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SC Court of Appeals

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 II R0501-1000

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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

MR. BOYD: I CAN CONFIRM THAT, YOUR HONOR. GIVE ME ONE SECOND.

JUDGE PADGETT: IF YOU WILL PLEASE.

MR. BOYD: MAY I APPROACH, YOUR HONOR?

JUDGE PADGETT: CERTAINLY. ALL COUNSEL APPROACH.

MR. BOYD: IT APPEARS, YOUR HONOR, THAT IT WAS SIGNED BY MR. DAVIS ON BEHALF OF... THEY ARE ALL SIGNED BY MR. DAVIS.

MR. DAVIS: YOUR HONOR, IN JUNE WE SUBMITTED THE CLOSING DOCUMENTS SO THAT MS. POAFPYBITTY WOULD GET THE EVALUATION FROM WHEN MR. CROMARTIE APPRAISED IT.

JUDGE PADGETT: WHICH WAS THE 95,000.00?

MR. DAVIS: WE CHARGED HER FOR THE REPAIR. SO, IT'S ACTUALLY MORE THAN 95,000.00. SHE'S GETTING CHARGED FOR THE REPAIRS TOO, WHICH IS THE ONLY WAY TO DO IT. THEN MR. TALL SHARED ABOUT THAT ONE PROPERTY AND SAID, "NO, IT'S WORTH 193,000.00." MS. POAFPYBITTY SAY, "WAIT A MINUTE. IT'S NOT WORTH THAT."

JUDGE PADGETT: I UNDERSTAND. I THINK THAT'S PRETTY CLEAR AS TO WHY SHE DID THAT. WHETHER THAT'S APPROPRIATE OR NOT

IS WHAT I'VE GOT TO DECIDE, BUT THAT IS THE LAST DOCUMENT AS TO WHAT THE VALUATION OF THE PROPERTY IS?

MR. BOYD: THERE IS A SUBSEQUENT EVALUATION, YOUR HONOR, BECAUSE THE COURT ORDERED US TO UPDATE THE EVALUATION. MR. DAVIS JUST SAID IF IT'S AN ISSUE, IF YOU DON'T LIKE OUR EVALUATION, TAKE THE PROPERTY. TAKE IT AT YOUR EVALUATION.

MR. DAVIS: WE DON'T KNOW WHAT ELSE TO DO.

JUDGE PADGETT: I UNDERSTAND THAT, BUT HAS ANOTHER OFFICIAL DOCUMENT --

MR. BOYD: YES. THAT'S THE MOTION --

JUDGE PADGETT: -- BEING FILED AND SIGNED BY THE PR?

MR. DAVIS: IT'S NOT SIGNED BY THE PR.

JUDGE PADGETT: SIGNED BY YOU ON THE BEHALF OF THE ESTATE, YES. IS THAT THE ONE WAS FILED IN FEBRUARY?

MR. DAVIS: THE LAST ONE THAT WAS FILED.

JUDGE PADGETT: AND THE EVALUATION THERE IS 193,000.00?

MR. BOYD: THAT'S CORRECT.

JUDGE PADGETT: THIS'S DEDUCTIONS AND THE IMPROVEMENTS THAT WERE MADE?

MR. DAVIS: YES. WE TOOK ALL THAT INTO ACCOUNT. THIS THING ABOUT THE DISCUSSIONS ABOUT JACK SCOVILLE AND ALL THAT, THAT WAS ALL PART OF THE SETTLEMENT THAT WE TALKED TO MR. SCOVILLE ABOUT. HE KEEPS HAMMERING THIS THING, BUT THAT WAS ALL RELATED TO THE SETTLEMENT. THAT WAS SETTLEMENT STUFF.

JUDGE PADGETT: I UNDERSTAND. ALRIGHT.

MR. TALL, ASK HER IN HER OPINION, IS THE PR OF THIS ESTATE TODAY FEBRUARY 24TH 2017, WHAT SHE THINKS THE VALUE OF THAT PROPERTY IS?

MR. TALL: THANK YOU, YOUR HONOR.

Q MS. JENE, WHAT DO YOU THINK THE VALUE OF THE CROOKED PINE PROPERTY IS?

A WHENEVER YOUR APPRAISER SAYS IT WAS. HE'S THE EXPERT. I'M NOT AN EXPERT. I'M JUST A LAYPERSON SO I DON'T KNOW.

Q DO YOU KNOW THAT YOU HAVE AN OBLIGATION AS PERSONAL REPRESENTATIVE OF THE ESTATE TO TELL THE COURT WHAT YOU THINK THE VALUE IS?

A I THINK THE VALUE IS WHATEVER THE APPRAISER SAID

IT WAS.

Q WHEN WE TOOK YOUR DEPOSITION IN NOVEMBER, DIDN'T YOU CALL A NUMBER LIKE THAT CRAZY?

A AT THE TIME, I DID BECAUSE I THOUGHT, YOU KNOW, I DON'T KNOW, THERE'S STILL SOME DAMAGE. SO, THERE'S STILL SOME PAINTING THAT NEEDS TO BE DONE, BUT I MEAN, WHO AM I TO SAY?

Q I'M SORRY.

A WHO AM I TO SAY? I MEAN, I'M NOT AN EXPERT.

Q YOU ARE SOMEONE WHO'S ASKING FOR A COMMISSION FROM THE COURT FOR DOING A PRIOR JOB. YOU HAVE USED TERMS LIKE DILIGENT AND EFFICIENT, HAVE YOU NOT?

A YES. I HAVE TRIED TO BE EFFICIENT.

Q THAT WAS A PROPERTY THAT YOU SAID WAS SUPPOSED TO COME TO YOU? YOU HAVE ALWAYS LOOKED FOR THAT PROPERTY TO BE DISTRIBUTED TO YOU?

MR. BOYD: YOUR HONOR, I WILL OBJECT.

IN THE LAST VERSION THAT WE SUBMITTED, THE PROPOSAL FOR DISTRIBUTION, SHE DIDN'T TAKE THE PROPERTIES. SO, HE'S MISCHARACTERIZING HER POSITION.

MR. TALL: OH, I'M NOT, YOUR HONOR. WE CAN LOOK AT THE DEPOSITION AND OTHER THINGS WHERE MS. POAFPYBITTY HAS SAID

THAT PROPERTY WAS ALWAYS COMING TO ME.
AND SHE CAN CHANGE HER MIND AND SHE CAN
RESPOND. SHE DOESN'T NEED MR. BOYD TO
RESPOND FOR HER.

JUDGE PADGETT: YOU CAN ASK HER A
QUESTION, ON THE DATE OF HER DEPOSITION
IF SHE REMEMBERS THE DEPOSITION THE DATE
WHEN IT WAS, WHAT WAS YOUR RESPONSE IN
REGARD TO WHETHER OR NOT YOU WANTED THIS
PROPERTY OR DID NOT WANT THIS PROPERTY.

Q WHAT ABOUT IN NOVEMBER OF 2016, DO YOU RECALL
TELLING OR RESPONDING THAT, THAT WAS THE
PROPERTY THAT WAS ALWAYS GOING TO BE YOURS?

A I RESPONDED THAT THAT'S WHAT EVERYBODY FELT
THAT, YEAH. IT WAS GOING TO BE MINE.

Q ARE YOU BEING PUSHED AROUND BY OTHER PEOPLE OR
DO YOU HAVE A --

A NO. IT WAS ALWAYS A CONSISTENT...

Q HOW ABOUT IN THE LETTER THAT CAME FROM MR.
SCOVILLE TO PROPOSE APPRAISALS? DID HE NOT SAY
THAT WE'VE HEARD FROM YOUR LAW FIRM THAT THE
RESIDENCE IS TO BE MS. JENE'S?

A I DON'T REMEMBER.

MR. TALL: EXCUSE ME ONE SECOND, YOUR
HONOR. I WILL HAVE TO RETURN TO THAT AT

ANOTHER MOMENT.

JUDGE PADGETT: ALRIGHT.

Q IS IT FAIR TO SAY, MS. JENE, THAT IF THERE'S A VALUE THAT YOU ARE COMFORTABLE WITH, YOU WANT TO TAKE THE PROPERTY? IF THERE'S ANOTHER VALUE YOU NO LONGER WANT TO TAKE THE PROPERTY?

A NO. I DON'T WANT TO TAKE THE PROPERTY PERIOD.

Q WHAT'S CHANGED --

A I JUST WANT TO GO ON WITH MY LIFE AND GET THIS BEHIND ME. NO. I JUST... I'M JUST... I'M UPSET. I'M HURT. YOU KNOW, I JUST WANT IT TO END.

Q WHAT DO YOU THINK ABOUT THE CHILDREN BENEFICIARIES, DO YOU THINK THEY WANT IT TO GO ON?

A OF COURSE NOT.

Q SO, YOU'RE NOT THE ONLY ONE WHO WANTS AN END TO THIS?

A OF COURSE NOT. I DIDN'T WANT IT TO LAST THIS LONG. BUT ONCE MY HANDS WERE TIED, YOU KNOW, I DON'T KNOW. I WAS GOING TO SELL THE PROPERTIES AND PUT THE MONEY IN THE BANK AND, YOU KNOW, JUST DIVIDE EVERYTHING AND SPEAK TO THEM ABOUT HOW THEY WANTED TO DO IT. AND I WASN'T ABLE TO DO ANYTHING.

Q MAY I KNOW, JENE, WHO IS THE PERSON JEFF IRVING?

A HE'S A HEAT AND AIR CONDITIONING COMPANY IN GARDEN CITY WHO WE HAVE DEALT WITH FOR YEARS AND WHO HAVE DONE ALL OUR AIR CONDITIONING PROBLEMS/REPAIRS.

Q ALRIGHT.

A I HAVE REALLY GOOD PEOPLE TO MAKE REPAIRS AS FAR AS PLUMBING AND AIR CONDITIONING.

Q MS. JENE, ARE YOU FAMILIAR WITH THE FILING OF AN INTERIM ACCOUNTING WITH THE PROBATE COURT IN 2015?

A I BELIEVE SO.

MR. TALL: ANOTHER MOMENT, YOUR HONOR.

JUDGE PADGETT: CERTAINLY.

MR. TALL: YOUR HONOR, THIS IS PART OF THE COURT'S FILE. IT'S AN INTERIM ACCOUNTING FILED IN SEPTEMBER OF 2015.

MR. TALL: ANY OBJECTION, MR. BOYD?

MR. BOYD: NO OBJECTION.

JUDGE PADGETT: THIS WILL BE 23.

MR. TALL: YOUR HONOR, A COPY FOR YOU TO REVIEW.

Q MS. JENE, DO YOU RECOGNIZE THE FORM?

A YES.

Q TELL ME WHAT YOU RECOGNIZE ABOUT IT?

A ALL THE PROPERTIES ARE LISTED, EVERYTHING IS LISTED.

INTERIM ACCOUNTING MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 23.

Q CAN YOU TELL FROM THE INTERIM ACCOUNTING, WHAT FUNDS ARE LEFT AT THE TIME OF FILING THIS INTERIM ACCOUNT?

A WHAT FUNDS ARE LEFT?

Q YES, MA'AM. DOES THIS ACCOUNTING TELL ANYBODY WHO IS TAKING A LOOK AND WONDERING WHAT'S HAPPENED AFTER A YEAR AND A HALF AT THE ADMINISTRATION, WHAT KIND OF --

A YOU MEAN THE TOTAL AT THE BOTTOM? IS THAT WHAT YOU'RE TALKING ABOUT?

Q THE TOTAL AT THE BOTTOM HAS THE VALUE OF ALL THE PROPERTIES, DOES IT NOT? DOES IT TELL US HOW MUCH CASH IS IN THE BANK AT THE TIME?

A 99,131.

Q AT THAT TIME, ONCE AGAIN, YOU CONSIDERED THAT YOU WERE GOING TO SELL ADDITIONAL PROPERTIES IN ORDER TO PAY OFF DEBT?

A YES.

Q HOW MUCH DOES IT SAY IN THIS INTERIM ACCOUNTING

ABOUT LEGAL FEES?

A (NO RESPONSE.)

Q HOW ABOUT ON PAGE 2 AT THE BOTTOM?

A 4,950.

MR. TALL: YOUR HONOR, I WILL OFFER IT AS AN EXHIBIT IF THE COURT PREFERS, BUT I HAVE IN MY HAND A COPY OF THE LEGAL BILLINGS THAT WERE SUBMITTED TO THE COURT IN JULY OF 2016.

JUDGE PADGETT: ANY OBJECTION, MR. BOYD?

MR. BOYD: I DON'T UNDERSTAND WAS COUNSEL MAKING A STATEMENT, YOUR HONOR? IS HE OFFERING IT AS AN EXHIBIT?

MR. TALL: I DON'T FEEL THE NEED TO, YOUR HONOR. IF WE WILL MAKE REFERENCE TO WHAT'S ALREADY IN THE COURT FILE, BUT I WILL DO IT ONE WAY OR THE OTHER.

JUDGE PADGETT: I THINK FOR PURPOSES IF EITHER SIDE NEEDS AN APPEAL, WE NEED TO MAKE IT AN EXHIBIT.

MR. BOYD: YOUR HONOR, IF IT WOULD PLEASE THE COURT, RATHER THAN HAVE OUR ACTUAL BILLS ENTERED INTO THE RECORD, IF WE COULD STIPULATE THAT WE WILL PREPARE A SUMMARY OF WHAT THE AMOUNTS WERE. I

SUPPOSE THERE...

MR. DAVIS: CAN WE STIPULATE TO THE
AMOUNT, YOUR HONOR?

MR. TALL: THAT WILL BE FINE WITH ME.

JUDGE PADGETT: WE WILL ADMIT THAT AS AN
EXHIBIT, BUT I WILL ALLOW YOU TO
STIPULATE. THAT WILL BE IN EXHIBIT 24.
IT IS A SUMMARY OF THE TOTAL LEGAL FEES
TO BE SUBMITTED TO THE COURT BY MR.
BOYD, IS THAT CORRECT?

MR. BOYD: YES.

JUDGE PADGETT: THAT IS AS OF JULY,
2016, CORRECT?

LEGAL FEES FROM BOYD AND DAVIS
MARKED FOR IDENTIFICATION AND
INTRODUCED INTO EVIDENCE AS
PLAINTIFF'S EXHIBIT 24.

MR. BOYD: YOUR HONOR, THESE BILLS RUN
JULY... BILLS IN THIS DOCUMENT ARE DATED
2/28/14 THROUGH JUNE THE 2ND... BEAR
WITH ME, YOUR HONOR.

MR. DAVIS: CAN WE BREAK FOR LUNCH?
IT'S 12:30?

JUDGE PADGETT: AT 12:30 RIGHT?

MR. BOYD: CAN WE TAKE A 10 MINUTE BREAK

SO I CAN DISCUSS WITH COUNSEL?

JUDGE PADGETT: SURE.

(DISCUSSION OFF THE RECORD.)

JUDGE PADGETT: ARE WE READY TO PROCEED,
MR. TALL?

MR. BOYD: YES, YOUR HONOR.

JUDGE PADGETT: MR. BOYD, DID Y'ALL
ARRIVE AT A FIGURE?

MR. BOYD: WE DID, YOUR HONOR.

JUDGE PADGETT: HAS THAT BEEN HANDED UP
AS AN EXHIBIT OR PUT ON A SHEET OF
PAPER, HOWEVER YOU WANT TO MOVE.

MR. TALL: I THINK WE CAN, YOUR HONOR.

JUDGE PADGETT: VERY GOOD. THAT WILL BE
EXHIBIT 24 WITHOUT OBJECTION.

ATTORNEY FEES FROM DAVIS AND
BOYD MARKED FOR IDENTIFICATION
AND INTRODUCED INTO EVIDENCE
AS PLAINTIFF'S EXHIBIT 24.

MR. TALL: ACTUALLY, YOUR HONOR, WE ARE
STIPULATING BETWEEN COUNSELS THAT WE
HAVE OVER \$15,000.00 WORTH OF EXPENSES
IN LEGAL FEES.

JUDGE PADGETT: \$15,822.42 PLAINTIFF'S
EXHIBIT 24? THAT IS FROM FEBRUARY 28TH

'14 THROUGH SEPTEMBER 1ST 2015.

MR. TALL: THANK YOU, YOUR HONOR.

Q MS. JENE, IF WE ASK YOU PLEASE TO LOOK ON PAGE 2 OR THE 3 PAGE INTERIM ACCOUNTING WHERE IT SHOWS \$4,950.00 LEGAL FEES THROUGH THE SEPTEMBER 2015 DATE. DO YOU KNOW HOW THAT FIGURE CORRESPONDS TO THE \$15,000.00 AND CHANGE THE JUDGE JUST SPOKE ABOUT IN LEGAL FEES THROUGH THE SEPTEMBER 2015 DATE?

A NO, I DON'T.

Q IF YOU WERE AN ESTATE BENEFICIARY AS MR. IRVING WAS AND YOU LOOKED AT THIS INTERIM ACCOUNTING, CAN YOU IMAGINE HER LOOKING AT THAT ACCOUNTING AND SEEING LESS THAN \$5,000.00 HAD BEEN SPENT FOR ESTATE LEGAL SERVICES THUS FAR? THAT WOULD BE FAIR, WOULDN'T IT?

A YES.

Q WHAT HAPPENS WHEN IN RESPONSE TO THE JUDGE'S REQUEST FOR LEGAL FEES, SHE REVIEWS RECORDS TO FIND THAT THROUGH THAT PERIOD OF TIME OVER \$15,000.00, ALMOST \$16,000.00 OF LEGAL EXPENSES WERE INCURRED? I'M NOT SAYING IT'S YOUR FAULT, BUT ASKING AS A BENEFICIARY LOOKING AT THAT ACCOUNTING THAT WOULD BE SURPRISING, WOULDN'T IT?

A I GUESS IF YOU TAKE INTO CONSIDERATION ALL THE FILINGS THAT HAD TO BE PREPARED BY THEM... I DON'T KNOW. IT SOUNDS LIKE IT MIGHT BE REASONABLE. I DON'T KNOW. I'M NOT IN THAT BUSINESS EITHER.

Q RIGHT. I'M NOT ASKING YOU ABOUT WHETHER THE FEES ARE REASONABLE, BUT I'M ASKING YOU IF YOU WERE A BENEFICIARY INTERESTED IN SEEING HOW THE ESTATE IS BEING MANAGED. THAT'S FAIR, IS IT NOT? YOU KNOW, THEN YOU ARE NOT SUGGESTING THAT JULIE IRVING AND HER BROTHERS ARE DIFFICULT SIMPLY BECAUSE THEY WANT TO KNOW WHAT'S GOING ON?

A YES.

Q YOU'RE NOT SUGGESTING THAT JULIE IRVING AND HER BROTHERS ARE BEING DIFFICULT BECAUSE THEY WANT TO KNOW WHAT'S GOING ON?

A NO. I'M NOT SUGGESTING THAT AT ALL.

Q AND IF THEY LOOK AT YOUR INTERIM ACCOUNTING, WOULDN'T THEY GET THE IMPRESSION THAT LESS THAN \$5,000.00 OF LEGAL FEES HAVE BEEN SPENT UP TO THAT POINT?

A YES.

Q DO YOU HAVE AN EXPLANATION AS TO HOW THAT'S WHAT'S ON THE INTERIM ACCOUNTING?

A UH-HUH. (AFFIRMATIVE RESPONSE.)

Q AND THIS IS WHAT YOUR LAW FIRM IS NOW STIPULATED
WHAT THE FEES WERE AT THAT TIME?

A YOU ARE KIND OF CONFUSING ME. I MEAN, THAT'S
WHAT IT SAYS SO. THAT'S WHAT IT SAYS.

Q CAN YOU IMAGINE, MS. IRVING, HAVING TO RESPOND
TO A COUNTERCLAIM THAT YOU AND THE LEGAL TEAM
HAVE FILED AGAINST HER? DO YOU HAVE AN
UNDERSTANDING OF WHAT IT IS, A CLAIM OF ABUSE OF
PROCESS?

A NOT REALLY.

Q DO YOU HAVE AN UNDERSTANDING OF THE CLAIM CALLED
FRIVOLOUS PROCEEDINGS?

A YES.

Q WHAT IS YOUR UNDERSTANDING?

A I MEAN, DOING SOMETHING WRONG THAT'S OUT OF THE
ORDINARY AND WASTES MONEY, I WOULD ASSUME.

Q ALRIGHT. WHAT ABOUT WHEN MS. IRVING HAS TAKEN
ACTION TO TRY AND CLOSE THE ESTATE AND IN
CONNECTION WITH THAT ACTION, SHE FINDS THAT THE
\$4,900.00 FIGURE FOR LEGAL EXPENSES ON THE
INTERIM ACCOUNTING IS DIFFERENT THAN WHAT THE
EXPENSES ACTUALLY ARE? DO YOU FAULT HER FOR
THAT?

A NO. I DON'T FAULT HER FOR THAT. BUT, YOU KNOW,

WHEN THE LEGAL TEAM THAT I HAVE HAS TO RESPOND TO ALL THE MOTIONS THAT YOU WANT THEM TO RESPOND TO, THEN THEY HAVE TO DO WORK IN ACCORDANCE WITH THAT. SO, THEY HAVE TO CHARGE LEGAL FEES FOR THAT RESPONSE, I WOULD ASSUME.

Q WHAT IS YOUR VIEW OF HAVING THREE REPRESENTATIVES OF THE LAW FIRM IN COURT TODAY AND OFTEN TWO LAWYERS REPRESENTING THE ESTATE IN PROCEEDINGS?

A WHAT IS MY VIEW?

Q SORRY?

A YOU'RE ASKING ME WHAT MY VIEW IS?

Q YES, MA'AM.

A I DON'T HAVE A VIEW. I MEAN, WHATEVER IS NECESSARY THAT THEY... YOU KNOW, THEY SHOULD DO THEY DO.

MR. BOYD: YOUR HONOR, I'M GOING TO OBJECT.

A I DON'T UNDERSTAND ALL THIS.

MR. BOYD: HE IS ASKING HER A QUESTION THAT CALLS FOR AN OPINION. I JUST WANT TO KNOW FOR THE RECORD, MR. TALL, HAS CALLED MR. DAVIS AS A WITNESS IN THESE PROCEEDING. I'M HERE BECAUSE I'M THE LEAD LITIGATION ATTORNEY IN THE FIRM.

MS. WEAVER IS THE PARALEGAL WHO WORKED ON THE FILE. I JUST WANT TO PRESERVE FOR THE RECORD, THAT THERE'S NO OPTION FOR ANY OF US NOT TO BE HERE. HE'S TRYING TO INSINUATE SOMETHING FROM THIS WITNESS AND GET AN ADMISSION FROM HER AGAINST HER INTEREST WHICH IS... IT'S A SETUP, YOUR HONOR. IT'S A SETUP OF HIS MAKING.

MR. DAVIS: ALSO, YOUR HONOR, THE BILLINGS WILL REFLECT THE TIME IN THE LITIGATION WAS PREDOMINANTLY BY MR. BOYD.

JUDGE PADGETT: I UNDERSTAND. MR. TALL, MOVE ON WITH YOUR QUESTION. I UNDERSTAND WHAT YOUR QUESTION WAS, BUT I DON'T KNOW THAT SHE AS A LAYPERSON WOULD KNOW WHAT IS NECESSARY. THAT WOULD BE FOR HER ATTORNEYS TO DECIDE THAT. AND IF SHE IS BILLED FOR THAT AND THERE'S SOME QUESTION ABOUT IT THAT'S BETWEEN HER AND HER ATTORNEYS. YOUR ISSUE IS, AS I UNDERSTAND, THAT THE FILING DOCUMENTS SHOW ONE THING AND THE ACTUAL EXPENDITURES THAT SHE PAID FOR IS

ANOTHER. THAT'S CLEAR. I JUST ASK THAT YOU MOVE ON.

MR. TALL: I WILL, YOUR HONOR. BUT IF I MAY, THE THEME OF THE CASE IS THAT MS. JENE IS IN CHARGE OF THE ESTATE EVEN AS A LAYPERSON.

JUDGE PADGETT: ABSOLUTELY. SHE, HERSELF, IN AFFIDAVIT HAS BEEN TALKING ABOUT BEING EFFICIENT, ALL THE THINGS THAT ARE ASSOCIATED WITH FIDUCIARY DUTY. THAT'S THE POINT, YOUR HONOR. THANK YOU.

Q MS. JENE, ARE YOU AWARE THAT IN FEBRUARY OF 2016, MS. IRVING HAD DISCHARGED THE SERVICES OF ATTORNEY SCOVILLE?

A YES.

Q ARE YOU AWARE OF COMMUNICATIONS FROM YOUR LAW FIRM THAT PAPERS WOULD BE FILED TO CLOSE THE ESTATE ACCORDING TO YOUR AUTHORITY AS PERSONAL REPRESENTATIVE?

A YES.

Q DO YOU KNOW WHY THOSE PAPERS WEREN'T FILED IN FEBRUARY OR MARCH?

A NO.

Q I'M SORRY?

A NO.

Q DO YOU KNOW WHY THOSE PAPERS WEREN'T FILED IN THE FIRST TWO WEEKS IN APRIL?

A NO.

Q WOULD YOU CRITICIZE MS. IRVING IF SHE SAID, "I HAVE HEARD THAT THERE'S GOING TO BE CLOSURE, BUT I'M NOT SEEING IT, SO I HAVE TO TAKE FURTHER ACTION?"

A NO.

Q YOU HAVE SAID IN YOUR AFFIDAVIT THAT SHE HIRES LAWYER AFTER LAWYER AND THAT'S A PROBLEM FOR THE ESTATE?

A IT JUST PROLONGS EVERYTHING. EVERYTHING, YOU KNOW, IS TRYING TO GET EVERYTHING DONE AND EVERY TIME SHE HIRES... WELL, SECOND LAWYER. IT JUST SEEMS LIKE IT JUST PROLONGS EVERYTHING.

Q FAIR TO SAY THAT IF THE ESTATE HAD FOLLOWED THROUGH AND FILED CLOSING PAPERS IN MARCH OR THE FIRST PART OF APRIL THERE MIGHT NOT HAVE BEEN LITIGATION?

MR. BOYD: OBJECTION, YOUR HONOR, CALLS FOR SPECULATION. SHE'S REALLY NOT IN A POSITION TO ANSWER THAT QUESTION. SHE DOESN'T KNOW.

JUDGE PADGETT: I SUSTAINED THAT

OBJECTION. I DON'T THINK SHE WOULD BE
IN A POSITION TO SAY WHETHER OR NOT YOUR
CLIENT WOULD OBJECT EVEN FOR THAT.

MR. TALL: THANK YOU, YOUR HONOR.

Q MS. JENE, IN THE BEGINNING OF THE ESTATE
ADMINISTRATION, DID YOU HAVE ADVICE WHETHER OR
NOT YOU COULD TAKE A MARITAL ELECTIVE SHARE OF
THE ESTATE?

A YES, I DID.

Q AND YOU PUT IN YOUR AFFIDAVIT IN OCTOBER OF 2016
THAT YOU DECIDED NOT TO DO THAT?

A YES. I DID BECAUSE I DID NOT WANT TO CAUSE ANY
HARD FEELINGS WITH THESE CHILDREN. I DIDN'T,
YOU KNOW, WANT TO DO THAT. I HAD A GOOD
RELATIONSHIP FOR A LONG NUMBER OF YEARS AND I
DID NOT WANT TO CAUSE ANY CONFLICT. YES, THAT'S
CORRECT.

Q CONFLICT NONETHELESS AROSE?

A NONETHELESS.

Q YOU THINK IT'S ALL BECAUSE OF MS. IRVING?

A I REALLY DO, YES.

Q I'M SORRY, DEAR?

A YES. I REALLY DO. YES, I DO.

Q YOU THINK SHE WAS PROVIDED REASONABLE
COMMUNICATIONS?

A YES, I DO.

Q DO YOU RECALL WHEN IT WAS THAT YOU FIRST CLARIFIED ABOUT THE VETERINARY ACCOUNT BEING A JOINT ACCOUNT? IN ESSENCE, IT WAS MONEY THAT BELONGED TO YOU?

A I SUPPOSE IT WAS IN APRIL.

Q OF WHAT MONTH?

A OF WHAT MONTH.

Q WHAT YEAR, PARDON ME.

A 2015 I BELIEVE. I AM NOT SURE BECAUSE WHEN MR. SCOVILLE GOT INVOLVED I DON'T KNOW. I DON'T KNOW DATES, YOU KNOW. I CAN'T REMEMBER DATES.

Q PRIOR TO THAT TIME, IT WASN'T EXPLAINED AS FAR AS YOU ARE AWARE?

A YES. IT COULD HAVE BEEN EARLIER. I DON'T REMEMBER WHAT THE DATE WAS.

Q ARE YOU AWARE THAT WHEN THERE WAS FIRST... IN DECEMBER OF 2015, A PROPOSAL THAT YOU TAKE THE MARITAL HOME FOR THE FEE OF \$95,000.00 THAT MS. IRVING HAD NOT RECEIVED A COPY OF THE APPRAISAL AT THAT TIME?

A NO. I'M NOT AWARE OF THAT.

Q ARE YOU AWARE THAT AT THAT TIME THE HOUSE HAD A BRAND NEW ROOF AND THE MOLD HAD BEEN TAKEN CARE OF?

A I'M NOT AWARE OF THAT.

Q YOU'RE NOT AWARE OF THAT?

A WHAT DID YOU JUST SAY?

Q I'M ASKING WHETHER OR NOT YOU KNEW IF MS. IRVING HAD BEEN INFORMED OF A NEW ROOF AND THE MOLD BEING FIXED, AT THE TIME OF THE \$95,000.00?

A I DON'T KNOW. I THINK SHE HAD BEEN. I DON'T KNOW.

Q YOU'RE AWARE THAT THE HOUSE HAD BEEN REPAIRED?

A YES.

Q IT'S NOT LIKE MR. CROMARTIE SAID IT WAS WHEN HE APPRAISED IT? IT'S A DIFFERENT HOUSE?

A IT'S A DIFFERENT HOUSE.

Q YOU DID NOT ASK HIM TO RE-APPRAISE AFTER THE HOUSE HAD BEEN REPAIRED, DID YOU?

A NO. BUT HE DID COME BACK WITH THE SECOND APPRAISER THAT YOU SENT.

Q ANYTHING ODD AS FAR AS YOU OBSERVED ABOUT HOW ABOUT MR. BURGESS HANDLED HIMSELF?

A NO. HE WAS AN APPRAISER.

MR. TALL: CAN I HAVE A MOMENT, YOUR HONOR?

JUDGE PADGETT: CERTAINLY.

Q MS. JENE, MS. IRVING HAS A RESIDENCE WE ALL

PRESUME IN VIRGINIA. WHETHER SHE OWNS IT OR RENTS IT, SHE HAS A MONTHLY OBLIGATION, FAIR ENOUGH?

A YES.

Q ARE YOU WILLING TO ACCEPT THAT THE VALUE OF THE RENT FOR YOUR PROPERTY, WHERE YOU'RE LIVING, THE UTILITIES, THE REAL ESTATE TAXES AND THE INSURANCE AND THE PROPERTY THAT YOU HAVE USED SINCE THE TIME OF DR. ROTHGEB'S PASSING IS A VALUE THAT IS PERSONAL TO YOU?

