7, 2017

CERTIFICATE OF SERVICE

I, Clifford H. Tall, attorney for Plaintiff, Julie Irving, do hereby certify that I have served Defendant's counsel in this action with a copy of the Motion for Sanctions, by mailing and emailing a copy, to the following addresses:

Donald Matthew Rothgeb
722 Racewater Drive
Myrtle Beach, SC 29588
mrhelluvaskinsfan@gmail.com

Steven Taylor Rothgeb
c/o Julie Irving
157 Mattox Ave.
Colonial Beach, VA 22443
strothgeb77@gmail.com



Erin Ensworth

Dated: February 7, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF PROBATE
)
COUNTY OF HORRY) CASE NO.: 2014-ES-26-00498

IN THE MATTER OF ESTATE OF)
DONALD M. ROTHGEB,)

Julie Irving,)
)
Petitioner,) HEARING IN THE
) PROBATE COURT
v.)
)
Jeanne Poafpybitty, Personal Representative)
Of the Estate of Donald M. Rothgeb,) COPY
)
Respondent,)
and)
)
Jeanne Poafpybitty, Donald Matthew)
Rothgeb, and Steven Taylor Rothgeb,)
)
Respondents.)

A hearing in the above-styled case was held before the Honorable Carroll Padgett, Chief Associate Probate Judge for Horry County, on Friday, May 27, 2016, at the Horry County Courthouse, 1301 2nd Avenue, Conway, South Carolina 29526, commencing at 10:43 a.m.

ADVANTAGE COURT REPORTING
OF MYRTLE BEACH
7201 Enterprise Road, Myrtle Beach, SC, 29588
843-650-6263

APPEARANCES OF COUNSEL:

For the Petitioner: Clifford H. Tall, Esquire
4702 Oleander Drive
Myrtle Beach, SC 29577
843-497-9777

For the Respondents: Reese R. Boyd, Esquire
Bret Davis, Esquire
Davis & Boyd, LLC
1110 London Street
Suite 201
Myrtle Beach, SC 29577
843-839-9800

EXHIBITS

**None marked during hearing

(HEARING COMMENCED AT 9:27 A.M.)

JUDGE: All right. I'm Carroll Padgett, the Chief Associate Probate Judge for Horry County, and I've been assigned to hear this matter this morning. This is the matter of the Estate of Donald Rothgate.

MR. TALL: Rothgeb, Your Honor.

JUDGE: Rothgeb, 2014-ES-26-498. Present in court is the Petitioner and her attorney, Mr. Cliff Tall. Also present in the courtroom are Brett Davis and also Mr. Reese Boyd on behalf of the personal representative of the estate. And we're here today on a motion for temporary relief, and I note for the record that we did have, with the attorneys, extensive conversation in my office, both uninterrupted and interrupted by each party, assuring everyone that both sides were fully heard in that regard. We were not able to reach any kind of agreement at that point. So at this point, Mr. Tall, are you ready to proceed?

MR. TALL: Thank you, Your Honor.

JUDGE: Yes, sir.

MR. TALL: May it please the Court, the personal representative in this case has scared the beneficiaries. No doubt our statutes have arrangements for someone to be in charge. I can't imagine a business without a manager, or an army without a general. And

R0190
J1 29

it's no doubt that Donald Rothgeb, the decedent, the father and the husband, had his wife, Ms. Jeanne, become the personal representative of the estate, and gave to her some discretion, and we'll call sole discretion, to manage estate affairs. This Court has given to Ms. Jeanne a certificate of appointment that also gives her authority. And then the question is, does that say it all? Is there nothing else? Is this just a colossal waste of time? Because we have Ms. Jeanne as the administrator of the estate. Are these three children beneficiaries, just bringing complaints to the Court? Why should they complain because someone else is in charge? We have, through affidavit, one of the beneficiaries calling Ms. Jeanne a liar in terms of how the estate is being handled, lied to him. Has Ms. Jeanne responded in any way to the affidavit that's before the Court? The answer is, she hasn't. There's a million dollar estate that we're working with, Your Honor. One of the beneficiaries said, "In order to get reasonable information about what's happening with my father's estate," she had to hire a lawyer, Mr. Scoville, and didn't get reasonable answers until she paid money to an attorney to ask these questions. We're talking about the discretion to manage the estate and the allegation that my clients have put forward,

that that allegation's been -- that that discretion has been abused. Pretty serious allegations, Ms. Irving, Mr. Tall. Is that really the case, that you couldn't get any information until Ms. Irving hired an attorney? Does Ms. Jeanne have an answer for that? Your Honor, it's three weeks since she's been served with papers in this. No reply affidavit. Ms. Jeanne and her legal team have signaled to everyone and to the Court that this morning's hearing is a colossal waste of time. In her handling of this estate, two beneficiaries has informed the Court that they've asked the estate to inform them about cash on hand, and that they haven't gotten reasonable responses about cash on hand. Is there an answer to that, that's contained in any affidavit? A beneficiary informs the Court that with cash holdings of the estate, Ms. Jeanne decides to spend twenty-nine thousand dollars and fix a modest house. And this is a house that, in two sworn inventory forms, a hundred and ninety-one thousand two hundred dollars is the price. But when it comes to making a final distribution, according to a new appraisal, ninety-five thousand dollars is the price that the personal representative wants to pay. Ms. Irving has characterized this as bargain-hunting on the part of the personal representative and has asked the estate, if

you're going to do that, can you recognize the conflict of interest? Maybe you're right. Maybe you're correct that that house is only worth ninety-five thousand dollars, but having told the Court at one time it was worth one ninety-one and now suggesting that it's worth ninety-five thousand dollars. By the way, the appraisal that shows ninety-five thousand dollars has been reviewed by Ms. Irving's witness, another appraiser in town, who says it has unreasonable adjustments. You won't find fair market value, because the adjustments that have been made on the ninety-five thousand dollar appraisal make it out of line. It's not the way to value real property. Is that something that the personal representative objects to? "Ms. Irving, you're gone way off the deep end to bring in Mr. Burgess to -- he didn't even come into the property to take a look at it. Mr. Burgess says so in his own affidavit. That's inappropriate. That's criticizing me for no good reason. I have an answer for why that ninety-five thousand dollars is actually the fair market value." Where is that answer, Your Honor? No affidavit in reply. One of the beneficiaries says in April, kind of a nervous time for most people -- they're thinking about filing their income tax return -- the estate informs one of the beneficiaries that an income

tax return that the estate has to file may result in a form that requires the individual beneficiaries to add something onto their personal income tax return. That's not unusual. It's called the K1. It's like a 1099 or a W2. April is the wrong time to be telling somebody that they might be filing -- have to file something to correct their income tax return. And in an affidavit, one of the beneficiaries said, "I've already filed my tax return. Why is the estate at this late date telling me about something that has to be in my personal income tax return?" And by the way, it wasn't done in 2014. If Ms. Jeanne had a response to that allegation, she hasn't offered it. We're here at a hearing today, and so what -- shall we take, Your Honor, all of these allegations inside the affidavits that have been presented to you as stipulations? Ms. Jeanne hasn't responded to any of these. How about Ms. Irving, my client? How has she behaved? Is she inconsolable? Is she litigious? She reports under oath politely communicating to the estate. "How about we have this proposal," she says to the estate. "Let's make equal distributions of all the remaining assets to all of the beneficiaries, and let them work it out. You don't like that proposal? How about a second proposal, that you have something of the cash that's on hand

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distributed. Keep enough to make sure that the estate needs to do what it has to, but let's have some interim distributions to the other three beneficiaries, so if we need to get some advice about how we're divvying things up, we can hire appraisers, attorneys, counselors, we can figure out what to do." According to Ms. Irving, she gets silence in response to that proposal, which she made. No, not in the middle of litigation. Before she even thinks about litigation. This motion that we have here is associated with taking a look to see, Your Honor, how strong is that language in the will which gives Ms. Jeanne sole discretion? That's the language that's there. We have this often in situations where one of the beneficiaries is also the representative of the estate, and what kind of balancing act does that person do? On the one hand, they can't ignore the fact that they're a beneficiary, and on the other hand, they have an obligation to inform, to keep people reasonably peaceful about what's happening in the estate administration. This is a two and a half year old estate administration. I've seen a request to the Court in an extension motion. The estate needs to sell all of the real property. That's not what the will says. I've seen wills that say the obligation of the personal representative is to liquidate everything. I drafted one

of those not long ago. That's not what this estate says. So to suggest that in exercising her sole discretion, this estate remains open for as long as it needs to remain open, because we're just going to go selling real property, because we can't work things out -- what about Ms. Irving's proposal to the estate, before any litigation in this case? How about we all sit down together? But don't bring this fifth person. We have four beneficiaries. The fifth person is the estate. Ms. Jeanne comes as a beneficiary. That's number four. And then number five, she comes as the personal representative. How many lawyers do we need? How much expense do we have? Why do we have two lawyers answering a simple motion today on behalf of the estate, rather than just one? At six hundred dollars an hour, three quarters of that bill are being paid by Ms. Irving and her two brothers. She's trying to get that to stop. What's the essence of this effort today in this motion? It is to recognize, Your Honor, that in this case, the discretion that's been given to the personal representative has been abused. There's been a conflict of interest that hasn't been recognized. Ms. Irving tries to be -- let's call her self-serving. She's trying, as all of us do when we come to court -- we want to show you our best side. We want to show you that we've been

reasonable. We've been open. We're not vindictive. Ms. Irving said that in her affidavit. Is it contested? Is she really difficult? Is she unreasonable? Has she taken advantage of situations? All of these things are what the estate might have said, if they wanted to reply in an affidavit, or do anything to associate their position with Ms. Irving not behaving as she should. Is there an agreement previously that she capriciously tossed into the trash? Has she acted in such a way to prevent this estate from being closed? This estate's open for two and a half years. Why does this estate need to be remaining open? I think we might have some consensus among all of the parties, that there's no reason to keep the estate open. Maybe we'll have some value issues. Mr. Burgess's comment on the most recent real estate appraisal might point that up. So maybe there's an opportunity to review these things, work these things out, try and work through differences, but not with this fifth person, called the estate. Well, it's the estate's obligation. But if the estate is doing nothing but adding onto the costs, there's nothing wrong with Ms. Jeanne coming and saying, as one beneficiary -- she could actually be relieved, Your Honor. We're proposing that she relieve herself of this double duty. It's a difficult thing to be

the King Solomon on the one hand, and also want to bring the baby home on the other hand. Let's have her, in her personal representative capacity, set aside. Let's have all four of these folks try and work this out, if there's objection to an equal quarter share distribution. The estate will tell you, the decedent wanted the personal representative to have sole discretion to figure out how to divide things, so long as it was of equal value. How pleased would the decedent be today, to realize what we have right now with this debate about valuations? If you distribute everything in quarter shares, won't you down the road, Mr. Tall, be suggesting that there will be a partition action, where these four folks won't want to be the owners of all of these four properties, and they'll have to work something out. That's the suggestion of why we do this, maybe before the estate closes. What we've asked, Your Honor, is that the estate not distribute any more properties. Ms. Irving has said in her affidavit that she was told the estate's going to do it anyway, whether she likes it or not. Is that a false statement? The estate had every opportunity to file an affidavit contesting what Ms. Irving said. I'm suggesting, Your Honor, that this estate and personal representative had scared the beneficiaries, told them that things are going

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to happen whether they like it or not, have not responded when somebody says, how about telling us how much money we currently have? How about distributing some of that money currently, so that when you have the opportunity of using the estate money -- twenty-nine thousand dollars for a roof, and as much as you want to talk to the estate lawyers about how to deal with things, how about distributing some of the money that you have on hand, so that we can go and get some advice? How about some fairness here? And that's a difficult balancing act between being the referee, and at the same time being one of the players on the field. It happens all the time with a lot more grace most of the time it takes place. That grace is absent here. As it relates to what's been happening so far, or what's proposed to happen, Your Honor, I don't know that I'm a big environmentalist, but around my house, we watch how much we pay for water and the light bill. If I could get Ms. Irving and her two brothers to pay for three quarters of my utility bills, I probably wouldn't be as careful with running the lights and the water. That's what we've got here, and what we're asking doesn't take place any more. Finally, we've got all the creditors to deal with. We've sold some of the properties. We're ready to make the distribution. Let's

have that happen with everybody having a reasonable opportunity for their say. I don't know if Mr. Burgess is correct or not, but I respect him, and there's a debate there, and it's a hundred thousand dollar swing. I know this is a million dollar estate, but that's ten percent of the size of the estate. That's significant. When that debate happens, and the estate says, come talk to us, but by the way, when we're giving advice to the personal representative slash beneficiary, you're going to pay for most of the fees that are associated, that's an unlevel playing field, and that's what we're asking not to -- that the Court has discretion to make that stop. How about these as excuses for things that we're complaining about? Ms. Jeanne could have, if she wanted to -- she has a quarter share of the estate. You know, if she wanted to, she could have put in, in the first eight months, to get a one third share of the estate. She is the surviving spouse.

MR. BOYD: Your Honor, with all due respect, I'm trying to give counsel some leeway, but I just want to object. When he says, "How about excuses," is he purporting to make reference to statements that have been made? Are we being quoted or ...

MR. TALL: I absolutely am not, Your Honor.

MR. BOYD: Or are we just hypothetically

speculating on excuses that might have been made?

MR. TALL: Absolutely hypothetical, Your Honor.

MR. BOYD: Okay. I just wanted to clarify, Your Honor.

MR. TALL: The estate record will show that this surviving spouse did not make an elective share to take a one third of the estate, rather than the quarter share that was given under the will. Is Ms. Irving showing a lack of gratitude because maybe that happened? Are we seeing here loose with accountings and distributions and appraisals because somebody's uncomfortable that they missed that opportunity for a one third share? I don't know. How about this as an excuse? Matt Rothgeb lived in a house that his father owned during the father's lifetime, and the father was peaceful about that. The personal representative has let Matt Rothgeb continue to live in that house, even tried to make repairs on that house. Is that an excuse for being difficult with appraisals and accountings and delays that we're talking about? How about pointing to the language in the will that says, you just don't understand. I have sole discretion. What is the purpose of an accounting with a right to review and demand a hearing, if it's not what the person -- what

the beneficiaries think is appropriate. It is a fine line that we all have, as we're given authorities. As I, as an officer of the court, as the personal representative of the estate, all of us who have authority, we have an obligation to exercise that authority in a fair way. What we pointed to, Your Honor, the lack of consideration in responding, the lack of information, the use of appraisals that are, at best, aggressive, the suggestion that things are going to get distributed, properties are going to get distributed whether or not Ms. Irving likes it or not, these are things that have contributed to the beneficiaries being afraid. We're not asking for anything unfair. Let's leave the assets as they currently are. If there's a proposal for a final distribution, we'll be happy to review them. What we haven't seen since September of 2015 is an accounting that can be presented to the Court. Hopefully the money's been spent in appropriate ways. Hopefully we won't find things that we'll criticize, and Ms. Irving is not somebody who wants to take time to criticize. She was measured in communicating with the estate before litigation even took place. And at the end of the day, these beneficiaries will join everyone, including the Court, to say, are we getting the result that the decedent intended? Thank you, Your Honor.

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JUDGE: Thank you, Mr. Tall. All right. Gentlemen, Mr. Davis or Mr. Boyd, which one would like to make the response?

MR. BOYD: Your Honor, I'll respond on behalf of the respondent.

JUDGE: That will be fine, Mr. Boyd.

MR. BOYD: Your Honor, with the Court's approval, I'll just argue from counsel table.

JUDGE: That will be fine.

MR. BOYD: Your Honor, there are quite a few things that I just love. I love lawyers that make our lives as lawyers more difficult than they have to be. And I think a lot of what's going on here today, Your Honor, is making things more difficult than they have to be. Frankly, there's been a lot that has been said, Your Honor. I looked at -- let me just say, I think there is -- most of what is raised in the motion, we can resolve, and in fact, we basically don't oppose, Your Honor, as we discussed in chambers before the hearing. But as I reviewed Mr. Tall's motion and attempted to discuss it with him, frankly, there's no cite to the statute. There's no cite to statute authority or case law, Your Honor, that gives this Court the authority to -- I'm not sure what Mr. Tall means when he asks for my client to set aside her role as PR and act as an

individual. I don't know of any precedent or any authority that would give the Court the opportunity to order that, Your Honor. The fact is, she is the PR, and I've seen nothing in this file -- and the Court can review the file, certainly, the Court has the file before it -- that would justify any sort of restraint on this PR or any sort of -- any sort of other sanction to be imposed upon her at this time. My client's first desire -- and she does have this discretion under the will, Your Honor, and I think the will was written the way it was for a reason, Your Honor. It's not language that we typically see. It obviously is there for a reason, Your Honor. Unfortunately, the decedent's not here to testify. We don't know exactly why he put that language in there, but the will says what it says. My client's first intent was to simply retain the residence that she was residing in, to have Matt, the -- one of the decedent's children, to retain the property that he was residing in, and to sell the balance of the properties and distribute the proceeds. That was not acceptable. Then we received a proposal from the prior attorney who represented the petitioner, Mr. Jack Scoville. We were agreeable to that.

MR. TALL: Your Honor, I'm going to object. If you don't have something in the record, I don't want

this to be testimony that I can't cross-examine.

MR. BOYD: Your Honor, I'm doing nothing more than giving the Court the flavor that Mr. Tall has been ...

MR. TALL: But mine was based on affidavit, Your Honor, in the record. And this is coming from memory of these attorneys who believe that they've spoken to other folks. And unless I'm going to have an opportunity to cross-examine, if someone steps forward as a witness, I have to ask for limits.

MR. BOYD: Your Honor ...

JUDGE: I understand that there has been some negotiations with prior attorneys, but that is not significant to me today, based on the motion. I understand those issues.

MR. BOYD: I understand.

JUDGE: Please just address the motion.

MR. BOYD: Your Honor, and to address the issue of the affidavits, frankly, Your Honor, I love when our process of moving these cases before you are made -- when we make the process more difficult. Yes, Mr. Tall has submitted affidavits to the Court, Your Honor. Frankly, at the request -- and the reason I raise Mr. Scoville, at the request of Mr. Scoville's communications on behalf of the petitioner, there were

-- there are affidavits -- excuse me. There are appraisals, certified appraisals in the file that have been prepared. Mr. Tall's affidavit from Mr. Burgess questioning that appraisal is based on his impression of the appraisal that's in the record. Frankly, he didn't go in the property. He didn't -- he did not examine the interior of the property. Much of the issues, Your Honor, if Your Honor will look at the appraisals, relate to the condition of the property, the specific condition of the property, which is evidenced by the appraisal. And again, these appraisals were prepared at the request of the other beneficiaries, Your Honor. Now they want to take issue with those appraisals. But the affidavit that has been filed is based on an opinion, where the affiant didn't examine the property closely, didn't go inside the property, Your Honor. So now I'm supposed to go file a contrary affidavit and say the affiant did not go? Your Honor ...

JUDGE: I think the affidavit's pretty clear, that he did not do an appraisal. He ...

MR. BOYD: The affidavit ...

JUDGE: .. looked at the appraisal that was done at your or your client's request, and said that he found fault in how he ...

MR. BOYD: Exactly.

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JUDGE: ... arrived at this price. That's basically all he said.

MR. BOYD: Exactly, Your Honor. And so I didn't feel -- again, we're not trying -- we're trying to minimize the expense for the estate, Your Honor. I didn't feel that it was prudent or necessary for us to file competing affidavits to compete -- I think an affidavit is what it is. It says what it says, and the Court can take it for what it's worth. My client, the personal representative, is here today if the Court would like to hear testimony from her as to how she has administered this estate, Your Honor. What she has done, I submit to the Court that my client has attempted to administer this estate in a fair and reasonable manner, and I think the record documents that, Your Honor. And there's nothing in Mr. Tall's motion that would justify restraining her, Your Honor. Now, if we need to put her on the stand, I can certainly put her on the stand, and we can cross-examine -- Mr. Tall can cross-examine her, and we can ask her questions. But there's nothing in Mr. Tall's affidavit, no authority. The only thing that Mr. Tall's complaining about is he doesn't like the way she's approaching the estate, the way she has exercised her discretion, but the discretion is clearly discretion that's

given her under the will, Your Honor. And so -- but we're agreeable, Your Honor, as we've discussed. We're agreeable. We're agreeable to submitting promptly a proposal for final distributions on this estate. We've attempted to do this before. If Mr. Tall has suggestions to us that he'd like to submit to us, I'm happy to have those. But we're happy, Your Honor, to promptly submit a proposal for final distribution. And by the way, Your Honor, I want to make a couple of other points. Mr. Tall kept referring to an absence of grace in this estate. That's been a two-way street, Your Honor. There have been lapses of grace from all ...

MR. TALL: More testimony, Your Honor?

MR. BOYD: I'm not -- Your Honor, I'm -- Mr. Tall is making an argument about there being an absence of grace in this estate. I'm not doing any further -- I'm not doing any more than what Mr. Tall did in his opening. Mr. Tall has alleged -- he made this point in his opening, Your Honor, that we've not provided information, we've not provided financial information to this estate. He alleged there had been no accounting. There has been an accounting, Your Honor. The accounting that we discussed, Your Honor, that's previously filed ...

JUDGE: September of last year.

MR. BOYD: It's in the record, Your Honor. And I also want to bring to the Court's attention, Your Honor -- and I apologize for not bringing this up in the -- on December, Your Honor, 28th of last year (HANDED DOCUMENT TO MR. TALL) -- can I have it back, please? I just wanted to show it to you.

MR. TALL: Yeah, but if this is something to be presented to the Court, Your Honor, I don't know where we are in terms of procedure. We've been look - - for three weeks, we've been looking for a response. First of all, we started with not wanting litigation. I think the comments I made are supported by affidavit. Now we've got something. Are we going to have Mr. Davis on the stand telling us what he ...

MR. BOYD: Your Honor, he made an allegation that we haven't shared information. It's ...

MR. TALL: And that for three weeks you've had an opportunity to file a responsive affidavit.

MR. BOYD: Your Honor, I'm simply responding to the allegation that Mr. Tall has placed before the Court. No, we have not filed it in an affidavit, but I have the information. I'm simply making the Court aware that on December 28th, we did provide copies of bank statements to Julie Irving at her address in Colonial Beach, Virginia. And Mr. Davis can testify to

that today, if the Court wants to put Mr. Davis on the stand. But Mr. Davis responded, contrary to what counsel is representing to this Court.

JUDGE: Okay. I think I understand your position in that regard. Let's move on to the issues at hand, because the Court's going to get this estate moving in the right direction.

MR. BOYD: I understand, Your Honor. And so as I was saying, Your Honor, we're agreeable. My client has attempted to administer this estate fairly and reasonably. She's agreeable to promptly filing closing papers, and will do that on a reasonable timeline. I will suggest to the Court, we had discussed Friday of next week. After Mr. Davis conferred with the paralegal that's working this file, because Monday is a holiday, next week is only four days. She had suggested and we would request that it be a week from Friday, but that certainly on -- by a very prompt basis, we can file -- we can file a proposal for final distributions in this estate. And we're also agreeable, Your Honor, as we've discussed, to mediating this matter, if that's what the Court would like the parties to do. And with regard to the allegation that, again, Mr.'s motion -- Mr. Tall's motion seems to turn on the fact that there's a conflict in us representing the client both in her capacity as a

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beneficiary and in her capacity as the personal representative. Your Honor, if the parties are agreeable, we're happy to bifurcate our representation, but we've done nothing for this client, other than to work for her as the personal representative. But we're ninety percent in agreement with what Mr. Tall has asked for, Your Honor. We're willing to do it. It's what we've been trying to do, Your Honor. And on a reasonable basis, we're happy to move forward consistent with that. But this client -- my client has done nothing to justify any punitive sanctions, or restraint, or other similar order from the Court, Your Honor. And I'm happy to put her on the stand. We can ask her any question that the Court would like to hear. I'll be happy to offer her testimony, but frankly, I think we're mostly in agreement. I don't know that that's necessary, so I'll leave that to the Court's discretion, Your Honor.

JUDGE: Thank you, Mr. Boyd. As I indicated earlier, we had an extensive conversation where both sides -- I hope they felt like, because I did, that the Court gave them opportunity to give us background as well as all the information that they wanted to tell the Court in regard to this matter. I am cognizant of the fact that the estate has been opened for over two years,

probably twenty-seven, twenty-eight months, and obviously there's been some disagreement as to the distribution of the remaining assets. As I understand it, in looking through the file, Mr. Rothgeb owned numerous properties, some of which have been sold, and I believe there's six -- approximately six that are left in the estate now, and one is under contract for sale, which was done obviously before we got to the court here today. With that in mind, I'm going to order that if a sale between now and the conclusion of this estate comes for that property, then of course the personal representative has the right to go ahead and execute those documents, the net proceeds of which will be paid into the estate account to be distributed after all expenses approved by the Court, et cetera, one fourth, one fourth, one fourth, and one fourth, between the four beneficiaries, all as equal beneficiaries. All closing documents I want filed by one week from today. That's Friday week. It is a short week. Monday is closed for Memorial Day, but I do want all those closing documents filed and served on Mr. Tall, and you can serve them on Mr. Tall before you file them with the Court, if that's by email or however you want to do that. But I want that full accounting done, as well as a proposal for distribution, because I think that's

been the most difficult part of getting this estate closed. That, of course, will include the notice, thirty day notice to demand a hearing, based upon the closing documents, so we give Mr. Tall an opportunity for his client to review those documents. If they're in agreement, that solves the problem. Then the estate will be closed in short order. If, however, there is disagreement, or Mr. Tall feels there's more information that he needs in regard to that closing, I'm going to order that there be a mediation between there and the time for the demand for hearing. That's normally sixty days out, anyway, from the demand, at least, depending upon the Court's calendar. And that the mediation, expense of the mediator, if you cannot find one that will volunteer to do it for all counsel without expense, will be paid by the estate. Each individual beneficiary, if they are to be represented by counsel, will be responsible for paying their own attorney. The estate will not be responsible for paying for the PR's or any of the beneficiaries' attorneys fees, so you will have to do that for yourself. Any other expenses in the estate until the estate is either closed, unless it is an emergency, I'm going to issue that there be no more expenses in the estate unless counsel can agree. In other words, if an electric bill has to be paid,

or real estate taxes, or insurance have to be paid, then I'm going to request that the attorneys for the estate notify Mr. Tall just to make sure he's aware of that, and if he has any objection, he can make the Court known. But no distributions unless all parties agree for distributions to be made prior to the closing of this estate, or to the agreement between the parties. If an appraiser is necessary, then I'll let the parties discuss that. If that cannot be arranged, if there's a disagreement as to the value, then the Court will make a decision as to how that is done. But I would hope that the parties could agree on that, if that has to be done. The Court does note that there have been two appraisals filed, and the figures other than -- I believe there was some minor personal property, and it was added to the second appraisal. Everything else remained the same. Am I correct on that, that there's approximately six pieces of real estate that remain to be distributed in some fashion? Is that approximately right?

MR. BOYD: There are approximately, yes, Your Honor -- that's correct, Your Honor.

JUDGE: All right. And I believe -- let me see if I've addressed -- just when I say closing documents, of course I mean a final accounting, up to date

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accounting, so that would need to be done. And if -- I know Mr. Davis and Mr. Boyd well, as well as Mr. Tall, for many, many years, your accounting in regard to attorneys fees, I want that an itemized accounting of what you've done from the last accounting to date in regard to expenses for the estate in that regard.

MR. BOYD: Your Honor?

JUDGE: Yes, sir.

MR. BOYD: Do you want an attorney's fee affidavit, or do you simply want ...

JUDGE: No, no, no. Just an item ...

MR. BOYD: Part of the accounting?

JUDGE: Part of the accounting.

MR. BOYD: Certainly.

JUDGE: But I do want it itemized.

MR. BOYD: Certainly.

MR. DAVIS: May I ask a question.

JUDGE: Sir?

MR. DAVIS: A quick question?

JUDGE: Certainly.

MR. DAVIS: We represent Ms. Irving as a beneficiary. I'm assuming the Court is saying we don't have any conflict of interest there? We keep our billing separate, and she keeps that -- pays for that work separately. Is that correct? Is that something ...

JUDGE: The Court has no problem with that, if no one else does. That's not uncommon in these situations, as long as you keep your billing separate.

MR. DAVIS: All right. Good. Thank you, Your Honor.

JUDGE: And of course, you would itemize that, if that becomes necessary.

MR. DAVIS: Thank you, Judge.

JUDGE: All right. And are there any other issues I had left out of your motion, Mr. Tall?

MR. TALL: This doesn't happen all the time, Your Honor, but I'm at a loss for words. I think we've got it covered.

JUDGE: All right. Very good. Anything further? We do need to get this estate wound up for everybody's benefit. I know it's been a trying situation on everybody's part, but -- yes, sir, Mr. Davis?

MR. DAVIS: Just logistically, Your Honor, if we file the closing documents and still have that contract outstanding -- that property's supposed to close in the next week or two, is what we're thinking. The buyer's obtaining some financing, and if they do, it will close sooner than later. We don't know exactly when it's going to close, so as we file the closing documents, we'll have to note that. And then the personal

representative would have to retain her authority until it actually closes, so she can sign the closing documents.

JUDGE: Oh, sure.

MR. DAVIS: I just wanted to note that for the Court.

JUDGE: Absolutely. And it may be, depending upon what the net figure is -- unless you already know what that's going to be, you might have to modify the accounting in that regard. I mean, I assume you know what the contract sale price is and ...

MR. BOYD: We have the contract sales price, and we provided a copy of the contract to Mr. Tall, Your Honor. But assuming the only adjustment, I imagine, is if there is some last minute negotiation between buyer and seller ...

JUDGE: Right.

MR. BOYD: ... on the basis of some condition found in the property.

JUDGE: And it should be relatively minor, but ...

MR. DAVIS: I would think.

JUDGE: ... it will have to be updated.

MR. TALL: Your Honor, I did think of an issue. We have, in our motion, asked for Ms. Irving to be

reimbursed for bringing what we think is a helpful end here. I'd like to propose, if we may, that my fees and costs, and asking whether the Court would bless those as part of estate administration. We'd table that for the moment and work that into -- if we have things between the parties, and if we can't work that out, we bring it to the Court. But that was an issue that was in my motion, and with that, I'm done for the moment.

JUDGE: With that in mind, the order should provide that the issue of attorney's fees will be reserved to a later date.

MR. TALL: Am I instructed to prepare that order for you, Your Honor?

JUDGE: Yes.

MR. TALL: Thank you.

JUDGE: Mr. Tall, if you would prepare your order in that regard and send it to Mr. Davis and Mr. Boyd for their consideration.

MR. TALL: I'll do that prior to sending it to you, Your Honor.

JUDGE: Please. And gentlemen, once you've taken a look at it, if you'll just send me an email that you agree with it, you don't agree with it. If you need to have an in-chambers or a phone conversation in that regard, regarding that, I will be glad to do that.

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MR. BOYD: We haven't discussed that, Your Honor, but if all the Court's going to do is reserve it for a future date, I certainly have no objection.

JUDGE: Exactly. Reserve the issue of attorney's fees and allocation for a future date.

MR. BOYD: Thank you, Your Honor.

JUDGE: Okay. Thank you very much. Good luck to you folks. That will end the hearing.

(THE HEARING CONCLUDED AT 11:25 A.M.)

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY) CERTIFICATE

I, Sarah B. Fry, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing proceedings were taken by me and thereafter transcribed by me; that the 33 pages contain a full, true, and correct transcription of all the proceedings; that I am not of kin to any parties to this cause of action, nor am I interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 6th day of December, 2016.

SARAH B. FRY

My commission expires 7/15/2020

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT

CASE NUMBER 2014-ES-26-00498

JULIE IRVING,
PLAINTIFF,
V.
JEANNE POAFPYBITTY, PERSONAL REPRESENTATIVE OF THE ESTATE OF DONALD M. ROTHGEB AND JEANNE POAFPYBITTY, DONALD MATTHEW ROTHGEB AND STEVEN TAYLOR ROTHGEB
DEFENDANT'S.

HEARING

FROM (9:00 A.M.) UNTIL (7:00 P.M.)
FEBRUARY 17 & 24, 2017

AS TAKEN AND TRANSCRIBED BY PEPPER M. MCCARTHY, NOTARY PUBLIC AND VERBATIM REPORTER, IN FRONT OF THE HONORABLE CARROLL D. PADGETT, JR., AT HORRY COUNTY GOVERNMENT AND JUSTICE CENTER, 1300 SECOND AVENUE, SECOND FLOOR, B1, CONWAY, SOUTH CAROLINA.

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BECKY WEAVER

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COURT REPORTERS NOTES:

*****ALL EXHIBIT'S WERE RETAINED BY JUDGE, CDP*****
*****AUDIO RECORDING WASN'T MARKED*****
*****TWO EXHIBIT 12'S, NO EXHIBIT'S 1 OR 24*****

JUDGE PADGETT: ALRIGHT. WE'RE HERE THIS MORNING, FRIDAY, FEBRUARY 17TH 2007 IN THE MATTER OF THE ESTATE OF DONALD ROTHGEB, FILE NUMBER 2014-ES-26- 0498. PRESENT IN COURT IS MR. CLIFF TALL REPRESENTING THE PETITIONER, JULIE IRVING. ALSO PRESENT IS DAVID BURCH JUST A FRIEND OF THE PLAINTIFF'S. ALSO

PRESENT IS REESE BOYD AND BRET DAVIS REPRESENTING THE PR. IS IT JENE POAFPYBITTY? THAT WAS BECAUSE OF YOUR ATTORNEYS THAT PRONOUNCED IT WELL. AND BECKY WEAVER, IS THAT CORRECT? IS THERE ANYTHING ELSE PRESENT OR EXPECTED BY ANY OF THE COUNSEL?

MR. TALL: THERE'S A CHANCE THAT ONE OF THE BENEFICIARIES, MATT ROTHGEB, HE'S DISABLED AND HAS TROUBLE WITH TRANSPORTATION. I DON'T REPRESENT HIM, BUT THERE IS A POSSIBILITY HE MAY COME TO COURT THIS MORNING.

JUDGE PADGETT: VERY GOOD.

MR. BOYD: WE MAY HAVE WITNESSES THAT WILL SHOW UP THROUGHOUT THE DAY DEPENDING ON HOW THINGS GO, BUT AS FAR AS PARTIES INTERESTED, NO.

MR. TALL: I SHOULD SAY, YOUR HONOR, AT SOME POINT, MR. RUSSELL BURGESS, A REAL ESTATE APPRAISER IS LIKELY TO BE A WITNESS.

JUDGE PADGETT: BUT WE CAN PROCEED WITHOUT THEM BEING PRESENT?

MR. TALL: YES.

MR. BOYD: YES, YOUR HONOR.
JUDGE PADGETT: ALSO WE HAVE AS OUR COURT REPORTER, MRS. PEPPER MCCARTHY. WELCOME. ALRIGHT, ARE WE READY TO PROCEED GENTLEMEN?
MR. TALL: YOUR HONOR, IF I MAY, WE HAVE TWO MOTIONS. I WONDER IF WE COULD ADDRESS THOSE FIRST?
JUDGE PADGETT: CERTAINLY.
MR. BOYD: NO OBJECTIONS, YOUR HONOR. CAN WE IDENTIFY FOR THE RECORD WHAT THE MOTIONS ARE THAT WE ARE ADDRESSING BEFORE WE GET STARTED? I THINK WE HAVE EXCHANGED SEVERAL MOTIONS. I KNOW THAT I HAVE GOT A MOTION TO COMPEL THAT I THINK IS ESSENTIALLY... I CAN WITHDRAW THAT MOTION BASED ON RECENT PRODUCTIONS.
MR. TALL: YOUR HONOR, WE HAVE TWO MOTIONS; A MOTION FOR SANCTIONS AND A MOTION FOR SUMMARY JUDGMENT.
JUDGE PADGETT: ALRIGHT. WHICH ONE DO YOU WANT TO TAKE FIRST?
MR. TALL: THE MOTION FOR SANCTIONS IF I MAY, YOUR HONOR.
JUDGE PADGETT: VERY GOOD. GO RIGHT

AHEAD.

MR. TALL: YOUR HONOR, IN THE COURT FILE THERE ARE TWO AFFIDAVITS THAT WE RECENTLY FILED, ONE FROM STEVEN ROTHGEB, WHO HAS WORKED AND LIVES IN THAILAND, BUT HAS NONETHELESS GIVEN US A SWORN AFFIDAVIT. THE PRINCIPAL ONE I RELY UPON THIS MORNING IS FROM THE PLAINTIFF, MS. JULIE IRVING. IT GIVES ME NO PLEASURE TO PROCEED WITH THIS, YOUR HONOR, BUT WE DO HAVE THIS AND WE CONSIDER IT A SERIOUS MATTER. ON 27, MAY THE COURT HEAR ARGUMENTS FROM BOTH PARTIES? THERE WAS ESSENTIALLY A MOTION FOR TEMPORARY RESTRAINING ORDER. AT THAT HEARING IT WAS DISCUSSED THAT OVER TWO YEARS HAD GONE BY SINCE THIS ESTATE HAD BEEN OPENED AND NO PROPOSAL BEING FILED FOR CLOSING THE ESTATE. IT'S NOT A DIFFICULT ESTATE. THE COURT ISSUED ITS RULING GRANTING THE MOTION FOR TEMPORARY RESTRAINING ORDER AND ENCOURAGED THE PARTIES TO SEE IF THEY COULD WORK THINGS OUT; WITH A MEDIATION, WITH AN EXCHANGE OF INFORMATION AND VERY

SPECIFICALLY THE COURT TOLD THE PERSONAL REPRESENTATIVE TO MADE NO GREATER ESTATE EXPENDITURES WITHOUT FIRST GETTING PERMISSION FROM THE COURT OR CONSENT FROM THE TWO COUNSELS. I NOTE AT THAT HEARING A VERY ANIMATED ARGUMENT FROM THE DEFENSE THAT THE JUDGE DOESN'T HAVE AUTHORITY TO RESTRAIN THE PERSONAL REPRESENTATIVE IN THE WAY THAT WE WERE SEEKING IN OUR MOTION FOR TEMPORARY RESTRAINING ORDER. AND THE ARGUMENT FROM THE DEFENSE WAS ACKNOWLEDGED IN YOUR ORDER, YOUR HONOR, AND IT WAS ADDRESSED WITH REFERENCED TO STATUTES IN THE PROBATE CODE, WHERE THE COURT SAID, INDEED WE DO HAVE THAT AUTHORITY. I THOUGHT LONG AND HARD ABOUT HOW I DID HEAR... BOTH THE THREE OF US LEARNED GENTLEMEN, WE PRACTICE IN THE COURT ALL THE TIME. WE HAVE RESPECTED REPUTATIONS. HOW CAN IT BE SAID TO THE JUDGE THAT YOU DON'T HAVE AUTHORITY TO GRANT A MOTION FOR TEMPORARY RESTRAINING ORDER THAT SAYS, LOOK, THIS ESTATE HAS BEEN GOING ON LONG ENOUGH. LET'S SEE IF

THE PARTIES CAN WORK THINGS OUT. ANYTHING YOU DO IN LEGAL MATTERS IS EXPENSIVE. LET'S KEEP NO MORE EXPENSES GOING ON. WE HAVE SOME REAL PROPERTIES. THERE'S REAL ESTATE TAXES AND INSURANCE AND THAT WAS ENTERED IN YOUR ORDER. MS. IRVING'S AFFIDAVIT SHOWS THAT AFTER A CONSIDERABLE BATTLE IN GETTING FINANCIAL RECORDS, THERE'S AN INTERESTING EXCERPT FROM MS. IRVING'S DEPOSITION WHERE IT WAS SAID, "DIDN'T YOU GET THE JULY BANK RECORDS AND THE STATEMENTS? WE CERTAINLY THOUGHT WE GAVE THOSE TO YOU. OH, YOU MIGHT BE RIGHT. WE DIDN'T GET THOSE TO YOU." IT SEEMS TO US TO BE A DELIBERATE WITHHOLDING OF FINANCIAL RECORDS. TIME AND AGAIN WE ASKED FOR THEM SO WE WENT TO GO AND GET FORMAL DISCOVERY AND THE FORMAL DISCOVERY DELIVERED TO US ON JANUARY 13TH SHOWS THAT THE PERSONAL REPRESENTATIVE WROTE CHECKS FOR $16,000.00 WORTH OF ATTORNEYS FEES AND OTHER MATTERS. OUR DISCOVERY REQUESTS FOR RECORDS INCLUDED A REQUEST THAT WE BE KEPT UP TO DATE. SO, SINCE

13 JANUARY, THERE'S BEEN JANUARY STATEMENT, EXCUSE ME, THE DECEMBER STATEMENT AND THE JANUARY STATEMENT THAT THE DEFENSE COULD HAVE GIVEN TO US. DON'T KNOW HOW MUCH ADDITIONAL EXPENSES HAVE TAKEN PLACE. AND I KEEP THINKING TO MYSELF, WE HAVE BEEN IN CHAMBERS AND I THINK I CAN REFERENCE THIS. THE JUDGE DID NOT TELL THE PERSONAL REPRESENTATIVE TO KEEP HER HANDS OFF THE MONEY AND MAYBE THIS IS TELLING. THE JUDGE COULDN'T HAVE DONE THAT BECAUSE HE DOESN'T HAVE THE AUTHORITY. THERE'S THAT ARGUMENT AGAIN, WHICH WAS ADDRESSED IN YOUR ORDER, AN ORDER WHICH NO ONE ASKED YOU TO RE-VISIT. YOU COULD DO A 59-E AND SAY, "YOUR HONOR, HERE'S MY AUTHORITY." I THINK YOU MADE A MISTAKE ON 27 MAY. NO ONE DID THAT. IT'S INTERROGATORY ORDER. THE OTHER SIDE HAS INDICATED THAT THIS CASE WILL BE APPEALED AND THOUSANDS AND THOUSANDS OF DOLLARS MORE WILL BE SPENT. I KEEP THINKING TO MYSELF, WHERE DID I MISS --

MR. BOYD: YOUR HONOR, I HAVE TO INSERT

AN OBJECTION. MR. TALL IS MAKING STATEMENTS ABOUT OUR INTENTIONS AND OUR MOTIVES THAT SIMPLY AREN'T TRUE. WHETHER OR NOT WE INTEND TO APPEAL ANY DECISION OF THIS COURT IS NOT A DECISION THAT HAS BEEN MADE AND MR. TALL SHOULDN'T STAND HERE AND MAKE REPRESENTATIONS TO YOU TO THAT EFFECT.

JUDGE PADGETT: I'M GOING TO ALLOW YOU AND MR. TALL TO EXPRESS YOUR OPINION IN THIS MATTER BECAUSE MOTIONS FOR SANCTIONS AND Y'ALL ARE VERY IMPORTANT TO THE COURT. CERTAINLY YOU MAY COUNTER THAT BY SAYING WHENEVER YOUR POSITION MIGHT BE. GO AHEAD, MR. TALL.

MR. TALL: SO, SOMETIMES WHEN TWO ATTORNEYS ARE ARGUING YOU THINK MAYBE THERE'S A SUBTLETY AND I CAN'T THINK OF A MORE BRIGHT LINE DIFFERENCE BETWEEN TWO COUNSELS SAYING NOT ONLY DID THE JUDGE TAKE ACTION, BUT HE HAD THE AUTHORITY TO TAKE ACTION. IN HIS ORDER HE ACKNOWLEDGED THE DEFENSE ARGUMENT THAT HE HAD NO SUCH AUTHORITY, SITED AUTHORITY, AND IT'S IN THE ORDER. SO

WHY AM I STILL HEARING THAT THE COURT HAS NO AUTHORITY? AND IF THE COURT HAD NO AUTHORITY, IF THAT'S AN ARGUMENT, DOES THAT COLOR HOW SOMEONE READS AN ORDER WHICH IS PRETTY PLAIN, NO FURTHER EXPENDITURES WITHOUT COURT AUTHORIZATION. I TOOK A DEPOSITION RECENTLY. IT'S UNUSUAL TO HAVE ONE ATTORNEY DEPOSE ANOTHER ATTORNEY, BUT IN THAT DEPOSITION MR. DAVIS MADE REFERENCE TO A SCHOLARLY PRESENTATION HE MADE, 19 PAGES. IT HAS A PROVISION IN HERE, PAGE 8. THIS IS AN AUTHORITY... ANY OBJECTION TO SHOWING THIS TO THE COURT?

MR. BOYD: WHAT ARE YOU LOOKING AT?

MR. TALL: THIS IS MR. DAVIS' DUTIES AND POWERS TO THE PERSONAL REPRESENTATIVE AND TRUSTEES.

MR. DAVIS: YOUR HONOR, I BELIEVE YOU WERE AT THAT ANYWAY SO PROBABLY ALREADY HAVE A COPY OF THIS OUTLINE.

JUDGE PADGETT: I MAY, BUT I DON'T HAVE IT WITH ME. I WILL BE GLAD TO ACCEPT IT IF YOU HAVE NO OBJECTION.

MR. BOYD: NO OBJECTIONS.

MR. TALL: I'M MAKING REFERENCE, YOUR HONOR, TO PAGE 8 OF THE DOCUMENT.

JUDGE PADGETT: DO YOU WANT TO HAVE IT MARKED?

MR. TALL: THAT WILL BE FINE, YES, SIR.

JUDGE PADGETT: THIS WILL BE PETITIONER'S OR PLAINTIFF'S 1. DAVIS DUTIES AS THE PERSONAL REPRESENTATIVE MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S 1.

MR. TALL: YOUR HONOR, IT TALKS ABOUT IF SOMEONE IS AGGRIEVED BY WHAT A PERSONAL REPRESENTATIVE DOES AND ACCORDING TO THIS PRESENTATION THERE ARE TWO OPTIONS. YOU PETITION TO HAVE THE PERSONAL REPRESENTATIVE REMOVED AND WE ALL KNOW THAT TAKES A GREAT DEAL OF EVIDENCE BECAUSE WE GIVE GREAT DEFENCE TO THE TESTATORS SELECTION OF HIS PERSONAL REPRESENTATIVE. WE PRESUME THE PERSONAL REPRESENTATIVE KNEW WHO IT WAS THAT HE WAS APPOINTING. AND WE DON'T HAVE THAT IN THIS CASE. THERE IS NOT A PETITION TO REMOVE THE PERSONAL REPRESENTATIVE.

THE SECOND REMEDY THAT'S SET FORTH IN THIS AUTHORITY IS THAT YOU BE VERY SPECIFIC AND ASK THE COURT TO HAVE THE PERSONAL REPRESENTATIVE DO CERTAIN THINGS. THERE'S NOT A FILING THAT SHOULD HAVE BEEN FILED. ASK THE JUDGE TO HAVE THAT FILING TAKE PLACE. THERE'S NOT A CLOSURE IN TIME. ASK THE JUDGE TO ENFORCE THE RULES THAT SAY ENCLOSURE SHOULD TAKE PLACE IN TIME. AND ACCORDING TO THIS PRESENTATION THOSE ARE THE ONLY TWO OPTIONS THAT YOU HAVE. I THINK I DIDN'T GET MY ANSWER TO WHY IT IS THE DEFENSE SAYS THAT THE COURT DOES NOT HAVE ANY AUTHORITY TO REIGN IN AND RESTRAIN THE PERSONAL REPRESENTATIVE. ACCORDING TO THIS ANALYSIS OF THE PROBATE CODE THERE IS NO SUCH THING IN THE PROBATE CODE AS SECTION 623607 OF THE CODE WHICH I MAINTAIN, YOUR HONOR, IT SAYS THERE IS INDEED --

MR. DAVIS: YOUR HONOR, CAN WE SEE THAT BEFORE IT'S PASSED UP TO YOU?

JUDGE PADGETT: SURE.

MR. TALL: IT SAYS THAT THERE IS INDEED

A THIRD OPTION. YOU DON'T HAVE TO GET RID OF THE PERSONAL REPRESENTATIVE AND TAKE ON THE BURDENS ASSOCIATED WITH ATTACKING ESSENTIALLY WHAT THE TESTATOR WANTED TO DO. AND YOU DON'T HAVE TO POINT TO SOME SIMPLE THINGS LIKE THE INVENTORY WASN'T FILED ON TIME OR THE ACCOUNTING WASN'T FILED ON TIME. YOU MAKE A PRESENTATION TO THE COURT WHICH SAYS THAT THIS ESTATE IS AT RISK BECAUSE OF ANY NUMBER OF THINGS THAT YOU CAN SAY THE PERSONAL REPRESENTATIVE IS RESPONSIBLE FOR. AND I MAINTAIN, YOUR HONOR, THAT THIS STATUTE THAT I JUST HANDED UP, 623607, IS WHAT GIVES THE COURT SPECIFIC GUIDELINES TO SAY AFTER A COUPLE YEARS, WE HAVE FOUR BENEFICIARIES. IT'S NOT UNUSUAL, YOUR HONOR, THAT WE FIND ONE OF THE PERSONAL REPRESENTATIVES WINDS UP BEING ONE OF THE BENEFICIARIES AND THAT IS A BALANCING ACT. HOW DO I LOOK OUT FOR MYSELF AS A BENEFICIARY AND HOW DO I LOOK OUT FOR THE ESTATE AND EVERYTHING ELSE? AND WHAT YOU HAVE IN THE

COMPLAINT THAT WAS BROUGHT TO YOU AND IF YOU LOOK AT MS. IRVING'S AFFIDAVIT, SHE WORKED HARD BEFORE SHE BROUGHT A COMPLAINT TO THE COURT. WE'VE GOT A LOT OF TIME THAT'S GONE BY. WE'VE GOT A VERY UNUSUAL SITUATION WHERE THE PERSONAL REPRESENTATIVE TWICE PRESENTED AN INVENTORY UNDER OATH TO THE COURT AND THEN DIDN'T AMEND THE INVENTORY, BUT SAYS TO THE BENEFICIARIES, "I THINK WE'RE GOING TO CUT THE VALUE OF THAT PLACE THAT I WANT IN HALF." AND MS. POAFPYBITTY CAN TAKE THE STAND AND EXPLAIN HOW SHE THOUGHT THAT VERY UNUSUAL PROVISION OF TRYING TO MAKE A FINAL DISTRIBUTION NEGOTIATION WHILE SHE'S DOING IT WITH ESTATE FUNDS THAT ARE BEING FINANCED BY THREE BENEFICIARIES AND HER ARGUMENT TO CUT THE VALUE OF THE PROPERTY IN HALF IS BEING FINANCED THREE QUARTERS BY THOSE OTHER THREE BENEFICIARIES, BUT ONLY ENURES TO THE BENEFIT OF THE ONE PERSON THAT'S GETTING A DISCOUNT ON THE VALUE. THESE ARE PRESENTATIONS THAT WERE MADE

TO MS. IRVING. AND IN THE FACE OF THAT SHE HAS VERY CORDIAL LETTERS... SHE HAS GOT THEM IN HER AFFIDAVIT AND MAYBE THEY'RE NOT SO LEGIBLE BECAUSE AFTER YOU MAKE A NUMBER OF COPIES IT'S A LITTLE DIFFICULT, BUT YOU CAN SEE HOW CORDIAL THEY ARE. AND THIS IS SOMEONE WHO SAYS IN PREVIOUS EPISODES OF THIS CASE, ALREADY HIRED A LAWYER. HE WAS INSTRUMENTAL IN GETTING ME FINANCIAL INFORMATION THAT I COULDN'T GET ON MY OWN. I THOUGHT WHEN I SAID GOODBYE TO THIS, MR. SCOVILLE FROM GEORGETOWN COUNTY, I HAD SOME INFORMATION IN MY HANDS WE COULD CLOSE THE ESTATE. WE HAVE SOME CHAOS. THE COURT RECORDS HAVE ALLIGATIONS THAT MS. IRVING INTERFERED WITH INCOME TAX FILINGS FOR THE ESTATE WHICH SHE DISAGREES WITH AND IS SURPRISED TO HEAR ABOUT THIS. ALL THE THINGS THAT WERE BROUGHT TO THE JUDGES' ATTENTION ON 27 MAY RESULTED IN A VERY DETAILED ORDER THEN AND THIS MOTION FOR SANCTIONS IS AND THIS MOTION FOR SANCTIONS IS ASSOCIATED WITH SHOWING YOU

THAT CONTRARY TO YOUR ORDER IT KEPT FROM THE PLAINTIFF, EVEN THOUGH THE PLAINTIFF ASKED FOR FINANCIAL RECORDS, WHICH WOULD HAVE REVEALED, WHAT WE'RE NOW COMPLAINING ABOUT. REVEALED ON 13 JANUARY AND IT'S NOT JUST... MR. TALL, ARE YOU JUST ARGUING ABOUT $16,000.00? I THINK ABOUT WHAT YOU MIGHT, YOUR HONOR, HAVE EXCEPTED WITH YOUR EQUITABLE POWERS? LET ME TAKE THESE FOUR BENEFICIARIES FOR A MOMENT AND GIVE THEM A LEVEL PLAYING FIELD. NO LONGER WILL THE PERSONAL REPRESENTATIVE BE ABLE TO FINANCE HER OWN EFFORTS. IT'S HARD TO DETERMINE ARE HER EFFORTS FOR HER PERSONAL BENEFIT AS A BENEFICIARY OR ARE HER EFFORTS FOR THE ESTATE LOOKING OUT FOR THE BEST INTERESTS OF THE ESTATE? NO LONGER WILL SHE HAVE THE FINANCIAL ABILITY FROM THE ESTATE. SHE WILL HAVE TO FINANCE THE SETTLING OF MATTERS JUST LIKE ALL THE OTHER BENEFICIARIES, SETTLE FINANCIAL MATTERS. YOUR HONOR WAS TOLD THAT THERE WAS GOING TO BE IN JULY OF 2016, A REAL ESTATE CLOSINGS AND THE

IDEA IN YOUR EQUITABLE POWERS WAS TO... LET'S LET THAT CLOSING TAKE PLACE. EVERYBODY WILL GET SOME MONEY FROM THAT AND THEY CAN PARTICIPATE TO SEE IF THEY CAN WORK THIS THING OUT. WHATEVER HAPPENED, THAT REAL ESTATE CLOSINGS DIDN'T TAKE PLACE. MS. IRVING TALKS ABOUT HOW THE FAILURE OF THAT REAL ESTATE CLOSING WASN'T VERY WELL COMMUNICATED. AND WE WERE IN FRONT OF YOU FOR AN ALTERNATIVE FINANCIAL RELIEF IN OCTOBER OF 2016.

JUDGE PADGETT: IS THAT THE ANDOVER PROPERTY?

MR. TALL: YES. AND IT STILL REMAINS UNSOLD AS I BELIEVE. YES, YOUR HONOR. THE IDEA, IF I UNDERSTOOD FROM THE COURT IN GRANTING MY MOTION FOR TEMPORARY RESTRAINING ORDER IS THERE HAS BEEN A LOT OF SPENDING. LET'S LET THESE FOLKS RETURN TO A POSITION OR ASSUME ONLY A POSITION OF FOUR BENEFICIARIES AND MAYBE THEY CAN MEDIATE, MAYBE THEY CAN'T, MAYBE THEY CAN SHARE. THEY WERE ORDERED TO SHARE INFORMATION. WHAT WE HAD WHEN

YOU'RE NEGOTIATING WITH ONE PERSON WHO DOESN'T FEEL THE PRESSURE THAT YOU FEEL THE PRESSURE, OH, MY GOD, ANOTHER ATTORNEY'S BILL! WHY IS THIS TAKING SO LONG? THE PERSONAL REPRESENTATIVE IN THIS CASE IN 2016, FOLLOWING OUR MAY HEARING, HAD THE LUXURY... WHICH YOU TOLD THE PERSONAL REPRESENTATIVE SHE WOULD NOT HAVE. SHE HAD THE LUXURY OF REACHING INTO ESTATE FINANCING AND FINANCING HER OWN EFFORTS. SO, THAT WHEN WE TRY AND COORDINATE A MEDIATION... WELL, I WILL GET BACK TO YOU IN A COUPLE WEEKS. WE TRIED TO COORDINATE THE SHARING OF INFORMATION. IT RESULTS IN A FORMAL DISCOVERY REQUEST BECAUSE WE'RE NOT SHARING AS WE HOPED WE WOULD. MY GOSH, YOU'RE GOING TO USE THE LAWYERS WITH FORMAL DISCOVERY AND BACK AND FORTH AND COMMUNICATE? IF YOU HAVE UNLIMITED ACCESS TO FINANCES, WHICH ARE FINANCED THREE QUARTERS BY YOUR STEP-CHILDREN, THAT'S KIND IF A LUXURY WHICH SHE HAD FOR OVER TWO YEARS BEFORE WE CAME TO SEE YOU IN MAY. IT'S NOT

JUST THE SMALL AMOUNT OF MONEY THAT WAS TAKEN, BUT IT IS LOOKING AT YOUR ORDER, YOUR HONOR. YOU CAN LOOK AT THE MOTION FOR TEMPORARY RESTRAINING ORDER. I HAVE THE TRANSCRIPT FROM THE HEARING. HE EVEN SAYS THAT THE PERSONAL REPRESENTATIVE HAS AN ELECTRIC BILL TO PAY, GET IN TOUCH WITH MR. TALL. I LOOKED AT THAT AND SAID, WOW, YOUR HONOR, THAT'S A LITTLE BIT STRICT. MAYBE THAT WAS MEDIATED A LITTLE BIT IN THE ORDER, BUT THE ORDER WAS CLEAR. I HAVE HEARD FROM THE DEFENSE THAT, THAT'S NOT WHAT YOU ORDERED. AND MY UNDERSTANDING, YOUR HONOR, IS THAT IS A RATIONALIZATION FOR THE DEFENSE POSITION SUPPORTED BY MR. DAVIS' PAPER, THAT THERE IS NO SUCH THING AS 623607, WHICH ALLOWS THE COURT TO TAKE A LOOK AT... ACTUALLY THAT STATUTES HAS BEEN RECENTLY AMENDED. IT USED TO BE THAT YOU HAD TO PUT IN A PETITION WITH THE SUMMONS AND COMPLAINT. IT NOW SAYS, "UPON APPLICATION TO THE COURT." THE PROBATE CODE HAS MADE IT EASIER TO COME TO THE

JUDGE AND SAY, "I THINK WE NEED TO REIGN IN THE PERSONAL REPRESENTATIVE. ARE YOU TRYING TO GET HIM BOUNCED? I PROBABLY WOULD LIKE TO DO THAT, BUT I UNDERSTAND THE BURDEN OF PROOF IS PRETTY HIGH. WE WANT TO GIVE RESPECT TO THE TESTATOR. LEAVE HER IN PLACE BECAUSE THE EXPENSE OF REMOVING SOMEBODY IS WAY TOO HIGH. WELL, THEN WHAT DO YOU WANT TO DO? ACCORDING TO MR. DAVIS AND MR. BOYD, THERE IS VERY LITTLE YOU CAN DO. ACCORDING TO 623607 THERE'S PLENTY YOU CAN DO. AND I'M NOT ARGUING, YOUR HONOR, WHAT YOU SHOULD DO OR WHAT YOU HAVE THE AUTHORITY TO FURTHER DO. YOU ISSUED AN ORDER ON 13 JUNE 2016, AND IT HASN'T BEEN RESPECTED AND BECAUSE IT HASN'T BEEN RESPECTED, IT HAS COLORED EVERYTHING THAT WE HAVE TRIED TO DO TO GET THIS CASE SETTLED. THAT'S MY CASE, YOUR HONOR, ABOUT THE MOTION FOR SANCTIONS. THANK YOU.

JUDGE PADGETT: THANK YOU, MR. BOYD.