A I MEAN, I HAVE LIVED THERE SINCE '95.

Q I'M SORRY.

A I MEAN, IT WAS OUR PERSONAL RESIDENCE. I HAVE LIVED THERE SINCE '95.

Q YES. MAY I ASK THE QUESTION AGAIN? I'M NOT SURE I UNDERSTAND YOUR ANSWER. SINCE THE TIME OF DR. ROTHGEB'S PASSING, ARE YOU WILLING TO ACCEPT THERE HAS BEEN VALUE COMING TO YOU IN THE FORM OF NO RENTAL EXPENSE, THE MORTGAGE ON THAT PROPERTY IS BEING PAID BY THE ESTATE, REAL ESTATE TAXES, INSURANCE AND UTILITIES?

MR. BOYD: YOUR HONOR, I'M GOING TO OBJECT TO THE FORMATION ARE YOU WILLING TO ACCEPT? I'M NOT EXACTLY SURE THAT THE WITNESS... HE SHOULD ASK THE WITNESS

WHAT SHE BELIEVES --

MR. TALL: I BE HAPPY TO REPHRASE, YOUR HONOR.

Q DO YOU RECOGNIZE VALUE IN THOSE THING?

A I RECOGNIZE VALUE IN THOSE THINGS. IT'S ESTATE PROPERTY. IF I WASN'T THERE THE MORTGAGE WOULD STILL HAVE TO BE PAID, THE INSURANCE WOULD STILL HAVE TO BE PAID, EVERYTHING WOULD STILL HAVE TO BE PAID.

Q BUT WE MIGHT HAVE A TENANT WHO WOULD BE PROVIDING A RENTAL OR WE MIGHT HAVE FOUND A PURCHASER BY SELLING THE PROPERTY. WOULD YOU SAY THAT WAS FAIR?

A I SUPPOSE SO.

Q THE RESIDENCE THAT YOU'RE IN IS A LITTLE LARGER, LITTLE MORE ATTRACTIVE THAN THE PROPERTY THAT'S BRINGING IN \$800.00 RENT?

A YES.

Q WHAT IS YOUR EXPLANATION TO THE COURT AND TO THE BENEFICIARIES AS TO WHY IN YOUR FINAL DISTRIBUTION WE CANNOT RECOGNIZE SOME VALUE COMING TO YOU FOR YOUR USE OF THE RESIDENCE DURING THE LAST THREE YEARS?

A I DON'T KNOW. I GUESS NOBODY EVER TOLD ME TO GET OUT. SO I DIDN'T GET OUT.

Q WHY NOT IN YOUR VIEW AS TO WHAT'S FAIR? WHY NOT SAY TO THE BENEFICIARIES, "HAVE RECEIVED A VALUE. WE CAN PRETTY MUCH CALCULATE WHAT IT IS AND I AM WILLING TO ACCEPT THAT, THAT CAME TO ME DURING THE LAST 36 MONTHS."?

A I GUESS AFTER TAKING CARE OF HIM FOR HALF MY LIFE, YOU KNOW, I JUST THOUGHT THAT WAS WORTH SOMETHING. I MEAN, YOU KNOW, I HAVE BEEN MARRIED TO HIM ALL THIS TIME AND I JUST... I DON'T KNOW.

Q YOU'RE NOT SUGGESTING THAT YOU DIDN'T GET ANY BENEFIT FROM BEING DR. ROTHGEB'S SPOUSE?

A WHAT YOU MEAN "BENEFIT"?

Q YOU ENJOY LIFE TOGETHER?

A OF COURSE.

Q YOU HAD A PARTNER WHO HELPED YOU WITH INVESTMENTS?

A HE DIDN'T HELP... WELL, I MEAN, HELP ME WITH INVESTMENTS? I MEAN, WE... YOU KNOW, HE ADVISED ME. HE TAUGHT ME WHAT TO DO AS FAR AS, YOU KNOW, TAKING CARE OF PROPERTY AND PURCHASING PROPERTY AND, YOU KNOW, GETTING RENTAL PEOPLE AND PAYING RENTS AND, YOU KNOW, TAKING CARE OF 12 PROPERTIES BY MYSELF. PAYING ALL THE BILLS, ALL THE RENTS, ALL THE REPAIRS, EVERYTHING BY

MYSELF FOR ALL THIS TIME AND EVEN BEFORE HE PASSED AWAY. I MEAN, IT WAS... YOU KNOW, I MEAN, WE WORKED TOGETHER.

Q DID YOU EVER CONSIDER AFTER HIS PASSING DEEDING THE PROPERTY TO YOURSELF?

A I HAD PLANNED TO PAY OFF THE DEBTS LIKE THE WILL WAS TELLING ME TO DO AND THAT'S WHAT I WAS SUPPOSED TO DO. THAT WAS GOING TO BE MY SHARE WHEN IT CAME DOWN TO, YOU KNOW, DIVIDING EVERYTHING.

Q THE PROBLEM THAT WE HAVE NOW IS THAT IT'S NOT COMING TO YOU AT A VALUE THAT YOU THINK IS FAIR. IS THAT A FAIR STATEMENT?

A I JUST WANT TO MOVE ON WITH MY LIFE, YOU KNOW. I AM JUST SAD. I'M UPSET. I'M OLD. THIS HAS TAKEN SUCH A TOLL ON ME THAT WHATEVER THE APPRAISER SAID IT WAS SUPPOSED TO BE THAT'S WHAT IT IS. I HAVE NO CONTROL OVER ANY OF IT. I JUST WANT TO MOVE ON.

Q DO YOU THINK MS. IRVING WANTS TO MOVE ON TOO?

A I'M SURE EVERYBODY WANTS TO MOVE ON.

Q DO YOU THINK YOU HAVE ANY RESPONSIBILITY FOR HOW LONG THIS HAS GONE ON?

MR. BOYD: OBJECTION, YOUR HONOR.

THAT'S NOT A FAIR QUESTION FOR THIS

WITNESS.

JUDGE PADGETT: YOU HAVE A COUNTERCLAIM AGAINST MS. IRVING SAYING THAT SHE'S THE REASON WHY THESE EXTENSIVE LAWYERS FEES ARE. YOU HAVE BROUGHT THAT COUNTERCLAIM. I THINK THAT'S A PROPER QUESTION HE CAN ASK THE PERSON WHO'S BRINGING THE COUNTERCLAIM.

A I JUST FEEL LIKE IT WOULD HAVE BEEN OVER A LONG TIME AGO IF THE LAWYERS WEREN'T HIRED. IF THE PROPERTIES COULD JUST BE SOLD. WHEN THE TENANTS MOVED OUT IS WHAT I WAS TRYING TO DO. AND JUST MOVE ON AND HAVE EVERYBODY, YOU KNOW, GET ALONG AND BE SETTLED, YOU KNOW. I DID NOT WANT ANY HARD FEELINGS WITH ANYBODY. I MEAN, I JUST WANTED WHAT WAS FAIR. I'M NOT AN UNFAIR PERSON. I'M REALLY NOT. I'M REALLY NOT AN UNFAIR PERSON. YOU KNOW, I HAVE ALWAYS TREATED THESE CHILDREN LIKE MY OWN FOR YEARS AND YEARS, YOU KNOW. IF IT WASN'T FOR ME THEY WOULDN'T HAVE GOTTEN BIRTHDAY CARDS OR CHRISTMAS CARDS BECAUSE DON WASN'T REALLY, YOU KNOW, INTO ALL THAT STUFF. I ALWAYS TOOK IT UPON MYSELF TO MAKE SURE, YOU KNOW, THAT WAS HANDLED. I JUST, YOU KNOW... I MEAN, THEY WERE A PART OF MY FAMILY.

THEY WEREN'T STRANGERS. I HAD BEEN AROUND THEM EVER SINCE THEY WERE TODDLERS. I DID NOT WANT TO DO ANYTHING UNFAIR. I HADN'T PLANNED TO DO ANYTHING UNFAIR. I WAS DOING THE BEST I COULD, YOU KNOW, BY GOING BY THE WILL AND, YOU KNOW, THAT'S WHAT I THOUGHT THE WILL SAID. THAT'S WHAT I WAS DOING. THAT'S ALL I WAS TRYING TO DO. I WAS TRYING NOT TO MAKE ANYBODY UPSET OR ANYTHING LIKE THAT. I DID NOT WANT ANY ANIMOSITY OR ANYTHING. I MEAN, HE JUST PUT ME IN CHARGE BECAUSE I HAVE THE MOST EXPERIENCE WITH ALL THE WORKINGS OF THE PROPERTIES AND I HAD FOR YEARS AND YEARS. AND I GUESS IT JUST MADE SENSE TO HIM. IT'S JUST BEEN A HEARTACHE FOR ME IN THE END. IT'S JUST BEEN A HEARTACHE. I'VE TRIED MY BEST AND TRIED TO DO WHAT I WAS SUPPOSED TO DO AND I DON'T KNOW, IT JUST NEVER SEEMED TO BE RIGHT IN OTHERS EYES I GUESS. I DON'T KNOW.

Q THERE'S AN ISSUE THAT WE SPOKE ABOUT IN NOVEMBER PERTAINING TO A CREDIT CARD BILL THAT WAS ASSOCIATED WITH COLLEGE TUITION. DO YOU RECALL?

A YES.

Q WHO WAS IN COLLEGE AT THE TIME?

A MY GRANDDAUGHTER, ONE OF MY GRANDDAUGHTERS. DON

WAS ALWAYS CLOSE TO HER. SHE WAS ALWAYS HIS FAVORITE AND SHE ALWAYS, YOU KNOW, WANTED TO GO TO COLLEGE AND WANTED TO TAKE A COUPLE OF CLASSES AND SHE'S REALLY MOTIVATED. HE TOLD HER THAT, YOU KNOW, HE WOULD HELP HER WITH SOME TUITION IF SHE DID WELL AND TO LET HIM KNOW. SO, YOU KNOW, SHE DID WELL, AND YOU KNOW, I FOLLOWED THROUGH WITH WHAT HE PROMISED, YOU KNOW. SHE SENT ME A LETTER AND, YOU KNOW, SHE REALLY APPRECIATED THE HELP THAT HE GAVE HER.

Q HOW MUCH WAS IT?

A I THINK IT WAS A \$1,000. SHE'S NOW STUDYING TO BE AN OPTOMETRIST. SO, SHE'S GOING TO SCHOOL PART TIME AND WORKING PART TIME.

Q THIS WAS AN EXPENSE THAT CAME OUT OF THE ESTATE?

A YES, BECAUSE HE HAD AUTHORIZED ME TO DO IT.

Q FOLLOWING... IT'S NOT IN WRITING ANYWHERE? THIS IS A COMMUNICATION THAT YOU HAD ORALLY?

A THERE WAS A COMMUNICATION. THERE WAS A LETTER THAT HE SENT TO HER THAT SHE SENT TO ME AND HAD IT NOTARIZED SAYING THAT, YOU KNOW, HE WAS GOING TO HELP HER WITH THAT. I THINK I HAVE PROVIDED THAT TO MY LAWYERS.

Q DO YOU RECALL WHEN YOU SHARED THAT WITH THE OTHER BENEFICIARIES?

A I DIDN'T.

Q ANY REASON NOT TO? IT MIGHT HAVE BEEN A NICE MOMENT FOR THE FAMILY.

A I DID NOT EVEN THINK ABOUT IT.

Q WHAT ABOUT SOME EXPENSES TO YOURSELF? ALMOST ON THE DAY THAT YOUR HUSBAND PASSED OUT OF THE VETERINARIAN ACCOUNT, ARE THOSE REIMBURSEMENTS FOR EXPENSES?

A I BELIEVE SO. I CAN'T EVEN REMEMBER THAT FAR BACK.

MR. TALL: YOUR HONOR, I DON'T HAVE ANY FURTHER QUESTIONS AT THIS TIME.

JUDGE PADGETT: IS THIS A GOOD TIME TO BREAK FOR LUNCH AND BE BACK AROUND 1:15 TO 1 O'CLOCK?

MR. BOYD: YOUR HONOR, IF I MAY, SHE'S IS OUR WITNESS. ONE OF OUR WITNESSES IN THE DEFENSE'S CASE. I'VE GOT TWO OR THREE QUESTIONS ON CROSS I WOULD LIKE TO EXAMINE HER AND THEN I WILL GIVE A BREAK AND WE CAN MOVE INTO OUR DIRECT WHEN WE COME BACK.

JUDGE PADGETT: NO OBJECTION TO THAT, MR. TALL?

MR. TALL: THERE IS NONE.

Q MS. JENE, I JUST WANT TO ASK YOU IN FEW BRIEF QUESTIONS THAT HAVE BEEN PROMPTED BY MR. TALL'S QUESTIONING HERE TODAY. ARE YOU FEELING OKAY? CAN YOU GO ON FOR TWO OR THREE MORE QUESTIONS?

A YES.

Q I JUST WANT TO DEAL WITH SOME OF THESE POP UP ISSUES. THESE THINGS THAT SEEM TO POP UP LIKE WACK-A-MOLE AND I JUST WANT TO GO AHEAD AND DEAL WITH THEM WHILE THEY'RE FRESH ON YOUR BRAIN PERHAPS. LET'S TALK ABOUT YOUR OCCUPANCY OF THE HOUSE ON CROOKED PINE DRIVE. ARE YOU THE ONLY ESTATE BENEFICIARY WHO'S LIVING IN AN ESTATE PROPERTY?

A NO.

Q WHAT OTHER ESTATE BENEFICIARIES ARE LIVING IN ESTATE PROPERTIES?

A MATT'S LIVING IN ONE OF THEM AND HAS BEEN FOR QUITE A WHILE.

Q HOW LONG HAS MATT LIVED IN AN ESTATE PROPERTY?

A SEVEN, EIGHT YEARS.

Q DOES HE PAY RENT?

A HE PAID THE FIRST TWO YEARS.

Q HAS HE PAID SINCE?

A NO.

Q WHEN DR. ROTHGEB HAD PASSED AWAY, WERE YOU THE

ONLY RESIDENT AT CROOKED PINE DRIVE?

A NO. WHEN HE PASSED AWAY STEVEN WAS HERE WITH ME. HE DIDN'T HAVE A JOB AT THE TIME AND HE DID NOT KNOW WHAT HE WANTED TO DO OR WHERE HE WANTED TO GO SO HE STAYED WITH ME FOR NINE MONTHS.

Q DURING THOSE NINE MONTHS IN WHICH STEVEN RESIDED WITH YOU AT CROOKED PINE DRIVE, DID YOU CHARGE HIM RENT?

A NO. OF COURSE NOT, NO. THAT WAS HIS HOME TOO.

Q A LOT OF QUESTIONS ABOUT EVALUATION OF CROOKED PINE DRIVE, I WILL ASK YOU MORE AS WE TALK ABOUT IT LATER. I WANT TO ASK YOU THE SAME QUESTION I'M ASKED BOTH OF THE APPRAISERS. YOU MAY RECALL, IF THEY WOULD PURCHASE CROOKED PINE DRIVE AT THE PRICE THEY APPRAISED THE PROPERTY. LET ME ASK YOU TOO, IF SOMEBODY OFFERED YOU THE OPPORTUNITY TO BUY CROOKED PINE DRIVE FOR \$193,000.00, WOULD YOU SELL IT?

A NO.

Q IF SOMEBODY OFFERED THE OPPORTUNITY TO BUY CROOKED PINE DRIVE FOR \$95,000.00, WOULD YOU SELL IT?

A YES. KNOWING THAT THERE STILL NEEDED TO BE WORK DONE.

Q YOU BELIEVE THAT THERE IS WORK THAT STILL NEEDS

TO BE DONE AT CROOKED PINE DRIVE?

A YES.

Q HAS THE MOLD PROBLEM BEEN FULLY REMEDIATED?

A YES.

Q PRIOR TO TODAY, JENE, HAS ANYBODY EVER ASKED YOU ANY QUESTIONS ABOUT THE INTERIM ACCOUNTING YOU FILED IN THIS CASE?

A NO.

Q IS TODAY THE FIRST DAY YOU HEARD ABOUT ANY ALLEGED ISSUES WITH THE INTERIM ACCOUNTING?

A YES.

MR. BOYD: THANK YOU, NO FURTHER QUESTIONS, YOUR HONOR.

JUDGE PADGETT: ANYTHING AS A RESULT, MR. TALL?

MR. TALL: NO, YOUR HONOR.

(OFF THE RECORD FOR LUNCH.)

JUDGE PADGETT: ARE WE READY TO PROCEED.

MR. TALL: YES, YOUR HONOR, I CALLED MR. DAVIS TO THE STAND.

BRET DAVIS, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. TALL:

A BRET, B-R-E-T, LAST NAME DAVIS.

Q GOOD AFTERNOON, MR. DAVIS.

A AFTERNOON, MR. TALL.

Q MR. DAVIS, YOU HAVE BEEN THE ATTORNEY FOR THE PERSONAL REPRESENTATIVE FOR THE ESTATE SINCE IT'S INCEPTION, IS THAT CORRECT?

A YES.

Q I DON'T THINK IT WILL TAKE MUCH FOR YOU TO AGREE THAT WE'VE GOT A CONFLICT ON OUR HANDS, WHAT DO YOU SAY?

A I DON'T THINK WE HAVE A CONFLICT, NO.

Q WELL, I'M GOING TO GIVE YOU SOME TIME TO EXPLAIN WHY YOU DON'T THINK THERE'S A CONFLICT?

A I BELIEVE WE JUST HAVE AN ISSUE WHERE ONE OF THE BENEFICIARIES WANTS TO CONTROL THE ADMINISTRATION. IT'S NOT REALLY A CONFLICT FOR THE PERSONAL REPRESENTATIVE.

Q WELL, LET ME TAKE IT AT THAT POINT. DO YOU THINK THAT WE HAVE A CASE WHERE MS. IRVING HAS TURNED HER BACK ON A SETTLEMENT?

A YES, OF COURSE.

Q LET ME SHOW YOU PLAINTIFF'S EXHIBIT 3 AND THAT'S A LETTER IN OCTOBER OF 2015 FROM JACK SCOVILLE. IS THIS WHAT YOU WOULD DESCRIBE IS THE SETTLEMENT?

A BEAR IN MIND THAT IN ANSWERING YOUR QUESTION. PARAGRAPH 4 OR ITEM 4 OF THE WILL STATES IN THE

MIDDLE AS I THINK YOU MENTIONED WITH MS. POAFPYBITTY PREVIOUSLY SAYS, "PROVIDED, HOWEVER, THAT THE PERSONAL REPRESENTATIVE SHALL HAVE SOLE DISCRETION TO DESIGNATE THE REAL OR PERSONAL PROPERTY COMPRISING IN THE RESPECTIVE SHARES SO ESTABLISHED SO LONG AS THE VALUE THEREOF IS APPROXIMATELY EQUAL." THE DISCUSSIONS WITH MR. SCOVILLE, WERE WHICH PROPERTIES WOULD GO TO WHICH BENEFICIARY. ALSO, AS YOU MENTIONED, IS THERE A CONFLICT OR IS THERE SOME KIND OF A SETTLEMENT? THERE WAS AN EARLIER LETTER THAT MR. SCOVILLE WROTE. I THINK YOU HAVE IT INTRODUCED INTO EVIDENCE. I'VE GOT A COPY HERE SOMEWHERE. I BELIEVE IT'S DATED APRIL 8, 2015, AND IN THAT LETTER IT WAS QUITE AN AGGRESSIVE LETTER. I GOT IT AND IMMEDIATELY, AS THE RECORD REFLECTS, WE RESPONDED. I WOULD LIKE THE COURT TO PAY PARTICULAR ATTENTION TO --

Q LET'S DO THIS BEFORE YOU START WITH THAT.

MR. TALL: YOUR HONOR, LET ME OFFER IT AS AN EXHIBIT BECAUSE IT HAS NOT YET BECOME AN EXHIBIT.

JUDGE PADGETT: ANY OBJECTIONS?

MR. BOYD: NO OBJECTIONS, YOUR HONOR.

JUDGE PADGETT: NO OBJECTIONS SO THAT

WILL BE PLAINTIFF'S EXHIBIT 25.

Q MR. DAVIS, LET ME SHOW THIS TO YOU AND SEE IF YOU AGREE IT'S THE SAME DOCUMENT THAT WE'RE REFERRING TO?

A YES, IT IS.

LETTER FROM SCOVILLE MARKED
FOR IDENTIFICATION AND
INTRODUCED INTO EVIDENCE AS
PLAINTIFF'S EXHIBIT 25.

A AS I WAS MENTIONING, IN MR. SCOVILLE'S LETTER THAT WAS JUST INTRODUCED INTO EVIDENCE DATED APRIL 8TH 2015, FOURTH PARAGRAPH ON THE SECOND PAGE, MR. SCOVILLE MAKES IT ABUNDANTLY CLEAR THAT HE IS READY TO FILE SOME TYPE OF AN ACTION IN PROBATE COURT. "HOWEVER, PLEASE BE ADVISED THAT IF WE HAVE NOT RECEIVED AN ACCOUNTING WITHIN 10 DAYS OF THE DATE OF THIS LETTER, WE INTEND TO PETITION THE PROBATE COURT TO RELIEVE MS. POAFPYBITTY AS PERSONAL REPRESENTATIVE." SO, YOUR QUESTION ABOUT, IS THERE A CONFLICT? WE SENT OUT... MR. SCOVILLE AND I SET OUT TO MAKE HIM AWARE OF WHATEVER HE WAS LOOKING FOR. HE ASKED FOR VIRTUALLY EVERYTHING IN THE ESTATE THAT COULD EXIST IN THE ESTATE WHICH WAS NOT A PROBLEM. WE SAID WE WILL GET EVERYTHING,

COMPLETELY TRANSPARENT. GAVE HIM ALL THE INFORMATION THAT HE ASKED FOR AND EVERYTHING WE COULD THINK OF --

Q I'M GOING TO ASK YOU NOT TO GIVE UP HEARSAY. I WILL BE HAPPY TO GIVE YOU ALL THE...

A SURE.

Q MR. SCOVILLE IS NOT HERE. I DON'T WANT YOU TO --

A SURE. WELL, AS THE LACK OF ANY KIND OF FILING WILL INDICATE, IT WILL INDICATE THAT THERE WAS NO GROUNDS TO FILE A PETITION. IF THERE WERE, HE HAD ALREADY THREATENED TO DO THAT. SO, THE FACT THAT NO PETITION WAS FILED, I THINK IT'S EASY TO DEDUCE THAT HE WAS SATISFIED WITH THE INFORMATION THAT HE HAD RECEIVED. I'M CERTAIN OF THAT BECAUSE HE AND I TALKED ABOUT IT. SO, THERE WAS COMPLETE DISCOVERY OF ANY AND EVERYTHING IN THE ESTATE THAT COULD EXIST IN THE ESTATE.

Q CERTAINLY FROM YOUR POINT OF VIEW?

A NO. FROM MR. SCOVILLE'S POINT OF VIEW. I --

Q YOU CAN'T TESTIFY ABOUT HIS --

A I GOT AN E-MAIL FROM MR. SCOVILLE.

Q IF YOU TRIED TO PRODUCE THAT TODAY FOR EVIDENCE THAT WOULDN'T BE HEARSAY?

A THE JUDGE WILL HAVE TO RULE ON THAT, BUT I CAN SAY THAT HE GOT EVERYTHING HE ASKED FOR. I CAN SAY THAT. EVERYTHING HE ASKED ME FOR WE GAVE HIM.

Q SO, DESCRIBE... BECAUSE MY QUESTION HAD TO DO WITH WHETHER THIS IS A CASE ASSOCIATED WITH MS. IRVING TURNING HER BACK OR FAILING TO COMPLY WITH A SETTLEMENT AND YOUR POSITION IS THAT'S WHAT SHE DID? AM I UNDERSTANDING YOU CORRECTLY?

A AGAIN, THERE WAS NO... WE HAD DISCUSSIONS ABOUT HOW TO DISTRIBUTE THE PROPERTY, BUT THERE WAS NO LAWSUIT. SO, THERE WAS NO FORMAL SETTLEMENT. IT WAS A DISCUSSION, AS MS. POAFPYBITTY MENTIONED EARLIER, SHE WAS GOING TO TALK WITH THE BENEFICIARIES AND FIND OUT WHO WANTED WHAT AND DISTRIBUTE THE ASSETS. IT WAS A MATTER OF IMPATIENTANCE AND CONTROL THAT HAS RESULTING IN ALL THIS STUFF THAT WE GOT GOING ON NOW.

Q HOW ABOUT A QUESTION THAT I ASKED MS. JENE. LET ME ASK IT TO YOU. WE ARE LOOKING AT THIS EXHIBIT 3 IF I'M NOT MISTAKEN. THIS IS A LETTER FROM MR. SCOVILLE PROPOSING APPRAISALS?

A SURE. AGAIN, I THANK YOU FOR SAYING THAT. I WANT TO MAKE IT CLEAR THAT MS. POAFPYBITTY WAS INTENDING TO USE THE EVALUATIONS ON THE

INVENTORY. THE IDEA OF THE APPRAISALS CAME SOLELY FROM MR. SCOVILLE. THAT WAS NOT MS. POAFPYBITTY'S IDEA AND IT WAS NOT MY IDEA. THAT WAS FROM MS. IRVING AND THE CHILDREN THROUGH MR. SCOVILLE AS THAT --

Q ARE YOU SUGGESTING THAT YOU MADE AN ACCOMMODATION BY GETTING APPRAISALS OF REAL PROPERTY?

A YES.

Q YOU DON'T THINK THAT'S AN OBLIGATION OF THE PERSONAL REPRESENTATIVE ANYWAY?

A YOUR QUESTION EARLIER TO MS. POAFPYBITTY ABOUT SHOULDN'T PROPERTY BE APPRAISED? WHAT WE WERE TRYING TO ACCOMPLISH WAS TO MAKE SURE THE ASSETS WERE RELATIVE TO ONE ANOTHER. SO, IF YOU HAVE TAX ASSESS VALUES FOR 10 PROPERTIES THEN ALL THE PROPERTIES MAY BE OFF, BUT THEY WILL ALL BE RELATIVE. SO, IF YOU MAKE DISTRIBUTIONS IT WON'T MATTER. THEY MAY ALL BE OVERVALUED BUT IF THEY ARE, ALL OF THEM ARE OVERVALUED. THEY WANTED SOME KIND OF APPRAISAL WITH THE EVALUATIONS AT THAT TIME AND MS. POAFPYBITTY AND WE SAID, "OF COURSE. NO PROBLEM. LET'S JUST GET THIS RESOLVED." SO, YES, THERE'S NO DUTY IN REQUIREMENT THAT YOU GET ALL PROPERTIES

APPRAISED.

Q YOU DON'T HAVE TO USE A PROFESSIONAL APPRAISAL?

A NO.

Q IN FACT, WHEN THE SUGGESTION WAS THAT MR. BURGESS WAS GOING TO COME LOOK AT THE CROOKED PINE RESIDENCE, DIDN'T YOU IN FACT MAKE AN ARGUMENT TO THE COURT THAT IF WE'RE DOING THAT FOR THE CROOKED PINE RESIDENCE IT'S ONLY FAIR TO DO THAT FOR ALL OF THE PROPERTIES?

A ABSOLUTELY. IT NEEDS TO BE RELATIVE. EVERYTHING NEEDS TO BE RELATIVE.

Q DID YOU DECIDE TO TAKE ANY ACTION WITH REGARD TO THE OTHER PROPERTIES AT THE TIME THAT MR. BURGESS PROPOSED HIS APPRAISAL?

A THANK YOU. AS THE COURT RECORD REFLECTS, WE HAVE MADE NUMEROUS REQUESTS TO MR. TALL TO SLOW DOWN THIS ACTION TO LIMIT THE EXPENSES BECAUSE IT WAS REALLY NOTHING TO ARGUE ABOUT. SO, TO GO OUT AND HAVE THE ESTATE TO PAY FOR FIVE OR SIX ADDITIONAL APPRAISALS MADE NO SENSE TO US. WHEN THE APPRAISALS WERE REQUESTED BY MS. IRVING AND HER BROTHERS AND MR. SCOVILLE, THOSE WERE NOT SOMETHING THAT WERE REQUESTED BY MS. POAFPYBITTY.

Q AT THE END OF THE DAY DOESN'T THE ESTATE HAVE AN

OBLIGATION TO THE COURT OF SAYING THIS IS WHAT THE ESTATE BELIEVES THE VALUES ARE AND THAT OBLIGATION IS IRRESPECTIVE OF WHETHER OR NOT BENEFICIARIES AGREE WITH THE ESTATE?

A AGAIN, FROM THE VERY BEGINNING, THERE WAS AN INVENTORY AND APPRAISAL FILE USING THE TAX ASSESSMENT VALUES. MS. POAFPYBITTY WOULD'VE MADE DISTRIBUTIONS BASED ON THOSE VALUES HAD IT NOT BEEN FOR THE ACTIONS OF MS. IRVING AND MR. SCOVILLE AND, I GUESS, THE TWO OTHER CHILDREN THROUGH MR. SCOVILLE.

Q BUT MY QUESTION TO YOU IS, DID YOU GIVE INSTRUCTIONS TO YOUR CLIENT THAT SHE HAS AN INDEPENDENT OBLIGATION TO TELL THE COURT, EVEN IF SHE'S NOT GOING TO GET AN AGREEMENT FROM ANYBODY ELSE IN THE UNIVERSE, SHE HAS AN OBLIGATION IF SHE WANTS TO GET PAID A COMMISSION FOR BEING THE PERSONAL REPRESENTATIVE, DOESN'T SHE HAVE TO PUT DOWN VALUES SHE WILL STICK BY?

MR. BOYD: YOUR HONOR, OBJECTION. AT THE BEGINNING OF THAT LENGTHY COMPOUND QUESTION THERE WAS, "DID YOU GIVE YOUR CLIENT INSTRUCTION WHICH SEEMS TO INQUIRE INTO MATTERS THAT ARE PRIVILEGED? "

MR. TALL: YOUR HONOR, IF I MAY.

JUDGE PADGETT: YES.

MR. TALL: I THINK WE HAVE ALL KINDS OF ISSUES ASSOCIATED WITH THAT, YOUR HONOR. IT BECAME CLEAR FROM MS. JENE THAT IF YOU WANTED TO HAVE COMMUNICATIONS WITH THE ESTATE YOU HAD IT WITH THE ATTORNEYS INVOLVED. WE'VE HAD ALL MANNERS OF COMMUNICATION THAT MS. JENE HAD WITH HER ATTORNEYS THAT SHE'S SHARED WITH US BECAUSE THEY'RE SORT OF ONE IN THE SAME WHEN IT COMES TO ESTATE ADMINISTRATION.

MR. BOYD: YOUR HONOR, I DON'T DISAGREE WITH THE FACT THAT THERE WERE COMMUNICATIONS WITH THE FIRM, BUT HE STILL CAN'T GET INSIDE THE CLIENT'S HEAD AND SAY, "WHAT DID YOU DISCUSS WITH YOUR CLIENT AS HER DUTIES AND OBLIGATIONS?" THAT'S DIFFERENT.

A YOUR HONOR, I WOULD JUST ASK THAT HE LOOK AT THE COMMENTARY ON HOW A PERSONAL REPRESENTATIVE IS SUPPOSED TO CONDUCT THEMSELVES. I'M NOT HERE AS AN EXPERT. IF HE WANTS ME TO GIVE SOME EXPERT TESTIMONY ABOUT HOW YOU'RE SUPPOSED TO COUNSEL A PERSONAL REPRESENTATIVE, I DON'T THINK THAT'S

APPROPRIATE FOR ME, YOUR HONOR.

MR. TALL: YOUR HONOR, WE ALREADY HAVE TESTIMONY THIS MORNING THAT THERE IS EVALUATION ASSOCIATED WITH A FINAL DISTRIBUTION THAT THE PERSONAL REPRESENTATIVE SAYS, "I DON'T THINK THAT'S THE VALUE BUT YOU GUYS DO. SO I'M PUTTING IT DOWN ON THE DISTRIBUTION PROPOSAL." THE QUESTION I HAVE FOR THIS ATTORNEY IS WHETHER HE ACKNOWLEDGES THAT THE PERSONAL REPRESENTATIVE HAS AN INDEPENDENT DUTY AND DID THEY... FIRST OF ALL, MAYBE HE DISAGREES THAT THE PERSONAL REPRESENTATIVE DOESN'T HAVE THAT DUTY OR IF HE DOES AGREE, DID HE WITNESS THE ABANDONMENT OF THAT DUTY?

MR. BOYD: YOUR HONOR, AGAIN, THE PROBLEMS WITH THAT QUESTION ARE MANIFOLD. HE SEEKS AN ILLEGAL CONCLUSION FROM COUNSEL. COUNSEL HAS NOT BEEN QUALIFIED AS A WITNESS. HE SEEKS TO INQUIRE INTO THE DISCUSSIONS BETWEEN MR. DAVIS AND HIS CLIENT, MS. POAFPYBITTY AS TO WHAT HER DUTIES WERE AND WERE NOT. THE DOCUMENT THAT WAS

FILED SPEAKS FOR ITSELF. HE'S ASKED MS. POAFPYBITTY WHAT SHE THINKS OF THAT EVALUATION AND SHE'S RESPONDED. I ASKED MS. POAFPYBITTY IF SHE WOULD BUY THE HOUSE AT THAT EVALUATION AND SHE RESPONDED. HE CAN ASK MR. DAVIS WHAT MR. DAVIS THINKS OF THAT VALUATION AND MR. DAVIS CAN RESPOND.

JUDGE PADGETT: LET ME PUT IT THIS WAY. I THINK, MR. TALL, THAT YOU CAN ASK AND OF COURSE, THIS GENTLEMEN IS THE ATTORNEY FOR THE ESTATE. THEREFORE, YOU CERTAINLY HAVE THE RIGHT TO ASK HIM, HOW HE IS THE ATTORNEY FOR THE PERSONAL REPRESENTATIVE AND THE ESTATE. I BELIEVE THAT'S WHAT HE SAID HIS RESPONSIBILITIES WERE ARRIVED AT EACH OF THE INDIVIDUAL VALUES THAT THEY ARRIVED AT AND WHY.

A CAN I ANSWER THAT QUESTION THAT YOU JUST POSED?

MR. BOYD: I'LL BE HAPPY TO ENDORSE YOUR QUESTION, YOUR HONOR.

A THERE WERE THREE FILINGS, YOUR HONOR. THERE WAS AN INVENTORY AND APPRAISEMENT FILED. THE FIRST SET OF CLOSING DOCUMENTS AND THE SECOND SET OF

CLOSING DOCUMENTS.

JUDGE PADGETT: WHEN WAS THE FIRST SET
OF CLOSING DOCUMENTS FILED?

A JUNE 2016.

JUDGE PADGETT: WHEN WAS THE SECOND SET
FILED?

A FEBRUARY 2017.

MR. TALL: THERE WERE TWO INVENTORIES,
YOUR HONOR. THERE WAS AN AMENDED
INVENTORY.

A THE INVENTORY WAS BASED ON THE TAX ASSESSED
VALUES. THE FIRST SET OF CLOSING DOCUMENTS WAS
BASED ON ALL THE APPRAISALS FROM CROMARTIE AND
THE LAST CLOSING DOCUMENTS WERE BASED ON THE
APPRAISALS FROM CROMARTIE AND MR. BURGESS.

Q I'M BACK TO THE ORIGINAL QUESTION BECAUSE IT
COULD PROVIDE A LOT OF MOTIVATION. THE ESTATE
COULD HAVE TAKEN... I'M ASKING YOU IF THE ESTATE
TOOK A POSITION THAT THE ADMINISTRATION OF THIS
ESTATE HAD BEEN SETTLED AND JULIE IRVING WALKED
AWAY FROM A SETTLEMENT? IS THAT THE ESTATE'S
POSITION?

A SHE ABSOLUTELY DID SOMETHING. I DON'T KNOW...
I GUESS, YOU CAN CALL IT WALKED AWAY, CHANGED
HER MIND. THERE WAS THAT CONVERSATION... I MADE

A NUMBER OF ATTEMPTS AND THROUGH THE E-MAILS. I'LL BE HAPPY TO PULL THEM OUT. I THINK MOST OF THEM ARE IN EVIDENCE WHERE MS. IRVING AND I COMMUNICATED AND I SAID OKAY, YOU... SHE SENT AN E-MAIL TO ME SAYING, YOU KNOW, "I WANT TO DO SOMETHING DIFFERENT." AND THEN SHE SAID, "WHY HAVEN'T YOU RESPONDED TO ME?" I DID RESPOND TO HER IN THE E-MAIL AND I THINK THIS INDICATES, YOU KNOW, THE FACT THAT SHE DID SORT OF WALK AWAY OR CHANGED HER MIND OR DO SOMETHING. I'M NOT EXACTLY SURE WHAT SHE DID.

Q LET ME BE CAREFUL BECAUSE I THINK I ASKED YOU A TWO PART QUESTION. WAS THERE A SETTLEMENT? AND THE SECOND WAS, DID SHE WALK AWAY? I'M STILL INTERESTED IN THE FIRST QUESTION. WAS THERE A SETTLEMENT AND HOW DO ALL OF US WHO WERE HERE IN FEBRUARY OF 2017 LOOK AT THAT SETTLEMENT AND DETERMINE, YOU KNOW WHAT THESE FOLKS REACHED AN ACCORD?

A AS I MENTIONED A MINUTE AGO. MR. SCOVILLE ASKED FOR VIRTUALLY EVERYTHING THAT HAD HAPPENED IN THE ESTATE, EVERY CONCEIVABLE PIECE OF INFORMATION. HE WAS PROVIDED WITH EVERYTHING THAT HE ASKED FOR. HE HAS A LETTER HERE THAT SAYS HE MET WITH HIS CLIENTS... "MY CLIENTS HAVE

HAD TIME TO REFLECT ON THE DISTRIBUTION OF ESTATE ASSETS." SO, THAT INDICATES TO ME THAT HE'S GOT ALL OF THE INFORMATION. HE HAS REVIEWED IT AND HIS CLIENTS HAVE REVIEWED IT. THEY HAVE REFLECTED ON IT. THEY HAVE THOUGHT ABOUT IT AND THEN OKAY, THIS IS WHAT THEY WANT FROM THE ESTATE, OKAY? AND SO, I GET THIS LETTER, HE WANTS THE PROPERTIES APPRAISED. WE GET THE PROPERTIES APPRAISED AND THEN MS. IRVING FIRES HER ATTORNEY. THERE WAS NEVER ANY COMMUNICATION FROM HER ATTORNEY WITH ME ABOUT, "HEY, WE DON'T LIKE THE APPRAISALS. WE DON'T LIKE THIS OR THAT." DURING THE PHONE CALL THAT WAS PLAYED HERE, THE RECORDING, I SAID, "LET'S TALK THROUGH SOME THINGS. IT WAS JULIE'S... MS. IRVING OR THE ONLY WAY --

Q I WILL BE HAPPY TO GO FURTHER WITH YOU, BUT IS THAT YOUR ASSESSMENT OF HOW A SETTLEMENT WAS REACHED? THIS LETTER CAME TO YOU AS FAR AS YOU CAN PERCEIVE, MR. SCOVILLE RECEIVED EVERYTHING THAT YOU UNDERSTOOD HIM TO ASKED FOR?

A HE DID RECEIVE EVERYTHING HE ASKED FOR.

Q QUESTION IS HOW YOU HAVE DECIDED THERE WAS A SETTLEMENT BECAUSE THE ESTATE...

MR. TALL: YOUR HONOR, I HAVE A

AFFIRMATIVE RESPONSE. THE ESTATE
MAINTAINS THAT A SETTLEMENT WAS REACHED
BETWEEN MS. IRVING AND ALL OF HER
SIBLINGS.

A YOUR HONOR, I WOULD ASK FOR SOME HELP HERE. WE
ARE GOING TO BE HERE ALL DAY GOING THROUGH THIS
STUFF. IT'S THE LETTER AND IT IS WHAT IT IS.

JUDGE PADGETT: I THINK HE HAS THE RIGHT
TO ASK YOU THE QUESTION NOW, IF YOU CAN
SAY I DON'T KNOW.

A I DON'T KNOW. THE LETTER SPEAKS FOR ITSELF.

MR. TALL: YOUR HONOR, I DON'T MIND.
MAYBE IT WILL BE HELPFUL. I THINK A LOT
OF TIME AND ENERGY CAN GO INTO BEING
FRUSTRATED WITH A SETTLEMENT WHICH WAS
REACHED AND ONE OF THE PARTIES SAYING,
"I AM NOT ABIDING BY THE AGREEMENT."
SO, MAYBE YOU DON'T KNOW WHETHER OR NOT
A SETTLEMENT WAS REACHED OR NOT. I
THOUGHT EARLIER IN THIS DISCUSSION YOUR
POSITION WAS A SETTLEMENT WAS REACHED?

A A RESOLUTION. I DON'T KNOW WHERE YOU'RE HEADED
WITH THAT IF YOU'RE LOOKING TO ESTABLISH THAT
THERE WAS A SETTLEMENT AND THERE WAS NO TYPE OF
WRITING. I DON'T UNDERSTAND WHERE YOU'RE GOING.

IN THE WILL ITSELF THERE WAS NO REQUIREMENT THAT THERE BE A WRITTEN SETTLEMENT AGREEMENT.

Q WE CAN LOOK AT THE WILL AND WE CAN LOOK AT OTHER THINGS, BUT I THINK I'M FOCUSING ON WHAT IT IS THAT YOU DID WITH ANOTHER ATTORNEY. I CAN BE PRACTICAL. DO YOU BELIEVE THAT, THAT LETTER ESTABLISHED SOMETHING WHERE IF A PARTY SEES THE APPRAISAL AND DOESN'T THINK THE APPRAISAL IS FAIR THAT PARTY NO LONGER HAS AN ABILITY TO ASK QUESTIONS BECAUSE THAT'S THE FOUR CORNERS OF A SETTLEMENT? EVERYBODY TAKES THE PROPERTIES ACCORDING TO HOW THE APPRAISER DOES HIS WORK?

A THANK YOU. I WOULD LIKE FROM YOU TO RE-LISTEN OR LISTEN AGAIN TO THE PHONE CONVERSATION WITH MS. IRVING, RECORDED WITHOUT MY KNOWLEDGE --

Q I DON'T HAVE TO DO THAT. I'M ASKING FOR YOUR OPINION RIGHT NOW.

A WELL, I'M TELLING YOU THAT RECORDED CONVERSATION, "I SAID, 'LET'S MAKE ADJUSTMENTS.'" MS. IRVING SAID, "NO."

Q ADJUSTMENTS TO WHAT?

A WE WERE OPEN TO ANYTHING TO GET THIS ESTATE RESOLVED. MS. IRVING WAS THE ONE THAT WOULD NOT WORK WITH US.

Q CAN I STIPULATE THAT YOU, MS. JENE AND MR. BOYD

DEARLY BELIEVE THAT YOU HAVE BEEN UP FRONT, NOT DIFFICULT, ACCOMMODATING, BUT I AM GOING TO SAY TO YOU THAT'S NOT RESPONSIVE TO MY QUESTION.

A I DON'T KNOW WHAT THE QUESTION IS. I DON'T KNOW.

Q THE QUESTION IS, DID YOU HAVE A SETTLEMENT WHICH DID NOT PERMIT, ACCORDING TO THE TERMS OF THE RESOLUTION OR THE SETTLEMENT, ANYONE TO ASK QUESTIONS ABOUT HOW THE APPRAISER DID HIS WORK?

A THE RESOLUTION THAT WE HAD IS SET FORTH IN THAT LETTER AND THAT'S ALL THE ANSWER I'VE GOT.

Q GOOD. SO, WHEN THE APPRAISER COMES IN AND MS. IRVING SAYS, "THAT DOESN'T MAKE SENSE TO ME." IN THE OPINION OF THE ESTATE, IS SHE VIOLATING... IS SHE TURNING HER BACK ON A SETTLEMENT?

A I'M GLAD YOU RAISED THAT POINT BECAUSE I WANT TO EXPLAIN SOMETHING TO YOU AND TO THE COURT.

JUDGE PADGETT: MR. DAVIS, YOU MAY EXPLAIN ANYTHING AS YOU WELL KNOW, ANYTHING IN THE WORLD, BUT I WANT YOU TO ANSWER HIS QUESTION EITHER YES OR NO OR I CAN'T GIVE YOU A YES OR NO. ANSWER HIS QUESTION FIRST AND THEN YOU CAN EXPLAIN IT AND TELL US ANYTHING YOU WANT

TO TELL US. DO YOU UNDERSTAND?

A I BELIEVE THERE WAS CERTAINLY ROOM FOR ADJUSTMENTS IF SOMEONE WERE WILLING. IF MR. SCOVILLE WOULD'VE STILL BEEN INVOLVED AND NOT FIRED. MS. IRVING WOULD HAVE COME TO THE TABLE AND SAID, "LET'S TALK THROUGH THIS." THAT'S MY ANSWER AND I WOULD LIKE TO EXPLAIN, YOUR HONOR? AS WE HAVE DISCUSSED ALREADY, THE PROPERTY THAT WAS SUPPOSED TO GO TO MS. IRVING, THE TAX ASSESSED VALUE WAS \$140,700.00. THAT PROPERTY WENT DOWN WITH THE CROMARTIE APPRAISAL TO \$100,000.00. THAT IS A DECREASE OF 29%. SO, THE PROPERTY THAT WAS SUPPOSED TO GO TO MS. IRVING WENT DOWN 29%. THE PROPERTY THAT IS THE SUBJECT OR THE BASIS OF THIS CASE, THE CROOKED PINE PROPERTY WAS TAX ASSESSED VALUE OF 191,200.00. THE APPRAISAL OF CROMARTIE WAS \$95,000.00. AS I MENTIONED TO YOU AT THE BENCH, THE REPAIRS WERE ADDED BACK TO IT AND IT CAME TO 118,074.61 FOR A DECREASE OF 38%. SO, IF YOU COMPARE THE DECREASE BETWEEN MS. POAFPYBITTY'S PROPERTY AND MS. IRVING'S PROPERTY THERE IS A 9% VARIANCE. SO, WE SPENT \$100,000.00 IN FEES OVER A 9% VARIANCE AND THE REDUCTION OF COSTS. THAT COULD HAVE EASILY BEEN DISCUSSED IF SHE WANTED

TO DISCUSS THE DECREASE IN THE EVALUATION OF THE CROOKED PINE. THEN WE COULD HAVE DISCUSSED THE DECREASE IN THE EVALUATION IN THE PROPERTY SHE WAS SUPPOSED TO GET. NONE OF THAT WAS AVAILABLE. I MADE NUMEROUS COMMUNICATIONS WITH HER TRYING TO SET SOME KIND OF A MEETING TO PUT OUR HEADS TOGETHER. "HOW CAN WE RESOLVE THIS? SO WE DON'T HAVE TO DO THIS? WHY DID YOU FIRE MR. SCOVILLE? HE AND I COULD HAVE WORKED IT OUT IN 10 MINUTES." BUT, ALL I GOT WAS... "I WANT IT THIS WAY PERIOD." AND NOT ONLY THAT, I'VE GOT AN E-MAIL FROM STEVE SAYING HE'S OKAY WITH THE APPRAISAL AND THAT MR. SCOVILLE WANTS TO DO IT. AN E-MAIL SAYING, I OFFICIALLY ACCEPT THAT. THAT'S WHAT I WANT TO DO."

MR. TALL: YOUR HONOR, IF I MAY?

JUDGE PADGETT: CERTAINLY.

MR. TALL: I HAVE ANOTHER EXHIBIT. I THINK THIS WILL BE 26. I HAVE SHOWN IT TO MR. BOYD AND I DON'T BELIEVE THERE IS AN OBJECTION.

JUDGE PADGETT: ANY OBJECTION?

MR. BOYD: YOUR HONOR, IT LOOKS TO ME TO BE OUT OF ORDER, BUT I'M CHECKING. THE FIRST ONE IS 13 AND THE SECOND ONE IS

12, BUT IT'S THE RIGHT ATTACHMENT, OKAY.

JUDGE PADGETT: WITHOUT OBJECTION. WHAT IS THIS?

MR. TALL: THIS IS AN E-MAIL FROM JULIE IRVING TO THE LAW FIRM. I BELIEVE THE DATE IS 10 DECEMBER.

A YEP.

JUDGE PADGETT: WHAT YEAR?

MR. TALL: 2015.

A THERE WAS A FOLLOW UP E-MAIL TO THIS AND IT HAD MORE INFORMATION SHORTLY AFTER THIS ONE.

E-MAIL DATED 12/10/15 MARKED
FOR IDENTIFICATION AND
INTRODUCED INTO EVIDENCE AS
PLAINTIFF'S EXHIBIT 26.

Q YOU RECOGNIZE THIS OR DO YOU NOT?

A I DON'T RECOGNIZE THAT THIS WAS THE EXHIBIT THAT WAS ATTACHED TO IT. THERE'S ANOTHER EXHIBIT SHOWING THE REPAIRS TO MATT'S PLACE AND TO JENE'S PLACE. I DON'T KNOW WHAT YOU'RE TRYING TO ACCOMPLISH WITH THAT, WHATEVER.

Q IS IT IMPORTANT FOR YOU TO UNDERSTAND WHAT I'M TRYING TO ACCOMPLISH WHEN I ASK YOU QUESTIONS?

A NO. I DON'T KNOW WHAT YOU'RE DOING, MR. TALL. I'M CONFOUNDED BY YOUR ACTIONS.

Q I WILL TRY TO BE AS CLEAR AS I CAN IN MY QUESTIONS.

JUDGE PADGETT: IT IS FOR ME TO FIGURE OUT WHAT'S GOING ON AND WHAT THE RESULT IS. MR. DAVIS, YOU DON'T NEED TO THINK ABOUT HIS QUESTIONS. HE NEEDS TO ASK THE QUESTIONS AND YOU ARE THE WITNESS, YOU RESPOND YES OR NO IF AT ALL POSSIBLE. THEN EXPLAIN THE YES OR NO ANSWER ANY WAY YOU NEED TO FEEL COMFORTABLE. NOW, WHETHER YOU UNDERSTAND WHY HE'S ASKING SUCH A SILLY QUESTION IS NOT FOR YOU TO WORRY ABOUT AND NOT FOR YOU TO ASK. YOU'RE TO ANSWER THE QUESTIONS AS HE PRESENTS THEM TO YOU. IF HE ASKS YOU A QUESTION THAT'S OBJECTIONABLE YOUR LAWYER AND YOUR LAW PARTNER WILL CERTAINLY OBJECT AND I WILL SUSTAIN THE OBJECTION, OKAY?

MR. DAVIS: YES, YOUR HONOR.

JUDGE PADGETT: I DON'T WANT TO BE HERE AT 6 O'CLOCK TODAY.

A YOUR HONOR, MR. TALL ASKED ME, DO I UNDERSTAND WHAT HE'S TRYING TO GET AT AND I WAS JUST SAYING, NO, I DON'T.

JUDGE PADGETT: I DON'T REMEMBER THAT.

MR. TALL: I'M PRETTY SURE THAT'S NOT
THE QUESTION I ASKED YOU.

A YOU SAID, "DO I UNDERSTAND WHAT YOU'RE TRYING TO
ACCOMPLISH HERE?"

Q NO, SIR. FIRST OF ALL, MR. DAVIS, LOOK AT THIS
NUMBER 25. ANYTHING LACKING... 26. WAS MS.
IRVING DIFFICULT IN THE WAY SHE'S COMMUNICATING
WITH YOU THERE?

A WELL, YES. SHE IS ASKING FOR INFORMATION THAT
DOESN'T PERTAIN TO THE ESTATE. I DON'T KNOW WHY
SHE WOULD BE REQUESTING... THIS IS AN OLD LOAN
AND SHE'S ASKING FOR A LOAN ORIGINATION, AS WELL
AS PAYMENT HISTORY FOR THREE YEARS ON BOTH
PROPERTIES AND HE HAD BEEN DECEASED FOR A YEAR
AND 8 OR 9 MONTHS. SHE WANTS THREE YEARS OF
PAYMENT HISTORY. WHY WOULD SHE WANT SOMETHING A
YEAR BEFORE HER DAD DIED, WHEN SHE'S ASKING
SOMETHING ON BEHALF OF THE ESTATE?

Q SHE'S ONE OF THE INTERESTED PARTIES OF THE
ESTATE.

A YES. BUT THAT PRE-DATED HIS DEATH. SO, WHY
WOULD SHE BE INTERESTED IN THAT?

Q NOT SURE. BUT THE POINT I WOULD LIKE TO ASK
YOU, WAS THIS CORDIAL?

A IT WAS CORDIAL. I MEAN, I THINK THE E-MAILS SPEAK FOR THEMSELVES. I THINK SHE WAS CORDIAL, YES.

Q SPEAKING FOR ITSELF, CAN WE NOT DEDUCE FROM THIS EXHIBIT THAT AT THE TIME YOU WERE ASKING HER TO CONSIDER A \$95,000.00 DISTRIBUTION OF A PROPERTY THAT THE PERSONAL REPRESENTATIVE HAD PLACED ON AN INVENTORY AT 199,200.00? MS. IRVING WAS NOT PROVIDED WITH A COPY OF THE APPRAISAL, YET SHE HAD TO ASK FOR IT AFTER SHE WAS GIVEN A PROPOSAL TO DISTRIBUTE IT TO THE PERSONAL REPRESENTATIVE FOR \$95,000.00.

A ALL I CAN SAY IS SHE WOULD NOT WORK WITH US. I MADE NUMEROUS ATTEMPTS TO TALK WITH HER SO WE COULD EXPLAIN IT. SHE WOULD NOT DO IT.

Q WHEN THAT COMES UP ABOUT HOW GENERALLY MS. IRVING WAS DIFFICULT, I WILL BE HAPPY TO HAVE YOU CHIME IN, BUT RIGHT NOW, I'M VERY SPECIFIC. WHEN YOU SENT A \$95,000.00 PROPOSAL TO MS. IRVING AND SHE SAID, "BEFORE I AGREE TO THIS, WOULD YOU GIVE ME A COPY OF THE APPRAISAL?" BUT MY QUESTION TO YOU IS, IS THERE ANYTHING WRONG WITH A BENEFICIARY BEHAVING AS MS. IRVING DID IN THIS DECEMBER 10 E-MAIL?

A YES. SHE ASKED FOR INFORMATION THAT PRECEDED

HER FATHER'S DEATH AND THE FORMATION OF THE ESTATE BY A YEAR OF MORE. SO, THAT WAS UNNECESSARY. I DON'T KNOW WHAT SHE WAS LOOKING FOR --

Q DID THAT COLOR YOUR DECISION AS TO WHETHER OR NOT TO GIVE HER A COPY OF THE APPRAISAL?

A NO. SHE CAN HAVE A... WE DIDN'T CARE. SHE CAN HAVE A COPY OF EVERY APPRAISAL. THERE WAS NO REASON TO WITHHOLD IT. WE DIDN'T TRY TO WITHHOLD IT. THERE WAS NO ORCHESTRATED ATTEMPT TO WITHHOLD ANYTHING. THEY COULD ALL HAVE EVERYTHING. THAT WAS A PROPERTY THAT SHE WASN'T GETTING. WE CERTAINLY DIDN'T HEAR ANY ARGUMENT ABOUT THE PROPERTY SHE WAS GETTING GOING DOWN \$40,700.00. THERE WAS NO COMMENT ABOUT THAT.

Q DID YOU ANTICIPATE THE POSSIBILITY THAT IF MS. IRVING GOT A DISTRIBUTION PROPOSAL THAT THE LAW FIRM PUT TOGETHER CUTTING IN HALF THE VALUE OF ONE OF THE PROPERTIES THAT SHE MIGHT BE SHOCKED?

A NO. I DON'T THINK WHEN YOU TAKE IT INTO CONTEXT, SHE SHOULD NOT BE SHOCKED. HER PROPERTY WENT DOWN ALMOST 30%.

Q I UNDERSTAND. BUT SHE ASKED SPECIFICALLY FOR THE ONE ASSOCIATED WITH HER FATHER'S RESIDENCE?

A THAT'S WHAT CONFOUNDS ME. HOW CAN THAT ONE

PROPERTY BE TAKEN IN A VACUUM AND LOOKED AT UNDER A MICROSCOPE WHEN ALL OF THE PROPERTIES WERE APPRAISED AND ALL OF THE VALUES FLUCTUATED?

Q WHAT DIFFERENCE DOES IT MAKE TO YOU IF MS. IRVING EXPRESSED AN INTEREST IN ONE OF THE PROPERTIES AND IS PEACEFUL ABOUT ALL THE OTHER PROPERTIES? ARE YOU TELLING HER HOW SHE SHOULD BEHAVE?

A YOUR HONOR, I HAVE ANSWERED THE QUESTION. I DON'T KNOW WHAT ELSE TO SAY. I DON'T KNOW WHAT ELSE TO SAY, YOUR HONOR.

Q BUT WE CAN STIPULATE, CAN WE NOT, THAT YOU FOLKS SENT HER A PROPOSAL WITHOUT A COPY OF THE APPRAISAL AND ASKED HER TO AGREE TO A DISTRIBUTION SCHEME THAT CUT THE VALUE OF THE PROPERTY IN HALF?

A ALSO, HER PROPERTY --

Q CAN WE STIPULATE TO THAT? I KNOW YOU WANT TO TELL ME OTHER THINGS AND YOUR ATTORNEY CAN GET UP IN A MOMENT AND CLARIFY THINGS, BUT ON THAT ONE POINT, CAN WE STIPULATE TO THAT?

A NO. IT DIDN'T GO DOWN \$95,000.00, NO. IT WENT DOWN 38%.

Q 95 AND 95 IS 190, IS IT NOT?

A AGAIN, THE REPAIRS WERE ADDED IN SO IT DIDN'T GO

DOWN \$95,000.00.

Q I WILL ASK YOU PLEASE TO LOOK AT THAT
DECEMBER --

A THAT WAS SUBMITTED. THAT WAS SHORTLY AFTER
BEING SUBMITTED.

Q MR. DAVIS, YOU MAY TELL ME THAT IN JANUARY 2016,
YOU FIXED THE DECEMBER 10 SHOCK, BUT THAT
DOESN'T STOP THERE FROM BEING A DECEMBER 10
SHOCK, DOES IT?

A I DON'T BELIEVE THERE WAS A DECEMBER 10TH SHOCK.

Q THERE'S NO REPAIRS. THERE'S NO INDICATION ON
THAT DISTRIBUTION PROPOSAL SENT TO MS. IRVING
WITHOUT AN APPRAISAL INDICATING THAT MS.
POAFPYBITTY WAS GOING TO TAKE ANYTHING OTHER
THAN A \$95,000.00 CREDIT FOR RECEIVING THAT
PROPERTY. WHAT AM I MISSING?

A A WHOLE LOT. YOU'RE MISSING A WHOLE LOT. IT
DOESN'T TAKE INTO CONTEXT THE FACT THAT HER
PROPERTY, THE ONE THAT SHE WAS SUPPOSED TO GET,
WENT DOWN AS WELL. SO, TAKING ONE PROPERTY BY
ITSELF, I MEAN --

Q SO, YOUR ANSWER IS THAT IF YOU'RE A BENEFICIARY
OF AN ESTATE YOU BETTER BE PREPARED TO ASK
QUESTIONS ABOUT ALL OF THE PROPERTIES AND IF
YOUR INQUIRY ONLY HAS TO DO WITH ONE OF THE

PROPERTIES, YOU GET TO BE PAINTED AS A DIFFICULT PERSON AND TREATED WITH DISRESPECT, IS THAT YOUR ANSWER?

MR. BOYD: YOUR HONOR, OBJECTION.

THERE'S NO INDICATION... HE'S NOT SAYING ANYTHING ABOUT TREATING ANYBODY WITH DISRESPECT. HE'S THROWING FACTS, IF THEY ARE IN EVIDENCE WHEN THEY ARE NOT.

A YOUR HONOR, THAT'S QUITE OFFENSIVE. AS THE WHOLE COURT LISTENED TO MY PHONE CONVERSATION WITH MS. IRVING THERE WAS ABSOLUTELY NO DISRESPECT IN THAT WHATSOEVER.

JUDGE PADGETT: I DIDN'T SEE ANY DISRESPECT FROM EITHER SIDE.

OKAY.

A WELL, I'M NOT SAYING SHE DISRESPECTED ME. MR. TALL IS SAYING THAT I DISRESPECTED HER AND I DIDN'T.

JUDGE PADGETT: HE ASKED YOU A QUESTION AND YOU CAN SAY ABSOLUTELY NOT. YOU NEED TO GET AROUND TO ANSWERING THE QUESTIONS AND THEN YOU CAN EXPLAIN IT, BUT THE WAY YOU REPHRASED THAT QUESTION... HE HAS THE RIGHT TO PHRASE THAT QUESTION THAT WAY. AND YOU CAN SAY

ABSOLUTELY NOT.

A ABSOLUTELY. THERE WAS NO DISRESPECT. AND I WOULD ASK THE COURT TO PLEASE ENSURE HE ASKS DIRECT QUESTIONS AS I HAVE BEEN CALLED AS A DIRECT WITNESS AND NOT LEAD ME, YOUR HONOR. AND NOT GO ON SOME COMMENTARY LIKE HE JUST DID ABOUT WHY DID YOU DISRESPECT MY CLIENT OR WHATEVER THE QUESTION WAS.

MR. TALL: YOUR HONOR, I BELIEVE THERE'S LEAD WHEN YOU KNOW THE OTHER SIDE IS AN ADVERSARY.

JUDGE PADGETT: YES. THE HOSTILE WITNESS EXCEPTION. I WILL ALLOW MR. TALL TO ASK THE QUESTIONS.