MR. BOYD: THANK YOU, YOUR HONOR. THIS CASE IS ONE WHERE IT IS ASTONISHING TO

ME THE DIFFERENT VIEWS THAT I SEE FROM THE PETITIONERS SIDE AND FROM MR. TALL'S SIDE OF THE MOTION. THERE WERE SEVERAL STATEMENTS MADE, YOUR HONOR, I, FROM THE OUTSET... WE HAVE ATTEMPTED TO RESOLVE THIS MATTER IN AS COST EFFECTIVE A FASHION AS WE CAN. UNDERSTANDING THAT THIS ESTATE DOES NOT HAVE UNLIMITED RESOURCES. THERE ARE LOTS OF PROPERTIES IN THIS ESTATE, BUT THERE IS NOT A LOT OF CASH IN THIS ESTATE. THIS ESTATE IS CASH POOR. FRANKLY, WE HAVE ATTEMPTED TO RESOLVE THESE MATTERS INFORMALLY WHERE WE SAW THAT THERE WOULD BE A WASTE OF RESOURCES AND ANY ACTIVITY WE HAVE TRIED TO AVOID THAT. IT IS, IN FACT, AND THE DOCUMENTS THAT WE HAVE IN OUR FILE, YOUR HONOR, MAKE THIS ABUNDANTLY CLEAR THAT IT IS, IN FACT, MR. TALL THAT HAS ATTEMPTED TO MAKE A FEDERAL CASE OUT OF EVERY LITTLE QUIBBLE BETWEEN THESE PARTIES. YOUR HONOR WAS IN CHAMBERS WITH US WHEN WE WERE DISCUSSING, EXACTLY WHAT I WASN'T SURE MR. TALL BROUGHT US ALL DOWN TO CHAMBERS TO HAVE A

CONFERENCE. AGAIN AND AGAIN, WE ARE JUMPING THROUGH HOOPS AT THE BEHEST OF MR. TALL AND FRANKLY, HE HAS MADE MANY STATEMENTS TO YOU THIS MORNING... THE FACT THAT WE ARE WHERE WE ARE, WE HAVE DONE, MR. DAVIS AND I, HAVE DONE OUR DEAD LEVEL BEST. I CAN ASSURE YOU, YOUR HONOR, THIS PERSONAL REPRESENTATIVE WANTS NOTHING MORE AT THIS JUNCTURE THAN TO BE DONE WITH THIS ESTATE AND TO BE FINISHED. THIS HAS BEEN A HERRING RIDE FOR HER, YOUR HONOR, AND SHE WILL TESTIFY TO THAT. SHE IS EMOTIONALLY IN SHAMBLES AS A RESULT OF ALL OF THIS. AND I THINK I CAN SAY THAT WITHOUT HURTING HER FEELINGS. BUT, YOUR HONOR, MR. TALL MAKES MULTIPLE STATEMENTS HERE, THE INSINUATION FROM HIS ARGUMENT... AND FRANKLY, I LOST TRACK. I WAS RIDING BUT I LOST TRACK. THE INSINUATION FROM HIS ARGUMENT THAT WE PROVIDED NO INFORMATION PRIOR TO OUR JANUARY 13 FORMAL DISCOVERY RESPONSE IS CATEGORICALLY ABSURD, YOUR HONOR. I HAVE A NOTEBOOK HERE THAT IS NOTHING BUT... AND YOUR HONOR, IS

WELCOME TO TAKE ALL OF THIS MATERIAL INTO CHAMBERS AND REVIEW IT. I DON'T SEE THE POINT IN INTRODUCING 500 PAGES, BUT I'M HAPPY FOR, YOUR HONOR, TO TAKE THESE DOCUMENTS INTO CHAMBERS AND REVIEW THEM. I HAVE A COMMUNICATIONS LOG, YOUR HONOR, AND IT REFLECTS ALL EFFORTS OF THIS ESTATE TO COMMUNICATE WITH THIS BENEFICIARY. I HAVE ANOTHER LOG, YOUR HONOR, WHICH DOCUMENTS OUR EFFORTS TO PROVIDE INFORMATION TO MR. TALL TO SATISFY HIS CLIENT. AND IT STARTS WAY BEFORE JANUARY 13, 2017, YOUR HONOR. THIS PARTICULAR NOTEBOOK BEGINS WITH THE FIRST SUBMISSION THAT THE COURT ORDERED WHICH IS THE PROPOSAL FOR DISTRIBUTION THAT THIS OFFICE PREPARED AND SUBMITTED TO THE COURT PURSUANT TO, YOUR HONOR' ORDER ON JUNE 3RD 2016. FROM THERE WE GO TO JULY 11, 2016 WHERE WE SENT A HUD CLOSING STATEMENT AND WELLS FARGO BANK STATEMENTS TODAY TO THE BEST OF OUR KNOWLEDGE, FORWARDED JULY 11TH 2016 TO MR. TALL FOR MYSELF WITH COPIES TO BRET DAVIS AND DEBRA EVANS IN MY OFFICE. AND

YOUR HONOR, YOU CAN SEE THE ATTACHMENTS THERE. THERE ARE MULTIPLE STATEMENTS. FROM THERE, WE GO TO JULY 14TH, YOUR HONOR, 3 DAYS LATER WHERE I SENT AN E-MAIL TO CLIFF. CLIFF, IN REGARDS TO OUR EARLIER CORRESPONDENCE, ATTACHED ON THE LEGAL BILLING SUBMITTED TO DATE IN THE ABOVE STATE BY OUR FIRM. WE PROVIDED... IN THAT I DON'T KNOW THE EXACT PAGINATION, BUT THAT E-MAIL INCLUDED LEGAL BILLS BEGINNING MAY 31ST 2016 AND CONTINUING THROUGH DECEMBER 31ST 2016. AS YOU CAN SEE, YOUR HONOR, THERE WAS QUITE A BIT OF INFORMATION. FROM THERE WE GO TO OCTOBER 18, YOUR HONOR, WHERE I PROVIDED ADDITIONAL DOCUMENTATION TO CLIFF; ATTACHED DOCUMENTS, SUPPLEMENTAL PRIOR INFORMATION THAT WE HAVE PROVIDED TO YOU IN CONNECTION WITH THE ABOVE ESTATE. THE ATTACHED PDF CONTAINS AN UPDATE ON THE STATUS AND THE CLOSING FOR THE ANDOVER DRIVE PROPERTY. THE REALTOR ADVISES THAT A POTENTIAL BUYER CONTINUES TO WORK THROUGH THE CREDIT/IDENTITY

THIEF ISSUES THAT HAVE CONTINUALLY PLAGUED THE DELAY OF THIS CLOSING. WE BELIEVE THE ISSUES CAN BE WORKED OUT AND THE BUYER REMAINS COMMITTED TO BUYING THE PROPERTY AND IF THAT CAN BE ACCOMPLISHED, SEE ATTACHED EXTENSION, WHICH EXTENDS THE CONTRACT TO 12/31. ALSO ATTACHED IN A SEPARATE PDF IS A PROCEDURAL DOCUMENT WITH RECORDED NOTES, YOUR HONOR. FROM OCTOBER 18, WE GOT TO OCTOBER 21, YOUR HONOR, WHERE I SENT AN E-MAIL TO MR. CLIFF TALL RESPONDING TO PRIOR INFORMATION, REQUESTS RELATED TO TAX RETURNS... PROVIDING MR. TALL COPIES OF ALL THE TAX RETURNS FILED BY THE ESTATE ACCORDING TO HIS REQUEST, YOUR HONOR. THERE'S SUBSEQUENT E-MAILS WHICH ARE SENT ON DECEMBER 14, 2016, WHERE WE PROVIDED A LINK TO MR. TALL OF ALL APPRAISALS THAT HAVE BEEN DONE. AND, YOUR HONOR, I SHOULD NOTE THAT AT THIS POINT THE PRODUCTIONS WERE REDUNDANT. WE HAD ALREADY PIECE-MEALED. MS. WEAVER IN OUR OFFICE HAD BEEN SENDING APPRAISALS TO THE BENEFICIARIES AS WE

THOUGHT THEY NEEDED TO SEE THEM AS THEY HAD INTEREST IN THE PROPERTIES IN QUESTION. WE THOUGHT THAT THERE HAD BEEN GENERAL... AND FRANKLY, YOUR HONOR, I WILL CONFESS TO THE COURT, I WAS UNDER THE MISTAKEN IMPRESSION THAT ALL BENEFICIARIES HAD RECEIVED ALL APPRAISALS. THAT, IN FACT, APPEARS TO HAVE NOT BEEN THE CASE. BUT IN DECEMBER I SENT MR. TALL, DECEMBER 14, AN E-MAIL WITH AN ELECTRONIC LINK TO A DROP BOX, A CLOUD LOCATION, YOUR HONOR, WHICH CONTAINED ALL APPRAISALS THAT THE ESTATE HAD ACCOMPLISHED USING CROMARTIE APPRAISALS AT THE REQUEST OF MR. SCOVILLE. FROM DECEMBER 14, YOUR HONOR, WE GO TO... WE SKIP THE FORMAL PRODUCTION. THESE ARE JUST OUR INFORMAL PRODUCTIONS. JANUARY 27 WHEN I PROVIDED AN UPDATE TO LEGAL BILLINGS, YOUR HONOR, AND THERE'S AN ADDITIONAL E-MAIL FROM MY ASSISTANT, YOUR HONOR, WHICH IS SUPPOSED TO UPDATE RECENT BANK STATEMENTS WHICH I HAVE NOT BEEN ABLE TO LOCATE AND I'M NOT EXACTLY SURE WHERE THAT E-MAIL IS. I

WILL BE GLAD TO SUBMIT THAT TO COURT IN A SUBSEQUENT FILING. BUT, YOUR HONOR, MY POINT IS TO SIT HERE AND SUGGEST TO THE COURT AS MR. TALL JUST DID THAT NOTHING HAD BEEN PROVIDED TO HIM OF ANY SUSTENANCE PRIOR TO JANUARY 13, 2017 IS CATEGORICALLY ABSURD, YOUR HONOR. AND YOUR HONOR, AGAIN, IS WELCOME TO REVIEW THIS INFORMATION AT LENGTH. YOU CAN TAKE IT INTO CHAMBERS AND REVIEW IT, YOUR HONOR. IF YOU WANT THEM INTRODUCED AS AN EXHIBIT WE WILL INTRODUCE IT AS AN EXHIBIT. BUT TO SIT HERE AND SUGGEST OTHERWISE IS CATEGORICALLY ABSURD.

JUDGE PADGETT: DO YOU HAVE ANY OBJECTION AS TO THEM COMING IN AS AN EXHIBIT, MR. TALL?

MR. TALL: I WILL BE HAPPY TO TAKE A LOOK AT IT. I THINK THERE ARE THINGS THAT HAVE BEEN SHARED, YOUR HONOR. I WILL WITHHOLD GIVING A COMMENTARY ABOUT WHAT I JUST HEARD FOR A MOMENT, BUT --

MR. BOYD: IF I MAY, YOUR HONOR, I WILL SUGGEST --

MR. TALL: I COULD SAY THIS, YOUR HONOR?

WE ARE PRETTY MUCH BEING VERY SPECIFIC. I DON'T THINK I SAID I DIDN'T GET INFORMATION, BUT WHAT I DO THINK IS IT GOT CHERRY PICKED. SO THAT THE OPPORTUNITY FOR US TO SEE THAT THESE FOLKS GOT PAID AT THE TIME WHEN YOU TOLD THE PERSONAL REPRESENTATIVE NOT TO WRITE CHECKS... RATHER THAN LOOK THROUGH 500 PAGES, LET MR. BOYD TAKE AS MUCH TIME AS HE LIKES TO SAY, "CLIFF, IN OCTOBER AND DECEMBER WE SHOWED YOU THAT WE WERE GETTING PAID. THAT WE MAINTAIN IT TOOK PLACE ON 13 JANUARY.

JUDGE PADGETT: AS I UNDERSTOOD YOUR MOTION FOR SANCTIONS, IT WAS THE ALLEGED VIOLATION OF MY ORDER MADE JUNE 13TH, SOMETHING LIKE THAT?

MR. TALL: YES, YOUR HONOR. I THINK WE ARE GOING FAR OUT TO FIELD HERE TO SUGGEST THAT --

JUDGE PADGETT: THERE AGAIN, I DID LET YOU GO AND I CERTAINLY WANT MR. BOYD TO PRESENT WHATEVER HE WANTS TO PRESENT IN HIS ARGUMENT.

MR. TALL: OKAY. I'M OFFERING, IF

YOU'RE ASKING ME, YOUR HONOR, TO BE ASSISTANCE TO THE COURT ON THE POINT WE'RE TALKING ABOUT. WE FOUND OUT ON 13 JANUARY THAT THERE WAS EXPENDITURES FROM THE ESTATE THAT WE MAINTAIN YOU TOLD THE COURT THAT THE PERSONAL REPRESENTATIVE NOT TO DO.

JUDGE PADGETT: THAT'S WHAT I THOUGHT YOUR MOTION --

MR. TALL: NOW, IF THERE'S ANYTHING IN THOSE PAPERS, RATHER THAN HAVE YOU LOOK THROUGH 500 PAPERS, WHY DON'T WE LOOK TO THE POINT THAT SAYS, "MR. TALL, YOU'RE MISTAKEN. YOU KNEW ABOUT THIS IN SEPTEMBER. YOU KNEW ABOUT THIS IN OCTOBER. THAT'S THE ESSENCE OF MS. JULIE IRVING'S AFFIDAVIT.

JUDGE PADGETT: MR. BOYD, I DID NOT THINK FROM HIS ARGUMENT TO ME, IT WAS NOT ENLIGHTENING TO ME TO THINK THAT YOU HAD NOT PROVIDED, BECAUSE AS YOU WILL KNOW, WE'VE HAD SEVERAL CONVERSATIONS IN MY OFFICE ABOUT THAT. THERE'S BEEN SOME EXTENSIVE DISCOVERY, BUT HIS COMPLAINT, AS I UNDERSTAND IT, WAS, IS HE IS

ALLEGING A VIOLATION OF THAT ORDER THAT RESULTED FROM OUR MAY 27TH HEARING IN CHAMBERS AND THAT WAS WHAT HIS MOTION FOR SANCTIONS WAS ABOUT.

MR. BOYD: AND, YOUR HONOR, I WOULD BE HESITANT TO INTRODUCE THE NOTEBOOKS AS IS BECAUSE FRANKLY, THEY PROBABLY CONTAIN SOME PRIVILEGE INFORMATION THAT HASN'T BEEN REVIEWED.

JUDGE PADGETT: I WAS WONDERING ABOUT THAT.

MR. BOYD: BUT HAVING SAID THAT, YOUR HONOR, I DON'T KNOW IF IT'S WORTH THE COURT'S TIME FOR US TO TRY TO RECONSTRUCT IT HERE, BUT I WOULD BE HAPPY UPON RETURNING TO MY OFFICE TO PROVIDE THE EXACT DATES OF WHEN ANY INDICATION OF THIS PARTICULAR INFORMATION WAS PROVIDED TO MR. TALL AND TO DO IT WITHIN THE NEXT COUPLE DAYS. IS THAT'S AGREEABLE TO THE COURT? OTHERWISE, YOUR HONOR, WITHOUT INTRODUCING THESE NOTEBOOKS INTO EVIDENCE, YOUR HONOR, IS WELCOME TO REVIEW THEM AND LOOK AT THEM AND ASSESS

FOR YOURSELF WHETHER OR NOT... IT'S GOING TO REQUIRE A LITTLE BIT OF LEG WORK, YOUR HONOR, BECAUSE SOME OF THE E-MAILS, THE ATTACHMENTS WERE SO VOLUMINOUS THAT FOR SOME OF THE E-MAILS ALL THE ATTACHMENTS ARE NOT THERE. I WOULD PROBABLY... I'M NOT EVEN SURE IF AS I SIT HERE AND REVIEW THE NOTEBOOK IF I CAN EVEN TELL YOU EXACTLY, POSITIVELY WHEN THE FIRST INFORMATION WAS TRANSFERRED TO MR. TALL THAT WOULD ADDRESS THIS SPECIFIC ISSUE OF THE EXPENDITURES THAT HE'S TALKING ABOUT. I WILL CERTAINLY TRY TO DO THAT IF THE COURT WANTS ME TO DO THAT.

MR. TALL: I HAVE A COMMENT, YOUR HONOR. THERE WAS NO RESPONSE TO THE MOTION FOR TEMPORARY RESTRAINING ORDER THAT WE FILED IN APRIL. I BELIEVE IT WAS IN APRIL, WHICH RESULTED IN THE MAY 27 HEARING. WE WENT TO COURT WITH NO RESPONSIVE PLEADING. WE NOW HAVE A SWORN AFFIDAVIT AND A MOTION FOR SANCTIONS. THAT'S A PRETTY SERIOUS THING FOR A LAWYER. FOR MR. BOYD TO

TELL US THAT IN THE LAST 10 DAYS HE HASN'T THOUGHT ABOUT TRYING TO GOOD THROUGH THESE PAPERS SO THAT YOU DON'T HAVE TO GO THROUGH 500 PAGES AND SAY, "MR. TALL, YOU'RE MISTAKEN." FIRST OF ALL, YOUR HONOR, THE MOTION FOR SANCTIONS HAS TO DO WITH THE STANDING. I WILL SAY THAT'S IT'S A SMALLER ISSUE AS TO WHETHER OR NOT YOU HIDE IT FROM ME UNTIL THE 13 OF JANUARY. LET'S SUPPOSE THAT HE FINDS SOMETHING THAT SAYS, "CLIFF, WE TOLD YOU ABOUT THAT UNWARRANTED SPENDING IN SEPTEMBER, BUT IT'S STILL UNWARRANTED SPENDING. I DON'T WANT TO MESS WITH. THAT'S A MINOR POINT. BUT MR. BOYD HAS HAD 10 DAYS TO TAKE A LOOK AT THIS THING TO COME TO COURT WITH ANY RESPONSE HE WANTS TO THE EVER EXPENSIVE EFFORT OF MS. IRVING AND I WILL BET IF WE FIND THE DECEMBER AND THE JANUARY BILLINGS WE'RE GOING TO FIND MORE ATTORNEYS FEES. MR. DAVIS SAYS IT WAS GOING TO HAPPEN WHEN WE MET IN CHAMBERS ON 27 OF JANUARY. THE ESSENCE IS THE COURT TOLD HIM NOT TO SPEND MONEY

AND THEY DID. WE HAVE SHOWN THAT AND THEY'RE NOT READY IN COURT TODAY TO SAY, "MR. TALL YOUR WRONG. THE JUDGE DIDN'T ORDER THAT OR YOU'RE WRONG, MR. TALL." WE GAVE YOU EVIDENCE OF THAT BEFORE 13. WHAT IS THE APPRAISAL OF THE REAL PROPERTY GOT TO DO WITH THE EMOTIONS THAT WE HAVE HERE? THIS IS WHAT TAKES PLACE, YOUR HONOR, AND WHY WE HAVE THOUSANDS AND THOUSANDS OF ATTORNEYS' FEES THAT ARE NOT ON POINT FOR ANYTHING REALISTIC.

MR. BOYD: YOUR HONOR, THAT'S NOT WHAT I SAID, YOUR HONOR. I'M TRYING TO ADDRESS THE SPECIFIC QUESTION RELATED TO THE SPECIFIC INFORMATION THAT WE TALKED ABOUT. WE'VE BEEN PRODUCING THE BANK STATEMENTS AS THEY HAVE BEEN PROVIDED TO US ALONG AND ALONG. THERE HAVE BEEN NO EFFORT TO FAIL TO PROVIDE THIS INFORMATION TO MR. TALL. AND YOUR HONOR, I FINISHED MY ARGUMENT. WE'RE TALKING ABOUT... MR. TALL IS TELLING WHAT I'M HERE TODAY TO ARGUE. AGAIN, I... YOUR HONOR, WE'VE BEEN DOWN THIS

PATH IN ESTATES AND THERE'S A CASE THAT I WOULD POINT, YOUR HONORS' ATTENTION TO AND I WILL PASS IT UP. THE BLACKMAN CASE, YOUR HONOR. THIS IS A TYPICAL CASE WHERE THE BENEFICIARY WANTS TO TAKE CONTROL OF THE ESTATE. I DID NOT INTERPRET, YOUR HONOR'S ORDER TO MEAN THAT WE COULD NOT CONTINUE TO CONCLUDE THE ADMINISTRATION OF THIS ESTATE OR THAT THE PERSONAL REPRESENTATIVE WAS DEPRIVED OF HER ABILITY TO DEFEND HERSELF. YOUR HONOR, MS. POAFPYBITTY, SHE DOES NOT HAVE THE MEANS TO DEFEND HERSELF WITHOUT ALLIANCE ON THE ESTATE'S FUNDS... AND IN HER POSITION AS THE PERSONAL REPRESENTATIVE, SHE DOESN'T HAVE THE MEANS, YOUR HONOR. AND THIS IS EXACTLY WHAT THE STATUE AND THE COURTS' **BLACKMAN VERSES WEAVER.** THE COURTS HAVE ADDRESSED THIS ISSUE IF A BENEFICIARY COULD HOLD AN ESTATE HOSTAGE BY SIMPLY BRINGING A BREACH OF FIDUCIARY CLAIM AND RESTRAINING THE ESTATE FROM DEFENDING ITSELF. THEN THE PERSONAL REPRESENTATIVE, ANY PERSONAL

REPRESENTATIVE, YOUR HONOR, THAT DIDN'T HAVE VERY DEEP POCKETS, PERSONALLY, YOUR HONOR, WOULD QUICKLY BE OUT OF BUSINESS. AND FRANKLY, THE SAME ORDER THAT CONTAINS THE LANGUAGE, YOUR HONOR, THAT MR. TALL REFERS TO FROM 623607, THE SAME LANGUAGE THAT'S THERE IS ALSO IN THE SAME ORDER THAT ORDERED THIS FIRM TO PRODUCT CERTAIN DOCUMENTS AND FILE THEM WITH THE COURT BY JUNE OF 2016. WHICH WE DID, YOUR HONOR. SO, HAD I UNDERSTOOD, YOUR HONOR, THAT WE HAD TO GET ADVANCE AUTHORITY FOR OUR FEES... I UNDERSTAND WE HAVE HAD THE DISCUSSION IN CHAMBERS MANY TIMES THAT THERE WAS GOING TO BE AN ANALYSES OF FEES SHIFTING AFTER THE MERITS OF THIS CASE SORT THEMSELVES OUT, YOUR HONOR, HAS SAID THAT. IF THERE'S GOING TO BE AN ANALYSES OF FEE SHIFTING, WHY IS THAT EVEN GOING TO TAKE PLACE IF SUDDENLY WE WERE RESTRAINED FROM DEFENDING MS. POAFPYBITTY. WE SHOULD HAVE JUST BROUGHT OUT THE WHITE FLAG AND SURRENDERED, YOUR HONOR. AM I SUPPOSED TO FILE A MOTION FOR THE

OPPORTUNITY TO DEFENDER HER? I DID NOT INTERPRET THE COURT'S ORDER IN REQUIRING US TO DO THAT. WE HAVE ATTEMPTED TO APPRISE MR. TALL OF OUR EXPENDITURES AS WE GO. THERE'S BEEN NO EFFORT TO WITHHOLD THAT INFORMATION FROM HIM, YOUR HONOR. THIS IS A MATTER FOR... IN MY OPINION, YOUR HONOR, THE COURTS' CAREFUL JUDGMENT. WE HAVE A SITUATION WHERE WE HAVE THE FAMILY VERY MUCH AT ODDS. I DON'T HAVE ANY DOUBT THAT MY CLIENT, MS. POAFPYBITTY, IF YOU PUT THE FOUR OF THEM IN A ROOM, SHE'S IS NOT GOING TO WIN A POPULARITY CONTEST, YOUR HONOR, BUT THIS IS NOT A POPULARITY CONTEST, YOUR HONOR. THE DECEDENT SHOWS MY CLIENT AS THE PERSONAL REPRESENTATIVE FOR REASONS WE WILL LEAVE TO HIM, YOUR HONOR, BUT SHE WAS THE PERSONAL REPRESENTATIVE CHOSEN. AND MR. TALL WAS CORRECT TO POINT OUT THAT THE BAR FOR REMOVING HER IS VERY HIGH, BUT FOR HIM ALSO TO SUGGEST AT THE SAME TIME, WHICH HE DID, THAT HE WANTS AN ENVIRONMENT WHERE THERE ARE SIMPLY FOUR EQUAL BENEFICIARIES IS ABSURD.

SOMEBODY HAS TO DO THE WORK, YOUR HONOR. WHEN YOUR HONOR ORDERED THAT WE FILE CLOSING PAPERS BY JUNE 2016, WHICH WE DID, SOMEBODY HAD TO DO THAT, YOUR HONOR. YOU CAN'T HAVE FOUR INDIANS IN THE ROOM AND NO CHIEFS. THERE HAS TO BE SOMEBODY WHO IS GOING TO DO THIS, YOUR HONOR, AND GET THE ESTATE CLOSED. UNLESS MR. TALL WANTS TO REMOVE MY CLIENT, SHE IS STILL THE PERSONAL REPRESENTATIVE. SO, TO SIT HERE AND SUGGEST THAT WE WEREN'T GOING TO SPEND ANY MONEY, I THINK... MY CLIENT WILL TESTIFY SHE'S BEEN CAREFUL ABOUT WHAT SHE SPENT. THERE HAVE BEEN EXPENDITURES THAT SHE CONTEMPLATED THAT SHE DIDN'T SPEND BECAUSE OF ALL OF THIS. BUT TO SUGGEST THAT WE WERE GOING TO SPENT ABSOLUTELY NOTHING, YOUR HONOR, I'M A LITTLE BIT AT ODDS TO FIGURE OUT HOW WE WERE TO PROCEED. AND FRANKLY, IF MR. TALL WANTED A ROOM WITH FOUR INDIANS AND NO CHIEFS, HE SHOULD HAVE ASKED THE COURT TO APPOINT A SPECIAL ADMINISTRATOR OR TAKEN SOME OTHER JUNCTURE THAN TO TIE

MY HANDS SO THAT I CAN'T DO MY JOB WHILE HE'S CONTINUING TO THROW MOTIONS AT ME ON A WEEKLY AND SOMETIMES DAILY BASIS. FRANKLY, YOUR HONOR, I WILL TELL YOU, I DID NOT AGREE WITH EVERY PORTION OF THE ORDER FOLLOWING THE MOTION HEARING. AGAIN, YOUR HONOR, WE HAVE BEEN TRYING... WE HAVE HAD MANY DISCUSSIONS ABOUT THE NUMBER OF DEPOSITIONS TO TAKE. WE HAVE HAD MANY DISCUSSIONS ABOUT THE EXPENDITURES, THE INCURRING OF LEGAL FEES AND HOW THAT WILL BURDEN THIS ESTATE. WE'VE BEEN TRYING TO HANDLE THIS CASE IN A MANNER THAT'S FRANKLY FULFILLS OUR DUTY TO OUR CLIENT, YOUR HONOR, BUT IS ALSO FAIR TO THE ESTATE. AND I DID NOT AGREE WITH NECESSARILY EVERYTHING IN THE COURT'S ORDER. I DID NOT LIKE THE VERBIAGE. IF YOUR HONOR WILL RECALL, WE HAD SOME E-MAILS BACK AND FORTH WHEN YOUR HONOR ISSUED THE ORDER. WHERE I OBJECTED TO SOME OF THE TERMS THAT I DID NOT THINK THAT THE TERMS AND SOME OF THE ARGUMENTS WERE NECESSARILY IN SYNC WITH WHAT WAS SAID

AT THE HEARING. BUT, YOUR HONOR, IMMEDIATELY WE DID NOT FILE A MOTION FOR RE-CONSIDERATION. I COULD HAVE DONE A 59-E AS MR. TALL SAYS BUT, YOUR HONOR, AT SOME POINT THIS HAS TO STOP. AS MR. DAVIS HAS REPRESENTED TO YOU MANY TIMES, WE JUST WANT TO GIVE YOU A PROPOSAL FOR DISTRIBUTION AND WE WANT TO HAVE A HEARING AND WE WANT TO BE DONE WITH THIS. FRANKLY, YOUR HONOR, WHAT I THINK THIS CASE IS GOING TO SUBSTANTIATE TO THE COURTS' SATISFACTION IS THAT THIS CASE STARTED AS A SMALL BATTLE FOR CONTROL AND IN THE PROCESS OF TRYING TO RESOLVE THAT LITTLE SKIRMISH FOR CONTROL, MS. IRVING INCURRED SOME LEGAL FEES WHICH SHE THEN NEEDED TO GET BACK. IN THE COURSE OF TRYING TO NEGOTIATE HERSELF INTO A POSITION WHERE SHE COULD GET THOSE ATTORNEYS FEES BACK, SHE SPENT EVEN MORE ATTORNEYS FEES. I HAVE HAD THIS CONVERSATION WITH MY CO-COUNSEL. YOUR HONOR, WHAT THIS CASE BECAME IN EFFECT WAS A ROUND OF POKER OVER ATTORNEYS FEES, YOUR HONOR. AND

EVERYTHING WE DID, EVERYTHING WE RESPONDED TO, WE WERE INCURRING MORE ATTORNEYS FEES. EVERY TIME WE PASSED DOCUMENTS BACK AND FORTH THE POT GETS BIGGER. THE AMOUNT OF ATTORNEYS FEES THAT WE'VE INCURRED, AND YOUR HONOR, WE HAVE BEEN TRYING TO SLOW THE TRAIN DOWN TO MINIMIZE WHAT HAS TRANSPIRED. AGAIN, IT'S BEEN OUR OBJECTIVE TO GET TO A FINAL RESULT OR GET TO A PROPOSED FINAL RESULT AND TO GET IT HEARD. I TOLD MR. TALL MANY TIMES... AND I'M NOT --

MR. TALL: YOUR HONOR, CAN WE DO THIS, THIS TESTIMONY HAS GONE ON FOR A LONG --

MR. BOYD: I'M ABOUT TO WRAP IT UP, YOUR HONOR --

MR. TALL: -- TIME. BASED UPON THINGS THAT ARE IN THE RECORDS, SWORN AFFIDAVITS, I'M GOING TO HAVE TO DO WHAT, CROSS-EXAMINE THIS GENTLEMEN?

MR. BOYD: YOUR HONOR, I DON'T THINK I'VE GONE ANY FURTHER UP HILL THAN MR. TALL DID. BUT HAVING SAID THAT, YOUR HONOR, WE HAVE ATTEMPTED TO DO OUR BEST TO HANDLE OUR DUTIES TO OUR CLIENT IN A

FAIR AND REASONABLE MANNER, YOUR HONOR. I DON'T THINK THAT THE BURDEN FOR SANCTIONS WHICH IS A HIGH BURDEN HAS BEEN MET, YOUR HONOR. WE HAVE BEEN FRANKLY IN COMMUNICATIONS IN YOUR CHAMBERS ON MANY OCCASIONS ABOUT A GREAT MANY ISSUES. AND FRANKLY, THIS ISSUE IF, IN FACT, THIS IS AN ISSUE, WHICH APPARENTLY MR. TALL WOULD SUGGEST TO YOU THAT IT IS, THERE WOULD HAVE BEEN MANY OPPORTUNITIES FOR IT TO BE RAISED AND FOR IT TO DISCUSSED. AND TO COME UP NOW ON THE EVE OF TRIAL AND SAY, I WANT SANCTIONS BECAUSE ALL OF THE WORK YOU'VE DONE FOR THE LAST 6 MONTHS SINCE THE ORDER IS SOMEHOW OUT OF SCHOOL, I THINK IS IMPROPER, YOUR HONOR. WE HAVE TRIED TO DO THE BEST WE CAN DO. WE'VE TRIED TO ACT IN GOOD FAITH, YOUR HONOR. WE HAVE A DUTY TO OUR CLIENT. I'VE TRIED TO BE REASONABLE WITH MR. TALL. HE'LL HAVE A DIFFERENT OPINION, BUT I THINK IF THE COURT, AGAIN, TAKES ALL THE COMMUNICATIONS AND LOOKS AT THEM IN CHAMBERS, WHICH I'M HAPPY FOR THE COURT

TO DO, YOUR HONOR. I DON'T EVEN HAVE TO REVIEW IT. THE COURT IS WELCOME TO TAKE EVERYTHING THAT I HAVE IN MY FILE AND LOOK AT. WE HAVE NOTHING TO HIDE, YOUR HONOR. I WILL BE HAPPY FOR THE COURT TO MAKE IT'S DECISION.

MR. DAVIS: YOUR HONOR, MAY I SAY SOMETHING ALSO?

JUDGE PADGETT: DO YOU HAVE ANY OBJECTION, MR. TALL?

MR. TALL: I SUPPOSE --

JUDGE PADGETT: I THINK WE'RE, AT THIS POINT, BEATING A DEAD HORSE --

MR. DAVIS: THERE ARE THINGS THAT HAVEN'T BEEN SHARED. I WOULD LIKE TO SHARE SOMETHING THAT HASN'T BEEN SHARED BY EITHER SIDE, AND I WOULD LIKE TO POINT OUT, YOUR HONOR. I WANT TO MAKE SURE FOR THIS MATTER THAT I KNOW EXACTLY WHAT MR. TALL IS TALKING ABOUT. IS HE TALKING ABOUT PARAGRAPH 3 ON PAGE 6 AND 7 OF YOUR ORDER? IS THAT WHAT HE'S REFERRING TO?

JUDGE PADGETT: IS THAT THE JUNE 13TH ORDER?

MR. TALL: YES, YOUR HONOR.
MR. DAVIS: WE'RE TALKING ABOUT THAT PARAGRAPH?
MR. TALL: YES, YOUR HONOR. WE HAVE THE HEARING TRANSCRIPT THAT SUPPORTS THAT AS WELL.
JUDGE PADGETT: ALRIGHT, SIR.
MR. DAVIS: OKAY. I APPRECIATE HIM REFERRING TO ME AS AN AUTHORITY. I DO APPRECIATE THAT, MR. TALL. HE BROUGHT UP 623607, AN ORDER RESTRAINING A PERSONAL REPRESENTATIVE. THAT IS WHERE YOU HAVE SOMEONE THAT... A PERSONAL REPRESENTATIVE IS DOING SOMETHING SO BAD THAT THE COURT HAS TO STEP IN AND SAY YOU CANNOT ADMINISTER THIS ESTATE ANY MORE. WE'VE GOT TO RESTRAIN YOU NOW. WHAT YOU'RE DOING IS SO DANGEROUS TO THE ESTATE, WE'VE GOT TO RESTRAIN YOU, RIGHT? OKAY. WELL, IN THIS ORDER, THE ORDER SAYS AS DESCRIBED IN THIS PARAGRAPH 4-B BELOW, "EXCEPT SPECIFICALLY THOSE NECESSARY AND ORDINARY EXPENSES FOR ROUTINE MAINTENANCE, MORTGAGE SERVICING, HOA

ASSESSMENTS, UTILITIES, TAXES ASSOCIATED WITH THE REAL PROPERTY, HOLDINGS THE PERSONAL REPRESENTATIVE SHALL...". SO, WHAT THAT'S SAYING, THE COURT IS SAYING, "WELL, THE PERSONAL REPRESENTATIVE IS DOING A GOOD JOB IN THESE AREAS AND WE TRUST THE PERSONAL REPRESENTATIVE TO MAKE THESE EXPENDITURES." BUT YET, MR. TALL SAYS THAT SHE IS SO BAD THAT THE COURT HAS TO STEP IN AND SAY YOU CAN'T DO ANYTHING. YOU CAN'T PAY ANY EXPENDITURES. IF IT WERE THAT BAD, THE COURT WOULD NOT LET HER DO ANYTHING. AND AS MR. BOYD MENTIONED THE COURT FURTHER SAID, YOU HAVE TO DO THESE THINGS. SO, THE COURT ORDERED THE PERSONAL REPRESENTATIVE TO TAKE ACTION WHICH EVERYBODY KNEW WOULD BE DONE BY HER COUNSEL. SO, HOW CAN THE COURT ORDERS SAY SHE CAN DO SOME THINGS AND SHE'S GOT TO DO OTHER THINGS, BUT YET SHE CAN'T HIRE AND PAY AN ATTORNEY? IF IT WERE GOING TO BE THAT SPECIFIC, IT SHOULD HAVE BEEN CRAFTED SPECIFICALLY LIKE THAT IN THE ORDER. IT SHOULD HAVE

SAID THAT SHE CANNOT PAY HER ATTORNEY WITHOUT THE ATTORNEY SUBMITTING AN AFFIDAVIT FOR ATTORNEYS FEES. IT DOESN'T SAY THAT. IT'S VERY GENERAL. IT'S VERY GENERIC AND I WOULD NOT CONSTRUE IT AS SAYING SHE CAN'T HIRE AND PAY AN ATTORNEY. ACTUALLY, IF YOU LOOK AT THE SECTIONS 623715, PARAGRAPH 19, IT SAYS, "EMPLOYEE PERSONS INCLUDING ATTORNEYS." PARAGRAPH 20, IT SAYS, "PROSECUTE OR DEFEND CLAIMS OR PROCEEDINGS." THE PERSONAL REPRESENTATIVE HAS THAT POWER. THEN IN 623720, IT SAYS, "EXPENSES AND ESTATE LITIGATION IF ANY PERSONAL REPRESENTATIVE OR PERSON NOMINATED AS PERSONAL REPRESENTATIVE DEFENDS OR PROSECUTES ANY PROCEEDING IN GOOD FAITH..." WHICH WE CLEARLY HAVE HERE. "WHETHER SUCCESSFUL OR NOT, HE IS ENTITLED TO RECEIVE FROM THE ESTATE THE NECESSARY EXPENSES AND DISBURSE INCLUDING REASONABLE ATTORNEYS FEES INCURRED." YOUR HONOR, THE WAY THAT MR. TALL OPERATES, HE WANTS TO GET IN, HAVE

THE COURT SAY, "YOU CAN'T HIRE AN ATTORNEY OR PAY AN ATTORNEY." SO, HE RUNS UP THE FEES AND THEN YOU CAN'T DEFEND IT. HE USED THAT AS A TACTIC OR STRATEGY AND AS THE COURTS' PUBLIC RECORD, YOU WILL SEE ANOTHER CASE, THE PIPER CASE, WHICH WE HAD THE SAME THING HE TRIED IN THAT CASE. HE LOST ON SUMMARY JUDGMENT. THE JUDGE SAID, "WAIT A MINUTE. SHE DIDN'T BUY IT. WE'RE NOT GOING TO DO THAT." AND HE DIDN'T PREVAIL. IT'S A GOOD TACTIC THAT HE'S GOT, BUT YOU CAN'T... HE CAN'T FILE SOMETHING AND EXPECT TO RESTRAIN THE PERSONAL REPRESENTATIVE FROM DEFENDING THEMSELVES. AND AS YOU WILL SEE FROM THE TESTIMONY, THE PERSONAL REPRESENTATIVE HAS DONE NOTHING WRONG. SO, FOR HIM TO COME IN AND SAY FILE SOME MOTION... AND AS WE DISCUSSED BEFORE, HE FILES UNORTHODOX MOTIONS AS WELL.

JUDGE PADGETT: MR. DAVIS, I DON'T WANT TO... THIS IS GETTING PERSONAL AS Y'ALL DID THE LAST TIME IN MY OFFICE AND I'M NOT GOING TO PUT UP WITH THOSE KIND OF

ALLEGATIONS EITHER WAY. SO, I THINK I'VE HEARD ENOUGH ON THIS MOTION FOR SANCTIONS. I KNOW WHERE YOU'RE COMING FROM AND I KNOW WHERE MR. TALL'S COMING FROM. I THINK Y'ALL HAVE INTRODUCED ENOUGH STATUTORY LEGISLATION ON YOUR SIDE. AND MR. TALL HAS TOO, TO REPRESENT HIS CLIENT. I THINK IT'S TIME... UNLESS YOU WANT TO SUMMARIZE VERY CLEARLY WITHOUT ANY PERSONAL ATTACKS ANY FURTHER ON MR. TALL OR VICE/VERSA AND I'M NOT GOING TO HEAR FROM MR. TALL'S PERSONAL ATTACKS ON YOU GENTLEMAN. I WILL LET YOU SUMMARIZE VERY SHORTLY. ANYTHING ELSE YOU WANT TO TELL THE COURT?

MR. DAVIS: THANK YOU, YOUR HONOR. FOR THE RECORD, I WAS NOT INTENDING TO MAKE ANYTHING PERSONAL. I WAS SIMPLY PRESSING THE STRATEGY WHICH HE HAS TRIED ON US BEFORE, WHICH HAS BEEN SHOT DOWN BY THIS COURT. THE STATUTES, IN MY OPINION, ARE CLEAR THAT THE PERSONAL REPRESENTATIVE HAS AUTHORITY TO HIRE AND PAY AN ATTORNEY. IF MR. TALL WANTED TO

BE SPECIFICALLY RESTRAINED THAT IT SHOULD HAVE BEEN SPECIFICALLY SET FORTH IN AN ORDER. THE ORDER DOES NOT CLEARLY STATE THAT AND THE ORDER GOES ON TO REQUIRE THE PERSONAL REPRESENTATIVE TO TAKE ADDITIONAL ACTIONS AND RESERVES CERTAIN THINGS AS PERSONAL REPRESENTATIVE. SO, IT CLEARLY DOES NOT GO THAT FAR AS HE MENTIONED UNDER 623607. THANK YOU, YOUR HONOR.

JUDGE PADGETT: THANK YOU. THAT WILL END THE ARGUMENTS ON THE MOTION FOR SANCTIONS. I'M GOING TO TAKE THAT UNDER ADVISEMENT AND RESERVE IT UNTIL WE GET FINISHED WITH THIS DEMAND HEARING, IF I DON'T GRANT THE SUMMARY JUDGMENT MOTION. ARE YOU READY TO PROCEED ON THAT, MR. TALL?

MR. TALL: I AM, YOUR HONOR.

JUDGE PADGETT: GO RIGHT AHEAD.

MR. TALL: YOUR HONOR, I AM MAKING REFERENCE TO THE COUNTERCLAIMS THAT ARE CONTAINED. THERE ARE TWO OF THEM IN THE ANSWER FILED BY THE DEFENDANTS ON OCTOBER 25TH 2016. ESSENTIALLY, WE ARE

TALKING ABOUT THE COUNTERCLAIM FOR ABUSE OF PROCESS. THE SUGGESTED IS THAT THERE WAS NO GOOD REASON. IT WAS ABUSIVE AND HARMFUL FOR THE ESTATE FOR MS. IRVING TO BRING HER ACTION, WHICH RESULTED IN THE HEARING ON 27 MAY OF LAST YEAR AND CONTINUES. I HAVE HANDED UP, YOUR HONOR, THE 2014 CASE OF **ALIRAS VERSES SANAR**, SOUTH CAROLINA SUPREME COURT AND IT TALKS ABOUT THE ELEMENTS OF ABUSIVE PROCESS, WHICH I MAINTAIN, YOUR HONOR, DON'T EXIST HERE. YOUR HONOR, INSIDE THE COURT FILE IS AN INTERIM ACCOUNTING FROM THE ESTATE. AMONG THE THINGS THAT ARE SHOWN IN THE INTERIM ACCOUNTING ARE ATTORNEYS FEES IN THE AMOUNT OF $4,900.00 AND CHANGE. A SWORN STATEMENT BY THE PERSONAL REPRESENTATIVE. AS A RESULT OF SOME OF THE THINGS THAT MS. IRVING HAS DONE TO BRING LIGHT ON THIS ESTATE ADMINISTRATION, WE HAVE ATTORNEYS BILLINGS. MR. BOYD MADE REFERENCE TO THEM EARLIER. THE COURT ORDERED THEM TO BE FILED ON JUNE 3RD AND THEY WERE FILED IN THE MIDDLE OF JULY. WHEN YOU REVIEW

THE COURT BILLINGS THAT ARE IN THE COURT FILING, YOU WILL FIND ALMOST $18,000 OF ATTORNEYS FEES UP UNTIL SEPTEMBER OF 2015. I WANT TO STOP, AT THIS POINT, AND SAY, YOUR HONOR, MS. IRVING IS ALSO EMOTIONAL ABOUT THIS CASE. SHE LOST HER FATHER. HER FATHER LEFT OVER A MILLION DOLLARS WORTH OF ASSETS. DOES NOT LOOK LIKE MUCH OF IT IS BEING AVAILABLE FOR DISTRIBUTION NOW. BOTH PARTIES ARE GOING TO POINT FINGERS AT THE OTHER AND SAY, "IT'S YOUR FAULT." WE DON'T HAVE TO POINT TO MS. POAFPYBITTY AND CALL HER A VILLAIN. I DISAGREE WITH WHAT MR. DAVIS SAID EARLIER THAT IF YOU'RE USING 3607 OF THE CODE YOU HAVE TO SHOW THAT SOMEONE IS A VILLAIN. 3607 OF THE CODE TALKS ABOUT HOW IF THE COURT IS IMPRESSED FOR WHATEVER REASON THAT AN ACTION IS IN THE BEST INTEREST OF THE ESTATE THE COURT HAS AUTHORITY TO TAKE SOME ACTION. SO, TO SUGGEST THAT IF SOMEONE MAKES AN ARGUMENT WHICH IS COUNTER TO ANOTHER ARGUMENT THEY MUST BE SOME KIND OF SHARP PRACTITIONER OR IF

YOU'RE ASKING THAT A PERSONAL REPRESENTATIVE BE RESTRAINED BECAUSE YOU ARE NOT GETTING THE INFORMATION YOU HOPE TO GET. THAT YOU HAVE TO PAINT SOMEONE AS INHUMAN. THAT'S AN UNFORTUNATE ARGUMENT AND IT MEANS THAT NO ONE IS GOING TO COME FORWARD AND MEDIATE OR GET THINGS DONE BECAUSE EVERYBODY HAS TO TAKE SHOTS AT EACH OTHER. WE CAN LOOK AT THE FACTS. WE CAN LOOK AT THE FACTS THAT IN THE MOST RECENT PROPOSAL FOR A DISTRIBUTION TO END THIS ESTATE FILED ON 14 FEBRUARY.

MR. BOYD: IF I CAN INTERJECT, YOUR HONOR. ARE WE ARGUING THE MOTION FOR SUMMARY JUDGMENT ON OUR COUNTERCLAIM OR ARE WE ARGUING THE PRIOR MOTION OR SOMETHING ELSE?

JUDGE PADGETT: I WAS UNDER THE IMPRESSION THIS WAS A SUMMARY JUDGMENT MOTION ON THE COUNTERCLAIM.

MR. TALL: IT IS, YOUR HONOR.

MR. BOYD: WE WERE TALKING ABOUT THE PRIOR MOTION FOR A MOMENT. COUNSEL IS NOW GOING INTO HIS --

MR. TALL: I WILL BE HAPPY TO RESPOND TO ANY OBJECTION REGARDING RELEVANCE. IS THERE AN OBJECTION REGARDING RELEVANCE?

MR. BOYD: NO OBJECTION.

JUDGE PADGETT: GO AHEAD, MR. TALL.

MR. TALL: IN THE FINAL DISTRIBUTION PROPOSAL DATED FEBRUARY 14, WE NO LONGER HAVE A CROOKED PINE DRIVE PROPERTY VALUED AT $95,000.00. THE ESTATE, THE DEFENSE HAS RETURNED TO THE INVENTORY VALUE THAT WAS TWICE SWORN TO THE COURT. THEN FROM BENEFICIARIES POINTS OF VIEW, CUT IN HALF WHEN IT CAME TO DISTRIBUTIONS, BUT NOW HAS IT BEEN BECAUSE OF SOMETHING MS. IRVING HAS DONE? THE NEW PROPOSAL IS TO CALL THAT A RESIDENCE WHICH IS $191,200.00. MAYBE IT TOOK MS. IRVING EFFORTS TO ENGAGE REAL ESTATE APPRAISER, RUSSELL BURGESS WHO LOOKED AT THE $95,000.00 APPRAISAL PUT UP BY THE ESTATE AND SAY THAT THERE WERE ADJUSTMENTS MADE IN THAT APPRAISAL WHICH WERE INAPPROPRIATE. MAYBE IT TOOK MS. IRVING TO RESPOND TO THE ESTATE'S ASSERTION THAT MR. BURGESS DID NOT KNOW

WHAT HE WAS TALKING ABOUT BECAUSE HE NEVER GOT A CHANCE TO SEE THE INSIDE OF THE HOUSE. MAYBE IT TOOK MS. IRVING'S EFFORTS TO GET MR. BURGESS ON THE INSIDE OF THE HOUSE SO THAT HE COULD DO WHAT THE ESTATE SAID HE SHOULD'VE DONE. THEY HAD THE KEYS TO LET HIM DO IT. SO THAT WHEN HE PRODUCED AN APPRAISAL AND I'M TALKING ABOUT AN APPRAISAL WHICH IS FORWARDED TO THE COURT WITH MS. IRVING'S AFFIDAVIT THAT WAS RECENTLY PREPARED 27 JANUARY. IT'S IN THE COURT'S FILE AND I'M HAPPY TO HAND IT UP, YOUR HONOR.

JUDGE PADGETT: I THINK IT WAS FILED TODAY.

MR. TALL: SO, MY FIRST QUESTION TO THE DEFENSE IS MAYBE WE CAN CUT THIS SHORT. MAYBE I DON'T HAVE TO ARGUE ANY MORE BECAUSE THE DEFENSE HAS AGREED WITH US THAT, THAT PROPERTY DOES HAVE PROPER VALUE AND THAT THE ESTATE SHOULD BE CLOSE. MAYBE IT IS REASONABLE TO SHINE A FLASHLIGHT ON $18,000.00 WORTH OF FEES THAT WERE CALLED $4,900.00 WORTH OF FEES ON AN INTERIM ACCOUNTING. IF YOU LOOK

AT THE INTERIM ACCOUNTING FILED IN SEPTEMBER OF 2015, YOU WON'T BE ABLE TO TELL HOW MUCH MONEY IS IN THE BANK. YOU WON'T BE ABLE TO TELL THAT MS. POAFPYBITTY FOR WHATEVER REASON... I AM NOT SUGGESTING THAT SHE'S A VILLAIN. I DON'T HAVE TO DO THAT, BUT FOR THREE YEARS SHE LIVED IN A HOME AND HAD EVERY NICKEL OF INSURANCE, UTILITIES, REAL ESTATE TAXES OF THE PLACE THAT SHE USED HERSELF AS AN INDIVIDUAL. IT WAS NOT THE OFFICE OF THE PERSONAL REPRESENTATIVE THAT REQUIRED TO... IT WAS AN INDIVIDUAL RESIDENCE AND EVERY NICKEL ASSOCIATED WITH THAT SUPPORT CAME FROM THE ESTATE. COMES FROM SOMEONE WHO WANTS TO COME INTO COURT AND ASK YOU FOR $40,000.00 WORTH OF COMMISSION FOR DOING THE JOB OF THE PERSONAL REPRESENTATIVE WITH NO ACCOUNTABILITY FOR ALL OF THE VALUE THAT THE ESTATE SUPPORTED. AND SHE LIVED BY HERSELF IN THAT RESIDENCE WITH THE EXCEPTION OF A FEW MONTHS WHEN STEVEN ROTHGEB LIVED IN THE RESIDENCE. MAYBE THE ESTATE TODAY WILL SAY, YOU

KNOW WHAT WE'VE COME AROUND TO AGREEING WITH YOU SO MUCH MAYBE WE WILL WITHDRAW OUR COUNTERCLAIMS AGAINST JULIE IRVING. WHEN THE ESTATE SAYS WE'VE TRIED VERY HARD TO BE COOPERATIVE AND CLOSE THIS ESTATE DOWN. THERE IS NO NEED TO SEND MS. IRVING A SUMMONS AND SAY, YOU'VE ABUSED PROCESS. YOU HAVE BROUGHT YOUR ACTION FOR NO GOOD REASON. THERE IS NOTHING ASSOCIATED WITH WHAT YOU HAVE DONE IN COURT THAT ANYONE HAD ANY VALUE OF. THAT IS, YOUR HONOR, IN ESSENCE, ATTACKING THE ORDER THAT YOU ISSUED ON 13 JUNE. THAT THERE WERE SOME GOOD REASONS TO BRING AN ACTION SO, THAT THE COURT COULD ASSIST IN DOING WHAT THESE PARTIES THEMSELVES COULD NOT DO. AS IT RELATES TO THERE BEING FOUR BENEFICIARIES, I HAVE CERTAINLY BEEN IN A SITUATION WHERE I ASSISTED SOMEONE AND I WAITED TO GET MY ATTORNEYS FEES. IF YOU HEAR FROM MR. BOYD THERE IS NO SUCH THING AS HIM CONTINUING TO ASSIST MS. POAFPYBITTY UNLESS HE CURRENTLY GETS PAID. THE PLAIN LANGUAGE OF YOUR ORDER

IS THERE, YOUR HONOR. I'M NOT ARGUING THE SANCTIONS MATTER, BUT I AM ARGUING THE WAYS IN WHICH YOU BROUGHT TO THESE FOUR PARTIES AND SAID THERE IS SOME THINGS Y'ALL CAN DO AND THE COURT CAN ASSIST. AND THAT WAS BROUGHT FORWARD IN A CLOSING PROPOSAL BECAUSE MS. JULIE IRVING CAME TO COURT AND SAID, "I CAN'T GET STRAIGHT ANSWERS. I AM TREATED TO MISERIES. IT'S NOT FAIR TO ME, YOUR HONOR. PLEASE HEAR MY PLEA." THE COURT HEARD IT ON 27 MAY. I MAINTAIN THAT THERE WERE POSITIVE THINGS THAT ASSISTED EVERYBODY THAT CAME FROM YOUR ORDER. WE NOW HAVE MS. POAFPYBITTY AGREEING THAT SHE WAS MISTAKEN ABOUT A $95,000.00 APPRAISAL ON THE PROPERTY. WHAT IN THE WORLD HAS MS. IRVING DONE ASSOCIATED WITH ALL OF THE ELEMENTS THAT YOU HAVE TO BRING WHEN YOU SAY SOMEONE HAS ABUSED PROCESS. WE ASK FOR SUMMARY JUDGMENT, YOUR HONOR, ON THE MATTER OF THE COUNTERCLAIM.

JUDGE PADGETT: THANK YOU, MR. TALL. MR. BOYD.

MR. BOYD: YOUR HONOR, I WILL DISAGREE WITH MR. TALL ON THIS. WE DON'T REJECT THE CROMARTIE APPRAISAL ON THE CROOKED PINE PROPERTY THAT WAS DONE AT THE REQUEST OF MS. IRVING THROUGH MR. SCOVILLE. WE DON'T IN ANY WAY OBJECT OR BACK AWAY FROM THE OUTSET, YOUR HONOR. WE ASKED... MY OFFICE ASKED MR. CROMARTIE TO PREPARE THOSE APPRAISALS FROM THE PROPERTIES THAT MR. SCOVILLE REQUESTED. WE DIDN'T INSTRUCT HIM ON HOW TO DO IT AND WHEN TO DO IT, WHICH ONES TO GO HIGH, WHICH ONES TO GO LOW. WE DIDN'T TELL HIM ANYTHING. WE JUST SAID THAT THE ESTATE BENEFICIARIES HAVE REQUESTED THESE APPRAISALS AND THAT'S WHAT WE WANTED. WE SENT MR. TALL... A COPY OF IT IS IN THE FILE. AN OFFER IN LIEU OF JUDGMENT OFFERING FOR THE PETITIONER TO TAKE THE CROOKED PINE PROPERTY AT THE EVALUATION THAT SHE SEEMS TO BELIEVE IS THE PROPER EVALUATION, WHICH IS THE FIRST EVALUATION SUBMITTED BY THE ESTATE BASED ON THE TAX --

JUDGE PADGETT: IS THIS YOUR OFFER FOR JUDGMENT, YOU SAID?
MR. BOYD: YES, YOUR HONOR.
JUDGE PADGETT: THAT'S NOT REALLY FOR ME TO CONSIDER.
MR. BOYD: I UNDERSTAND. BUT IT'S --
JUDGE PADGETT: SO, LET'S DON'T TALK ABOUT THAT. I'M NOT EVEN SUPPOSED TO LOOK AT THAT UNTIL AFTER THE END OF THE TRIAL AND DECIDE ABOUT WHETHER ATTORNEYS FEES ARE GOING TO BE ALLOCATED.
MR. TALL: YOUR HONOR, IS THERE ANY OBJECTION HERE? HAVE WE NOT HEARD FROM THE PERSONAL REPRESENTATIVE WHO HAS AN OBLIGATION TO THE COURT TO VALUE PROPERTY? CAN WE NOT STIPULATE THAT THE PERSONAL REPRESENTATIVE HAS NOW AGREED?
JUDGE PADGETT: THAT'S ONE OF THE THINGS THAT I WAS GOING TO ASK MR. BOYD WHEN HE FINISHED BECAUSE AS I UNDERSTAND IT A NEW PROPOSAL OR AMENDED DOCUMENTS TO CLOSE THE ESTATE WAS SUBMITTED, AS I UNDERSTAND IT, ON THE 14TH OF FEBRUARY MAYBE TO MR. TALL AND COPIES FILED ON THE 15TH OF FEBRUARY, IS THAT CORRECT?

MR. BOYD: THAT IS CORRECT, YOUR HONOR. THE COURT ORDER PROVIDED THAT WE WOULD UPDATE THE PROPOSALS FOR CLOSING THE ESTATE PRIOR TO THESE HEARINGS. MS. WEAVER, OUR PROBATE PARALEGAL, WAS WORKING ON THAT. SHE'S BEEN OUT OF THE OFFICE QUITE A BIT WITH SOME MEDICAL ISSUES. SO, WE WERE A LITTLE BEHIND WITH THE TIME LINE SET BY THE COURT, BUT WE WERE ORDERED TO DO THAT BY YOUR HONOR'S ORDERS.

JUDGE PADGETT: AND THE EVALUATION GIVEN TO THE CROOKED PINE PROPERTY WAS WHAT ON YOUR RECENT FILE? WAS IT THE $191,000.00?

MR. BOYD: THE ADJUSTED APPRAISAL VALUE, YOUR HONOR, ON CROOKED PINE IS $118,000.00.

JUDGE PADGETT: 118?

MR. DAVIS: MAY IT PLEASE THE COURT, YOUR HONOR. THE CLOSING DOCUMENTS RECENTLY SUBMITTED... I HAVE A LOG ON THIS INFORMATION HERE. LET'S SEE. THE ARGUMENT THAT MS. IRVING HAS MADE IS THAT THE CROOKED PINE PROPERTY IS WORTH

$193,900.00. THAT'S THE APPRAISER FROM MR. BURGESS. THAT'S NOT CONSISTENT WITH THE APPRAISAL FROM MR. CROMARTIE. SO, IT APPEARED THAT WAS A PROPERTY THAT WAS THOUGHT VERY HIGHLY OF. SO, IN AN EFFORT TO JUST TAKE CARE OF THINGS AND RESOLVE THIS WHOLE MATTER, AS YOU WILL SEE IN THOSE CLOSING DOCUMENTS, MS. POAFPYBITTY TOOK TWO PROPERTIES HERSELF, WHICH DID NOT INCLUDE THAT RESIDENCE AND GAVE ALL THE PROPERTIES, THE REST OF THEM EQUALLY TO ALL THREE BENEFICIARIES. AND, YES, THAT IS WHAT MS. IRVING BELIEVES THE PROPERTY IS WORTH AND THAT IS THE PROPERTY VALUE ATTRIBUTED TO IT. AND IT WILL BE DISTRIBUTED TO THE THREE KIDS. IN ESSENCE, AS YOU WILL SEE IN THE TESTIMONY AND IT HAS BEEN MENTIONED HERE, MS. POAFPYBITTY HAS BEEN SO DISTRAUGHT, SHE'S JUST THROWING UP HER HANDS AND SAYING APPARENTLY, "THEY WANT THE RESIDENCE. JUST GIVEN IT TO THEM." IT'S THAT BAD, YOUR HONOR. IT REALLY IS THAT BAD.

JUDGE PADGETT: ALRIGHT. BUT AS I

UNDERSTAND IT ON YOUR ACCOUNTING, AMENDED ACCOUNTING PARAGRAPH 12, THAT'S THE DEERFIELD LOT 408?

MR. DAVIS: YES, YOUR HONOR.

JUDGE PADGETT: YOU'VE GOT IT APPRAISED AT... OR AT LEAST, THE SUBMITTED VALUE IS IN EXCESS IS 191,200.00, IS THAT CORRECT?

MR. DAVIS: I BELIEVE WE AGREED ON THE THIRD, TOGETHER 193. SO, WE TAKE THOSE... THE PROPOSAL FOR DISTRIBUTION AND YOU'VE GOT... ADD THE 2700 UNDERNEATH IT. IT'S THE INCREASE WHICH WOULD BRING IT TO 193.

JUDGE PADGETT: INCREASE FROM WHAT?

MR. DAVIS: IF YOU LOOK AT THE... LOOK AT ALL OF THEM, YOUR HONOR.

JUDGE PADGETT: THE INCREASE FROM THE LAST ONE YOU FILED?

MR. DAVIS: INCREASE IN VALUATION. IF YOU LOOK, WE DID THAT ON ALL THE PROPERTIES. WE ORIGINALLY HAD INVENTORY BASED ON THE TAX AMOUNT VALUE. THEN THEY ARE ALL APPRAISED AND THOSE AMOUNTS WERE ADJUSTED ON THE CLOSING DOCUMENTS

HERE. SO, IT SHOWS THAT. THIS IS SIMPLY SHOWING THAT ADJUSTMENT BASED ON WHAT, YOU KNOW, THEY... THEY APPARENTLY WANT THE PROPERTY. THEY BELIEVE IT'S WORTH THAT AMOUNT. SO, THAT'S THE AMOUNT THAT WE'RE GIVING TO THEM.

JUDGE PADGETT: BUT YOU INITIALLY HAD FILED ANOTHER INVENTORY DECREASING THE VALUE OF THIS PARTICULAR PIECE OF PROPERTY SOMETIME --

MR. DAVIS: THE INITIAL ONE, BACK IN JUNE, BASED ON THE CROMARTIE APPRAISAL. AS WE TALKED ABOUT IN CHAMBERS, THE FEAR WAS THIS, YOUR HONOR. I WAS CONCERNED THAT MR. TALL WAS GOING TO CHERRY PICK ONE PROPERTY AND IT WOULD NOT BE RELEVANT TO THE OTHER PROPERTIES. I SAW THIS ISSUE COMING IF YOU REMEMBER IN CHAMBERS. WE TALKED ABOUT THIS. I SAID HE'S GOING TO HAVE MR. BURGESS APPRAISE THAT ONE PROPERTY. WE NEED TO APPRAISE ALL THE PROPERTIES TO SEE IF WE'RE DEALING WITH APPLES TO APPLES OR ORANGES TO ORANGES. ONE THING WE SENT TO MR. TALL THAT THE COURT REALLY NEEDS TO

UNDERSTAND --

MR. TALL: I'M GOING TO OBJECT, YOUR HONOR. IF WE'RE GOING TO HAVE SOME TESTIMONY HERE --

MR. DAVIS: THIS WAS EVER --

MR. TALL: I HAVE AN OBJECTION, YOUR HONOR.

JUDGE PADGETT: WHAT?

MR. TALL: THERE WAS EVERY OPPORTUNITY TO PUT IN WHATEVER THEY WANTED TO IN SOME KIND OF A AFFIDAVIT SO THAT WE'RE NOT PUT IN A SITUATION WHERE I COULD SAY, "I WISH I COULD CROSS-EXAMINATION THAT GENTLEMAN." THE CASE IS FULL OF THIS, YOUR HONOR. WHAT ARE WE DOING?

JUDGE PADGETT: I AM GOING TO DENY THE MOTION FOR SUMMARY JUDGMENT AS TO THE COUNTERCLAIM, UNLESS YOU WITHDRAWN IT. THEN I WILL CONSIDER ALL OF IT. I WANT TO HEAR ALL OF THE TESTIMONY AND I WANT TO HEAR EVERYBODY THAT WANTS TO TESTIFY OR TO BE CROSS-EXAMINED BY EITHER PARTY, I'M GOING TO HEAR IT. AND THEN SOMEBODY IS NOT GOING TO LIKE MY DECISION. Y'ALL ALL UNDERSTAND THAT?

MR. DAVIS: WE UNDERSTAND, YOUR HONOR.
JUDGE PADGETT: I'M VERY DISAPPOINTED, AS I TOLD YOU IN MY CHAMBERS, WITH THE ATTITUDE ON BOTH SIDES IN THE RESOLVING OF THIS ESTATE. THIS GENTLEMAN DIED IN JANUARY 2014. HERE WE ARE IN FEBRUARY OF 2017, WHERE THE WILL ITSELF SAYS THAT HE APPOINTED HIS WIFE AS THE PERSONAL REPRESENTATIVE AND THAT EVERYTHING WAS TO BE DIVIDED EQUALLY AS COULD BE DONE. ONE FOURTH SHARE FOR HIS THREE CHILDREN AND ONE FOURTH SHARE TO HIS WIFE. AND WE ARE STILL HERE ARGUING ABOUT HOW TO DISTRIBUTE IT AND THERE HAS BEEN... AND I HAVEN'T LOOKED AT IT THAT CLOSELY AT THAT POINT, BUT THERE'S BEEN SOMEWHERE OVER $50,000.00 IN ATTORNEYS FEES SPENT. AND ONCE WE HEAR ALL THE TESTIMONY THAT'S GOING TO BE PRESENTED, I'M GOING TO ALLOCATE WHETHER THAT WAS PROPER OR WHETHER THERE'S MORE THAT NEEDS TO BE PAID OR WHETHER THAT'S WAY TOO MUCH AND SOMEBODY'S GOING TO PAY THE PRICE FOR THAT.
MR. DAVIS: YOUR HONOR, IT WARMS MY

HEART TO HEAR YOU SAYING THAT.
JUDGE PADGETT: WELL, WE ARE GOING TO GET --
MR. DAVIS: I HAVE ABSOLUTELY BEEN SCREAMING THAT FOR MONTHS. THIS HAS DRIVEN ME CRAZY WITH ALL THE STUFF WE HAVE DONE. WE'RE GOING TO SHOW YOU IN COURT TODAY WHY WE BELIEVE... THIS IS A TRIBUTE TO MR. TALL, AS I MENTIONED TO YOU IN CHAMBERS. IT WARMS MY HEART TO HEAR YOU SAY THAT BECAUSE I SHARE YOUR FRUSTRATION. WE HAVE A STRONGER FRUSTRATION THAN YOU DO, YOUR HONOR. THIS COULD HAVE BEEN RESOLVED A YEAR AGO OR MORE AND IT WAS --
JUDGE PADGETT: THAT'S THE PROBLEM. IT WAS RESOLVED ACCORDING TO YOUR POSITION VERSES WHAT THEY THINK. AND THAT'S WHAT THE COURTS ARE FOR TO HEAR BOTH SIDES OF THE ISSUE AND THEN ARRIVE AT A SOLUTION THAT BOTH PARIES HAVE TO LIVE WITH, AT LEAST, UNTIL THE APPEAL.
MR. DAVIS: YOU'RE EXACTLY RIGHT, YOUR HONOR. AND THE ONE THING WE HAVE TO GO BY, THE ONLY THING THAT THE COURT AND

THE ATTORNEYS HAVE TO GO BY, IS THE MAIN THING, IS THE WILL. WHAT THE PERSONAL REPRESENTATIVE DID IS EXACTLY WHAT THE WILL TOLD HER TO DO. EXACTLY, NOT SORT OF EXACTLY. SHE DID EXACTLY WHAT THE WILL SAID TO DO. IT JUST HAPPENED THAT MS. IRVING WAS NOT HAPPY WITH THAT, BUT SHE DID WHAT THE WILL TOLD HER TO DO. THERE'S NO WAY --

JUDGE PADGETT: THAT'S FOR ME TO DECIDE IF SHE DID IT ACCORDING TO THE WILL. DO Y'ALL WITHDRAW YOUR COUNTERCLAIM OR NOT?

MR. BOYD: YOU HAVE ALREADY ADMITTED THAT YOU HAVE DENIED THE SUMMARY JUDGMENT. I THINK THE ADVISABLE THING IS JUST TO HOLD EVERYTHING IN ABEYANCE. YOUR HONOR, I THINK WHAT THIS CASE COMES DOWN TO IN THE END IS, YOUR HONOR, IS GOING TO HAVE TO LOOK AT THE TOTALITY OF THE CIRCUMSTANCES AND APPORTION THE FEES AS, YOUR HONOR, DEEMS APPROPRIATE.

JUDGE PADGETT: I THINK YOU'RE RIGHT. ANYTHING FURTHER, MR. TALL?

MR. DAVIS: YOUR HONOR, I NEED TO CLARIFY ONE THING. YOU ASKED A QUESTION

AND I NEED TO GIVE YOU THE FULL ANSWER. YOU SAID THE EVALUATION OF THAT PROPERTY WE USED WAS 193,9 AND THEN WE REDUCED IT BY THE OUTSTANDING MORTGAGE. I JUST WANT TO CLARIFY THAT.

JUDGE PADGETT: OKAY. VERY GOOD. ALRIGHT GOOD.

MR. BOYD: YOUR HONOR, ONE LAST ONE, YOUR HONOR. WE DON'T TODAY THINK THE CROMARTIE APPRAISAL AT CROOKED PINES WAS A BAD APPRAISAL. AGAIN, WE... IF OTHER PEOPLE WANT THE PROPERTY AT THEIR EVALUATION, IF THEY THINK OUR EVALUATION IS WRONG, LET THEM HAVE IT. SO YOU HAVE TO CONSIDER THE CHANGES AND THE DISTRIBUTION AS WELL.

JUDGE PADGETT: LIKE I TOLD Y'ALL IN CHAMBERS SOMETIME BACK, THIS MATTER COULD HAVE BEEN RESOLVED COMPLETELY BY PUTTING EVERYTHING UP AND SELLING IT AND DIVIDING THE MONEY AND IT WOULD HAVE SAVED A TREMENDOUS AMOUNT OF EFFORT.

MR. DAVIS: WE TRIED THAT, YES, YOUR HONOR.

JUDGE PADGETT: THAT'S WHAT I WANT TO

HEAR FROM BOTH SIDES.
MR. TALL: YOUR HONOR, I DID NOT REALIZE THAT I HAD THAT MUCH AUTHORITY. A PERSONAL REPRESENTATIVE HAS AN OBLIGATION TO THE COURT TO TELL THE COURT WHAT SHE THINKS THE VALUE IS.
JUDGE PADGETT: ABSOLUTELY.
MR. TALL: IF SHE THROWS UP HER HANDS, SHE'S SAYING SHE'S NOT DOING HER JOB AS PERSONAL REPRESENTATIVE. SHE FILES SOMETHING SHE TELLING US WHAT SHE THINKS HER VALUES ARE.
JUDGE PADGETT: ABSOLUTELY. ALRIGHT. ALL MOTIONS HAVE BEEN DEPOSED OF AT THIS POINT. ARE WE READY TO PROCEED?
MR. TALL: CAN WE TAKE A FEW MOMENTS?
JUDGE PADGETT: CERTAINLY.
(DISCUSSION OFF THE RECORD.)
JUDGE PADGETT: ARE WE READY TO PROCEED?
MR. TALL: THANK YOU, YOUR HONOR, YES. I WILL START WITH SOMETHING I THINK THE OTHER SIDE WOULD LIKE TO HEAR. I ACKNOWLEDGE I HAVE A BURDEN OF PROOF. I ACKNOWLEDGE THAT I HAVE A BURDEN OF PROOF. DR. ROTHGEB PASSED AWAY AND LEFT

A WILL AND HE LEFT HIS WIFE AS THE PERSONAL REPRESENTATIVE AND TO THE EXTENT THAT SHE HAS COME FORWARD WITH A PROPOSAL THAT MY CLIENT, ON BEHALF OF HERSELF AND HER BROTHERS, THERE'S PLEADINGS IN THE FILE THAT INDICATE THAT HER BROTHERS, ALTHOUGH NOT HERE, ARE SUPPORTIVE OF WHAT SHE IS ATTEMPTING TO DO. SHE HAS AN OBLIGATION TO COME FORWARD AND SAY TO THE COURT THERE ARE REASONS WHY THE PROPOSALS OF THE PERSONAL REPRESENTATIVE, YES. THAT PERSON WHO WAS SELECTED BY MY FATHER, THERE'S SOMETHING ABOUT THEM THAT I NEED THE COURT TO KNOW SO THAT WE HAVE SOME FAIRNESS. THAT'S WHAT SHE HAS ATTEMPTED TO DO. I DON'T KNOW HOW OFTEN THE COURT GETS A FEELING LIKE THIS FROM EACH SIDE, EACH ONE IS SAYING, "WE HAVE THE HIGHER GROUND." "NO. WE HAVE THE HIGHER GROUND." MAYBE THAT'S COMMON IN A LITIGATED MATTER. I DON'T KNOW THAT IT GETS TO THE POINT WHERE EVERYBODY HAS TO BE A VILLAIN IF THEY TAKE A DIFFERENT POSITION. WE DO NOT TAKE THAT POSITION

WITH REGARD TO MS. JENE. MS. JENE IS LISTED AS A BENEFICIARY FOR A QUARTER SHARE OF THE ESTATE. MS. JENE DID NOT DO WHAT SHE COULD, WHICH IS TO FILE A PETITION TO TAKE A ONE-THIRD SHARE OF THE ESTATE, AN ELECTED SHARE OF THE SPOUSES. I EXPECT THE OTHER SIDE WANTS THE COURT TO KNOW THAT, I THINK IT'S BEEN BROUGHT UP PREVIOUSLY, IT HASN'T GONE OUT OF OUR RECOGNITION, THAT IF SHE WANTED TO SHE COULD HAVE FILED A PETITION FOR AN ELECTIVE SHARE. THIS ESTATE DIDN'T HAVE A LOT OF ASSETS THAT WERE LIQUID AT THE TIME OF PASSING. MS. JENE HAD A $63,000.00 ACCOUNT THAT HAD BEEN ESTABLISHED WITH THE RIGHT OF SURVIVORSHIP. MADE THAT AVAILABLE ACCORDING TO THE ACCOUNTINGS FOR ESTATE ADMINISTRATION. THE ESTATE DID HAVE INCOME FROM RENTS. DR. ROTHGEB WAS SOMEONE WHO TOOK HIS INVESTMENTS SERIOUSLY AND LIKED REAL ESTATE. APPARENTLY, OVER A MILLION DOLLARS WORTH OF VALUE. THERE'S SOME MORTGAGES, NOT LARGE, BUT SIGNIFICANT THAT HE LEFT

BEHIND. AND THE IDEA IS TO SELL A PROPERTY HERE OR THERE THAT PRODUCED SOME INCOME, THAT PRODUCED SOME LIQUIDITY. AND EVENTUALLY, MS. JENE WAS PAID BACK WHAT SHE CONSIDERED TO BE A LOAN TO THE ESTATE, THAT RIGHT OF SURVIVORSHIP ACCOUNT. MAYBE THE THREE CHILDREN WERE SEEN AS VILLAINS BECAUSE THEY ASKED TO BE INFORMED ABOUT THAT RIGHT OF SURVIVORSHIP ACCOUNT WHICH WAS ASSOCIATED WITH THEIR FATHER'S VETERINARIAN PRACTICE. IT WASN'T AT ALL CLEAR TO THEM IN THE BEGINNING THAT WHAT COULD HAVE BEEN IN HIS BUSINESS ACCOUNT WAS, IN FACT, A JOINTLY HELD RIGHT OF SURVIVORSHIP ACCOUNT. ALL OF US, LIKE PENCILS WITH ERASERS ON THEM, WE MAKE MISTAKES. I THINK THE OTHER SIDE IN SPITE OF THEM SUGGESTING THAT I'M A SHARP PRACTITIONER AND I'VE TRIED THINGS AND I'M A LAWYER WHO MAKES CREATIVE ARGUMENTS. MAYBE THEY'LL AGREE THAT A PART OF FIDUCIARY DUTY IS TO HAVE AN OPEN LINE OF COMMUNICATION. HOW WELL WAS THAT COMMUNICATED TO THE

BENEFICIARIES, THAT THE MONEY THAT DAD LEFT IN HIS BUSINESS WAS ACTUALLY A RIGHT OF SURVIVORSHIP ACCOUNT AND AT SOME POINT IT GETS PAID BACK? HOW WELL WAS IT COMMUNICATED THAT THE IDEA IS WE SELL SOME OF THE PROPERTIES, GET SOME LIQUIDITY AND PAY OFF THE MORTGAGES? HOW WELL WAS IT COMMUNICATED THAT IT ONLY SEEMS RIGHT SINCE THIS IS THE MARITAL RESIDENCE THAT NUMBER ONE, IT COMES TO THE PERSONAL REPRESENTATIVE AND NUMBER TWO, THAT THE MORTGAGES AND THE INSURANCE AND THE TAXES AND THE UTILITIES ALL GET PAID OUT OF THE ESTATE BECAUSE THAT'S WHAT MY HUSBAND MIGHT HAVE WANTED TO DO. A MOMENT AGO WE HEARD THAT THE PERSONAL REPRESENTATIVE ONLY DID WHAT THE WILL TOLD HER TO DO. THE WILL IS SILENT ON WHO PAYS YOUR INSURANCE BILL, YOUR CABLE BILL, YOUR UTILITIES BILL, YOUR REAL ESTATE TAX BILL WHEN YOU'RE IN A RESIDENCE. MAYBE THERE WAS ROOM FOR THE THREE CHILDREN TO BE GENEROUS AND SAY, "WELL, IT'S ONLY GOING TO BE OPEN FOR A SHORT PERIOD OF

TIME". STEVEN ROTHGEB IS ONE OF THE PEOPLE LIVING IN THE HOME. MATT ROTHGEB HAS GOT A RESIDENCE THAT DAD HAD FOR HIM AND WE'RE NOT CHARGING HIM ANY RENT. MAYBE THERE WAS ROOM FOR THE THREE CHILDREN TO BE A LITTLE GENEROUS IN THAT REGARD. MAYBE THERE WAS ROOM FOR GREATER COMMUNICATION. I BELIEVE THAT THE DEFENDANTS ARE MISTAKEN WHEN THEY SUGGEST TO THE COURT THAT ONLY DOES A COURT INTERVENE WHEN THEY FIND THAT SOMEONE HAS DONE SOMETHING CLOSE TO CRIMINAL OR HAS BECOME A LARGE VILLAIN. OTHERWISE, THE COURT LEAVES THINGS ALONE. I DID SOME RESEARCH ON THE ISSUE OF SPOILED RELATIONSHIPS BETWEEN THE TRUSTEE AND THE BENEFICIARY. IT'S AN INTERESTING CASE I THOUGHT I FOUND. I REJECTED ALL THE CALIFORNIA AND MASSACHUSETTS CASES.

JUDGE PADGETT: THE COURT APPRECIATES THAT.

MR. TALL: WHAT THE AMERICAN LAW REVIEW DOES HAVE IS AN INTERESTING TENNESSEE CASE. IT SAID THAT THE WOMAN... I'VE

GOT THE CASE I WILL SEND IT UP, BUT THIS IS MY OPENING ARGUMENT. IT SAID A PERSON WHO IS DOING... THE PERSONAL REPRESENTATIVE WAS DOING A FAIRLY GOOD JOB IN TERMS OF EXTENSIVELY HOW IT WAS GOING, BUT THE RELATIONSHIP BETWEEN THE BENEFICIARY AND TRUSTEE WAS SO STRAINED THAT THE COURT NONETHELESS INTERVENED AND REMOVED THE TRUSTEE IN THAT SITUATION BECAUSE IT LOOKED AS THOUGH THE RACE, THE PRINCIPAL OF THE TRUST... THERE'S A FAMOUS DICKENS NOVEL CALLED, BLEAK HOUSE AND IN THE END THOSE NICE PEOPLE WON, BUT WHERE WAS ALL THE MONEY? IN THE LAWYER'S POCKETS. AND IN RECOGNITION PERHAPS OF CHARLES DICKENS, I'M A FAN. YOU MIGHT NOTE THE PHRASE, "CRY UNCLE". THAT COMES FROM DAVID COPPERFIELD. THE UNCLE WAS LOOKING FOR THE NIECE THAT HAD GONE TO AUSTRALIA AND HE SAYS, "I AM JUST WAITING FOR THE DAY WHEN I CAN HEAR HER CRY UNCLE." THAT CASE FROM TENNESSEE, I LOOKED AT IT AND I SAID, OH, MY GOSH, IT'S A 101 YEAR OLD CASE, 1916. I DON'T KNOW IF WITH THE

NEW SYSTEM WE STILL CALL IT SHEPHERDIZING. WE DID SOME SHEPHERDIZING. AND SON OF A GUN, THAT 1916 CASE IS QUOTED IN A PAWLEY'S ISLAND 2005 CASE CALLED FLOYD VERSUS FLOYD. AND IT SAYS THERE'S ROOM FOR COURT INTERVENTION EVEN WHEN THE FIDUCIARY IS NOT AVAILABLE. MAYBE THERE WERE EMOTIONS. MAYBE THERE WAS ADVICE THAT SAYS, "YOU STAND YOUR GROUND BECAUSE A COURT CAN'T DO ANYTHING TO YOU UNLESS YOU'RE A VILLAIN AND YOU'RE NOT A VILLAIN, YOU'RE A NICE PERSON." THEREFORE, THE OTHER SIDE IS VILLAINOUS BY ATTACKING YOU. SO, THE PERSONAL REPRESENTATIVE SAYS, "I'M JUST GOING TO DO... I GOT AN APPRAISAL." WE'VE HEARD MANY TIMES, INCLUDING THIS MORNING, THOSE NEW APPRAISALS TWO YEARS AFTER, A YEAR AND A HALF AFTER DR. ROTHGEB PASSED AWAY. WELL, THAT WAS JULIE IRVING'S IDEA. AND IT'S FOLLOWED, UNFORTUNATELY, BY SOMETHING THAT'S NOT. SO THE COURT HAS SEEN THE DOCUMENT AND WE WILL PROBABLY SEE IT AGAIN TODAY. IF THE

APPRAISERS TELL US WHAT THE VALUES OF THE PROPERTY IS NO ONE HAS AN OPPORTUNITY TO QUESTION THE APPRAISALS. EVERYONE WILL BE BOUND BY THE APPRAISER'S OPINION. WHY WOULD THE ESTATE SUGGEST SOMETHING LIKE THAT WHEN THAT WAS NOT WHAT THE AGREEMENT IS. YOU CAN LOOK AT THE LETTER FROM MR. SCOVILLE AND IT SAYS, "I THINK IT'S A WISE THING." WE'VE HAD A PERIOD OF TIME SINCE DR. ROTHGEB PASSED ON AND THERE HAVEN'T BEEN ANY FORMAL APPRAISALS. WHY DON'T WE GET SOME. IT DOES SAY, BY THE WAY, IN THAT LETTER IT'S UNFORTUNATE THAT THE PERSONAL REPRESENTATIVE HAS DECIDED THAT SHE WILL TAKE THE MARITAL HOME AND THERE'S NO ARGUMENT ABOUT THAT. THAT'S THE MARITAL HOME THAT SHE NO LONGER WANTS, ACCORDING TO THE LETTER OF FEBRUARY 14TH. THIS PAWLEY'S ISLAND CASE OF FLOYD VERSES FLOYD, AMONG MANY OTHER THINGS, IT'S A VERY LONG CASE, BUT IT GIVES AMISH TO THIS CASE FROM TENNESSEE, WHICH SAYS UNDER THE RIGHT CIRCUMSTANCES A COURT HAS TO INTERVENE

AND MAYBE IT'S NOT BECAUSE EVERYBODY'S EVIL AND EVERYBODY NEEDS TO GO TO JAIL AND EVERYBODY NEEDS TO BE SANCTIONED AND SILENCED, BUT THAT THE MIXTURE, THE RELATIONSHIP HAS BECOME SO SOURED. CONSIDER, IF YOU WILL, YOUR HONOR, IN CONNECTION WITH OUR MOTION IN OCTOBER OF 2016 THE PERSONAL REPRESENTATIVE FOR SOME REASON FEELS A NEED TO TELL THE COURT THAT THE ESTATE COULD NOT EVEN FILE ITS INCOME TAX RETURNS BECAUSE OF THE CONDUCT OF JULIE IRVING. SHE WILL TAKE THE STAND IN A MOMENT. LATE MARCH OF 2016 IS THE FIRST TIME SHE GETS WORD THAT SOMEONE WANTS HER SOCIAL SECURITY NUMBER AND THIS IS AFTER THERE ARE SOME SUSPICIONS BACK AND FORTH. AND POLITELY, I SUBMIT TO YOU, YOUR HONOR, SHE SAYS, "WHY DO YOU NEED THAT? WHAT KIND OF TAX RETURN ARE WE TALKING ABOUT?" AND YOU CAN SEE, YOUR HONOR, FROM A DOCUMENT THAT WENT TO THE CPA'S OFFICE TO THE ESTATE LAWYER'S OFFICE THAT SAYS, THIS IS CALLED A 1041 AND IT WILL RESULT POTENTIALLY IN A FORM THAT

WILL PUSH INCOME OR LOSSES ONTO INDIVIDUALS. IT'S LIKE A 1099 OR A W-2 THAT SOMEONE MIGHT GET. AND WHEN JULIE IRVING, WHO RUNS AN EXTREMELY ACTIVE BUSINESS IN VIRGINIA WAS ASKED FOR THE POTENTIAL OF PARTICIPATING IN SOMETHING THAT WOULD RESULT IN THE FILING OF A PERSONAL INCOME TAX RETURN AND SHE SAID SOMETHING ALONG THE LINES OF, "MAYBE I'M A NERD, BUT I GET MY TAX RETURNS IN ON TIME. YOU'RE CONTACTING ME ON 31 MARCH. MY INCOME TAX RETURNS ARE ALREADY DONE. IS THIS SOMETHING THAT WILL REQUIRE ME TO AMEND MY TAX RETURNS?" AND A BUSINESS PERSON WHO HAS A LOT OF EMPLOYEES AND A LOT OF ACTIVITY IS UNDERSTANDABLY NERVOUS ABOUT EITHER FILING LATE, FILING AN EXTENSION OR AMENDING YOUR INCOME TAX RETURN. AND POLITELY SHE COMMUNICATED THAT TO THE ESTATE. THE ESTATE TOOK MONTHS AND DID NOT RESPOND. WOW! WE GOT IT AFTER THE DOCUMENT REQUEST. WHAT A LOVELY LETTER FROM THE CPA THAT SAYS, "LET ME EXPLAIN WHAT THIS IS ALL ABOUT." COULDN'T THAT

MAYBE BE AN OVERSIGHT? I DON'T KNOW. MAYBE SOMEONE WASN'T WELL. TAKE THE CPA'S LETTER AND GIVE IT TO MRS. IRVING AS IT TURNED OUT IN 2016. IF THIS ISSUE WAS HANDLED PROPERLY, THIS IS FEBRUARY NOW OF 2017. WHAT WAS WRONG IN JANUARY OR FEBRUARY OF 2016 TO TELL THE BENEFICIARIES YOU MIGHT WANT TO HOLD OFF ON YOUR PERSONAL INCOME TAX RETURN. OH, MY GOSH, MR. TALL, ARE YOU DICTATING WHAT THE PERSONAL REPRESENTATIVE NEEDS TO DO? EVERYONE MISSED OUT ON A $25,000 DEDUCTION ON THEIR PERSONAL INCOME TAX RETURN. AND I SUBMIT TO THE COURT THAT IF THERE WAS REASONABLE COMMUNICATION BETWEEN THE CPA'S OFFICE AND THE ATTORNEY'S OFFICE, THE ATTORNEY'S OFFICE AND THE PERSONAL REPRESENTATIVE, A VERY POLITE LETTER WOULD BE SENT TO EACH BENEFICIARY IN JANUARY OR FEBRUARY OF LAST YEAR THAT SAYS, "LET US EXPLAIN TO YOU WHAT'S HAPPENING. YOU MIGHT WANT TO HOLD OFF ON PREPARING YOUR PERSONAL INCOME TAX RETURN BECAUSE WE HAVE A GIFT FOR YOU."

MR. DAVIS: YOUR HONOR, I OBJECT. HE MADE A STATEMENT THAT HE NEEDS TO CLARIFY. THERE'S APPARENTLY A 100,000 DEDUCTION THAT WAS NOT TAKEN. HE NEEDS TO INDICATE THAT OR SHOW THAT TO THE COURT. HE JUST SAID THAT AND WE NEED MORE INFORMATION THAN THAT.

MR. TALL: I PRESUME THERE'S AN OBJECTION TO MY OPENING ARGUMENT, YOUR HONOR.

JUDGE PADGETT: I TAKE THAT AS AN OBJECTION. YOU CAN ADDRESS THAT IN YOUR OPENING STATEMENT OR HAVE MR. BOYD ADDRESS THAT ISSUE. AND IF HE DOESN'T PROVE IT, THEN IT WON'T BE CONSIDERED BY THE COURT.

MR. TALL: HOW ABOUT I OFFER THIS, YOUR HONOR, AND LOOK AT THE ANIMOSITY WE HAVE FOR EACH BENEFICIARY. THERE ARE FOUR OF THEM. IF THEY GET A $25,000 DEDUCTION, 4 TIMES 25 GETS TO THE NUMBER THAT MR. DAVIS JUST MENTIONED. MR. DAVIS, ARE YOU SATISFIED?

JUDGE PADGETT: MR. TALL, ADDRESS THE COURT. I DON'T WANT THE LAWYERS TALKING

TO EACH OTHER.

MR. TALL: THANK YOU, YOUR HONOR. IN JANUARY OR FEBRUARY OF 2016, IF YOU'RE DOING A PROPER JOB, CAN YOU TELL THE BENEFICIARIES THAT EACH OF YOUR TAX RETURNS CAN BENEFIT FROM A $25,000 DEDUCTION? HOLD OFF OR LET US HELP YOU COORDINATE. INSTEAD WHAT YOU'LL SEE IS COMMUNICATIONS AT THE END OF MARCH AND POOR NERDY MS. IRVING HAD ALREADY GOTTEN HER TAX RETURN PREPARED. THIS IS THE SECOND YEAR FOR THE INCOME TAX RETURN FOR THE ESTATE. NO WORD ABOUT ANYTHING SHE NEEDED TO DO FOR 2014. SO, SHE GETS A MESSAGE AT THE END OF MARCH AND THAT'S SCARY. SHE IS CORDIAL AS YOU CAN SEE AND THE ESTATE CAN COME FORWARD WITH THIS 500 PAGES AND TELL THE COURT HOW THEY COMMUNICATED TO MS. IRVING. AS IT TURNED OUT, THE ESTATE WAS ABLE TO FILE ITS TAX RETURNS, THE 2014 RETURN IS INEXPLICABLY A YEAR LATE, BUT WASN'T A PROBLEM. THERE WASN'T A PENALTY. AND THE 2016 WAS FILED WITHOUT THESE FORMS CALLED K-1 BECAUSE THERE WASN'T A

COORDINATION AND MY CLIENT WAS ONE OF THE ONES WHO DIDN'T SURRENDER HER SOCIAL SECURITY NUMBER. ALTHOUGH SHE ASKED PLEASANTLY, "CAN YOU EXPLAIN THIS TO ME?" AND MAYBE IF SHE HAD CPA COUNSEL, HE MIGHT'VE SAID, "LOOK, JUST AMEND YOUR RETURN" BUT THERE'S A RELIANCE ON THE INFORMATION THAT'S COMING BACK AND FORTH. THIS IS SOMEBODY FROM THE OTHER SIDE WHO SAYS THEY DID A VERY GOOD JOB AND ARE ENTITLED TO $40,000.00 WORTH OF FEES FOR BEING THE REPRESENTATIVE OF THE ESTATE. IN THE AFFIDAVIT IN OCTOBER, THE PERSONAL REPRESENTATIVE FEELS THE NEED TO SAY THAT EVEN THE 2014 INCOME TAX RETURN WAS DELAYED BECAUSE OF MS. IRVING. WE HAVE TO TAKE SHOTS AT EACH OTHER. I HOPE, YOUR HONOR, YOU WILL HOLD ME TO A STANDARD THAT IF I BRING SOMETHING TO YOU AND SAY THIS ISN'T THE WAY IT SHOULD HAVE BEEN DONE, THIS IS OUT OF BOUNDS THAT I WILL HAVE SOME EVIDENCE THAT YOU CAN LOOK TO AS MUCH AS I... WE HAVE AN ANIMATED... I GUESS, I USE THAT TERM IN MY OFFICE "AND

ANIMATED" RELATIONSHIP BETWEEN THE DAVIS AND BOYD FIRM AND MINE. I'M COMFORTABLE THAT THEIR PASTOR LIKES THEM. I'M COMFORTABLE THAT THEIR FAMILY LIKES THEM. AND I LIKE THEM, BUT THIS IDEA THAT WE HAVE TO TEAR EACH OTHER DOWN AND WE HAVE TO TEAR EACH OTHER'S CLIENTS DOWN HAS CONTRIBUTED TO THIS ESTATE NOT BEING CLOSED AND I THINK THERE'S SOME RESPONSIBILITY FOR THAT. YOUR HONOR, WITH THOSE THINGS THAT I HAVE OFFERED AS AN OPENING ARGUMENT, I AM PREPARED TO MOVE FORWARD AND I WOULD LIKE TO CALL MY FIRST WITNESS.

JUDGE PADGETT: LET ME GIVE MR. BOYD AN OPPORTUNITY TO RESPOND TO YOUR OPENING STATEMENT, IF YOU FEEL THE NEED TO.

MR. BOYD: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. I'M VERY PUZZLED BY THIS CASE, YOUR HONOR. I REMAIN PUZZLED BY THIS CASE. HOPEFULLY AT THE END OF THE DAY WE WILL BE ABLE TO SHED SOME LIGHT ON THE MATTER FOR THE COURT, YOUR HONOR. I AM NOT EXACTLY SURE WHAT TO SAY ABOUT SOME OF MR. TALL'S

ALLEGATIONS EXCEPT I WILL SAY THIS, YOUR HONOR, I THINK WHAT THE COURT WILL SEE, WHAT THE EVIDENCE WILL BEAR OUT, IS THAT WHEN YOU SET ASIDE THE ANIMATION THAT MR. TALL REFERS TO, SET ASIDE THE PERSONAL ISSUES, SET ASIDE THE FACT THAT I HAVE ALREADY CONCEDED AT THE FAMILY REUNION MY CLIENT IS NOT GOING TO WIN THE PERSONALITY CONTEST... THE POPULARITY CONTEST. I WILL GIVE YOU THAT ONE. HE CAN HAVE THAT ONE AS A FREEBEE. BUT, YOUR HONOR, WHEN YOU SET ALL THAT STUFF ASIDE THE SUBSTANTIVE ISSUES THAT WE'RE TALKING ABOUT ARE LIMITED AT BEST. WE'RE TALKING ABOUT THE EVALUATION OF A CROOKED PINE DRIVE PROPERTY, YOUR HONOR. WE'RE TALKING ABOUT FRANKLY, A NEW ALLEGATION THAT'S NOT EVEN IN HIS PLEADINGS THAT SOMEHOW WE HAVE HARMED... THAT MY CLIENT SOMEHOW HARMED THE ESTATE BY RETAINING AN ACCOUNTANT WHO MAY OR MAY NOT HAVE DONE EVERYTHING IN A TIMELY FASHION AND THAT ACCOUNTANT CAN TESTIFY, YOUR HONOR. BUT THERE'S A REASONABLENESS STANDARD HERE.

MY CLIENT IS NOT REQUIRED TO BE PERFECT, YOUR HONOR. SHE'S REQUIRED TO ATTEMPT TO BE FAIR AND TO ATTEMPT TO BE REASONABLE, BUT SHE'S NOT AN ACCOUNTANT. SHE'S NOT A TAX PROFESSIONAL. SHE CERTAINLY NOT A LAWYER, YOUR HONOR. AND MANY OF THESE THINGS ARE FOREIGN TO HER. MUCH OF THIS IS FOREIGN TO HER, YOUR HONOR. SET ASIDE THE ISSUE THAT SHE LOST HER HUSBAND AND THE ENTIRE FAMILY IS GOING THROUGH THAT. AS I SAID EARLIER TO YOU THIS MORNING, RIGHT NOW WHAT MY CLIENT WANTS IS TO BE OUT. WE HAVE BEEN LOOKING FOR A WAY OUT OF THE BOX AND FRANKLY THERE ARE MANY THINGS THAT WE WOULD'VE DONE IF WE THOUGHT THERE WERE ANY HOPE OF SUCCESS. WE DIDN'T DO MEDIATION BECAUSE I HAD A CONVERSATION WITH THE MEDIATOR AND HE SAID BASED ON MY UNDERSTANDING OF THE SITUATION YOU WOULD BE WASTING YOUR TIME AND YOUR MONEY. AND SO, I WOULD LIKE TO SAY THIS: I THINK THIS FRANKLY IS MUCH ADO ABOUT LITTLE. IT STARTED SMALL. "WE'RE GOING TO DO IT MY WAY." "NO. WE

ARE GOING TO DO IT THIS WAY." BUT IT HAS UNFORTUNATELY SPIRALED, YOUR HONOR. NOW MR. TALL HAS SPENT $40,000.00 IN LEGAL FEES. AND MY FIRM HAS PROBABLY SPENT $25,000.00 TRYING TO KEEP HIM AT BAY. AND AS YOUR HONOR HAS ALWAYS ACKNOWLEDGED IN A SMALL ESTATE THAT DOESN'T HAVE A LOT OF CASH, BUT COMMUNICATION, YOUR HONOR, IS A TWO WAY STREET. IF YOU WANT COMMUNICATION, IT'S INCUMBENT UPON YOU TO BE EASY TO COMMUNICATE WITH. NOW, MR. TALL HAS PRODUCED TO ME A DOCUMENT ELECTRONICALLY WHICH WE WILL SHARE WITH THE COURT. IT'S A CONVERSATION THAT MS. IRVING RECORDED WITH MR. DAVIS, WITHOUT HIS PERMISSION. AND WE WILL LET YOUR HONOR HEAR WHAT IT WAS LIKE TO TRY TO DEAL WITH MS. IRVING AND I'M NOT TRYING TO PAINT HER OUT TO BE ANYTHING SHE'S NOT. SHE DOESN'T HAVE TO BE A CRIMINAL, YOUR HONOR, AND I'M NOT TRYING TO MAKE HER INTO ONE, BUT ALL OF THIS IS GIVE AND TAKE, YOUR HONOR, AND IT'S SUBJECT TO REASONABLENESS. AND BY THEIR ACTIONS

AND THE COURT MAY VIEW IT DIFFERENTLY AND IF YOU DO, GOD BLESS YOU AND THE RED SOX. IN MY ESTIMATION WHAT HAS HAPPENED HERE IS MR. TALL HAS ATTEMPTED TO LEVERAGE THE LEGAL PROCESS AND PUT MY CLIENT IN BOX WHERE SHE HAS GOT TWO OPINIONS; RUN UP THE WHITE FLAG OF SURRENDER AND DO EXACTLY WHAT MRS. IRVING WANTS OR TRY TO CONTINUE TO STICK TO HER GUNS REASONABLY TO FOLLOW THE WILL OF THE TESTATOR TO IMPLEMENT THE WISHES OF HER HUSBAND IN THE WILL AND TO ATTEMPT TO DO WHAT'S REASONABLY FAIR TO ALL BUT, YES. WHAT'S REASONABLY FAIR TO HER. COMMUNICATION IS A TWO WAY STREET. YOU LIVE BY THE SWORD, YOU DIE BY THE SWORD, YOUR HONOR. IF YOU WANT COMMUNICATION, IF YOU WANT TO BE IN COMMUNICATION, YOU HAVE TO BE EASY TO COMMUNICATE WITH. AND I KNOW YOUR HONOR UNDERSTANDS THAT FROM YOUR MANY YEARS IN PRIVATE PRACTICE. THE CLIENTS THAT YOU COMMUNICATE WITH ARE THE CLIENTS WHO MAKE THE PROCESS MANAGEABLE. WHENEVER THE CALL IS A FIGHT, YOUR HONOR, YOU

SHIRK FROM IT, ANYBODY WOULD. I KNOW MR. TALL IS REALLY EXCITED ABOUT THIS PAWLEY'S ISLAND CASE THAT HE DISCOVERED, BUT I JUST WANT TO REMIND THE COURT THAT TWO OF THE LEADING CASES IN THIS AREA OF THE LAW, ASIDE FROM THE TERRY PIPER ESTATE, WHICH IS IN THE COURTS'S FILE WHICH MR. DAVIS HAS ALREADY DISCUSSED. CHURCH V. MCGEE, WHICH IS THE 2011 CASE AND THE BLACKMAN CASE THAT I HAVE ALREADY MENTIONED, YOUR HONOR, AND BOTH OF THEM STAND FOR THE PROPOSITION THAT, YOUR HONOR, THAT PERSONAL REPRESENTATIVES ARE HUMAN BEINGS AND WE GET INTO ARGUMENTS AND THE MERE EXISTENCE OF DISCORD WITHIN THE ESTATE IS NOT THE BASIS FOR RESTRAINING ORDER REPLACING A PERSONAL REPRESENTATIVE, YOUR HONOR. THE CASE LAW, PARTICULARLY THE BLACKMAN CASE, YOUR HONOR, AND I WILL PROVIDE CLEAN COPIES BECAUSE I HAVE WRITTEN ALL OVER THIS ONE, BUT THE 621 SOUTHEAST SECOND 41, THE BLACKMAN VERSES WEAVER CASE, THAT'S A 2005 CASE. IT NOTES "HOWEVER, THERE'S A STRONG

DIFFERENCE SHOWN TO THE PERSONAL REPRESENTATIVE. COURTS HAVE BEEN EVER RELUCTANT TO TAKE THE MANAGEMENT OF AN ESTATE FROM THOSE TO WHOM IT HAS BEEN CONFIDED BY THE TESTATOR. THE MERE EXISTENCE OF A CONFLICT BETWEEN A PERSONAL REPRESENTATIVE AND A BENEFICIARY IS AN INADEQUATE REASON FOR REMOVAL OF A PERSONAL REPRESENTATIVE..." DO YOU WANT A COPY YOUR HONOR?

JUDGE PADGETT: IF YOU HAVE ANOTHER ONE THAT WOULD BE GREAT.

MR. BOYD: YOUR HONOR, SO I THINK AT THE END OF THE DAY, YOUR HONOR, WHAT THIS COMES DOWN TO IS IT'S A VERY UNFORTUNATE MATTER, BUT MY CLIENT ... AND I HAVE NEVER SUGGESTED TO ANYBODY THAT WE THINK SHE'S GOT TO BE A CRIMINAL TO BE IN TROUBLE. ALL I HAVE SUGGESTED TO YOU IS SHE'S TRIED TO DO HER JOB REASONABLY WITHOUT THE UNACCEPTABLE OPTION OF UNCONDITIONAL SURRENDER. AND IT APPEARS IN MY ESTIMATION THAT THE ONLY WAY SHE WAS GOING TO GET ALONG, YOUR HONOR, WAS TO GO ALONG WITH WHATEVER THE OTHERS

WANTED. I WILL MAKE ONE FINAL OBSERVATION, YOUR HONOR. THERE IS A PROVISION IN THE CODE FOR AGREEMENTS AMONG SUCCESSORS, BUT AS YOUR HONOR KNOWS, THAT AGREEMENTS AMONG SUCCESSORS REQUIRE THE UNIVERSAL CONSENT OF THE RECIPIENTS UNDER THE WILL. AND 3 OUT OF 4 IS GREAT, YOUR HONOR, BUT 3 OUT OF 4 IS NOT UNANIMOUS. AND IN ADDITION TO HER PERSONAL REPRESENTATIVE HAT, MY CLIENT IS ALSO A BENEFICIARY OF THIS ESTATE AND SHE HAS A RIGHT, YOUR HONOR, TO ASSERT... IT IS A BALANCING ACT AS MR. TALL HAS SUGGESTED. IT'S A DIFFICULT ACT, BUT THE LAW RECOGNIZES THAT IT MUST BE UNDERTAKEN. IT'S A PRACTICAL CONCESSION TO REALITY. NINE TIMES OUT OF 10 THE PERSONAL REPRESENTATIVE IS SOMEHOW INTIMATELY CONNECTED TO THE ESTATE AND THEY GET SOMETHING OR SOMETIMES ALL OF THE ESTATE AND THAT IS FINE BECAUSE THE PERSONAL REPRESENTATIVE IS USUALLY THE ONE WHO IS IN THE POSITION TO DO THE JOB. AND SO, THESE CONFLICTS ARE INHERENT AND THE LAW

RESPECTS THAT AND UNDERSTANDS THAT. THE FACT IS MY CLIENT HAS TRIED TO WEAR BOTH HATS, BALANCE THEM REASONABLY AND DO HER JOB FAIRLY. HAS SHE BEEN PERFECT? NO. HAVE THERE BEEN MISTAKES THAT HAVE BEEN MADE? YES. IS THAT THE STANDARD? NO. I WILL AGREE WITH MR. TALL ON THIS, THE BAR IS HIGH AND THE BURDEN IS ON HIM. I DON'T THINK AT THE END OF THE DAY THAT THE COURT IS GOING TO FIND THAT THEY HAVE MET IT, YOUR HONOR. AT THE END OF THE DAY THIS IS A CASE THAT I WISH COULD HAVE BEEN WORKED OUT DIFFERENTLY, BUT IS IT A CASE THAT MERITS THE REMEDY THAT MR. TALL NOW SEEKS? I THINK WE HAVE A SITUATION, YOUR HONOR, WHERE WE WISH CALMER HEADS WOULD HAVE PREVAILED LONG AGO, BUT THEY DIDN'T. BUT HAS MR. TALL MET HIS BURDEN HERE TODAY? I THINK THE COURT WILL FIND AT THE END OF IT'S REVIEW THAT HE HAS NOT. THANK YOU.

JUDGE PADGETT: THANK YOU, SIR. CALL YOUR FIRST WITNESS MR. TALL.

MR. TALL: THANK YOU, YOUR HONOR.

JULIE IRVING, **HAVING BEEN FIRST DULY SWORN,**

TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. TALL:

A JULIE CHRISTINE IRVING, 157 MADDOX AVENUE COLONIAL BEACH, VIRGINIA 22443.

Q GOOD MORNING, MS. IRVING.

A GOOD MORNING.

Q MS. IRVING, I'M GOING TO ASK YOU QUESTIONS AND I ASK YOU PLEASE TO ADDRESS THE JUDGE WHEN YOU'RE ANSWERING. IT MIGHT LOOK LIKE YOU'RE BEING IMPOLITE TO ME, BUT THE COURT'S THE ONE THAT'S GOING TO HEAR FROM YOU. YOU ARE ONE OF FOUR BENEFICIARIES UNDER YOUR FATHER'S WILL, IS THAT CORRECT?

A YES.

Q TELL ME PLEASE A LITTLE BIT ABOUT YOUR FATHER AND YOUR RELATIONSHIP WITH THEM?

A MY FATHER WAS A VETERINARIAN. HE WENT TO COLLEGE AT THE UNIVERSITY OF GEORGIA. WE GREW UP IN MARYLAND. MY PARENTS DIVORCED WHEN MY YOUNGER BROTHER WAS LESS THAN A YEAR... OR THEY SEPARATED WHEN MY YOUNGER BROTHER WAS LESS THAN A YEAR OLD, BUT HE LIVED ALWAYS NEARBY. WE SAW HIM ON A REGULAR BASIS. SO, OBVIOUSLY, I HAVE TWO BROTHERS, I'M THE MIDDLE. AND MY FATHER AND I WERE ALWAYS VERY CLOSE. I MEAN, I GREW UP

WANTING TO BE A VETERINARIAN. I ALWAYS WAS AT THE ANIMAL HOSPITAL HELPING THERE AT THE ANIMAL HOSPITAL. ACTUALLY, DURING COLLEGE I WENT TO RADIOLOGY SCHOOL, AND DURING COLLEGE WHEN HE SOLD THAT ONE PRACTICE, I WORKED FORMALLY FOR THE ONE VETERINARIAN THAT BOUGHT THAT PRACTICE. I LIVED WITH MY FATHER FOR MAYBE ABOUT A YEAR DURING HIGH SCHOOL. WHEN JENE... THE TWO OF THEM WERE MARRIED AT THAT POINT. WE ALWAYS HAD A CLOSE RELATIONSHIP, YOU KNOW. DADDY'S LITTLE GIRL TYPE RELATIONSHIP. HE, YOU KNOW, I THINK EVERYONE PRETTY MUCH IN THIS ROOM KNOWS THAT HE WAS A DRINKER. SO, THAT WAS SOMETHING THAT AFFECTED, YOU KNOW, EVERYONE IN THE FAMILY. THAT'S WHY MY MOTHER AND HE DIVORCED. HE WASN'T ONE THAT REALLY TOOK US ON A WHOLE LOT OF TRIPS OR ANYTHING LIKE THAT. WE DIDN'T REALLY HAVE THAT IN OUR UPBRINGING BUT --

Q DID YOU REMAIN CLOSE WITH THEM?

A YES. I MEAN, TO THE TAIL END. I WAS HERE IN THE HOSPITAL ROOM WHEN HE PASSED.

Q WHAT WAS THE NATURE OF HIS PASSING?

A I MEAN, ESSENTIALLY IT GOT TO THE POINT WHERE HE LOST THE ABILITY TO SWALLOW AND IT WAS JUST AN OVERALL DECLINE IN HIS HEALTH DUE TO THE

DRINKING.

Q HOW OLD WAS HE WHEN HE PASSED?

A I GUESS 72.

Q YOUR STEPMOTHER, MS. JENE, WHO IS THE PERSONAL REPRESENTATIVE, SHE WAS MARRIED TO YOUR FATHER FOR QUITE A WHILE?

A YES. I MEAN, THEY WERE TOGETHER FOR MANY YEARS BEFORE THEY GOT MARRIED AND THEN THEY WERE MARRIED. THEN THERE WAS A PERIOD OF TIME WHERE THEY SEPARATED AND SHE MOVED OUT. I MEAN, REALLY, SHE JUST GOT TIRED OF THE DRINKING SO SHE LEFT. HE BOUGHT A HOUSE FOR HER, YOU KNOW, MAYBE 15 MINUTES AWAY OR SO. THEY STILL KEPT A RELATIONSHIP GOING. SHE WOULD COME OVER A COUPLE TIMES A WEEK AND LIKE CLEAN THE HOUSE FOR HIM. THEY WOULD GO OUT TO DINNER AND STUFF LIKE THAT. SO, THEY STILL SAW EACH OTHER, BUT SHE HAD BEEN MOVED OUT FOR... I'M NOT SURE, YOU KNOW, ANYWHERE FROM A COUPLE TO SEVERAL YEARS SHE HAD BEEN MOVED OUT OF THE HOUSE.

Q ABOUT YOUR RELATIONSHIP WITH MRS. JENE?

A WE HAD A COUPLE OF BUMPS IN THE ROAD. ONE HAPPENED BACK WHEN I WAS 19. MY FATHER HAD INGESTED SOME FLEA DIP FROM HIS ANIMAL HOSPITAL. IT GOT INTO A CRACKER AND HE ENDED UP, YOU KNOW,

REALLY, REALLY SICK IN THE HOSPITAL AND SHE NEVER TOLD ANY OF US THAT HE WAS HOSPITALIZED. HE ALMOST ENDED UP DYING FROM IT. SO, I WAS REALLY UPSET. ONCE HE GOT ON HIS FEET WE BASICALLY SAID, "DON'T EVER DO THAT AGAIN. YOU KNOW, IF THERE'S ANYTHING WRONG WITH... YOU BETTER LET MY KIDS KNOW." THAT, I MEAN, I REALLY WAS MAD AT HER AT THAT POINT WHEN I WAS 19 AND WE SORT OF HAD SOME DISTANCE FOR LIKE A GOOD YEAR --

Q HOW OLD WERE YOU WHEN YOUR DAD PASSED ON?

A THIS WAS THREE YEARS AGO. I WAS 41 WHEN HE PASSED.

Q I WAS PRESENT, YOU WERE PRESENT WHEN MS. JENE HAD HER DEPOSITION TAKEN?

A CORRECT.

Q AFTER YOUR DAD'S PASSING, WHAT KIND OF RELATIONSHIP DID YOU HAVE WITH HER?

A SO, WHEN DAD PASSED, I MEAN, I WAS HERE WITH JENE. I WAS HERE FOR A COUPLE OF DAYS BEFORE HE PASSED, YOU KNOW. WE WERE CLOSE, YOU KNOW, WE WERE CRYING TOGETHER AND THE WHOLE NINE YARDS. IT WAS VERY HARD. SO, YOU KNOW, THERE WASN'T ANY ANIMOSITY BETWEEN US AT THAT POINT WHATSOEVER.

Q THERE'S A SUGGESTION IN THIS CASE THAT YOU ARE TAKING ACTION IN THIS CASE BECAUSE OF VENGEANCE OR BECAUSE YOU HAVE HARD BAD FEELINGS FOR MS. JENE. CAN YOU ADDRESS THAT?

A I AM TAKING ACTION IN THIS CASE BECAUSE MY FATHER PASSED THREE YEARS AGO. AND, YOU KNOW, WE, MY BROTHERS AND I... HE PASSED IN JANUARY THREE YEARS AGO AND, YOU KNOW, 6 MONTHS, 9 MONTHS LATER WHEN I STARTED ASKING JENE SOME QUESTIONS WITH REGARDS TO, YOU KNOW, WHAT WOULD BE ESTATE TYPE QUESTIONS. I LEFT A VOICE MAIL OR I SENT A TEXT. SHE WOULD SAY SHE DIDN'T GET THE TEXT OR DIDN'T GET THE VOICE MAIL. WHEN MY BROTHER, MATT, HAD ASKED HER ABOUT, YOU KNOW, SELLING PROPERTY SHE SAID SHE DIDN'T SELL PROPERTY AND WE ENDED UP FINDING OUT THAT SHE HAD. SO, THERE WERE THINGS LIKE THAT, THAT WERE SORT OF RED FLAGS FOR THE THREE OF US. AND STEVEN, MY YOUNGER BROTHER, WHO WAS BASICALLY LIKE... I THINK BECAUSE OF HIS AGE AND HIS PERSONALITY, HE'S REALLY THE MOST PASSIVE OF THE THREE OF US. HE'S THE WRITER IN THE FAMILY TOO. SO, HE WROTE THE E-MAIL TO HER ABOUT... I DON'T KNOW. AT LEAST A WEEK OR MAYBE TWO WEEKS HAD GONE BY AND SHE NEVER REPLIED. WE WERE SORT OF

SITTING ON PINS AND NEEDLES LIKE THINKING, IF SHE'S GOING TO REPLY TO SOMEONE OUT OF THE THREE OF US, SHE WILL REPLY TO STEVEN --

Q WHAT ARE THE PINS AND NEEDLES THAT YOU'RE TALKING ABOUT?

A JUST SORT OF LIKE I SAID SINCE WE KNEW SHE DIDN'T TELL THE TRUTH TO MATT AND SHE WASN'T RESPONDING BACK TO MY TEXTS OR E-MAILS WITH ANY KIND OF ESTATE TYPE QUESTIONS WE JUST FIGURED THAT SHE WOULD, AT LEAST, REPLY TO STEVEN. SO, WE WERE JUST LIKE EVERY DAY LIKE, YOU KNOW, I'M ASKING STEVEN, "DID SHE REPLY TO YOUR E-MAIL?" STILL NO ANSWER FROM HIS E-MAIL. SO, FINALLY AFTER A WEEK OR TWO I SAID, "LET ME FORWARD YOUR E-MAIL FROM MY E-MAIL AND I WILL PUT A BLIND COPY ON THIS E-MAIL... OR A READ RECEIPT. THAT WAY I CAN SEE IF SHE'S READ IT." SO, SURE ENOUGH, SHE READ IT AND SHE IMMEDIATELY GOT RIGHT BACK TO ME. IT WAS NASTY AND SARCASTIC RESPONSE.

Q HOW DID YOU TAKE THAT? WHAT JUSTIFIED BEING AS YOU SAY, "NASTY AND SARCASTIC"?

A WELL, IT STARTS OFF IN ALL CAPS, WHICH USUALLY... WHEN SOMEONE WRITES IN ALL CAPS YOU'RE MAD GENERALLY. GENERALLY, WHEN YOU'RE

WRITING SOMETHING IN ALL CAPS THAT'S THE TONE. THEN SHE JUST... I GAVE YOU A COPY, I DON'T KNOW IF YOU HAVE IT HERE, BUT IT WAS A PRETTY LONG E-MAIL. I MEAN, AT THE END OF THE E-MAIL SHE DID SAY THAT SHE WAS GOING TO, YOU KNOW, GIVE US SOME INFORMATION AND WE WAITED A COUPLE WEEKS AND STILL NO INFORMATION CAME. SHE STARTED BRINGING UP THINGS ABOUT HOW DAD, YOU KNOW, GAVE ALL THIS MONEY TO MATT. HOW DAD GAVE ALL HIS MONEY TO STEVEN. AT ONE POINT, I GUESS, IT WAS LIKE A COUPLE OF YEARS AGO I ENDED UP WITH A CONCUSSION. WHEN I CALLED MY FATHER, OF COURSE, HE WAS DRUNK AND I WAS UPSET AND I DID SAY TO JENE, "YOU KNOW WHAT? YOU KNOW, WHENEVER SOMETHING DOES HAPPEN TO DAD, YOU KNOW, I DON'T WANT MY SHARE. YOU JUST TAKE IT." SO, SHE BROUGHT THAT UP IN THE E-MAIL. I DON'T KNOW WHY, BUT SHE DID BRING THAT UP IN THAT E-MAIL TOO. SHE WAS JUST LIKE, MAYBE SHE WAS HAVING A BAD DAY. I DON'T KNOW MAYBE... I'M NOT SURE, BUT THAT'S SORT OF WHAT THE E-MAIL INCLUDED SO...

MR. TALL: YOUR HONOR, I HAVE SHOWED THIS DOCUMENTS TO DEFENSE COUNSEL IF THEY HAVE ANY OBJECTION TO MY PRESENTING

IT TO THE COURT.

MR. BOYD: NO OBJECTION.

JUDGE PADGETT: WITHOUT OBJECTION.

LET'S MARK THAT AS AND EXHIBIT.

RESPONSE FROM E-MAIL MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 2.

JUDGE PADGETT: MR. TALL, PROCEED.

Q MS. IRVING, IS THAT DOCUMENT THE E-MAIL THAT YOU'RE REFERRING TO?

A RIGHT, THAT WAS HER RESPONSE.

Q I'M LOOKING AT PAGE 2 OF THE DOCUMENT AND IT SUGGESTS FROM THE PERSONAL REPRESENTATIVE THAT YOU HAD DIFFICULTY WITH YOUR DAD? WHAT IS YOUR UNDERSTANDING OF THE LAST PART IN CAPITAL LETTERS?

A LIKE I WAS JUST TELLING THE JUDGE, I THINK IT WAS LIKE A YEAR OR TWO... THIS E-MAIL IS FROM A YEAR AFTER HE PASSED. SO, IT WAS PROBABLY LIKE SOMETIME A YEAR BEFORE OR SOMETIME THAT SUMMER. I ENDED UP WITH A CONCUSSION AND LIKE I SAID, ON MY WAY OUT OF THE HOSPITAL I CALLED DOWN TO TALK TO MY FATHER AND HE WAS DRUNK, AND YOU KNOW, JUST ACTING SORT OF NASTY, BECAUSE HE WAS DRUNK.

AND SO, I HAD JENE PUT BACK ON THE PHONE AND I TOLD JENE, YOU KNOW, I PROBABLY TOLD HER THIS BEFORE, YOU KNOW, BECAUSE HE WAS SO MEAN TO ME THAT NIGHT. I JUST SAID, "TAKE ME OUT... YOU KNOW, JUST TAKE ME OUT OF THE WILL" KIND OF THING BECAUSE I WAS UPSET ABOUT JUST NOT FEELING LOVED OR WHATEVER BECAUSE HE WAS BEING MEAN TO ME. I FELT LIKE I WAS GOING TO DIE THAT NIGHT FROM THIS CONCUSSION IN MY EYEBALL. AND SO, THAT'S WHAT SHE'S REFERENCING RIGHT THERE. THAT I DIDN'T WANT ANYTHING.

Q DID YOU AND YOUR FATHER EVER RECONCILE BEFORE HE PASSED AWAY?

A OF COURSE, WE DID. YEAH. I WAS IN THE HOSPITAL, YEAH. NO, OF COURSE, WE DID.

Q WE DON'T KNOW OF COURSE, YOU HAVE TO TELL US.

A OF COURSE WE DID.

Q SO HOW DID YOU FEEL ABOUT RECEIVING THIS EPISODE BEING PRESENTED TO YOU IN CONNECTION WITH THE ESTATE?

A AS FAR AS THIS LINE BEING HERE ABOUT... WELL, TO ME IT WAS VERY HURTFUL JUST TO THINK ABOUT HIM IN THAT... IT WAS JUST HURTFUL TO RECOLLECT THINKING ABOUT HIM. JUST SEEING IT AGAIN RIGHT NOW... TO ME IT WAS JUST HURTFUL TO THINK ABOUT

IT THAT NIGHT BECAUSE IT WAS ALREADY HURTFUL THAT NIGHT TO BEGIN WITH WHEN I CALLED HIM.

Q WHAT HAS THIS GOT TO DO... THIS REFERENCE TO WHEN YOU AND YOUR FATHER HAD SOME DIFFICULTY, WHAT'S THAT GOT TO DO WITH THE ESTATE ADMINISTRATION?

A NOTHING, I GUESS. I DON'T KNOW.

Q DID IT FORM A MOTIVE FOR YOU TO GET BACK AT MS. JENE BECAUSE SHE DARE RAISE AN ISSUE IN THIS E-MAIL?

MR. BOYD: OBJECTION, YOUR HONOR, HE IS ASKING HER TO SPECULATE ON... HE'S NOT ASKING HER A QUESTION THAT SHE IS QUALIFIED TO ANSWER. HE'S ASKING FOR THE MOTIVE OF THE PR.

MR. TALL: I'M PRETTY SURE I ASKED HER ABOUT HER MOTIVES, YOUR HONOR.

JUDGE PADGETT: I THINK HE'S GOT THE RIGHT TO ASK HER, WHAT WERE YOUR MOTIVES.

A I DON'T UNDERSTAND THE QUESTION.

Q WELL, YOU'VE GOT SOMETHING UPSETTING IN AN E-MAIL? DO I HAVE THAT CORRECT?

A YES. THE WHOLE E-MAIL WAS JUST UPSETTING.

Q YOU'RE TELLING ME IT'S IN RESPONSE TO YOU MAKING

INQUIRIES ABOUT HOW THE ESTATE IS GOING?

A RIGHT.

Q YOU TOLD ME A MOMENT AGO YOU DIDN'T THINK IT HAD ANYTHING TO DO WITH THE ESTATE?

A WELL, STEVEN... IT WAS STEVEN'S E-MAIL. I DIDN'T WRITE... THAT WAS STEVEN'S E-MAIL --

Q BUT IN ALL FAIRNESS, YOU ALSO WANTED TO KNOW, DID YOU NOT?