A I WILL ALSO ANSWER THAT I HAVE NUMEROUS E-MAILS AND THE E-MAIL THAT I WAS GOING TO READ BEFORE MR. TALL STOPPED ME, I THINK IS PERTINENT TO THIS WHOLE ISSUE.

MR. TALL: YOUR HONOR, I HAVE NO OBJECTION TO ANYTHING BEING READ SO LONG AS IT'S GOING TO BE ENTERED INTO EVIDENCE. I DON'T KNOW. MR. DAVIS, IF YOU WANT TO OFFER IT THROUGH MR. BOYD AT THIS POINT?

A I'M NOT SURE IF THIS HAS ALREADY BEEN OFFERED,

YOUR HONOR, OR NOT. IT'S COMMUNICATION BETWEEN MY FIRM AND MS. IRVING. I WOULD ASSUME MR. TALL... WE CAN CONFIRM THAT MR. TALL HAS OFFERED THIS DATED FEBRUARY 12TH 2016. IT'S AN E-MAIL BETWEEN ME AND MS. IRVING.

JUDGE PADGETT: MS. COURT REPORTER, CAN YOU CHECK AND SEE?

MR. TALL: YOUR HONOR, I DON'T BELIEVE IT'S BEEN ADMITTED INTO EVIDENCE. CAN WE JUST PUT A FOOTNOTE HERE FOR THE MOMENT?

Q I HAVE A QUESTION FOR MR. DAVIS. IF HIS INTENTION IS TO SHARE THAT AT SOME LATER TIME AFTER DECEMBER 10, OTHER THINGS HAPPENED, I'D BE HAPPY TO QUESTION HIM ABOUT IT OR LET MR. BOYD QUESTION HIM ABOUT IT, BUT I'M NOT SURE AT THIS POINT IT'S HELPFUL.

A AND THE E-MAIL EXCHANGE TOOK PLACE AFTER THAT EXHIBIT THAT YOU HAD WAS SUPPLEMENTED. I DO NOT HAVE THAT DOCUMENT AND I'M NOT SURE IF MR. BOYD HAS THE SUPPLEMENTAL E-MAIL WITH THE SUPPLEMENTED CHART SHOWING THE IMPROVEMENTS WHERE --

MR. TALL: YOUR HONOR, YOU HAVE BEEN GENEROUS TO ALL OF US WHATEVER WE COULD

DO TO PUT TOGETHER DOCUMENTS. I HAVE NO INTENTION OF LEAVING ANYTHING OUT THAT MR. BOYD THINKS IS APPROPRIATE.

A THIS E-MAIL WOULD BE --

Q LET ME MOVE ON, MR. DAVIS. I KNOW YOU WANT TO SHARE THAT WITH US, BUT I DON'T THINK IT'S RESPONSIVE TO MY QUESTION.

A I BELIEVE IT IS. ASK YOUR QUESTION AGAIN.

MR. BOYD: YOUR HONOR, IF HE'S GOT A DOCUMENT THAT HE THINKS SHOULD BE ENTERED INTO EVIDENCE AS MR. TALL SUGGESTED, SET IT ASIDE AND I WOULD ADDRESS THE ADMISSION OF THAT DOCUMENT.
JUDGE PADGETT: THAT I'LL BE FINE. JUST SET THAT ON THE SIDE, MR. DAVIS.

A CAN I RESPOND WITH THE INFORMATION IN THE E-MAIL OR DO I NEED TO WAIT UNTIL IT'S PUT INTO EVIDENCE?

JUDGE PADGETT: THERE AGAIN, I'M GETTING CONFUSED AGAIN. WHAT'S THE QUESTION?

MR. TALL: I THINK THE QUESTION WAS ASKED AND ANSWERED, YOUR HONOR.

A HE ASKED ME WAS THERE A REASON FOR SHOCK THAT MS. IRVING GOT A PROPOSAL THAT DIDN'T HAVE THE REPAIRS ON IT? BUT I'VE GOT E-MAILS AFTER THAT

HAD BEEN SUPPLEMENTED WITH THE REPAIRS ON IT.

JUDGE PADGETT: HE'S TALKING ABOUT, AS I UNDERSTAND IT, THE DECEMBER 10TH E-MAIL THAT WAS SENT TO HER AT THAT TIME. HE'S NOT TALKING ABOUT WHAT YOUR FOLLOW UP WAS. HE'S TALKING ABOUT DECEMBER 10TH. NOT HAVING THE INFORMATION WHICH I'M ASSUME YOU'RE GOING TO SAY YOU SENT TO HER IN FEBRUARY.

A JANUARY.

JUDGE PADGETT: WOULD SHE HAVE THE RIGHT TO BE AT LEAST QUESTIONED DECEMBER THE 10TH WITHOUT THE OTHER INFORMATION WHICH YOU LATER IN FEBRUARY SUPPLEMENTED? I THINK THAT'S WHAT HIS QUESTION WAS. WE ARE TALKING ABOUT SPECIFICALLY DECEMBER 10TH OR UPON RECEIPT OF THAT E-MAIL. IS THAT CORRECT, MR. TALL?

MR. TALL: YES, YOUR HONOR. I HAVE NO PROBLEM SUGGESTING THAT AFTER THE INITIAL COMMUNICATIONS OF DECEMBER 10, THERE WERE ADDITIONAL COMMUNICATIONS. I'M NOT TRYING TO PAINT ANYBODY AS A VILLAIN, BUT MY CLIENT HAS BEEN SUED FOR COUNTERCLAIMS AND SHE'S BEEN SHOCKED BY

A FAILURE IN COMMUNICATIONS FROM MY POINT OF VIEW. I UNDERSTAND THE OTHER SIDE IS GOING TO DISAGREE. THEY WILL HAVE AN OPPORTUNITY TO SAY THERE WAS NOTHING WRONG WITH THE DECEMBER 10 COMMUNICATIONS. I HAVE NO PROBLEM WITH THAT, BUT TO SUGGEST THEY'RE SURPRISED. I HAVE NO DOUBT THAT THERE WERE MANY MORE COMMUNICATIONS AFTER DECEMBER 10. JUDGE PADGETT: ASK ANOTHER QUESTION. I THINK WE ALL HAVE TAKEN CARE OF THAT.

Q MR. DAVIS, YOU WERE IN COURT EARLIER WHEN AN EXHIBIT WAS PRESENTED PERTAINING TO MS. WEAVER MAKING THE STATEMENT FROM YOUR LAW OFFICE THAT THE \$200,000.00 IN MORTGAGE DEBT WOULD HAVE TO BE PAID OFF BEFORE THE ESTATE WAS CLOSED. DO YOU RECALL THAT?

A IT SPEAKS FOR ITSELF, BUT I RECALL THAT DIALOG.

Q DO YOU RECALL THAT E-MAIL AND THE PERSONAL REPRESENTATIVE SHARING THAT WITH THE BENEFICIARIES?

A IF YOU GOT IT THERE I WILL LOOK AT IT. AGAIN, IT'S COMMONLY UNDERSTOOD THAT THE DEBTS NEED TO BE PAID, YES. AS I WILL ANSWER YOUR QUESTION, ITEM 1 SAYS "THAT IN THE WILL, I DIRECT THAT ALL

MY LEGALLY ENFORCEABLE DEBTS SECURED AND UNSECURED TO BE PAID AS SOON AS PRACTICAL AFTER MY DEATH." IT SAYS DOWN HERE, THE SENTENCE IN CONTENTION, "IF, AT THE TIME OF MY DEATH... ANY OF THE REAL PROPERTY HERE AND DEVISEES A SUBJECT TO A MORTGAGE, I DIRECT THAT THE DEVISEE TAKING SUCH MORTGAGE PROPERTY SHALL TAKE IT SUBJECT TO SUCH MORTGAGE." THAT SENTENCE CONTEMPLATES THAT A SPECIFIC PIECE OF PROPERTY IS DEVISED TO SOMEBODY. IF THE WILL SAYS, "I LEAVE A PIECE OF PROPERTY "A" TO BOB AND IT'S GOT A MORTGAGE, THEN THAT MEANS HE GETS IT SUBJECT TO THE MORTGAGE." THERE WAS NO SPECIFIC DEVISE OF ANY PROPERTY, YOUR HONOR, IN THIS WILL. IT WAS ALL IN THE ESTATE. THAT REALLY WOULD NOT HAVE APPLICATION TO WHAT WE'RE TALKING ABOUT. HERE THE CONTROLLING LANGUAGE IS THAT ALL DEBTS BE PAID. THERE'S THIS THING ABOUT THE PROPOSAL OF DISTRIBUTION HAD A PROPERTY BEING TAKEN SUBJECT TO A MORTGAGE. THAT WAS AN ACCOMMODATION BY MS. POAFPYBITTY TO TRY TO GET THIS THING RESOLVED. THAT'S ALL THAT WAS. I DON'T KNOW WHY HE'S PUSHING THAT BECAUSE THAT JUST SHOWS HOW EAGER SHE WAS AND HOW MUCH SHE WANTED TO WORK THIS THING OUT. SHE WAS WILLING TO TAKE... THE

MORTGAGE WAS ACTUALLY GREATER THAN WHAT THE PROPERTY WAS WORTH. I DON'T KNOW WHY HE KEEPS PUSHING THIS ANY WAY.

Q I THINK YOU HAVE GIVEN US SOME CLARIFICATION. YOU DID TAKE THE POSITION AFTER MR. SCOVILLE CAME FORWARD AND AS YOU CALL IT, IT'S AN ACCOMMODATION, YES?

A YES. TO WORK THINGS OUT TO GET THIS THING RESOLVED.

Q PRIOR TO THAT TIME THE POSITION OF THE ESTATE WAS YOU CAN'T CLOSE THE ESTATE? WE NEEDED SOMEBODY LIKE MR. SCOVILLE TO PROPOSE AN ACCOMMODATION. THE ESTATE WASN'T PROPOSING IT, WAS IT?

A WE HAVE TO GO BY THE TERMS OF THE WILL. IT'S BEEN SAID ABOUT 50 TIMES AND I GUESS, I WILL SAY IT AGAIN. WHAT WE'RE GOVERNED BY, WHAT THE PERSONAL REPRESENTATIVE IS GOVERNED BY, IS THE TERMS OF THE WILL. YOUR HONOR, WE ALL KNOW THAT WAS THE TESTATOR'S INTENT. IT SAYS IT IN BLACK AND WHITE LANGUAGE. I DON'T KNOW WHAT ELSE WE CAN DO.

Q THERE'S NO ROOM FOR SOMEONE TO BE MISUNDERSTANDING ABOUT THAT?

A I DON'T KNOW WHAT YOU'RE ASKING ME. WHAT DO YOU

MEAN? ANYBODY CAN BE MISUNDERSTANDING ABOUT ANYTHING. WHAT YOU MEAN?

Q WELL, WHEN MS. IRVING COMES TO YOU WITH A MISUNDERSTANDING AND YOU PAINT HER AS SOMEONE WHO IS DIFFICULT OR HARD TO GET ALONG WITH, WHAT ABOUT THAT PARAGRAPH?

A OF COURSE SHE FIRED HER ATTORNEY.

Q HOW DO YOU KNOW WHAT WAS DONE? HOW DO YOU KNOW WHY SHE FIRED HER ATTORNEY?

A I KNOW HE'S NOT HAPPY WITH THE SITUATION.

Q HOW DO YOU KNOW THAT?

A BECAUSE I TALKED WITH THEM.

Q BECAUSE OF THE HEARSAY YOU WANT TO OFFER?

A I WANT TALK TO WHAT HE'S SAYING, BUT MY IMPRESSION IS HE'S NOT HAPPY WITH THOSE THREE CHILDREN.

Q SO, THERE'S ANOTHER EXAMPLE OF HOW YOU WOULD LIKE THE COURT TO UNDERSTAND THAT MS. IRVING IS NOT DESERVING OF PROPER RESPECT?

MR. BOYD: OBJECT, YOUR HONOR. THIS IS BADGERING. THIS IS NOT QUESTIONING.

MR. TALL: THIS IS SOMEONE WHO IS TELLING US HEARSAY AS A REASON -- THIS IS A DIFFICULT LADY AND SHE'S BEING A DIFFICULT LADY IS THE KEY IN THIS CASE.

MR. BOYD: HE SPECIFICALLY DECLINED TO OFFER HEARSAY TESTIMONY, YOUR HONOR, AND COUNSEL WANTS TO KEEP BADGERING HIM UNTIL HE SAYS SOMETHING THAT WILL BE HARMFUL TO HIMSELF.

A YOUR HONOR, I DON'T HAVE ANYTHING AGAINST ANY OF THE KIDS OR ANYBODY. IT DOESN'T MATTER. I DON'T HAVE ANYTHING AGAINST JULIE OR MATT OR STEVE OR ANYBODY. WE JUST WANT TO GET ADMINISTRATION COMPLETED AND DONE. AND WE'RE UNABLE TO DO THAT. I DON'T HAVE AN ISSUE WITH JULIE, I REALLY DON'T. SHE'S PUTTING UP THESE THINGS AND TELLING ME THESE THINGS AND IT'S ALL SET FORTH IN THIS E-MAIL BECAUSE IT IS WHAT IT IS. YES, SHE HAS MADE IT VERY DIFFICULT.

JUDGE PADGETT: LET ME TELL THE ATTORNEYS AND THE PARTIES. WE ARE GOING TO GET THIS THING OVER WITH BECAUSE I'M GOING TO SEE THAT IT GETS DONE. SO, WE DON'T NEED MR. DAVIS, MR. TALL OR MR. BOYD TO SAY, "I DON'T UNDERSTAND WHY THIS AND WHY SO FORTH AND SO ON." TESTIFY AS TO WHAT HAPPENED WITHOUT ANY COMMENTARY SO WE CAN MOVE ON AND I WILL MAKE THE ULTIMATE DECISION RIGHT OR

WRONG. MR. TALL.

MR. TALL: THANK YOU, YOUR HONOR.

Q MR. DAVIS, I AM HANDING TO YOU COPIES OF EXHIBITS' 4 THROUGH 7 OF PLAINTIFF. THESE ARE COPIES OF JANUARY AND FEBRUARY 2016 COMMUNICATIONS FROM JULIE IRVING TO YOUR FIRM?

A YES. I WILL NOTE THAT ONE WAS DATED JANUARY 20TH. ONE WAS DATED JANUARY 29TH AND ONE WAS FEBRUARY 8TH. I MEAN, THESE ARE LIKE IN RAPID SUCCESSION. ONE WAS FEBRUARY 11TH, WHICH WAS THREE DAYS LATER. SO, THESE WERE FOUR LETTERS IN RAPID SUCCESSION.

Q WHAT'S YOUR IMPRESSION ABOUT THE RAPID SUCCESSION THAT YOU WANTED THE COURT TO KNOW?

A I E-MAILED JULIE... BEAR IN MIND THIS CAME COMPLETELY OUT OF THE BLUE.

Q WHAT DOES THAT MEAN, "COMPLETELY OUT OF THE BLUE"?

A UNEXPECTED. COMPLETELY UNEXPECTED.

Q WHAT'S THE SIGNIFICANCE OF GETTING AN UNEXPECTED LETTER?

A BECAUSE I DIDN'T KNOW WHAT TO DO WITH IT. I DIDN'T KNOW HOW TO RESPOND TO HER.

Q WHAT'S CONFUSING ABOUT THE LETTER?

A WHAT'S CONFUSING IS WE HAD TALKED FOR SEVERAL

MONTHS WITH MR. SCOVILLE AND EXCHANGED PERSONAL PROPERTY. WE HAD INFORMATION. WE TALKED AT LENGTH. WE CAME UP WITH A HEARTFELT RESOLUTION. WE GOT TO THE TIME TO IMPLEMENT THE RESOLUTION AND I GET A COMPLETE 180 IN THE MAIL FROM MS. IRVING. SO, YES. IT WAS VERY CONFUSING.

Q WHAT'S CONFUSING ABOUT IT? DIDN'T SHE EXPLAIN WHAT SHE WANTED?

A NO. SHE DIDN'T EXPLAIN THE REASON. SO, WHEN I GOT THAT I SAID, "WAIT A MINUTE. THIS IS COMPLETELY OUT OF CHARACTER. THIS IS COMPLETELY OFF TRACK -- "

Q WHAT DO YOU MEAN "COMPLETELY OUT OF CHARACTER"?

A WE HAD SOLVED HOW THINGS WERE GOING TO BE DISTRIBUTED AND THEN I GET A LETTER... WHAT HAD HAPPENED, BASED ON THAT PHONE CALL APPARENTLY, SHE HAD TALKED TO SOMEBODY AND SOMEBODY SAID THAT IF YOU GET THE PROPERTY DISTRIBUTED, YOU WILL BE ABLE TO CONTROL 75%.

Q HOW DO YOU KNOW THAT?

A BECAUSE SHE TOLD ME. SHE TOLD ME IN THAT CONVERSATION.

Q SHE TOLD YOU ABOUT SPEAKING TO SOMEONE ELSE?

A YES. IN THAT CONVERSATION... SHE GOT OUTSIDE LEGAL COUNSEL THAT TOLD HER THAT IF THE

DISTRIBUTIONS WERE MADE, A QUARTER SHARE FOR ALL THE PROPERTIES, THAT SHE COULD CONTROL ALL THE PROPERTIES. SOMEBODY TOLD HER THAT, WHICH WAS MISERABLE ADVICE.

Q ALRIGHT.

A APPARENTLY THAT'S WHAT CHANGED YOUR MIND BECAUSE NOW SHE FELT LIKE SHE COULD BE IN CONTROL OF THE WHOLE ESTATE.

Q YOU DON'T THINK IT HAD ANYTHING TO DO WITH THE VALUE OF THE CROOKED PINE PROPERTY WITH A NEW ROOF AND NO MOLD?

A AGAIN, SHE WOULD NOT ALLOW US TO HAVE AN OPPORTUNITY TO EVEN TALK ABOUT IT. WHAT I TRIED TO DO AND ALL I GOT WAS THAT LETTER. I SAID, "WAIT A MINUTE. THIS IS COMPLETELY UNEXPECTED. WHAT'S HAPPENED HERE. THIS TRAIN HAS COME OFF THE RAILS. LET'S HAVE A CONVERSATION OR A MEETING AND GET TO THE BOTTOM OF THIS." WHAT ELSE WOULD A REASONABLE PERSON DO?

Q I THINK INSTEAD OF SENDING TO HER ON 29 JANUARY SOMETHING THAT PRETENDS LIKE YOU NEVER GOT THE LETTER FROM JANUARY 20, YOU MIGHT HAVE INQUIRED ABOUT THE JANUARY 20 LETTER. WILL YOU ADMIT THAT THE COMMUNICATION FROM YOUR OFFICE ON 29 JANUARY WAS AS IF YOU NEVER RECEIVED THE

JANUARY 20 LETTER?

A IT WAS SO OUT OF CHARACTER.

Q WHOSE CHARACTER ARE WE TALKING ABOUT?

A THE CHARACTER OF THE WHOLE MATTER.

Q WHAT DOES THAT MEAN?

A WE HAD BEEN MOVING DOWN A CERTAIN TRACK FOR LIKE 6 TO 8 MONTHS AND CAME TO IMPLEMENT IT AND THEN IT ALL OF A SUDDEN CHANGED OVERNIGHT.

Q WHY DID YOU NOT PROPOSE TO COMMUNICATE BACK WITH HER AND SAY, "THAT'S A SHOCKING LETTER, YOUR JANUARY 20. WHY ARE YOU DOING THIS?"

A I DID DO THAT.

Q AFTER YOU SENT HER A 29 JANUARY PROPOSAL THAT IGNORED THE JANUARY 20 LETTER, CORRECT?

A NO, I DID. I E-MAILED HER AND SAID, "LET'S GET TOGETHER AND TRY TO WORK THIS OUT".

Q WHAT WAS THE DATE?

A I'VE GOT DATES HERE OF FEBRUARY 9TH, FEBRUARY 29TH OR WHENEVER SHE SENT IT. SO, THIS IS WHAT... HOW MANY DAYS LATER IS THAT? 31 DAYS, 10 OR 11 DAYS. I'M SENDING A --

Q LET'S TAKE A LOOK AT JANUARY 29. THIS IS EXHIBIT 12.

A I ASKED HER NUMEROUS TIMES? "CAN WE PLEASE HAVE A CONFERENCE CALL OR A MEETING TO --"

Q LET'S LOOK AY JANUARY 29, EXHIBIT 12?

A SHE REFUSED TO DO IT. YES, JANUARY THE 29TH.

Q THIS IS A PROPOSAL TO MODIFY WHAT YOU THOUGHT WAS THE SETTLEMENT, IS IT NOT?

A ALL THAT DID WAS ADDED THE REPAIRS TO THE DISTRIBUTION PROPOSAL.

Q I WILL ASK THE QUESTION AGAIN. ISN'T THIS A PROPOSAL TO MODIFY THE DISTRIBUTION PLAN THAT YOU SENT IN DECEMBER?

A NO, NO, IT'S NOT, ABSOLUTELY NOT.

Q IT ADDED THE REPAIRS. WHAT ELSE DO YOU --

A THAT WOULD'VE SHOWN UP ON THE CLOSING DOCUMENTS ANYWAY. THE FIRST ONE JUST DIDN'T HAVE THE REPAIRS THAT WAS GOING TO STILL SHOW UP, BUT JUST BECAUSE IT WAS LEFT OFF THE FIRST ONE DIDN'T MEAN THAT WAS HOW IT WAS GOING TO BE HANDLED. THAT WAS NOT A FORMAL PROPOSAL.

Q DO YOU OBJECT TO THE USE OF THE WORD "MODIFIED"?

A NO. I OBJECT TO YOUR USE OF THE INCLUSIVENESS OF THE DOCUMENTS. THAT WAS A VERY PRELIMINARY DISCUSSION POINT --

Q NO ONE IS SUGGESTING THAT IT WAS ETCHED IN STONE. WE CAN STIPULATE TO THAT?

A IT SOUNDED TO ME LIKE --

Q -- YOU SENT A PROPOSAL IN DECEMBER?

A YES.

Q ON JANUARY 20 YOU GOT A LETTER FROM THE BENEFICIARY THAT SAYS, "NO LONGER AM I INTERESTED IN THIS KIND OF PROPOSAL." YES?

A THAT'S NOT EXACTLY WHAT HER LETTER SAID. YOU NEED TO READ IT.

Q I THINK THE JUDGE IS READING IT RIGHT NOW. JANUARY 20 2016. SHE EXPLAINS THAT MR. SCOVILLE'S SICKNESS IS GONE AND SHE EXPLAINS THAT SHE NO LONGER WANTS TO MOVE FORWARD WITH THE PROPOSALS THAT ARE BEING MADE IN OCTOBER.

A THE OTHER THING THAT IS SO CONFOUNDING IS I HAVE AN E-MAIL FROM STEVE THAT SAYS, "I WANT TO DO THIS." WE HAVE NOTHING FROM MATT SAYING NOT TO DO THAT -- FROM MS. IRVING --

Q SO, THE ANSWER IS TO IGNORE WHAT MS. IRVING SAID TO YOU ON JANUARY 20 AND SEND HER A REVISION? IS THAT A BETTER WORD?

A NO.

Q THE DIFFERENCE BETWEEN JANUARY 29 AND DECEMBER 10, WHAT DO YOU CALL THAT? YOU DON'T LIKE THE WORD MODIFIED?

A WE HAVE HAD SEVERAL MONTHS WITH MR. SCOVILLE. WE WORKED OUT A --

Q I DON'T WANT AN ANSWER THAT TALKS ABOUT... THE

JUDGE HAS ALREADY SAID WE WILL BE HERE ALL AFTERNOON. LET'S GET REAL CLEAR. YOU HAVE A LETTER FROM A BENEFICIARY ON 20 JANUARY. DO YOU DIRECTLY ADDRESS IT WITH THAT BENEFICIARY?

A YES, I DID. YES, I DID.

Q BEFORE YOU SENT HER SOMETHING ON 29 JANUARY WHICH WAS SIMILAR?

A NO. I ADDRESSED IT IN AN E-MAIL TO HER.

Q I DID NOT ASK THE FORMAT. I ASKED THE TIME.

A I SAID HERE, "I AM NOT SURE HOW TO RESPOND TO YOUR LETTER."

Q THAT'S IN FEBRUARY NOT --

A "I'M NOT SURE EXACTLY WHAT IT MEANS IN REGARD TO THE SALE OF ESTATE PROPERTY AND DISTRIBUTION OF THE PROPERTIES." I DIDN'T EXACTLY KNOW WHAT WAS SO... PLUS, I HAD SOMETHING FROM STEVE SAYING HE WANTED TO DO IT AND MATT STILL WANTED TO IT AND MS. POAFPYBITTY STILL WANTED TO DO IT. SO, I HAD ONE PERSON TO MOVE --

Q LET'S TURN DOWN THE HEARSAY BECAUSE IF YOU WANT TO BRING SOMEONE IN AND HAVE THEM TESTIFY, BY ALL MEANS DO IT. BUT HERE WE'VE GOT AN EXHIBIT WITH A LETTER 29 JANUARY TO YOU SAYS, "MS. IRVING SAYS SHE'S SURPRISED." IS THAT INAPPROPRIATE FOR HER TO SAY SUCH A THING?

A SHE WAS CLEARLY JUST BUILDING THE CASE. THESE RAPID FIRE LETTERS AND THEN RECORDING MY PHONE CONVERSATION. SHE MADE UP HER MIND SHE WANTED TO DO SOMETHING AND WAS BUILDING THE CASE. THAT'S CLEAR --

Q YOU CAN DISAGREE WITH HER IF YOU WANT TO, CAN'T YOU?

A IT'S UNFORTUNATE.

Q YOU GUYS HAVE BEEN SAYING ALL ALONG THAT MS. JENE HAS FULL AUTHORITY TO HANDLE THIS THE WAY SHE WANTS TO, TRUE?

A NO. UNDER THE TERMS OF THE WILL. NO, SIR. SHE'S DOESN'T HAVE UNFAVORED ABILITY TO DO WHATEVER SHE WANTS TO DO. SHE IS GOVERNED BY THE TERMS OF THE WILL.

Q YOUR POSITION TO THE COURT IS THAT SHE HAS A GREAT DEAL OF AUTHORITY GIVEN BY THE TESTATOR, ISN'T THAT SO?

A AS FAR AS CHOOSING WHICH PROPERTIES GO WHERE, IT SAYS IT CLEARLY IN BLACK AND WHITE.

Q SO, YOU AGREE WITH MY STATEMENT?

A I'M NOT SURE WHAT YOUR STATEMENT WAS.

Q MS. JENE HAS UNDER THE WILL A LOT OF AUTHORITY TO HANDLE THE ESTATE AFFAIRS AND PICK OUT THE PROPERTIES AND CLOSE THE ESTATE?

A YES. BEAR IN MIND THERE WAS SOMETHING YOU
FAILED TO MENTION --

Q WHOSE MINDS ARE YOU TALKING ABOUT? I AM ASKING
YOU A QUESTION.

MR. BOYD: YOUR HONOR, HE SHOULD BE ABLE
TO ANSWER THE QUESTION.

JUDGE PADGETT: MR. DAVIS, YOU NEED NOT
EDITORIALIZE AND PUT YOUR OPINIONS ABOUT
WHY MS. JULIE IS WRITING LETTERS AND SO
FORTH AND SO ON. JUST ANSWER THE
QUESTION. I MEAN, I DON'T KNOW HOW MUCH
CLEARER I CAN MAKE IT. WE WOULDN'T BE
HERE TODAY IF THERE WASN'T A
DISAGREEMENT AND THE DISAGREEMENT IS MY
JOB TO DECIDE WHO OR WHAT CAUSED THE
DISAGREEMENT AND WHY WE ARE HERE AND
SHOULD SOMEBODY PAY A PENALTY FOR THAT.
WHETHER THAT'S MS. IRVING OR WHETHER
THAT'S YOUR CLIENT, THE PERSONAL
REPRESENTATIVE. I CAN'T GET IT DONE
UNLESS YOU ANSWER THE QUESTIONS AND MOVE
ON WITHOUT THE EDITORIALIZING, OKAY?
BOTH OF YOU.

A OKAY. I BELIEVE THE QUESTION IS, DID MS.
POAFPYBITTY HAVE AUTHORITY TO CHOOSE WHICH

ASSETS GO WHERE AND THE ANSWER IS YES.

Q SO, DID YOU CONSIDER... MAYBE THE ANSWER IS NO. DID YOU CONSIDER IN RESPONSE TO THE 20 JANUARY LETTER FROM MS. IRVING TELLING HER THAT HER IDEAS WERE INAPPROPRIATE? THEY'RE NOT GOING TO BE RESPECTED. WE ARE GOING TO BE DOING OTHER THINGS. MAYBE YOU DIDN'T THINK THAT WAS THE WAY TO GO.

A NO. I DON'T UNDERSTAND THE QUESTION.

Q YOU GET A LETTER FROM SOMEONE ON JANUARY 20 PROPOSING SOMETHING THAT SHOCKS YOU AND YOU THINK IS INAPPROPRIATE, WHY NOT HANDLE IT DIRECTLY?

A I DID. I JUST TOLD YOU I DID.

Q IN FEBRUARY AFTER YOU SENT HER A VERY SIMILAR PROPOSAL ON JANUARY 29 SO SHE HAD TO WRITE YOU A LETTER THAT SAYS, "DID YOU EVEN READ MY JANUARY 20 LETTER?" "WHY WOULD YOU SEND ME A NEW PROPOSAL AFTER I ALREADY TOLD YOU THAT I DON'T LIKE A SIMILAR ONE IN DECEMBER?" WHY DON'T WE HAVE DIRECT COMMUNICATIONS BETWEEN YOU AND THE BENEFICIARIES? IF YOU HAVE ANY COMMUNICATIONS AT ALL?"

A OH, MY GOSH, YOUR HONOR. I CAN'T STAND THIS! I HAVE ALREADY ANSWERED IT FOUR TIMES. I

COMMUNICATED WITH JULIE. I SENT HER MULTIPLE E-MAILS AND SAID, "LET'S HAVE A MEETING OR A CONFERENCE CALL."

Q OKAY. LET'S TALK MORE ABOUT COMMUNICATIONS.

MR. TALL: YOUR HONOR, THIS IS DEFENDANT'S RESPONSES FOR PLAINTIFFS REQUESTS FOR ADMISSIONS. IT'S EXHIBIT NUMBER 10. I WOULD LIKE YOU TO REVIEW REQUEST NUMBER SEVEN AND THE RESPONSE THAT YOU AFFORDED.

A OKAY. WHAT IS THE QUESTION?

Q CAN YOU EXPLAIN THE OBJECTIONS THAT YOU HAVE TO THE PLAINTIFFS ASKING IN THIS ADMISSION WHETHER OR NOT IN A FINAL DISTRIBUTION PROPOSAL YOU'RE PROPOSING TO USE SIMILAR VALUES THAT WERE LISTED ON THE JUNE 2016 DISTRIBUTION PROPOSAL?