A RIGHT. AND MATT TOO, YOU KNOW. STEVEN --

Q SO, I'M ASKING YOU ABOUT YOUR MOTIVES. ARE YOU MAD BECAUSE YOU GOT AN E-MAIL LIKE THIS AND YOU NOW ARE SETTING OUT TO CAUSE TROUBLE FOR --

MR. BOYD: YOUR HONOR, I'M JUST GOING TO REMIND THE COURT THAT THIS MR. TALL IS QUESTIONING HIS WITNESS AND MR. TALL IS TALKING AT LEAST AS MUCH AS SHE IS. HE'S LEADING HER SIGNIFICANTLY ON THESE QUESTIONS.

JUDGE PADGETT: MR. TALL, DON'T LEAD YOUR WITNESS. JUST ASK THE QUESTION AND LET HER ANSWER.

Q DID THIS E-MAIL CREATE A MOTIVE FOR YOU TO HARM MS. JENE IN THE ESTATE ADMINISTRATION?

A NO. MOTIVE TO HARM HER?

Q ARE YOU UNAWARE OF WHAT THE DEFENSE HAS CHARGED

YOU WITH IN COUNTERCLAIMS?

A YES. BUT, I MEAN, WE JUST WERE TRYING TO GET INFORMATION SO THAT WE KNEW WHAT WAS GOING... I MEAN, AT THIS POINT IN TIME, THIS IS MARCH 2015. WE'RE NOW LIKE TWO YEARS LATER. SO AT THIS POINT TIME, WE WERE TRYING TO GET INFORMATION ON WHAT WAS GOING ON, YOU KNOW. LIKE WHAT WAS HER GAME PLAN? WHAT, ARE WE SELLING PROPERTY OR ARE WE GOING TO JUST, YOU KNOW, DEED THIS PROPERTY, YOU KNOW, TO THE FOUR OF US? WE HAD NO IDEA. I DON'T KNOW IF YOU HAVE READ THIS, YOU KNOW, WHERE SHE IS TALKING ABOUT PUTTING A TABLE TOGETHER. AT FIRST, SHE SAYS, "THERE'S NO DETAILS TO SHARE. THE NEXT PARAGRAPH IS OKAY. "I'M GOING TO PUT A TABLE OF THE DETAILS TO YOU." SO... THEN WE STILL NEVER GOT ANY DETAILS. SO, WE'RE JUST TRYING TO FIGURE THINGS OUT. I MEAN, WE WERE FRUSTRATED AT THIS POINT, AND I GUESS, YOU KNOW, THE FACT THAT SHE DID SELL PROPERTY, BUT THEN SAID THAT SHE DIDN'T, YOU KNOW. WE ARE FEELING A LITTLE BIT LIKE WE'RE BEING DECEIVED HERE FROM SOMEONE WE'VE KNOWN AT THIS POINT FOR A VERY LONG TIME IN OUR FAMILY. SO THINGS WERE NOT MAKING SENSE.

Q CAN YOU TELL THE JUDGE WHAT LED YOU ULTIMATELY

TO HIRE ATTORNEY SCOVILLE FROM GEORGETOWN?

A BASICALLY EVERYTHING THAT I JUST SAID BECAUSE ALL THREE OF US, MY BROTHERS AND I, YOU KNOW, WERE ALL COMMUNICATING BETWEEN THE THREE OF US AND EVERY TIME WE, YOU KNOW, ARE EITHER ASKING A QUESTION, WE'RE NOT GETTING AN ANSWER. IT JUST GOES SILENT. WE REALLY THOUGHT WITH THE LETTER THAT STEVEN WROTE, YOU KNOW, TO HER... YOU KNOW. THIS IS A YEAR LATER THAT, THAT KIND OF RESPONSE WAS NOT GOING TO BE, YOU KNOW --

Q IF I CAN ASK YOU TO CLARIFY. YOU SAID A YEAR LATER. A YEAR LATER THAN YOUR FATHER'S PASSING?

A ACTUALLY, ALMOST 14 MONTHS. IT'S ALMOST 15 MONTHS. I'M SORRY. 13 MONTHS LATER. YEAH. IT WAS A YEAR AFTER HE PASSED.

Q OKAY. DID MR. SCOVILLE ASSIST YOU IN ANY MEASURE?

A YES. SO, THE THREE OF US, YOU KNOW, HE HAD A RETAINER WE HAD TO COME UP WITH AND, YOU KNOW, LUCKILY, YOU KNOW, WE WERE ALL IN A POSITION WE COULD PUT IN A THIRD EACH. SO, WE HIRED HIM TOGETHER. WE REALLY... I MEAN, PART OF WHAT WE WANTED TO DO THERE WAS, YOU KNOW, GET A CHANCE TO... YOU KNOW, BE ABLE TO GO THROUGH DAD'S THINGS AND WE NEVER REALLY GOT A CHANCE TO

REALLY DO THAT. AND THEN ALSO FIND OUT WHAT WAS GOING ON AND GET THE LINE OF COMMUNICATION STARTED.

Q WHAT IS YOUR RESPONSE IF MS. JENE SAID SHE KEPT YOU REASONABLY INFORMED ABOUT TENANTS AND PROPERTY AND MOVING ON WITH THE ESTATE? HOW DO YOU RESPOND IF YOU GET THAT KIND OF TESTIMONY TODAY?

A YOU MEAN AFTER WE HIRED SCOVILLE?

Q BEFORE YOU HIRED SCOVILLE?

A NO. WE DIDN'T KNOW ANYTHING.

Q YOU THINK YOU MADE REASONABLE ATTEMPTS?

A YES.

Q DID MR. SCOVILLE GET INFORMATION FOR YOU?

A WELL, LET ME BACKTRACK.

Q SURE.

A AS FAR AS MAKING REASONABLE ATTEMPTS, YOU KNOW, WHEN DAD FIRST PASSED, I MEAN, I THINK WE WERE ALL LIKE GRIEVING, YOU KNOW. IT'S NOT LIKE WE WERE ASKING THE NEXT DAY, YOU KNOW.

Q MS. JENE LOST HER HUSBAND.

A RIGHT. AND WE LOST OUR FATHER. SO, NOBODY IS ASKING ABOUT ANYTHING, YOU KNOW. AND STEVEN WAS LIVING THERE WHEN DAD... YOU KNOW, WE KNEW THAT HE WAS GOING TO PASS. SO, STEVEN BASICALLY

STAYING THERE THROUGH THAT JANUARY THROUGH AUGUST, SEPTEMBER. AND I KEPT SAYING TO STEVEN, YOU KNOW, "ASK JENE IF SHE NEEDS ANY HELP? YOU KNOW, WHETHER IT'S CLEANING UP THE HOUSE, YOU KNOW, GOING THROUGH THINGS --"

Q AND YOUR RELATIONSHIP WITH MS. JENE AT THIS TIME?

A WE WERE ON THE PHONE. WE WERE E-MAILING EACH OTHER ABOUT LIFE AND GRIEVING, YOU KNOW, TALKING THROUGH OUR GRIEF AND DOING THAT KIND OF THING.

Q SUPPORTIVE OF EACH OTHER?

A RIGHT. DOING THAT KIND OF... YOU KNOW, STILL HAVING THAT RELATIONSHIP. AND THEN IT WAS RIGHT WHEN STEVEN MOVED OUT THAT I HAD A CONVERSATION WITH... WELL, ACTUALLY I'LL DOUBLE BACK. IT WAS ACTUALLY THAT AUGUST, MY OLDER BROTHER WAS IN JAIL. SO, HE HAD SOME PEOPLE, BASICALLY LIVING THERE IN THE HOUSE THAT SHOULDN'T HAVE BEEN THERE.

Q WHICH HOUSE ARE YOU REFERRING TO?

A THE RACE WATER, YOU KNOW. IT'S ONE OF THE ESTATE PROPERTIES.

JUDGE PADGETT: IS THIS MATT?

A MATT. SO, HE KNEW HE WAS GOING TO GO AWAY FOR LIKE 6 MONTHS AND I GUESS HE WAS HOPING THAT

MAYBE HE WOULD GET SOME INCOME FOR HIMSELF WHILE HE WAS IN JAIL. SO, HE DECIDED, OKAY, I'M GOING TO RENT HIS HOUSE OUT OR WHATEVER, BUT HE ENDED UP RENTING IT TO SOME PEOPLE THAT HE PROBABLY SHOULDN'T HAVE. BUT I CALLED... I HAD BEEN TALKING TO JENE ABOUT, YOU KNOW, "JENE DO YOU HAVE INSURANCE ON, YOU KNOW, THE HOUSE?" AND SHE'S LIKE, "NO, THERE'S NO INSURANCE ON THE HOUSE." AND I SAID, "WELL, YOU'VE GOT TO GET INSURANCE ON THIS HOUSE, YOU KNOW. WHAT IF SOMETHING HAPPENS AND YOU GOT STRANGERS LIVING IN THIS HOUSE NOW, YOU KNOW." AND MATT HAD TOLD ME THAT HE FOUND OUT THESE PEOPLE WERE DOING BAD ACTIVITIES, BLAH, BLAH, BLAH. SO, JENE TOLD ME THAT SHE CALLED DOWN I THINK TO SOME INSURANCE COMPANY IN FLORIDA AND THEY TOLD HER THAT SHE COULD NOT GET THE INSURANCE, YOU KNOW, PUT IN HER NAME OR WHATEVER BECAUSE, YOU KNOW, SHE'S NOT DON ROTHGEB, DON ROTHGEB'S DEAD. I SAID, "YEAH. BUT YOU HAVE POWER OF ATTORNEY. YOU CAN DO ANYTHING. YOU HAVE THE POWER OF ATTORNEY."

Q ARE YOU REFERRING TO THE CERTIFICATE FROM THE COURT IN THE ESTATE?

A WELL, "I JUST ASSUMED THAT IF YOU HAVE POWER OF ATTORNEY, YOU KNOW, DAD'S GONE. SO OBVIOUSLY...

YOU KNOW, IF YOU HAVE POWER OF ATTORNEY, YOU SHOULD BE ABLE TO DO ANYTHING WITH THAT, YOU KNOW. YOU CAN GET INSURANCE ON THE PROPERTY. WE HAVE MULTIPLE PROPERTIES SO YOU HAVE TO GET INSURANCE ON THIS PROPERTY, I MEAN, WHAT'S GOING ON WITH THESE OTHER PROPERTIES? THIS IS ALL THAT'S LEFT OF THE ESTATE, HIS PROPERTY AND WE NEED TO INSURE THE PROPERTY." SO, I WAS VERY CONCERNED ABOUT THAT.

Q DID YOU GET AN OBJECTION TO THE PURCHASE OF INSURANCE?

A SHE JUST TOLD ME BASICALLY THAT SHE MADE THE CALL AND SHE WAS TOLD THAT SHE COULD NOT GET INSURANCE BECAUSE SHE'S NOT DON ROTHGEB. I SAID, "THAT DOESN'T MAKE SENSE BECAUSE YOU HAVE POWER OF ATTORNEY YOU CAN USE, YOU KNOW." THAT WAS THE FIRST TIME I CALLED BRET DAVIS AND I SPOKE WITH HIM ON THE TELEPHONE. I WAS CONCERNED LIKE, YOU KNOW, "SHE'S TELLING ME SHE CAN'T GET INSURANCE ON THE PROPERTY, YOU KNOW. CAN YOU HAVE A CONVERSATION OR FIGURE OUT, YOU KNOW, HOW SHE CAN GET MATT'S HOUSE INSURED?"

Q WHAT'S THE TIMEFRAME THAT WE'RE SPEAKING OF?

A THAT WAS AUGUST.

Q OF?

A 2015.

Q 2015. THAT'S OVER A YEAR AND A HALF AFTER YOUR FATHER PASSED?

A YES.

MR. DAVIS: YOUR HONOR, I WOULD JUST LIKE TO MAKE SURE I UNDERSTAND CLEARLY. THE DATE THAT SHE HAD A CONVERSATION WITH ME IS AUGUST 2015.

A I'M SORRY, THAT COULD BE '14.

MR. TALL: WE CAN HAVE CROSS-EXAMINATION, YOUR HONOR.

MR. DAVIS: I'M NOT TRYING TO CROSS HER I JUST WANT TO --

MR. TALL: I IMAGINE THERE ARE GOING TO BE SOME THINGS MR. DAVIS WILL WONDER ABOUT AND HE WILL HAVE HIS CHANCE.

A I'M SORRY. THAT WILL BE '14. SO, I DID HAVE A CONVERSATION WITH BRET DAVIS. THAT WAS MY FIRST CONVERSATION WITH BRET DAVIS.

Q YOU KNOW THERE'S AN ALLEGATION AGAINST YOU THAT YOU IMPOSED YOURSELF AND TRIED TO TAKE CONTROL. YOU'RE AWARE OF THAT? YOU'RE NOT AWARE OF THAT?

A I SUPPOSE, BUT LIKE I SAID, IN THIS SITUATION WHERE I FOUND OUT THERE'S NO INSURANCE ON THE... YOU KNOW, MY BROTHER'S HOUSE... WELL, IT'S NOT

MY BROTHER'S HOUSE THEN, BUT IT'S ESTATE PROPERTY. I FELT LIKE THERE SHOULD BE INSURANCE ON A $50,000.00 PIECE OF PROPERTY. IF YOU DRIVE A CAR --

Q DID THAT RESOLVE ITSELF?

A I DON'T KNOW. I DON'T KNOW A LOT OF THINGS. I'M JUST TRYING TO FIND OUT. UNFORTUNATELY, MY BROTHERS, PARTICULARLY MATT, HE'S NOT IN A POSITION TO ...I MEAN, HE'S STILL NOT EVEN HERE. LET'S JUST PUT IT THAT WAY. SO, I'M TRYING TO FIND THINGS OUT FOR MY FAMILY.

Q YOU TALKED ABOUT HIRING MR. SCOVILLE. DO YOU KNOW HOW HE WAS RECEIVED BY THE ESTATE?

A WHAT DO YOU MEAN, "RECEIVED"?

Q WAS HE CONSIDERED HELPFUL TO THE ESTATE? WAS HE CONSIDERED TO BE AN OPPONENT?

A I THINK --

Q MAYBE YOU DON'T KNOW.

A THE ONLY THING THAT I REALLY DON'T KNOW THAT I ACTUALLY FOUND A LITTLE BIT MORE OUT JUST THIS PAST WEEK BECAUSE I RECEIVED A FLASH DRIVE FROM FILES FROM... THERE IT IS. WITH REGARDS TO, YOU KNOW, OUR FATHER'S BELONGINGS. THAT'S PART OF WHY WE HIRED HIM. THINKING WE WERE GOING TO BE ABLE TO GO THROUGH, YOU KNOW, PERSONAL

BELONGINGS AND, I GUESS, SCOVILLE NEVER REALLY COMMUNICATED PROPERLY OR I'M NOT SURE. IT JUST SEEMED LIKE THINGS GOT --

Q WHAT ABOUT FINANCIAL INFORMATION?

A YEAH. HE WAS ABLE TO GET, YOU KNOW, BANK RECORDS AND COMMUNICATE THAT TO ME PRETTY EARLY ON.

Q WE ARE TALKING ABOUT 2015 NOW?

A CORRECT. YES. WE HIRED HIM SHORTLY AFTER THAT E-MAIL... SHORTLY AFTER, YOU KNOW, WITHIN A MONTH AFTER THAT... THE THREE OF US HIRED SCOVILLE.

Q WAS MR. SCOVILLE OF ASSISTANCE TO YOU IN GETTING FINANCIAL INFORMATION?

A YES.

Q WHAT ABOUT EFFORTS TO TRY AND GET THE ESTATE SETTLED, CAN YOU DESCRIBE THAT?

A SO, THE... YEAH. I MEAN, THE FIRST COUPLE OF MONTHS WERE, YOU KNOW, SORT OF CAUGHT UP WITH TRYING TO GET THE BANK RECORDS. TRYING TO FIGURE OUT, YOU KNOW, I THINK WHAT WERE THE DIRECTIONS OF JENE, YOU KNOW. WHAT WAS REALLY GOING ON. AND THEN, YOU KNOW, JENE HAD ALWAYS TOLD ME FROM THE START AND WE HAD A CONVERSATION, YOU KNOW, MATT'S BEEN LIVING IN

THE ONE HOUSE FOR YEARS. I MEAN, DAD REALLY BOUGHT THAT HOUSE FOR MATT. AND MATT WAS ACTUALLY PAYING MONTHLY PAYMENTS ON IT FOR YEARS. THEN HE STOPPED BECAUSE HE WAS BACK ON DRUGS. BUT HE WAS MAKING PAYMENTS ON THAT HOUSE FOR YEARS. JENE SAID FROM THE BEGINNING, YOU KNOW, SHE WANTED TO STAY IN THE HOUSE. SO, THOSE TWO PROPERTIES WERE PRETTY MUCH... I MEAN, SHE AND I HAD, HAD A COUPLE OF CONVERSATIONS AFTER HE DIED THAT, YOU KNOW, THOSE TWO PROPERTIES WERE THERE. ONCE SCOVILLE CAME INTO THE PICTURE AROUND AUGUST/SEPTEMBER IS WHEN, YOU KNOW, WE STARTED LOOKING AT, OKAY, WHAT PROPERTIES ARE EVEN LEFT? WE HAD NO IDEA AT THIS POINT WHAT ALL HAS BEEN SOLD. WE HAD NO IDEA, YOU KNOW. WELL, WE AT THIS POINT, WE DID HAVE A LITTLE BIT OF A IDEA OR AT LEAST WHAT'S IN THE BANK ACCOUNT. BUT WE REALLY DIDN'T KNOW WHAT ELSE HAS BEEN SOLD? SO, WE'RE TRYING TO FIGURE OUT WHAT PROPERTIES ARE EVEN LEFT.

Q THIS IS A YEAR AFTER YOUR FATHER PASSED ON?

A WE ARE NOW INTO ABOUT A YEAR AND A HALF LATER.

Q WHAT DIFFERENCE DOES IT MAKE IF YOU KNOW ANYTHING ABOUT WHAT PROPERTY EXISTS, WHAT PROPERTIES HAVE BEEN SOLD FOR? WHY IS THAT

IMPORTANT TO YOU?

A WE ARE TRYING TO DETERMINE WHAT IS LEFT AT THIS POINT BECAUSE AT SOME POINT IF YOU'RE GOING TO CLOSING AN ESTATE, YOU KNOW, WHO'S GOING TO GET WHAT HERE?

Q WHY IS THAT IMPORTANT TO YOU?

A WELL, MATT... IT WAS IMPORTANT TO THE THREE OF US. I'M SURE IT WAS IMPORTANT TO JENE TOO. I THINK EVERYBODY HAS TO FIGURE OUT WHERE IT'S GOING TO GO. IN FACT, WHEN I SPOKE TO BRET DAVIS THE YEAR BEFORE, THE OTHER PART OF THAT CONVERSATION WAS, MATT'S IN JAIL, BUT WHEN HE GETS OUT, YOU KNOW, WE ALL NEED TO START TALKING ABOUT, YOU KNOW, CLOSING THE ESTATE, RIGHT? AND HE'S LIKE, YEAH. I WILL TALK TO JENE AND WE DO NEED TO START TALKING ABOUT THESE PROPERTIES?

Q WHY IS IT IMPORTANT TO CLOSING THE ESTATE FROM YOUR POINT OF VIEW?

A I DON'T SEE THE REASON TO KEEP IT OPEN FOR YEARS ON END. I THINK PART, YOU KNOW, WHEN MY FATHER DIED YOU HAVE THAT WHOLE INITIAL GRIEVING, BUT IT'S LIKE KEEPING THIS THING OPEN, IT'S LIKE YOU'RE STILL GRIEVING. YOU'RE STILL THINKING ABOUT IT. (CRYING).

MR. TALL: CAN WE HAVE A MOMENT, YOUR

HONOR?

JUDGE PADGETT: SURE.

Q CAN YOU OFFER A VIEW BECAUSE I'M GOING TO TELL YOU, I'M CONFUSED ABOUT WHAT APPEARS TO BE A RELATIONSHIP THAT YOU HAVE WITH MS. JENE WHERE YOU ARE COMMUNICATING AS YOU TALKED ABOUT AND THEN YOUR EXPRESSING CONCERNS ABOUT ESTATE CLOSURE TO THE POINT WHERE YOU'RE HIRING A LAWYER. CAN YOU EXPLAIN THAT TO THE JUDGE?

A WE FELT LIKE WHEN MY FATHER DIED SHE DETACHED HERSELF FROM US. LIKE, WHEN MY BROTHER WAS LIVING THERE, FOR INSTANCE. WHILE HE WAS THERE I THINK HE FELT LIKE, YOU KNOW, HE WAS FINE TO STAY THERE AS LONG AS HE COULD. BUT, YOU KNOW, SHE'S ON THE PHONE WITH ME LIKE TALKING BEHIND HIS BACK.

JUDGE PADGETT: WHICH BROTHER ARE YOU TALKING ABOUT?

A STEVEN. MY YOUNGER BROTHER. HE STAYED THERE --

JUDGE PADGETT: SO, THIS IS NOT MATT?

A NO. STEVEN STAYED THERE FOR, I DON'T KNOW, 6 MONTHS OR SO AFTER... MAYBE 8 MONTHS AFTER DAD PASSED. AND YOU KNOW, STEVEN IS SORT OF LIKE THAT. HE'S HARD TO LIVE WITH, THERE'S NO DOUBT ABOUT THAT. BUT, YOU KNOW, LIKE I SAID, THE

MAIN ISSUE IS THAT WE SHOULD BE ABLE TO ASK QUESTIONS AND GET SOME ANSWERS.

Q WHAT STOPPED THE ANSWERS FROM COMING?

A JENE. SHE WOULD NOT... THERE WAS JUST SILENCE. OR IN SOME CASES LIKE WHEN MATT SAID, "DID YOU SELL PROPERTY?" SHE SAID, "NO." SO, IF YOU GET SILENCE OR LIES, WE LOST THE TRUST IN SOME OF THAT, YOU KNOW. THIS WAS SUPPOSED TO BE SOMEONE THAT WE WERE ABLE TO TRUST. SO, YOU KNOW, IT'S DIFFICULT BECAUSE I HAVE A BROTHER ON DRUGS. I'M SEVERAL STATES AWAY AND I'M BUSY AND THEN I HAVE A BROTHER THAT'S IN THAILAND. SO, THEN WE HAVE SOMEONE THAT'S NOT ANSWERING US OR GIVING US LIES AND THEN YOU GOT ALL THIS TIME THAT'S PASSING AND WHAT OTHER CHOICE DO WE HAVE, YOUR HONOR, BUT TO HIRE A LAWYER TO GET THE ANSWERS FOR US? I DIDN'T HAVE ANY OTHER OPTIONS. WE DIDN'T HAVE ANOTHER OPTION AT THAT POINT, SO WE HIRED SCOVILLE.

Q LET ME ASK YOU, MS. IRVING, WHAT IS IT THAT YOU DO FOR A LIVING?

A I'VE HAD A STAFFING AGENCY. IT'S A MEDICAL STAFFING AGENCY.

Q WHAT'S THE NATURE OF THE STAFFING? WHAT KIND OF WORK IS THIS IN THE MEDICAL FIELD?

A SO, I EITHER, YOU KNOW, HIRE PEOPLE AND SEND THEM OUT TO HOSPITALS AND DOCTORS OFFICES OR I PLACE THEM PERMANENTLY IN JOBS.
Q DOES THIS HAVE TO DO WITH X-RAY WORK?
A NOT NECESSARILY, JUST MEDICAL.
Q NURSES AIDES OR NURSING ASSISTANCE?
A YES.
Q NURSES THEMSELVES?
A COULD BE.
Q DO YOU CONSIDER YOURSELF ACCOUNTABLE IN YOUR BUSINESS?
A YES, I MEAN, VERY RESPONSIBLE.
Q HOW LONG HAVE YOU DONE THIS WORK?
A 17 YEARS.
Q SUCCESSFUL AT IT?
A I HAVE BEEN, BUT I'M PROBABLY NOT GOING TO HAVE IT MUCH LONGER AT THIS POINT.
Q HAS THERE BEEN A DOWNTURN IN YOUR BUSINESS?
A I SPENT THE LAST THREE YEARS WITH MY HEAD IN SOME OTHER PLACE.
Q COMMUNICATION AN IMPORTANT COMPONENT OF YOUR BUSINESS?
A VERY MUCH.
Q WHAT IF I WERE TO ASK, ARE YOU OVERLY SENSITIVE ON THE ISSUE OF COMMUNICATION BECAUSE OF YOUR

BUSINESS? FAIR QUESTION?

A I PRIDE MYSELF IN COMMUNICATION. I'M... YOU KNOW, FIRST OF ALL, MY BACKGROUND WAS IN HEALTHCARE BEFORE I STARTED THE COMPANY. YOU KNOW, I'M BIG ON RESPONDING BACK SAME DAY OR BY THE NEXT MORNING. I DON'T LEAVE PEOPLE HANGING AT ALL.

Q DO YOU HEAR FROM OTHER PEOPLE THAT'S OFF-PUTTING OR ANNOYING THAT YOU ARE SO DEMANDING ABOUT COMMUNICATIONS?

A YOU KNOW, THE THING IS, YOU KNOW, YOU CAN'T ALWAYS GET SOMEONE THE INFORMATION RIGHT WAY, BUT YOU CAN USUALLY SAY, YOU KNOW, "I WILL GET BACK TO YOU AT SOME POINT" AND AT THAT POINT GIVE THEM THE INFORMATION. BUT I THINK SILENCE OR, YOU KNOW, A LIE IS NOT... THAT'S NOT HOW YOU HANDLE THINGS.

Q LET ME SHOW YOU A DOCUMENT.

MR. TALL: YOUR HONOR, I HAVE SHOWN THIS TO DEFENSE. I DON'T BELIEVE THAT THEY HAVE AN OBJECTION IF WE MAKE THIS AN EXHIBIT.

MR. BOYD: NO OBJECTION.

JUDGE PADGETT: NUMBER 3 IS IDENTIFIED WITHOUT OBJECTION.

Q LET ME ASK YOU TO LOOK AT THAT DOCUMENT AND ASK IF YOU CAN IDENTIFY IT?

A IT'S A LETTER THAT JACK SCOVILLE WROTE TO BRET DAVIS.

LETTER FROM SCOVILLE TO DAVIS MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 3.

Q WHAT IS THE NATURE OF THE LETTER?

A BASICALLY SAYING THAT THEY WERE THE PROPERTIES THAT WE WERE INTERESTED IN AND ASKING FOR AN APPRAISAL.

Q THIS HAVE ANYTHING TO DO WITH SETTLING THE ESTATE?

A YES.

Q AS A RESULT OF THIS LETTER, DO YOU KNOW WHETHER APPRAISALS WERE DONE REGARDING THE ESTATE PROPERTIES?

A YES, THEY WERE DONE. I DIDN'T KNOW AT THAT TIME THAT ALL THE ESTATE PROPERTIES WERE DONE. I JUST RECENTLY FOUND THAT OUT.

Q WERE YOU PROVIDED WITH COPIES OF APPRAISALS AS A RESULT OF THIS LETTER?

A NO.

Q YOU EVENTUALLY GOT SOME, DID YOU NOT?

A I RECEIVED AT THAT TIME... AT THE TIME OF THOSE APPRAISALS, I RECEIVED ONE FOR THE PROPERTY THAT IS LISTED NEXT TO MY NAME. I ONLY SAW MATT'S BECAUSE, YOU KNOW, MATT AND I ARE SHARING INFORMATION. I HAD SEEN STEVENS ONLY BECAUSE STEVEN WAS IN THAILAND AND DID NOT RECEIVE HIS OWN... I CONTACTED THE APPRAISAL COMPANY MYSELF, WHICH THEIR LITTLE OFFICE GOT UPSET WITH ME BECAUSE APPARENTLY I DIDN'T HAVE AUTHORITY TO DO THAT. I DID NOT KNOW THAT. I DID NOT KNOW THAT I WAS STEPPING ON TOES, BUT I --

Q WAS MR. SCOVILLE YOUR ATTORNEY AT THIS TIME OR HAD HE BEEN LET GO?

A I'M NOT SURE ABOUT THE TIMEFRAME HONESTLY.

Q WHEN IS IT THAT YOU LET MR. SCOVILLE GO?

A I DON'T KNOW WHAT THE EXACT DATE WAS.

Q DO YOU HAVE AN IDEA OF WHEN THAT WAS?

A PROBABLY OCTOBER.

Q 2015?

A YES. I'M THINKING OCTOBER 2015.

Q DID YOU THINK HE HAD ASSISTED YOU IN MOVING TOWARD ESTATE CLOSURE?

A YES, BUT I WAS UNDER THE IMPRESSION THAT THROUGH HIM A LITTLE BIT THAT WE WERE GOING TO ACTUALLY... THE ESTATE WAS GOING TO CLOSE LIKE

THEN. HOWEVER, DURING THIS TIMEFRAME, YOU KNOW, THE ROOF WAS PUT ON AND THEN IT WASN'T UNTIL I SAW THE DISTRIBUTION SHEET, WHICH THAT DID NOT COME TO ME UNTIL DECEMBER --

Q YOU MENTIONED A ROOF BEING PUT ON. A ROOF BEING PUT ON WHAT PROPERTY?

A THE CROOKED PINE.

Q IS THAT YOUR FATHER'S RESIDENCE WHERE MS. JENE ALSO LIVED?

A CORRECT.

Q YOU MENTIONED IN DECEMBER RECEIVING A DISTRIBUTION PROPOSAL?

A RIGHT. I DID NOT RECEIVE THE DISTRIBUTION PROPOSAL UNTIL DECEMBER. I MEAN, WE ALL DID. IT WASN'T JUST LIKE I DID. WE ALL RECEIVED IT AND IT WAS THEN THAT... BECAUSE LIKE I SAID, I NEVER SAW AN APPRAISAL FOR CROOKED PINE. SO, IT WAS THEN THAT'S WHEN I SAW CROOKED PINE AT THE $95,000.00.

Q NOW, THIS IS THE SAME PROPERTY THAT'S LISTED IN THE ESTATE INVENTORY AT $191,000.00 AND CHANGE?

A YES.

Q IS THERE ANOTHER RESIDENCE CLOSE BY IN THE DEERFIELD PROPERTY OTHER THAN THE CROOKED PINE RESIDENCE?

A YES.
Q ARE YOU FAMILIAR WITH THAT?
A YES.
Q WHAT DO YOU KNOW ABOUT THAT RESIDENCE AND IT'S VALUE?
A WELL, THAT'S THE ONE THAT'S ON THAT LETTER NEXT TO MY NAME. THAT'S THE ONE THAT I ACTUALLY GOT AN APPRAISAL FOR.
Q YOU COMMISSIONED THE APPRAISAL OR THE ESTATE DID?
A THE ESTATE DID, YOU KNOW. JACK SCOVILLE ASSISTED, YOU KNOW, IN REQUESTING IT.
Q BY THE WAY, THIS LETTER FROM MR. SCOVILLE, DOES THIS MENTION WHETHER OR NOT AFTER THE APPRAISALS ANYONE COULD REVIEW THEM AND ASK QUESTIONS?
A I DON'T KNOW. I WOULD HAVE TO SEE THE LETTER AGAIN.
Q DID YOU HAVE ANY UNDERSTANDING THAT AFTER THE APPRAISALS THE ESTATE BENEFICIARIES WOULD BE BOUND BY WHATEVER THE APPRAISERS SAID? DID YOU UNDERSTAND THE QUESTION?
A I DIDN'T HEAR. I'M SORRY. MULTITASKING... READING AND LISTENING IS...
Q I'M ACCUSED OF NOT LISTENING VERY OFTEN. WHAT ABOUT A PLAN FOR THE APPRAISALS, IS THERE

ANYTHING THAT YOU UNDERSTOOD ABOUT WHAT WOULD BE DONE WITH THE APPRAISALS? FOR EXAMPLE, EVERYBODY DISTRIBUTES THE PROPERTY ACCORDING TO WHAT THE APPRAISERS SAID NO MATTER WHAT?

A NO. I THINK THE IDEA OF GETTING THE PROPERTIES APPRAISED WAS SO WE COULD MAKE SURE THAT, I MEAN, THIS IS REALLY JUST ABOUT NUMBERS HERE AND MAKING SURE THAT EVERYBODY IS GETTING... YOU KNOW, MY FATHER'S WILL IS FOUR EQUAL SHARES. SO, YOU GET PROPERTY APPRAISED SO THAT YOU MAKE SURE THAT WHEN IT'S DISTRIBUTED THAT EVERYBODY IS GETTING A QUARTER... YOU KNOW, IT'S MY FATHER'S WILL. IT DOESN'T SAY 35, 15 AND 65. DO YOU KNOW WHAT I MEAN? IT'S FOUR EQUAL SHARES. THAT WAS THE POINT OF GETTING THE APPRAISALS.

Q DESCRIBE IF YOU WILL, HOW IT WAS EXPLAINED TO YOU THAT A PROPERTY THAT WAS YOUR DAD'S RESIDENCE, WHICH LISTED ON AN INVENTORY AT $191,200.00 WAS NOW BEING PROPOSED FOR A $95,000.00 VALUE? HOW WAS THAT EXPLAINED TO YOU?

A WELL, I MEAN, NO ONE EXPLAINED IT TO ME. I LOOKED AT THE APPRAISAL. WELL, IT WAS NOT EXPLAINED TO ME. IT WAS ON THE DISTRIBUTION

SHEET THAT DECEMBER WHEN I --

Q WHERE DID YOU GET THE DISTRIBUTION SHEET?

A IT WAS E-MAILED TO ME FROM BECKY FROM THEIR LAW OFFICE.

Q ARE YOU SAYING NO ONE EXPLAINED TO YOU WHY THE DIFFERENT VALUES EXISTED?

A NO.

Q WHAT DID YOU DO WHEN YOU GOT THE DISTRIBUTION PROPOSAL?

A I WAS LIKE WHAT IS THIS? I MEAN, I WAS... I ASKED FOR... THAT'S WHEN I WROTE TO THEIR OFFICE AND ASKED FOR AT THAT POINT... THEY DID, I... I... I WAS VERY HAPPY THAT THEY SENT WHAT I REQUESTED. I ASKED FOR THE APPRAISAL FOR CROOKED PINE. I ASKED FOR A COUPLE MONTHS OF BANK STATEMENTS BECAUSE AT THAT POINT, YOU KNOW, WE DIDN'T HAVE SCOVILLE. SO, I THINK I ASKED FOR A COUPLE MONTHS BANK STATEMENTS AND THEN SOMETIME I THINK IN JANUARY THEY ARRIVED. AND THAT'S WHEN I SAW THE APPRAISAL SHOWING WHAT THE APPRAISAL SHOWED AND I WAS LIKE, OKAY, $95,000.00.

Q TO BE FAIR, THE APPRAISAL MENTIONED BAD THINGS ABOUT THE HOUSE, SUCH AS, WHAT DO YOU RECALL?

A WELL, MOLD.

Q DO YOU HAVE AN UNDERSTANDING THAT THERE WAS MONEY SPENT TO REMEDIATE THE MOLD?

A RIGHT. I MEAN, I KNOW THAT NOW, I GUESS, BUT I DIDN'T...

Q WE TALKED ABOUT EARLIER COMMUNICATION AND I WANT TO MAKE SURE THAT YOU ARE CLEAR ON THIS. THERE'S A PROPOSAL TO DISTRIBUTE THE PROPERTY TO ONE OF THE PARTIES. WE CAN CALL IT A $95,000.00 PROPERTY, IS THAT CORRECT? ON THE DISTRIBUTION PROPOSAL THAT YOU RECEIVED?

A YES. THE ONE THAT I RECEIVED, YOU KNOW, OVER A YEAR AGO.

Q AND THE EXPLANATION THAT CAME TO YOU AS A BENEFICIARY ABOUT WHY A PROPERTY LISTED FOR 191 ON AN INVENTORY WAS PROPOSED FOR $95,000.00 DISTRIBUTION, THE EXPLANATION WAS WHAT?

A THERE WAS NO EXPLANATION.

Q DID YOU ASK FOR A EXPLANATION?

A NO.

Q YOU GOT A COPY OF THE APPRAISAL?

A YES.

Q FAIR TO SAY THAT GIVING YOU THE APPRAISAL WAS THE ESTATES' WAY OF COMMUNICATING IT TO YOU?

A RIGHT. I HAD TO ASK FOR IT.

Q YOU RECALL WRITING TO THE ESTATE IN 2015 MAKING

PROPOSALS TOWARDS CLOSING THE ESTATE ADMINISTRATION?

A YES.

Q WHAT DID YOU ASK FOR?

A BASICALLY TO TRY TO, YOU KNOW, JUST INSTEAD OF IT BEING, YOU KNOW, CONTINUED TO BE LIKE... AND THE LAWYERS... WELL, IN LAWYERS' HANDS AND, YOU KNOW, EVERYTHING IS STILL HELD UP IN REAL ESTATE. SO, IT JUST SEEMED TO BE LIKE, WHY NOT JUST DIVIDE THESE PROPERTIES SINCE THE THREE OF US ARE IN AGREEMENT THAT WE COULDN'T STILL WORK TOWARDS FINDING OUT SOME SORT OF SOLUTION.

MR. TALL: I'M MARKING A COUPLE OF OTHER EXHIBITS, YOUR HONOR.

JUDGE PADGETT: ANY OBJECTIONS?

MR. BOYD: NO OBJECTION, YOUR HONOR.

JUDGE PADGETT: WITHOUT OBJECTION. 4 AND 5.

Q MS. IRVING, I WOULD LIKE YOU TO TAKE A LOOK AT WHAT'S BEEN MARKED AS EXHIBITS 4 AND 5 AND ASK YOU IF YOU CAN IDENTIFY THE DOCUMENTS?

A UH-HUH. (AFFIRMATIVE RESPONSE).

Q YOU HAVE TO GIVE A YES OR NO ANSWER?

A YES. I'M SORRY.

E-MAILED LETTERS MARKED FOR

IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 4.

E-MAILED LETTERS MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 5.

Q ARE THESE... MS. IRVING, THEY'RE NOT SIGNED. ARE THESE LETTERS THAT YOU SENT ELECTRONICALLY?

A YES, E-MAILED.

Q THEY MAKE A PROPOSAL, DO THEY NOT, TO CLOSE THE ESTATE?

A YES.

Q WHAT IS YOUR REPLY IF THE ESTATE SAYS, "THESE PROPOSALS OF YOURS ARE DIFFERENT THAN THE PROPOSAL THAT MR. SCOVILLE WAS MAKING IN HIS LETTER, THE OTHER EXHIBIT THAT WE SHOWED YOU A MOMENT AGO?

A WELL, LIKE I SAID, THAT'S BEFORE I FOUND OUT THAT THE APPRAISAL HAD COME IN AT $95,000.00.

Q WHAT IF THE PROPERTY WAS WORTH $95,000.00? WHAT DIFFERENCE DOES THAT MAKE?

A WELL, I MEAN, IF IT WAS BEING SOLD AND DISTRIBUTED... IF IT WAS BEING SOLD AND DISTRIBUTED AND THEN, YOU KNOW, EQUALED OUT THEN

THAT'S WHAT IT WAS, BUT THAT WASN'T THE CASE. SHE WAS STILL TRYING TO LIVE... YOU KNOW, TAKE THE PROPERTY SO... THAT'S THE DIFFERENCE.

Q DID YOU DISAGREE WITH THAT $95,000.00 VALUE?

A YES.

Q ARE YOU A REAL ESTATE PROFESSIONAL?

A NO.

Q WHAT WAS YOUR BASIS FOR LOOKING AT THE $95,000.00 AND SAYING, "I DISAGREE."?

A IT WAS MY FATHER'S HOUSE. SO, I KNEW THE HOUSE, FIRST OF ALL. AND SECONDLY, THE OTHER HOME... EVERYTHING ELSE WERE CONDOS. THERE WAS ONE OTHER SINGLE FAMILY HOME, WHICH ACTUALLY WAS THE HOUSE THAT I HAD THE APPRAISAL FROM AND IT'S ONLY LIKE THREE BLOCKS AWAY. AND IT'S NOT ON A GOLF COURSE AND IT'S SMALLER. SO... AND THE DIFFERENCE IS THAT WE'RE TALKING A DIFFERENCE OF $100,000.00 BETWEEN 95 AND 190.

Q YOU'RE SAYING IT DIDN'T SOUND RIGHT TO YOU?

A IT DIDN'T SOUND RIGHT. I THOUGHT IT NEEDED TO BE LOOKED AT AGAIN.

Q IN ALL FAIRNESS, YOU WERE INVITED TO PARTICIPATE IN AN ESTATE MEETING WHERE THESE VIEWS COULD HAVE BEEN AIRED, IS THAT CORRECT?

A WHAT ESTATE MEETING?

Q DIDN'T MR. DAVIS INVITE YOU TO A MEETING SO THAT YOU COULD WORK TO SEE IF THE PROPERTIES COULD BE DISTRIBUTED AND THE ESTATE BE CLOSED?

A ARE YOU SPEAKING ABOUT THE FEBRUARY 1 THAT --

Q I AM. THESE ARE JANUARY LETTERS AND IN FEBRUARY IF YOU ARE --

A IT'S NOT THAT EASY FOR ME TO COME. FIRST OF ALL, I'M A SINGLE MOTHER. I DO HAVE A CHILD. I DO RUN A BUSINESS. AND I'M SIX PLUS HOURS AWAY. SO, IT'S NOT THAT EASY FOR ME TO COME IF IT'S... YOU KNOW, IF IT'S SOMETHING WE COULD HAVE DONE ON THE TELEPHONE JUST TO DO A ONE ON ONE MEETING WITH SOMEONE. THAT'S WHY I ELECTED TO HAVE A TELEPHONE CONVERSATION WITH HIM VERSUS COMING IN PERSON.

Q IN FAIRNESS, THE ESTATE CAN'T BE IN EXISTENCE JUST TO CATER TO YOU AND YOUR PARTICULAR NEEDS. ARE YOU WILLING TO ACKNOWLEDGE THAT?

A WELL, LIKE I SAID, IF IT WAS JUST A MEETING WITH ONE PERSON THAT WE COULD HAVE HAD ON THE TELEPHONE, THAT'S WHAT I DID.

Q WHY NOT GO TO A MEETING WHERE YOU COULD HAVE YOUR VIEWS ABOUT VALUES DISCUSSED? DID YOU HAVE CONCERNS ABOUT TRUST AT THAT TIME?

A I THINK WE ALL, MY BROTHERS AND EVERYBODY, YEAH.

WE ALL HAVE CONCERNS ABOUT TRUST.

Q AND WHY WAS THAT?

A BECAUSE WE... GOING BACK TO OUR RELATIONSHIP WITH JENE. WE FELT LIKE IT'S BEEN BROKEN. THAT'S WHERE IT ALL STARTED. IT'S BEEN BROKEN.

Q IF I DON'T SAY IT SOMEONE ELSE'S IS GOING TO. WASN'T THERE A MEETING YOU DIDN'T HAVE A LAWYER AND YOU COULD HAVE MET TO SEE IF YOU COULD WORK THINGS OUT? NOW, YOU'RE CONCERNED ABOUT THE EXPENSES OF IT? YOU WERE CONCERNED ABOUT HOW IT WAS ESTABLISHED?

A I'M NOT SURE WHAT THAT QUESTION MEANS.

Q SUPPOSE MR. DAVIS SAYS THAT THERE'S SOME DIFFERENCES BETWEEN YOU AND WHAT THE APPRAISER SAYS THE PROPERTY IS WORTH. COME TO A MEETING, LET'S WORK IT OUT. WHAT'S YOUR OBJECTION?

A LIKE I JUST SAID, I DIDN'T COME TO THE MEETING IN PHYSICAL FORM. I HAD THE MEETING OVER THE TELEPHONE. I HAVE MEETINGS ALL THE TIME... I ACTUALLY RUN A NATIONWIDE COMPANY THAT EVEN DEALS IN HAWAII AND ALASKA. SO, I DIDN'T SEE THE NEED TO DRIVE TO SOUTH CAROLINA TO HAVE CONVERSATIONS --

Q BUT IN ALL FAIRNESS, THE TELEPHONE CONVERSATION YOU PROPOSED AN EQUAL DISTRIBUTION OF ALL THE

PROPERTIES?

MR. BOYD: YOUR HONOR, COUNSEL CONTINUES TO LEAD HIS OWN WITNESS. HE IS REALLY TESTIFYING AS MUCH AS SHE IS, YOUR HONOR.

JUDGE PADGETT: MR. TALL, YES. I WILL SUSTAIN THE OBJECTION. YOU CAN ASK HER DID SHE HAVE A CONVERSATION AND WHAT WAS HER RECOLLECTION OF THE CONVERSATION.

MR. TALL: THANK YOU, SIR.

Q WHAT'S YOUR RECOLLECTION OF THE CONVERSATION?

A ARE YOU SPEAKING OF OUR FEBRUARY CONVERSATION?

Q HOW MANY TELEPHONE CONVERSATIONS DID YOU HAVE WITH MR. DAVIS?

A I HAD THE INITIAL ONE THAT I ALREADY SPOKE ABOUT WHERE WE SPOKE ABOUT THE INSURANCE. HE ALSO TOLD ME IN THAT CONVERSATION... THE FIRST THING HE SAID WAS, "I'M TELLING YOU RIGHT OFF THE START I WORK FOR JENE... "YOU KNOW, "SHE RETAINED ME AND I CAN'T TELL YOU ANYTHING ABOUT" YOU KNOW, "THE ESTATE BASICALLY. I WORK FOR JENE, AND I WANT TO MAKE THAT CRYSTAL CLEAR." WE HAD THE CONVERSATION ABOUT... IN THAT SAME CONVERSATION WE TALKED ABOUT THE INSURANCE AND IN THAT SAME CONVERSATION, YOU KNOW, I TOLD HIM

ABOUT MATT BEING IN JAIL. HE'LL BE OUT, YOU KNOW, TOWARDS THE END OF THE YEAR AND THAT, YOU KNOW, WE DO NEED TO START HAVING SOME CONVERSATION ABOUT HOW WE'RE GOING TO, YOU KNOW, TAKE THESE PROPERTIES. I DON'T THINK THE IDEA WAS EVER WAIT AROUND UNTIL ALL THESE PROPERTIES GET SOLD OR, YOU KNOW. WE HAVE TO CLOSE THE ESTATE. SO, WE HAD THAT FIRST CONVERSATION AND THEN I THINK THE ONLY OTHER TIME WE WERE ON THE TELEPHONE WAS THE CONVERSATION LAST FEBRUARY.

Q AND FROM YOUR POINT OF VIEW, WHAT WAS IMPORTANT ABOUT THAT?

A WELL, HE WANTED TO, YOU KNOW, HAVE THIS MEETING AFTER, I GUESS, I HAD SENT THESE LETTERS. I SENT THE LETTERS. HE NEVER RESPONDED TO THE LETTERS, FIRST OF ALL. THEN FINALLY, HE WANTED TO PIN DOWN AND HAVE A MEETING. SO, I SAID, YOU KNOW, OKAY. WE FINALLY GOT ON THE TELEPHONE AND HE SAID HE HAD IDEAS AND I WAS INTERESTED TO HEAR ACTUALLY. I MEAN, I WAS ACTUALLY REALLY INTERESTED TO HEAR WHAT THE IDEAS WERE BECAUSE MY BROTHERS AND I WANTING TO GET THIS THING CLOSED. SO, I DON'T KNOW, WE WERE ON THE PHONE FOR MAYBE HALF... IT SEEMED LIKE WE WERE ON THE PHONE FOR AWHILE. AND I DID RECORD IT, YOUR

HONOR. AND THE REASON WHY I RECORDED IT WAS BECAUSE, YOU KNOW, MY BROTHERS AND I AREN'T THERE, ONE IN THAILAND AND ONE'S ON DRUGS AND I FELT LIKE THEY NEEDED TO KNOW WHAT'S GOING ON. I HAVE INCLUDED THEM IN EVERY TIME, YOU KNOW, CLIFF AND I TALK. I'M EITHER FORWARDING HIS E-MAILS OFF TO THEM. I HAVE INCLUDED THEM ON EVERYTHING. WELL, BECAUSE THIS IS A CONVERSATION, YOU KNOW, I WANTED TO BE ABLE TO LET THEM KNOW EXACTLY WHAT WAS SAID. I DID NOT KNOW WHAT... I DIDN'T KNOW WHAT THESE IDEAS WERE GOING TO BE THAT HE HAD. AND ALSO, YOU KNOW, IT'S LIKE, WHAT AM I GOING TO DO, JUST SIT THERE AND WRITE NOTES. I DIDN'T KNOW HOW FAST HE WAS GOING TO BE TALKING. IF I'M GOING TO BE ABLE TO KEEP IN MY HEAD STRAIGHT OF HOW THIS CONVERSATION IS GOING TO GO. I FELT REALLY NERVOUS. I FELT EXTREMELY NERVOUS. SO, YOU KNOW, IT'S SORT OF LIKE A WAY OF... THAT WAY I CAN PLAY IT BACK AND SAY, OKAY. THE THING IS, I HAD NO IDEA... I WAS THINKING IN MY HEAD HE HAD PLANS OR MAYBE THERE'S A, B AND C. WE CAN DO THIS. WE CAN DO THIS OR WE CAN DO IT THIS WAY. WHETHER YOU HEARD THIS TAPE OR YOU DON'T, I DON'T KNOW, BUT NONE OF THAT TOOK PLACE. I FELT

LIKE I WAS BULLIED QUITE FRANKLY.

Q LET ME SHOW YOU A COUPLE OF OTHER PROPOSED EXHIBITS?

MR. DAVIS: YOUR HONOR, I DID NOT HEAR HER LAST STATEMENT.

JUDGE PADGETT: SHE SAID SHE FELT LIKE YOU BULLIED HER.

MR. DAVIS: OKAY. THANK YOU.

MR. TALL: MARK THOSE SEPARATELY PLEASE.

MR. BOYD: ARE THOSE THE LETTERS THAT ARE NOT LEGIBLE?

MR. TALL: I THINK THEY'RE LEGIBLE, BUT NOT ALL THAT GOOD.

JUDGE PADGETT: MR. BOYD, WITHOUT OBJECTION?

MR. BOYD: YOUR HONOR, I HAVE SOME OBJECTION AS THERE ARE SOME WORDS THAT I CAN'T MAKE OUT. THEY ARE WHAT THEY ARE AND THE DOCUMENTS SPEAK FOR THEMSELVES. IF IT BECOMES AN ISSUE, WE CAN DISCUSS IT.

JUDGE PADGETT: VERY GOOD. ADMITTED WITH EXEMPTIONS THAT YOU STATED.

Q CAN YOU IDENTIFY THE TWO DOCUMENTS THAT WE HAVE NOW MARKED AS ADDITIONAL EXHIBITS?

A YES.

MR. TALL: YOUR HONOR, WE MARK THESE AS EXHIBIT'S 6 AND 7.

LETTERS MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 6.

LETTERS MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 7.

Q THESE ARE TWO ADDITIONAL LETTERS BESIDES THE JANUARY LETTERS THAT YOU FORWARDED?

A YES.

Q WERE THESE BEFORE OR AFTER YOU HAD THE CONVERSATION THAT YOU REFERRED TO EARLIER WITH MR. DAVIS?

A THEY'RE JANUARY SO WE SPOKE IN FEBRUARY.

Q THESE TWO LETTERS ARE FEBRUARY.

A I KNOW HE AND I WERE ON THE TELEPHONE RIGHT AROUND FEBRUARY 16TH OR SOMETHING. SO, IT HADN'T BEEN THAT LONG. THEY'RE DATED.

Q ALRIGHT. CAN YOU TELL US WHAT YOU HEARD FROM THE ESTATE IN THE LATTER PART OF MARCH OF 2016 ABOUT INCOME TAXES?

A SO, I THINK... I DON'T THINK THEY CALLED ME. I THINK THEY SENT AN E-MAIL. BASICALLY JUST AN E-MAILS. "WE NEED YOUR SECURITY NUMBER" BECAUSE, I GUESS, THE ESTATE WANTED TO DO THEIR TAX RETURN.

JUDGE PADGETT: MR. TALL, BEFORE WE GO FORWARD, IT IS 12:30 NOW. WE ANTICIPATED THAT THIS PART OF THE TESTIMONY IS GOING TO BE EXTENDED. IS THIS A GOOD STOPPING POINT?

MR. TALL: I THINK, YOUR HONOR, YES.

JUDGE PADGETT: WE CAN GET INTO THAT AFTER LUNCH. WE WILL RE -- ADJOURN AT FIFTEEN MINUTES TO 2, 1:45.

JUDGE PADGETT: MS. JULIE IRVING, YOU'RE NOT ALLOWED TO DISCUSS THIS MATTER WITH YOUR ATTORNEY OR ANYBODY TO ADVISE YOU ABOUT YOUR TESTIMONY. YOU'RE UNDER OATH, DO YOU UNDERSTAND THAT?

A YES.

JUDGE PADGETT: PLEASE DO NOT DISCUSS IT WITH ANYBODY, YOUR TESTIMONY, WHAT YOU HAVE ALREADY TESTIFIED TO OR ANYTHING IN THE FUTURE.

A OKAY.

JUDGE PADGETT: ANYTHING FURTHER?

(OFF THE RECORD FOR LUNCH).

MR. BOYD: WITH THAT, YOUR HONOR, WE WILL CALL JIMMY CROMARTIE TO THE STAND.

JAMES CROMARTIE, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. BOYD:

A MY NAME IS JIMMY JAMES CROMARTIE. IT'S C-R-O-M-A-R-T-I-E.

Q MR. CROMARTIE, WE HAVE MET, OF COURSE. YOU WERE DEPOSED IN MY OFFICE. WE ARE SORRY TO TROUBLE YOU AGAIN TODAY WITH THIS, BUT WE APPRECIATE YOU COMING TO THE COURTHOUSE FOR US. CAN YOU BRIEFLY BEGIN BY STATING YOUR NAME AND ADDRESS FOR THE RECORD PLEASE?

A MY NAME IS JAMES CROMARTIE. MY ADDRESS IS 64 EGRET RUN LANE IS MY OFFICE ADDRESS, PAWLEY'S ISLAND.

Q WHAT'S YOUR BUSINESS, MR. CROMARTIE?

A I HAVE A REAL ESTATE APPRAISAL OFFICE, CROMARTIE APPRAISAL SERVICE, INC.

Q HOW LONG HAVE YOU BEEN IN THE REAL ESTATE APPRAISAL BUSINESS?

A SINCE '76.

Q WOULD YOU SAY... IS IT FAIR TO SAY THAT YOU

OBVIOUSLY HOLD YOURSELF OUT AS AN EXPERT ON REAL ESTATE?

A I DON'T KNOW HOW MUCH OF AN EXPERT YOU WOULD CALL IT, BUT I'VE BEEN APPRAISING A LONG TIME.

Q YOU HAVE BEEN DOING THIS FOR A WHILE?

A YEAH.

Q DID THE ESTATE REQUEST THAT YOU PREPARE A SERIES OF THE APPRAISALS IN CONNECTION WITH THIS ESTATE?

A YES.

Q CAN YOU BRIEFLY DESCRIBE TO THE COURT HOW THAT TRANSPIRED?

A WE GOT A CALL FROM THE OFFICE AND THEY ASKED US WOULD WE BE INTERESTED IN APPRAISING THESE PROPERTIES? THEY WERE I THINK 6 OR MAYBE 7. WE TOLD THEM, YES, YOU KNOW, "SEND US THE INFORMATION." THE LADY SENT US A LIST OF THE PROPERTIES. THERE WAS ACTUALLY NOTHING WITH IT OTHER THAN JUST APPRAISAL OF THE PROPERTIES FOR THE ESTATE.

Q WHEN YOU SAID, "THE LADY" ARE YOU REFERRING TO THE INDIVIDUAL AT DAVIS AND BOYD?

A YES.

Q DO YOU RECALL WHO THAT WAS?

A NO. I DON'T KNOW. AND I DON'T HAVE MY FILE. I

HAD IT IN MY FILE.

Q NO PROBLEM. WAS ONE OF THE PROPERTIES THAT YOU APPRAISED, MR. CROMARTIE, LOCATED ON CROOKED PINE DRIVE?

A YES.

Q AND YOU UNDERSTAND THAT'S THE APPRAISAL THAT'S AT ISSUE IN THIS PROCEEDING?

A YES.

Q I'M GOING TO ASK YOU...

MR. BOYD: MAY I APPROACH, YOUR HONOR?

JUDGE PADGETT: CERTAINLY.

MR. TALL: YOUR HONOR, THIS IS MANY PAGES AND I THINK WE HAVE IT IN A NUMBER OF DIFFERENT FORMATS. I HAVE NO REASON TO BELIEVE IT WOULD BE DIFFERENT THAN HOW WE HAD IT AT THE DEPOSITION, YOUR HONOR.

JUDGE PADGETT: SO, YOU HAVE NO OBJECTIONS.

MR. TALL: NOT IN THAT CASE, YOUR HONOR.

JUDGE PADGETT: VERY GOOD. ADMITTED AS DEFENDANT'S 1.

Q MR. CROMARTIE, CAN YOU IDENTIFY THAT DOCUMENT FOR THE COURT?

A YES. THIS IS THE APPRAISAL THAT I ORIGINALLY

DID FOR YOU ALL.

ORIGINAL APPRAISAL FROM CROMARTIE MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS DEFENDANT'S EXHIBIT 1.

Q MR. CROMARTIE, LET ME ASK YOU THIS QUESTION, WHEN YOU WENT OUT TO DO THESE APPRAISALS, DID YOU KNOW ANYTHING ABOUT THE FILE PROCEEDING IN THE PROBATE COURT? DID YOU KNOW ANYTHING ABOUT PRIOR EVALUATIONS THAT HAD BEEN ASSERTED?

A NO, NO. NOTHING WAS MENTIONED.

Q DID ANYBODY TELL YOU ANYTHING? ANYBODY FROM THE PERSONAL REPRESENTATIVE OR ANYBODY FROM DAVIS AND BOYD, TELL YOU ANYTHING TO TRY AND INFLUENCE YOUR EVALUATION OF THESE PROPERTIES?

A NO, NOT AT ALL.

Q AND DO YOU UNDERSTAND NOW A LITTLE BIT BETTER HAVING BEEN DEPOSED, WHAT THE QUESTIONS ARE CONCERNING THAT EVALUATION THAT YOU PREPARED?

A YES. I THINK I UNDERSTAND. THEY'RE DISAPPOINTED IN MY VALUE.

Q WHAT'S YOUR UNDERSTANDING OF THAT DISAPPOINTMENT? WHAT'S YOUR UNDERSTANDING IS THE BASIS OF THAT DISAPPOINTMENT?

MR. TALL: YOUR HONOR, WHAT ABOUT A FOUNDATION? HOW DOES HE KNOW ANYTHING ABOUT SOMEONE'S DISAPPOINTMENT?

JUDGE PADGETT: I AGREE WITH THAT.

Q WELL, LET YOU ME ASK YOU THIS, MR. CROMARTIE, DO YOU UNDERSTAND THAT OBJECTIONS THAT ARE INVOLVED HERE AS IT RELATES TO YOUR APPRAISAL OF THE CROOK PINE PROPERTY?

A YES.

Q HOW DO YOU UNDERSTAND THAT?

A WELL, I UNDERSTAND THAT THE... I UNDERSTAND THAT THEY THINK THAT MY VALUE IS TOO LOW, WAY TOO LOW. AND I DISAGREED WITH THEM. YOU KNOW, THIS IS AN OPINION, THAT'S WHAT AN APPRAISAL IS. IT'S MY OPINION. AND IN MY OPINION, I DID A FAIR JOB.

Q WHAT WERE SOME OF THE FACTORS THAT CAUSED THE VALUE IN YOUR APPRAISAL TO BE LESS THAN WHAT THE ESTATE HAD REPORTED FROM THE TAX ROLL?

MR. TALL: YOUR HONOR, I HAVE AN OBJECTION. I THINK MR. CROMARTIE JUST SAID HE DIDN'T KNOW ABOUT WHAT THE ESTATE SAID THE VALUE WAS.

MR. BOYD: YOUR HONOR, HE JUST TESTIFIED THAT THE OBJECTION WAS THAT THE VALUE

WAS EXTENSIVELY TOO LOW. I'M JUST ASKING HIM, WHAT WERE THE FACTORS THAT WENT INTO THE APPRAISAL THAT WOULD HAVE ATTRIBUTED TO THE LOWER EVALUATION?

JUDGE PADGETT: HOW DID HE ARRIVE AT HIS APPRAISAL?

MR. BOYD: EXACTLY.

MR. TALL: NO OBJECTION THERE.

A WELL, THE FIRST THING, IS WHEN I DID MY EXTERIOR MEASURING AND OBSERVATIONS OF THE PROPERTY, THERE WAS A LOT OF ROTTED WOOD ON THE EXTERIOR AND THERE WAS A LOT OF GREEN MATTER GROWING ON THE SIDE OF HOUSE, WHENEVER IT IS. IT WAS JUST IN BAD CONDITION. AND THEN WHEN I GOT INSIDE, IT IS IN DEPLORABLE CONDITION, IN MY OPINION. YOU HAD... APPEARED TO BE MOLD IN THE MASTER BEDROOM ALL OVER THE CEILING WHERE THE CEILING WAS BOWED DOWN. I TOOK PICTURES OF IT AND PUT IT IN MY REPORT. THE GARAGE, ALL OF THE GARAGE CEILING WAS THE SAME WAY, HAD MOLD ALL OVER IT. I CALL IT MOLD. IT WAS SOME KIND OF FUNGUS. IT WAS BLACK. THE LITTLE SUN ROOM AREA, THE SAME THING IN LIKE TWO OR THREE PLACES. AND I TOOK PICTURES OF ALL THAT AND PUT IT IN MY REPORT. I JUST FELT LIKE IT WAS... OUTSIDE YOU COULD LOOK

UP INTO THE ATTIC BECAUSE THERE WAS... THE EAVE WAS NOT... THE WOOD WAS GONE FROM THE EAVE IN ONE PLACE. I TOOK PICTURES OF THAT AND PUT IT IN THE --

Q CAN YOU POINT OUT FOR THE COURTS' REFERENCE, MR. CROMARTIE, WHAT PICTURES YOU'RE REFERRING TO?

A IF I CAN PUT THESE PAGES APART. THIS IS ONE.

Q THAT'S THE EXTERIOR EAVE WHERE THE WOOD IS MISSING?

A RIGHT.

Q CAN YOU IDENTIFY WHAT PAGE YOU'RE LOOKING AT?

A IT'S NOT NUMBERED. BUT YOU'VE GOT THAT AND THE NEXT PAGE IS THE SUN ROOM AND THE GARAGE CEILING.

Q WHAT DUTIES --

A WELL, THIS IS THE MOLD FROM WATER DRIPPING ALL THROUGH THE CEILINGS. THIS IS THE EXTERIOR WOOD ROT THAT I WAS TALKING ABOUT WITH THE GREEN GROWTH DOWN THE SIDE. THIS IS THE MASTER BEDROOM CEILING. I WOULDN'T SLEEP THERE PERSONALLY.

Q IS IT FAIR TO SAY, MR. CROMARTIE, THAT THE INTERIOR OF THE HOUSE AND THE CONDITION OF THE INTERIOR OF THE HOUSE HAD A LARGE IMPACT ON YOUR EVALUATION?

A SURE, YES.

Q DID I UNDERSTAND YOU TO SAY THAT YOU WOULD NOT STAY IN THAT HOUSE, MR. CROMARTIE?

A CORRECT.

Q WHY IS THAT?

A I JUST FEEL LIKE WITH ALL OF THAT... WHAT APPEARED TO ME TO BE MILDEW OR FUNGUS GROWING ALL THROUGH THE ATTIC AND, I MEAN, THROUGH THE CEILINGS AND EVERYTHING. IT HAD TO BE ALL UP IN THE ATTIC. I WOULDN'T WANT TO BE IN THERE BREATHING THAT ALL THE TIME ITSELF.

Q WHAT DOES YOUR APPRAISAL SAY ABOUT THE ROOF OF THE PROPERTY?

A I DON'T REALLY GET INTO DETAIL ON THE ROOF, BUT I DID MARK ON THE APPRAISAL THAT THE ROOF WAS IN GOOD CONDITION BECAUSE IT HAD BEEN REPLACED. I PUT DOWN ARCHITECTURAL SHINGLES, GOOD CONDITION.

Q DO YOU FEEL, MR. CROMARTIE, HAVING SOME TIME TO THINK ABOUT THE MATTER AND HAVING BEEN DEPOSED AND IN ESSENCE, CHALLENGED ON YOUR APPRAISAL NOW, DO YOU STAND BEHIND YOUR EVALUATION THAT YOU PUT ON THE PROPERTY AND DO YOU CONTINUE TO BELIEVE IT'S A FAIR EVALUATION AS REFLECTED IN THE APPRAISAL?

A YES. I STILL STAND BEHIND IT. I THINK AT THE

TIME I DID IT THAT WAS A FAIR EVALUATION.

Q THANK YOU, MR. CROMARTIE. PLEASE ANSWER ANY QUESTIONS THAT MR. TALL MAY HAVE FOR YOU.

JUDGE PADGETT: MR. TALL.

MR. TALL: THANK YOU, YOUR HONOR.

CROSS EXAMINATION BY MR. TALL:

Q MR. CROMARTIE, DO YOU RECALL GIVING YOUR DEPOSITION AT MR. BOYD'S OFFICE?

A SURE.

Q DO YOU RECALL SHARING BOTH IN YOUR APPRAISAL AND IN THE DEPOSITION THAT YOU DON'T HAVE A BACKGROUND IN MOLD REMEDIATION, DO YOU?

A I SURE DO, YEAH.

Q I'M SORRY --

A I RECALL THAT, YES.

Q AND THAT'S THE POSITION YOU HAVE?

A YES.

Q DO YOU RECALL AT THE DEPOSITION BEING UNSURE AS TO WHETHER OR NOT THERE WAS A NEW ROOF ON THAT PROPERTY AT THE TIME THAT YOU WERE INSPECTING IT?

A I WASN'T SURE AT THE TIME OF THE DEPOSITION, BUT WHEN I GOT BACK TO MY OFFICE AND WENT THROUGH MY FILES I SAW WHERE I HAD PUT IT DOWN AS "GOOD CONDITION". IF IT WAS IN GOOD CONDITION THAT

WOULDN'T HAVE BEEN LEAKING PRIOR TO THAT.

Q YOU HAVE ANY IDEA WHETHER IT WAS A NEW ROOF AT THE TIME?

A I'M SURE IT WAS A NEW ROOF.

Q ALRIGHT, SIR. AT THE DEPOSITION IT WAS ASKED IF YOU RECALL ANYONE ASKING YOU TO GIVE A PRESENT DAY VALUE OF THE PROPERTY?

A YOU ASKED ME SOMETHING ABOUT THE PRESENT DAY VALUE AND I TOLD YOU THAT I WOULDN'T BE ABLE TO DO THAT --

Q AND NO ONE HAS ASKED YOU TO DO THAT, HAVE THEY?

A RIGHT. I HAVE A TAINTED IMAGE OF WHAT THAT PROPERTY WAS BEFORE IT HAD BEEN REPAIRED AND I DIDN'T THINK THAT I WOULD BE ABLE TO PUT ANOTHER VALUE ON IT.

Q YOU RECALL BEING INFORMED THAT MOLD REMEDIATION SERVICES WERE PRESENTED TO THE HOUSE?

A YES.

Q YOU DON'T HAVE THE PRESENT DAY VALUE OF THE PROPERTY?

A NOT AT ALL, NO. I WOULD NOT THINK... LIKE I SAY, I THINK I'VE GOT A TAINTED OPINION OF WHAT THE INSIDE OF THE HOUSE IS.

Q THANK YOU. NO FURTHER QUESTIONS.

RE-DIRECT EXAMINATION BY MR. BOYD:

Q I THINK I'VE GOT ONE FOLLOW UP. MR. CROMARTIE, I BELIEVE IN YOUR DEPOSITION, DID YOU CHARACTERIZE YOUR DEDUCTIONS FOR THE CONDITIONS OF THE PROPERTY?

A WELL, YEAH. I MEAN, I USED A PERCENTAGE. I CAME UP WITH A PERCENTAGE AND USED THAT BASED ON THE INTERIOR AND EXTERIOR CONDITION OF THE PROPERTY.

Q DID YOU CONSIDER THE DEDUCTIONS TO BE CONSERVATIVE?

A I'M NORMALLY CONSERVATIVE IN WHAT I DO WITH MY APPRAISALS. I HAVE BEEN CALLED THAT MANY TIMES, BUT I THINK IN THAT CASE WHAT I DID WAS FAIR.

Q THIS MAY BE AN UNUSUAL QUESTION. LET ME ASK YOU THIS QUESTION. WOULD YOU BUY THAT PROPERTY IF YOU HAD THE OPPORTUNITY TO BUY IT AT THE PRICE YOU APPRAISED IF FOR?

A NO, I WOULD NOT.

Q MR. CROMARTIE, I APPRECIATE YOUR TIME.

JUDGE PADGETT: ANYTHING FURTHER, MR. TALL?

MR. TALL: NO QUESTIONS.

JUDGE PADGETT: CAN WE RELEASE MR. CROMARTIE?

MR. TALL: JUST A MOMENT, YOUR HONOR.

WE HAD ANOTHER APPRAISER WHO THOUGHT THAT THEY MIGHT BE DEPOSED EARLIER AND IF HE'S HERE --

JUDGE PADGETT: CERTAINLY. MR. TALL, DO YOU WANT TO CALL MR. BURGESS?

JUDGE PADGETT: ANY OBJECTION?

MR. BOYD: NO OBJECTION, YOUR HONOR.

RUSSELL BURGESS, JR., HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. TALL:

A MY NAME IS RUSSELL BURGESS, JUNIOR. MY ADDRESS IS 801 SECOND AVENUE NORTH, NORTH MYRTLE BEACH, SOUTH CAROLINA.

JUDGE PADGETT: MR. TALL.

Q MR. BURGESS, CAN YOU STATE YOUR NAME PLEASE FOR THE RECORD?

A RUSSELL BURGESS, JUNIOR.

Q YOUR ADDRESS PLEASE, SIR.

A 801 SECOND AVENUE NORTH, NORTH MYRTLE BEACH, SOUTH CAROLINA.

Q WAS IS YOUR BACKGROUND IN YOUR WORK?

A I'VE BEEN A REAL ESTATE BROKER SINCE 1978. I'M A CERTIFIED GENERAL APPRAISAL SINCE 1990.

Q AND IS THE WORK THAT YOU DO ASSOCIATED WITH COMMERCIAL OR RESIDENTIAL OR IS IT A --

A I DO A COMBINATION.
Q YOU HAVE EXPERIENCE IN THIS CASE ASSOCIATED WITH THE CROOKED PINE DRIVE ADDRESS?
A YES, SIR.
Q YOU ALSO AT ONE TIME GAVE AN AFFIDAVIT IN THIS COURT, DID YOU NOT?
A YES, SIR.
Q YOU HAD AN OPPORTUNITY TO REVIEW AN APPRAISAL THAT WAS DONE PREVIOUSLY BY JIMMY CROMARTIE?
A YES, SIR.

MR. TALL: CAN I SHOW THE COURT, YOUR HONOR?

JUDGE PADGETT: THAT'S FINE. THAT'S DEFENDANT'S EXHIBIT 1, IS THAT CORRECT?

MR. TALL: YES.

Q MAY I HAVE YOU TAKE A LOOK AT THE EXHIBIT NUMBER 1 FOR THE DEFENSE AND ASK IF THAT'S SOMETHING YOU'RE FAMILIAR WITH?
A YES, SIR.
Q IN THE SPRING OF 2016, YOU GAVE AN AFFIDAVIT SPEAKING TO THIS APPRAISAL, DO YOU RECALL?
A YES, SIR.
Q WHAT IS YOUR IMPRESSION ABOUT THIS APPRAISAL?
A THE PROBLEM THAT I HAD WITH IT WAS THE ADJUSTMENTS... THE PERCENTAGE ADJUSTMENTS WERE

TOO HIGH, IN MY OPINION.

Q AND YOU'RE FAMILIAR WITH THE NEIGHBORHOOD THAT WE'RE SPEAKING OF?

A YES, SIR.

Q DID YOU SUBSEQUENTLY HAVE AN OPPORTUNITY TO PREPARE AN APPRAISAL YOURSELF?

A YES, SIR.

Q YOU TAKE THE MEASUREMENTS YOU NEEDED TO?

A YES, SIR.

Q DID YOU HAVE AN OPPORTUNITY TO INSPECT THE INTERIOR OF THE PROPERTY?

A YES, SIR.

Q HAD YOU BEEN INFORMED THAT THE PROPERTY HAD RECEIVED A NEW ROOF?

A YES, SIR.

Q INFORMED THAT THE PROPERTY HAD A MOLD/MILDEW PROBLEM?

A WHEN I WENT BACK TO DO THE INSPECTIONS OF THE PROPERTY I WAS TOLD THAT THEY HAD DONE SOME REPAIRS AND THERE HAD BEEN SOME LEAKS.

Q THIS APPRAISAL, IN FACT, IDENTIFIES SOME OF THEM, DO THEY NOT?

A YES.

Q AND YOU PREPARED AN APPRAISAL YOURSELF?

A YES, SIR.

MR. TALL: MAY I APPROACH, YOUR HONOR.
JUDGE PADGETT: CERTAINLY.
MR. TALL: I HAVE HANDED YOU PLAINTIFF'S 8?
COURT REPORTER: YES, SIR.
MR. TALL: ANY OBJECTION?
MR. BOYD: NO OBJECTION.
JUDGE PADGETT: PLAINTIFF'S EXHIBIT 8 WITHOUT OBJECTION. I ASSUME IT'S A COPY OF MR. BURGESS'S APPRAISAL?
MR. TALL: YES, YOUR HONOR.

Q CAN YOU IDENTIFY THAT?

A YES, SIR. THAT'S MY APPRAISAL.

MR. BURGESS'S APPRAISAL MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 8.

Q TELL US ABOUT YOUR WORK IN COMING TO THIS APPRAISAL. WHAT DID YOU DO?

A IT'S JUST A STANDARD SINGLE FAMILY DETACHED RESIDENTIAL APPRAISAL. I WENT TO THE PROPERTY, MADE NOTES OF THE EXTERIOR, TOOK PICTURES OF THE EXTERIOR, STREET SCENE, FRONT AND REAR OF THE PROPERTY, CHECKED THE CONDITION OF THE OUTSIDE, DID MY MEASUREMENTS OF THE OUTSIDE. WE DO

OUTSIDE MEASUREMENTS AS OPPOSED TO SHOOTING SHOTS INSIDE WITH THE LASER UNLESS IT'S A CONDO 18 STORIES UP. I WENT INTO THE PROPERTY, JIM WAS THERE AT THE TIME AND WALKED AROUND WITH ME. I LOOKED OVER THE PROPERTY AND MADE MY NOTES ON THAT. TOOK PICTURES OF VARIOUS ROOMS TO SHOW THE CONDITION OF THE ROOMS.

JUDGE PADGETT: EXCUSE ME. YOU SAID JIM. IS THAT MR. CROMARTIE?

A YES.

JUDGE PADGETT: I JUST WANT TO MAKE SURE I UNDERSTOOD WHO YOU'RE TALKING ABOUT.

A I TOOK MY PICTURES AND MADE MY NOTES ON THE INSIDE. OF COURSE, WENT BACK TO THE OFFICE AND WENT TO THE MLS SYSTEM TO TRY AND FIND COMPARABLES THAT SOLD IN THAT AREA THAT WERE SIMILAR IN CONSTRUCTION AND SIMILAR IN SIZE AND SIMILAR IN AGE THAT SOLD AS CLOSE TO THE DATE OF THAT APPRAISAL OR INSPECTION THAT I COULD FIND. THEN I PROCEEDED TO PICK OUT MY COMPS THAT I THOUGHT WERE GOOD COMPS AND PUT THEM INTO THE 1004 FORM AND MADE MY ADJUSTMENTS ACCORDING TO WHAT THE COMPS HAD THAT THE SUBJECT DIDN'T HAVE AND SO FORTH.

Q HOW ABOUT THE ISSUE OF ANOTHER APPRAISER HAVING

REACHED ANOTHER NUMBER? DID THAT MOTIVE YOU IN ANY MEASURE IN COMING TO YOUR OPINION?

A NO, SIR.

Q YOU WERE INFORMED ABOUT ROOF REPAIR, MOLD REMEDIATION, IS THAT CORRECT?

A YES, SIR.

Q WHAT IS YOUR OPINION OF THE RESIDENCE AS IT CURRENTLY SITS?

A THAT WAS WHAT I WAS INSPECTING AND THAT WAS WHAT I WAS APPRAISING IS WHAT I SAW THAT DAY. IT LOOKED TO ME ON A BASIS OF FAIR, AVERAGE AND EXCELLENT. I FIGURED IT WAS AN AVERAGE HOME FOR THE AGE THAT IT WAS. I KNOW THERE WERE REPAIRS MADE, BUT... AND I COULD TELL, YOU KNOW, YOU LOOK AT A POPCORN CEILING, YOU CAN'T PATCH ONE WITHOUT DOING THE WHOLE THING WITHOUT IT BEING NOTICEABLE. I MADE MY ASSESSMENT OF THE CONDITION OF THE REST OF THE HOUSE, AND OF COURSE, DID MY ADJUSTMENTS ACCORDINGLY.

Q DID YOU EVER MAKE REFERENCE TO THE TAX ASSESSED VALUE OF THE PROPERTY?

A THE ONLY TIME I LOOKED AT THE TAX ASSESSED VALUE OF THE PROPERTY IS AFTER I COMPLETED MY APPRAISAL BECAUSE TO ME... OR THE COUNTY FOR YEARS WAS WAY OFF ON THEIR APPRAISED VALUES.

THEY HAVE GOTTEN A WHOLE LOT BETTER SINCE THE CRASH. BUT THEN I LOOK AT IT AND COMPARED WHAT I CAME UP WITH WHAT THEY DID AND USUALLY THEY ARE PRETTY CLOSE NOW.

Q ALRIGHT. WHAT IS THE VALUE YOU CAME UP WITH IN YOUR APPRAISAL?

A 193,9 AS OF DECEMBER THE 2ND 2016.

Q THAT TAKES INTO ACCOUNT YOUR ASSESSMENT OF THE AVERAGE CONDITION?

A YES, SIR.

Q YOU HAVE ADJUSTMENTS?

A YES, SIR.

Q WHAT ARE YOUR CONCERNS THAT YOU HAVE? WELL, LET ME ASK YOU THIS: I WILL WITHDRAW THE QUESTION AND ASK ANOTHER ONE. BASED UPON PROBLEMS WITH MILDEW AND MOLD, WHICH MIGHT HAVE EXISTED AT THE TIME THAT MR. JIM CROMARTIE DID HIS APPRAISAL, DO YOU HAVE ANY CONCERNS THAT HIS APPRAISAL WAS PREPARED ASIDE FROM THE ADJUSTMENTS AS YOU SAY?

A NO, SIR. THE ADJUSTMENTS IS WHAT STOOD OUT IN MY MINE. IT'S WHAT I ALWAYS LOOK AT.

Q CAN YOU EXPLAIN TO THE COURT WHAT IT MEANS TO HAVE ADJUSTMENTS?

A WHAT YOU DO IS, FOR EXAMPLE, IF THE SUBJECT HAS A POOL AND THE COMPARABLE TO USE IS EVERYTHING

IS THE SAME EXCEPT THERE'S NO POOL, THEN YOU ADDRESS THAT BY ADDING THE COST OF THE POOL TO THE ADJUSTMENT COMP.

Q WHEN YOU USE THE TERM "POOL" WHAT ARE YOU REFERRING TO?

A SWIMMING POOL.

Q I SEE. I THOUGHT YOU WERE SPEAKING TO A POOL OF PROPERTIES.

A SWIMMING POOL. I AM TALKING ABOUT AMENITIES TO THE PROPERTY. THAT'S WHERE WE MAKE OUR ADJUSTMENTS.

Q IN THIS PARTICULAR CASE, IS IT FAIR TO SAY THAT THE ADJUSTMENT WAS MADE FOR THE CONDITION AT THE TIME MR. CROMARTIE TOOK A LOOK AT THE PROPERTY?

A I WOULD THINK THAT'S PROBABLY WHAT HIS WAS BASED ON KNOWING NOW ABOUT THE CONDITION OF THE HOUSE WHEN HE SAW IT BECAUSE HE DID HIS APPRAISAL 12 OR 14 MONTHS BEFORE I DID.

Q YES, SIR.

A WITH IMPROVEMENTS THAT WERE DONE PLUS THE TIME THERE WOULD BE SOME INCREASED VALUE IN THE PROPERTY BASED ON TIME ALONE BECAUSE THE PROPERTY VALUES HAVE BEEN GOING UP IN THE LAST TWO OR THREE YEARS.

Q I APPRECIATE YOU GIVING US YOUR ASSESSMENT OF

YOUR WORK. THERE MAY BE QUESTIONS THE DEFENSE WOULD LIKE TO ASK OR THE COURT.

A THANK YOU, SIR.

JUDGE PADGETT: MR. BOYD.

CROSS-EXAMINATION BY MR. BOYD:

Q MR. BURGESS, I'M REESE BOYD AND I REPRESENT THE PERSONAL REPRESENTATIVE IN THIS MATTER, JENE POAFPYBITTY. WHAT'S THE DATE OF YOUR APPRAISAL, MR. BURGESS?

A 12/2 OF '16.

Q DID I UNDERSTAND YOU... 12/2/16 IS THE DATE OF YOUR APPRAISAL? DO YOU RECALL WHEN YOU DID THE ACTUAL PROPERTY INSPECTION?

A THAT WOULD'VE BEEN THAT DAY.

Q SO, YOUR APPRAISAL IS DATED THE SAME DAY THAT YOU DID THE INSPECTION?

A YES.

Q BOTH DECEMBER 2, 2016?

A YES.

Q DID I UNDERSTAND YOU TO SAY, MR. BURGESS, THAT YOU DID NOT CONSIDER PRIOR EVALUATIONS WHEN YOU PREPARED YOUR APPRAISAL?

A CORRECT. IN OTHER WORDS, HE ASKED ME IF I... IF THIS HAD ANY BEARING... IF JIM'S APPRAISAL HAD ANY BEARING OF HIS VALUE ON MY APPRAISAL.

Q DID ANY OTHER PRIOR EVALUATIONS HAVE A BEARING ON YOUR APPRAISAL?

A NO, SIR. I APPRAISED WHAT I SAW THAT DAY.

MR. BOYD: YOUR HONOR, MAY I APPROACH?

JUDGE PADGETT: SURE.

MR. BOYD: I'VE GOT AN AFFIDAVIT WHICH MR. TALL PREVIOUSLY FILED AS COMPLETED BY MR. BURGESS AND IT'S DATED MAY 18, 2016. I WOULD LIKE TO OFFER THAT INTO EVIDENCE IF MR. BURGESS CAN IDENTIFY IT FOR ME?

Q DO YOU RECOGNIZE THAT DOCUMENT?

A YES, SIR.

Q YOU CAN IDENTIFY IT FOR THE RECORD IF YOU RECALL?

A IT'S AN AFFIDAVIT THAT I SIGNED.

Q WAS THE DATE OF THAT AFFIDAVIT?

A MAY 18TH 2016.

JUDGE PADGETT: WITHOUT OBJECTION, MR. TALL?

MR. TALL: NO OBJECTION.

JUDGE PADGETT: DEFENDANT'S NUMBER 2 ADMITTED WITHOUT OBJECTION.

AFFIDAVIT FROM MR. BURGESS DATED MAY 18TH, 2016, MARKED

FOR IDENTIFICATION AND
INTRODUCED INTO EVIDENCE AS
DEFENDANT'S EXHIBIT 2.

Q NOW, I AM CURIOUS, MR. BURGESS. YOU INDICATE THAT YOU DIDN'T CONSIDER PRIOR EVALUATIONS IN YOUR APPRAISAL OF THE PROPERTY, BUT I WOULD ASK YOU IF YOU WOULD TO LOOK AT ITEM THREE ON PAGE 2 AND IF YOU WOULDN'T MIND READING THAT LAST SENTENCE FOR ME. I WOULD APPRECIATE THAT.

A IT SAYS, "A FAIR REVIEW OF NUMEROUS RECENT COMPARABLE SALES IN THE SAME NEIGHBORHOOD SUPPORTS 191,2 VALUE LISTED ON THE PROBATE INVENTORY."

Q WHEN YOU FILED THIS AFFIDAVIT, MR. BURGESS, HAD YOU BEEN INSIDE THE PROPERTY?

A NO, SIR. I HAD BEEN ON THE OUTSIDE OF THE PROPERTY AND AS I RECALL... AS I RECALL, I THINK WHEN I SAW THAT... WHEN I DID THAT I HAD LOOKED UP SOME COMPARABLES TO SEE WHAT KIND OF PRICES WERE GOING WITHIN THE AREA. BUT, NO, I HAD NOT BEEN IN THE PROPERTY. I HAD BEEN AROUND THE OUTSIDE OF IT.

Q WHEN YOU SAY, "YOU HAD BEEN AROUND THE OUTSIDE OF IT" HAD YOU BEEN UP CLOSE AND --

A YES, SIR. I WALKED AROUND THE PROPERTY AND TOOK

PICTURES OF IT.

Q I AM CURIOUS --

A I KNOCKED ON THE DOOR OF THE HOUSE, AND THE PEOPLE ACROSS THE STREET SAW ME AND THEY SAID THAT THE LADY THAT LIVED THERE WAS AT WORK.

Q I'M CURIOUS, MR. BURGESS. YOU TESTIFIED THAT NO PRIOR EVALUATIONS, IF I UNDERSTOOD YOU CORRECTLY, INFLUENCED YOUR LATER APPRAISAL OF THE PROPERTY. BUT YOU WON'T DISAGREE, I HOPE, THAT THE 191,200 EVALUATION YOU ASSERT IN YOUR MAY AFFIDAVIT IS VERY CLOSE TO THE FINAL APPRAISAL VALUE YOU PROVIDED IN DECEMBER OF 2016 OF 193,900? IS THAT A FAIR STATEMENT?

A YES, SIR.

Q IS THAT JUST A COINCIDENCE OR --

A WELL, TO EXPLAIN SOMETHING ABOUT THE AFFIDAVIT. I DID THAT AFFIDAVIT IN MAY AND FRANKLY, I HAD FORGOTTEN ANYTHING ABOUT IT BECAUSE I DID NOT KEEP A COPY OF THAT AFFIDAVIT. I HAD FORGOTTEN ABOUT THAT AFFIDAVIT ALTOGETHER WHEN I WAS ASKED TO DO THE APPRAISAL. SO, I REALLY DIDN'T REMEMBER THE PROBATE VALUE OR ANY OF THE OTHER... OTHER THAN THIS APPRAISAL THAT I HAD THAT WAS DONE PRIOR... BY SOMEBODY ELSE. SO, WHEN I WENT IN THE HOUSE, I DID THE APPRAISAL

BASED ON WHAT I SAW AT THAT TIME AND WAS NOT INFLUENCED BY ANY OTHER EVALUATIONS.

Q YOU DID THE INITIAL AFFIDAVIT BASED ON A WALK AROUND OF THE EXTERIOR PROPERTY?

A RIGHT. AND I LOOKED UP SOME COMPS IN THE AREA THAT HAD SOLD... IN THAT GENERAL AREA AT ABOUT THAT TIME.

Q YOUR SUBSEQUENT APPRAISAL DECEMBER OF 2016, WAS BASED ON A PRESUMABLE REVIEW OF THE INSIDE OF THE PROPERTY, CORRECT?

A OF DECEMBER --

Q 2016?

A YES. I DID THE WHOLE --

Q THIS DOCUMENT?

A THIS WAS DONE BASED ON WHAT I SAW THAT DAY AS AN APPRAISER.

Q WHEN YOU HAD AN OPPORTUNITY NOT JUST TO REVIEW THE EXTERIOR OF THE PROPERTY, BUT TO GO INSIDE, WHAT WAS YOUR REACTION TO THE INTERIOR OF THE RESIDENCE? WAS IT IMPRESSIVE? WAS IT --

A I THOUGHT IT LOOKED LIKE AN AVERAGE HOUSE FOR THE AGE IT WAS. IT LOOKED LIKE IT WAS IN FAIRLY GOOD CONDITION. I WOULD SAY AVERAGE CONDITION. IT WAS NOT IN FAIR CONDITION OR POOR CONDITION.

Q WAS THERE EVIDENCE OF REPAIRS AS A RESULT OF

WATER DAMAGE?

A THERE WAS EVIDENCE OF REPAIRS AND I WOULD ASSUME IT WAS FROM WATER DAMAGE IN THE CEILING, IN THE SUN ROOM. THE POPCORN CEILING, AS I STATED BEFORE, YOU CAN'T PREPARE A POPCORN CEILING WITHOUT IT BEING NOTICEABLE UNLESS YOU DO THE WHOLE THING. AND I NOTICED AN AREA IN THE GARAGE THAT HAD BEEN... THE DRYWALL HAD BEEN REMOVED AND REPLACED AND HAD BEEN TAPED AND MUDDED, BUT HAD NOT BEEN PAINTED AT THAT TIME. I WOULD ASSUME THAT THE DAMAGE HAD BEEN REPAIRED TO THE LIKING OF THE PEOPLE THAT OWNED THE HOUSE BECAUSE I'M ASSUMING THEY PAID THE PEOPLE BY THEN TO FIX IT, WHATEVER, THE COST OF THE DAMAGE. I'M NOT AN EXPERT IN MOLD AND MILDEW.

Q DID YOU SEE ANY EVIDENCE OF MOLD OR MILDEW ON THE PROPERTY?

A NO, SIR.

Q YOU MENTIONED ONE THING THAT INDICATED ANOTHER MOVING PIECE IN ALL OF THIS. THE APPRAISAL DONE BY MR. CROMARTIE WAS DONE IN 2015?

A RIGHT.

Q AND YOUR APPRAISAL WAS DONE IN 2016 AT THE END, CORRECT?

A YES.

Q AND YOU MENTIONED PROPERTY VALUES WERE CHANGING?
A YES, SIR.
Q WHAT WAS THE TREND BETWEEN OCTOBER 2015 AND DECEMBER 2016?
A THE WAY IT SEEMS TO BE GOING, AND THIS IS INFORMATION FROM COASTAL CAROLINA ASSOCIATION OF REALTORS AND SOME OF THEIR GRAPHING OF THE CHANGES, IT'S RUNNING ABOUT 2% PERCENT --
Q INCREASE?
A CORRECT.
Q MR. BURGESS, MR. CROMARTIE TESTIFIED THAT THE ADJUSTMENTS WERE BASED UPON THE SIGNIFICANT ISSUES WITH THE HOUSE. IS IT FAIR TO SAY THAT --

MR. TALL: YOUR HONOR, THIS WITNESS WASN'T IN THE COURTROOM WHEN MR. CROMARTIE TESTIFIED.

MR. BOYD: I'M JUST SUMMARIZING, YOUR HONOR, FOR PURPOSES OF THE QUESTION. I'M NOT ASKING HIM TO ACCEPT. I'M ASKING HIM TO COMMENT. IF I'M GIVING HIM AN UNFAIR HYPOTHETICAL, YOU KNOW, MR. TALL CAN CROSS-EXAM HIM --

MR. TALL: IF IT'S A HYPOTHETICAL IT WASN'T --

JUDGE PADGETT: I THOUGHT YOU WERE DOING A HYPOTHETICAL QUESTION BASED UPON SOME TESTIMONY EARLIER.

MR. BOYD: YEAH. I'M JUST ASSERTING TO THE WITNESS, YOUR HONOR, THAT THE APPRAISAL OFFER BY MR. CROMARTIE WAS INFLUENCED BASED ON HIS TESTIMONY EARLIER TODAY, WHICH THE WITNESS DID NOT HEAR OBVIOUSLY. BUT BASED ON THIS TESTIMONY, IT WAS INFLUENCED SUBSTANTIALLY BY THE CONDITIONS INSIDE THE RESIDENCE.

Q I WOULD SIMPLY ASK, MR. BURGESS, ARE THERE SPECIFIC ISSUES WITH THE ADJUSTMENTS THAT YOU REFERRED THAT YOU DISAGREED WITH?

A I DID NOT PICK OUT ANY SPECIFIC ADJUSTMENTS. I LOOKED AT THE PERCENTAGE ADJUSTMENTS ON THE BOTTOM OF EACH COLUMN AND I THOUGHT THEY WERE UNUSUALLY HIGH. THAT WAS THE ONLY STATEMENT THAT I MADE CONCERNING HIS APPRAISAL.

Q SO, REALLY, YOU DON'T HAVE A SPECIFIC OBJECTION, YOU JUST THINK THEY WERE TOO HIGH?

A YES. AGAIN, HE WAS THERE BEFORE I WAS AND SAW WHAT HE SAW. APPARENTLY, WHAT HE SHOULD HAVE DONE WAS APPRAISED WHAT HE SAW THAT DAY. THAT'S

WHAT I DID WITH MY APPRAISAL, WHAT I SAW THAT DAY.

Q I ASKED MR. CROMARTIE THIS QUESTION AND I WILL ASK YOU THE SAME QUESTION. IF YOU WERE A BUYER AND YOU HAD THE OPPORTUNITY, WOULD YOU BUY THE SUBJECT PROPERTY AT THE VALUE AT WHICH YOU APPRAISED IT?

A VERY CLOSE TO IT, I PROBABLY WOULD, NOT KNOWING ANYTHING ABOUT ANY PRIOR ISSUES. I MEAN, LIKE I SAID, I'M NOT AN EXPERT IN ENVIRONMENTAL PROBLEMS.

Q BUT IF YOU HAD KNOWN ABOUT THE PRIOR ISSUES, WOULD THAT INFLUENCE YOU AS A BUYER?

A I WOULD PROBABLY WANT TO BUY IT A LITTLE CHEAPER.

Q LET ME ASK YOU A QUESTION ABOUT THIS PICTURE.

A ONLY THING I SAW ON THE OUTSIDE WOULD HAVE BEEN LIKE MOSS OR SOMETHING ON THE SIDE OF THE HOUSE BECAUSE THERE WERE SO MANY TREES AROUND --

Q I WAS GOING TO ASK YOU, IS THERE SOME REASON WHY THE EXTERIOR PHOTOS SEEM TO BE SO FAR AWAY?

A TO GET THE WHOLE HOUSE INTO THE PICTURE.

Q OKAY. THERE APPEARS TO BE DAMAGE THAT'S A LITTLE BIT DIFFICULT TO DISCERN, BUT WAS THERE NOT DAMAGE TO SOME OF THESE REAR WALLS?

A I DID SEE A LITTLE WOOD ROT RIGHT IN THIS AREA, WHICH IS NOT A BIG DEAL. I DON'T KNOW IF I MENTIONED THAT IN THE APPRAISAL OR NOT.

Q JUST FOR THE RECORD, YOU'RE POINTING TO THE RIGHT-HAND INSIDE OF THE PHOTO, WHICH IS CAPTIONED "REARVIEW OF SUBJECT PROPERTY"?

A YES, SIR.

Q THANK YOU, MR. BURGESS, NO FURTHER QUESTIONS.

JUDGE PADGETT: ANY FOLLOW UP QUESTIONS, MR. TALL?

RE-DIRECT EXAMINATION BY MR. TALL:

Q MR. BURGESS, ANYONE OR ANY FACTOR INFLUENCE YOU TO DO ANYTHING OTHER THAN A PROFESSIONAL JOB IN PREPARING YOUR APPRAISAL?

A NO, SIR.

Q THANK YOU FOR YOUR ASSISTANCE.

JUDGE PADGETT: THANK YOU, MR. BURGESS. I BELIEVE IF I'M NOT MISTAKEN MS. IRVING WAS ON THE STAND.

(OFF THE RECORD).

JUDGE PADGETT: YOU ARE STILL UNDER OATH, OKAY?

CONTINUING DIRECT-EXAMINATION BY MR. TALL:

A YES, SIR.

Q MS. IRVING, WHEN WE WERE SPEAKING LAST TIME YOU

MENTIONED ABOUT A TELEPHONE CONVERSATION THAT YOU HAD IN FEBRUARY OF 2016 WITH MR. DAVIS?

A YES.

Q WHAT WAS YOUR IMPRESSION ABOUT THE FINISHING OF THE ESTATE ADMINISTRATION AT THAT TIME?

A YOU MEAN AS THE TELEPHONE CONVERSATION ENDED?

Q YES, MA'AM.

A HE MADE IT SEEM AS IF...

JUDGE PADGETT: IF YOU WILL PLEASE SPEAK A LITTLE LOUDER OR PULL THE MIC OVER.

A HE MADE IT SEEM AS IF HE WAS GOING TO, YOU KNOW, CLOSE THE ESTATE. AND, YOU KNOW, I SAID IT SEVERAL TIMES DURING THE CONVERSATION, YOU KNOW, THAT THAT'S WHAT WE WANTED. MY BROTHERS AND I WANTED TO CLOSE THE ESTATE. SO, HE MADE IT SEEM AT THE END OF THE CONVERSATION, AND THE FACT THAT HE EVEN SAID IT, "I CAN CLOSE THE ESTATE IN THE NEXT 30 DAYS. I CAN CLOSE THE ESTATE IN THE NEXT 30 DAYS."

Q ISN'T THAT WHAT YOU WANTED?

A YES. WE WANTED TO CLOSE THE ESTATE. SO, THAT'S WHAT HE EVEN SAID AT THE END OF THE CONVERSATION. I CAN MAKE THAT HAPPEN. WE CAN CLOSE THE ESTATE IN THE NEXT 30 DAYS. I THINK IT WAS A COUPLE DAYS LATER WHEN I GOT THE

E-MAIL. MAYBE IT WAS THE END OF THAT BUSINESS DAY OR THE NEXT BUSINESS DAY, I RECEIVED AN E-MAIL BUT, YOU KNOW, IT WAS STILL SHOWING THE HOUSE PROPERTY AT THE $95,000.00, WHICH REALLY WAS A BIG ISSUE.

Q YOU HAVE NOW HEARD FROM MR. CROMARTIE, WHO IS THE APPRAISER HERE AND YOU'VE HEARD FROM MR. BURGESS AND HAD YOUR OWN OPINION ABOUT VALUE, DID YOU?

A WELL, I THINK WE ALREADY...

Q I'M SORRY?

A I MEAN, I DID. LIKE I SAY... IT'S LIKE I SAID BEFORE, I KNEW MY FATHER'S HOUSE... I MEAN, THERE WAS... HE HAD SUN LIGHTS IN THE DINING ROOM... I'M SORRY. THE LIVING ROOM BASICALLY HAD A BIG FAMILY ROOM AND BECAUSE THERE WERE SUN LIGHTS IN THERE AND I THINK THE ONE APPRAISER JUST MENTIONED THERE'S A LOT OF TREES THAT ARE RIGHT AROUND HIS HOUSE AND THE CEILING HAD ISSUES FOR A WHILE. MY EX-HUSBAND EVEN BEING A ROOFER KEPT TELLING MY FATHER AND JENE, YOU KNOW, "YOU NEED TO GET THIS FIXED." SO, THAT ROOM HAD PROBABLY BEEN LEAKING FOR YEARS AND COMING INTO THE HOUSE AND NOTHING HAD BEEN DONE ABOUT IT.

Q DID YOU FIND THAT SOMETHING WAS DONE ABOUT IT?

A WELL, I GUESS IT WAS REPAIRED SOME TIME IN THE PAST, YOU KNOW, YEAR AND A HALF.

Q ANY OBJECTION ABOUT THE MANNER IN WHICH IT WAS REPAIRED?

A I DON'T KNOW HOW IT WAS REPAIRED OR WHO REPAIRED IT OR WHAT. I DON'T KNOW ANY OF THE DETAILS.

Q WHAT'S YOUR OPINION ABOUT GETTING A DISTRIBUTION PROPOSAL WITH THE $95,000.00 VALUE AFTER THE TIME WHEN THE REPAIRS WERE MADE?

A CAN YOU REPEAT THAT?

Q DID YOU HAVE ANY REACTION TO GETTING A DISTRIBUTION PROPOSAL WHICH USED THE $95,000.00 VALUE FOR THE PROPERTY AND THAT'S AFTER THE REPAIRS HAD BEEN MADE TO THE HOUSE?

MR. DAVIS: YOUR HONOR, I OBJECT. HE'S SAYING THINGS THAT ARE NOT ACCURATE. IF YOU LOOK AT THE CLOSING DOCUMENTS IN THE FILE, THEY ARE NOT ACCURATE. IF YOU LIKE ME TO CLARIFY FOR THE COURT I'LL BE HAPPY TO, BUT HIS REPRESENTATIONS ARE NOT ACCURATE.

JUDGE PADGETT: I'M GOING TO ALLOW HIM TO ASK HIS QUESTION AND YOU CAN CROSS-EXAMINE TO CORRECT THAT SITUATION.

SO, I'M GOING TO OVERRULE YOUR OBJECTION.

Q LET ME MARK THIS FOR AN EXHIBIT 9 PLEASE?

JUDGE PADGETT: WITHOUT OBJECTION?

MR. DAVIS: NO OBJECTION.

JUDGE PADGETT: PLAINTIFF'S 9 ADMITTED WITHOUT OBJECTION.

Q MS. IRVING, LET ME HAVE YOU LOOK AT EXHIBIT 9 AND ASK IF YOU CAN IDENTIFY IT?

A YES, I CAN IDENTIFY IT.

Q WHAT ARE YOU LOOKING AT?

A THIS IS AN E-MAIL THAT I RECEIVED FROM THE ESTATE DECEMBER 20, 2015 WHICH WAS THE FIRST TIME THAT WE RECEIVED, YOU KNOW, A DISTRIBUTION... PROPOSED DISTRIBUTION. MY BROTHERS RECEIVED ONE AS WELL AND IT HAS A BREAKDOWN OF ALL THE PROPERTIES THAT WERE LEFT THAT HAD NOT BEEN SOLD YET. WHAT THE APPRAISED VALUE IS... TWO OF THE PROPERTIES... ONE STILL HAS A MORTGAGE ON IT AND ONE STILL HAS A LINE OF CREDIT. WHAT THE NET VALUE IS AND IT'S SHOWING THE ONES THAT ARE BEING LEASED, MUCH OF THE RENT IS COMING IN, WHEN THEIR LEASE ENDS. BASICALLY WHO IS TO GET WHAT. BUT IT WAS ON THIS DOCUMENT FOR THE FIRST TIME THAT I SAW THE CROOKED PINE

HAD THE $95,000.00 APPRAISAL. AND THAT'S WHEN I HAD ASKED THE ESTATE TO SEND ME, YOU KNOW, THE ACTUAL APPRAISAL FOR CROOKED PINE AND SOME OTHER DOCUMENTS AT THAT POINT. THERE WAS NO EXPLANATION AS TO WHY THE NUMBER HAD CHANGED. I DIDN'T KNOW.

E-MAIL FROM THE ESTATE MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EX. EXHIBIT 9.

MR. TALL: THANK YOU, YOUR HONOR. AT THIS TIME I WOULD LIKE THE COURT TO TAKE KNOWLEDGE OF THE REQUESTS FOR ADMISSIONS WHICH WE FORWARDED TO THE DEFENSE. IT HAS THE BILLS FOR REPAIRS TO THE PROPERTY IN QUESTION, CROOKED PINE DRIVE. AND WE HAVE ADMISSIONS FROM THE DEFENSE THAT THESE ARE PROPER RECEIPTS FOR THE WORK THAT WAS DONE. PERHAPS THERE'S AN OBJECTION.

JUDGE: MR. BOYD, WHAT ARE YOUR RESPONSES TO THE INTERROGATORIES?

MR. BOYD: ARE YOU OFFERING THESE INTO EVIDENCE?

MR. TALL: YES.

MR. BOYD: NO OBJECTIONS, YOUR HONOR.

JUDGE PADGETT: WITHOUT OBJECTION. THAT WILL BE EXHIBIT 10 AND 11.

Q MS. IRVING, I'M ASKING YOU TO PLEASE LOOK AT EXHIBITS A AND EXHIBITS B ASSOCIATED WITH OUR REQUEST FOR ADMISSION.

MR. TALL: YOUR HONOR, THIS IS A COPY FOR YOUR REVIEW. IT'S THE SAME EXHIBIT.

Q MS. IRVING, CAN YOU SHARE WITH US WHAT IT IS THAT YOU'RE LOOKING AT AND YOUR UNDERSTANDING?

A IT'S A RECEIPT... IT'S AN INVOICE FOR $15,000.00 FOR THE WORK... BASICALLY THE ROOF THAT WAS PUT ON AT THE CROOKED PINE.

REQUEST FOR ADMISSIONS MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 10.

RESPONSE MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 11.

Q DOES IT TALK ABOUT THE DATE OF COMPLETION?

A THE DATE OF COMPLETION FOR THE ROOF WAS 10/13/2015.

Q LOOK AT EXHIBIT B?

A UH-HUH. (AFFIRMATIVE RESPONSE). IT LOOKS LIKE SHE CONTRACTED WITH THEM, YOU KNOW, 9/25 WHICH IS JUST A COUPLE DAYS AFTER THE MEETING WITH SCOVILLE.

Q THIS IS EXHIBIT B?

A NO. IT'S STILL PART OF EXHIBIT A. I JUST WANTED TO POINT THAT OUT. SHE ORDERED FOR THE ROOF A COUPLE DAYS AFTER THE MEETING AT SCOVILLE SO...

Q YOU ARE NOT SUGGESTION BY THE WAY THAT MS. JENE HAS TO CHECK EVERYTHING WITH YOU AT EVERY POINT --

A NO, NO, NO. THAT'S NOT WHAT I'M SUGGESTING. I'M JUST POINTING OUT THAT IT WAS... I MEAN, SHE WANTED CROOKED PINE AND THAT WAS THE PLAN THAT SHE WANTED CROOKED PINE.

Q WHAT ABOUT EXHIBIT B, DO YOU SEE THAT?

A THAT'S FOR THE CAROLINA ENERGY CONSERVATION, WHICH I BELIEVE WAS ALL THE INSULATION AND I GUESS, MOLD. THERE'S $8,300.00 AND SOME CHANGE.

Q HOW MUCH IS THAT AMOUNT?

A 8,332.00. THAT'S NOVEMBER 19TH OF 2015 ON THE INSULATION.

Q WHAT'S THE DATE ON THE MOLD COMPANY RECEIPT?

A NOVEMBER 19TH 2015.

MR. TALL: YOUR HONOR, I OFFER YOU THESE TWO EXHIBITS. ESSENTIALLY, THERE IS A REQUEST FOR ADMISSION THAT THESE ARE RECEIPTS TRUE AND ACCURATE AND THE DEFENSE HAS ADMITTED THAT THESE ARE SO.

RECEIPTS MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT **12.**

Q MS. IRVING, YOU DIDN'T KNOW ABOUT THESE RECEIPTS AT THE TIME OF DECEMBER 2015, DID YOU?

A I DID. I DID KNOW ABOUT THOSE, YES.

Q TELL US YOUR FEELINGS ABOUT SEEING A PROPOSAL FOR A $95,000.00 DISTRIBUTION? DID YOU HAVE AN APPRAISAL AT THE TIME WHEN YOU FIRST GOT THE EXHIBIT WITH THE DISTRIBUTION PROPOSAL?

A LET ME GO BACK. I DON'T THINK I HAD THE... I KNEW ABOUT THE ROOF. I DON'T KNOW THAT I HAD THE OTHER $8,000.00 PART. I KNEW THE ROOF, THE SPAN ROOFING, NOT THE OTHER. I JUST WANT TO CLARIFY THAT.

Q YES, MA'AM.

A I WANT TO MAKE THAT RIGHT FOR THE COURT.

Q SO, IF THE QUESTION COMES TO YOU, DID YOU HAVE

AN APPRAISAL OF THE PROPERTY, AT THE TIME, WHEN IN DECEMBER OF 2015, YOU WERE GIVEN A DISTRIBUTION PROPOSAL BY THE ESTATE?

A NO. WE JUST GOT THAT E-MAIL TO IS.

Q THE ESTATE WAS COMMUNICATING WITH YOU, WAS IT NOT BECAUSE YOU WEREN'T REPRESENTED AT THE TIME?

A YES. WE RELEASED SCOVILLE I THINK EARLIER OCTOBER BECAUSE WE WERE HOPEFUL THAT WE WERE GOING TO, YOU KNOW, HAVE PROPERTIES AND CLOSE THE ESTATE. IN FACT, I HAD SOME DISCUSSIONS EVEN WITH... SOME COMMUNICATIONS WITH BECKY AT THEIR LAW FIRM BECAUSE I WANTED TO HAVE SOME COMMUNICATION WITH THE ONE TENANT TO THE ONE PROPERTY THAT I WAS PLANNING ON TAKING. MATT, OF COURSE, WAS ALREADY LIVING IN MATT'S HOUSE. STEVEN BEING IN THAILAND, UNFORTUNATELY, WITH A 12 HOUR DIFFERENCE, HE WASN'T REALLY SO CONCERNED. SO, YOU KNOW, WE THOUGHT THAT THINGS WERE MOVING ALONG AND THEN WHEN THE DISTRIBUTION SHEET CAME OUT IN EARLY DECEMBER, WE ALREADY KNOW THAT THE ROOF HAD GONE ON AND WE ALREADY KNEW THAT HUGE EXPENSE HAD COME OUT. SO, THAT'S WHEN MATT GOT, YOU KNOW, ALL UP IN... HE TEXTED JENE AND SAID IF SHE'S GOING TO FIX HER HOUSE, I WANT MY HOUSE FIXED. SO, THAT WHOLE THING

STARTED UP. BUT WHEN THE DISTRIBUTION SHEET CAME OUT IN EARLY DECEMBER AND WHEN I SAW THE APPRAISAL AND THIS NEW NUMBER ON THERE THAT'S WHEN I, YOU KNOW, E-MAILED THE ESTATE AND SAID, "CAN YOU PLEASE SEND THE APPRAISAL?" YOU KNOW. "CAN YOU PLEASE UPDATE SOME OF THESE BANK RECORDS BECAUSE AT THIS POINT NOW WE DIDN'T HAVE AN ATTORNEY. SO, OF COURSE, WE DON'T KNOW ANY BANK RECORDS AGAIN. WE'RE BACK IN LIMBO NOT KNOWING ANYTHING AGAIN. AT THAT POINT, I GUESS IT HAD BEEN TWO OR THREE MONTHS. I GUESS, SOMETIME IN JANUARY I GOT A PACKAGE DELIVERED IN THE US MAIL AND THAT'S WHEN I SAW THE APPRAISAL. IT WAS SHORTLY AFTER THAT'S WHEN THOSE LETTERS CAME. I SENT THE LETTERS TO THE ESTATE TRYING TO SEE IF WE CAN GET SOME DIALOG GOING, BUT THEY WEREN'T RESPONDING AND THEN EVENTUALLY I RETAINED CLIFF.

Q LET ME HAVE YOU LOOK AT ANOTHER DOCUMENT, AN E-MAIL DATED 29 JANUARY.

MR. TALL: YOUR HONOR, I HAVE SHOWN THIS TO THE DEFENSE. THEY MAY NOT HAVE AN OBJECTION.

JUDGE PADGETT: WHAT YEAR, 2016?

MR. TALL: 2016, JANUARY 29.

JUDGE PADGETT: ANY OBJECTION, MR. BOYD?

MR. BOYD: NO OBJECTION, YOUR HONOR.

JUDGE PADGETT: OKAY. WITHOUT OBJECTIONS.

Q MS. IRVING, WHAT ARE WE LOOKING AT HERE?

A ANOTHER REVISION TO THE DISTRIBUTION SHEET. I WILL SAY THAT'S DECEMBER. YOU KNOW, THIS WENT ON FOR MONTHS. THEY KEPT ON REVISING THE DISTRIBUTION SHEET AND BASICALLY THE E-MAIL, YOU KNOW, JUST SAYS ONCE THE REPAIRS HAVE BEEN COMPLETED TO THE PROPERTY THAT'S OCCUPIED BY MATTHEW BECAUSE, LIKE I SAID, MATT WAS REACHING OUT TO JENE. MATT WAS REALLY UPSET THAT, YOU KNOW, A LOT OF THIS MONEY WAS SPENT ON A HOUSE THAT JENE --

MR. BOYD: YOUR HONOR, I OBJECT.

JUDGE PADGETT: YOU CAN'T TESTIFY TO WHAT MATT SAID. THAT WOULD BE HEARSAY.

A I'M SORRY. SO, IN THE E-MAIL IT SAYS, ONCE REPAIRS HAVE BEEN COMPLETED BY THE PROPERTY OCCUPIED BY MATTHEW... SO, MATT DID REACH OUT TO JENE AND JENE, YOU KNOW, HIRED SOMEBODY TO WORK ON MATT'S HOUSE. SO, THAT WENT ON FROM LIKE JANUARY UNTIL APRIL I THINK, WHICH THEN AGAIN, HELD UP THE ESTATE LONGER. SO, THEY KEPT

REVISITING THE DISTRIBUTION SHEETS AND IT SEEMS LIKE IT WAS COMING OUT EVERY OTHER WEEK.

MR. BOYD: IS THAT THE SAME EXHIBIT I JUST LOOKED AT?

MR. TALL: YES.

JUDGE PADGETT: EXHIBIT 12.

REVISION TO DISTRIBUTION SHEET

MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT **12**.

MR. TALL: I HAVE ANOTHER 2 PAGE EXHIBIT FOR PROPOSAL. I HAVE SHOWED IT TO DEFENSE.

JUDGE PADGETT: SAME THING?

MR TALL: IT IS AN E-MAIL SCROLLED WITH A COMMUNICATION ON 31 MARCH 2016 AND A COMMUNICATION ON APRIL 8, 2016.

JUDGE PADGETT: ANY OBJECTION MR. BOYD?

MR. BOYD: NO OBJECTION.

JUDGE PADGETT: NO OBJECTION. THAT'S PLAINTIFF'S EXHIBIT 13. THESE EXHIBITS ARE GETTING CONFUSING.

Q MS. IRVING, THERE ARE TWO MESSAGES ON THIS EXHIBIT, ARE THERE NOT? ONE DATED APRIL 8 AND THE OTHER 31 MARCH?

A YES.

E-MAILS MARKED FOR
IDENTIFICATION AND INTRODUCED
INTO EVIDENCE AS PLAINTIFF'S
EXHIBIT 13.

Q I ASK YOU TO PLEASE FOCUS ON THE 31 MARCH?

A ALRIGHT. IT'S AN E-MAIL FROM BECKY TO ME.

Q WHO IS BECKY?

A SHE'S THE ILLEGAL... I GUESS, SHE'S THE PROBATE SECRETARY. I HAVE HEARD IN THE LAST DAY SHE IS THEIR PROBATE SPECIAL EMPLOYEE.

Q AT THE COURTHOUSE?

A NO. SHE WORKS FOR DAVIS AND BOYD.

Q THANK YOU.

A HANDLING PROBATE... I DON'T KNOW WHAT HER TITLE IS.

Q LEGAL ASSISTANT?

A HERE IT SAYS, PROBATE PARALEGAL TO BRET DAVIS ON HER SIGNATURE.

Q WHAT'S HAPPENING ON 31 MARCH?

A SHE SENT AN E-MAIL TO ME, "GOOD MORNING, MS. IRVING. THE ESTATE IS COMPLETING AN ESTATE TAX RETURN. WE WOULD REQUIRE YOUR SOCIAL SECURITY NUMBER FOR REPORTING PURPOSES. PLEASE SEND THE INFORMATION TO ME OR CALL ME WITH THAT

INFORMATION. THANK YOU."

Q DID YOU REPLY?

A I SAID, "DEAR BECKY, THANKS FOR YOUR E-MAIL. I APOLOGIZE FOR..." THIS WAS APRIL 8TH BECAUSE I THINK I WAS OUT OF TOWN" ... MY DELAYED RESPONSE I WAS AWAY AND TRYING TO CATCH UP ON THINGS NOW. I'M VERY PROTECTIVE OF MY PERSONAL TAX INFORMATION. I WAS A VICTIM OF IDENTITY THEFT THIS PAST YEAR. I UNDERSTAND, HOWEVER, ABOUT INCOME REPORTING REQUIREMENTS FOR AN ESTATE. AM I GOING TO BE RECEIVING A K-1 FORM OR SOME OTHER DOCUMENT WITH A REPORT OF INCOME THAT I WILL HAVE TO INCLUDE FOR MY PERSONAL RETURN? IF YES, WILL IT EFFECT MY 2015 RETURN, WHICH HAS A APRIL 15TH DUE DATE AS I ALREADY FILED AND RECEIVED MY REFUND? ALSO WAS THERE SOME KIND OF INCOME REPORTING WITH MY SOCIAL SECURITY NUMBER FOR THE 2014 TAX YEAR. I DON'T REMEMBER THE ESTATE SAYING ANYTHING TO ME ABOUT THIS LAST YEAR. AS YOU CAN IMAGINE BEING ACCURATE WITH THE IRS IS A NERVOUS CONCERN. AND I WANT TO BE CLEAR AS I CAN ON THESE ISSUES, THANK YOU, JULIE".

Q ARE YOU ATTEMPTING TO BE DIFFICULT WITH THE LAW OFFICE?

A NO. I JUST NEED AN ANSWER.

Q WE HEARD EARLIER EVERY CALL WAS A FIGHT. WERE YOU PICKING A FIGHT?

MR. BOYD: OBJECTION, YOUR HONOR, I'M NOT SURE WHO HE'S REFERRING TO, BUT HE'S REFERRING --

MR. TALL: MR. BOYD'S OPENING ARGUMENT, YOUR HONOR.

MR. BOYD: HE'S GIVING TESTIMONY FOR WHICH I WAS CHASTISED FOR EARLIER AND I'M NOT SURE WHAT HE'S TALKING ABOUT.

JUDGE PADGETT: DON'T CHARACTERIZE IT AS A FIGHT. YOU MAY ASK HER QUESTIONS --

MR. TALL: I'M QUOTING FROM THE OPENING ARGUMENT OF THE DEFENSE, YOUR HONOR. THAT EVERYTHING WAS A FIGHT WITH MS. IRVING.

MR. BOYD: I DON'T BELIEVE I USED THOSE WORDS, YOUR HONOR.

JUDGE PADGETT: I'M GOING TO SUSTAIN THE OBJECTION, MR. TALL.

Q TRYING TO BE DIFFICULT WITH THE LAW OFFICE?

A NO. I JUST NEEDED TO KNOW WHAT DIRECTION, YOU KNOW. FIRST, YOU KNOW, LIKE I SAID, IT WAS AN ORDEAL WHEN SOMEONE STOLE MY SECURITY NUMBER. NOT THAT THEY'RE TRYING TO STEAL IT. I NEEDED

TO MAKE SURE WHAT'S GOING ON, YOU KNOW. I'M JUST GOING THROUGH MY SOCIAL SECURITY OUT THERE AND SENT IT OVER THE INTERNET, YOU KNOW, AND THIS KIND OF THING. SO, THAT WAS MY FIRST THING WAS, YOU KNOW, WHAT AM I DOING WITH MY SOCIAL SECURITY NUMBER? SECONDLY, YOU KNOW, I... I'VE... I DO HAVE TO FILE MY TAXES BY MARCH 15TH. I MEAN, I CHOSE TO AS A BUSINESS. I'M NOT INTO FILING EXTENSIONS. I HAVE NEVER FILED AN EXTENSION. I NEED TO KNOW, YOU KNOW, WHAT'S GOING ON. THEY NEVER ASKED FOR IT THE YEAR BEFORE. AND WE ARE TWO YEARS INTO THE ESTATE AND I JUST HAD QUESTIONS. I THOUGHT I ASKED QUESTIONS IN MY E-MAIL AND THEY NEVER ANSWERED THE QUESTIONS. I DON'T KNOW IF HE'S GOING TO PUT THIS OUT THERE, BUT YOU WILL SEE.

MR. TALL: YOUR HONOR, CAN I SEE THE LAST PLAINTIFF'S EXHIBIT 12, EXHIBIT 13? THANK YOU. MR. BOYD AND I WERE DISCUSSING THE POSSIBILITY OF AN OBJECTION TO A NEW EXHIBIT. YOUR HONOR, I HAVE A PROPOSAL FOR EXHIBIT 14.

JUDGE PADGETT: WITHOUT OBJECTION, MR. BOYD?

MR. BOYD: NO OBJECTION, YOUR HONOR.

JUDGE PADGETT: PLAINTIFF'S EXHIBIT 14.

Q I'LL ASK YOU TO TAKE A LOOK, MS. IRVING, AT WHAT WE'RE LOOKING AT HERE.

A SOME E-MAIL CORRESPONDENCE FROM APRIL 8TH BETWEEN ME AND BECKY WEAVER AGAIN.

E-MAILS FROM IRVING TO WEAVER MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 14.

Q WHAT IS THE ISSUE AT THIS POINT?

A STILL TALKING ABOUT THE ESTATE TAX RETURN. IT LOOKS LIKE BECKY WROTE TO ME FIRST AT 3:25. SAYING, "THE ACCOUNTANT WILL NORMALLY PREPARE THE K-1S AND SEND THEM TO THE BENEFICIARY. THE INFORMATION WILL GO TO THE ACCOUNTANT DIRECTLY FROM OUR OFFICE. THE INHERITANCE IS NOT NORMALLY A TAXABLE EVENT TO THE BENEFICIARY. WE WOULD APPRECIATE THE INFORMATION FROM YOU AS SOON AS YOU CAN PROVIDE IT TO OUR OFFICE." I WROTE BACK TO HER LIKE 7 MINUTES LATER, "WHAT INHERITANCE DISTRIBUTION ARE YOU REFERRING TO? OTHER THAN A $5,000.00 DISTRIBUTION THAT I RECEIVED IN SEPTEMBER 2014, THERE HAS NOT BEEN ANY OTHER DISTRIBUTION. CAN YOU PLEASE SHED SOME LIGHT ON THE REQUEST FOR MY SOCIAL SECURITY

NUMBER AT THIS TIME?"