A I'M NOT SURE WHAT YOU'RE ASKING ME. WE FILED AN INVENTORY. WE FILED JUNE 2016 DOCUMENTS. WE FILED FEBRUARY 2017 DOCUMENTS. THEY ARE WHAT THEY ARE AND THEY SAY WHAT THEY SAY. I DON'T UNDERSTAND WHAT --

JUDGE PADGETT: RESTATE YOUR QUESTION FOR THE COURT IF YOU WILL.

A IT SAYS, "DEFENDANT'S CURRENT DISTRIBUTION PROPOSAL INCLUDES DISTRIBUTIONS OF PROPERTIES IN

IT'S JUNE 2006 FINAL ACCOUNTING AT VALUES LISTED
IN SAID FINAL ACCOUNTING."

JUDGE PADGETT: THAT WAS YOUR ANSWER?

A THAT WAS THE QUESTION.

JUDGE PADGETT: WHAT WAS YOUR ANSWER?

A BEAR IN MIND, THESE WERE PREPARED BY COUNSEL FOR
THE ESTATE, MR. BOYD. SO, YOU MAY WANT TO ASK
HIM THE QUESTION.

JUDGE PADGETT: WHAT DOES THAT RESPONSE
SAY?

A IT SAYS, "ANSWER: OBJECTION. THE PERSONAL
REPRESENTATIVE OBJECTS TO THIS REQUEST TO ADMIT
ON GROUNDS THAT IT IS UNCLEAR AND AMBIGUOUS AND
OPEN TO MULTIPLE INTERPRETATIONS." BUT IT GOES
ON TO EXPLAIN SOME...

Q YOU MADE REFERENCE TO INVENTORIES THAT HAVE BEEN
FILED. BUT IN NOVEMBER OF 2016, WILL YOU AGREE
THAT IT'S A FAIR QUESTION TO THE ESTATE AS TO
WHETHER OR NOT IN THEIR FINAL PROPOSAL WHICH THE
COURT HAS SAID SHOULD BE FILED PRIOR TO HEARING.
WHETHER OR NOT THE ESTATE HAS DECIDED TO STICK
WITH THE JUNE 2016 VALUES OR USE OTHER VALUES?
FAIR INQUIRY?

A THE DOCUMENT SPEAKS FOR ITSELF. WHAT IT SAYS IS
WHAT IT SAYS.

Q I DIDN'T ASK ABOUT THE DOCUMENT. I ASKED ABOUT JULIE IRVING AND HER ATTORNEY UNDERSTANDING THAT YOU FOLKS PUT VALUES ON A DISTRIBUTION PROPOSAL IN JUNE AND WANTED TO INQUIRE AS TO WHETHER OR NOT YOU DID SOMETHING YOU TOLD THE JUDGE YOU MIGHT DO, WHICH IS TO GO OUT AND GET SECOND APPRAISALS. ISN'T IT FAIR TO ASK YOU WHETHER YOU DID THAT? WHETHER OR NOT THE UPCOMING DISTRIBUTIONAL PROPOSAL --

A WE DID NOT GET ANY ADDITIONAL APPRAISALS.

Q WAS IT FAIR TO ASK YOU THAT QUESTION?

A WHETHER WE GOT NEW APPRAISALS?

Q WHETHER YOU WERE PROPOSING TO USE NUMBERS DIFFERENT FROM THE JUNE NUMBERS? UNFAIR?

A AGAIN, I AM TRYING TO FIGURE OUT WHAT THE QUESTION IS.

Q THE QUESTION IS REAL CLEAR.

MR. BOYD: NO, IT'S NOT, YOUR HONOR. I WOULD OBJECT, YOUR HONOR. THE QUESTION IS NOT REAL CLEAR. THAT'S THE REASON FOR THE ORIGINAL OBJECTION.

JUDGE PADGETT: THE QUESTION IS PRETTY CLEAR TO ME. HIS QUESTION IS, WAS IT FAIR TO ASK YOU WHAT WERE YOU GOING TO USE THE EVALUATIONS ON THE JUNE

APPRAISAL FOR THE FINAL PROPOSAL, AS I UNDERSTAND IT? IS THAT THE QUESTION, MR. TALL?

MR. TALL: IT IS, YOUR HONOR.

JUDGE PADGETT: THAT'S PRETTY CLEAR. WAS IT FAIR?

A SURE. HE CAN ASK. IF HE WANTS TO ASK THAT'S FINE.

JUDGE PADGETT: I'M GOING TO ASK IT TO YOU. WAS IT FAIR FOR MS. IRVING TO ASK WHICH VALUATIONS WERE YOU GOING TO USE ON THE FINAL PROPOSAL, THE ONE IN JUNE OR SOME NEW ONES?

A I BELIEVE IT'S REASONABLE TO ASK WHY. I MEAN, IS THAT WHAT'S HE SAYING? IS IT FAIR TO ASK WHY THE --

JUDGE PADGETT: IS IT FAIR TO ASK WHICH VALUATIONS FOR THE PROPERTY ARE YOU GOING TO USE ON THE FINAL PROPOSAL? ARE YOU GOING TO USE JUNE OR SOME NEW ONES? IS IT FAIR TO ASK THAT QUESTION AS A BENEFICIARY?

A THAT'S CONFUSING BECAUSE WE'VE ALREADY ANSWERED IT BECAUSE WE HAVE ALREADY FILED THE PROPOSING DOCUMENTS WITH DIFFERENT VALUATIONS ON IT. SO,

THAT IS YOUR ANSWER. WE FILED IT. IT HAS THE NEW EVALUATION FOR THE CROOKED PINE PROPERTY ON IT.

Q YOUR ANSWER IN JANUARY OF 2017 WAS, "OBJECTION. WE'RE NOT GOING TO ADMIT OR DENY THIS REQUEST." ISN'T THAT TRUE?

A LET ME SEE THAT AGAIN, WHAT YOU ASKED THERE.

JUDGE PADGETT: WE WILL CALL FOR THE RECORD, EXHIBIT 10, PARAGRAPH 7, OF THE REQUEST TO ADMIT.

MR. BOYD: YOUR HONOR, CAN I JUST BRIEFLY INTERJECT AND CLARIFY. I THINK I CAN HELP THIS DISCUSSION ALONG.

JUDGE PADGETT: SURE.

MR. BOYD: THE OBJECTION, FIRST OF ALL, THE QUESTION WAS PROFFERED ON NOVEMBER 30TH AND IT WAS ANSWERED DECEMBER 30TH BEFORE I AND ANYBODY ELSE IN THE OFFICE HAD SEEN THE FINAL DISTRIBUTION. THE REASON THE OBJECTION IS RAISED... IF MR. TALL WOULD'VE CALLED ME TO HAVE A DISCUSSION ABOUT IT, WE COULD'VE CLARIFIED THIS, BUT I DIDN'T RECEIVE COMMUNICATION. I SIMPLY MADE THE OBJECTION AND SAID, "HEY, THE DOCUMENTS

SPEAK FOR THEMSELVES." BUT IT WASN'T ENTIRELY CLEAR TO ME WHAT VALUES HE WAS REFERRING TO. SO, WITHOUT ADMITTING SOMETHING IN AN ABUNDANCE OF CAUTION, I DENIED... I RESERVED AN OBJECTION, BUT I HAD NOT HAD ANY DISCUSSIONS WITH HIM UNTIL THIS POINT IN TIME. AND THE FACT THAT WE'RE NOT EVEN SURE WHAT ACCOUNTING WE'RE REFERRING TO UNDERSCORES THE AMBIGUITY IN ALL OF THIS. MR. DAVIS DIDN'T ANSWER THE QUESTION, I DID. MR. TALL NEVER ASKED ME A QUESTION ABOUT IT UNTIL HE STARTED ASKING MR. DAVIS ABOUT IT RIGHT NOW.

MR. TALL: YOUR HONOR, I CAN OFFER GREATER CLARIFICATION. WE RECEIVED ON 14 FEBRUARY A DISTRIBUTION PROPOSAL THAT WAS DUE ON 7 FEBRUARY.

MR. BOYD: I ALREADY EXPLAINED TO MR. TALL THAT WE --

MR. TALL: I'M NOT FINISHED. MR. DAVIS WAS DEPOSED ON 6 FEBRUARY AND WE WERE ASKING HIM THEN WHAT WAS YOUR PROPOSAL? HIS RESPONSE AT THAT TIME WAS THAT YOU DIDN'T HAVE A OBLIGATION TO FILE AN

ADDITIONAL CLOSING DOCUMENT. DO YOU
RECALL?

A NO. WE WERE GOING TO UP DATE IT. WHATEVER I
SAID IN MY DEPOSITION IS WHAT I SAID. THE FACT
IS WE DID UPDATE IT AND I THINK THE ANSWER TO
THE QUESTION THAT I THINK YOU'RE ASKING IS, WHY
DID IT CHANGE AS I MENTIONED IN FRONT OF THE --

Q I DIDN'T ASK WHY IT CHANGED. IT SEEMS TO ME
THAT WE ASKED A SIMPLE QUESTION AND DIDN'T GET A
SIMPLE ANSWER. THAT'S A CONTINUING THEME THAT
MS. IRVING SAYS AND SHE GETS PAINTED AS BEING
DIFFICULT. I DIDN'T ASK YOU WHY IT CHANGED. I
ASKED YOU IF IT WOULD CHANGE?

A AGAIN, THIS IS NOT MY RESPONSE. IT CHANGED.
THERE'S REASONS WHY IT CHANGED AND THAT'S IT.

JUDGE PADGETT: GO AHEAD AND MOVE ON,
MR. TALL.

Q LET ME SHOW YOU EXHIBIT 14. IT IS A
COMMUNICATION AND I THINK AT THE BOTTOM IT HAS
31 MARCH. EXCUSE ME. HAS 8 APRIL.
COMMUNICATIONS BETWEEN MS. IRVING AND YOUR
OFFICE. DO YOU SEE THE RESPONSE THAT YOUR
OFFICE OFFERED TO SAY THAT THERE'S NOT LIKELY TO
BE A TAXABLE EVENT FOR THE BENEFICIARIES?

A WHICH PART ARE YOU REFERRING TO, THE PART IN THE

MIDDLE?

Q YES.

A YES. AGAIN, AS I MENTIONED BEFORE, A PERSONAL REPRESENTATIVE IS NOT REQUIRED TO GIVE TAX ADVICE TO THE PARTIES. IT WAS MADE CLEAR THAT I WAS NOT REPRESENTING MS. IRVING OR ANYBODY. THEY HAVE TO GET THEIR OWN TAX ADVICE. IT'S NOT OUR RESPONSIBILITY TO GIVE ANY BENEFICIARY TAX ADVICE.

JUDGE PADGETT: YOU ARE REFERRING TO
PLAINTIFF'S EXHIBIT 14?

A YES.

Q YOU TOOK IT UPON YOURSELF OR YOUR OFFICE TOOK IT UPON ITSELF TO TRY AND GET MS. IRVING'S SOCIAL SECURITY NUMBER IN MARCH OF 2016? FAIR STATEMENT?

A LET ME SEE THE E-MAIL, THAT ONE IN YOUR HAND THERE.

Q I HAVE ONE IN MY HAND FROM 12 AND 11 OF APRIL. I DON'T THINK THAT'S GOING TO HELP YOU.

A YES. I RECALL THAT MS. POAFPYBITTY HAD... THAT'S SOMETHING THAT WE CERTAINLY ASK. "DO YOU HAVE AN ACCOUNTANT? YOU KNOW, YOU HAVE TO FILE TAX RETURNS FOR THE DECEDENT." SHE HAS AND CURRENTLY HAS AN ACCOUNTANT. SHE TOOK THAT

INFORMATION TO THEM. THEY REQUESTED SOME INFORMATION. WE SOUGHT TO GET IT FROM MS. IRVING AND SHE REFUSED TO GIVE IT TO US.

Q YOUR OFFICE TOOK ON THE RESPONSIBILITY OF SEEKING OUT MS. IRVING'S SOCIAL SECURITY NUMBER. WELL, YOU TOOK ON THE TASK, DID YOU NOT?

A WE WERE ASKED BY THE ACCOUNTING FIRM FOR THE SOCIAL SECURITY NUMBERS OF THE BENEFICIARIES. WE ASKED ALL OF THEM. STEVE SENT HIS RIGHT AWAY, NO PROBLEM. JULIE WAS THE ONLY PROBLEM.

Q WHAT WAS THE PROBLEM?

A I DON'T KNOW.

Q WHY CALL IT A PROBLEM IF YOU DON'T KNOW?

A IT WAS A PROBLEM BECAUSE THEY WERE ASKING US TO GIVE THE BENEFICIARIES SOCIAL SECURITY NUMBERS AND WE COULDN'T OBTAIN THEM. SO, WE CALLED THEM BACK AND SAID, "MS. IRVING REFUSES TO GIVE IT TO US."

Q SHE BEEN CALLED DIFFICULT BECAUSE OF THAT, HASN'T SHE?

A IT IS WHAT IT IS.

(CONFIDENTIAL. STRIKING.)

Q ALRIGHT. IS SOMETHING ABOUT THIS TAX RETURN ASSOCIATED WITH THE COUNTERCLAIMS OF YOUR CLIENT?

A SHE WOULD NOT PROVIDE HER SOCIAL SECURITY NUMBER SO THE ACCOUNTANT COULD FINISH THE TAX RETURNS FOR THE ESTATE PERIOD. TAKE IT AS YOU WANT IT.

Q I DO WANT TO TAKE IT A LITTLE FURTHER. DID SHE EXPLAIN HERSELF TO YOU?

A THERE WAS AN E-MAIL THAT SAID SHE HAD HER IDENTITY STOLEN, YOU KNOW. THAT WAS PART OF THE EXPLANATION I GUESS THAT WE GOT.

Q DID SHE ASK YOU FURTHER AS TO WHAT THIS WAS ALL ABOUT? YOU MIGHT HAVE DECIDED AT THAT POINT, SHE'S ASKING TOO MANY QUESTIONS ABOUT SOMETHING THAT WE DON'T HAVE ANY INVOLVEMENT IN.

A IT WAS OUTSIDE THE PURVIEW OF WHAT WE WERE DOING. WE WERE ASSISTING THE PERSONAL REPRESENTATIVE TO ADMINISTER THE ESTATE. SHE HAD AN OUTSIDE CPA FIRM DOING THE TAXES AND WE WERE SIMPLY REQUESTED TO GET SOME INFORMATION, WHICH WE TRIED TO GET AND SHE WOULD NOT PROVIDE.

Q HERE'S 15. 15 IS IT NOT, FROM THE ACCOUNTING FIRM RESPONDING TO INQUIRIES THAT YOUR OFFICE HAD MADE ABOUT MS. IRVING'S SOCIAL SECURITY NUMBER AND THE CONSEQUENCES OF ASKING FOR IT?

A WHAT'S THE QUESTION AGAIN?

Q IS THIS NOT A COMMUNICATION FROM THE ACCOUNTING FIRM FOR THE ESTATE RESPONDING TO YOUR OFFICES

INQUIRING ABOUT THE REASON FOR MS. IRVING'S
SOCIAL SECURITY NUMBER?

A THIS WAS AN E-MAIL... I AM NOT EXACTLY SURE.
THIS WAS AN E-MAIL SENT FIRST BY BECKY WEAVER TO
JULIE IRVING ON APRIL 11TH ASKING FOR HER
INFORMATION. IT WAS COPIED ON THAT TO ROXANNA
AT THE ACCOUNTING FIRM. THE RESPONSE CAME FROM
ROXANNA. THE E-MAIL WAS SENT TO JULIE, ROXANNA
WAS COPIED. ROXANNA RESPONDED AND SAID, "YES.
WE 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 TO THE BENEFICIARIES THROUGH FORM K-1.
THIS COULD BE INCOME TO THEM..." WHAT'S THE
QUESTION AGAIN?

Q I THINK YOU'RE ANSWERING IT, WHICH IS THAT THE
ACCOUNTING FIRM RESPONDING TO YOUR OFFICES
INQUIRY SIMILAR TO MS. IRVING'S INQUIRY. THE
POINT THAT YOU DIDN'T READ... LET'S LOOK AT IT.
AT THIS POINT IF THEY HAD FILED THEIR FORM 1040S
ALREADY, THEY WILL HAVE TO PREPARE AN AMENDED
RETURN? FAIR STATEMENT?

A IF THAT'S WHAT IT SAYS. I MEAN...

Q I'M ASKING YOU IF THAT WHAT IS SAYS?

A YES. THAT'S WHAT IT SAYS.

Q IS THERE A REASON WHY AFTER YOU REQUESTED MS. IRVING'S SOCIAL SECURITY NUMBER AND SHE ASKED YOU ABOUT WHY IT WAS NEEDED AND WHY AFTER YOUR FIRM VOLUNTEERED TO MS. IRVING THAT THERE WAS UNLIKELY TO BE A TAX CONSEQUENCE --

A NO. THAT'S NOT WHAT IT SAYS.

Q LET'S LOOK AGAIN.

JUDGE PADGETT: PLEASE REFER TO WHICH EXHIBIT.

Q THE PHRASE IS, "NOT NORMALLY A TAXABLE EVENT TO THE BENEFICIARY" AND THAT IS 8 APRIL, FRIDAY BECKY WEAVER TO JULIE IRVING. THAT'S EXHIBIT 14.

A YOUR HONOR, THIS IS A LITTLE OFFENSIVE. MR. TALL HAS HIS LLM IN TAX AND HE KNOWS I'M AN ACCOUNTANT. HE KNOWS THIS STATEMENT TO BE TRUE. I DON'T KNOW HOW HE IS TRYING TO TWIST IT? IT IS A TRUE STATEMENT --

JUDGE PADGETT: WHAT HE IS ASKING YOU IS, IS THAT NOT WHAT THE LETTER SAYS?

A HE KNOWS IT DOESN'T, BUT I WILL ANSWER IT. THIS IS A TRUE STATEMENT THAT WHEN YOU RECEIVE SOMETHING FROM AN ESTATE AS A BENEFICIARY IT'S NOT TAXABLE. THE ISSUE HERE IS MORE COMPLICATED. IF THERE IS INCOME GENERATED IN AN

ESTATE, THEN THERE'S DISTRIBUTIONS. THEN SOME OF THE INCOME COULD BE TAXABLE. SO, THIS STATEMENT AS IT IS WRITTEN IS TRUE.

JUDGE PADGETT: ALL HE WAS ASKING IS, AS I UNDERSTOOD IT WAS, IS THAT NOT WHAT THE LETTER SAYS? IT DOESN'T MATTER IF IT'S TRUE OR NOT. IS THAT WHAT IT SAYS? AS I UNDERSTOOD THE QUESTION.

Q LET ME PUT IT TO YOU THIS WAY. I'M LOOKING AT 14 AND 15. 14 TELLS MS. IRVING THAT IT'S UNLIKELY TO BE A TAXABLE EVENT. THE REASON WHY HER SOCIAL SECURITY NUMBER IS BEING REQUESTED. AND 15 COMES FROM THE ACCOUNTANT THAT SAYS, "NOT ONLY MIGHT IT BE A TAXABLE EVENT, BUT SOMEONE WHO HAS ALREADY BEEN A BENEFICIARY THAT FILED THEIR TAX RETURN MIGHT HAVE TO AMEND IT." NOW, AM I MAKING SOMETHING UP OR ISN'T THAT WHAT THAT SAYS?

A IT SAYS EXACTLY WHAT IT SAYS ON THOSE PAGES.

Q DID YOU EVER CONSIDER THAT YOU FOLKS, WHO HAD, NUMBER ONE, ASKED FOR THE SOCIAL SECURITY NUMBER AND NUMBER TWO SAID, "DON'T WORRY ABOUT IT. IT MIGHT NOT BE A TAXABLE. IT'S NOT LIKELY TO BE A TAXABLE EVENT." DID YOU THINK ABOUT SHARING WHAT THE ACCOUNTANT HAD SAID ABOUT IT POSSIBLY

THAT.

JUDGE PADGETT: THAT LETTER, THAT E-MAIL THAT CAME FROM THE ACCOUNTANT TO YOUR OFFICE, DID YOU PROVIDE A COPY OF THAT E-MAIL TO MS. IRVING?

A I DON'T KNOW, YOUR HONOR. THAT WAS AN E-MAIL EXCHANGE FOR MS. WEAVER. I DON'T KNOW.

JUDGE PADGETT: OKAY.

MR. TALL: YOUR HONOR, I BECAME INVOLVED IN THE CASE AND HAVE A JUNE 1 COMMUNICATION AND MAY 31 COMMUNICATION WITH MR. DAVIS'S OFFICE. I HAVE A JUNE 28 COMMUNICATION. THESE ARE EXHIBITS 16 AND 17.

Q MR. DAVIS, YOU'RE LOOKING AT 16 AND 17 AND MY QUESTION TO YOU IS, CAN YOU ACKNOWLEDGE THAT THESE WERE COMMUNICATIONS BETWEEN YOUR OFFICE AND MINE?

A THERE WAS AN E-MAIL SENT BY MS. WEAVER ON MAY 31ST TO YOU. IT SAYS, "PLEASE PROVIDE JULIE IRVING AND D. MATTHEW ROTHGEB'S SOCIAL SECURITY NUMBERS AT THIS TIME FOR THE ESTATE TAX RETURNS. STEVEN HAS SUPPLIED HIS TO OUR OFFICE WITH THE ACCOUNTANT AT AN EARLIER DATE. THANK YOU, BECKY WEAVER." AND YOU RESPONDED, "DEAR MS. WEAVER, THANKS FOR YOUR E-MAIL. I'M CHARGED WITH

BEING A TAXABLE EVENT --

A NO.

Q -- SO MUCH SO THAT IT MIGHT CAUSE JULIE IRVING TO AMEND HER RETURN THE VERY THING THAT SHE WAS CONCERNED ABOUT?

A CAN I SEE THOSE EXHIBITS AGAIN, YOUR HONOR?

Q AS YOU MENTIONED A LITTLE DISCLAIMER ON THE BOTTOM OF EACH OF THESE E-MAILS. IT SAYS, "THAT THIS IS NOT INTENDED TO DEVELOP OR CREATE OR ESTABLISH ANY KIND OF ATTORNEY CLIENT RELATIONSHIP. IT'S FOR INFORMATION PURPOSES." IT SAYS, "NOT NORMALLY." THERE'S NO INFORMATION IN HERE THAT SAYS THIS WILL NOT BE A TAXABLE EVENT. IT IS INCUMBENT UPON EACH BENEFICIARY TO TAKE CARE OF THEIR OWN TAXABLE ISSUES. THERE IS NOTHING IN HERE THAT SAYS, "JULIE, YOU WILL NOT PAY A TAX BECAUSE OF THIS ESTATE." IT DOESN'T SAY THAT. IT SAYS NORMALLY THAT'S A TRUE STATEMENT. I DON'T KNOW IF HE'S ASKING ME, DID WE COUNSEL HER? WE HAVE NO ATTORNEY/CLIENT OR CPA CLIENT... NO RELATIONSHIP WITH MS. IRVING THAT REQUIRES ANY KIND OF TAX ADVICE OR ANY DUTY. WE SIMPLY LAID OUT SOME INFORMATION THERE. WE ASKED FOR SOME COOPERATION AND WE DIDN'T GET IT. SO, THAT'S ALL I CAN SAY ABOUT

PROVIDING GUIDANCE AND ASSURANCES TO MS. IRVING. CAN YOU SHARE OR ARE WE TALKING ABOUT A FORM 706, A FORM 1041? IF IT'S A 1041 WILL THIS POTENTIALLY RESULT IN 2015 TAX LIABILITY..." I DON'T SEE A RESPONSE FROM HER. THESE ARE QUESTIONS THAT SHOULD HAVE BEEN... SHOULD I BE SPEAKING TO MR. PARKER? THAT WAS HIS QUESTION TO US. AND OF COURSE, THE ANSWER IS YES. YOU SHOULD DIRECT THESE QUESTIONS TO MR. PARKER.

Q DO YOU HAVE ANY THAT INDICATES THAT THAT'S WHAT WE SHOULD DO? DO YOU HAVE ANY RESPONSES... HERE IS 28 JUNE THAT ALSO SAYS, "JULIE IRVING DECIDED IN JUNE OF 2016 IS THAT SHE DID NOT RECEIVE SOMETHING CALLED A K-1, WHICH WOULD CAUSE HER TO AMEND HER RETURN." IN MY INQUIRY ON 28 JUNE WAS WHETHER OR NOT THE ESTATE WOULD CONSIDER FILING IT'S TAX RETURN IN A WAY THAT IT DOESN'T REQUIRE A K-1 TO BE DISTRIBUTED. DID YOU ACKNOWLEDGE THAT LETTER OF 28 JUNE?

A SO, YOU'RE SAYING THAT YOU WANTED TO DICTATE HOW THE ESTATE WAS GOING TO HANDLE ITS TAX SITUATION?

Q MR. DAVIS, I CAN'T BE ANY MORE CLEAR ABOUT THE WHOLE THING IN THIS CASE. WHEN SOMEONE ASKS YOU A QUESTION, YOU INTERPRET IT THAT SOME IS

DICTATING IT TO YOU. THERE'S NO DICTATION IN THAT LETTER, IS THERE?

A I'M SORRY. WHAT QUESTION?

Q YOU CAN READ THE PART WHICH SOME ON MS. IRVING'S BEHALF ASKED WHETHER OR NOT THE STATE WOULD CONSIDER A 1041 FILING WHICH DOESN'T INCLUDE THE K-1'S. YOU CAN DO IT EITHER WAY. IN FACT, YOU AND I CAN AGREE THAT THE ESTATE WOUND UP FILING A TAX RETURN THAT HAD NO K-1'S?

A YOUR HONOR, THERE WAS AN ACCOUNTANT INVOLVED, CLARK PARKER. WE WERE NOT INVOLVED IN THE TAX PREPARATIONS SO THIS IS NOT... I MEAN, THIS IS A LETTER OR AN E-MAIL THAT MR. TALL SENT TO REESE BOYD ASKING ABOUT TAX ISSUES WHEN HE WAS AWARE THAT THERE WAS... CLARK PARKER WAS DOING THE RETURNS. AND NOW HE'S ASKING ME TO OPINE ABOUT SOMETHING. CLARK PARKER'S ACCOUNTING FIRM WAS ALREADY DOING THE TAX RETURNS. THIS E-MAIL WAS ADDRESSED TO REESE. SO, WHAT --

Q WHY IN JUNE OF 2016, IS MS. WEAVER OF YOUR OFFICE STILL SEEKING A TAX IDENTIFICATION NUMBER? WHY NOT JUST LEAVE IT UP TO THE ACCOUNTANT? WHY NOT JUST SAY TO EVERYBODY, "WE'RE OUT. WE DON'T HAVE ANYTHING TO DO WITH THIS. YOU NEED TO TALK TO THE ACCOUNTANT" AND

YOU DON'T HAVE AN E-MAIL LIKE THAT, DO YOU?

A I DID NOT SEND IT. I DON'T KNOW IF MS. WEAVER DID. I DON'T HAVE ONE. I MEAN, THAT'S A GOOD IDEA, YEAH. IF WE WOULD'VE KNOWN IT WOULD BE THAT DIFFICULT TO GET THE INFORMATION, WE WOULD'VE SOONER SAID, "YOU JUST DEAL STRAIGHT WITH THEM."

Q WELL, WE COULD SAY MS. IRVING WAS DIFFICULT IN GIVING THE INFORMATION, BUT WE CAN ALSO SAY, CAN WE NOT. THAT THE ESTATE WAS DIFFICULT IN RESPONDING TO... CORDIAL, NICE, POLITE COMMUNICATIONS TO MS. IRVING AND HER COUNSEL?

A NO. I DISAGREE WITH YOU.

Q YOU DON'T THINK THAT WAS CORDIAL OR POLITE?

A NO. THAT WAS CORDIAL AND POLITE, BUT THE ESTATE WAS NOT DIFFICULT IN RESPONDING.

Q DO YOU RECALL AT A TIME IN OUR OCTOBER 2016, WE MET WITH THE JUDGE IN CHAMBERS AND DISCUSSED DEPOSITION SCHEDULES AMONG OTHER THINGS?

A YES.

Q YOU'RE AWARE, ARE YOU NOT, THAT A LETTER FROM YOU DATED JANUARY 3, 2017 EXPRESSED SHOCK THAT YOU MIGHT GIVE YOUR DEPOSITION IN THIS CASE?

A I'M STILL SHOCKED, YES.

Q THAT LETTER WENT TO JUDGE WARD IN ADDITION TO

OTHERS?

A NO. THAT LETTER DID NOT GO TO JUDGE WARD.

Q NOT A CARBON COPY TO ADDRESSEE?

A THAT LETTER WAS MAILED TO MR. TALL INITIALLY. THAT LETTER LATER WAS ATTACHED IN RESPONSE TO E-MAIL... AND E-MAIL THAT MR. TALL SENT TO THE COURT REQUESTING YET ANOTHER HEARING OR MEETING. SO, THE LETTER WOULD NOT HAVE EVER GONE TO THE COURT HAD MR. TALL NOT SENT THAT UNORTHODOX E-MAIL TRIBUNAL WHERE HE'S TRYING TO DO THINGS BY E-MAIL. THAT IS THE ONLY REASON THAT WENT TO THE COURT, YOUR HONOR. IT WENT AFTER THE FACT. I ONLY WENT TO YOU THE FIRST TIME.

Q EVENTUALLY IT WENT TO JUDGE WARD?

A IN RESPONSE TO YOUR ARGUMENT THAT YOU PUT IN THE E-MAIL TO THIS COURT.

Q WHAT WAS SHOCKING ABOUT YOU BEING LISTED AS A WITNESS AND THE PROPOSAL THAT YOU BE EXAMINED BEFORE YOU TAKE THE STAND?

A BECAUSE... I'M NOT GETTING TO GET INTO A LOT OF DETAIL RIGHT HERE. I ALREADY HAVE WITH THE JUDGE AND WE HAVE BEEN TOLD TO KEEP IT BRIEF, SO I WILL. THIS WHOLE ACTION BROUGHT BY MS. IRVING AND MR. TALL IS COMPLETELY UNNECESSARY, DAMAGING AND EXTREMELY EXPENSIVE, VERY.

Q MR. DAVIS, I WOULD LIKE TO ASK... SO, AT THAT MEETING WHEN WE TALKED ABOUT DEPOSITIONS, WE WERE ALSO TALKING ABOUT STEVEN ROTHGEB'S DEPOSITION AND HE LIVES IN THAILAND, CORRECT?

A I DON'T RECALL ALL THOSE COMMUNICATIONS. THAT WOULD BE MORE OF MR. BOYD'S AREA.

Q YOU WERE PRESENT, WERE YOU NOT?

A I WAS PRESENT AT THE MEETING IN CHAMBERS, YES.

Q ARE YOU FAMILIAR WITH THE JUDGE'S ORDER OF NOVEMBER 10, WHICH SAYS IF ANYBODY WANTS TO TAKE STEVENS ROTHGEB'S DEPOSITION, THEY CAN DO IT BY TELEPHONE OR VIDEO?

A IF YOU PRESENT IT TO ME. IF THAT'S WHAT IT SAYS THAT'S WHAT IT SAYS. I HAVE TRIED TO KEEP THE EXPENSES DOWN AND I DID NOT GET INTO THAT PART AS MUCH AS MR. BOYD DID. SO, THAT WOULD'VE BEEN AN AREA THAT HE WOULD HAVE HANDLED.