Q CAN YOU TELL THE COURT YOUR UNDERSTANDING OF WHAT A K-1 IS?

A WELL, I RUN A BUSINESS SO ON MY PERSONAL RETURN MY K-1 IS A REFLECTION OF MY COMPANY'S PROFIT OR LOSS. I DON'T KNOW HOW A K-1 WOULD OPERATE IN TERMS OF AN ESTATE. I WOULD IMAGINE IT OUT BE THE SAME THING. WHETHER THE ESTATE... IN TERMS OF WHETHER THIS REAL ESTATE PROPERTY HAD A PROFIT OR LOSS.

Q DOES THAT HAVE ANY BEARING ON YOUR PERSONAL INCOME TAX RETURN?

A YES.

MR. TALL: YOUR HONOR, I HAVE ANOTHER EXHIBIT IF I MAY?

JUDGE PADGETT: THAT WOULD BE PLAINTIFF'S EXHIBIT 15. ANY OBJECTION MR. BOYD?

MR. BOYD: NO OBJECTION.

JUDGE PADGETT: WITHOUT OBJECTION. PLAINTIFF'S EXHIBIT 15. IS THAT E-MAILED CORRESPONDENCE?

MR. TALL: YES, YOUR HONOR.

JUDGE PADGETT: WHAT'S THE DATE?

MR. TALL: TWO MESSAGES HERE. ONE IS

APRIL 11 AND ONE IS APRIL 12.

Q COULD YOU PLEASE REVIEW THE MESSAGE FROM APRIL 12, MS. IRVING?

A YOU WANT ME TO READ THE MESSAGE OUT OF SEQUENCE?

Q PLEASE DO. IT'S SHORT. WHO IS IT FROM?

A YES. THIS IS FROM ROXANNA, WHO IS FROM THE CPA'S OFFICE.

Q TO WHOM?

A WRITING TO BECKY AT DAVIS AND BOYD.

Q HOW DID YOU GET A COPY OF THIS?

A I JUST GOT A COPY OFF THEIR FLASH DRIVE THEY PROVIDED TO CLIFF, AND CLIFF JUST SENT IT TO ME LAST WEEKEND. SO, I JUST SAW THIS LIKE LAST WEEKEND.

Q WHAT'S THE IMPRESSION THAT YOU HAD FROM THIS?

A SO, ROXANNA WRITES TO BECKY, "SORRY I DID NOT GET BACK TO YOU SOONER. YES. WE WILL NEED THIS INFORMATION TO FILE THE TAX RETURN TO THE IRS FOR THE ESTATE. IT IS ESSENTIAL BECAUSE THIS FORM ALLOCATES THE ESTATES PROFIT AND LOSS THROUGH THE ESTATES BENEFICIARIES THROUGH FORM K-1. THIS IS INCOME TO THEM AND THEY MUST REPORT IT ON THEIR PERSONAL TAXES. AT THIS POINT, IF THEY HAVE FILED THEIR FORM 1040S ALREADY THEY WILL HAVE TO PREPARE AN AMENDED

RETURN."

Q DIDN'T GET THIS FROM THE ACCOUNTING OFFICE, DID YOU?

A NO.

Q LIKE I SAID, THE E-MAIL DOWN BELOW WHERE BECKY WRITES TO ME, THAT'S WHERE SHE SENT TO ME INSTEAD WAS HER VERSION OF HOW SHE DECIDED TO WRITE --

E-MAILS MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 15.

Q HAVE YOU NOT ASKED THE LAW OFFICE WHETHER OR NOT THERE COULD BE A PROBLEM WITH YOU AMENDING YOUR RETURN WITH A NEW K-1?

A I HAD NO IDEA THAT ANY OF THIS, I MEAN, THIS AS ALL... I HAD NO IDEA THAT --

Q HOW ABOUT IN JANUARY OF 2016, DID YOU GET ANY KIND OF MESSAGE ABOUT THE ESTATE INCOME HAVING SOME BEARING ON YOUR TAX RETURN?

A NO.

Q ABOUT IN FEBRUARY OF 2016?

A NO.

Q HOW ABOUT ANY TIME PRIOR TO MARCH 31, 2016 DATE WHEN YOUR SOCIAL SECURITY NUMBER WAS REQUESTED?

A NO. I'M ASSUMING THAT WAS THE FIRST... YOU HAVE ALL THE DOCUMENTS. SO, IF THAT'S THE FIRST DATE THAT YOU PULLED FROM EVERYTHING THAT I'VE GIVEN YOU THEN THAT'S THE FIRST DATE.

MR. BOYD: YOUR HONOR, I DON'T NECESSARILY HAVE AN OBJECTION TO THIS, WHICH HAS JUST BEEN INTRODUCED BY COUNSEL. I WILL JUST SAY THERE'S A PLETHORA OF E-MAIL EXCHANGES THAT WERE AS RECENTLY AS YESTERDAY PRODUCED TO ME BY MR. TALL THAT INVOLVED COMMUNICATIONS FROM US IN OUR EFFORTS TO LITIGATE THE CASE. I'M NOT ACCUSTOMED TO THOSE COMMUNICATIONS ROUTINELY COMING INTO EVIDENCE. I THINK THAT'S SOMETHING THAT WE ARE GOING TO HAVE TO BE LEERY OF, BUT I HAVE NO OBJECTION TO THESE PARTICULAR E-MAILS.

JUDGE PADGETT: THAT WILL BE PLAINTIFF'S EXHIBIT 16 AND 17.

MR. TALL: THANK YOU, YOUR HONOR.

Q MS. IRVING, ARE YOU AWARE OF EVEN THROUGH MAY OF 2016, GETTING AN ANSWER TO YOUR QUESTION ABOUT WHETHER YOUR PERSONAL INCOME TAX RETURN MAY HAVE TO BE AMENDED AS A RESULT OF PROVIDING YOUR

SOCIAL SECURITY NUMBER FOR A TAX RETURN?

A I MEAN, I HAVE HEARD IT FROM YOUR LIPS, YOU KNOW. YOU AND I HAVE SORT OF TALKED ABOUT IT FOR THE PAST FEW WEEKS BUT, NO. I MEAN, I HAVEN'T HEARD IT FROM THE ESTATE.

E-MAILS MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 16.

E-MAILS MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 17.

Q DO YOU RECALL ANY DIRECTION FROM YOU SEEKING INFORMATION ABOUT HOW THIS TAX RETURN COULD BE REPAIRED?

A CAN YOU REPEAT THAT?

Q ANY DIRECTION FROM YOU ASKING THE LAW OFFICE THE DETAILS ABOUT THIS ESTATE INCOME TAX RETURN?

A YES. SO, WHEN I WAS FIRST ASKED FOR MY SOCIAL SECURITY NUMBER, I DON'T KNOW IF YOU HAVE THE E-MAIL OR NOT RIGHT HERE, BUT WHEN THEY FIRST ASKED ME FOR THE SOCIAL SECURITY NUMBER, YOU KNOW, BECAUSE THEY WERE PREPARING FOR THE ESTATE TAX RETURN I ASKED HIM THAT... "CAN I SEE THE

RETURN?" BASICALLY I WAS NOT PRIVY TO THAT INFORMATION. BECAUSE I FELT LIKE IF MY NAME AND SOCIAL SECURITY NUMBER IS GOING TO GO ON THIS RETURN, I WOULD LIKE TO SEE, YOU KNOW, WHAT DOES THIS RETURN LOOK LIKE? I MEAN, IS THERE GOING TO BE A LOSS OR A GAIN? HOW IS IT GOING TO AFFECT MY, YOU KNOW... IT'S BASICALLY, MY RETURN TOO. THAT'S HOW I VIEW IT, BUT... SO, THEY WOULDN'T SHOW IT TO ME. I SHOULDN'T SAY, "THEY". I WAS DEALING WITH BECKY DURING THESE CORRESPONDENCE AND THESE E-MAILS. SHE NEVER...

MR. BOYD: YOUR HONOR, ANOTHER EXHIBIT IF I MAY?

MR. DAVIS: I WOULD LIKE TO PUT AN OBJECTION ON THE RECORD, RELEVANCY. WE ALL KNOW THAT IT'S NOT THE PERSONAL REPRESENTATIVES RESPONSIBILITY TO GIVE TAX ADVICE TO THE BENEFICIARIES. SO, I WONDER HOW FAR MR. TALL IS GOING TO GO WITH THIS AND IF IT'S RELEVANT TO WHAT WE'RE DOING OR NOT? THE PR IS NOT CHARGED WITH GIVING BENEFICIARIES TAX ADVICE. SO, I DON'T KNOW HOW RELEVANT WHAT HE'S DOING IS.

JUDGE PADGETT: IT WOULD BE RELEVANT TO

THE K-1 IF THE ESTATE CONTINUED TO GIVE TO EACH OF THE FOUR BENEFICIARIES, WOULD IT NOT?

MR. DAVIS: I BELIEVE WE HAVE ESTABLISHED THAT, YOUR HONOR.

JUDGE PADGETT: I OVERRULE YOUR OBJECTION. PLAINTIFF'S EXHIBIT 18.

Q MS. IRVING, HAVE YOU GOT SOME OBSERVATION REGARDING NUMBER 18?

A OKAY.

Q DO YOU SEE A FIGURE ON THE FIRST PAGE AS TO WHEN THE DATE OF THE RETURN WAS FILED?

A 10/17/16.

ESTATE TAX RETURN MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 18.

Q ON THE FAR RIGHT-HAND COLUMN, UNDER 'TAXABLE INCOME, LINE 22, DO YOU SEE SOMETHING?

A NEGATIVE -98,156.

Q TO HAVE AN UNDERSTANDING THAT, THAT REPRESENTS A LOSS TO THE ESTATE?

A YES. CORRECT.

Q DO YOU HAVE THE UNDERSTANDING THAT IF THERE WAS A TIMELY K-1, WHETHER THAT WOULD HAVE HAD SOME

BEARING ON YOUR PERSONAL INCOME TAX RETURN?

A I WOULD THINK IT WOULD.

Q HOW WOULD THAT HELP YOU OR HURT YOU AS FAR AS YOU UNDERSTAND?

MR. BOYD: YOUR HONOR, I'M GOING TO OBJECT. I'M NOT SURE MS. IRVING, FOR ALL HER EXPERTISE IN LIFE, IS QUALIFIED TO TELL US WHAT THE RAMIFICATIONS OF THE K-1 ARE OR ARE NOT. SHE'S NOT AN ACCOUNTANT AND SHE'S NOT A TAX PROFESSIONAL.

JUDGE PADGETT: I DON'T KNOW THAT SHE'S GIVEN HER PROFESSIONAL OPINION. I THINK SHE'S GIVING HER UNDERSTANDING AS A TAX PAYER AS TO WHAT A K-1 WOULD DO, WHETHER IT'S A LOSS AND WOULD BE A LOSS TO ALL FOUR PEOPLE. IF IT IS A GAIN THEN THEY WOULD HAVE TO PAY INCOME TAX ON THAT GAIN. SO, I'M GOING TO OVERRULE THE OBJECTION.

Q THAT $98,000.00 AND CHANGE LOSS, DO YOU HAVE AN UNDERSTANDING OF HOW THAT MIGHT HAVE AFFECTED YOUR PERSONAL INCOME TAX RETURN FOR 2016?

A YES. I MEAN, IT WOULD OBVIOUSLY BE A LOSS OF ALMOST $25,000.00 TO ALL OF US. WE WOULD HAVE

ALL --

Q HOW DO YOU GET TO THE 25,000.00?

A IT'S ALMOST 100,000 AND THERE IS FOUR OF US SO I WOULD ASSUME THAT I WOULD HAVE A LOSS OF ALMOST 25,000.OO.

Q WOULD THAT HAVE HELPED YOU WITH YOUR 2016, PERSONAL INCOME TAX RETURN?

A IT WOULD PROBABLY HELP ME IN ANY YEAR TAX RETURN I WOULD THINK. I THINK IT WOULD HELP ANY ONE AT ANY TIME.

Q LET ME BE CLEAR. THE FIRST TIME YOU'RE HEARING ABOUT TAX REPORTING ASSOCIATED WITH THE ESTATE IS IN JANUARY, FEBRUARY WHEN?

A END OF MARCH OF LAST YEAR.

Q AND YOU ALREADY FILED YOUR PERSONAL TAX RETURN?

A YEAH. I DO IT RIGHT NOW AND WHEN I GO BACK TO WORK NEXT WEEK MY ACCOUNTANT IS GOING TO HAVE ALL MY STUFF READY, PAPERWORK.

Q DOES THE COURT HAVE EVIDENCE OF RESPONSES THAT YOU HAVE OFFERED TO THE LAW FIRM TO ASK ABOUT THESE DETAILS?

A I NEVER ASKED THE ESTATE... I NEVER STARTED A CONVERSATION WITH THE ESTATE ABOUT TAXES BECAUSE, I GUESS, I ASSUMED THEY WOULD COME TO US.

Q BUT YOU RESPONDED, DID YOU NOT?

A YES.

Q WERE YOU DIFFICULT OR ANGRY?

A NO.

Q WE CAN READ IT FOR YOURSELVES, CAN WE NOT?

A YES.

Q AND YOU SEE... HAVE YOU SEEN WHAT THE ACCOUNTANT WAS SHARING WITH THE LAW FIRM?

A YES. I JUST SAW THAT THIS PAST WEEKEND.

Q LAW FIRM DID NOT SHARE IT WITH YOU?

A NO.

JUDGE PADGETT: THIS IS A LITTLE BIT CONFUSING TO ME. THE FIRST TIME YOU HEARD ABOUT THE K-1 AMOUNT WAS MARCH YOU SAID, OF WHAT YEAR 2015 OR LAST YEAR?

A LAST YEAR BECAUSE THE TAXES WEREN'T EVEN FILED UNTIL THIS PAST OCTOBER FOR THE PAST TWO YEARS.

Q THERE WAS A 2014 INCOME TAX RETURN, WAS THERE NOT?

A APPARENTLY THERE WAS.

Q DID ANYONE CONTACT YOU IN 2015 AND TELL YOU THAT THERE WERE ISSUES ASSOCIATED WITH THE INCOME TAXES?

A NO. NO ONE'S BEEN CONTACTED ABOUT TAXES OR SOCIAL SECURITY NUMBERS OR ANYTHING UNTIL THIS

PAST MARCH WHEN WE ALL GOT CONTACTED ABOUT OUR SOCIAL SECURITY NUMBERS.

Q WE CAN BE CLEAR THAT YOU WITHHELD YOUR SOCIAL SECURITY NUMBER?

A I DID.

Q TRYING TO BE DIFFICULT? TRYING TO HARM SOMEONE?

A NO. NOT AT ALL.

Q WHY DID YOU WITHHOLD?

A I WITHHELD FOR TWO REASONS. THE IMMEDIATE ONE WAS I DID NOT WANT TO DO ANYTHING YET BECAUSE IT HAD JUST BEEN LIKE A 9 MONTHS PRIOR, BUT STILL GETTING THROUGH THE ORDEAL OF HAVING MY SOCIAL SECURITY NUMBER, YOU KNOW, TAMPERED WITH. IT IS AN ORDEAL. SECONDLY, I ASKED TO SEE, YOU KNOW, WHAT THE RETURN WAS GOING TO LOOK LIKE OR HOW IT WAS GOING TO AFFECT ME BECAUSE I HAD ALREADY FILED MY TAXES. THEN I GOT SORT OF HIT WITH THIS BRICK WALL AND WHEN I KEPT SORT OF ASKING THE WALL GOT HIGHER AND HIGHER AND HIGHER. THEN, YOU KNOW, I THINK YOU REACHED OUT EVEN TO TRY AND SEE, YOU KNOW, WHAT CAN WE DO HERE? AND THEN, OF COURSE, YOU KNOW, THAT WAS LAST MARCH AND HERE WE ARE IN FEBRUARY SO...

Q AFTER WE HAD A HEARING IN COURT ON 27 MAY WHAT WERE YOUR EXPECTATIONS?

A MY EXPECTATIONS WERE ACTUALLY THAT WE COULD CLOSE THIS ESTATE. I MEAN, I GUESS, I HAD HIGH EXPECTATIONS BUT, YES.

Q YOU SAW CLOSING DOCUMENTS THAT WERE FILED ON 3 JUNE?

A NO. I THINK JUST EMOTIONALLY I JUST... YOU KNOW, MAYBE WE ALL JUST ARE TIRED AND... YEAH. SO, MY EXPECTATIONS, I GUESS, WERE... YOU KNOW, THAT WE WANTED TO CLOSE THE ESTATE. THAT'S BEEN A GOAL I THINK FOR EVERYONE INCLUDING JENE. SO, YES, IT'S A VERY SAD SITUATION.

Q HOW DO YOU RESPOND WHEN THE ESTATE MAY SAY IT'S YOUR CONTINUING QUESTIONS, IT'S YOUR CONTINUING MOTIONS THAT HAVE KEPT THIS ESTATE OPEN?

A IT'S DIFFICULT WHEN THE PERSON WHO IS MANAGING THE ESTATE SAYS THAT THEY WANT THIS PIECE OF PROPERTY AND HAS SAID THAT FROM DAY ONE, BUT YET, WHEN IT'S TIME TO TAKE IT NOW ALL OF A SUDDEN, NO. IT'S NOT WORTH THIS MUCH. THERE'S A LOT OF THINGS THAT, YOU KNOW, WE DON'T HAVE THE TIME TO TALK ABOUT AND IT'S NEVER GOING TO COME OUT. IT'S JUST NOT GOING TO ALL COME OUT. BUT --

Q IS THAT, YOU SAID, YOU BEING POLITE TO THE COURT?

A YES. I'M BEING VERY POLITE RIGHT NOW.

Q WHAT ABOUT IT BEING RELEVANT TO YOU BEING TREATED FAIRLY? DID YOU GET BANK RECORDS WHEN YOU ASKED FOR THEM?

A NO. BECAUSE ACTUALLY WE WANTED JUNE, JULY OR AUGUST. THERE'S TWO MONTHS THAT WERE WITHHELD UNTIL... THEY WERE WITHHELD FOR SEVERAL MONTHS AND THEN WE FINALLY GOT THEM.

Q ANYTHING REMARKABLE IN THOSE BANK STATEMENTS WHEN YOU FINALLY GOT THEM IN JANUARY OF 2017?

A YES. LOTS OF SPENDING.

Q WHAT DID THAT MEAN TO YOU, "LOTS OF SPENDING"?

A IF SHE WAS ORDERED NOT TO SPEND EXCESSIVE, THEN IN MY MIND THAT MEANS DON'T SPEND EXCESSIVE. YOU PAYING MINIMUM ON THE BILLS.

Q ANYONE EVER SAY TO YOU THAT THE COSTS ARE ASTRONOMICAL AND BECAUSE OF THE COSTS YOU SHOULD CONSIDER A SETTLEMENT?

A THERE'S NEVER... THE ONLY TIME... LIKE I SAID, THE DISTRIBUTION SHEET CAME OUT A YEAR AGO DECEMBER. THAT WAS THE FIRST TIME WE SAW IT. IT WAS THEN THAT THE PROPERTY ALL OF A SUDDEN WENT DOWN $100,000.00.

Q THAT DISTRIBUTION PROPOSAL, DID IT TELL YOU HOW MUCH MONEY WAS IN THE ESTATE?

A NO.

Q DID IT TELL YOU HOW MUCH THE PERSONAL REPRESENTATIVE WANTED TO TAKE AS A FEE?

A NO.

Q DID IT TELL YOU THAT NO RENT WAS PAID ON THE CROOKED PINE DRIVE PROPERTY AND THAT ALL THE TAXES AND UTILITIES WERE PAID BY THE ESTATE?

A NO. WE ASSUMED, YOU KNOW, THAT. WE PRETTY MUCH ASSUMED THAT BUT, NO. ALL IT WAS JUST A SPREADSHEET OF THE PROPERTY. SO, WE HAD NO IDEA HOW MUCH WAS IN THE BANK ACCOUNT AT THAT POINT BECAUSE WE DIDN'T HAVE SCOVILLE. WE HAD NO BANK RECORDS AT THAT POINT FOR A COUPLE OF MONTHS. YOU KNOW, WE DIDN'T EVEN KNOW AT THAT POINT THAT MATT'S LAWYER HADN'T BEEN STILL PAID, WHICH WAS PROMISED YEARS BEFORE. SO, THERE WERE A LOT OF UNKNOWNS STILL. SO, WITHOUT HAVING A LAWYER ON OUR SIDE INVOLVED IT JUST SEEMED VERY... IT MADE US ALL FEEL VERY NERVOUS.

Q WHERE ARE YOU TODAY IN YOUR HOPES FOR WHAT SHOULD HAPPEN WITH THE ESTATE?

A WE NEED TO JUST CLOSE IT.

Q WE'VE HEARD MS. JENE SAY THAT TO OR AT LEAST HER REPRESENTATIVES.

A RIGHT.

Q YOU WANT TO KEEP THIS GOING ANOTHER YEAR AND A HALF?

A NO.

Q WHAT IS YOUR RESPONSE TO THE PROPOSAL THAT YOU JUST HAVE SEEN? IT CAME IN 14 OF FEBRUARY?

A YOU KNOW, MY BROTHERS AND I TAKE A BIG ISSUE WITH THE FACT THAT, YOU KNOW, JENE HAS WANTED TO STAY IN THIS HOUSE FOR THREE YEARS AND ONLY NOW WE GET ANOTHER APPRAISAL SAYING, YOU KNOW, IT'S WORTH WHAT I'VE SAID IT'S WORTH WITH THE STATE OR THE COUNTY HAS SAID IT'S WORTH. YOU WANTED IT WHEN YOU WERE TRYING TO SAY IT WAS 95 AND NOW IT'S WORTH THIS AND YOU DON'T WANT IT. WE'VE NEVER SAID WE WANTED DAD'S HOUSES. I DON'T REALLY WANT ANYTHING IN SOUTH CAROLINA. NO OFFENSE TO ANYBODY HERE, BUT IT'S JUST A VERY SAD PLACE FOR ME TO BE.

Q WHY IS THAT?

A BECAUSE I DON'T HAVE ANY GOOD MEMORIES HERE. EVERYTHING HERE IS SAD.

Q WELL, HERE IS THE JUDGE WITH THE AUTHORITY TO REVIEW ALL THE EVIDENCE AND MAKE A DETERMINATION, WHAT WOULD YOU SAY TO HIM?

A I WOULD SAID THAT THERE'S NO REASON THAT, YOU KNOW, TWO YEARS AGO THESE PROPERTIES COULD HAVE

STILL HAVE BEEN DEEDED TO ALL OF US INTO OUR INDIVIDUAL NAMES AND WE ALL COULD'VE BEEN COLLECTING RENT FOR OURSELVES. WHEN THESE PROPERTIES SOLD, AS THEY SOLD, THE CASH COULD HAVE BEEN DIVVIED OUT TO US INTO EQUAL PARTS AS THEY SOLD TWO, THREE YEARS AGO. THIS ESTATE HAS BEEN SO MISMANAGED FROM THE START AND IT HAS NOTHING TO DO WITH US THREE CHILDREN. IT HAS TO DO WITH HER.

Q THERE'S AN OPPORTUNITY IN 2017 TO TAKE AN INCOME TAX DEDUCTION BECAUSE OF THE WAY THE ESTATE CAN REPORT ITS TAXES. WILL YOU COOPERATE SO YOU CAN GET YOUR QUARTER SHARE OF THE DEDUCTIONS?

A OF COURSE, I WOULD. OF COURSE, I WOULD.

Q HAD ANYBODY EXPLAINED THAT TO YOU IN JANUARY, FEBRUARY, MARCH OF 2016, WOULD YOU HAVE IMAGINING OBJECTING?

A NO. I WOULD HAVE COOPERATED. I MEAN, OF COURSE I WOULD'VE COOPERATED.

Q I IMAGINE THE DEFENSE HAS SOME QUESTIONS FOR YOU.

JUDGE PADGETT: MR. BOYD, BEFORE YOU START, DO YOU WANT A SHORT BREAK OR ARE WE YOU READY TO GO?

JUDGE PADGETT: I WOULD LOVE A SHORT

BREAK. THANK YOU.

(DISCUSSION OFF THE RECORD.)

JUDGE PADGETT: PLEASE COME BACK TO YOUR CHAIR. YOU'RE STILL UNDER OATH.

CROSS-EXAMINATION BY MR. BOYD:

Q GOOD AFTERNOON. HOW ARE YOU HOLDING UP, MS. IRVING?

A I'M OKAY.

Q MS. IRVING, WE'VE MET. I'M REESE BOYD AND AS YOU KNOW, I REPRESENT JENE POAFPYBITTY IN THE MATTER. YOU HAD YOUR DEPOSITION TAKEN A FEW WEEKS BACK. I DO HAVE A FEW QUESTIONS FOR YOU. WE START BY SAYING THERE ARE SEVERAL THINGS THAT I HEARD TODAY THAT SEEM INCONSISTENT. I'M NOT TRYING TO TRIP YOU UP, I'M JUST TRYING TO ASK YOU TO CLARIFY A FEW THINGS. ALL I REALLY WANT TO DO IS UNDERSTAND YOUR TESTIMONY. FIRST, I WOULD LIKE TO ASK YOU, YOU MADE SEVERAL COMMENTS EARLIER THIS MORNING, EARLIER IN YOUR TESTIMONY, ABOUT AN ALLEGATION OR THE GENERAL ALLEGATION, AS I UNDERSTOOD YOUR TESTIMONY, THAT THE PERSONAL REPRESENTATIVE LIED TO YOU RELATING TO THE SALE OF THE PROPERTY. DID I UNDERSTAND YOU CORRECTLY?

A SHE... MY BROTHER, MATT, HAD ASKED HER ABOUT

SELLING PROPERTY AND SHE TOLD MY BROTHER, MATT, THAT SHE HAD NOT SOLD PROPERTY.

Q BUT SHE NEVER LIED DIRECTLY TO YOU?

A MY CONVERSATION WITH JENE WITH REGARDS TO THE ESTATE, THOSE WERE THE ONLY CONVERSATIONS BECAUSE ALL OF THE TIME WHEN I WAS TRYING TO TALK TO HER ABOUT IT LIKE I SAID I WOULD SEND HER A TEXT OR LEAVE A VOICE MAIL AND SHE SAID SHE NEVER GOT IT. BUT HER OVERALL POSTURE WAS BASICALLY NOTHING COULD HAPPEN WITH THE ESTATE UNTIL ONE YEAR. WE ALL SORT OF TOOK THAT AS ABSOLUTELY NOTHING COULD HAPPEN. SO, MATT HAD ASKED HER IF SHE HAD SOLD ANY CONDOS AND SHE SAID NO. WE HAD ALREADY FOUND OUT THAT, YOU KNOW --

Q WOULD YOU SAY, "MATT HAD ASKED HER AND SHE SAID NO."? YOU'RE OBVIOUSLY RELYING ON MATT'S TESTIMONY TO YOU?

A CORRECT.

Q AND IS THIS THE SAME BROTHER, MATTHEW ROTHGEB, THAT YOU TESTIFIED MULTIPLE TIMES THIS MORNING AS HAVING A DRUG PROBLEM?

A WELL, I MEAN, HE HASN'T HAD A DRUG PROBLEMS SINCE HE WAS A CHILD. HE IS NOT ALWAYS ON DRUGS. JUST LIKE MY FATHER WAS AN ALCOHOLIC,

BUT HE WASN'T ALWAYS DRUNK.

Q BUT YOU DID TESTIFY THIS MORNING... I HEARD SEVERAL REFERENCES ABOUT A DRUG PROBLEM. THAT MATT DID HAVE A DRUG PROBLEM. DID I UNDERSTAND YOU CORRECTLY?

A MATT HAS A DRUG PROBLEM, YES.

MR. TALL: YOUR HONOR, THERE IS A HIGHLIGHT HERE TO SUGGEST, IF THE ESTATE IS WILLING TO SUGGEST THAT THEY ARE HIGHLIGHTING PARTS THAT THEY WANT THE COURT TO SEE. I DON'T WANT THE IMPRESSION THAT THERE'S SOMETHING ABOUT THIS HIGHLIGHTING THAT RELATES TO THIS WITNESS.

MR. BOYD: YOUR HONOR, I'M USING A HIGHLIGHTED PROPOSED EXHIBIT BECAUSE THE ONLY COPY THAT I HAVE HAPPENS TO HAVE HIGHLIGHTING ON IT AND I COULDN'T FIGURE OUT HOW TO REMOVE THE HIGHLIGHTING.

MR. TALL: I GOT A COPY --

MR. BOYD: I WILL BE HAPPY TO STIPULATE, YOUR HONOR, THE HIGHLIGHTING IS NOT IN THE ORIGINAL. IT WAS ADDED BY ME AT SOME POINT.

JUDGE PADGETT: DO YOU HAVE A COPY THAT

DOESN'T HAVE THE HIGHLIGHTING ON IT?

MR. TALL: I VERY WELL MAY, YOUR HONOR.

JUDGE PADGETT: ARE YOU COMFORTABLE WITH THE STIPULATION --

MR. TALL: I'M COMFORTABLE WITH THE STIPULATION, YOUR HONOR.

JUDGE PADGETT: ARE YOU GOING TO INTRODUCE THAT?

MR. BOYD: I'M GOING TO ASK HER ABOUT IT, YOUR HONOR.

JUDGE PADGETT: GO RIGHT AHEAD.

Q IS IT FAIR TO SAY, MS. IRVING, IN A CONVERSATION ON FACEBOOK WITH YOUR BROTHER, STEVEN, AT ONE POINT, YOU INDICATED TO HIM THAT WHAT CLIFF WAS SAYING WAS THAT IT MAY NOT GET VERY FAR THIS CASE?

A YEAH. I AM NOT SURE WHY JENE WAS CHECKING PEOPLE'S FACEBOOK AND MY CONVERSATION BETWEEN STEVEN AND I, BUT --

Q I DIDN'T ASK YOU WHY MS. POAFPYBITTY MIGHT BE READING FACEBOOK. A LOT OF PEOPLE READ FACEBOOK. BUT WHAT I ASKED YOU IS --

A THIS IS A CONVERSATION BETWEEN STEVEN AND I ON FACEBOOK. IT WASN'T ANYTHING TO DO WITH JENE ON FACEBOOK. THIS IS A CONVERSATION BETWEEN MY

BROTHER AND I ON FACEBOOK THAT, I GUESS, SHE HAD TO HAVE GONE TO HIS FACEBOOK PAGE TO SEE THIS. A COUPLE OF DAYS BEFORE I WAS COMING DOWN FOR MEDIATION... AND WHAT'S HIGHLIGHTED HERE, ALTHOUGH WHAT CLIFF IS SAYING, "IT MAY NOT GET VERY FAR." MEANING THE MEDIATION. I WAS HOPEFUL ACTUALLY THAT MEDIATION WOULD GET SOMETHING DONE THAT WE COULD, YOU KNOW... THAT'S WHAT MEDIATION IS SUPPOSED TO DO, YOU KNOW, ACCOMPLISH SOMETHING BECAUSE AT THIS POINT, WE HAD NOT ACCOMPLISHED ANYTHING. AS FAR AS IT NOT GETTING VERY FAR, YOU KNOW, I FELT LIKE WE PROBABLY STILL ARE GOING TO HAVE TO GET IN FRONT OF THE JUDGE. BUT, AT LEAST MEDIATION WOULD GET US TO SOMETHING THAT WE COULD STILL GET TO THE JUDGE AT THE MEDIATION AND THEN, YOU KNOW, GET TO THE JUDGE. THIS WOULD BE A STARTING GROUND AT LEAST WITH THE MEDIATION AND THAT'S WHAT I MEANT BY THAT LINE THAT'S HIGHLIGHTED. AND ANOTHER ONE THAT'S HIGHLIGHTED, "IF IT GOES TO COURT AND THE JUDGE DOESN'T MAKE HER PAY MY EXPENSES, I'M OUT A LOT OF MONEY." OF COURSE, THERE'S NOTHING WRONG WITH ME SAYING THAT BECAUSE I... MY LAWYER RIGHT NOW IS NOW BEING FUNDED WITH HELP FROM MY BROTHERS. IT'S ALL

COMING OUT OF MY POCKET, YEAH. I'M VERY NERVOUS ABOUT THE FACT THAT IT'S COSTING ME A LOT OF MONEY TO TRY TO GET THIS ESTATE CLOSED FOR MY BROTHERS AND I.

Q ISN'T IT FAIR TO SAY, MS. IRVING, THAT REALLY WHAT THIS CASE IS ABOUT AT THIS JUNCTURE, MORE THAN ANYTHING, IS YOU GETTING YOUR MONEY BACK?

A WHAT THIS CASE IS ABOUT?

Q YES.

A IS ABOUT ME GETTING MY MONEY BACK?

Q YES.

A NO. THAT'S NOT WHAT THIS CASE IS ABOUT. NO.

MR. BOYD: YOUR HONOR, I WOULD LIKE TO OFFER THIS INTO EVIDENCE.

JUDGE PADGETT: WITHOUT OBJECTION UNDER THE CIRCUMSTANCES THAT THE ATTORNEY HIGHLIGHTED THE PROVISION AND THAT'S GOING TO BE THE ORIGINAL. THAT WILL BE EXHIBIT --

MR. BOYD: I WILL BE GLAD TO PROVIDE THE COURT WITH A CLEAN COPY WHEN WE --

JUDGE PADGETT: I THINK IT'S FINE.

FACEBOOK PAGE MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS DEFENDANT'S

EXHIBIT 3.

JUDGE PADGETT: THIS IS DEFENDANT'S EXHIBIT 3.

Q BEFORE I LEAVE THE QUESTION I WANT TO JUST BE CLEAR FOR THE COURT. YOU'RE NOT MAKING THE ALLEGATION HERE THAT THE PERSONAL REPRESENTATIVE LIED TO YOU DIRECTLY ABOUT THE SALE OF THE REAL ESTATE?

A I WAS NOT HAVING ANY MORE COMMUNICATION WITH HER. I GUESS, LIKE I TOLD THE JUDGE EARLIER, EVERY TIME I QUESTIONED HER SHE... BASICALLY SHE AVOIDED. MATT IS THE ONE WHO ASKED HER THAT DIRECT QUESTION ABOUT THE SALE OF THE PROPERTY.

MR. BOYD: YOUR HONOR, MAY I APPROACH?

JUDGE PADGETT: CERTAINLY.

Q I WANT TO MOVE TO FEBRUARY 2016, MS. IRVING. AGAIN, AS I UNDERSTOOD YOUR TESTIFY THIS MORNING, I HEARD YOU TESTIFY THAT YOUR LETTERS... I WILL LET YOU REFER TO THEM, IF YOU LIKE. YOUR LETTERS THAT YOUR ATTORNEY PREVIOUSLY MARKED AS EXHIBITS 6 AND 7, AS I UNDERSTOOD YOUR TESTIMONY, YOU INDICATED YOU DID NOT RECEIVE A RESPONSE?

A WELL, SOMETIME RIGHT AFTER THIS IS WHEN WE ENDED UP ON THE TELEPHONE, BRET DAVIS AND I.

Q SO, IN FACT, YOU DID RECEIVE A RESPONSE? IN FACT, THE STAFF AND MR. DAVIS... HIS STAFF AND HIS ASSISTANT CONTACTED YOU IN AN EFFORT TO SET UP A MEETING BETWEEN THE BENEFICIARIES, IS THAT RIGHT?

A RIGHT. BUT THAT WAS NOT... BASICALLY IMPOSSIBLE. I MEAN, I HAVE A BROTHER THAT LIVES IN THAILAND --

Q BUT YOUR TESTIMONY IS --

A AND ANOTHER ONE THAT'S ON DRUGS SO --

Q I UNDERSTAND, BUT YOUR TESTIMONY CONSISTENTLY THROUGHOUT THE MORNING HAS BEEN THAT THE PERSONAL REPRESENTATIVE HAS FAILED TO FULFILL HER OBLIGATION DUTIES BECAUSE THERE WAS A LACK IN ABSENCE AND COMMUNICATION. SO, IN FACT, IF THERE'S A MEETING SCHEDULED AMONGST THE BENEFICIARIES AND Y'ALL SIMPLY CAN'T BE THERE BECAUSE YOU'RE IN THAILAND OR BECAUSE YOU'RE ON DRUGS, IS THAT MS. POAFPYBITTY'S FAULT?

A NO. THAT'S WHY I WENT AHEAD AND TOOK THIS PHONE CALL ON BEHALF OF... SO I COULD THEN, YOU KNOW, GO BACK TO MY BROTHERS AND BASICALLY BE SORT OF A... WHATEVER THE TERM WOULD BE. GO BACK AND FORTH WITH MY BROTHERS AND SAY, "THIS IS WHAT'S GOING ON." SOMEBODY HAD TO GO BACK AND

COMMUNICATE TO MY BROTHERS --

Q THE POINT OF FACT, MS. IRVING, I HEARD YOU TESTIFY THIS MORNING THAT MR. DAVIS DID NOT RESPOND TO YOUR LETTERS.

A WELL, THERE WERE TWO OR THREE LETTERS AND THEY WERE NOT RESPONDED TO OVER A COURSE OF DAYS AND WEEKS AND THEN FINALLY THERE WAS A RESPONSE. THAT'S WHAT I MEAN BY, "THERE WAS NO RESPONSE." THERE FINALLY WAS AND THEN WE GOT ON THE TELEPHONE.

Q THE TELEPHONE CALL WAS THAT ABOUT THE SAME TIME THE MEETING WAS TO HAVE TAKEN PLACE? DO YOU HAVE A RECOLLECTION AS TO THE SEQUENCE OF EVENTS?

A YEAH. I MEAN, I GOT ON THE TELEPHONE A LOT BETTER THAN I COULD'VE GOTTEN IN THE CAR AND HEADED DOWN HERE. LIKE I SAID, I MEAN, I'M A SINGLE MOM. I RUN A BUSINESS. THERE WAS NO WAY I COULD HAVE GOTTEN DOWN HERE ANY SOONER. I WAS ABLE TO GET ON THE PHONE MUCH QUICKER THAN WHAT I COULD HAVE MADE ARRANGEMENTS TO GET DOWN HERE.

Q I THINK IT WAS INITIALLY CONTEMPLATED THAT YOU WOULD PARTICIPATE IN THIS MEETING BY PHONE, CORRECT?

A RIGHT. I DON'T BELIEVE THAT THERE WAS EVER A

PLAN TO COME IN PERSON, YOU KNOW. CLIFF HAD JUST MENTIONED THAT WHEN HE WAS QUESTIONING ME ABOUT COMING. I THINK THERE WAS NEVER A PLAN TO COME IN PERSON.

Q THE REASON I ASKED IS YOU WERE JUST DISCUSSING THE DIFFICULTIES OF GETTING TO MYRTLE BEACH IN PERSON.

A RIGHT.

Q SO, DO YOU RECALL THE DATE OF THIS TELEPHONE CALL THAT TOOK PLACE WITH MR. DAVIS --

A I REMEMBER IT WAS ON A FRIDAY. I DO REMEMBER IT WAS AROUND VALENTINE'S DAY. IT WAS RIGHT AROUND THIS TIME OF THE YEAR, FRIDAY AFTERNOON. I MEAN, IT WAS DEFINITELY FRIDAY AFTERNOON PROBABLY AROUND THE 3 OR 4 O'CLOCK TIME IN FEBRUARY. IT MIGHT HAVE BEEN THE THIRD WEEK OF FEBRUARY.

Q IS THIS THE SAME TELEPHONE CALL THAT YOU RECORDED?

A YES. BECAUSE I HAVEN'T TALKED TO HIM ANY OTHER TIME AND I HAVEN'T RECORDED HIM ANY OTHER TIME. YES, I HAVE ONLY TALKED TO HIM THAT TIME.

Q DID YOU TELL MR. DAVIS THAT YOU WERE RECORDING THE PHONE CALL?

A NO, I DID NOT.

Q IS THERE ANY PARTICULAR REASON WHY YOU RECORDED SERPENTINELY?

A WHAT DOES THAT WORD MEAN?

Q IN SECRET.

A IS THERE A REASON THAT I RECORDED IT IN SECRET? I DID NOT REALLY THINK I WAS DOING IT SO MUCH IN SECRET, BUT IT WAS MORE THAT I WAS DOING IT SO THAT I COULD, YOU KNOW, PLAY IT FOR STEVEN AND MATT. SO, THAT THEY CAN ACTUALLY HEAR, YOU KNOW, LIKE THEY WERE THERE WITH ME. ALSO THE WHOLE IDEA THAT HE WANTED TO HAVE THIS PHONE CONVERSATION WAS THAT HE SAID HE HAD IDEAS ON HOW TO CLOSE THE ESTATE. I DIDN'T KNOW, YOU KNOW, HOW INVOLVED THESE IDEAS MIGHT BE. I CAN'T READ MY OWN WRITING. I SHOULD BE IN THE MEDICAL FIELD. SO, IF I BEGIN TO WRITE THINGS DOWN, ESPECIALLY IF I'M IN THE MIDST OF TALKING AS WELL THEN, YOU KNOW, I DIDN'T KNOW HOW THE PHONE CONVERSATION WAS GOING TO GO SO I DIDN'T WANT TO TRUST ME HAVING TO WRITE MY OWN NOTES DOWN WHILE I'M IN MIDDLE OF A PHONE CONVERSATION. SO, YOU KNOW, I RECORDED IT FOR THOSE TWO REASONS. SO, MATT AND STEVEN WOULD BE ABLE TO LISTEN TO IT AS WELL AS BE ABLE TO RECOLLECT FOR MY OWN, YOU KNOW, REASONS OF...

YOU KNOW, WHAT EXACTLY TOOK PLACE ON THIS PHONE CONVERSATION.

Q DID YOU ACQUIRE OR DID YOU CHECK TO SEE IF RECORDING A CONVERSATION WAS LEGAL BEFORE YOU RECORDED IT?

A YES. I KNEW IT WAS LEGAL TO DO IT. I WOULD HAVE NEVER DONE IT IF IT WAS NOT LEGAL.

Q ARE YOU FAMILIAR WITH THE STATE LAWS IN SOUTH CAROLINA?

A I'M NOT A LAWYER, BUT I DEFINITELY KNEW THAT I COULD DO IT.

Q HOW DID YOU KNOW YOU COULD DO IT?

A BECAUSE YOU CAN CHECK.

Q HOW DID YOU CHECK?

A THE INTERNET.

Q ARE YOU FAMILIAR WITH THE STATE LAWS IN VIRGINIA? WHERE WERE YOU WHEN YOU RECORDED THE CONVERSATION?

A I WAS ACTUALLY IN MY CAR WHEN I TALKED TO HIM.

Q WHERE WAS YOUR CAR LOCATED?

A IN MY DRIVEWAY. I HAD GOTTEN HOME BUT I HADN'T GOTTEN INTO THE HOUSE YET OR ANYTHING SO...

Q THIS WAS IN THE COMMONWEALTH OF VIRGINIA?

A THAT'S WHERE I LIVE.

MR. BOYD: YOUR HONOR, THIS IS A LITTLE

UNUSUAL FOR ME. SINCE WE HAVE THE AUDIO BECAUSE MR. TALL PRODUCED IT TO US, I WOULD LIKE TO PLAY THE AUDIO AND REVIEW IT WITH THE WITNESS IF THAT'S AGREEABLE WITH MR. TALL AND AGREEABLE WITH THE COURT?

JUDGE PADGETT: MR. TALL, DO YOU HAVE ANY OBJECTIONS?

MR. TALL: I DON'T HAVE ANY OBJECTIONS, YOUR HONOR.

JUDGE PADGETT: ARE YOU GOING TO INTRODUCE THE TAPE OR THE --

MR. BOYD: YOUR HONOR, MR. TALL GAVE IT TO ME ON A USB DRIVE, WHICH WE HAVE TRANSFERRED TO OUR NETWORK AND I HAVE IT DOWNLOADED ON MY COMPUTER. BEFORE I LEAVE TODAY... I COULD TAKE A MOMENT TO DO IT NOW AND HAND IT TO THE COURT REPORTER OR I CAN TELL YOU BEFORE I LEAVE TODAY, I WILL TRANSFER IT BACK TO A USB DRIVE AND GIVE IT TO THE COURT REPORTER.

JUDGE PADGETT: IS THAT SATISFACTORY TO YOU?

COURT REPORTER: YES.

MR. BOYD: IF THE AUDIO CAPTURES IT, WE WANT IT TRANSCRIBED, BUT I DON'T KNOW THAT'S IT STRONG ENOUGH.

***AUDIO MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS DEFENDANT'S EXHIBIT "NEVER MARKED"**

Q MS. IRVING, I'M SORRY. DO YOU... YOU MAY HAVE TESTIFIED REGARDING THIS SUBJECT JUST A MOMENT AGO, BUT DID YOU ROUTINELY RECORD TELEPHONE CALLS?

A NO. I HAVE NOT HAD A NEED... LIKE I SAID, MY MAIN REASON WAS BECAUSE THIS IS AFFECTING MY TWO BROTHERS WHO WEREN'T ABLE TO HEAR THIS CONVERSATION, I MEAN, AND I FELT LIKE I'M HAVING TO RELAY INFORMATION TO THEM. I DIDN'T KNOW WHAT THESE IDEAS WERE GOING TO BE COMING FROM MR. DAVIS. I DID NOT KNOW IF I WAS GOING TO BE ABLE TO... HE'S A LAWYER TALKING SORT OF LAWYER TALK. AGAIN, MY HANDWRITING IS ATROCIOUS. SO, YOU KNOW, I DON'T KNOW IF ME TAKING NOTES WAS GOING TO WORK. SO, I JUST FELT LIKE THIS WAY, YOU KNOW, I COULD SEND IT TO STEVEN. HE'S IN THAILAND AND MATT WOULD HEAR IT TOO.

Q OKAY. FAIR ENOUGH?

COURT REPORTERS NOTES: (PLAYING AUDIO.)

Q RECOGNIZE THAT SO FAR?

A YES.

Q DID YOU RECOGNIZE THAT IS MR. BRET DAVIS AND BECKY WEAVER ON THE ROOM?

A YES.

(PLAYING RECORDING.)

Q IS THERE A REASON YOU DON'T WANT TO BE ON SPEAKERPHONE?

A MOSTLY BECAUSE I DON'T KNOW WHO ELSE WAS IN THE ROOM.

Q DID MR. DAVIS TELL YOU WHO WAS IN THE ROOM WITH HIM?

A YES. HE SAID BECKY WAS IN THE ROOM WITH HIM, BUT I DIDN'T KNOW IF JENE WAS IN THE ROOM AS WELL. I FELT LIKE I WAS AT A DISADVANTAGE.

Q WHY WOULD HAVING MS. POAFPYBITTY IN THE ROOM PUT YOU AT A DISADVANTAGE?

A I JUST DIDN'T KNOW WHO ELSE WAS IN THE ROOM AND I DIDN'T LIKE BEING ON SPEAKERPHONE.

Q DIDN'T WE JUST HEAR MR. DAVIS DESCRIBE WHO WAS IN THE ROOM WITH HIM?

A YES.

Q DID YOU NOT TRUST MR. DAVIS?

A WITH THIS THING GOING ON FOR AS LONG AS IT WAS,

I GUESS I DIDN'T. SO, I JUST ASKED TO BE OFF SPEAKERPHONE. I MEAN, THE OTHER THING IS SPEAKERPHONE IS A LOT OF TIMES, YOU CAN'T HEAR, THERE IS AN ECHO. THERE IS ALL KINDS OF REASONS.

Q BUT YOU DO UNDERSTAND HE HAD... THE SIMPLE EXPLANATION IS HE HAD OTHER STAFF IN THE ROOM AND HE WAS TRYING TO MAKE THE CALL PRODUCTIVE?

A I'M JUST GIVING YOU MY ANSWER.

Q I UNDERSTAND.

A I DON'T LIKE BEING ON SPEAKERPHONE ANYWAY EVEN TALKING TO ANYBODY. SPEAKERPHONE JUST, YOU KNOW...

(PLAYING RECORDING.)

(RECORDING ENDED.)

MR. BOYD: THANK YOU, YOUR HONOR.

Q MS. IRVING, LISTING TO THAT CALL, IS THERE ANYTHING ABOUT THAT CALL THAT IS INCONSISTENT WITH YOUR RECOLLECTION?

A NO. BECAUSE I HAVEN'T LISTENED TO IT BUT A COUPLE TIMES SINCE LAST YEAR.

Q DO YOU UNDERSTAND WHY SOMEBODY LISTENING TO THAT CALL, THAT TAPE OR THAT RECORDING I SHOULD SAY OR MR. DAVIS, FRANKLY AT THE OTHER END OF THE PHONE, DO YOU UNDERSTAND WHY HE MIGHT HAVE

REACHED A CONCLUSION THAT YOU WERE SPEAKING OFFICIALLY OR UNOFFICIALLY ON BEHALF OF YOUR BROTHERS WAS TRYING TO CONTROL THE ESTATE?

A CAN YOU REPEAT THAT?

Q DO YOU UNDERSTAND, EVEN IF YOU DON'T AGREE WITH HIM, DO YOU UNDERSTAND HOW MR. DAVIS MIGHT HAVE WALKED AWAY FROM THAT CONVERSATION THINKING THAT YOU WERE TRYING TO ASSERT CONTROL OVER THE ESTATE?

A I DON'T UNDERSTAND WHY IN THE PAST YEAR OR SO I'M BEING DEEMED A... THIS WHOLE WORD "CONTROL" KEEPS POPPING OVER ON MY LAP. MY BROTHERS CAN'T REALLY, YOU KNOW... I'M... ONE BROTHER IS A DRUGGIE AND DOESN'T REALLY... THE OTHER ONE IS IN THAILAND 12 HOURS AHEAD OF US. SO RIGHT NOW IT'S 4:30 P.M. SO IT'S 4:30 A.M. THERE. WE'RE NOT GOING TO GET HIM ON THE TELEPHONE RIGHT NOW. I'M LUCKY TO SPEAK WITH HIM ONCE A DAY, BUT, YOU KNOW, YOU HAVE TO TIME IT. I HAVE TRIED TO BE A VOICE FOR MY FAMILY. YOUR LAW OFFICE HAS... OR JENE OR A COMBINATION OF HAS MADE THIS WHOLE THING... CONTROL OR POWER OR WHATEVER. THAT'S NOT WHAT THIS IS. MY FATHER HAD A WILL... MY FATHER PASSED. HE HAD A WILL TO BE FOLLOWED AND CARRIED OUT IN A TIMELY FASHION. WE ARE THREE

YEARS INTO THIS AND NOTHING HAS BEEN TIMELY.

Q IT IS A POINT WORTH EXPLORING THAT YOU UNDERSTAND, I ASSUME, THAT THE INTERVENTION OF JACK SCOVILLE AND THE INTERSECTIONS BETWEEN SCOVILLE AND MR. DAVIS, AT THAT TIME, ACTUALLY CAUSED THE PROPERTIES NOT TO BE SOLD FOR A PERIOD OF TIME? ACTUALLY HAD THE IMPACT OF HOLDING OFF SOME OF THE SALES OF THE PROPERTY?

A OH, THEY ONLY MIGHT HAVE HELD OFF FOUR PROPERTIES. THERE WERE A HANDFUL OF OTHER PROPERTIES THAT WEREN'T EVEN DISCUSSED BECAUSE TENANTS WERE STILL IN THEM. NO. WE ONLY HAD FOUR PROPERTIES THAT WERE UNDER DISCUSSION WITH SCOVILLE. THERE WERE A HANDFUL OF OTHER PROPERTIES THAT TENANTS WERE IN AND/OR... MAYBE THEY WERE ON THE MARKET FOR SALE. I DON'T KNOW. BUT WE WERE ONLY DISCUSSING FOUR PROPERTIES.

Q ARE THOSE THE FOUR PROPERTIES IDENTIFIED IN MR. SCOVILLE'S LETTER IN EVIDENCE?

A CORRECT. WE ARE TALKING ABOUT THE PROPERTY THAT MATT IS RESIDING IN. WE ARE TALKING ABOUT CROOKED PINE. WE ARE TALKING ABOUT THE SINGLE FAMILY HOME WITH A $80,000.00 LINE OF CREDIT. AND THEN THE ONE CONDO THAT STEVEN AS INTEREST IN. THOSE WERE THE PROPERTIES. THERE WERE A

HANDFUL OF OTHER PROPERTIES, AT THAT POINT, AND THERE ARE STILL, YOU KNOW, THESE OTHER PROPERTIES. SO, THEY WEREN'T EVEN DISCUSSED WITH SCOVILLE.

Q DO YOU STILL AGREE WITH THE STATEMENT THAT WE HEARD YOU MAKE ON THE RECORDING THAT WHAT YOU ARE ASKING MR. DAVIS TO DO DURING THAT PHONE CALL IS DIFFERENT THAN WHAT YOU HAVE ASKED MR. SCOVILLE TO OBTAIN?

A IN TERMS OF THE IDEA OF --

Q IN TERMS OF WHAT YOU WANTED TO HAPPEN WITH THIS ESTATE. IN TERMS OF THE RESOLUTION YOU WERE SEEKING?

A THE IDEA OF NOW SPLITTING UP PROPERTIES INTO FOUR EQUAL SHARES VERSUS --

Q I'M ASKING YOU WAS IT YOUR WISH LIST OF OBJECTIVES FOR THIS ESTATE DIFFERENT AT THIS JUNCTURE WHEN YOU HAD THAT PHONE CALL WITH MR. DAVIS VERSUS THE PRIOR DISCUSSION THAT HAD TAKEN PLACE IN OCTOBER AND THE WEEKS AFTER WITH MR. SCOVILLE?

A YES. BECAUSE OF THE DIFFERENCE OF THE VALUE THAT WAS PUT IN THAT LIST FOR CROOKED PINE AND AT THAT POINT, WE HAD NO NEW APPRAISAL TO SHOW ANYTHING DIFFERENT. I DID NOT THINK THAT HER

TAKING A PROPERTY AT $95,000.00... I MEAN, UNTIL THAT WAS REMEDIED... THE ONLY WAY TO REMEDY IT IMMEDIATELY WAS TO PUT ALL THE PROPERTY IN ALL OF OUR NAMES OR SOMETHING ALONG THAT LINE TO MAKE IT EQUAL.

Q AND YOU WOULD AGREE WITH ME, WOULDN'T YOU, THAT CROOKED PINE PROPERTY WAS NOT THE ONLY PROPERTY WHOSE VALUE DECREASED FROM THE INITIAL INVENTORY TO THE APPRAISAL THAT WERE PREPARED BY MR. CROMARTIE AT MR. SCOVILLE'S REQUEST, CORRECT?

A I HAD NOT SEEN ALL THE APPRAISALS. SO, I DON'T KNOW HOW ALL THE APPRAISALS LINED UP TO ALL THE PROPERTIES. I MEAN, I HAVE SEEN THEM NOW, BUT A YEAR AGO I HAD NOT SEEN ALL THE APPRAISALS.

Q YOU SAW THE PLANTATION DRIVE PROPERTY, CORRECT?

A YES, BECAUSE THAT WAS THE ONE THAT I WAS GOING TO TAKE.

Q CERTAINLY. HOW DID THAT APPRAISAL COMPARE TO THE INVENTORY?

A THERE WAS A DIFFERENCE I THINK OF $40,000.00 ON THAT ONE.

Q SO, IN FACT, YOUR APPRAISAL WOULD DECREASE THE VALUE OF YOUR PROPERTY BY $40,000.00?

A CORRECT. I HAVE NEVER BEEN INSIDE THAT HOUSE. I DON'T KNOW, YOU KNOW, I KNEW THE HOUSE WAS

SMALLER. I NEVER BEEN INSIDE THE HOUSE. SO, YOU KNOW, I TOOK IT AT FAIR VALUE AND I LOOKED AT ALL THE OTHER, YOU KNOW, APPRAISALS ON THE DISTRIBUTION SHEET AND THEY ALL SEEMED TO, YOU KNOW, BE OFF FROM WHAT THE TAX ASSESSMENTS WERE. HOWEVER, THE CROOKED PINE WAS A $100,000.00 DIFFERENCE. SO, I HAD BEEN TO MY FATHER'S HOUSE.

Q BUT THE POINT BEING, IT WASN'T, IF ALL THOSE APPRAISALS REMAINED CONSISTENT WITH THE INVENTORY AND THE CROOKED PINE DRIVE ALONE WAS THE ONE THAT GOT THE LOWER EVALUATION?

A LIKE I SAID, I MEAN, ALL OF THEM HAD... ALL OF THEM CAME IN AT DIFFERENT FIGURES. I DIDN'T EVEN REALIZE THAT THEY ALL... I MEAN, I NEVER SAW ALL THE ACTUAL APPRAISALS UNTIL JUST RECENTLY. WE WEREN'T EVEN CONCERNED WITH ALL THOSE OTHER APPRAISALS SO MUCH AT THE START BECAUSE WE WEREN'T TAKING THOSE PROPERTIES. I MEAN, EVENTUALLY THE CASH WOULD HAVE ALL BEEN DISTRIBUTED, I GUESS, IN EQUAL SHARES, BUT THE MAIN THING IS WE WERE LOOKING AT THE PROPERTIES THEMSELVES.

Q LET'S TALK A LITTLE BIT ABOUT THE SHARING OF INFORMATION. I HEARD YOU SAY A COUPLE OF

DIFFERENT THINGS REGARDING BANK STATEMENTS DURING YOUR TESTIMONY THIS MORNING. AT ONE POINT, YOU INDICATED THAT YOU HAD NOT GOTTEN ANY BANK STATEMENTS. AND YOU MAY HAVE BE REFERRING TO A SUB-SET OF BANK STATEMENTS THAT YOU WERE LOOKING FOR. I'M NOT SURE, BUT YOU WILL AGREE WITH ME, WOULD YOU NOT, THAT OVER THE COURSE OF THE ADMINISTRATION OF THE ESTATE, FROM TIME TO TIME, YOU'VE NEVER BEEN UPDATED WITH INFORMATION REGARDING THE FINANCIAL ACCOUNTS IN THIS ESTATE, CORRECT?

A FROM TIME TO TIME, WE'VE HAVE TO ASK. WE'VE ASKED REPEATEDLY FOR CERTAIN THINGS AND THEY HAVE STILL NOT BEEN GIVEN UP. LIKE I SAID, I MEAN, WITHOUT HIRING SCOVILLE, WHO KNOWS WHERE WE WOULD BE? WITHOUT HIRING NOW CLIFF, THERE WOULD BE A $95,000.00 DISTRIBUTION ON A $200,000.00 HOUSE.

Q BUT THE POINT OF THE QUESTION IS INFORMATION HAS BEEN PROVIDED TO YOU?

A NOT ALWAYS COMPLETE. WE TRIED TO GET THE BANK STATEMENTS FROM THIS PAST SUMMER AND IT TOOK MONTHS AND MONTHS AND MONTHS TO GET IT AND WE FINALLY RECEIVED THEM.

Q WHAT IS THE END RESULT, MS. IRVING? MS. IRVING,

I WANT TO HAND YOU A DOCUMENT AND I WANT TO ASK IF YOU RECOGNIZE IT?

MR. TALL: YOUR HONOR, I'M GOING TO HAVE AN OBJECTION.

JUDGE PADGETT: YOUR OBJECTION IS?

MR. TALL: THIS IS A STATEMENT THAT COMES FROM A WITNESS WHO IS NOT HERE, NOT AVAILABLE TO BE EXAMINED. AND I DON'T THINK IT'S BEEN PRESENTED FOR ANYTHING OTHER THAN THE SUBSTANCE OF WHAT'S IN THIS LETTER. I RESPONDED TO A REQUEST FOR DOCUMENT PRODUCTION TO SEE IF I HAD ANY STATEMENT FROM SOMEONE WHO HAD INFORMATION. AND SO, I PRESENTED IT TO THE OTHER SIDE, BUT IF WE'RE GOING TO GET INTO THE ESSENCE OF WHAT THAT WITNESS WOULD SAY, WHICH I THINK IS THE ONLY REASON FOR PRODUCING THIS DOCUMENT, WE DON'T HAVE AN OPPORTUNITY TO ASK HIM QUESTIONS AND HAVE HIM QUALIFY WHAT HE'S SAYING HERE. THIS IS HEARSAY.

MR. BOYD: YOUR HONOR, IT IS A DOCUMENT THAT MS. IRVING'S COUNSEL HAS PRODUCED TO ME. I WAS GOING TO ASK HER ABOUT IT TO SEE IF SHE HAD SEEN IT BECAUSE SHE

HAS TESTIFIED AT LENGTH AT THE SIGNIFICANT ISSUE THAT SHE HAD RELATED TO THE ESTATE TAXATION AND THE PREPARATION OF THE ESTATE'S INCOME TAX RETURNS BY MR. PARKER. NOW, SHE'S TESTIFIED AT LENGTH AT THE DIFFICULTIES THAT SHE CLAIMS TO HAVE EXPERIENCED. WELL, HERE IS A STATEMENT FROM HER COUNSEL, WHICH HER COUNSEL OBTAINED FROM MR. --

MR. TALL: THIS IS NOT A STATEMENT FROM ME, YOUR HONOR. THIS IS A STATEMENT FROM A WITNESS I HAVE GIVEN A RESPONSE TO A DISCOVERY REQUEST. AND THE ONLY REASON FOR PUTTING THAT DOCUMENT IN IS FOR THE ESSENCE OF WHAT THAT WITNESS WOULD SAY IF HE WERE HERE.

JUDGE PADGETT: IS THAT A LETTER FROM MR. TALL?

MR. BOYD: IT'S A LETTER FROM MR. PARKER, BUT IT APPEARS TO BE A... FROM PARKER AT MYRTLE BEACH, CPA TO CLIFF TALL, E-MAIL DATED WEDNESDAY FEBRUARY 8TH.

JUDGE PADGETT: OF WHAT YEAR?

MR. BOYD: THIS YEAR, YOUR HONOR.

JUDGE PADGETT: I'M NOT GOING TO ALLOW THAT. THAT WOULD BE HEARSAY IF IT'S OFFERED FOR ANYTHING OTHER THAN THE FACT THAT IT WAS A CONVERSATION IN THAT REGARD. AS A MATTER OF FACT, NEXT FRIDAY YOU'VE GOT PLENTY OF TIME TO SUBPOENA MR. PARKER AND HAVE HIM COME TESTIFY ABOUT THIS CASE.

MR. BOYD: YOUR HONOR, MY THOUGHT WAS THAT FRANKLY, MS. IRVING HAS TESTIFIED ABOUT ISSUES RELATED TO THE PREPARATION OF THE TAX RETURNS. I DID INTEND FOR MR. PARKER TO BE HERE NEXT FRIDAY. BUT I TELL YOU, IT WOULD BE FAIR TO ASK HER ABOUT THIS AND SEE IF SHE HAS BEEN SHOWN THIS DOCUMENT BECAUSE FRANKLY, SOME OF THE STUFF SHE TESTIFIED TO TODAY IS INCONSISTENT WITH WHAT MR. PARKER IS SAYING.

JUDGE PADGETT: YOU HAVE THE RIGHT TO PRESENT THAT TO MR. PARKER AND ASK WHAT HE TOLD MS. IRVING OR WHAT HE DIDN'T TELL MS. IRVING. WE ARE TALKING ABOUT FEBRUARY OF 2017. WE'RE NOT TALKING

ABOUT 2015 OR 2016?

MR. BOYD: NO. WE'RE TALKING ABOUT WEDNESDAY, FEBRUARY 8TH OF THIS MONTH.

JUDGE PADGETT: OKAY. SO, YOU WILL HAVE THE RIGHT TO ASK MR. PARKER THAT. FOR THAT MATTER, MR. TALL WILL HAVE THE OPPORTUNITY TO CROSS-EXAMINE HIM REGARDING THAT BEING A COMMUNICATION COMING IN BETWEEN HIM AND MR. TALL. I DON'T THINK THE SUBSTANCE OF THAT LETTER AT SUCH A LATE DATE, FEBRUARY THE 8TH OF THIS YEAR, WHEN THE HEARING WAS 9 DAYS LATER, THE TRIAL, WHICH IS TODAY, WOULD ESTABLISH ANYTHING THAT SHE HAS STATED IN REGARD TO WHAT SHE'S ASKED FOR FROM COUNSEL AND PARTIES INVOLVED IN THAT BACK WHEN YOUR EMPLOYEE, MS. BECKY, ASKED HER TO PROVIDE HER SOCIAL SECURITY NUMBER. YOU'RE NOT SAYING THAT LETTER INDICATES THAT SHE KNEW THAT AT THE TIME THAT SHE SPOKE TO BECKY ABOUT HER SOCIAL SECURITY NUMBER, ARE YOU?

MR. BOYD: WELL, YOUR HONOR, I THINK THE COMMUNICATIONS RELATING TO THE SOCIAL SECURITY NUMBER SPEAK FOR THEMSELVES.

THE WITNESS ALSO TESTIFIED ABOUT SOME OF HER CONCLUSIONS ABOUT THE IMPLICATIONS ABOUT SOME OF THOSE COMMUNICATIONS. INCLUDING SOME COMMUNICATIONS THAT SHE JUST SAW FOR THE FIRST TIME RECENTLY. SO, I WAS TRYING TO ADD SOME CONTEXT TO THAT, BUT THAT'S FINE. I WILL WAIT UNTIL MR. PARKER IS AVAILABLE.

Q IT IS FAIR TO SAY IS IT NOT, MS. IRVING, THAT WHEN YOU WERE REQUESTED TO PROVIDE YOUR SOCIAL SECURITY NUMBER BY EITHER MR. PARKER'S OFFICE OR FROM THE DAVIS AND BOYD LAW FIRM, YOU DID RESIST THOSE EFFORTS IN MARCH OF 2016 TO PROVIDE THAT INFORMATION, CORRECT?

A I DID NOT GET A REQUEST FROM THE CPA. I GOT A REQUEST FROM YOUR OFFICE.

Q BUT YOU DID NOT COOPERATE WITH THE REQUEST FOR THE SOCIAL SECURITY NUMBER, CORRECT?

A THE WORD, "COOPERATE".

JUDGE PADGETT: I THINK IT'S CLEAR TO THE COURT THAT, YEAH, SHE DID NOT PROVIDE IT. SHE GAVE HER REASONS FOR NOT PROVIDING IT.

Q IS IT YOUR IMPRESSION THAT IF YOU HAD TIMELY PROVIDED THAT INFORMATION THAT THE LOSS THAT

YOU'RE INDICATING IN YOUR TESTIMONY THAT YOU NOW WILL... THAT YOU MIGHT NOT HAVE TAKEN ADVANTAGE OF, IS IT REASONABLE TO SAY THAT IF YOU PROVIDED YOUR SOCIAL SECURITY NUMBER ON A TIMELY BASIS YOU MIGHT HAVE BEEN ABLE TO TAKE ADVANTAGE OF THAT LOSS?

A APPARENTLY, THE TAX RETURN WAS NOT FILED UNTIL THIS PAST OCTOBER. SO, I MEAN, WITH NO COMMUNICATIONS COMING BACK FROM THE ESTATE, I MEAN, AM I SUPPOSED TO JUST SIT AND WAIT? IF I WOULD HAVE FILED... I HAD ALREADY FILED MY RETURN, NUMBER ONE. IF I WOULD HAVE PROVIDED MY... IF I WOULD HAVE COOPERATED AND GIVEN MY SOCIAL SECURITY NUMBER THEN, I GUESS, THE ESTATE COULD HAVE FILED THEIR TAX RETURN IN OCTOBER. SO, THEN, WOULD THEY HAVE SENT ME BACK SOMETHING AT THAT POINT? IT PROBABLY WOULD HAVE BEEN PAST MY EXTENSION, YOU KNOW. GOD ONLY KNOWS WHAT WOULD HAVE TRANSPIRED AFTER... I HAVE NO IDEA WHAT WOULD HAVE TAKEN PLACE THEREAFTER IF I DIDN'T GIVE MY SOCIAL SECURITY NUMBER. SO, LIKE I SAID, IN THE BEGINNING THE WHOLE THING JUST SORT OF MADE ME NERVOUS BECAUSE I WASN'T GETTING MY QUESTIONS ANSWERED PROPERLY. AND I DID HAVE A CONVERSATION WITH THE CPA. I MEAN, I DID CALL

OVER THERE.

Q WHEN YOU SAY, "CPA" YOU'RE REFERRING TO CLARK PARKER'S OFFICE?

A YES. I SPOKE WITH HIM. AND WE HAD LIKE MAYBE A FIVE MINUTE CHAT AND HE TOLD ME AT THE TIME THAT JENE WASN'T SURE WHICH WAY SHE WAS GOING TO FILE. SHE HAD, I GUESS, ONE OF TWO OPTIONS. YOU KNOW, AGAIN, I'M NOT AN ACCOUNTANT. WHEN HE WAS TRYING TO EXPLAIN IT ME, AGAIN, JUST THE WHOLE UNSURENESS OF HER NOT KNOWING WHICH WAY SHE WAS GOING TO FILE LEFT ME WITH... WELL, YOU KNOW WHAT, IF SHE DOESN'T KNOW WHAT SHE'S DOING...

Q IS IT CLEAR TO YOU THAT YOU HAVE BEEN HARMED IN ANY WAY BY THE LOSS OF THE ESTATE NOT BEING ATTRIBUTED TO YOUR PERSONAL TAXES?

A WELL, IT APPEARS NOW AFTER THE FACT THAT I COULD HAVE SHOWN A LOSS.

Q HAVE YOU INQUIRED INTO THE POSSIBILITY OF USING THAT LOSS AT SOME POINT IN THE FUTURE?

A I HAVE NOT YET BECAUSE I'M SO CAUGHT UP IN ALL OF THIS RIGHT NOW. THIS IS TAKING MORE PRECEDENCE OVER MY ENTIRE LIFE. IT'S OVERCOME MY BUSINESS DURING THE DAY AND MY PERSONAL LIFE AT NIGHT AND EVERYTHING.

Q LET ME SHOW YOU ANOTHER DOCUMENT AND ASK YOU IF YOU HAVE SEEN THAT DOCUMENT?

A I'VE SEEN PARTIALS OF IT. I DID NOT SEE THE FINAL UNTIL THIS MORNING.

Q WHAT DO YOU UNDERSTAND THAT DOCUMENT TO BE?

A IT'S A RUNNING BILL TO DATE OF MR. TALL'S BILLINGS.

Q WHO IS HE SENDING THAT INVOICE TO?

A TO ME.

Q HAVE YOU HAD A CHANCE TO REVIEW IT?

A I HAVEN'T HAD A CHANCE TO REVIEW THE LAST PROBABLY 30 DAYS, 30 TO 60 DAYS WORTH.

Q YOU'RE WELCOME TO TAKE A MOMENT TO REVIEW IT?

A I DON'T WANT TO... I MEAN, I'M GOING TO REVIEW IT LATER.

Q WELL, I WOULD LIKE TO ASK YOU NOW, DO YOU CONSIDER MR. TALL'S BILLINGS TO BE FAIR AND REASONABLE?

A I HAVEN'T REVIEWED THE LAST 30 TO 60 DAYS, BUT, YES. UP UNTIL THEN, YOU KNOW, LIKE I SAID... BUT ALL THE WORK AND THE TIME HE'S PUT INTO THE BILLINGS, YES.

Q WHAT IS THE TOTAL AMOUNT REFLECTED ON THAT INVOICE?

A TOTAL FEES AND COSTS, $42,777.48.

Q DO YOU CONSIDER THAT TO BE A REASONABLE FEE IN THE CONTEXT OF --

A I MEAN, LAWYERS ARE NOT CHEAP. IT'S SADDENS ME THAT I HAVE LOST TIME OUT OF MY WORK DAYS FOR THREE YEARS. I'M GRIEVING. AND I'M TAKING TIME WITH NOT JUST HIM, BUT SCOVILLE AND TAKING TIME WITH BOTH MY BROTHERS. NOW, MONEY OUT OF MY POCKET TO TRY AND, YOU KNOW, SORT OF MOVE THIS THING ALONG. AND THE BOTTOM LINE, YOUR HONOR, IS OUT OF THE THREE OF US, I DON'T EVEN NEED MY FATHER'S INHERITANCE, NEVER DID. I'M SELF-SUFFICIENT. I'M DOING THIS FOR MY BROTHERS. SO, NOW, I'M THE ONE OUT $42,000.00.

Q AND THE REASON THAT I ASK...

MR. BOYD: THERE'S NO OBJECTION IF I PUT THAT EVIDENCE?

MR. BOYD: NO OBJECTION. I WANTED THAT INTO EVIDENCE.

JUDGE PADGETT: NO OBJECTION AS I UNDERSTAND, MR. TALL?

MR. TALL: NO OBJECTION.

JUDGE PADGETT: THAT WILL BE DEFENDANT'S 4, WITHOUT OBJECTION.

RUNNING INVOICE FOR MR. TALL MARKED INTO IDENTIFICATION AND

INTRODUCED INTO EVIDENCE AS

DEFENDANT'S EXHIBIT 4.

Q AND THE REASON I ASK FOR SOME CONTEXT ON THE BILLING, MS. IRVING, AGAIN, WHEN I ASKED YOU ABOUT THE FAIR AND REASONABLE ATTORNEY'S FEES REFLECTED ON MR. TALL, BUT YOU WOULD AGREE WITH ME I THINK THAT THIS DISPUTE PRIMARILY AROSE FROM A RELATIVELY SMALL EVALUATION QUESTION OVER CROOKED PINE DRIVE? WOULD YOU AGREE WITH THAT STATEMENT?

A THERE ARE A LOT OF THINGS LIKE I WAS SAYING EARLIER, THAT UNFORTUNATELY ARE NOT GOING TO GET RAISED IN THIS COURTROOM.

Q WELL, LET'S RAISE THEM.

A NO. WE'RE NOT GOING TO RAISE THEM. THEY'RE NOT GOING TO GET RAISED IN THIS COURTROOM.

Q AND WHY NOT?

A THEY'RE NOT GOING TO GET RAISED IN THIS COURTROOM.

Q IF THERE ARE OTHER THINGS THAT DRIVE THE PETITIONER IN PURSUING THESE PROCEEDINGS, MS. IRVING, I THINK THE PERSONAL REPRESENTATIVE HAS THE RIGHT TO KNOW.

A IF IT'S TAKEN THREE YEARS AND TAKEN TWO LAWYERS AND THE SECOND LAWYER IS $42,000.00 AND

COUNTING, WE'RE NOT GOING TO TALK ABOUT ALL THOSE OTHER THINGS, PLEASE. WE'RE NOT. WE'RE NOT DOING THAT RIGHT NOW, PLEASE. CAN WE NOT DO THIS? WE'VE HAD TO BRING IN APPRAISERS AND THIS AND THAT AND EVERYTHING ELSE. CAN WE NOT BRING UP THINGS THAT IF WE DON'T HAVE A POUND OF EVIDENCE... WE ARE NOT PREPARED TO TALK ABOUT THESE THINGS. I'M NOT GOING TO TALK ABOUT IT.

Q LET ME REPHRASE MY QUESTION. WHAT OTHER MOTIVATIONS MOVE THIS PROCESS ALONG, MS. IRVING?

A MY FATHER'S WILL. THREE YEARS THAT HE'S PASSED. THAT'S THE MOTIVATION.

Q THAT'S YOUR ONLY MOTIVATION?

A YES. AND IT'S BEEN SINCE DAY ONE FOR ALL OF US AND HOPEFULLY... AND MAYBE THE OTHER MOTIVATION IS THERE'S NO MORE CASH LEFT IN THE BANK.

Q IT'S AN INTERESTING SITUATION, MS. IRVING, BECAUSE FRANKLY MS. POAFPYBITTY IS GOING TO SAY THAT SHE IS DRIVEN BY THE SAME DESIRE WHICH IS TO FULFILL HER OBLIGATION AND DUTIES AND SEE THE TERMS OF THE WILL IMPLEMENTED. WHAT SAY YOU TO THAT?

JUDGE PADGETT: WAS THAT A QUESTION?

MR. BOYD: YES, YOUR HONOR. I CAN RESTATE IT.

JUDGE PADGETT: IF YOU WOULD. IT SOUNDS LIKE A STATEMENT TO ME.

MR. BOYD: MY APOLOGIES, YOUR HONOR.

Q JENE WILL TESTIFY WHEN SHE TAKES THE STAND THAT SHE TOO WANTS TO SEE THE TERMS OF THE IMPLEMENTED. SO, I AM STILL PUZZLED IF I HAVE A PETITIONER AND A RESPONDENT WHO BOTH WANT TO SEE THE TERMS OF THE WILL IMPLEMENTED AND THE ONLY REAL DISPUTE I SEE BEFORE ME MAYBE IS THE DISPUTE OVER CROOKED PINE DRIVE AND, YES. THERE WAS AN INITIAL DEDUCTION OF 191 TO 95, BUT WHEN I FACTOR IN THE REPAIRS, THE NET RESULT WAS ONLY A 38% DECREASE. WHEN YOUR PROPERTY HAD A 29% DECREASE. I DON'T SEE THE DISPUTE AND I'M HAVING A HARD TIME UNDERSTANDING WHY THIS HAS ROLLED INTO THE LITIGATION THAT IT HAS.

A (WHISPERING) ...MY FATHER'S WILL.

Q DO YOU RECOGNIZE THAT WILL?

A YES.

MR. TALL: I'M SORRY, YOUR HONOR.

JUDGE PADGETT: SHE SAID SHE RECOGNIZED THAT AS THE WILL OF HER FATHER.

MR. BOYD: I'M SURE, YOUR HONOR, THIS HAS BEEN FILED, YOUR HONOR. I WOULD LIKE TO ASK HER A FEW QUESTIONS ABOUT

IT? YOUR HONOR, WE WILL OFFER THIS INTO EVIDENCE.

JUDGE PADGETT: WITHOUT OBJECTIONS.

DEFENDANT'S 5.

DR. ROTHGEB'S WILL MARKED INTO IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS DEFENDANT'S EXHIBIT 5.

Q MS. IRVING, I WOULD LIKE TO ASK YOU IF THE OBJECTIVE IS TO SEE THE WILLS' PROVISIONS IMPLEMENTED AND THAT'S YOUR QUARREL WITH MS. POAFPYBITTY. WHAT, IF YOU CAN TELL THE COURT, IS THE PROVISION OF THE WILL? YOU UNDERSTAND THAT YOUR FATHER CHOSE MS. POAFPYBITTY AS THE PERSONAL REPRESENTATIVE?

A YES, I UNDERSTAND THAT.

Q AND YOU UNDERSTAND THAT THE WILL DIRECTED THAT THE ESTATE BE PAID?

A RIGHT, BUT THEY HAVEN'T BEEN.

Q THAT'S MY QUESTION TO YOU. WHAT PROVISIONS OF THE WILL SPECIFICALLY DO YOU FEEL LIKE THE PERSONAL REPRESENTATIVE HAS NEGLECTED?

A I MEAN, HOW LONG IS AN ESTATE SUPPOSED TO BE OPEN?

Q THAT'S NOT MY QUESTION.

A THEN, I'M SORRY.

Q I AM ASKING THE QUESTION AND YOU HAVE INDICATED YOU THINK THE TERMS OF THE WILL ARE THE REASON WE'RE HERE. I WANT YOU TO TELL ME WHAT TERMS OF THE WILL HAVE WE NEGLECTED?

MR. TALL: YOUR HONOR, IF I MAY. ARE WE AT A POINT WE'RE ASKING A LAY WITNESS TO TELL US WHAT A WILL MEANS? HASN'T MR. IRVING EXPRESSED CONCERN ABOUT WHAT'S HAPPENING IN THE ESTATE WITH DEBTS REMAINING OPEN, DELAYING QUARTER SHARES NOT BEING GIVEN? WE ARE NOT ASKING QUESTIONS ABOUT HOW SHE AS A LAYPERSON IS SUPPOSED TO LOOK AT A WILL AND INTERPRET IT?

JUDGE PADGETT: I THINK HE HAS THE RIGHT TO ASK HER WHAT SHE HAS TO SAY ABOUT IT. HE MADE CERTAIN PROVISIONS AND THEY HAVE NOT BEEN GONE OVER. I THINK SHE HAS ANSWERED THAT QUESTION A DIFFERENT WAY, BUT HE CERTAINLY HAS THE RIGHT TO ASK THAT QUESTION.

MR. TALL: THANK YOU, YOUR HONOR.

A LIKE I SAID BEFORE, WE WERE NEVER GIVEN THE OPPORTUNITY, OTHER THAN OF COURSE, THROUGH

SCOVILLE, WHICH THAT COMMUNICATION NEVER WENT BACK TO ME OR MY BROTHERS. TO BE ABLE TO GO THROUGH THE ACTUAL PERSONAL EFFECTS. I SAW AN E-MAIL AFTER THE FACT RECENTLY ON A FLASH DRIVE THAT THERE WAS SOME STUFF THAT WAS LEFT BACK AT YOUR LAW OFFICE AND I IMAGINE IT WAS JUST A BUNCH OF CLOTHING. MY FATHER WAS A VETERINARIAN. FIRST OF ALL, YOU DON'T HAVE A MILLION DOLLARS WORTH OF REAL ESTATE FOR NOTHING. I RECEIVED A BOX A COUPLE OF DAYS BEFORE I HAD A SERVICE FOR HIM. SHE NEVER HAD A SERVICE FOR HIM. I HAD A SERVICE A YEAR LATER. I DID RECEIVE A BOX. MOST OF WHAT WAS INSIDE THIS BOX WERE PICTURES OF MY BROTHERS AND I. THERE WERE A COUPLE PHOTOS OF MY FATHER IN THERE AND THERE WAS A DIPLOMA IN THERE, BUT THAT'S ALL THAT WE GOT. WE DIDN'T GET A CHANCE TO GO THROUGH THE ACTUAL HOUSE THAT MY FATHER LIVED IN OR ANYTHING OF HIS PERSONAL EFFECTS AND THAT'S IN THE WILL.

Q WHERE IS THAT IN THE WILL?

A WELL, YOU HAVE THE WILL AND YOU'RE THE LAWYER.

Q WITH ALL DUE RESPECT, THAT'S NOT RESPONSIVE TO MY QUESTION. DURING THE PHONE CALL YOU HAD WITH MR. DAVIS WE HEARD YOU ASSERT MANY TIMES, "WE

WANT TO DO THE WILL! WE WANT TO DO THE WILL!" AND MY QUESTION TO YOU HAS BEEN, WHAT ASPECTS OF THE WILL WAS MR. DAVIS AND THE PERSONAL REPRESENTATIVE NOT HONORING? AND I STILL DON'T THINK I'VE GOTTEN A STRAIGHT ANSWER TO THAT QUESTION.

A MY DAD LEFT... WE WERE ALL SUPPOSED TO GET 25%.

Q WHERE DOES IT SAY IN THIS DOCUMENT THAT THE PERSONAL REPRESENTATIVE IS TO DEED TO THE BENEFICIARIES OF THE ESTATE THE PROPERTIES IN FOUR CO-TENANT SHARES?

A IT DOESN'T SAY THAT, "CO-TENANT SHARES". BUT WHEN ALL YOU HAVE LEFT IS PROPERTY AND IT'S BEEN THREE YEARS, ARE WE GOING TO WAIT AROUND AND SELL PROPERTY FOR THE NEXT 10 YEARS AND THEN CASH IT OUT 10 YEARS LATER? THERE HAS TO BE SOME KIND OF PLAN. WE CAN'T THEN DEED IT ALL OUT INDIVIDUALLY WHEN THERE ARE ALL DIFFERENT AMOUNTS AND THERE'S NO MORE CASH LEFT IN THE BANK FOR THE ESTATE TO BUY EACH OTHER OUT. SO, WHAT OTHER PLAN CAN THERE BE?

Q SO, IN FACT, YOU WOULD AGREE WITH ME THAT THE WILL DOESN'T SAY WHAT YOU WERE INDICATING TO MR. DAVIS ON THE PHONE CALL THAT IT DID, THAT THE PROPERTIES WOULD BE DISTRIBUTED INTO FOUR

BENEFICIARIES INTO EQUAL SHARES? IT DOESN'T SAY THAT, CORRECT?

A NO. IT DOES NOT SAY THAT, BUT MY DAD LEFT US ALL 25%. AND ALL THAT'S LEFT BASICALLY IS PROPERTY. SHE HAD TIME AND MONEY AND INCOME TO PAY OFF DEBTS AND NEVER DID.

MR. BOYD: YOUR HONOR, BEAR WITH ME 1 SECOND.

Q I DO WANT TO ASK YOU TO REVIEW ONE PARTICULAR PROVISION OF THE WILL, MS. IRVING. IF YOU WOULD LOOK AT ITEM 4, ON PAGE 2 AND IF YOU WOULD COME DOWN TO THE FIFTH LINE WHERE IT SAYS, "PROVIDED HOWEVER THAT". DO YOU SEE WHERE I'M TALKING ABOUT?

A RIGHT. "FULL DISCRETION".

Q READ THAT TO US IF YOU WOULD. MY PERSONAL...

A "THAT MY PR SHOULD HAVE SOLE DISCRETION TO DESIGNATE THE REAL OR PERSONAL PROPERTY COMPRISING THE RESPECTIVE SHARE SO ESTABLISHED SO LONG AS THE VALUE THEREOF IS APPROXIMATELY EQUAL." RIGHT, BUT THESE PROPERTIES ARE NOT EQUAL AND WE HAVE NO CASH LEFT IN THE BANK TO TRY TO MAKE THEM EQUAL AT THIS JUNCTURE.

Q I UNDERSTAND YOU'RE NOT A LAWYER, BUT YOU DO UNDERSTAND THE TERM, "SOLE DISCRETION" RIGHT?

A CORRECT.

MR. TALL: YOUR HONOR, THAT'S A SPECIALIZED MEANING AND THAT'S A RED HERRING TO GIVE TO A LAY WITNESS. I OBJECT TO THE QUESTION.

A HE MADE HER THE PR. HE DIDN'T MAKE CO-PR'S. THERE'S ONLY ONE PR, THE WORD, "SOLE".

MR. BOYD: YOUR HONOR, I'M JUST ABOUT DONE WITH THIS WITNESS. I NOTICE THAT THE TIME IS 5:00. WHAT DOES THE COURT WANT TO DO?

JUDGE PADGETT: IF YOU CAN FINISH IN THE NEXT 10 OR 15 MINUTES, IF THAT'S FINE WITH THE COURT REPORTER?

COURT REPORTER: YES, SIR.

JUDGE PADGETT: I WOULD LIKE TO COMPLETE THIS WITNESS.

MR. BOYD: GIVE ME JUST ONE SECOND. YOUR HONOR, WE ARE GOING TO EXCUSE THIS WITNESS. THANK YOU, MS. IRVING.

JUDGE PADGETT: ANY RE-DIRECT AS A RESULT OF THE CROSS-EXAMINATION?

MR. TALL: MAY I HAVE A MOMENT, YOUR HONOR.

JUDGE PADGETT: CERTAINLY.

RE-DIRECT EXAMINATION BY MR. TALL:

Q SUPPOSE, MS. IRVING, THAT MR. JENE IS GIVEN DISCRETION TO MANAGE, ORGANIZE AND DISTRIBUTE THIS ESTATE UNDER YOUR FATHER'S WILL. WHAT HAPPENS AFTER TWO YEARS AND IT HASN'T BEEN DISTRIBUTED IN YOUR VIEW?

A I MEAN, THAT'S SORT OF A BLANKET QUESTION. ARE YOU TALKING ABOUT IF WE STARTED ALL OVER? ARE YOU TALKING ABOUT WITH THE WAY IT'S ALREADY BEING OPERATED? IS IT LIKE A THEORETICAL?

Q WHAT IF WE GET INTO YEAR TWO WHEN YOU WERE TALKING TO MR. DAVIS ON THE TELEPHONE?

A IF WE WERE BACK IN FEBRUARY OF LAST YEAR?

Q YES, MA'AM. BEFORE YOU DECIDE TO TAKE ACTION HERE IN THE COURT?

A WELL, I MEAN, THE REASON THAT I THINK IT SORT OF, YOU KNOW, STEAM ROLLED IS BECAUSE OF THE EVALUATION OF CROOKED PINE. FIRST OF ALL, YOU KNOW, THEY DIDN'T WANT TO HEAR ANY SUGGESTION THAT CROOKED PINE COULD HAVE BEEN WORTH MORE THAN THE 95.

Q CERTAINLY AFTER IT WAS REPAIRED.

A RIGHT. AT THAT POINT, SHE STILL WANTED TO STAY THERE.

Q WHAT EXPLANATION DID YOU GET FOR THE DEBTS OF THE ESTATE STILL REMAINING UNPAID?

A THERE WAS NO... THERE HAS NEVER BEEN ANY KIND OF EXPLANATION OR COMMUNICATION. IT'S EITHER BEEN, YOU KNOW, E-MAIL OF A DISTRIBUTION SHEET. BASICALLY THAT'S IT. THAT'S THE ONLY COMMUNICATION THAT WE'VE EVER GOTTEN FROM THE ESTATE. HERE'S AN UPDATED DISTRIBUTION SHEET. WE NEED YOUR SOCIAL SECURITY NUMBER. THAT'S REALLY IT. WE REALLY NEVER GOT ANY KIND OF... UNLESS WE... LIKE I'VE HAD A LAWYER AND THEY SAY, WE WOULD LIKE TO SEE WHERE THIS ESTATE IS. WE HAVE NO IDEA... ACTUALLY WHEN WE DID GET THE BANK RECORDS BACK AROUND THIS PAST AUGUST OR SEPTEMBER, IT WAS SCARY BECAUSE ALL OF A SUDDEN IT WAS THE TITANIC. THIS ESTATE IS NO LONGER BRINGING IN INCOME. IT'S GOING DOWN. THE BANK ACCOUNT IS OFFICIALLY DEPLETED. YOU KNOW, THERE WAS A TIME WHEN DAD FIRST PASSED THAT, YOU KNOW, IT WAS AN INCOME PRODUCING ACCOUNT. YOU KNOW, WE HAD TENANTS. THEY WERE PAYING RENT.

Q DO YOU KNOW WHETHER WE HAVE VACANT PROPERTIES NOW OR FULLY LEASED PROPERTIES?

A I HAVE NO IDEA. I WOULD ASSUME THAT THERE WERE TENANTS IN THESE PROPERTIES. AGAIN, WE DON'T

GET AN UPDATE OF ANYTHING. SO, I DON'T KNOW WHAT'S GOING ON. BUT, AGAIN, YOU KNOW, THE FIRST YEAR OR SO, YOU KNOW, ALL THE PROPERTIES ARE RENTED AND EVERYBODY IS PAYING RENT AND THERE'S ALL THIS MONEY COMING IN. A YEAR AND A HALF ALL THIS MONEY COMING IN AND THERE'S CONDOS BEING SOLD WITH LARGE CHUNKS OF MONEY COMING IN WHEN CONDOS ARE SOLD. THERE IS NO REASON THAT AN $80,000.00 LINE OF CREDIT COULD NOT HAVE BEEN PAID.

Q IN FACT, THE EXHIBITS THAT WE OFFERED THIS MORNING, WHICH IS A MESSAGE FROM MS. JENE, IT MENTIONED HER GOALS WITH REGARD TO DEBT, DO YOU RECALL?

A SAY THAT AGAIN?

Q THE EXHIBIT THAT WE OFFERED THIS MORNING, A LETTER FROM MS. JENE IN RESPONSE TO STEVEN'S --

A THAT'S EXACTLY RIGHT.

Q WHAT DID MS. JENE SAY ABOUT DEBT?

A THAT THERE WERE DEBTS TO PAY OFF AND THAT SHE NEEDED TO PAY THE DEBTS OFF IN ORDER TO CLOSE THE ESTATE. SO, YES, IN MY MIND IT WAS LIKE, OKAY, WE HAD TO SELL A COUPLE OF CONDOS FIRST AND THAT WAS SORT OF THE MESSAGE THAT WAS CONVEYED TO US. I MEAN, WE HAD... YOU KNOW,

THERE WAS 12 PROPERTIES OR SOMETHING LIKE THAT. OBVIOUSLY, THE FIRST COUPLE OF CONDOS THAT SELL, THAT MONEY HAS TO GO STRAIGHT TO THAT DEBT. I MEAN, TO ME THAT WAS A NO-BRAINER. YOU KNOW, SELL THE FIRST FEW CONDOS, PAY OFF THAT DEBT. AS SOON AS THAT DEBT IS PAID OFF THEN WE CAN START, YOU KNOW, FIGURING OUT, OKAY, MATT... IT SHOULD HAVE BEEN, YOU KNOW, SO EASY. SIGN THE DEED OVER TO MATT. SIGN THIS PROPERTY OVER TO SEVEN. SIGN CROOKED PINE TO JENE. THIS COULD HAVE BEEN SO EASY AND HERE WE ARE THREE YEARS LATER.

Q IT'S PROPOSED THAT YOU WERE ONE OF THE REASONS THAT THIS IS MORE DIFFICULT?

A NO. THAT SHOULD HAVE BEEN PAID. WE HAD ALL THESE TENANTS PAYING ALL THIS RENT. THOSE CONDOS SOLD... TWO CONDOS SOLD RIGHT AFTER DAD DIED. I MEAN, MONEY WAS THERE AND NOW IT'S GONE. THERE'S A MILLION DOLLARS AND NOW WE'RE DOWN TO 400, 500 MAYBE. THERE'S NO CASH IN THE BANKS. SO, THAT'S CALLED MISMANAGEMENT.

MR. TALL: YOUR HONOR, I DON'T HAVE ANY OTHER QUESTIONS.

JUDGE PADGETT: MR. BOYD?

RE-CROSS-EXAMINATION BY MR. BOYD:

Q BRIEFLY, I'M PUZZLED BECAUSE WE JUST GOT THROUGH LISTENING TO A TAPE WHERE MR. DAVIS GAVE YOU, AT LEAST, A QUARTER HOUR OF HIS TIME WITH ANOTHER MEMBER OF HIS STAFF AND TALKED TO YOU ABOUT THIS ESTATE ON THE AFTERNOON OF THE DAY WHEN THEY TRIED TO SET UP A MEETING WITH THE ESTATE BENEFICIARIES AND APPARENTLY NOBODY WANTED TO PARTICIPATE IN. AND YET, YOU STILL SITTING HERE IN THE LAST FIVE MINUTES AND REPRESENT TO THE COURT THAT YOU DIDN'T... NEVER GOT AN UPDATE ABOUT ANYTHING, THAT YOU GOT AN OCCASIONAL E-MAIL.

A I THINK WE ALL LISTENED TO THAT AUDIO. THERE WAS NO UPDATE DURING THAT TIME THAT WE SPOKE ABOUT WHERE THE ESTATE WAS ON THE FINANCIALS, ON WHO WAS LIVING IN ANY OF THE CONDOS. THERE WAS NOTHING ABOUT THE ESTATE IN THAT AUDIO.

Q I THINK... I WON'T TESTIFY. MS. IRVING, ISN'T IT FAIR TO SAY THAT IF YOU HAD BEEN COOPERATIVE AND ASSUMED A MORE COOPERATIVE TONE IN THE CALL, THE CALL COULD HAVE BEEN MORE PRODUCTIVE?

A I ASK HIM WHAT HIS IDEAS WERE. THAT WAS THE WHOLE PLAN OF US GETTING ON THE TELEPHONE. I ASKED HIM THAT ONCE OR TWICE AT LEAST I BELIEVE IF NOT THREE TIMES. "WHAT WERE YOUR IDEAS?"

AND HE NEVER TOLD ME.

Q NO FURTHER QUESTIONS.

JUDGE PADGETT: THANK YOU, MS. IRVING. YOU CAN STEP DOWN. IT'S 5:10. WE WILL START AGAIN AT 9:00 NEXT FRIDAY, WHICH IS THE 24TH. MR. TALL, I'M NOT GOING TO HOLD YOU TO THIS, BUT DO YOU HAVE ANY OTHER WITNESSES?

MR. TALL: YOUR HONOR, I DO.

JUDGE PADGETT: APPROXIMATELY HOW MANY WITNESSES, MR. BOYD, DO YOU HAVE?

MR. BOYD: YOUR HONOR, THE PR OF COURSE WILL TESTIFY. MR. DAVIS WILL TESTIFY. WE MAY HAVE ONE OTHER WITNESS. THAT WOULD BE A TOTAL OF THREE. I WOULD LOVE TO FINISH ON FRIDAY TOO.

JUDGE PADGETT: WE ARE GOING TO DO OUR BEST. WE ARE GOING TO GET STARTED AT 9 O'CLOCK SO PLEASE BE PRESENT AT 9 O'CLOCK.

MR. TALL: I HAVE AN ADMINISTRATIVE ISSUE. I ALSO HAVE THAT FACEBOOK PAGE THAT WAS TAKEN WITHOUT ANY HIGHLIGHTS. IF ANYBODY DOESN'T HAVE AN OBJECTION, I WILL BE HAPPY TO POSE THESE AS SUBS FOR

THE EXHIBITS.

(DISCUSSION OFF THE RECORD AT 5:10 ON FEBRUARY 17, 2017.)

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HEARING BEGUN ON FEBRUARY 24, 2017 AT 9:30 A.M.

JUDGE PADGETT: ALRIGHT. WE ARE HERE FRIDAY, FEBRUARY 24TH 2017 IN DAY TWO OF THE TRIAL INVOLVING THE STATE OF DONALD ROTHGEB, FILE NUMBER 2014-ES- 26-0498. PRESENT IN COURT IS MR. CLIFF TALL REPRESENTING THE PLAINTIFF/ PETITIONER. JULIE IRVING WHO IS ALSO PRESENT IN COURT. MR. DAVID BURKS FRIEND OF THE PLAINTIFF. PRESENT ALSO IN COURT IS REESE BOYD AND BRET DAVIS. THE PR OF THE ESTATE, MS. JENE POAFPYBITTY. BECKY WEAVER, I BELIEVE IS FROM THE BOYD AND DAVIS FIRM?

MR. DAVIS: YES, YOUR HONOR.

JUDGE PADGETT: AS I UNDERSTAND IT, WE WILL ANTICIPATE THE ACCOUNTANT COMING AROUND 3 O'CLOCK THIS AFTERNOON. IS THAT CORRECT, MR. PARKER?

MR. BOYD: THAT'S CORRECT, YOUR HONOR.

JUDGE PADGETT: I BELIEVE LAST FRIDAY WE RESTED ON THE PLAINTIFF'S SIDE. IT'S FIRST WITNESS. IT'S MY UNDERSTANDING THAT MR. TALL HAS SOME ADDITIONAL WITNESSES, IS THAT CORRECT?

MR. TALL: THANK YOU, YOUR HONOR. IT'S THE PERSON REPRESENTATIVE, MS. JENE POAFPYBITTY.

JEANNE POAFPYBITTY, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. TALL:

Q J-E-A-N-N-E P-O-A-F-P-Y-B-I-T-T-Y. 1529 CROOKED PINE DRIVE, SURFSIDE BEACH, SOUTH CAROLINA 29575.

JUDGE PADGETT: IF YOU WOULD, MS. POAFPYBITTY, SPEAK UP AS LOUDLY AS YOU CAN.

Q DO WE HAVE EXHIBITS FROM LAST FRIDAY? WE MIGHT NEED TO REFER TO THEM.

JUDGE PADGETT: YOU WANT TO LEAVE THEM WITH THE COURT REPORTER FOR NOW?

MR. TALL: YES, YOUR HONOR.

Q MS. POAFPYBITTY, MAY I REFER TO YOU AS MS. JENE?

A ABSOLUTELY.

Q MS. JENE, YOU WERE MARRIED TO THE DECEDENT, DR. ROTHGEB?

A YES, SIR.

Q ASSISTED HIM WITH HIS VETERINARIAN PRACTICE?

A YES, SIR.

Q AND YOU BECAME THE PERSONAL REPRESENTATIVE FOR THE ESTATE?

A YES.

Q CAN YOU SHARE WITH ME A LITTLE BIT ABOUT FAMILY HISTORY. YOU HAVE BEEN MARRIED TO DR. ROTHGEB FOR SOME TIME?

A WE HAVE BEEN TOGETHER 35... WELL, SINCE 1978, 35 YEARS. I ASSISTED HIM WITH ALL HIS BUSINESS DEALINGS AS FAR AS PROPERTIES ARE CONCERNED. WE OWNED PROPERTIES TOGETHER. WE OWNED PROPERTY SEPARATE. SO, I AM VERY FAMILIAR WITH EVERYTHING, THE WORKINGS OF ALL THE PROPERTIES THAT ARE INVOLVED.

Q HOW ABOUT THE RELATIONSHIP WITH DR. ROTHGEB'S CHILDREN?

A I HAVE ALWAYS HAD A GOOD RELATIONSHIP WITH THEM. I HAVE KNOWN THEM SINCE STEVEN WAS A YEAR OLD AND I THINK JULIE WAS FIVE AND MATT WAS SIX. I MEAN, WE HAD THEM EVERY WEEKEND. WE DID THINGS WITH THEM. I HAVE ALWAYS HAD A GOOD

RELATIONSHIP... I ALWAYS THOUGHT I HAD A GOOD RELATIONSHIP WITH THEM UNTIL THE DAY AFTER THE YEAR OF HIS DEATH AND JULIE STOPPED TALKING TO ME. BUT UP UNTIL THAT TIME WE ALWAYS COMMUNICATED. WE ALWAYS TALKED ON THE PHONE. WE TEXTED. THEY CAME DOWN TO VISIT. SHE DIDN'T BRING HER DAUGHTER VERY OFTEN, MAYBE TWICE, BUT SHE ALWAYS CAME WITH WHOEVER SHE WAS WITH AT THE TIME, EITHER HER HUSBAND OR HER SIGNIFICANT OTHER OR, YOU KNOW, SOMEBODY. AND WE ALWAYS GOT ALONG FINE AS FAR AS I WAS CONCERNED. YES, ALWAYS. I'M REALLY SHOCKED AND REALLY UPSET ABOUT THIS WHOLE SITUATION.

Q YES, MA'AM. HOW ABOUT FOR THE FIRST YEAR THAT YOU WERE THE ADMINISTRATOR OF THE ESTATE, THINGS WENT WELL AS FAR AS YOU ARE CONCERNED?

A AS FAR AS I'M CONCERNED, YES. STEVEN WAS WITH ME AND I ALWAYS GOT ALONG WITH STEVEN. I THINK I WAS CLOSER TO HIM THAN ANYBODY BECAUSE HE ALWAYS LIVED WITH US. WELL, FROM THE TIME WE CAME DOWN HERE. AND HE WENT TO HIGH SCHOOL HERE AND, YOU KNOW, I KIND OF INTERCEDED WHEN THERE WAS STUFF BETWEEN HE AND HIS DAD. YOU KNOW, I HAVE ALWAYS BEEN CLOSE TO HIM. THAT'S ANOTHER REASON I'M SO UPSET ABOUT THIS WHOLE THING

BECAUSE I KNOW HE'S OUT OF THE COUNTRY. I CAN'T CONTACT HIM. I DON'T KNOW HOW HE IS. I DON'T KNOW. I JUST FEEL LIKE, YOU KNOW, I'M HERE. I HAVE BEEN MARRIED TO THIS MAN AND BEEN WITH HIM FOR 35 YEARS AND LOVED HIM DEARLY, AND NOW I'M BY MYSELF, YOU KNOW, I'M NOT YOUNG. I'M 74 YEARS OLD. I HAVE NOBODY. I HAVE NOBODY HERE, BUT, YOU KNOW, I'M TRYING TO DO THE BEST I CAN. I'M TRYING TO ABIDE BY WHAT THE WILL SAYS AND GO BY THE TERMS OF IT. I DON'T EVEN KNOW WHY I'M HERE, BUT I AM SO.

Q DID YOU HAVE A CHANCE TO OBSERVE MS. IRVING WITH HER FATHER AT THE TIME OF HIS PASSING?

A YES.

Q WAS SHE HELPFUL TO HIM?

A YES. SHE WAS CONCERNED JUST LIKE I WAS. WE WERE BOTH VERY, VERY UPSET.

Q DID THEY ENJOY A REASONABLE RELATIONSHIP SHORTLY BEFORE DR. ROTHGEB PASSED?

A YES. AS FAR AS I KNOW, YOU KNOW, SHE WASN'T HERE, BUT, I MEAN, THEY TALKED ON THE TELEPHONE FROM TIME TO TIME.

Q THERE HAD BEEN SOME DISCUSSION FROM LAST WEEK ABOUT THERE'S BEEN SOME CONFLICT IN THE FAMILY LET'S SAY, MATT'S DRUG ABUSE THAT PRESENTED AN

ISSUE?

A THAT'S BEEN AN ISSUE FOR YEARS AND YEARS --

Q DR. ROTHGEB HAD A DRINKING ISSUE?

MR. BOYD: OBJECT, YOUR HONOR. SHE NEEDS TO ANSWER THE QUESTIONS IF HE'S GOING TO ASK THEM.

JUDGE PADGETT: SURE. JUST LET HER FINISH THE ANSWER.

Q EXCUSE ME. I DIDN'T MEAN TO INTERRUPT.

A HE HAS HAD DRUG ISSUES AND JAIL ISSUES FOR MANY YEARS.

Q THAT'S MATT?

A YES.

Q OKAY. DR. ROTHGEB HIMSELF HAD ALCOHOL ISSUES?

A YES. YES. HE HAD ALCOHOL ISSUES AND HE JUST KEPT GETTING WORSE AND WORSE AS HE GOT SICKER AND SICKER. ONCE HE STOPPED... HE WAS A... LIKE SHE SAID, HE WAS A VETERINARIAN. HE WAS THE BEST VETERINARIAN EVER. HE WAS WONDERFUL. WHEN HE DECIDED TO RETIRE, I WAS REALLY DISAPPOINTED BECAUSE I KNEW THAT HE WOULD BE BORED. HE DIDN'T HAVE A LOT OF ACTIVITY IN HIS LIFE AS FAR AS GOLF OR ANYTHING. SO, WE CAME DOWN HERE AND HE DECIDED THAT HE WAS BORED. SO, HE STARTED UP A HOUSE CALL PRACTICE. HE WENT TO

PEOPLE'S HOMES AND VACCINATED THEIR ANIMALS. I WENT WITH HIM AND DID THE PAPERWORK. AND PEOPLE LOVED HIM. AS FAR AS HIM BEING CLOSE TO ANYBODY HE WASN'T. HE WASN'T REALLY... DIDN'T HAVE ANY FRIENDS, BUT THAT'S THE WAY HE WANTED IT. AS LONG AS IT WAS ME AND HIM AND HIM AND ME, HE WAS FINE. AND YOU KNOW, THE CHILDREN, YOU KNOW, THEY HAVE BUSY LIVES. THEY CALLED. THEY DIDN'T CALL A LOT, BUT, YOU KNOW, THAT WAS, YOU KNOW, HE DIDN'T SEEM TO MIND THAT TOO MUCH. HE DIDN'T REALLY CALL THEM. THEY CALLED HIM. YEAH, HE WAS THE BEST VETERINARIAN AND WHEN HE STOPPED DOING THAT THEN HE STARTED DRINKING MORE AND THEN IT GOT WORSE.

Q NOT MANY VETERINARIANS OFFER THEIR SERVICES IN A HOUSE CALL SITUATION, IS THAT YOUR EXPERIENCE?

A YES. HE WAS THE FIRST ONE. IN FACT, THERE WAS AN ARTICLE IN THE NEWSPAPER WRITTEN ABOUT HIM. HE WAS WONDERFUL.

Q TREMENDOUS. WHEN DR. ROTHGEB PASSED ON, IF WE LOOK AT THE INVENTORY OF THE ESTATE WE'RE FINDING A LOT OF REAL PROPERTIES, BUT NOT A LOT OF CASH. IS THAT A CORRECT ASSESSMENT FROM WHERE YOU SAW IT?

A YES.

Q COLLECTING RENT FROM DIFFERENT PROPERTIES?

A YES.

Q THERE'S A PROPERTY CLOSE BY TO YOUR RESIDENCE IN DEERFIELD, IS IT NOT?

A YES.

Q DOES THAT RENT FOR ABOUT $800.00 A MONTH?

A UH-HUH. (AFFIRMATIVE RESPONSE.)

Q DID YOU HAVE A REASONABLE TIME IN FINDING TENANTS AND COLLECTING RENT?

A WE ALWAYS DID THAT OURSELVES. HE ALWAYS PUT ADS IN THE PAPER AND DID THAT HIMSELF. WE ALWAYS DID THE LEASES AND MANAGED EVERYTHING OURSELVES. IT WASN'T UNTIL HE GOT REALLY SICK AND THEN WENT TO MUSC AND FROM THERE HE WENT TO THE NURSING HOME IN GEORGETOWN THAT I HAD TO GET SOME HELP WITH THE RENTALS. SO, I GOT THE PERSON THAT IS A REAL ESTATE PERSON THAT LIVES ACROSS THE STREET.

Q IS THAT JOHN?

A JOHN.

Q WHAT IS JOHN'S LAST NAME?

A BEALE, B-E-A-L-E.

Q SURE.

A AND I WAS GOING TO GEORGETOWN THREE TIMES A WEEK TO VISIT HIM IN THE NURSING HOME DURING THE

WEEK. I WOULD GO ON SATURDAYS. I WOULD GO ON SUNDAYS AND WITH ALL THAT GOING ON... THEN I WOULD GO TO NURSING HOME IN CHARLESTON, I MEAN, IN GEORGETOWN AND THEN I WOULD GO TO WORK BECAUSE I STILL WORK AT A LAW FIRM NEAR BY AND HAVE FOR 10 YEARS AND I NEEDED MY JOB. I AM SO BLESSED TO HAVE IT. AND THAT WAS A LOT OF RUNNING UP AND DOWN THE ROAD. SO, WHEN SOMETHING GOT EMPTY, I SAID, "JOHN, I REALLY NEED SOME HELP. CAN YOU HELP ME GET SOME TENANTS FOR THESE BECAUSE THIS IS MOVING OUT OR THAT'S MOVING OUT?" SO, THAT'S WHEN HE STARTED TO HELP ME WITH THAT.

Q HE'S BEEN GOOD WITH YOU, HAS HE NOT?

A YES. HE'S BEEN WONDERFUL, YES.

Q WHAT DID YOU UNDERSTAND ABOUT THE GOAL OF THE ESTATE, HOW IT HAD TO RUN WHEN YOU BECAME THE PERSONAL REPRESENTATIVE OR IS THAT TOO BROAD OF A QUESTION?

A NO. I UNDERSTOOD AS FAR AS THE TERMS OF THE WILL... LOOKED AT THE TERMS OF THE WILL AND WHAT I WANTED TO DO AND ACCOMPLISH WAS TO PAY OFF THE DEBTS. THERE WERE ONLY TWO DEBTS. THE RESIDENCE AND THE EQUITY LINE. I WANTED TO PAY OFF THOSE TWO THINGS. THEN FROM THAT POINT ON,

YOU KNOW, DISCUSS WITH JULIE BECAUSE SHE WAS REALLY THE SPOKESPERSON FOR EVERYBODY. YOU KNOW, HOW TO DIVIDE THINGS OR WHATEVER.

Q HOW DID YOU UNDERSTAND HER TO BE THE SPOKESPERSON FOR EVERYONE?

A I ONLY COMMUNICATED... WELL, WHEN STEVEN WAS THERE, YOU KNOW, OF COURSE WE COMMUNICATED, BUT I BASICALLY COMMUNICATED WITH HER. I MEAN, SHE WOULD ASK ME FOR ADVICE OVER THE YEARS WITH, YOU KNOW, THIS PROBLEM OR THAT PROBLEM OR, YOU KNOW, WHEN SHE WOULD HAVE A PROBLEM WITH HER SECOND HUSBAND OR HER THIRD HUSBAND. HER SECOND HUSBAND WAS REALLY HARD TO DEAL WITH. SO, I WOULD GIVE HER ADVICE AND TRY AND HELP HER OUT. I BASICALLY JUST SPOKE WITH HER.

Q WAS THERE ANY IMPEDIMENT TO YOUR SPEAKING WITH STEVEN WHO LIVED WITH YOU FOR THE FIRST SIX OR SEVEN MONTHS?

A NO. I TALKED TO HIM ALL THE TIME.

Q SO, NO IMPEDIMENT?

A NO, NO. THE ONLY REASON I DIDN'T TALK TO HIM WHEN HE WASN'T AROUND IS BECAUSE HE WAS IN NORTH CAROLINA AND HE WAS BUSY WITH WHATEVER HE WAS DOING. SO, JULIE AND I WERE THE ONES THAT SPOKE ALL THE TIME, TEXTED, YOU KNOW, WE COMMUNICATED

CONSTANTLY.

Q IS IT A FAIR STATEMENT TO SAY THAT YOU WERE NOT INTERFERED WITH AS THE ADMINISTRATOR OF THE ESTATE FOR THE FIRST YEAR?

A NO. I WAS NOT INTERFERED WITH, NO. I ASKED HER, YOU KNOW, EVEN BEFORE HE PASSED AWAY, YOU KNOW, I SAID, "I'M REALLY NERVOUS ABOUT HOW MUCH MONEY IS IN THE BANK BECAUSE I HAD TO HAVE ROUND-THE-CLOCK NURSING AFTER HE GOT OUT OF THE NURSING HOME THAT WAS $220.00 A DAY." THAT REALLY DEPLETED THE ACCOUNTANT. SO, I TOLD HER EVEN BEFORE ANYTHING HAPPENED, YOU KNOW, "I'M REALLY WORRIED ABOUT THIS BANK ACCOUNT. THERE'S ONLY $40,00000. I'VE GOT 12 PROPERTIES TO DEAL WITH AND I DON'T KNOW..." I SAID, "I THINK WE NEED TO SELL SOMETHING AND SHE AGREED WITH ME.

Q HARMONY, IS THAT A FAIR STATEMENT?

A YES. SHE AGREED WITH ME AND WE TEXTED BACK AND FORTH. I HAVE A TEXT MESSAGES SAYING, YOU KNOW, THAT WOULD BE A GOOD IDEA. NOT A TEXT MESSAGE, AN E-MAIL. WE USED TO E-MAIL.

Q YES, MA'AM. BECAUSE --

A I'M JUST SAYING WE USED TO E-MAIL A LOT. THAT'S HOW WE COMMUNICATED.

JUDGE PADGETT: MR. TALL, YOU SAID THERE

WERE ONLY TWO DEBTS AT THE TIME OF YOUR HUSBAND'S DEATH. ONE WAS ON THE RESIDENCE AND WHERE WAS THE OTHER ONE?

A IT WAS AN EQUITY LINE THAT WAS ATTACHED TO ONE OF THE PROPERTIES.

JUDGE PADGETT: THANK YOU.

MR. TALL: YOUR HONOR, IF I MAY. WE HAD MATT ROTHGEB WHO'S NOW COME INTO THE COURTROOM. HE'S ONE OF THE PARTIES AND ONE OF THE BENEFICIARIES. I THINK HE HAS A DRIVER THAT IS WITH HIM.

JUDGE PADGETT: VERY GOOD.

MR. TALL: WE ARE TO 18 EXHIBITS AND I AM PROPOSING EXHIBIT 19. UNLESS THERE IS AN OBJECTION, YOUR HONOR, I'M PROPOSING AN E-MAIL RECORD THAT HAS TWO MESSAGES ON IT. THREE MESSAGES ON IT. I PROPOSE IT AS EXHIBIT 19.

JUDGE PADGETT: FROM WHOM TO WHOM?

MR. TALL: FROM MS. JENE POAFPYBITTY TO THE CHILDREN BENEFICIARIES FROM THE LAW OFFICE TO MS. JENE AND FROM MS. JENE TO THE LAW OFFICE.

JUDGE PADGETT: WHAT TIME AND DATE IS ON IT?

MR. TALL: THIS IS FEBRUARY OF 2015.

MR. BOYD: WITHOUT OBJECTION. THAT WILL JUST BE ONE? EXHIBIT 19.

LETTER E-MAIL TO BENEFICIARIES MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 19.

Q MS. JENE, I AM ASKING YOU TO PLEASE LOOK AT NUMBER 19 AND TELL ME IF YOU RECOGNIZE THE DOCUMENT?

A OKAY.

Q I APOLOGIZE IF YOU'VE OFFERED A RESPONSE.

A WHAT DID YOU WANT TO ASK ME?

Q FIRST, IF YOU RECOGNIZE THE DOCUMENT?

A YES, I RECOGNIZE IT.

Q THIS IS, IS IT NOT, A MESSAGE THAT YOU HAVE SENT ON 17 FEBRUARY TO THE THREE CHILDREN BENEFICIARIES FORWARDING A MESSAGE FROM THE LAW OFFICE, IS THAT FAIR?

A YES.

Q I AM WONDERING IF YOU'VE RESPONDED TO THE QUESTION OR YOU ARE STILL LOOKING TO SEE?

A OKAY. WHAT WAS THE QUESTION AGAIN? I'M SORRY. I RECOGNIZE IT, YES.

Q IF WE LOOK AT THE FIRST MESSAGE, WHICH IS

ALSO... ALL OF THESE ARE 17 FEBRUARY... IS THIS A FAIR ASSESSMENT? IT SAYS, "HEY BECKY, DON'S KIDS WANT TO KNOW WHEN PROBATE WILL BE FINISHED OR WHAT NEEDS TO BE DONE IN ORDER TO HAVE ANY FUNDS DISBURSED?" WAS THAT YOUR STATEMENT?

A YES.

Q HOW DID YOU GET THE MESSAGE FROM THE CHILDREN THAT THEY WANTED TO KNOW IN FEBRUARY OF 2015, WHEN PROBATE COULD BE COMPLETED? HOW DID YOU GET THAT MESSAGE, BY E-MAIL?

A PROBABLY.

Q NO DOUBT YOU GOT THE MESSAGE FROM THEM?

A YES. BECAUSE THAT'S WHAT I AM SAYING.

Q THEN YOU'RE FORWARDING THE MESSAGE THAT THE LAW OFFICE GAVE TO YOU?

A YES.

Q AND IS THIS FAIR IN THE MESSAGE FROM THE LAW OFFICE, THE OUTSTANDING DEBTS OF THE ESTATE WILL HAVE TO BE PAID PRIOR TO CLOSING THE ESTATE?

A RIGHT. THAT WAS MY UNDERSTANDING, I MEAN, THAT'S WHAT THE WILL SAID AND I WAS TRYING TO GO BY WHAT THE WILL SAID. THAT WAS MY GOAL.

MR. TALL: YOUR HONOR, I HAVE ANOTHER EXHIBIT WHICH WILL NOW BE 20. I DON'T BELIEVE THERE'S AN OBJECTION. WE HAVE

SHARED THESE DOCUMENTS BACK AND FORTH.

JUDGE PADGETT: THESE E-MAILS?

MR. TALL: YES, YOUR HONOR.

JUDGE PADGETT: ANY OBJECTION MR. BOYD?

MR. BOYD: NONE.

JUDGE PADGETT: WITHOUT OBJECTION, EXHIBIT 20. IF YOU WOULD IDENTIFY THE E-MAIL BY DATE.

MR. TALL: THE FIRST ONE IS TWO PAGES THAT PRESENTS TWO E-MAILS. THE EARLIER ONE IS FROM STEVEN ROTHGEB TO MS. JENE DATED 24 FEBRUARY, 2017. AND THEN THAT SAME DATE A LITTLE LATER IN THE DAY, FEBRUARY 24, 2015 MS. JENE TO THE LAW FIRM THAT WAS REPRESENTING HER.

Q MS. JENE, I WOULD LIKE YOU TO LOOK AT THIS EXHIBIT 20 PLEASE AND TELL ME IF YOU CAN RECOGNIZE THE TWO E-MAIL MESSAGES THAT ARE REPRESENTED ON THE EXHIBIT? MS. JENE, TAKE AS MUCH TIME AS YOU LIKE, BUT I'M NOT GOING TO ASK YOU ABOUT THAT UNTIL YOU --

A OKAY. GO AHEAD.

Q CAN YOU ACKNOWLEDGE THAT?

A YES.

E-MAILS 2/24/15 MARKED FOR

IDENTIFICATION AND INTRODUCED
INTO EVIDENCE AS PLAINTIFF'S,
EXHIBIT 20.

Q THE EARLIER E-MAIL AGAIN, BOTH OF THESE COME FROM 24 FEBRUARY WAS FROM STEVE ROTHGEB TO YOU?

A OKAY. FEBRUARY 2015, RIGHT.

Q WHAT DID YOU UNDERSTAND THIS E-MAIL TO SAY TO YOU?

A OKAY. HE IS CONCERNED ABOUT ME NOT... I GUESS, SAYING WHEN ALL THIS WAS GOING TO BE OVER WITH, YOU KNOW. I MEAN, I WAS COMMUNICATING WITH JULIE. AND THEN ONE DAY AFTER THE YEAR OF HIS DEATH, SHE STOPPED TALKING TO ME. SHE HIRED A LAWYER AND FROM THAT POINT ON I WAS TOLD THAT THE LAWYERS HAD TO COMMUNICATE BETWEEN THEMSELVES. I COULD NOT COMMUNICATE WITH HER ANY MORE OR ANY OF THE CHILDREN. SO, THAT REALLY STOPPED ME FROM SAYING ANYTHING TO ANYBODY.

Q THIS IS FEBRUARY OF 2014, IS THAT CORRECT?

A YES.

Q WOULD IT SURPRISE YOU TO LEARN THAT MR. SCOVILLE AN ATTORNEY FOR THE THREE CHILDREN MADE AN APPEARANCE IN APRIL OF 2015?

A OKAY. WELL, I MEAN, I WAS DOING THE BEST I

COULD. I WAS TRYING TO SELL THE PROPERTIES. WHEN SOMEBODY MOVED OUT I TOLD JOHN, "PUT IT ON THE MARKET." YOU KNOW, THERE IS NO TIMETABLE AS FAR AS SELLING ANYTHING, YOU KNOW, ESPECIALLY AT THAT TIME OF THE YEAR IT'S SLOW. I MEAN, EVERYBODY KNOWS REAL ESTATE IS SLOW OR IT WAS, YOU KNOW, A COUPLE OF YEARS AGO.