Q OKAY. WHAT ABOUT YOUR DIRECTION TO THE PERSONAL REPRESENTATIVE? THE FIRST THING THAT WE HAD, THE FIRST EXHIBIT THAT WE HAD LAST FRIDAY SPOKE ABOUT A THIRD REMEDY IN THE EVENT THAT SOMEONE WAS CONCERNED ABOUT A PERSONAL REPRESENTATIVE BEHAVIOR. ONE IS TO FILE A PETITION TO REMOVE. CAN WE AGREE ON THAT?

A THAT INJUNCTIVE RELIEF IS NOT AN END ALL REMEDY.

THAT'S A TEMPORARY INJUNCTION THAT'S...

Q I DON'T RECALL ASKING YOU ABOUT AN INJUNCTIVE RELIEF. I WAS ASKING YOU ABOUT REMOVING THE PERSONAL REPRESENTATIVE.

A I'M SORRY. WHAT'S THE NEXT QUESTION?

Q THAT'S ONE REMEDY, IS IT NOT?

A REMOVING THE PERSONAL REPRESENTATIVE IS A REMEDY, YES.

Q THE SECOND REMEDY IS TO ASK THE COURT TO SPECIFICALLY DIRECT THE PERSONAL REPRESENTATIVE TO TAKE CARE OF SOMETHING THEY SHOULD'VE DONE THAT THEY HAVEN'T DONE ACCORDING TO THE STATUTE?

A YES. THIS IS A REMEDY.

Q IS THERE A THIRD REMEDY IN YOUR VIEW?

A THERE IS ALWAYS IN ANY CASE. INJUNCTION RELIEF. YOU CAN ALWAYS ASK THE COURT IF YOU HAVE GOT SOMETHING THAT'S GOING TO CREATE AN IRREPARABLE INJURY, YOU CAN ALWAYS ASK THE COURT TO HOLD THINGS OR DO WHATEVER. SO, I DON'T CALL THAT A REMEDY.

Q YOU DON'T CALL THAT A REMEDY?

A NO.

Q IS IT ONE OF THE POWERS OF THE COURT?

A THE COURT CERTAINLY HAS POWERS TO DO THAT, YES.

Q OKAY.

COURT REPORTER: CAN I ASK THAT WE TAKE
A SMALL BREAK PLEASE?

JUDGE PADGETT: ABSOLUTELY.

(OFF THE RECORD.)

JUDGE PADGETT: MR. TALL, I BELIEVE YOU
WERE EXAMINING MR. DAVIS.

MR. TALL: YES, YOUR HONOR. I DON'T
THINK I HAVE MUCH LONGER.

Q MR. DAVIS, ONE OF THINGS THAT THE JUDGE HAD
ASKED IN MAY WAS WHETHER OR NOT WE COULD MAKE A
DETERMINATION OF WHAT EXPENSES WERE INCURRED
WITH YOUR OFFICE FOR THE ESTATE AND WHAT, IF
ANY, WERE INCURRED FOR MS. POAFPYBITTY AS A
BENEFICIARY. DO YOU RECALL THAT?

A YES.

Q IS IT THE POSITION OF YOUR FIRM THAT EVERYTHING
THAT YOU FOLKS HAVE DONE YOU HAVE DONE FOR THE
ESTATE?

A YES. I HAVE GOT DOCUMENTATION HERE INDICATING
TO MS. POAFPYBITTY THAT WE REPRESENT HER AS A
PERSONAL REPRESENTATIVE. AND I'VE GOT AN E-MAIL
TO MS. IRVING INDICATING THAT WE REPRESENT HER
AS A PERSONAL REPRESENTATIVE --

Q DID YOU SAY MS. IRVING? I'M SORRY.

A YES. MS. IRVING. I HAVE AN E-MAIL INDICATING

THAT AND TO MS. POAFPYBITTY. AND WHAT WE HAVE DONE IN THIS MATTER IS FOR MS. POAFPYBITTY AS PERSONAL REPRESENTATIVE OF THIS ESTATE. THE ESTATE DOCUMENTS HAVE ALREADY BEEN FILED. SO, WHATEVER WE DID TO DEFEND THESE ACTIONS AND I THINK THE PLAINTIFF IN THIS ACTION IS HER IN HER CAPACITY AS A PERSONAL REPRESENTATIVE. SHE WAS NOT SUED AS A BENEFICIARY. SO, WE DEFENDED HER IN HER --

Q I THINK SHE'S LISTED AS BOTH, BUT YOU'RE NOT CLEAR?

A I'M NOT CLEAR, NO. WHATEVER. MY UNDERSTANDING IS SHE IS BEING SUED AS A PERSONAL REPRESENTATIVE. YES. I AM NOT SURE IF THE CAPTION HAS CHANGED. I WOULD HAVE TO GO BACK AND LOOK AT THIS. THIS IS THE FIRST SET OF INTERROGATORIES. I WOULD HAVE TO... ANYWAY, TO THE EXTENT THAT WE REPRESENT MS. POAFPYBITTY, WE REPRESENT HER AS A PERSONAL REPRESENTATIVE.

Q THE CLOSING DOCUMENTS LIST A FIGURE OF 50,000. HOW MANY WE KNOW --

MR. BOYD: EXCUSE ME, YOUR HONOR. CAN I HAVE A MOMENT BEFORE COUNSEL MOVES ON JUST ONE SECOND PLEASE?

JUDGE PADGETT: SURE.

MR. BOYD: YOUR HONOR, I WOULD LIKE TO CLARIFY MR. DAVIS WASN'T CLEAR IN HIS ANSWER BECAUSE APPARENTLY... I DON'T KNOW WHAT HE'S LOOKING AT, YOUR HONOR, BUT I'M LOOKING AT THE COMPLAINT AND WE WILL HAVE TO TAKE THAT UP LATER, YOUR HONOR.

JUDGE PADGETT: MR. TALL.

Q MR. DAVIS, THE CLOSING DOCUMENTS WITH \$50,000.00 WORTH OF LEGAL FEES FOR THE ESTATE, HOW MAY WE UNDERSTAND THIS FEE TO BE AT PRESENT?

A I WILL BE MORE THAN HAPPY TO PROVIDE A DETAILED ACCOUNTING OF ALL THE FEES, BUT I THINK THERE... I CAN'T SAY EXACTLY, BUT THEY'RE DEFINITELY IN EXCESS OF \$50,000.00. THEY'RE IN EXCESS OF 60,000.00 AND PROBABLY IN EXCESS OF 70,000.00 FOR EVERYTHING.

Q DOCUMENTS THAT WERE SHARED WITH THE PLAINTIFF YESTERDAY INDICATED THAT IN JANUARY OF 2017, THERE WERE ADDITIONAL ESTATE EXPENSES FOR LEGAL FEES. HAVE THERE BEEN LEGAL FEES TAKEN FROM THE ESTATE SINCE JANUARY OF 2017?

A I DON'T KNOW. I WOULD HAVE TO LOOK. I DON'T KNOW.

Q AFTER YOU HAD COMMUNICATIONS WITH MS. IRVING IN

FEBRUARY OF 2016, THERE WAS DISCUSSION OF CLOSING THE ESTATE WITHIN A 30 DAY PERIOD, DO YOU RECALL?

A SAY THAT AGAIN.

Q AFTER YOU HAD COMMUNICATIONS WITH MS. IRVING IN FEBRUARY OF 2016, THERE WAS DISCUSSION ABOUT THE ESTATE CLOSING WITHIN A 30 DAY PERIOD, DO YOU RECALL THAT?

A NO. NO, THERE WAS NOT. THAT WAS PREDICATED ON US WORKING SOMETHING OUT, BUT SHE REFUSED TO DO.

Q SO, THERE WAS DISCUSSION BUT THERE WAS A PREDICATION ON THE DISCUSSION?

A I MADE A COMMENT AND WE CAN REPLAY IT IF THE COURT WOULD LIKE. THE COMMENT WAS... OR THE QUESTION WAS WHETHER MS. IRVING WANTED TO BE IN CONTROL OF THE ESTATE OR WHETHER SHE WANTED TO CLOSE THE ESTATE. AND I SAID, "IF YOU WANT TO CLOSE THE ESTATE THAT CAN BE DONE WITHIN 30 DAYS." I THINK THAT WAS THE CONTEXT IN WHICH I SAID THAT.

Q DID YOU PROPOSE CLOSING THE ESTATE IN MARCH OF 2016?

A AGAIN, SHE DID NOT WANT TO DO THAT. SO, WE REALLY DIDN'T KNOW WHAT TO DO. BESIDES THERE'S ONE FACTOR THAT WE'VE DISCUSSED THAT'S IMPORTANT

THAT WE DON'T FORGET. THERE WAS A PROPERTY THAT HAD A CONTRACT ON IT THAT WE WERE GOING TO SELL AND WE HAD DISCUSSED THAT IN CHAMBERS. IT'S ACTUALLY PART OF THAT ORDER THAT WAS GOING TO BE SOLD. SO, THERE WAS A PIECE OF PROPERTY THAT WE COULDN'T DISTRIBUTE BECAUSE WE HAD IT UNDER CONTRACT TO SELL AND THE PERSON THAT WAS GOING TO BUY IT HAD SOME ISSUES, BUT THEN SHE COULD BUY IT AND SHE COULDN'T BUY IT. SO, THAT WAS SORT OF STRINGING US ALONG. SO, WE HAD TO WORK THAT OUT.

Q ALRIGHT, SIR. YOU HAD A CHANCE DURING TESTIMONY TODAY TO SHARE YOUR EXPERIENCES WITH JULIE IRVING. ARE YOU STILL STANDING BY THE COUNTERCLAIMS THAT THE ESTATE HAS FILED?

A ABSOLUTELY. SHE'S ON HER SECOND ATTORNEY. I STILL DO NOT HAVE AN EXPLANATION AS TO WHY SHE FIRED JACK SCOVILLE.

Q WAS THERE AN OBLIGATION TO GIVE YOU AN EXPLANATION?

A YES. I BELIEVE THERE IS AN OBLIGATION GIVEN THE LEVEL OF EXPENSES THAT HAVE BEEN INCURRED AND THE COUNTERCLAIM THAT'S INVOLVED. I BELIEVE SHE OWES IT TO EVERYBODY TO EXPLAIN, YOU KNOW, WHY SHE FIRED JACK SCOVILLE BECAUSE I THINK THAT IF

HE WAS STILL --

Q YOU KNOW IT WASN'T MS. IRVING THAT WAS BEING REPRESENTED BY JACK SCOVILLE, BUT THREE SIBLINGS, ARE YOU AWARE?

A THAT'S ANOTHER POINT I'M GLAD YOU BRING THAT UP BECAUSE YOU MADE A POINT EARLY ON THAT ALL THREE OF THEM WERE REPRESENTED BY JACK SCOVILLE, BUT ONLY JULIE HIRED YOU. THAT LEADS ME TO BELIEVE THAT THE OTHER TWO SIBLINGS DIDN'T WANT TO BE PART OF THIS ACTION THAT JULIE WAS BRINGING.

Q HAVE YOU SEEN THE ANSWER FILED... THE ACCEPTANCE OF SERVICE FILED BY BOTH OF THE BOYS?

A I HAVE READ THE AFFIDAVIT OF STEVEN ROTHGEB AND IT IS QUITE CURIOUS HOW THE PROSE IS IDENTICAL TO WHAT I SEE IN YOUR OTHER WRITINGS.

Q WHAT DOES THAT MEAN?

A IT APPEARS TO FOLLOW YOUR ARGUMENT AND IT APPEARS TO BE WRITTEN BY YOU BUT I WILL LEAVE THAT UP TO YOU.

Q ALRIGHT. DOES THAT LEAD YOU TO BELIEVE THAT STEVEN ROTHGEB IS NOT TRUTHFUL IN WHAT HE SAYS IN HIS AFFIDAVIT?

A THAT WAS MY QUESTION. IS HE THE ONE SAYING IT OR WAS THAT MR. TALL SAYING IT THROUGH HIS DRAFTING? THAT I DON'T KNOW AND I WILL HAVE TO

LEAVE IT TO YOU AND MR. ROTHGEB. IT WOULD BE NICE IF HE WERE HERE. IT WOULD BE NICE IF MATT WERE STILL HERE. SO THEY COULD, YOU KNOW, EXPRESS THEIR POSITIONS, BUT THEY'RE NOT. SO, IT IS WHAT IT IS.

Q WHAT MORE WOULD YOU LIKE THE COURT TO KNOW ABOUT MS. IRVING THAT YOU HAVEN'T SHARED SO FAR?

A THAT'S ALL I HAVE.

MR. TALL: THAT'S ALL I HAVE, YOUR HONOR.

JUDGE PADGETT: MR. BOYD?

MR. BOYD: NO QUESTIONS FOR THIS WITNESS ON CROSS, YOUR HONOR. I THINK MR. PARKER IS HERE. JUST GIVE ME A COUPLE MINUTES SO I CAN GET HIM ON THE STAND.

JUDGE PADGETT: CALL YOU NEXT WITNESS.

CLARK PARKER, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. BOYD:

A CLARK PARKER, CPA. I LIVE AT 27 APACHE TRAIL MYRTLE BEACH, SOUTH CAROLINA 29588.

JUDGE PADGETT: ALRIGHT.

MR. BOYD: BEAR WITH ME ONE SECOND, YOUR HONOR.

Q MR. PARKER, GOOD AFTERNOON. HOW ARE YOU TODAY?

A GOOD, SIR.

Q THANK YOU FOR COMING. I DID NOT EXPECT MR. TALL TO WRAP UP SO EXPEDITIOUSLY. SO, I NEEDED A MOMENT TO GATHER MY DOCUMENTS. MR. PARKER, COULD YOU EXPLAIN TO THE COURT BRIEFLY WHAT YOUR ROLE IN THE ESTATE OF DONALD ROTHGEB HAS BEEN?

A I WAS RETAINED TO PREPARE ESTATE TAX RETURNS.

Q LET ME ASK YOU TO TAKE A LOOK AT WHAT HAS BEEN PREVIOUSLY INTRODUCED INTO EVIDENCE. WHAT HAS BEEN INTRODUCED INTO EVIDENCE AS EXHIBIT 18 BY THE PLAINTIFFS AND ASK YOU IF YOU RECOGNIZE THAT DOCUMENT?

A YES, SIR. 2014 ESTATE TAX RETURNS.

Q IN ADDITION TO 2014 RETURN, MR. PARKER, DID YOU PREPARE AN ADDITIONAL RETURN, A SUBSEQUENT RETURN FOR THE ESTATE?

A 2015. YES, SIR.

Q I'M NOT SURE WHY THAT ONE WAS NOT INTRODUCED INTO EVIDENCE.

MR. TALL: YOU'RE NOT SURE?

MR. BOYD: NO, I'M NOT SURE.

MR. TALL: MY UNDERSTANDING, YOUR HONOR, IS THE 2015 TAX RETURN WAS INTRODUCED INTO EVIDENCE. I WILL BE HAPPY TO RESPOND TO QUESTIONS --

MR. BOYD: IS 2015 IN EVIDENCE?

COURT REPORTER: 2015, LOOKS LIKE NUMBER 18. YES, SIR.

JUDGE PADGETT: MR. PARKER, WHEN YOU ANSWERED THE QUESTION BY MR. BOYD IN WHAT YOUR PARTICIPATION IN THIS ESTATE, DID YOU SAY TO FILE ESTATE TAX RETURN?

A YES, SIR.

JUDGE PADGETT: THAT IS AN INDIVIDUAL TAX RETURN?

A NO. THAT IS A FORM 1041.

JUDGE PADGETT: THE ESTATE TAX RETURN IS 706, ISN'T IT?

A WELL, 1041 IS THE TEMPORARY ESTATE.

Q MR. PARKER, TELL THE COURT A LITTLE BIT ABOUT YOUR BACKGROUND. OBVIOUSLY, YOU'RE AN ACCOUNTANT. WHAT IS YOUR PROFESSIONAL DESIGNATION?

A I'M A CERTIFIED PUBLIC ACCOUNTANT. I HAVE A BS DEGREE IN ACCOUNTING FROM COASTAL CAROLINA.

Q HOW LONG HAVE YOU BEEN PRACTICING ACCOUNTING?

A SINCE 1981.

Q WHAT'S THE NAME OF YOUR BUSINESS, MR. PARKER?

A I'M CURRENTLY IN A PARTNERSHIP CALLED PARKER, HUNTER, SKIPPER, CPAS.

Q DO YOU DO A FAIR AMOUNT OF ESTATE TAX RETURNS FOR ESTATES IN THE AREA OR ELSEWHERE?

A RECENTLY TOO MANY.

Q IF YOU HAD TO GUESS AND I KNOW IT WOULD BE HAZARDING, ANY IDEA OF HOW MANY ESTATE TAX RETURNS YOU HAVE DONE OVER THE YEARS?

A PROBABLY A 100 OR MORE.

Q IS IT FAIR TO SAY THAT YOU KNOW YOUR WAY AROUND THE PROCESS?

A WE HAVE DONE A FEW OF THESE, YES, SIR.

Q WAS THERE ANYTHING OUT OF THE ORDINARY IN TERMS OF THE WORK THAT YOU DID HERE IN THIS CASE? IN TERMS OF JUST THE GENERAL WORK FLOW OF GETTING THESE TAX RETURNS PREPARED AND FILED?

A THE TIMING OF '14 AND '15 ALL SORT OF TRANSFERRED IN '15. I THINK WHEN WE FIRST GOT THE INFORMATION IN, WE MAY HAVE LOGGED THE DATE OF DEATH DIFFERENTLY. WE THOUGHT IT MIGHT BE A '12 DAY OF DEATH RATHER THAN A JANUARY DATE OF DEATH. SO, WE THOUGHT WE HAD A LITTLE BIT MORE TIME TO FILE '14, WHICH GOT A LITTLE BIT BEHIND. SO, WE ENDED UP FILING '14 AND '15 IN THE SAME TAX YEAR.

Q SO, THAT WAS JUST AN OVERSIGHT AND MISTAKES HAPPEN, BUT LET ME ASK YOU THIS QUESTION, MR.

PARKER. IN YOUR OPINION, IN YOUR INTERACTIONS WITH THE PERSONAL REPRESENTATIVE AND HER PROVIDING INFORMATION TO YOU, DID THE PERSONAL REPRESENTATIVE DO ANYTHING, IN YOUR OPINION, THAT WAS OUT OF SORTS OR IMPROPER THAT OTHERWISE CAUSED YOU TO CONCLUDE SHE WAS NOT DOING HER JOB PROPERLY?

A SHE OPERATED VERY NICELY WITH US.

Q OKAY. MR. PARKER, I WANT TO SHOW YOU WHAT PLAINTIFFS HAVE PRODUCED TO US IN THEIR DISCOVERY AND ASK IF YOU HAVE SEEN THAT DOCUMENT BEFORE?

A YES. I WAS ASKED TO PREPARE A STATEMENT, WHICH I SENT TO CLIFF BY WAY OF E-MAIL, YES.

Q WHAT'S THE DATE OF THAT STATEMENT, MR. PARKER?

A FEBRUARY THE 8TH 2017.

Q 2017?

A YES, SIR.

Q YOU SAID SOMEONE ASKED YOU TO PREPARE THAT STATEMENT?

A CLIFF CALLED AND ASKED IF I WOULD PREPARE SOMETHING THAT WOULD GO IN LIEU OF ME PRESENTING MYSELF IN COURT. I MIGHT COULD PROVIDE A STATEMENT.

Q BY CLIFF, YOU'RE REFERRING TO MR. TALL, COUNSEL

FOR THE PLAINTIFFS?

A YES, SIR.

Q SO, YOU PROVIDED THIS STATEMENT BUT AT HIS REQUEST?

A YES, SIR.

Q LET ME ASK YOU TO BRIEFLY READ FOR ME PARAGRAPH 3 IF YOU WILL?

JUDGE PADGETT: IS THAT AN EXHIBIT?

ANY OBJECTION, MR. TALL?

MR. TALL: NO OBJECTION.

JUDGE PADGETT: I THINK THAT WOULD BE DEFENDANT'S 6. SUBMITTED WITHOUT OBJECTION.

A "I WAS ABLE TO SPEAK TO MS. IRVING, THE BENEFICIARY BY PHONE IN RESPONSE TO SEVERAL OF HER QUESTIONS AS TO THE INCOME TRANSACTIONS OF THE ESTATE. SHE WAS CORDIAL IN OUR CONVERSATION, BUT WAS UNABLE TO PROVIDE ME WITH ANY PERSONAL INFORMATION THAT WE NEEDED TO COMPLETE THE ESTATE RETURN AS WE WOULD LIKE TO HAVE PREPARED. I ALSO HAD SEVERAL CONVERSATIONS WITH THE PERSONAL REPRESENTATIVE, JENE POAFPYBITTY AND SHE WAS ALSO VERY CORDIAL AND PROVIDED INFORMATION TO US TO COMPLETE THE RETURN THAT WE NEEDED TO COMPLETE."

LETTER FROM MR. PARKER MARKED
FOR IDENTIFICATION AND
INTRODUCED INTO EVIDENCE AS
DEFENDANT'S EXHIBIT 6.

Q SO, YOU MENTIONED THAT THE PERSONAL
REPRESENTATIVE WAS COOPERATIVE, IN YOUR OPINION,
AND THE PLAINTIFF, MS. IRVING, WAS SHE
COOPERATIVE WITH YOU?

A SHE WAS VERY CORDIAL, BUT WE WERE STILL LOOKING
FOR A SOCIAL SECURITY NUMBER TO COMPLETE THE
INFORMATION.

Q DID SHE PROVIDE THAT INFORMATION TO YOU?

A NO, SIR.

Q DID YOU ENLIST THE HELP OF MR. DAVIS' OFFICE IN
OBTAINING THAT INFORMATION TO YOUR KNOWLEDGE?

A WE WERE TALKING BACK AND FORTH TRYING TO GET
ADDITIONAL INFORMATION COMPLETE, YES.

Q YES. LET ME ASK YOU THIS QUESTION. I WANT TO
ASK YOU ABOUT AN ADDITIONAL DOCUMENT THAT I HAVE
RECEIVED FROM YOU. DO YOU RECOGNIZE THIS
DOCUMENT, MR. PARKER?

A YES.

MR. TALL: NO OBJECTION.

JUDGE PADGETT : NO OBJECTION. THAT
WOULD BE DEFENDANT'S EXHIBIT 7.

Q HOW DID YOU UNDERSTAND WHAT'S BEEN MARKED AS EXHIBIT 7. DO YOU RECOGNIZE THAT E-MAIL, MR. PARKER?

A YES. I RECEIVED THIS FEBRUARY 22ND FROM MS. IRVING.

E-MAIL DATED 2/22 FROM IRVING
MARKED FOR IDENTIFICATION AND
INTRODUCED INTO EVIDENCE AS
DEFENDANT'S EXHIBIT 7.

Q SHE'S ASKING IF I UNDERSTAND HER E-MAIL... SHE'S INTENDS TO NOW FILE AN AMENDED RETURN TO HER 2015 FEDERAL RETURN KNOWING THAT THE INFORMATION HAS BEEN PROVIDED TO ME. IS IT YOUR UNDERSTANDING THAT THE ESTATE BENEFICIARIES ARE GOING TO HAVE TO AMEND THEIR 2015 RETURNS?

A I GOT ANOTHER E-MAIL FROM HER THE NEXT MORNING BASICALLY SAYING THAT SHE'S CHANGED HER MIND AND THOUGHT THAT NOT FILING THE '15 RETURN WOULD PROBABLY BE BETTER NOT TO FILE. TYPICALLY, WE RECOMMEND NOT TO AMEND THE RETURN UNLESS YOU HAVE TO. IT WOULD NOT BE OUR RECOMMENDATION TO AMEND THOSE RETURNS.

Q IN YOUR ESTIMATION, IS IT A NECESSARY ACT FOR ANY OF THE BENEFICIARIES TO AMEND THEIR RETURNS?

A NOTHING THAT'S IMMINENT, NO.

Q LOOK AT WHAT'S BEEN MARKED AS EXHIBIT 18?

JUDGE PADGETT: EXHIBIT 7, IS WHAT YEAR?

Q THIS YEAR. WHAT WERE THE OPERATING RESULTS...
BUT WHAT WAS THE FINANCIAL CLOSING... YOU'RE THE
ACCOUNTANT, MR. PARKER. WHAT AM I TRYING TO ASK
YOU? WHAT WAS THE END RESULT FOR 2014 IN TERMS
OF PROFIT OR LOSS?

A IT SHOWED A LOSS OF 2,592.00.

Q DID THAT LOSS FLOW OUT TO THE BENEFICIARIES OF
THE ESTATE?

A NO, SIR.

Q WHAT HAPPENED TO THAT LOSS?

A BASICALLY IT WAS JUST RETAINED INSIDE THE ESTATE
OR TRUST.

Q AND FOR 2016, IF YOU LOOK BRIEFLY AT 18, THE
SAME QUESTION. WHAT WERE THE RESULTS OF THE
OPERATIONS OF THE ESTATE FOR 2015?

A IT'S SHOWING A LOSS OF ABOUT \$98,000.00.

Q WHAT HAPPENED TO THE 98,000.00 LOSS IN 2015, MR.
PARKER?

A IT'S RETAINED INSIDE THE ESTATE OR TRUST.

Q WOULDN'T IT HAVE BENEFITED THE BENEFICIARIES TO
REPORT THAT LOSS OUT TO THE BENEFICIARIES?

A IF IT WOULD'VE FLOWED THROUGH, YES.

Q SO, WHY DIDN'T YOU DO THAT?

A AGAIN, WE ONLY HAD LIMITED INFORMATION. I THINK WE HAD THE SOCIAL SECURITY NUMBER OF ONE OF THE BENEFICIARIES.

Q SO, WHAT INFORMATION WERE YOU MISSING?

A SOCIAL SECURITY NUMBERS.

Q IF YOU HAD THE SOCIAL SECURITY NUMBER IN CONNECTION WITH THE 2015 RETURNS, WHAT WOULD YOU HAVE DONE WITH THE 98,000 LOSS?

A IT WOULD'VE FLOWED THROUGH TO THE BENEFICIARIES.

Q PRESUMEDLY, IF THEY HAD INCOME IT WOULD'VE BENEFITED EACH OF THE BENEFICIARIES?

A PASS OF ACTIVITIES ARE NOT NECESSARILY AUTOMATIC. THEY WOULD HAVE TO QUALIFY WITH CERTAIN INCOME LEVELS OF THE INDIVIDUAL BENEFICIARIES. I WOULD ASSUME THEY WOULD GET TAX DEDUCTIONS RELATED TO THAT. IF THEY DIDN'T HAVE OTHER PASSIVE ACTIVITIES OR IF THEIR INCOME WAS AT A CERTAIN LEVEL, WITHOUT KNOWING THOSE NUMBERS, I CAN'T TELL YOU EXACTLY HOW IT WOULD BE TREATED. IF THE LOSSES COULD NOT BE USED IN ONE YEAR, THEY COULD BE CARRIED FORWARD IN FUTURE YEARS IF THEY'RE NOT UTILIZED.

Q IS IT FAIR TO SAY THAT MORE THAN LIKELY IT WOULDN'T HAVE HURT ANYBODY THE \$98,000.00 LOSS?

A IT WOULD HAVE PROBABLY BEEN A TAX BENEFIT TO

SOME EXTENT PROBABLY.

Q YOU INDICATED IN YOUR TESTIMONY THAT YOU JUST RECENTLY RECEIVED QUESTIONS FROM MS. IRVING DIRECTLY ABOUT THE 2016 TAXES? AS OF THIS MOMENT, HAVE YOU STILL RECEIVED A SOCIAL SECURITY NUMBER FROM MR. IRVING?

A NO, SIR.

MR. BOYD: I BELIEVE THAT'S ALL THE QUESTIONS THAT I HAVE FOR THIS WITNESS, YOUR HONOR.

JUDGE PADGETT: MR. TALL.

CROSS-EXAMINATION BY MR. TALL:

MR. TALL: THANK YOU, YOUR HONOR. YOUR HONOR, I HAVE A PROPOSAL FOR AN EXHIBIT. I'VE SHARED IT WITH MR. BOYD. I DON'T KNOW IF HE HAS AN OBJECTION.

MR. BOYD: THIS E-MAIL THAT YOU JUST HANDED ME, CLIFF?

MR. TALL: YES, SIR.

MR. BOYD: YOUR HONOR, IT'S NOT AN E-MAIL THAT I AM AWARE OF. IT'S ADDRESSED TO MR. PARKER AND IF HE CAN VALIDATE IT, I DON'T HAVE ANY OBJECTIONS.

JUDGE PADGETT: 27. OUT OF ABUNDANCE OF

CAUTION, LET'S GET HIM TO IDENTIFY IT
FIRST, CLIFF?

MR. TALL: YES, YOUR HONOR.

Q HOW ARE YOU, MR. PARKER?

A GOOD, SIR.

Q WE HAVE JUST HANDLED YOU WHAT HAS BEEN MARKED AS
EXHIBIT 27. EARLIER, YOU WERE SPEAKING ABOUT
RECEIVING SOMETHING FROM MS. IRVING. IN
ADDITION TO THE EXHIBIT THAT MR. BOYD HANDED TO
YOU, IS THIS THE EXHIBIT THAT YOU RECEIVED
E-MAIL?

A THIS IS A SUBSEQUENT E-MAIL I MENTIONED, YES.

MR. TALL: YOUR HONOR, I PROPOSE THAT
THIS COME INTO EVIDENCE.

JUDGE PADGETT: WITHOUT OBJECTION.

THAT'LL BE PLAINTIFF'S 27 DATED FEBRUARY
23RD 2017 FROM JULIE IRVING TO MR. CLARK
PARKER? I ASSUME IT CAME TO THE OFFICE
VIA E-MAIL ADDRESS.

A YES, SIR.

E-MAIL DATED 2/23/17 FROM
IRVING MARKED FOR
IDENTIFICATION AND INTRODUCED
INTO EVIDENCE AS PLAINTIFF'S
EXHIBIT 27.

Q MR. PARKER, THE EVIDENCE EARLIER FROM MS. IRVING IS THAT SHE HAD COMMUNICATIONS ABOUT INCOME TAXES WITH THE ESTATE AT THE END OF MARCH 2016. I'M WONDERING IF YOU HAVE ANYTHING TO INDICATE TO THE CONTRARY?

A IS THAT REFERENCE TO AN E-MAIL I RECEIVED FROM HER IN MARCH? IS THAT WHAT YOU'RE REFERRING TO?

Q I'M REFERRING TO 2016. I THINK YOU'RE SPEAKING OF THIS E-MAIL RIGHT HERE?

A THIS E-MAIL HERE IS FEBRUARY OF '17.

Q YES.

A YES, SIR.

JUDGE PADGETT: ASK YOUR QUESTION AGAIN, MR. TALL?

Q DO YOU HAVE SOMETHING TO INDICATE... OTHER THAN WHAT MS. IRVING HAS EARLIER TESTIFIED...

MR. BOYD: YOUR HONOR, OBJECTION. HE WASN'T HERE. HE DOESN'T KNOW WHAT MS. IRVING HAS TESTIFIED TO.

Q I'M ABOUT TO EXPLAIN IT.

A OKAY.

Q THAT MS. IRVING FIRST HEARD ABOUT INCOME TAX ISSUES FOR THE ESTATE IN LATE MARCH 2016. DO YOU HAVE EVIDENCE TO THE CONTRARY?

A I CAN GO BACK AND LOOK AT MY FILES, BUT I'M NOT

SURE WHEN IT TRANSPIRED. THERE WAS SOME COMMUNICATIONS BY E-MAIL OR BY PHONE AROUND THAT TIME I THINK.

Q SURE. PRETTY SIGNIFICANT THING TO OFFER BENEFICIARIES THE POTENTIAL OF A K-1 WITH \$25,000.00 OF LOSSES THAT MAY BE USED ON THEIR PERSONAL INCOME TAX RETURN? FAIR STATEMENT?

A IT SHOULD HELP THEM, YES.

Q SURE. LET ME SHOW YOU SOME COMMUNICATIONS. I'M SHARING WITH YOU, MR. PARKER, PLAINTIFF'S EXHIBITS 14, 15, 16 AND 17. I WILL JUST GIVE YOU TIME TO REVIEW THEM.

A OKAY. NONE OF THOSE WENT BACK AND FORTH TO ME, BUT THEIR REFERENCING THE ESTATE IN QUESTIONS BACK AND FORTH.

Q SURE. MY QUESTION TO YOU IS... SOMEONE IN THE SECOND YEAR OF ESTATE ADMINISTRATION IN LATE MARCH. DO YOU HAVE CONCERNS ABOUT WHETHER THAT PERSON CAN ANTICIPATE, WITHOUT SOME ADVICE, THAT THEIR PERSONAL INCOME TAX RETURN MIGHT GET INFLUENCED BY WHAT HAPPENS IN THE ESTATE?

MR. BOYD: YOUR HONOR, IS HE ASKING A HYPOTHETICAL?

JUDGE PADGETT: IS IT A HYPOTHETICAL, MR. TALL?

MR. TALL: IT COULD BE, BUT IT'S RATHER CLOSE TO WHAT WE HAVE IN THE FACTS OF THIS CASE.

MR. BOYD: WELL, IF HE'S ASKING SPECIFICALLY ABOUT THE FACTS OF THIS CASE, HE'S ASKING THE WITNESS TO ASSUME EVIDENCE THAT'S NOT WITHIN HIS PURVIEW, YOUR HONOR. IF HE'S ASKING FOR A SPECULATIVE OPINION, I SUPPOSE HE CAN OFFER IT, BUT HE'S NOT BEEN QUALIFIED AS AN EXPERT. CERTAINLY, MR. PARKER KNOWS WHAT HE'S DOING, BUT I WOULD JUST LIKE THE COURT TO UNDERSTAND WHAT SORT OF TESTIMONY WE'RE ASKING FOR HERE.

A CAN YOU CLARIFY YOUR QUESTION A LITTLE BIT?

Q I CAN. WE HAD NO TAX CONSEQUENCES. IN FACT, NOT EVEN A TAX RETURN FILED FOR 2014 IN THE 2015 CALENDAR YEAR, IS THAT CORRECT?

A THAT'S CORRECT.

Q SO, THE FIRST YEAR OF THE ESTATE WOULD HAVE BEEN IN JANUARY OF... HE DIED IN 2014. IN JANUARY. FROM THAT POINT TO THE END OF JANUARY THAT WOULD'VE BEEN THE FIRST YEAR OF THE ESTATE?

A YES, SIR.

Q A 1041 ARGUABLY IS DUE OR WAS DUE IN FACT?

A THAT'S CORRECT.

Q NO ONE AS FAR AS YOU'RE AWARE MADE AN ATTEMPT TO FILE A TAX RETURN, WHICH WOULD PRODUCE K-1S FOR 2014 OR AM I MISTAKEN?

A I THINK I REPORTED EARLIER THAT WE FILED BOTH THOSE YEARS IN THE SUBSEQUENT TAX YEAR.

Q I'M SORRY, SIR?

A IN 2016, WE FILED BOTH 2014 AND '15 TAX RETURN.

Q WAS THERE, IN YOUR VIEW, A REASON, A PLAN, AN ADVANTAGE TO FILE THE 2014 TAX RETURN WITH A K-1 THAT WENT OUT TO ALL THE BENEFICIARIES?

A IN THE INITIAL YEAR, IT'S NOT UNCOMMON FOR THE TRUST OR THE ESTATE TO PAY THE TAXES OR ANY CONSEQUENCES UNTIL THESE GET SORTED OUT AND THE BENEFICIARIES START RECEIVING BENEFITS FROM THE ESTATE OR TRUST. SO, THERE WASN'T A K-1 AS A PREFERENCE. IT HAD TO BE DONE FOR '14.

Q IN FACT, THE 2014 TAX CONSEQUENCES WERE SMALL?

A YES, SIR.

Q SO, EVEN IF THERE WAS A K-1 IT WOULD'VE BEEN SMALL?

A IT WOULD'VE BEEN SMALL, YES.

Q SO, IN 2015, ARE THERE NOT IN THIS CASE TWO DIFFERENT WAYS THAT A TAX RETURN COULD HAVE BEEN PREPARED?

A WE WOULD HAVE PREPARED IT WITH THE SOCIAL SECURITY NUMBERS OR THE BENEFICIARIES IF WE HAD THOSE AVAILABLE.

Q SURE. HOW ABOUT CONTACTING FOR THE FIRST TIME THE BENEFICIARIES IN LATE MARCH OF THE YEAR WHEN YOU'RE PROPOSING A K-1 DISTRIBUTION ANY CONCERNS OF YOURS?

A TIMELINESS IS IMPORTANT TO EVERYBODY. AT THAT POINT WHETHER THEY FILED THEIR RETURNS OR DIDN'T FILE THEIR RETURNS, WE DIDN'T KNOW THAT. A LOT OF TAXPAYERS, BY THEIR OWN CHOICES, WAIT INTO THE 15... WAIT UNTIL THE DEADLINE TO FILE THEM, EVEN IF THEY HAVE BEEN PREPARED. SO, WE WOULD MAKE THE FIRST ASSUMPTION THAT THEY MAY NOT HAVE BEEN PREPARED BECAUSE IT WASN'T APRIL 15TH.

Q IN FACT, AT SOME POINT YOU HAD A COMMUNICATION WITH MS. IRVING, DID YOU NOT?

A I TALKED TO HER BY PHONE I THINK WAS THE FIRST CONVERSATION THAT I HAD, BUT I HAD SPOKEN TO HER BY E-MAIL ACCORDING TO THIS BY ROXANNA EARLIER.

Q CAN YOU SEE ROXANNA IS COMMUNICATING WITH THE LAW OFFICE? CAN YOU SEE THAT?

A YES.

Q ROXANNA IS INDICATING THAT THERE COULD BE TAX CONSEQUENCES AND THE POTENTIAL OF AN AMENDED

RETURN?

A YES, SIR.

Q HOW ABOUT YOU AS A TAX PRACTITIONER, CAN YOU UNDERSTAND THE CONCERN OF SOMEONE IN AMENDING THEIR RETURN, PARTICULARLY IF THEY'RE A SMALL BUSINESS PERSON?

A I THINK I MENTIONED EARLIER, WE NORMALLY DON'T RECOMMEND THAT YOU AMEND THE RETURN UNLESS YOU HAVE TO. AGAIN, EVERYBODY'S TAX SITUATIONS ARE DIFFERENT. AND NOT KNOWING THE OTHER TAXPAYERS, I REALLY CAN'T TELL YOU A WHOLE LOT ABOUT WHAT THEY SHOULD OR SHOULDN'T HAVE DONE.

Q WITHOUT SUGGESTING THAT YOU OR THE LAW OFFICE OR ANYONE HAS DONE SOMETHING INAPPROPRIATE, IS IT A BETTER PRACTICE TO LET PEOPLE KNOW IN JANUARY AND FEBRUARY THAT THE POTENTIAL OF A K-1 MIGHT BE COMING? IS THAT A FAIR STATEMENT?

A THE SOONER THE BETTER I WOULD SAY THAT, YES, SIR.

Q IF SOMEONE ALREADY FILED THEIR TAX RETURNS, THAT'S A BIT OF A PROBLEM, IS IT NOT?

A YOU PREFER NOT TO AMEND THE RETURNS. LIKE I SAID BEFORE, BUT IT'S NOT UNCOMMON TO AMEND RETURNS.

Q SURE. WHAT ABOUT FOR 2016? LET ME LET YOU LOOK

AT THIS 27.

A OKAY.

Q WHAT DO YOU TAKE FROM MS. IRVING'S SECOND LETTER TO YOU?

A SHE IS BASICALLY SAYING THAT AFTER SHE HAD THOUGHT ABOUT IT, PROBABLY AMENDING THE RETURNS IS NOT WHAT SHE WOULD PREFER TO DO. SHE'S ASKING ABOUT THE STATUS OF THE '16 RETURNS BASICALLY.

Q THE LOSSES THAT THE ESTATE RECOGNIZED IN THE 2015 RETURN, THOSE HAVE BEEN ACCUMULATED?

A THEY'RE PASSIVE ACTIVITIES. THEY WILL BE TRANSFERRED OUT BECAUSE THEY WERE NOT UTILIZED.

Q TOGETHER WITH WHATEVER HAPPENED IN 2016?

A YES, SIR.

Q MS. IRVING ASKS WHETHER OR NOT IT'S PRACTICAL FOR BENEFICIARIES TO GET K-1 FORMS BY APRIL 15, 2017. DO YOU HAVE AN OPINION?

A WE WILL TRY... WE HAVE RECENTLY GOT THAT INFORMATION. WE'LL TRY TO HAVE THOSE BY APRIL 15TH, ASSUMING WE HAVE FULL INFORMATION, SOCIAL SECURITY NUMBERS AND OTHER INFORMATION FROM THE BENEFICIARIES, WHICH WE DO NOT HAVE AT THIS TIME.

Q WHAT WOULD YOU GET BESIDES THE INDIVIDUAL'S NAME

AND THEIR SOCIAL SECURITY NUMBER AND THEIR ADDRESS?

A THOSE WOULD BE WHAT I NEED. YES, SIR.

Q AND MS. IRVING OFFERS TO YOU HER COOPERATION?

A SHE HAS OFFERED TO COORDINATE WITH YOU, OKAY. YES. BUT I STILL DON'T HAVE THAT INFORMATION, SIR.

Q THANK YOU, NO OTHER QUESTIONS, YOUR HONOR.

JUDGE PADGETT: ANY FOLLOW UP QUESTIONS, MR. BOYD?

MR. BOYD: NO FOLLOW UP, YOUR HONOR.

A I WILL LEAVE THESE FOR YOU, SIR.

JUDGE PADGETT: THANK YOU, MR. PARKER. PLEASE.

MR. TALL: YOUR HONOR, I THINK WE HAVE STEPPED INTO, TO BE SURE, WE'RE COURTEOUS TO MR. PARKER AND I KNOW THAT HE WAS CALLED BY MR. BOYD. I DON'T HAVE ANY OTHER WITNESSES.

JUDGE PADGETT: SO YOU REST?

MR. TALL: YES.

JUDGE PADGETT: MR. BOYD?

MR. BOYD: YES, YOUR HONOR, I'M READY. WE WILL RECALL THE PERSONAL

REPRESENTATIVE TO THE STAND.

JEANNE POAFPYBITTY, HAVING BEEN FIRST DULY SWORN,
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. BOYD:

JUDGE PADGETT: JUST TO REMIND YOU, YOU
ARE STILL UNDER OATH.

A YES, YOUR HONOR.

MR. BOYD: THANK YOU, YOUR HONOR.

Q MS. JENE, IS THAT OKAY?

A ABSOLUTELY.

Q YOU HOLDING UP OKAY?

A YES.

Q WOULD YOU PLEASE REMIND THE COURT, STATE YOUR
FULL NAME FOR THE RECORD?

A JEANNE POAFPYBITTY.

Q MS. POAFPYBITTY, WHERE DO YOU RESIDE?

A 1529 CROOKED PINE DRIVE, SURFSIDE BEACH, SOUTH
CAROLINA.

Q MS. JENE, WHAT IS YOUR LINE OF WORK? WHAT YOU
DO FOR A LIVING?

A I'M A LEGAL SECRETARY.

Q HOW LONG HAVE YOU BEEN IN THE LEGAL PROFESSION?

A 1963. QUITE A WHILE.

Q SO, YOU HAVE HAD SOME EXPERIENCE?

A A LITTLE BIT.

Q YOU COULD PROBABLY DO THIS BETTER THAN MANY OF US?

A NO. I DON'T BELIEVE SO. IT'S DIFFERENT AREAS.

Q WHERE ARE YOU EMPLOYED, JENE?

A MULLIN, WILEY.

Q WHAT DO YOU DO THERE?

A I'M A LEGAL SECRETARY/LEGAL ASSISTANT.

Q LET'S TALK ABOUT OBVIOUSLY IT'S BEEN A DIFFICULT DAY FOR YOU. I APPRECIATE YOU HANGING IN THERE. IT'S ABOUT THE ESTATE OF YOUR DECEASED HUSBAND, DONALD ROTHGEB?

A YES.

Q YOU'RE THE PERSONAL REPRESENTATIVE, CORRECT?

A YES, SIR.

Q TELL THE COURT JUST A BRIEF SNAPSHOT, HOW WAS YOUR RELATIONSHIP WITH DR. ROTHGEB?

A IT WAS GOOD. I MEAN, I HAD SOME TRIALS AS FAR AS THE ALCOHOL WAS CONCERNED BUT, YOU KNOW, I NEVER CARED ANY LESS ABOUT HIM. I ALWAYS LOVED HIM JUST LIKE I DID WHEN I FIRST MET HIM THE FIRST DAY. OUR RELATIONSHIP WAS ALWAYS GOOD. IT HAD SOME CHALLENGES AS FAR AS THE ALCOHOL WAS CONCERNED. I NEVER CEASED, YOU KNOW, TO FEEL THE WAY I DID AND LOVE HIM, YOU KNOW, MORE THAN ANYBODY.

Q WHEN DID YOU MEET DR. ROTHGEB?

A 1978.

Q SO, YOU WERE WITH HIM FOR HOW MANY YEARS?

A PROBABLY 35.

Q WHEN WERE YOU MARRIED?

A WHEN?

Q YES, MA'AM.

A 1989.

Q WHEN YOU MARRIED DR. ROTHGEB, WHAT WAS THE SITUATION REGARDING CHILDREN? YOU HAD CHILDREN AND HE HAD CHILDREN?

A I HAD ONE AND HE HAD THREE.

Q WAS HE PREVIOUSLY MARRIED?

A HE WAS PREVIOUSLY MARRIED, YES.

Q WHAT HAPPENED TO HIS FIRST WIFE?

A THEY DIVORCED.

Q THAT FIRST WIFE WAS... IS THAT THE MOTHER OF THE ESTATE BENEFICIARIES?

A YES.

Q WHO ARE PARTY TO THIS ACTION?

A YES.

Q TELL ME A LITTLE BIT ABOUT WHERE Y'ALL RESIDED?

A WE RESIDED IN MARYLAND. WE CAME FROM MARYLAND. DON HAD A PRACTICE THERE FOR 25 YEARS, ANIMAL HOSPITAL. HE WAS THE SOLE PROPRIETOR/OWNER.

LIKE I SAID EARLIER, HE WAS WONDERFUL. HE WAS JUST THE GREATEST. HE COULD DO OPERATIONS WHERE NOBODY ELSE WOULD NEVER ATTEMPT AND THEY WOULD BE SUCCESSFUL. WHEN HE RETIRED HE SAID, IF HE GOT TO THE POINT WHEN HE WAS 50, YOU KNOW, AND IF HE COULD RETIRE HE WAS GOING TO. WELL, EVERYBODY SAYS THAT AND I DIDN'T THINK HE REALLY MEANT IT, BUT HE DID. SO, HE DECIDED THIS IS WHERE HE WANTED TO BE.

Q DR. ROTHGEB WAS A VETERINARIAN, RIGHT?

A YES.

Q DID YOU TAKE AN ACTIVE ROLE IN THE FAMILY LIFE OF THE CHILDREN?

A I DID EARLY ON, YOU KNOW. WE HAD THEM ON THE WEEKENDS, EVERY WEEKEND, YES. WE HAD THEM HOLIDAYS.

Q DID DR. ROTHGEB INVOLVE YOU IN ANY OF HIS BUSINESS DEALINGS AND HIS VETERINARIAN PRACTICE OR ANYTHING OF THAT SORT?

A NOT IN THE VETERINARIAN PRACTICE IN MARYLAND, BUT AFTER WE CAME DOWN HERE, I WAS LIKE HIS RIGHT-HAND PERSON. I DIDN'T HAVE A JOB WHEN I CAME HERE AND WHEN HE DECIDED TO DO THE HOUSE CALL PRACTICE, I WENT AND RODE WITH HIM AND DID THE PAPERWORK AND MET WITH THE PEOPLE AND HE

VACCINATED THE ANIMALS. THAT'S ALL HE DID WAS VACCINATIONS. THEN, I WOULD SEND OUT THE RABIES CERTIFICATES OR GIVE THEM TO THEM THEN. IT JUST WORKED HAND AND HAND.

Q DID HE HAVE ANY OTHER BUSINESS VENTURES OR ACTIVITIES THAT YOU BECAME INVOLVED IN OVER THE YEARS?

A THE RENTAL PROPERTIES. AS WE WERE HERE, HE STARTED TO ACCUMULATE, YOU KNOW, ONE CONDO AND THEN ANOTHER AND THEN ANOTHER BECAUSE HE THOUGHT IF HE PUT HIS MONEY INTO THAT, THAT WOULD SUPPLEMENT HIS INCOME AND IF HE GOT TIRED OF DOING THE VETERINARIAN PRACTICE THEN HE COULD FALL BACK ON THAT.

Q WAS IT FAIR TO SAY THAT YOU ASSISTED HIM WITH THAT?

A YES. WE HAVE ALWAYS OWNED PROPERTIES TOGETHER OR SEPARATE AND I HAVE ALWAYS, YOU KNOW, HELPED HIM WITH THOSE.

Q WHAT SORT OF ACTIVITIES WOULD YOU HAVE BEEN INVOLVED IN DAY TO DAY TO ASSIST HIM WITH THE RENTAL PROPERTIES?

A COLLECTING THE RENTS, PAYING THE CONDO FEES, YOU KNOW, TALKING TO THE PEOPLE WHEN THEY NEEDED REPAIRS DONE, ARRANGING FOR SERVICE PEOPLE.

PLUMBERS OR LIKE I SAID, I HAVE... THROUGH THE YEARS I HAVE HAD AN EXCELLENT PLUMBER AND AIR CONDITIONING PERSON THAT WAS WONDERFUL. PEOPLE THAT DIDN'T RIP US OFF. WE ARE VERY FAIR. WE JUST CONTINUED TO, YOU KNOW, USE THE SAME PEOPLE. AND SO, I WOULD ARRANGE... YOU KNOW, A PERSONAL RELATIONSHIP BASIS WITH THESE REPAIR PEOPLE AND, YOU KNOW, CALLED THEM WHENEVER THERE WAS A PROBLEM AND HAD IT TAKEN CARE OF.

Q UNFORTUNATELY, YOUR HUSBAND PASSED AWAY?

A YES.

Q WHEN DID HE PASS AWAY?

A IN JANUARY OF 2014. HE HAD BEEN SICK AWHILE AND THEN HE WOULD BOUNCE BACK AND THEN HE WAS SICK AGAIN. BUT NOT TO THE POINT WHERE I THOUGHT, YOU KNOW... HE DODGED A LOT OF BULLETS, LET ME PUT IT THAT WAY. AND I NEVER IN MY WILDEST DREAMS THOUGHT THAT, THAT WAS GOING TO BE THE END BUT IT WAS.

Q DO YOU UNDERSTAND UNDER THE WILL YOU WERE NAMED AS THE PERSONAL REPRESENTATIVE? DO YOU HAVE A OPINION AS TO WHY YOUR HUSBAND NAMED YOU AS THE PERSONAL REPRESENTATIVE?

MR. TALL: OBJECTION, YOUR HONOR.

JUDGE PADGETT: I THINK SHE CAN GIVE HER

OPINION WHY IT WAS DONE. WE DON'T HAVE
A JURY TO INFLUENCE.

Q ANY OPINION AS TO WHY YOUR HUSBAND NAMED YOU
PERSONAL REPRESENTATIVE?

A BECAUSE I KNEW ALL THE WORKING OF THE
PROPERTIES. I KNEW THE TENANTS. YOU KNOW, I
KNEW THEIR, YOU KNOW, PERSONALITIES AND WAS ABLE
TO COMMUNICATE WITH THEM. BEFORE I GOT THE JOB
THAT I HAVE NOW AT THE LAW OFFICE I WORKED FOR
SEAGATE VILLAGE, WHICH IS THE HOUSES ON THE
FORMER AIR FORCE BASE. I WORKED IN THE OFFICE.
SO, I WAS FAMILIAR WITH LEASING AND PROPERTY
MANAGEMENT THERE. SO, I THINK THE COMBINATION
OF EVERYTHING. I THINK THAT HE THOUGHT I WAS,
YOU KNOW, A GOOD PERSON TO HANDLE THINGS.

Q OKAY.

A AND HE TRUSTED ME. I MEAN, HE NEVER HAD ANY
REASON NOT TO TRUST ME. I HAVE ALWAYS BEEN
HONEST, YOU KNOW. I'VE NEVER BEEN IN TROUBLE
WITH ANYBODY, WITH THE LAW, WITH ANYBODY. I
HAVE ALWAYS DONE WHAT I WAS SUPPOSED TO DO.
THERE WERE A LOT OF ISSUES WITH THE OTHERS
THROUGH THE YEARS, YOU KNOW. THEY WERE AFFECTED
BY ALCOHOL, MENTAL INSTABILITY AND OTHER THINGS
LIKE THAT. I THINK HE THOUGHT IT WOULD BE

BETTER TO HAVE ME HANDLE THINGS.

Q IS IT... HOW WOULD YOU CHARACTERIZE THE GENERAL CIRCUMSTANCES OF THE ESTATE WHEN YOU BECAME PR?

A WELL, EVERYTHING --

Q WAS IT FAIR TO SAY IT WAS A LITTLE BIT OF A MESS?

A IT WAS. IT WAS A LITTLE BIT OF A MESS. YOU KNOW, DON COLLECTED THE RENTS, BUT HE DIDN'T REALLY, YOU KNOW, FOCUS ON ANY REPAIRS UNLESS THERE WAS SOMEBODY CALLING. HE DIDN'T REALLY CHECK UP ON THEM. HE JUST... AS LONG AS THE RENT WAS COMING, HE JUST THOUGHT EVERYTHING WAS FINE. MOST OF THE TIME IT WAS, BUT THEN WHEN WE WOULD HAVE A REPAIR IT MIGHT BE SOMETHING MAJOR. IT MIGHT BE LIKE AN AIR CONDITIONING UNIT WHICH NOBODY COULD DETERMINE THAT IT WAS JUST SOMETHING THAT WOULD HAPPEN, WHICH WOULD HAVE TO BE FIXED AND PAID FOR.

Q APPROXIMATELY HOW MANY RENTAL PROPERTIES WERE IN THIS STATE WHEN YOUR HUSBAND PASSED AWAY?

A I THINK EVERYTHING ADDED UP TO ABOUT 12 DIFFERENT PLACES.

Q SO, IT'S FAIR TO SAY THAT MANAGING THESE PROPERTIES IS ACTUALLY A REASONABLE AMOUNT OF WORK?

A YES. BETWEEN COLLECTING THE RENTS AND DEPOSITING ALL THE MONEY... I KNOW THAT DEPOSITING A CHECK INTO THE BANK DOESN'T SOUND LIKE A BIG DEAL BUT, YOU KNOW, GETTING THE RENT MONEY TOGETHER, HAVING PEOPLE, YOU KNOW, PAY WHETHER THEY PAID ON TIME OR HAVING TO FOLLOW UP IF THEY DIDN'T. YOU KNOW, PAYING THE TAXES. TAKING CARE OF ALL THE PAPERWORK THAT, THAT ENTAILED. PAYING ALL THE CONDO FEES. YOU KNOW, IF SOMEBODY MOVED OUT TRYING TO GET SOMEBODY ELSE IN THERE. IN THE MEANTIME, YOU KNOW, HAVING THE POWER SWITCHED OVER, YOU KNOW, BACK INTO OUR NAME. ALL THAT HE DIDN'T REALLY WANT TO BE BOTHERED WITH SO I HANDLED ALL THAT.

Q WHEN YOU SAY, "HE DIDN'T WANT TO BE BOTHERED" YOU'RE REFERRING TO THE TIME BEFORE HE PASSED?

A YES. SO, I WAS FAMILIAR WITH DOING ALL THAT BEFORE BECAUSE I HAD ALWAYS DONE IT. AND I HAD ALWAYS WRITTEN CHECKS SO...

Q WHEN YOU WERE APPOINTED BY THE COURT AS PERSONAL REPRESENTATIVE OF DR. ROTHGEB'S ESTATE, WHAT DID YOU UNDERSTAND YOUR OBJECTIVES TO BE AS THE PERSONAL REPRESENTATIVE? WHAT WERE YOU TRYING TO ACCOMPLISH?

A WELL, ACCORDING TO WHAT THE WILL SAID, I WAS

SUPPOSED TO, YOU KNOW, PAY OFF THE DEBTS OF THE ESTATE AND THEN CLOSE THE ESTATE.

Q WAS IT IMPORTANT TO LOOK TO THE WILL? WHAT'S THE IMPORTANCE OF LOOKING TO THE WILL?

A IT GAVE ME GUIDANCE ON, YOU KNOW, WHAT TO DO OR, YOU KNOW, WHAT I WAS SUPPOSED TO DO, WHAT MY FUNCTION WAS.

Q DO YOU BELIEVE IT'S IMPORTANT THAT YOUR HUSBAND'S INTENT IN THIS ESTATE BE IMPLEMENTED?

A YES.

Q DID YOU TRY TO BE FAIR?

A YES. I HAVE ALWAYS TRIED TO BE FAIR.

Q DID YOU TRY TO BE FAIR TO THE BENEFICIARIES?

A YES. I TRIED TO BE FAIR TO THE BENEFICIARIES. I TRIED TO, YOU KNOW, GET THESE THINGS SETTLED, YOU KNOW, AS TIMELY AS I COULD. LIKE I SAID, I NEVER HAD THIS EXPERIENCE BEFORE. SO I WAS, YOU KNOW, TRYING TO DO THE BEST I COULD TO DO THINGS TIMELY.

Q DID YOU TRY TO PROVIDE COMMUNICATION TO THE BENEFICIARIES WHEN YOU BECAME THE PERSONAL REPRESENTATIVE?

A I TALKED TO JULIE. I TALKED TO STEVEN. I DIDN'T TALK TO MATT TOO MUCH BECAUSE, YOU KNOW, THERE WAS PROBLEM THERE SO...

Q LET ME ADDRESS THIS. LET'S TALK ABOUT THE BENEFICIARIES INDIVIDUALLY. HOW DID YOU TYPICALLY COMMUNICATE WITH JULIE?

A BY E-MAIL, TEXT OR PHONE CALLS. I DID THAT EVEN WHEN HE WAS ALIVE. SOMETIMES I WOULD TALK TO HER... I MEAN, HE WOULDN'T TALK TO HER... HE WOULDN'T BE AVAILABLE TO TALK TO HER. SHE WOULD CALL ME AND ASK ME THINGS, YOU KNOW. ASK ME TO GIVE HER SOME ADVICE ON THIS OR THAT.

Q IS IT FAIR TO SAY THAT Y'ALL TALKED FAIRLY FREQUENTLY BY PHONE?

A YES. WE HAD A GOOD RELATIONSHIP. I THOUGHT WE ALWAYS HAD A GOOD RELATIONSHIP.

Q TELL ME ABOUT STEVE. HOW DID YOU COMMUNICATE WITH STEVEN?

A USUALLY BY PHONE. USUALLY BY PHONE. HE WOULD CALL.

Q STEVEN LIVED WITH YOU AFTER YOUR HUSBAND PASSED AWAY FOR A TIME?

A HE DID. HE LIVED WITH ME FOR NINE MONTHS BECAUSE HE DID NOT KNOW, YOU KNOW, WHAT HE WANTED TO DO. HE DID NOT KNOW WHERE HE WANTED TO BE. ONE MINUTE IT WAS PHILADELPHIA. THE NEXT MINUTE IT WAS NORTH CAROLINA. HE WASN'T SURE SO, YOU KNOW, HE STAYED FOR A WHILE UNTIL

HE DECIDED.

Q WAS THAT AT THE CROOKED PINE DRIVE?

A YES, IT WAS.

Q OKAY. HOW LONG HAD YOU LIVED AT THE CROOKED PINE DRIVE RESIDENCE?

A 20 YEARS.

Q WAS THAT THE MARTIAL HOME?

A YES.

Q WHAT ABOUT MATTHEW? YOU MENTIONED... WHAT WAS THE SITUATION WITH MATTHEW?

A WHEN MATT FIRST CAME HERE, HE CAME TO... HE GOT OUT OF JAIL AND THEY SENT HIM TO FLORENCE TO A HALFWAY HOUSE. THEN AFTER THE HALFWAY HOUSE FOR A FEW MONTHS, THEN HE CAME TO LIVE WITH US. THAT WAS FINE WITH ME BECAUSE HE DIDN'T HAVE ANY PLACE TO GO. HE DIDN'T KNOW ANYBODY AND SO, YOU KNOW, WE JUST PUT HIM IN A BEDROOM AND YOU KNOW, TRIED TO GET HIM ON HIS FEET. DON BOUGHT HIM A COUPLE OF TRUNKS, YOU KNOW, TO GO AROUND TO CONSTRUCTION AREAS TO SELL FOOD, YOU KNOW. WHEN THAT WENT DOWN THEN HE REALLY DIDN'T DO TOO MUCH AT THAT.

Q IS IT FAIR TO SAY YOUR HUSBAND TRIED TO HELP MATTHEW DURING YOUR HUSBAND'S LIFETIME?

A YES. WE'VE HELPED ALL OF THEM THROUGH THE

YEARS. WE'VE HELPED ALL OF THEM. YOU KNOW, STEVEN WOULD CALL FOR... YOU KNOW, NEEDING A CAR OR HE WOULD NEED RENT MONEY AND, YOU KNOW, DON ALWAYS HELPED HIM. AND WITH MATT, HE ALWAYS HELPED MATT. HE BOUGHT HIM A TRUCK, WHICH HE WAS SUPPOSED TO PAY BACK, YOU KNOW, FOR THAT. AND HE DID FOR A LITTLE WHILE AND THEN HE STOPPED AND HE WAS SUPPOSED TO PAY RENT. HE HAD BEEN THERE FOR A LONG TIME, ABOUT EIGHT YEARS AND HE WOULD PAY FOR LIKE TWO YEARS AND HE NEVER PAID ANYMORE.