Q DR. ROTHGEB PASSED ON, DID HE NOT, IN JANUARY OF 2014?

A YES, THE 26TH.

Q SO, HERE WE ARE IN FEBRUARY AND MY QUESTION TO YOU IS, HOW DID YOU TAKE STEVEN ROTHGEB'S LETTER TO YOU? WAS IT CORDIAL? WAS IT UPSETTING TO YOU?

A WELL, I REALLY DID NOT KNOW HOW TO RESPOND. I TOLD HER UP UNTIL THAT TIME --

Q YOU SAID, "HER" WHO ARE YOU REFERRING TO?

A JULIE. I'M SORRY. UP UNTIL THAT TIME, YOU KNOW, WHAT WAS GOING ON. THERE WASN'T A LOT GOING ON, YOU KNOW. I WAS TRYING TO SELL THE PROPERTIES. I WAS TRYING TO WAIT UNTIL THE LEASES WERE UP BECAUSE I DIDN'T WANT TO THROW PEOPLE OUT ON THE STREET.

Q DID YOU EVER CONSIDER THAT MAYBE A PURCHASER FOR A CONDOMINIUM MIGHT LIKE TO BE AN INVESTOR?

THEY MIGHT WOULD APPRECIATE HAVING A TENANT? DID THAT EVER OCCUR TO YOU AND JOHN?

A IT DID, YES.

Q IN FACT IN 2014, YOU SOLD TWO PROPERTIES, DID YOU NOT?

A THAT IS CORRECT.

Q YOU COLLECTED THE PROCEEDS?

A YES. AND I PUT IT INTO THE BANK.

Q DID YOU CONSIDER PAYING OFF THE $80,000.00 LINE OF CREDIT WITH THE MONEY THAT CAME IN?

A AROUND THIS TIME, YOU KNOW, THERE WERE OTHER DEBTS. YOU KNOW, I HAD TO KEEP SOME KIND OF A CUSHION IN THE BANK. I WAS TRYING TO BUILD UP THE ACCOUNT WITH MORE PROPERTY SETTLEMENTS IN ORDER TO SUPPLEMENT THE BANK ACCOUNT SO THAT I COULD PUT THE MONEY IN THE BANK. I DID NOT WANT TO SELL SOMETHING, PUT THE MONEY IN THE BANK AND THEN PAY OFF SOMETHING AND THEN BE BACK TO SQUARE ONE WHEN I DID NOT HAVE ANY MONEY IN THE BANK, AGAIN, BECAUSE SELLING PROPERTIES, YOU KNOW, YOU DON'T KNOW HOW FAST THAT'S GOING TO HAPPEN. AND I WAS JUST TRYING TO DO THE BEST I COULD.

Q SURE. ONCE AGAIN, YOUR REACTION TO STEVEN'S LETTER, DID YOU CONSIDER IT AN ANNOYANCE?

A NO, NOT REALLY. I MEAN, I ALWAYS GOT ALONG WITH STEVEN. YOU KNOW, I DON'T THINK SO.

Q ANYTHING WRONG WITH --

A I AM JUST TRYING TO FIGURE OUT WHAT I'M SUPPOSED TO SAY. I DON'T KNOW HOW I'M SUPPOSED TO RESPOND. THAT'S THE ONLY FRUSTRATION THAT I HAVE.

Q WELL, IS IT FAIR IN THIS LITIGATION, HAS THERE NOT BEEN ON THE PART OF THE ESTATE AN EFFORT TO PAINT JULIE AND OTHERS AS PEOPLE THAT ALL THEY CARE ABOUT IS MONEY? IS THAT YOUR POSITION?

A WELL, THAT'S HOW I FELT AFTER A WHILE, YES.

Q DID YOU FEEL THAT WHEN YOU GOT THIS LETTER FROM STEVEN A YEAR --

A YES, I DID. IN A WAY I DID. I MEAN, I'M TRYING TO GET THIS SETTLED AND I'M TRYING TO, YOU KNOW... I HAVE NEVER DONE THIS BEFORE. I MEAN, I HAVE A LOT OF PROPERTY MANAGEMENT EXPERIENCE AND I WORK WITH A PROPERTY MANAGEMENT OFFICE. I HAVE WORKED IN LAW FOR 40 YEARS OF MY LIFE, BUT I HAVEN'T, YOU KNOW, COME ACROSS A SITUATION WHERE I WAS PUT IN THIS POSITION. I WAS TRYING TO FOLLOW THE WILL AND THE TERMS OF THE WILL AND DO THE BEST THAT I COULD.

Q WELL, IN FACT, ON THE SAME DAY THAT YOU GOT THE

LETTER, YOU WROTE TO THE LAW FIRM, DID YOU NOT, "THIS REALLY AGGRAVATES ME."?

A OKAY. YES, BECAUSE I DON'T KNOW WHAT ELSE I CAN DO.

Q YOU HAD A GOOD RELATIONSHIP WITH STEVEN, DIDN'T YOU?

A I DID.

Q WHY NOT JUST TALK WITH HIM OR SEND HIM AN E-MAIL?

A I MAY HAVE. I DON'T REMEMBER.

Q DID YOU SHARE OR DO YOU RECALL SHARING WITH STEVEN AND THE OTHER BENEFICIARIES THAT TWO OF THE PROPERTIES HAVE SOLD AND HOW MUCH MONEY WAS THEN IN BANK?

A I TOLD THEM TWO PROPERTIES HAD SOLD. "I'M GOING TO BE PUTTING THE OTHER ONES ON THE MARKET AS SOON AS THE LEASES ARE UP."

Q HOW DID YOU COMMUNICATE THAT, THROUGH E-MAIL?

A I PROBABLY TOLD HIM ON A PHONE CALL. I DON'T KNOW IF I TOLD HIM ON AN E-MAIL. I TOLD HIM ONE WAY OR THE OTHER I'M SURE.

Q IS THERE ROOM FOR A LITTLE CONFUSION WHEN ON THE ONE HAND YOU THOUGHT THIS WASN'T REALLY OUT OF THE ORDINARY FOR STEVEN TO WRITE TO YOU, BUT THEN ON THE SAME DAY, YOU TELL YOUR LAW FIRM

THIS REALLY AGGRAVATES YOU?

A IT AGGRAVATES ME BECAUSE I WAS DOING THE BEST THAT I COULD WITH THE TIMEFRAME THAT I WAS IN. TO BE ASKED OVER AND OVER, YOU KNOW, WHAT IS THE STATUS OR WHAT'S GOING ON? THERE WAS NOTHING GOING ON. I SAID THAT I HAD PROPERTIES FOR SALE WHEN THEY MOVED OUT... WHEN THE PEOPLE MOVED OUT I WAS GOING TO PUT THEM ON THE MARKET. WHAT I PLANNED TO DO WAS PAY OFF THE DEBTS, SPLIT THE MONEY OR WHAT EVER PROPERTIES THEY WANTED, YOU KNOW. AFTER I GOT THE DEBTS PAID THEN I WAS GOING TO ASK, YOU KNOW, WHAT PROPERTIES DO YOU WANT? AND DO IT THAT WAY.

Q HOW MANY PRIOR E-MAILS DO YOU RECALL GETTING FROM STEVEN PRIOR TO THIS FEBRUARY 20015, WHERE HE ASKING YOU ABOUT... HE ACTUALLY ASKED, "HOW ARE YOU DOING AS A GRIEVING WIDOW."? DID HE NOT?

A YES.

Q DO YOU THINK THAT WAS GENUINE?

A YES. ABSOLUTELY. WE WERE CLOSE.

Q WAS HE PESTERING YOU ABOUT WHAT WAS GOING ON? "WHERE'S MY MONEY?"

A NO.

Q THIS IS ACTUALLY THE FIRST TIME HE'S WRITTEN TO

YOU ABOUT THIS. AS YOU SAY, THERE WAS HARMONY FOR A YEARS PERIOD OF TIME?

A RIGHT.

Q SO, HOW ARE WE TO TAKE IT THAT YOU CONSIDERED TIME AND AGAIN THE BENEFICIARIES ARE BOTHERING YOU ABOUT AN UPDATE AND IT AGGRAVATES YOU WHEN THAT WASN'T THE CASE?

A OKAY.

MR. BOYD: YOUR HONOR, I'M GOING TO OBJECT. I UNDERSTAND HE CAN LEAD HER TO A DEGREE, BUT I THINK HE'S RE-CHARACTERIZING WHAT SHE SAID. HE IS RESUMING HER TESTIMONY IN A MANNER THAT IS NOT CONSISTENT WITH WHAT SHE SAID.

JUDGE PADGETT: I THINK IF SHE HAS BEEN MISCHARACTERIZED SHE CAN RESPOND TO THAT. I'M GOING TO OVERRULE YOUR OBJECTION.

A OKAY. IN THE FIRST PLACE, ONE DAY AFTER THE YEAR OF MY HUSBAND'S DEATH JULIE STOPPED TALKING TO ME. THAT UPSET ME TREMENDOUSLY BECAUSE I DID NOT KNOW WHAT I HAD DONE WRONG. I WAS TRYING TO COMMUNICATE WITH HER. I DID COMMUNICATE WITH HER. I TOLD HER, "WHAT WAS GOING ON?" SHE USUALLY TALKED TO STEVEN MORE THAN I DID. I

ASSUMED THAT SHE WAS PASSING ON THE INFORMATION THAT I GAVE HER. THERE WAS NOT A LOT OF INFORMATION TO BE HAD. ONCE SHE STOPPED TALKING TO ME THEN THAT UPSET ME. THAT'S WHY I WAS AGGRAVATED BECAUSE I DID NOT KNOW WHAT ELSE TO SAY. YOU KNOW... I MEAN, I DID NOT UNDERSTAND THAT, YOU KNOW. HE REACHED OUT TO ME AND ASKED ME IF I WAS OKAY. I APPRECIATED THAT. HE AND I WERE VERY CLOSE. WE HAVE ALWAYS BEEN VERY CLOSE.

Q WELL, I'M TRYING TO UNDERSTAND. DID YOU THINK THAT LETTER FROM STEVEN WASN'T GENUINE FROM HIM? THAT SOMEONE PUT HIM UP TO THAT?

A NO. OF COURSE NOT, NO.

Q SO, YOU WERE UPSET ABOUT THIS LATER BECAUSE --

A I AM UPSET ABOUT THE WHOLE SITUATION. THE WHOLE SITUATION OF ME, YOU KNOW, BEING PORTRAYED AS THE BAD GUY WHEN I'M JUST TRYING TO DO WHAT I'M SUPPOSED TO DO.

Q WHAT DID YOU SEE BETWEEN THE TIME OF YOUR HUSBAND'S PASSING AND THIS FEBRUARY LETTER WHERE YOU WERE PORTRAYED AS THE BAD GUY?

A I DON'T EVEN KNOW WHAT THAT MEANS.

Q I APOLOGIZE. YOU'RE SUGGESTING THAT YOU WERE PORTRAYED AS THE BAD GUY.

A I WAS BY JULIE.

Q WHAT DID SHE SAY TO YOU?

A SHE DID NOT TALK TO ME ANY MORE. SHE STOPPED SPEAKING WITH ME. SHE HIRED MR. SCOVILLE AS HER LAWYER.

Q OKAY.

A I DON'T KNOW WHEN SHE DID THAT, BUT IT WAS RIGHT AFTER SHE STOPPED SPEAKING TO ME. THEN I WASN'T ALLOWED TO SPEAK TO ANYBODY.

Q FROM WHOSE ORDER?

A MR. SCOVILLE.

Q MR. SCOVILLE TOLD YOU NOT TO SPEAK --

A NO. I DIDN'T SPEAK WITH MR. SCOVILLE. I UNDERSTOOD THAT ONCE A LAWYER IS HIRED THAT THE LAWYERS HAVE TO SPEAK BETWEEN THEMSELVES. AND I WAS TO SPEAK WITH MY LAWYER. I WAS NOT SUPPOSED TO SPEAK TO ANYONE ELSE AFTER THAT POINT IN TIME.

Q SO, IF WE SAY THAT... FEEL FREE TO LOOK AT RECORDS OR WHATEVER YOU HAVE. I CAN SHOW YOU A LETTER IN APRIL FROM MR. SCOVILLE. THAT DIDN'T PREVENT YOU FROM COMMUNICATING WITH JULIE OR STEVEN IN FEBRUARY 2015, DID IT?

A NO, I DON'T BELIEVE SO.

MR. TALL: YOUR HONOR, IF I MAY APPROACH

WITH AN EXHIBIT?

JUDGE PADGETT: SURE.

MR. TALL: THIS IS EXHIBIT 2 THAT WAS PRESENTED LAST FRIDAY.

Q LET ME ASK YOU IF YOU CAN RECOGNIZE IT?

A I DO.

Q WHAT IS THIS LETTER EXHIBIT 2?

A THIS IS A RESPONSE TO AN E-MAIL THAT STEVEN SENT ME.

Q YOU WERE RESPONDING TO JULIE IRVING, ARE YOU NOT?

A I'M RESPONDING TO... STEVEN SENT ME AN E-MAIL ASKING ME FOR INFORMATION.

Q IS THAT THE SAME EXHIBIT WE JUST LOOKED --

A YES. I WAS TRYING TO GET A TABLE TOGETHER OF WHAT PROPERTIES THERE WERE, YOU KNOW, THE INFORMATION FOR THE RENTALS OR WHATEVER. I HAVE A FULL-TIME JOB AT A LAW OFFICE. SO, WHEN I HAD TIME I WOULD WORK ON THAT IN ADDITION TO MY REGULAR WORK TO TRY AND GET HIM SOME INFORMATION. AND I GUESS I DIDN'T GET IT TO HIM IN TIME OR A TIMELY FASHION ACCORDING TO HIM. SO, HE SAID THAT I GOT THIS FROM JULIE FORWARDING IT SAYING, STEVEN HAD SENT ME THIS E-MAIL. SO, THAT'S WHEN I RESPONDED TO HER

AND... YES. THIS IS MY RESPONSE TO HER.

Q DID YOU CONSIDER IT TO BE AN INCONVENIENCE TO HAVE TO RESPOND?

A NO. I DID NOT CONSIDER IT AN INCONVENIENCE. I JUST DIDN'T UNDERSTAND WHY ALL OF A SUDDEN WE HAD A GREAT RELATIONSHIP, YOU KNOW. I WOULD GIVE HER... SHE WAS GOING THROUGH PROBLEMS WITH HER EX-HUSBAND, WITH HER DAUGHTER AND A GUARDIAN-AD-LITEM AND I WAS GIVING HER ADVICE AS BEST I COULD TO HELP HER WITH THAT SITUATION. ALL OF A SUDDEN I'M TOLD, YOU KNOW, I JUST DROPPED OFF THE FACE OF THE EARTH. SHE JUST DIDN'T RESPOND AND, YOU KNOW, ALL OF A SUDDEN IT'S LIKE EVERYTHING'S FINE. I'M GOING ALONG FINE... WHAT 40 YEARS OF MY LIFE WITH THESE CHILDREN TREATING THEM LIKE MY OWN. I MEAN, I HAVE ALWAYS CARED ABOUT THESE CHILDREN, ALWAYS. AND THEN YOU KNOW, THEY KNEW HOW DON WAS. THEY KNEW THAT HE DIDN'T SPEND A LOT OF MONEY ON ANYTHING, FIX A LOT OF THINGS OR WHATEVER. HE HAD A LIFE INSURANCE POLICY AND JULIE'S MOTHER HIS EX-WIFE, PAID... GOT A LIFE INSURANCE POLICY MANY YEARS AGO ON HIM AND PAID FOR IT MONTHLY IN CASE ANYTHING HAPPENED TO HIM BECAUSE SHE KNEW THE ALCOHOLISM WAS GOING TO DO HIM IN SOONER OR

LATER. AND IT DID, BUT IN THE MEANTIME... HE HAD THIS INSURANCE POLICY AND HE GOT TIRED OF PAYING FOR IT. HE GOT THE BILL AND ONE DAY HE SAID, "I'M REALLY GETTING TRIED OF PAYING FOR THIS INSURANCE. WOULD YOU LIKE TO TAKE IT OVER?" BECAUSE HE KNEW THAT SHE, YOU KNOW, HAD TAKEN OVER THE PAYMENTS AND GOTTEN A POLICY. AND I SAID, "I REALLY CAN'T AFFORD TO DO THAT." AND HE SAID, "I'M JUST GETTING TIRED OF PAYING FOR IT SO I'M JUST GOING TO LET IT GO." AND I SAID... HE ALWAYS, YOU KNOW, DID WHAT HE WANTED TO DO. I COULD NOT AFFORD TO MAKE THE PAYMENTS ON THE POLICY. SO, OF COURSE, HE LET IT GO AND THERE WAS NO INSURANCE AFTER THAT.

Q ARE YOU SUGGESTING THAT THE CHILDREN BLAMED YOU FOR THE LACK OF LIFE INSURANCE?

A NO, NO, NO, NO. NOT AT ALL. I'M JUST SAYING THAT'S HOW, YOU KNOW, HE HANDLED THINGS. HE JUST THOUGHT HIS OTHER PROPERTY WAS HIS CUSHION TO LIVE HIS LIFE AND HAVE INCOME FROM. HE DIDN'T NEED A LIFE INSURANCE POLICY.

Q ALRIGHT, MA'AM. ANYTHING WRONG IN GIVING STEVEN A RESPONSE? YOU INDICATED THAT YOU DIDN'T GIVE IT TO HIM AS QUICKLY AS HE WOULD HAVE LIKED, BUT YOU GAVE HIM A RESPONSE THROUGH --

A THROUGH JULIE. YES.

Q YOU DID THAT BECAUSE JULIE'S SENT YOU HIS E-MAIL?

A THAT'S EXACTLY RIGHT.

Q WHAT WERE YOU ATTEMPTING TO DO IN THIS RESPONSE?

A REITERATE THAT I WAS GOING TO PAY OFF THE DEBTS OF THE ESTATE WITH THE RENTAL PROPERTY SALES.

Q DOES IT SAY ANYTHING ABOUT YOUR PERSONAL EXPENSES IN THAT LETTER?

A OKAY. WELL, I SAID "I'M WORKING EVERY DAY. DON'T LIVE AN EXTRAVAGANT LIFESTYLE. DON'T GO ON TRIPS. DON'T GO TO FANCY RESTAURANTS. I'M JUST LIVING DAY TO DAY AND DOING WHAT I'M SUPPOSED TO DO. ANY OF MY EXPENSES ARE MY EXPENSES." I PAID FOR MY ACCOUNT AND, YOU KNOW, I HAVE CAR PAYMENTS. I MEAN, I HAVE INSURANCE PAYMENTS. I HAVE ALL THAT. THAT WAS ALL SEPARATE. WHATEVER WAS MY PROPERTY AND MY AFFAIRS, I PAID FOR MY AFFAIRS. THE FUNDS WERE NEVER INTERMINGLED EVEN THOUGH... YOU KNOW, AS FAR AS WHAT I OWNED, HE NEVER PAID FOR WHAT I OWNED. I PAID FOR MY OWN PROPERTY.

Q ABOUT UTILITIES ON THE RESIDENCE, THAT WAS WHERE YOU WERE LIVING?

A I PAID FOR THOSE A LOT OF TIMES.

Q A LOT OF TIMES?

A UH-HUH. (AFFIRMATIVE RESPONSE.)

Q ARE YOU AWARE OF A DISCOVERY REQUEST THAT WENT IN YOUR LAW FIRM?

A WELL, I GAVE HIM MONEY TO PUT IN THE BANK TO PAY THEM. OUT OF THE ESTATE... OUT OF THE BANK ACCOUNT THAT WE HAD TOGETHER.

Q YOU WERE REIMBURSED, WERE YOU NOT, FOR EVERY NICKEL OF THAT ACCOUNT WITH THE VALUE OF IT AT TIME OF YOUR HUSBAND PASSING, ISN'T THAT SO?

A YES.

Q SO, YOU MIGHT HAVE ADVANCED SOME OF THE EXPENSES?

A NO. THIS WAS THROUGH THE YEARS. THIS WAS THROUGH THE YEARS I PUT MONEY INTO THE BANK ACCOUNT TO PAY UTILITIES. I PAID FOR GROCERIES. I PAID FOR THINGS LIKE THAT.

Q WE ARE TALKING --

A I PAID FOR --

Q -- ARE WE NOT, ABOUT ESTATE ADMINISTRATION AFTER YOUR HUSBAND PASSED ON?

A WHAT?

Q AREN'T WE TALKING ABOUT THE TIME AFTER YOUR HUSBAND PASSED WHEN YOU WERE THE ADMINISTRATOR?

A I THOUGHT YOU WERE TALKING ABOUT THROUGH OUR

LIVES. I MISUNDERSTOOD YOU.

Q ISN'T THE MESSAGE IN THIS LETTER THAT IF THERE ARE PERSONAL EXPENSES OF YOURS, YOU ARE TAKING CARE OF IT, IF ANYONE IS INTERESTED OR CONCERNED ABOUT WHAT'S HAPPENING TO THE ESTATE?

A I HAD PERSONAL EXPENSES AS FAR AS MYSELF, YES.

Q RIGHT.

A CAR INSURANCE.

Q BUT UTILITIES ON THE RESIDENCE WERE TAKEN CARE OF BY ESTATE PLANNING?

A YES. I THOUGHT YOU MEANT EARLY ON. I DIDN'T KNOW YOU MEANT AFTER THE ESTATE HAD OPENED.

Q OKAY. WOULD YOU SAY THIS LETTER IS A REASONABLE REPLY TO A BENEFICIARY WHO IS INQUIRING ABOUT THE STATUS OF AN ESTATE A YEAR... MORE THAN A YEAR AFTER THE DECEDENT PASSED ON?

A YES.

Q ANYTHING WRONG WITH BENEFICIARIES ASKING YOU FOR A STATUS REPORT?

A NO.

Q ON PAGE 2, CAN YOU READ AT THE BOTTOM WHAT YOU HAVE PUT IN CAPITAL LETTERS TO JULIE IRVING?

A WHAT DID YOU WANT ME TO DO?

Q READ IT TO THE COURT?

A "YOU GOT UPSET BECAUSE YOU TOLD ME HE WASN'T

INTERESTED IN YOU AND YOU NOT FEELING WELL. AND YOU TOLD ME YOU WERE NEVER GOING TO TALK TO HIM AGAIN. AND THAT IF ANYTHING HAPPENED TO HIM YOU DIDN'T WANT ANYTHING." THAT'S WHAT SHE SAID.

Q WHY IS SHARING THAT EPISODE WITH JULIE IRVING IMPORTANT TO YOU WHEN YOU WERE RESPONDING TO STEVEN, THE BENEFICIARY, WHO WAS ASKING --

A I WAS --

Q I WILL GIVE YOU ALL THE TIME TO ANSWER YOUR QUESTION PLEASE. WHY WERE THOSE CAPITAL LETTERS TELLING OF AN EVENT THAT TOOK PLACE? WHY WAS THAT IMPORTANT TO YOU IN RESPONDING TO STEVEN ROTHGEB'S LETTER?

A I WAS RESPONDING TO JULIE. I WAS RESPONDING TO HER, YOU KNOW. SHE'S MAKING ME... I FELT VERY BULLIED.

Q LIKE HER SHARING WITH YOU STEVEN'S LETTER?

A NO, NO, NO. BY THE WHOLE SITUATION OF HER NOT SPEAKING WITH ME. ABOUT THE, YOU KNOW... I DON'T KNOW. I JUST FELT BULLIED BY HER HIRING A LAWYER AND --

Q ARE WE CLEAR THAT SHE HIRED A LAWYER AFTER THIS PERIOD OF TIME?

A I DON'T KNOW WHEN SHE HIRED A LAWYER. I KNOW SHE STOPPED TALKING TO ME THE DAY AFTER HE DIED

A YEAR LATER.

Q YOU HAD INDICATED THAT, BUT SHE HADN'T HIRED A LAWYER IN FEBRUARY, OTHERWISE HE WOULDN'T HAVE BEEN COMMUNICATING WITH HER, FAIR STATEMENT?

A FAIR STATEMENT.

Q SO, HERE SHE IS SENDING TO YOU STEVEN'S LETTER AND YOU'RE RESPONDING. YOU HAVE SHARED WITH US, HAVE YOU NOT, THAT AT THE TIME OF DR. ROTHGEB'S PASSING, JULIE AND HER FATHER WERE CLOSE?

A THEY WERE CLOSE.

Q AT THAT TIME?

A YES, HE WAS DYING.

Q I'M SORRY.

A HE WAS DYING.

Q I UNDERSTAND YOU'VE SAID THAT. SO, WHATEVER THIS EPISODE THAT YOU'RE SPEAKING OF THAT TOOK PLACE PRIOR TO DR. ROTHGEB PASSING --

A YES.

Q -- IS THIS YOUR WAY OF SAYING, "JULIE, YOU DIDN'T WANT ANYTHING. I SHOULDN'T HAVE TO EXPLAIN ANYTHING TO YOU."?

A NO, NO. WHAT I WAS SAYING WAS, "YOU SAID YOU DIDN'T WANT ANYTHING AND NOW YOU'RE, YOU KNOW, MAKING ME FEEL LIKE I'M DOING SOMETHING WRONG AND I'M NOT. I'M TRYING TO DO THE BEST I CAN."

Q THE LETTER SUGGESTS IN FEBRUARY THAT YOU WERE GOING TO SEND TABLES --

A RIGHT.

Q -- TO THE BENEFICIARIES AND FOLLOWED UP, DID YOU NOT?

A I BELIEVE I DID.

Q YOU SHARED WITH THE BENEFICIARIES WHAT THE CASH POSITION WAS?

A NO, I DIDN'T.

Q DID YOU SHARE WITH THE BENEFICIARIES THAT OF ALL OF THE INSURANCE, TAXES AND UTILITIES FOR THE RESIDENCE YOU WERE LIVING IN WAS BEING PAID BY THE ESTATE?

A NO, I DIDN'T.

Q DID YOU SHARE WITH THE BENEFICIARIES THAT YOU HAD A PLAN OF ASKING THE COURT FOR $40,000.00 OF A COMMISSION FOR BEING THE PERSONAL REPRESENTATIVE?

A I UNDERSTOOD THAT WAS... AS FAR AS BEING A PERSONAL REPRESENTATIVE THAT WAS THE LAW.

Q IS THE ANSWER TO THAT NO, YOU DID NOT SHARE THAT WITH THE CHILDREN?

A NO. I DID NOT SHARE THAT BECAUSE I DID NOT KNOW THAT UNTIL LATER ON.

Q ARE YOU AWARE OF A PROVISION IN YOUR HUSBAND'S

WILL THAT SAYS, "AS PART OF ESTATE SETTLEMENT BENEFICIARIES COULD RECEIVE PROPERTIES SUBJECT TO THE MORTGAGE"? IN OTHER WORDS, YOU TAKE THIS PROPERTY AND YOU ASSUME THE OBLIGATION OF PAYING THE MORTGAGE ASSOCIATED WITH THE PROPERTY?

A YES.

Q YOU HAVE BECOME AWARE OF THAT?

A YES.

Q WHAT DOES THAT SAY TO YOUR PLAN AND THE PLAN OF YOUR LAW FIRM THAT IT WAS IMPORTANT TO PAY OFF THE DEBTS BEFORE THE ESTATE COULD BE CLOSED?

A THAT'S WHAT JULIE AND I HAD DISCUSSED EARLY, TO PAY OFF THE EQUITY LINE AND THE HOUSE. LIKE I SAID, I'M KNEW AT THIS... I DON'T KNOW, YOU KNOW. I MEAN, I'M NOT AN EXPERT AT ESTATES OR ANYTHING LIKE THAT. THAT'S WHAT I THOUGHT WOULD BE THE BEST COURSE OF ACTION. IT SAID THAT PAYING OFF THE DEBTS IN THE WILL AND THAT'S WHAT I WAS TRYING TO GO BY THE WILL.

Q ISN'T THE WILL A BIT CONFUSING ON THE ONE HAND IT'S SAYS, "PAY OFF DEBT" AND ON THE OTHER HAND THE WILL SAYS, "YOU CAN DISTRIBUTE PROPERTY SUBJECT TO THE MORTGAGE, GIVE THE BENEFICIARY WHO TAKES A PROPERTY THE OBLIGATION OF CONTINUING THE MORTGAGE DEBT." IS THAT SOMEWHAT

CONFUSING?

MR. BOYD: OBJECTION, YOUR HONOR. IS HE ASKING HER A LEGAL OPINION? I MEAN, THE WILL SPEAKS FOR ITSELF. WE ALL KNOW THAT THE WILL IS NOT ALL ENTIRELY, INTERNALLY CONSISTENT JUST LIKE ANY OTHER DOCUMENT, BUT SHE'S NOT A LAWYER.

JUDGE PADGETT: I UNDERSTAND THAT. I DON'T THINK HE'S ASKING FOR A LEGAL OPINION. I THINK YOU CAN ALWAYS ASK THE OPINION OF THE PERSON IN CHARGE OF A WILL BEING THE PR WHAT HER UNDERSTANDING OF THE WILL OR PROVISIONS WERE BECAUSE THAT OBVIOUSLY COLORED HER ACTIONS AS TO HOW SHE DEALT WITH THE ASSETS OF THE ESTATE.

MR. BOYD: THANK YOU, YOUR HONOR.

Q SO, DID YOU SEE THE CONFLICT THERE ON THE ONE HAND, LET SOMEONE TAKE A PROPERTY AND THEY TAKE OVER THE MORTGAGE AND ANOTHER PART OF THE WILL TALKS ABOUT PAYING OFF DEBT?

A I DID NOT EVEN REALIZE ALL THAT UNTIL LATER ON. I THOUGHT THE THING I WAS SUPPOSED TO DO WAS TO PAY OFF THE DEBTS. I DID NOT REALIZE THAT UNTIL LATER.

Q IN FACT, ISN'T IT FAIR TO SAY THAT YOU WERE ADVISED BY YOUR LAW FIRM... I'M LOOKING AT THE MIDDLE PROVISION ON EXHIBIT 19. DIDN'T YOUR LAW FIRM, IN FACT, TELL YOU THAT YOU HAD TO PAY OFF DEBT BEFORE THE ESTATE COULD BE CLOSED?

A RIGHT.

Q SO, YOU'RE TAKING YOUR LAW FIRM ADVICE, ARE YOU NOT?

A THAT'S WHAT I WAS SUPPOSED TO DO ACCORDING TO WHAT THE WILL SAID. THERE WERE ONLY TWO DEBTS AND IT SAID PAY OFF THE DEBTS.

MR. TALL: YOUR HONOR, IF I MAY HAVE A MOMENT. CAN WE HAVE A BREAK FOR A FEW MINUTES?

JUDGE PADGETT: CERTAINLY.

(OFF THE RECORD.)

MR. TALL: MAY I PROCEED, YOUR HONOR.

JUDGE PADGETT: YES, SIR. YOU MAY. I BELIEVE WE ARE ALL BACK IN THE COURT ROOM NOW, MR. TALL. ARE YOU READY TO PROCEED?

MR. TALL: YES, YOUR HONOR.

MR. BOYD: YES, SIR, YOUR HONOR.

Q MS. JENE, THERE'S AN EXHIBIT THAT THE DEFENDANT'S HAVE OFFERED 5. I WOULD LIKE TO

SHOW IT TO YOU. THIS IS THE DECEDENT'S WILL. MS. JENE, WE HAVE TALKED BEFORE. IT'S IN THE SECOND PARAGRAPH TALKING ABOUT MORTGAGE DEBT. DO YOU SEE IT?

A YES.

Q LET ME HAVE YOU THINK ABOUT THAT MORTGAGE DEBT PARAGRAPH.

MR. TALL: YOUR HONOR, I HAVE AS ANOTHER EXHIBIT A LETTER DATED MAY 13, 2015 FROM MR. BRET DAVIS TO JACK SCOVILLE. I DON'T BELIEVE THERE'S AN OBJECTION. I WOULD LIKE TO OFFER THIS AS THE NEXT EXHIBIT.

JUDGE PADGETT: ANY OBJECTION?

MR. BOYD: NO OBJECTION, YOUR HONOR, EXCEPT FOR THE POSSIBLE CONCERN THAT I HAVE. THE LETTER FALLS UNDER THE CATEGORY OF SETTLEMENT COMMUNICATION, YOUR HONOR, BUT WE DON'T OBJECT TO THIS ADMISSION.

JUDGE PADGETT: THAT WILL BE EXHIBIT 21. WITHOUT OBJECTION.

Q LET ME HAVE YOU PLEASE LOOK AT THIS LETTER OR MAYBE IT'S THE FIRST THAT YOU'VE SEEN OF IT? IT'S A LETTER FROM YOUR LAWYER TO JACK SCOVILLE

IN MAY OF 2015. IS IT FAMILIAR TO YOU?

A NO.

LETTER FROM DAVIS TO SCOVILLE MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 21.

Q DO YOU HAVE ANY UNDERSTANDING THAT THE LAW FIRM WHO TOLD YOU AND OTHERS THAT THE DEBTS... MORTGAGE DEBTS HAD TO BE PAID OFF BEFORE THE ESTATE CLOSED CHANGED THAT POSITION?

A CAN YOU GIVE ME A MINUTE TO READ THIS?

Q YES, MA'AM. THANK YOU.

A THANK YOU.

Q I WONDER IF IT OCCURS TO YOU THE PROPOSAL THAT WAS OFFERED TO THE BENEFICIARIES IN DECEMBER OF 2015, IN JANUARY OF 2016, THE CLOSING PROPOSALS IN JUNE OF 2016, AND THE ONES THAT HAVE JUST BEEN FILED FEBRUARY 14? THOSE ARE FOUR DIFFERENT SITUATIONS WHERE YOU AND YOUR TEAM ARE COMMUNICATING WITH THE BENEFICIARIES, IS THAT FAIR TO SAY?

A YES.

Q IN EACH ONE OF THOSE FOUR SCENARIOS IS THERE NOT A PROPOSAL FROM THE ESTATE WHERE PROPERTY IS GOING TO BE DISTRIBUTED AND SOMEONE IS GOING TO

ACCEPT THE MORTGAGE DEBT WITHOUT IT BEING PAID OFF?

MR. BOYD: YOUR HONOR, I'M GOING TO OBJECT. IF HE'S GOING TO ASK HER ABOUT FOUR SEPARATE PROPOSALS... HE'S TALKING ABOUT FOUR PROPOSALS SPANNING MANY MONTHS. SHE'S LOOKING AT A LETTER DATED MAY THE 13TH 2015. HE'S ASKING HER TO COMMENT ON FOUR DIFFERENT DOCUMENT PACKAGES AND MAKE SOME BROAD SWEEPING STATEMENT ABOUT THEM WHICH, I DON'T THINK, IS PUTTING HER IN A FAIR POSITION.

JUDGE PADGETT: MR. TALL, IF YOU WILL POINT TO EACH ONE OF THE E-MAILS THAT YOU'RE TALKING ABOUT AND THEN ASK YOUR... REFRAME YOUR QUESTION IN THAT REGARD.

MR. TALL: I WOULD BE HAPPY TO, YOUR HONOR. YOUR HONOR, AS I AM HUNTING FOR THIS. I THINK I GOT A POSITIVE RESPONSE FROM... MAY I PAUSE, YOUR HONOR?

JUDGE PADGETT: CERTAINLY.

Q THE QUESTION IS, HAVE WE NOW MOVED TO A POINT WHERE BENEFICIARIES ARE GOING TO ASSUME DEBT AND

DEBTS NOT GOING TO BE PAID OFF? I CAN GO THROUGH FOUR DIFFERENT SCENARIOS, BUT IT'S A BASIC POINT AND I DON'T THINK IT'S --

JUDGE PADGETT: I GUESS, YOU CAN ASK IT ANOTHER WAY. THE TWO DEBTS THAT YOU MENTIONED EARLY ON, ARE THEY STILL OUTSTANDING?

Q SURE. ARE THEY STILL OUTSTANDING, MS. POAFPYBITTY?

A YES, THEY ARE.

Q YOU HAVE A PROPOSAL NOW, DO YOU NOT, FOR THE PROPERTIES TO BE DISTRIBUTED?

A YES.

Q I'M SORRY, MA'AM?

A YES.

Q PART OF THAT PROPOSAL THAT WE NOW HAVE IN FEBRUARY, IS THAT SOMEONE WHO TAKES PROPERTY SUBJECT TO THE DEBT?

A CORRECT.

Q THIS LETTER IN PARAGRAPH 2, DOES IT NOT SAY FROM THE LAW OFFICE THAT INDIVIDUALS WHO WILL TAKE PROPERTY CAN TAKE IT SUBJECT TO THE DEBT?

A YES.

Q DO YOU THINK THAT'S DIFFERENT THAN WHAT THE LAW OFFICE HAD SHARED WITH YOU IN FEBRUARY AND THAT

YOU HAD SHARED WITH THE BENEFICIARIES THAT THE ESTATE COULD NOT BE CLOSED UNLESS THE MORTGAGE DEBT WAS PAID OFF?

A YOU KNOW, THIS IS REALLY CONFUSING BECAUSE I WAS TOLD AS FAR AS READING THE WILL THAT THE DEBTS WERE SUPPOSED TO BE PAID OFF. THERE WERE TWO DEBTS. THAT'S ALL I KNOW THAT I WAS SUPPOSED TO DO.

Q ARE YOU SURPRISED THEN THAT THE SAME LAW FIRM WHO TOLD YOU THE DEBTS HAD TO BE PAID OFF ARE NOW PROPOSING TO HELP YOU CLOSE THE ESTATE WITHOUT PAYING OFF THE DEBT? IS THAT CONFUSING TO YOU?

A I ALWAYS THOUGHT THAT, YOU KNOW, I WAS SUPPOSED TO PAY OFF THE DEBTS, YES. THEN LATER ON REALIZED THAT, THAT WAS THE CASE.

Q REALIZED WHAT, MA'AM?

A THAT WAS THE CASE. THAT THEY... THAT WASN'T SUPPOSED TO BE THE WAY IT WAS WRITTEN, I GUESS. EVEN THOUGH THAT'S THE WAY I READ IT.

Q I'M NOT SURE THAT I'M FOLLOWING YOUR TESTIMONY. ARE YOU NOW UNDER AN UNDERSTANDING --

A I UNDERSTAND THAT NOW. I DID NOT UNDERSTAND THAT EARLY ON. I UNDERSTOOD THAT WAS ONE OF THE DEBTS AND THAT HAD TO BE PAID OFF. I DID NOT

UNDERSTAND THAT SUBJECT TO THE MORTGAGE, ALL THAT STUFF. I DID NOT UNDERSTAND THAT PART OF IT.

Q MR. BOYD LAST FRIDAY SAID THAT IF YOU AND THE THREE CHILDREN WERE TOGETHER YOU MIGHT NOT BE THE MOST POPULAR PERSON IN THE ROOM, I'M PARAPHRASING. DO YOU REMEMBER?

A ABSOLUTELY.

MR. BOYD: YOUR HONOR, I OBJECT. I HAVE NOT TESTIFIED IN THIS CASE AND HE SHOULDN'T CITE ARGUMENT. THAT'S ABSURD.

JUDGE PADGETT: LET'S DON'T... ASK HER A QUESTION RATHER THAN PINNING SOMEONE AGAINST ANOTHER, MR. TALL.

MR. TALL: I DON'T MEAN TO DO THAT, YOUR HONOR.

Q DO YOU HAVE AN IMPRESSION THAT THE THREE CHILDREN BENEFICIARIES ARE UPSET WITH YOU?

A YES.

Q HOW ABOUT THAT THEY HEARD FROM YOU THAT THE ESTATE HAS TO BE OPEN FOR A CONSIDERABLE PERIOD OF TIME AND DEBTS HAVE TO BE PAID OFF AND THEN HEARD THAT THERE'S A WAY TO CLOSING THE ESTATE WITHOUT DOING THAT, COULD THAT BE AN EXPLANATION?

A I HAVE NEVER HEARD THE PHRASE THAT THE ESTATE HAS TO BE OPEN FOR A LONG PERIOD OF TIME. I WAS TRYING TO CLOSE IT JUST AS FAST AS I COULD BY SELLING THE PROPERTIES AND DISBURSING THE MONEY AND PAYING OFF THE DEBTS.

Q WELL, THERE'S NO PREDICTION AS TO HOW LONG IT TAKES TO SELL OFF THE PROPERTIES, IS THERE?

A NO, THERE ISN'T. AND WHEN YOU HAVE 12 PROPERTIES, YOU KNOW, THERE IS NO PREDICTION.

Q HOW ABOUT THE ANDOVER DRIVE PROPERTY, IS THAT LADY STILL INTERESTED... A YEAR AGO SHE WAS STILL INTERESTED IN TRYING TO PURCHASE THE PROPERTY --

A YES, SHE IS STILL --

Q I HAVEN'T FINISHED MY QUESTION. IS THAT LADY STILL INTERESTED IN TRYING TO PURCHASE THE PROPERTY?

A YES, SHE IS.

Q IS THAT AN EXAMPLE OF HOW YOU'RE NOT QUITE SURE WHAT'S GOING TO HAPPEN NEXT?

A I HAVE WITHDRAWN THE OFFER OF THAT PROPERTY. SHE STILL WANTS TO BUY IT. SHE HASN'T BEEN ABLE TO GET HER FINANCING BECAUSE HER IDENTITY WAS STOLEN. SHE'S BEEN TRYING TO GET THAT STRAIGHTENED OUT FOR QUITE A WHILE. BUT SHE IS

STILL INTERESTED.

Q IS IT A FAIR STATEMENT THAT IF YOU WERE CONFUSED ABOUT THE OBLIGATIONS IN HANDLING THE DEBT THEN THE CHILDREN WHO WERE RELYING UPON YOU ALSO BECOME CONFUSED?

A I SUPPOSE.

Q YOU REALIZE THAT MR. SCOVILLE, AN ATTORNEY WAS HIRED BY THREE BENEFICIARIES? DID YOU UNDERSTAND THAT?

A YES.

Q AND AS A RESULT OF SOME COMMUNICATIONS IN OCTOBER OF 2015, THERE WAS A PROPOSAL TO VALUE, TO APPRAISE PROPERTIES?

A CORRECT.

Q HOW DID YOU COME ABOUT REACHING AN APPRAISAL ASSOCIATED WITH THE INVENTORIES THAT ARE FILED IN THE PROBATE COURT?

A THEY WERE APPRAISED.

Q WELL, THE INVENTORIES, IF I'M UNDERSTANDING CORRECTLY, WERE FILED WITH THE COURT PRIOR TO OCTOBER AND NOVEMBER 2015 APPRAISALS OR MAYBE I'M MISTAKEN.

A OKAY. YOU MEAN THE INITIAL... OKAY. WELL, THEY WERE... EVERYTHING WAS... THE TAX MAP AMOUNT WAS USED FOR THE VALUE OF THE PROPERTIES.

Q THAT'S WHAT YOU USED, MA'AM?

A THAT'S WHAT THE LAW FIRM USED IN ORDER TO PUT A FIGURE ON ALL THE PROPERTIES. THE TAX MAP FIGURES THAT ARE FOR HORRY COUNTY.

Q DID ANYONE SUGGEST MAYBE HAVING AN APPRAISAL OF PROPERTIES MIGHT BE A GOOD IDEA?

A NO.

Q HAVE YOU HAD EXPERIENCE THAT SOMETIMES THE TAX ASSESSED VALUE WITH THE COUNTY DOESN'T REFLECT THE PROPER VALUE OF AN ASSET?

A I KNOW THAT NOW BECAUSE THE TAX MAP VALUE OF THE HOUSE IS SO OVER THE TOP. IT'S...

Q I'M SORRY, DEAR?

A THE TAX MAP AMOUNT IS WAY MORE THAN THE PROPERTY IS WORTH, IN MY OPINION.

Q WHICH PROPERTY ARE YOU SPEAKING OF?

A THE PROPERTY AT 1529 CROOKED PINE.

Q DID YOU HAVE AN OBJECTION TO THE IDEA OF GETTING PROPERTY APPRAISALS IN OCTOBER 2015?

A OF COURSE NOT.

Q WHY DO YOU SAY, "OF COURSE NOT"?

A I DID NOT HAVE ANY OBJECTION.

Q YOU SAID, "OF COURSE NOT" --

A I DID NOT THINK IT WAS NECESSARY. BUT, I MEAN, IF IT WAS REQUESTED THEN THAT WAS FINE WITH ME.

Q ALRIGHT. DID YOU HAVE ANY UNDERSTANDING THAT THE VALUE PRESENTED BY THESE APPRAISALS WOULD BIND THE BENEFICIARIES IN AN AGREEMENT? IF YOU WERE NOT FOLLOWING MY QUESTION I WILL --

A I DON'T KNOW. I MEAN, I DON'T KNOW. I MEAN, THE PROPERTY WAS APPRAISED AND THAT WAS THE VALUE THAT WAS PUT ON IT AS FAR AS I UNDERSTOOD. THAT WAS THE PURPOSE OF AN APPRAISAL.

Q SURE. TO GET A PROFESSIONAL'S OPINION?

A YES.

Q DID YOU HAVE ANY UNDERSTANDING THAT ONCE THE PROFESSIONALS GAVE AN OPINION, THERE WERE NO MORE QUESTIONS TO BE ASKED BY ANY OF THE FOUR PARTIES INCLUDING YOURSELF?

MR. BOYD: YOUR HONOR, I OBJECT TO THE FORM THE QUESTION. HE'S ASKED HER THIS AND I THINK SHE'S TESTIFIED THAT SHE DOESN'T KNOW.

JUDGE PADGETT: REPHRASE YOUR QUESTION. I'M CONFUSED ABOUT THE QUESTION MYSELF.

Q THE APPRAISALS WERE ORDERED?

A RIGHT.

Q NO DOUBT, THE SUGGESTION CAME FROM THE CHILDREN'S ATTORNEY?

A RIGHT.

Q MY QUESTION TO YOU IS... MAYBE YOU HAD AN UNDERSTANDING OR NOT, IF THE APPRAISER SAID A CERTAIN PROPERTY IS WORTH A CERTAIN AMOUNT, COULD THERE BE ANY DISCUSSIONS AMONG THE FOUR BENEFICIARIES ADDITIONAL QUESTIONS ABOUT WHAT THE APPRAISER DID OR HOW HE REACHED HIS VALUE OR IF THE VALUE WAS FAIR?

A I DON'T KNOW. I ASSUME THAT WHATEVER HE SAID IT WAS APPRAISED AT WAS THE CORRECT AMOUNT. I MEAN, HE'S A PROFESSIONAL.

Q ALRIGHT.

MR. TALL: YOUR HONOR, I AM PROPOSING AS THE NEXT EXHIBIT AN AFFIDAVIT OF MS. JENE THAT WAS GIVEN IN OCTOBER OF 2016. OCTOBER 26. IT IS A MATTER THAT'S ALREADY IN THE COURT FILE, BUT I'M PROPOSING IT AS AN EXHIBIT.

JUDGE PADGETT: ANY OBJECTION MR. BOYD?

MR. BOYD: NO OBJECTION, YOUR HONOR. WHAT EXHIBIT WOULD THAT BE?

JUDGE PADGETT: WOULD BE EXHIBIT 22.

Q MS. JENE, I'M OFFERING YOU EXHIBIT 22 AND ASK IF YOU COULD PLEASE IDENTIFY IT?

A IT'S AN AFFIDAVIT.

Q IS THAT YOUR AFFIDAVIT?

A YES.

AFFIDAVIT FROM MS. JENE MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 22.

Q WHAT WAS THE PURPOSE FOR OFFERING THIS AFFIDAVIT, MS. JENE?

A PROBABLY AS A RESPONSE TO SOMETHING THAT YOU FILED. ONE OF THE MANY THINGS THAT YOU FILED.

Q I WILL ASK YOU TO LOOK ON PAGE 4 OF THE AFFIDAVIT, PARAGRAPH 12, AND YOU HAVE DESCRIBED, HAVE YOU NOT, MS. IRVING ASKING YOU TO JUMP THROUGH HOOPS?

A OKAY.

Q IS THAT YOUR FEELING TODAY?

A IT'S BEEN MY FEELING. YES, SIR.

Q WHAT HAS SHE FORCED YOU TO DO REGARDING THIS APPRAISAL?

A THE APPRAISER THAT ORIGINALLY APPRAISED THE PROPERTY.

Q YES, MA'AM?

A HE CAME IN AND LOOKED AROUND AND FROM THE LOOK ON HIS FACE WAS ASTONISHED ABOUT THE DISREPAIR THAT THE PROPERTY WAS IN.

Q HOW ABOUT IF I ASK YOU TO LOOK AT PARAGRAPH 10

ON PAGE 3 OF YOUR AFFIDAVIT?

A OKAY.

Q IS THAT A FAIR ASSESSMENT?

A UH-HUH. (AFFIRMATIVE RESPONSE.) SO, AFTER THE APPRAISER APPRAISED THE PROPERTY THEN I BELIEVE SHE THOUGHT IT WAS... AND YOU THOUGHT IT WERE TO LOW AN AMOUNT. AND YOU WANTED YOUR OWN APPRAISER TO COME IN AND APPRAISE THE PROPERTY.

Q LET'S TALK ABOUT THE LAST PART OF 2015 AND JANUARY OF 2016. DID YOU HEAR FROM MR. TALL? I FILED A LAWSUIT IN APRIL OF 2016.

A I KNOW YOU FILED SO MANY THINGS I HAVE LOST TRACK.

Q SORRY, DEAR?

A I SAID, YOU HAVE FILED SO MANY THINGS I HAVE LOST TRACK.

Q OKAY. FAIR ANSWER.

A SO, WHAT IS YOUR QUESTION?

Q WHAT ABOUT WHERE THE APPRAISER SAYS AND YOU HAVE REPORTED IT IN YOUR AFFIDAVIT, "THE MARITAL RESIDENCE WAS IN VERY POOR CONDITION WITH A ROOF THAT HAD BEEN LEAKING AND IN TURN CAUSED A MOLD INFESTATION IN THE HOUSE."

A CORRECT. SO, WHAT IS YOUR QUESTION?

Q DO YOU STILL STAND BY THAT STATEMENT?

A ABSOLUTELY.

Q YOU HAVE GIVEN THE IMPRESSION TO THE BENEFICIARIES, HAVE YOU NOT, THAT HOUSE WAS IN SHAMBLES?

A IT WAS IN BAD CONDITION.

Q WHEN MR. CROMARTIE CAME IN AND APPRAISED IT?

A YES.

Q AND AT THE TIME WHEN HE CAME AND APPRAISED IT, IT HAD A BRAND NEW $12,000 ROOF ON IT, DID IT NOT?

A THAT'S BECAUSE IT WAS JUST DONE. THE DAMAGE WAS ALREADY DONE, YOU KNOW, IN EXISTENCE. THE ROOF HAD TO BE PUT ON SO THAT THE DAMAGE WOULD NOT CONTINUE.

Q SO, IT'S YOUR POSITION THAT, THAT PROPERTY WOULD HAVE BEEN WORTH LESS THAN $95,000.00 PRIOR TO THE ROOF BEING PUT ON IT?

A NO. THAT'S WHAT HE APPRAISED IT AT WITH THE ROOF BEING PUT ON IT. THE ROOF NEEDED TO BE REPLACED BECAUSE IT WAS LEAKING.

Q YES, MA'AM.

A MY HUSBAND PUT A BAND-AID ON THINGS. HE NEVER REALLY REPAIRED THINGS CORRECTLY. HE DID IT AS CHEAPLY AS POSSIBLE AND THEN WHEN IT HAPPENED AGAIN HE WOULD GET SOMEBODY ELSE TO RE-DO

WHATEVER THE PROBLEM WAS. SO, WHEN I GOT ALL THE MOLD STARTING TO COME IN FROM THE LEAKS THROUGH THE CEILING THAT'S WHEN SOMETHING HAD TO BE DONE.

Q YES, MA'AM.

A I WENT TO... SOMEONE TOLD ME, A FRIEND OF MINE TOLD ME THAT SOUTH CAROLINA HAS SOME KIND OF PROGRAM THAT IF YOU PUT YOUR NAME ON A LIST AND THEY COME OUT THAT YOU CAN HAVE THEM, YOU KNOW, THE COUNTY OR THE STATE OF SOUTH CAROLINA WILL PAY FOR HALF OF IT AND YOU PAY FOR THE OTHER HALF. AND SO, I DID THAT IN ORDER TO SAVE MONEY AND NOT, YOU KNOW, HAVE TO SPEND A LOT OF MONEY. WELL, I DIDN'T REALIZE WHEN I WAS NOT CONTACTED MONTH AFTER MONTH, I KEPT LISTENING AND WAITING FOR THE PHONE AND WAITING FOR SOME KIND OF RESPONSE AND SOMEBODY CAME OUT AND LOOKED AT IT AND SAID, "OKAY, YOU KNOW, WE'LL GET THIS IN PROCESS." AND I NEVER HEARD ANYTHING ANY MORE AND IN THE MEANTIME, WE WERE GETTING THESE RAINS AND THE ROOF WAS LEAKING MORE AND I WAS GETTING MORE AND MORE DAMAGE IN THE CEILINGS. ONE WHOLE WALL IN THE SUN ROOM... HALF OF THE WALL WAS DETERIORATING BECAUSE OF THE WATER THAT WAS COMING DOWN. AND SO FINALLY, I CALLED THEM AND

I SAID, YOU KNOW, "I'VE BEEN ON A LIST, BUT I'VE HEARD ANYTHING." AND THEY SAID, "YOU'RE STILL ON THE LIST. THE LIST IS QUITE LONG." I HAD NO IDEA IT WAS HUNDREDS OF PEOPLE ON THE LIST. I SAID, YOU KNOW, "I CAN'T WAIT ANY LONGER. I HAVE TO CONTACT SOMEBODY TO GET HIS ROOF REPAIRED BECAUSE IT WAS CAUSING MORE AND MORE DAMAGE INSIDE THE HOUSE." PLUS THERE WERE MOLD IN THE CEILING, BLACK MOLD, THAT I WAS BREATHING EVERY DAY AND SOMEBODY TOLD ME THAT WAS DANGEROUS FOR MY HEALTH. AND SO, THAT'S WHEN I DECIDED, YOU KNOW, THE ROOF NEEDS TO BE REPAIRED. WELL, WHEN THE ROOF WAS REPAIRED THEN THEY DISCOVERED THAT ALL THE INSULATION IN THE ATTIC WAS ALL WET AND THAT WAS CAUSING THE MOISTURE TO COME THROUGH THE CEILINGS AND CREATE THE WATER AND THE MOISTURE AND THE BLACK MOLD.

MR. TALL: YOUR HONOR, I'M AWARE THAT I ASKED THE QUESTION, BUT I THINK THAT WE'RE NOT HAVING EXPERTS HERE TO TALK ABOUT THE MOLD. I'M NOT SURE WHO WE ARE SPEAKING ABOUT ON THIS SPECIFICS SUBJECT.

A I'M JUST TELLING YOU WHAT HAPPENED. YOU ASKED ME WHAT HAPPENED. I'M ANSWERING YOUR QUESTION.

THAT'S WHY WHEN HE CAME IN AND SAW THE BLACK MOLD AND THE LEAKS AND THE WATER DAMAGE INSIDE, EVEN THOUGH THE ROOF HAD BEEN REPAIRED, EVERYTHING ELSE WAS STILL IN DISREPAIR INSIDE BECAUSE THAT HAD NOT BEEN DONE YET. I MEAN, I JUST, YOU KNOW, FITTED THE FIRST INITIAL PROBLEM TO STOP THAT FROM CONTINUING.

Q AFTER THE APPRAISAL TOOK PLACE YOU ALSO SPENT MONEY ON MOLD REMEDIATION?

A YES.

Q WE ASKED YOU AT YOUR DEPOSITION IN NOVEMBER WHETHER THE HOUSE HAD BEEN REPAIRED?

A THE CEILINGS HAD BEEN... THE MOLD HAD BEEN REMEDIATED. THE CEILINGS HAD BEEN, YOU KNOW, RE-DONE. THERE'S STILL --

Q THE ANSWER IS YES?

A THERE IS STILL WATER DAMAGE. THERE IS STILL PAINTING TO BE DONE, BUT THAT HAD BEEN DONE, YES.

Q I THINK YOU MENTIONED WHEN WE ASKED YOU WHAT WAS STILL NEEDED TO BE DONE, YOU MENTIONED A COUPLE OF BOARDS? FAIR STATEMENT FROM YOUR DEPOSITION?

A THEY ARE BOARDS ON THE OUTSIDE OF THE HOUSE THAT NEED TO BE REPLACED.

Q YES, MA'AM.

A AND THERE IS WALL RE-PAINTING THAT NEEDS TO BE DONE IN SEVERAL PLACES INSIDE WHERE THE DRYWALL HAD TO BE TAKEN OUT AND REPLACED BECAUSE OF THE WATER DAMAGE FROM THE WATER COMING DOWN THE WALLS.

Q OKAY.

A SO, THE BOARDS ON THE OUTSIDE, THAT'S JUST AN ADDITIONAL, SOMETHING THAT DOESN'T, YOU KNOW, GET INTO THE INSIDE.

Q LET ME ASK YOU THIS AND IT HAS TO DO WITH YOUR DUTIES AS BEING THE ADMINISTRATOR OF THE ESTATE. WHAT IF THE BENEFICIARY SAYS EVEN TODAY, EVEN WITH A PROPOSAL TO CLOSE THE ESTATE ADMINISTRATION AND END THIS, YOU ARE NOT ON RECORD, MS. JENE, OF TELLING THE COURT WHAT YOU THINK THE VALUE OF THE CROOKED PINE PROPERTY IS. IS THAT A FAIR STATEMENT?

MR. BOYD: OBJECTION, YOUR HONOR. SHE HAS INDICATED IN MULTIPLE FILINGS THE EVALUATION FOR THE PROPERTY.

MR. TALL: THE WITNESS CAN ANSWER, YOUR HONOR.

JUDGE PADGETT: WHY DON'T YOU JUST ANSWER THE QUESTION. WHAT DO YOU THINK THE VALUE OF THE PROPERTY IS NOW?

MR. TALL: THIS GOES TO PART OF THIS, YOUR HONOR, BECAUSE WE HEAR THAT PROPERTIES HAVE TO BE SOLD. DEBTS HAVE TO BE PAID OFF. DEBTS DON'T HAVE TO BE PAID OFF. THE FINAL PROPOSAL WHICH CALLS THIS PROPERTY $193,000.00 DOES NOT BEAR MS. JENE SIGNATURE. IT'S NOT EVEN SIGNED BY THE LAW FIRM FOR JENE POAFPYBITTY. I BELIEVE THAT THE FRUSTRATION FROM THE BENEFICIARIES IS THERE'S A SHELL GAME. YOU CAN'T TALK TO THE PERSONAL REPRESENTATIVE. SHE SAYS, "WELL, YOU HAVE TO DO EVERYTHING THROUGH THE LAWYERS." THEN THE LAWYERS ARE CRITICIZED FOR BEING TOO FORMAL AND CREATIVE BECAUSE THAT'S THE ONLY WAY YOU GET INFORMATION.

Q MS. JENE, YOU HAVEN'T TOLD THE COURT, HAVE YOU, TO THIS DATE WHAT YOU THINK THE VALUE OF THE PROPERTY IS?

A NOBODY ASKED ME.

MR. BOYD: YOUR HONOR, I'M GOING TO RENEW MY OBJECTION. THE PLEADINGS ARE WHAT THE PLEADINGS ARE. THEY SPEAK FOR THEMSELVES. SHE HAS SUBMITTED MULTIPLE

VALUE TO THE COURT.

Q I WILL BE VERY SPECIFIC. DO YOU THINK THAT PROPERTY IS WORTH $193,000.00, MS. JENE?

A NO. NO, I DON'T.

Q HOW DID YOU LET YOUR LAW FIRM PUT IN PLEADINGS THAT INDICATING THAT IS THE VALUE?

A BECAUSE THAT'S WHAT YOUR APPRAISER, WHO IS A PROFESSIONAL, APPRAISED THE PROPERTY AT. SO, IF THAT'S WHAT HE APPRAISED THE PROPERTY AT, THEN THAT'S THE FIGURE THAT SHOULD BE PUT DOWN THERE ACCORDING TO WHAT YOUR EXPERT SAID. I DON'T KNOW ANYTHING ABOUT APPRAISERS AND APPRAISALS. YOU HAVE AN EXPERT THAT DID THE APPRAISAL. SO, IF THAT'S WHAT HE SAID, THEN I WILL GO ALONG WITH WHAT HE SAID.

Q YOU WILL FILE A PLEADING UNDER OATH IN FRONT OF A NOTARY?

MR. BOYD: OBJECTION, YOUR HONOR. HE'S BADGERING HER WHEN THE DOCUMENTS SPEAK FOR THEMSELVES AND SHE HAS JUST EXPLAINED WHY THE EVALUATION IS THERE.

JUDGE PADGETT: IN THE DOCUMENTS THAT WERE FILED IN JUNE OF LAST YEAR, WHERE THEY WERE SIGNED BY THE PR AND WERE THEY SIGNED BY YOU?