Q LET ME ASK YOU A QUESTION ABOUT THAT. MATTHEW LIVED IN --

A WHERE HE LIVES NOW. WHERE HE'S BEEN LIVING, INLET REEF. IT'S CALLED INLET REEF. IT'S LIKE A DOUBLE WIDE MOBILE HOME.

Q WHERE IS THAT LOCATED?

A IT'S OFF OF 707. IN THE BACK OF 707 BEHIND WATSON'S RIVERSIDE.

Q DO YOU RECALL THE STREET THAT IT'S ON?

A RACE PATH... RACE SOMETHING.

Q DOES RACE WATER SOUND CORRECT?

A RACE WATER. (AFFIRMATIVE RESPONSE.) I NEVER WANTED TO GO OVER THERE TOO MUCH. I WOULD TAKE DON OVER FOR, YOU KNOW, I TOLD HIM A FEW TIMES,

YOU KNOW, GO OVER AND VISIT MATT. GO OVER AND WATCH THE FOOTBALL GAME, YOU KNOW, WHICH THEY LOVED THE REDSKINS. SO, I WOULD DROP HIM OFF AND THEN I WOULD PICK HIM UP. AND, YOU KNOW, SPEND SOME TIME WITH YOUR SON. EVEN THOUGH HE KNEW MATT HAD A LOT OF PROBLEMS WITH DRUGS, YOU KNOW, HE... YOU KNOW, I ENCOURAGED HIM TO SPEND SOME TIME WITH HIM.

Q WAS DR. ROTHGEB A FOOTBALL FAN?

A OH, YES.

Q DID HE LOVE THE REDSKINS?

A YES.

Q SO, JUST TO BE CLEAR, YOUR TESTIMONY WAS THAT MATT LIVED IN THAT PROPERTY FOR HOW LONG? DOES HE LIVE IN THAT PROPERTY TODAY?

A YES.

Q WHO LONG HAS HE LIVED THERE?

A I LOST TRACK REALLY. IT MIGHT BE 10 YEARS.
IT'S A LONG TIME.

Q SO, FOR THE ENTIRE ESTATE HE HAS LIVED THERE?

A YES.

Q PRIOR TO THAT, PRIOR TO YOUR HUSBAND'S DEATH, HE LIVED THERE?

A YES.

Q HAS HE PAID RENT TO THE ESTATE?

A NO.

Q DID HE EVER FOR SOME PERIOD OF TIME PRIOR --

A FOR A COUPLE OF YEARS. HE WOULDN'T PAY EVERY MONTH, BUT HE, YOU KNOW, PAID SOME MONTHS.

Q DO YOU UNDERSTAND WHY YOU ARE HERE TODAY?

A YES, BECAUSE THE ESTATE ISN'T CLOSED.

Q DO YOU UNDERSTAND WHY JULIE IRVING HAS BROUGHT --

A NOT REALLY.

Q -- HER PETITION AGAINST YOU?

A NOT REALLY.

Q DO YOU UNDERSTAND SHE'S CLAIMED THAT YOU HAVEN'T COMMUNICATED ADEQUATELY WITH HER?

A RIGHT. I COMMUNICATED UNTIL I WAS, YOU KNOW, I GOT THE IMPRESSION THAT SHE DIDN'T WANT TO TALK TO ME ANY MORE. SHE STOPPED TALKING TO ME. SHE HIRED THE LAWYER AND I... YOU KNOW, WASN'T SUPPOSED TO COMMUNICATE ANY MORE. SO, THEN I WAS KIND OF IN THIS DILEMMA. I DIDN'T KNOW WHAT TO DO. I MEAN, EVEN THOUGH SHE STOPPED TALKING TO ME AND I COULDN'T FIGURE THAT OUT, I STILL TALKED TO STEVEN. I STILL TALKED TO HIM ON THE PHONE BECAUSE LIKE I SAID EARLIER, I WAS CLOSE TO HIM.

Q WHEN DID SHE STOP TALKING TO YOU?

A 27TH OF JANUARY, 2014.

Q WHAT WAS THE SIGNIFICANCE OF THAT DATE?

A IT WAS ONE DAY AFTER MY HUSBAND'S DEATH. THE YEAR OF HIS DEATH.

Q THE FIRST ANNIVERSARY?

A YES. SHE HAD TOLD ME A LONG TIME AGO THAT SOMEBODY TOLD HER THAT THE ESTATE WOULD NORMALLY SETTLE WITHIN A YEARS' TIME. WELL, THAT MIGHT BE IF YOU ONLY HAVE ONE OR TWO PROPERTIES. I DON'T KNOW. BUT NOT WHEN YOU HAVE 12 OR 13 PROPERTIES TO DEAL WITH AND TRY AND FIGURE OUT WHAT TO DO WITH THEM. I WAS TRYING TO... EVEN BEFORE HE PASSED AWAY IN 2013, THE MONEY SITUATION WAS REALLY LOW AND I HAD SAID TO HER, "I THINK WE NEED TO SELL SOMETHING" AND SHE AGREED WITH ME. SO, AFTER HE PASSED AWAY THEN... THE ACCOUNT WAS STILL LOW. I TOLD HER, I SAID, I "NEED TO SELL SOME PROPERTIES SO THAT I CAN PUT THE MONEY IN SO I CAN PAY OFF THESE DEBTS." SO, I SOLD A COUPLE OF PROPERTIES. AND STEVEN KNEW THAT TOO. AND I DON'T KNOW IT JUST... IT DIDN'T WORK OUT.

Q I WANT TO ASK YOU A COUPLE OF THINGS THAT HAVE BEEN TALKED ABOUT IN HER TESTIMONY. MS. IRVING, TESTIFIED THAT SHE FELT THAT YOU HAD LIED TO HER

AND IMPRESSED... AS I UNDERSTOOD HER TESTIMONY, SHE INDICATED THAT THE LIE WAS TO MATTHEW AND NOT DIRECTLY TO HER?

A YES. I HEARD HER SAY THAT.

Q LET ME JUST ASK YOU TO TELL THE COURT, HAVE YOU EVER LIED AS FAR AS YOU ARE AWARE TO ANY OF THE BENEFICIARIES OF THE ESTATE?

A NO.

Q ABOUT ANY ESTATE MATTERS?

A NO. I NEVER TOLD MATT THAT I EVER SOLD ANYTHING. I WOULD NEVER DO THAT. IN FACT, I DIDN'T TALK TO HIM THAT MUCH. THE ONLY TIME I TALKED TO HIM WAS WHEN HE WANTED ME TO GIVE HIM SOME MONEY FOR HIS PHONE BILL OR HE WAS BROKE AND CALLING FOR THINGS LIKE THAT. I DIDN'T WANT TO GO OVER AND VISIT HIM BECAUSE I KNEW THAT THERE WAS A LOT OF DRUG ACTIVITY COMING AND GOING... PEOPLE, YOU KNOW, HAD TOLD ME AND I DID NOT WANT TO BE INVOLVED IN THAT AND DIDN'T WANT ANYBODY SEEING MY CAR AND MAYBE FOLLOW ME HOME. I WAS KIND OF GETTING PARANOID ABOUT THAT, YOU KNOW. I TOLD DON, I SAID, YOU KNOW, "I WILL TAKE YOU OVER TO HIS HOUSE, BUT I DON'T WANT YOU TO HAVE HIM, YOU KNOW, BRING HIS FRIENDS OVER TO VISIT YOU BECAUSE I DIDN'T WANT ANYBODY KNOWING

WHERE WE LIVED." YOU KNOW, IT MADE ME VERY NERVOUS TO KNOW THAT THE PEOPLE THAT HE WAS DEALING WITH WERE UNSAVORY TO SAY THE LEAST.

Q WHAT WOULD YOU SAY IF WE TALKED A LITTLE BIT ABOUT SOME OF THE ISSUES? WHAT WOULD YOU SAY SOME OF THE THINGS... I DON'T THINK YOU ACTUALLY FULLY RESPONDED, BUT WHAT WERE SOME OF THE THINGS THAT THE ESTATE HAS DONE FOR MATT? WE TALKED ABOUT THE RENT. WHAT WERE SOME OF THE OTHER THINGS THE ESTATE HAS DONE FOR MATT?

A PAID THE ELECTRIC, PAID THE WATER BILL. EVERY MONTH WE HAD TO PAY... SEE, WHEN HE FIRST MOVED THERE, EVERYTHING WAS IN DON'S... EVERYTHING'S ALWAYS BEEN IN DON'S NAME. IT WAS NEVER IN MATT'S NAME, BUT MATT WOULD PAY THE BILLS A LOT OF TIMES. THEN HE WOULD RUN OUT OF MONEY BECAUSE HE WAS SPENDING IT ON THINGS HE SHOULDN'T BE SPENDING IT ON. THEN HE WOULD GET BROKE AND THEN HE'D CALL AND SAY THE ELECTRIC IS GOING TO BE TURNED OFF? "CAN I COME OVER?" EVIDENTLY, YOU ONLY HAVE TO HAVE \$25.00 ON A FRIDAY TO KEEP IT ON FOR THE NEXT WEEK. SO, HE WOULD COME OVER ALL THE TIME AND GET \$25.00 AND THEN THE WATER... THEN WE STARTING GETTING WATER BILLS BECAUSE THE WATER WAS IN DON'S NAME. SO,

HE WASN'T PAYING THE WATER. SO, THEN WE WOULD HAVE TO PAY THE WATER BILLS. IT WAS LIKE \$50.00 A MONTH. THE LAST ONE BEFORE I SAID, YOU KNOW, "I'M NOT DOING THIS ANY MORE. I'M TAKING IT OUT OF HIS NAME. IT WAS \$200.00."

Q LET ME ASK THIS QUESTION. MS. IRVING IN HER TESTIMONY EARLIER LIKE LAST WEEK RAISED THE ISSUE OF YOU AS THE PERSONAL REPRESENTATIVE EITHER FAILING TO RENEW OR SOMEHOW ALLOWING THE INSURANCE ON MATTHEW'S HOUSE TO LAPSE. CAN YOU --

A RIGHT. HE WAS GOING INTO JAIL AGAIN. HE WAS GOING TO TURN HIMSELF IN, BUT HE KEPT PUTTING IT OFF AND PUTTING IT OFF BECAUSE HE KNEW THAT, YOU KNOW, HE HAD TO DO IT AT SOME POINT. SO, HE WAS TRYING TO GET SOMEBODY TO COME INTO THE HOUSE TO GIVE HIM RENT MONEY SO THAT HE WOULD HAVE MONEY FOR... I GUESS, YOU HAVE COMMISSARY BENEFITS OR SOMETHING IN JAIL, I DON'T KNOW. SO HE FINALLY FOUND THIS COUPLE AND HE SAID... SO, JULIE AND I TALKED AND SHE SAID, "HE'S GOING INTO JAIL. THIS COUPLES IS IN THE HOUSE. WE NEED TO GET INSURANCE ON THE PROPERTY." WELL, I CALLED THE LOCAL PEOPLE. THEY DIDN'T WANT TO DO IT. THEY SAID, "CALL THIS PERSON IN FLORIDA" AND I CALLED

THE PERSON IN FLORIDA AND THEY SAID THAT BECAUSE OF THE YEAR OF IT, IT WAS OLD. IT WASN'T NEW. AND BEING THAT IT WAS HERE THEY COULDN'T INSURE IT, BUT THEY WERE GOING TO REFER ME TO SOMEBODY ELSE. I TALKED TO THE SECOND PERSON AND THEY SAID THEY WOULDN'T INSURE IT EITHER. I DIDN'T KNOW WHAT TO DO.

Q JUST TO BE CLEAR, FOR PURPOSES OF THE COURT'S UNDERSTANDING AND YOUR TESTIMONY, MATT'S HOME... WE REFERRED TO IT AS HIS HOME ON RACE WATER?

A RIGHT. IT'S A DOUBLE WIDE TRAILER?

Q TRAILER, A DOUBLE WIDE?

A YES.

Q DO YOU KNOW APPROXIMATELY WHAT YEAR?

A NO.

Q HOW OLD IT IS?

A OH, MY GOSH. IT'S OLD. I'M NOT SURE HOW OLD IT IS. IT'S PROBABLY 20 YEARS OLD I WOULD THINK.

Q IS IT FAIR TO SAY YOU UNDERTOOK REASONABLE EFFORTS TO GET INSURANCE ON THE PROPERTY?

A YES, I DID AND I WAS TURNED DOWN.

Q I WOULD ASK YOU TO TAKE A LOOK AT A COUPLE OF DOCUMENTS?

MR. TALL: I DON'T HAVE ANY OBJECTIONS.

MR. BOYD: YOUR HONOR, I WOULD LIKE TO

OFFER THIS DOCUMENT INTO EVIDENCE IF MS.
POAFPYBITTY CAN IDENTIFY IT FOR ME.

Q CAN YOU TELL ME WHAT I HAVE JUST HANDED YOU,
JENE?

A WHEN STEVEN LEFT HERE HE NEEDED A CAR. AFTER HE
LEFT HIS CAR BROKE DOWN, EVEN THOUGH I HAD
GOTTEN IT FIXED FOR HIM WHILE HE WAS HERE AND IT
BROKE DOWN. HE NEEDED ANOTHER CAR BECAUSE IT
WAS ON ITS LAST LEGS. SO, HE ASKED ME IF I
COULD GIVE HIM \$5,000.00 TO GET ANOTHER VEHICLE.
SO, THAT HE COULD, YOU KNOW, GET AROUND. I SAID
OF COURSE. I DIDN'T KNOW THAT I WOULD HAVE TO
GIVE EVERYBODY \$5,000.00. I THOUGHT I COULD
JUST, YOU KNOW, HELP HIM OUT LIKE WE ALWAYS DID
AND --

Q DOES THE E-MAIL THAT YOU SENT AT THE TOP, DOES
IT REFERENCE A CONVERSATION THAT YOU HAD WITH
JULIE IRVING?

A I TALKED TO JULIE AND SHE WAS IN AGREEMENT TO
GIVE STEVEN \$5,000.00, YES.

JUDGE PADGETT: I UNDERSTAND IT'S
WITHOUT OBJECTION. IT'S GOING TO BE
DEFENDANT'S 8.

NOTES ABOUT \$5,000.00 TO
STEVEN MARKED FOR

IDENTIFICATION AND INTRODUCED
INTO EVIDENCE AS DEFENDANT'S
EXHIBIT 8.

A LIKE I SAID EARLIER, WE ALWAYS HELPED THE
CHILDREN, WHATEVER THEY NEEDED.

Q IS IT FAIR TO SAY THIS IS TYPICAL OF
COMMUNICATIONS AS THEY WERE OCCURRING AT THE
TIME?

A YES.

Q DID YOU ATTEMPT TO DISCUSS THESE MATTERS WITH
JULIE AS THEY AROSE?

A YES. ALWAYS. WE WERE ALWAYS IN AGREEMENT IF
STEVEN NEEDED SOMETHING. WE WOULD TRY TO DO
WHATEVER WE COULD.

Q I WANT TO ASK YOU TO TAKE A LOOK AT THIS
DOCUMENT AND TELL THE COURT IF YOU RECOGNIZE
THAT DOCUMENT, JENE?

A YES.

Q WHAT DO THE FIRST COUPLE SENTENCES OF THE E-MAIL
SAY? WHO IS IT AN E-MAIL TO AND FROM?

A IT'S AN E-MAIL FROM ME TO JULIE.

Q TO MS. IRVING?

A OCTOBER 1ST 2014. "I JUST GOT A CHANCE TO
ANSWER YOUR TEXT. I UNDERSTAND THE INVENTORY
DIDN'T LIST THE ESTATE ACCOUNTS BECAUSE IT WAS

OPENED AFTER THE DATE OF DEATH AND THE ESTATE ACCOUNT IS THE ONLY BANK ACCOUNT THAT IS OPEN AND THAT EXISTS." SHE'S... "YOU ARE MENTIONING ANY LIFE INSURANCE. SUNDAY WHEN WE TALKED I PAID ALL THE BILLS OUT OF THE ACCOUNT AND HAVE FOR THE LAST SEVERAL YEARS. I PAID HIS HEALTH INSURANCE EVERY MONTH, BUT THERE WAS NEVER A PAYMENT FOR LIFE INSURANCE AND THERE HASN'T BEEN A PAYMENT FOR LIFE INSURANCE FOR ABOUT AT LEAST 10 YEARS SINCE HE TOLD ME HE WAS TIRED OF PAYING IT. AND ASKED ME IF I WANTED TO TAKE IT OVER... TO TAKE OVER THE MONTHLY PAYMENTS. SINCE I DIDN'T HAVE THE FUNDS TO DO THAT...

Q YOU DON'T HAVE TO READ ANY MORE. THAT'S THE POLICY YOU WERE TESTIFYING ABOUT EARLIER?

A YES.

JUDGE PADGETT: LET'S GET THAT MARKED,
MR. BOYD. THAT WILL BE DEFENDANT'S
EXHIBIT 9, WITHOUT OBJECTION.
E-MAIL DATED 10/1/14 MARKED
FOR IDENTIFICATION AND
INTRODUCED INTO EVIDENCE AS
DEFENDANT'S EXHIBIT 9.

Q SO, YOU ARE SENDING THIS E-MAIL, IF I UNDERSTAND WHAT YOU HAVE WRITTEN HERE, YOU'RE RESPONDING TO

A TEXT VIA E-MAIL?

A YES.

Q THERE WAS A QUESTION ABOUT THE ESTATE ACCOUNTS LISTED IN THE INVENTORY. DID JULIE HAVE QUESTIONS FOR YOU INITIALLY ABOUT THE ACCOUNTS? WERE THERE SOME ISSUES THAT CAME UP RELATED TO THE ACCOUNTS?

A YES. I THINK THERE WERE.

Q WHAT WERE THOSE ISSUES IF YOU RECALL?

A WE HAD A JOINT ACCOUNT AND THERE WAS MONEY IN THE ACCOUNT AND...

Q ARE YOU REFERRING TO A JOINT ACCOUNT BETWEEN YOU AND --

A YES. A JOINT ACCOUNT BETWEEN DON AND I. DON AND I HAD OUR SEPARATE ACCOUNTS. I HAD A SEPARATE ACCOUNT. THEN WE HAD A JOINT ACCOUNT, YOU KNOW. THE HOUSE CALL PRACTICE ACCOUNT. SO, WHEN HE DIED HALF OF THE MONEY IN THAT ACCOUNT WAS MY MONEY AND I THINK THAT SHE DIDN'T AGREE THAT, THAT WAS ANY PART OF IT MY MONEY AND... AT ONE TIME SHE EVEN ASKED ME IF SHE COULD HAVE A COPY OF MY... I'M SO UPSET ABOUT THIS WHOLE THING. I APOLOGIZE IF I'M STUTTERING. OF MY MARRIAGE LICENSE. I MEAN, I HAVE BEEN MARRIED FOR ALL THAT TIME SINCE 1989. I HAVE BEEN WITH

HIM SINCE 1978 AND NOW SHE'S ASKING ME ABOUT, YOU KNOW, SHE WANTS A COPY OF MY MARRIAGE LICENSE. WHICH REALLY KIND OF PUT ME OFF AND, YOU KNOW, UPSET ME. I WASN'T TRYING TO SAY I WAS MARRIED TO HIM WHEN I WASN'T. I PUT UP WITH A LOT FOR A LOT OF YEARS FOR NOT GETTING MARRIED TO SOMEBODY. THAT'S JUST... I MEAN, THAT WAS JUST UNCALLED FOR I THINK. I DID NOT UNDERSTAND.

Q I UNDERSTAND. WHAT ARE THE QUESTIONS RELATED TO INSURANCE IF YOU RECALL?

A SHE WAS ASKING ME IF HE HAD LIFE INSURANCE. AND HE DID HAVE LIFE INSURANCE, BUT THEN HE LET IT GO BECAUSE HE DIDN'T FEEL LIKE PAYING FOR IT ANY MORE. I GUESS HE FELT LIKE HE DIDN'T NEED IT BECAUSE HE HAD THE RENTAL PROPERTIES.

Q DO YOU RECALL WHEN HE LET THAT LIFE INSURANCE LAPSE?

A IT WAS A LONG TIME AGO. I DON'T KNOW, PROBABLY ABOUT 15 YEARS AGO.

Q ARE YOU AWARE OF ANY OTHER POLICIES?

A NO. THERE WE NO ANY OTHER POLICIES, NO.

Q I AM GOING TO ASK YOU ABOUT WHAT HAS PREVIOUSLY BEEN MARKED AS PLAINTIFF'S 2, JENE. THIS EXHIBIT WAS MARKED DURING MS. IRVING'S

TESTIMONY. CAN I ASK YOU IF YOU RECOGNIZE THAT DOCUMENT?

A I DO.

Q WHAT IS THAT DOCUMENT?

A THAT'S A RESPONSE TO STEVEN'S E-MAIL.

Q DO YOU RECALL DRAFTING THIS E-MAIL?

A YES.

Q WHAT'S THE DATE OF THE E-MAIL?

A MARCH 8TH 2015.

Q IS THERE ANYTHING THAT YOU WOULD LIKE TO TELL THE COURT ABOUT ANY OF THE FEELINGS THAT YOU EXPRESSED IN THAT E-MAIL? MR. TALL ASKED YOU ABOUT SOME OF YOUR COMMENTS IN ALL CAPS. IS IT FAIR TO SAY THIS WAS A DIFFICULT PROCESS FOR YOU?

A IT'S BEEN A DIFFICULT PROCESS, YES. IT'S BEEN A DIFFICULT PROCESS EVER SINCE... AFTER THE YEAR WAS UP TO HIS DEATH AND ALL THIS STARTED. YOU KNOW, ME NOT DOING THIS OR NOT DOING THAT. I'M DOING THE BEST I CAN. I'M TRYING TO FIGURE OUT HOW TO BE EQUITABLE AND FAIR WITH EVERYBODY, YOU KNOW. I FEEL LIKE I HAVE BEEN SHOT DOWN EVERY TIME I TURN AROUND.

Q DO YOU FEEL LIKE THE PROCESS PERHAPS BECAME A LITTLE BIT ADVERSARIAL?

A ABSOLUTELY.

Q DID YOU WANT THE PROCESS TO BE ADVERSARIAL?

A NO. I NEVER WANTED ANY HARD FEELINGS. IF I DIDN'T CARE ABOUT THAT I WOULD'VE TAKEN THE THIRD SHARE TO BEGIN WITH. I DIDN'T WANT ANY HARD FEELINGS. I DID NOT EVEN ENTER THAT, YOU KNOW, TO HAPPEN.

Q WHEN YOU SAY, "THE THIRD". YOU'RE REFERRING TO THE ELECTIVE SHARES?

A YES. THE ELECTIVE SHARE.

Q DID YOU HAVE DISCUSSIONS WITH JULIE ABOUT THE POSSIBILITY YOU COULD EXERCISE THE ELECTED SHARE?

A YES. I RAN IT BY HER. YEAH. I DIDN'T WANT TO DO ANYTHING BEHIND THEIR BACKS.

Q WHY WOULD YOU DISCUSS THAT WITH JULIE?

A BECAUSE I THOUGHT IT WAS ONLY FAIR TO LET HER KNOW THAT, YOU KNOW, THAT WAS A POSSIBILITY THAT I COULD TAKE ADVANTAGE OF.

Q WHAT WAS HER REACTION?

A SHE WASN'T VERY HAPPY WITH THAT. SHE SAID, YOU KNOW, SHE DID NOT THINK THAT, THAT WAS, YOU KNOW... SHE DIDN'T SAY INAPPROPRIATE, BUT THAT'S PRETTY MUCH WHAT IT WAS AND TOO, YOU KNOW, LEAVE IT THE WAY THE WILL WAS WRITTEN. WHICH IS WHAT

I WAS GOING TO DO ANYWAY. I JUST WANTED TO RUN IT BY HER AND LET HER KNOW IT WAS AVAILABLE TO ME. BUT I SURE DIDN'T WANT ANY HARD FEELINGS. I MEAN, I COULD'VE DONE THAT BUT I DIDN'T. I WANTED TO GET ALONG WITH EVERYBODY. I DIDN'T THINK IT WAS EVER GOING TO COME TO THIS.

Q SURE.

A I THINK THAT'S WHEN SHE ASKED ME FOR A COPY OF MY MARRIAGE LICENSE.

Q MS. JENE, I AM GOING TO HAND YOU ANOTHER DOCUMENT AND ASK IF YOU RECOGNIZE THAT DOCUMENT?

A YES.

Q CAN YOU BRIEFLY IDENTIFY THAT DOCUMENT FOR THE RECORD?

A YES. IT'S AN E-MAIL FROM ME TO STEVEN, MARCH 19TH 2015, GIVING HIM AN UPDATE. YOU KNOW, IT'S THE COUPLE CHARGE... I SAID I WAS GOING TO MAKE UP SO HE WOULD KNOW WHAT PROPERTY WAS AVAILABLE AND HOW MANY BEDROOMS AND, YOU KNOW, WHAT THE HOA DUES WERE AND WHAT THE TAXES WERE ON EACH ONE. JUST GIVING HIM THE INFORMATION THAT HE WANTED, YOU KNOW, TO HAVE AND ASKED FOR.

MR. BOYD: YOUR HONOR, I WOULD LIKE TO INTRODUCE THIS IF I MAY.

JUDGE PADGETT: ANY OBJECTIONS?

MR. TALL: WITHOUT OBJECTION.

JUDGE PADGETT: I WILL BE EXHIBIT 10 I BELIEVE.

E-MAIL DATED 3/19/15 MARKED
FOR IDENTIFICATION AND
INTRODUCED INTO EVIDENCE AS
DEFENDANT'S EXHIBIT 10.

Q MS. JENE, I'M GOING TO ASK YOU IF YOU WOULD
TO... IT MAY BE A LITTLE BIT DIFFICULT FOR YOU
IF YOU TAKE A MOMENT PLEASE. BUT I'M GOING TO
ASK YOU TO READ THE THIRD PARAGRAPH FOR ME
BRIEFLY. IF YOU WANT TO START MIDWAY THROUGH
THE PARAGRAPH AND SKIP THE PART ABOUT MAX,
THAT'S FINE.

A "OTHER THAN THE FACT THAT I PUT MAX TO SLEEP
LAST NIGHT AT THE VET'S OFFICE, I HAVE NOTHING
ELSE TO REPORT. I WILL SAY, HOWEVER, IT WAS
VERY DISAPPOINTING TO KNOW THAT THROUGH ALL OF
THESE 37 YEARS OF TRYING MY BEST TO TREAT
EVERYBODY FAIRLY AND LIKE YOU WERE MY KIDS. I
BENT OVER BACKWARDS TO SMOOTH THINGS OVER
REGARDING Y'ALL WHENEVER THERE WAS A PROBLEM
WITH YOUR DAD AND BEING TREATED NOT VERY NICE AT
TIMES THROUGH THE YEARS BY HIM. I CAN'T BELIEVE
THAT JULIE IS ACTING THE WAY SHE IS. SHE NEVER

HAD TO PUT UP WITH ANYTHING LIKE YOU AND I DID AND BOTH OF US HUNG IN THERE. THAT'S OKAY. I KNOW IT'S ALWAYS ABOUT MONEY. WELL, THERE ISN'T GOING TO BE ANY MONEY TODAY OR TOMORROW SO, I GUESS, WE WILL JUST HAVE TO GET A GRIP." YOU KNOW, I'M TRYING TO SELL THESE PROPERTIES, BUT THERE'S NOT GOING TO BE ANY MONEY TO GIVE TODAY, YOU KNOW. IT'S GOING TO TAKE TIME. I'M JUST DOING THE BEST I CAN. THAT'S WHY I SENT HIM THOSE OTHER CHARTS AND, YOU KNOW, MAYBE THAT WASN'T, YOU KNOW, A SUFFICIENT AMOUNT OF INFORMATION. BUT, YOU KNOW, I DID NOT HAVE A LOT MORE INFORMATION TO GIVE, I WAS, YOU KNOW, TRYING TO GET SOME MONEY IN THE BANK TO, YOU KNOW, PAY OFF THE DEBTS. AND HOPEFULLY NO REPAIRS WOULD BE NEEDED. I MEAN, WE HAD AN AIR CONDITIONER GO. WE HAD WATER DAMAGE HAPPEN, YOU KNOW. THOSE THINGS ARE SIGNIFICANT. SO, I JUST NEEDED A CUSHION, YOU KNOW, AND THE ONLY WAY I WAS GOING TO GET A CUSHION FROM THE BANK ACCOUNT WAS TO SELL SOME OF THE PROPERTIES.

Q SURE. YOU SAY, "BENDING OVER BACKWARDS TO SMOOTH THINGS OVER REGARDING Y'ALL WHENEVER THERE WAS A PROBLEM WITH YOUR DAD." WHAT IS THAT A REFERENCE TO?

A WELL, YOU KNOW, DON HAD A PROBLEM WITH DRINKING AND DURING THE DAY HE WAS FINE, BUT IT WOULD ALL COME OUT IN THE EVENING AFTER HE HAD A FEW DRINKS. WHEN STEVEN WAS IN HIGH SCHOOL, HE GOT INTO SOME TROUBLE BECAUSE HE TOOK A CAMCORDER OR SOMETHING. IT WAS SOMETHING SILLY. TOOK A CAMCORDER TO CLASS OR WAS TRYING TO FILM OR WHATEVER. AND THEY SENT A NOTE HOME SAYING, YOU KNOW, HE COULDN'T BRING IT AND HE COULDN'T DO THAT. HE SAID HE WAS GOING TO DO IT ANYWAY. SO, THEY HAD A MEETING WITH DON. ONCE DON WENT OVER AND HAD A MEETING AND YOU KNOW, THAT EVENING, YOU KNOW, HE TOLD HIM, "YOU CAN'T DO THAT." AND STEVEN, YOU KNOW... WELL, YOU KNOW, STEVEN IS KIND OF, YOU KNOW, WELL, YOU KNOW, "I'M GOING TO DO WHAT I WANT TO DO." YOU KNOW, SO THEY JUST KIND OF WENT ROUND AND ROUND. I KIND OF GOT IN THE MIDDLE OF IT AND SAID, YOU KNOW, "DON TAKE IT EASY." YOU KNOW, "HE WON'T DO IT ANY MORE" AND OF COURSE, THEN I'M SHUT DOWN TOO. YOU KNOW, I'M TOLD TO MIND MY OWN BUSINESS. THAT IT'S BETWEEN HIM AND HIS SON. I DIDN'T REALLY MAKE A LOT OF HEADWAY THERE, YOU KNOW. YOU CAN'T TALK TO ANYBODY WHEN THEY'RE DRINKING ANYWAYS, BUT I TRIED. I TRIED

DIFFERENT TIMES, YOU KNOW, BETWEEN THE TWO OF THEM OR EVEN BETWEEN HE AND METT.

Q WHEN YOU SAID, "NOT BEING TREATED VERY NICE AT TIMES" WHAT... BRIEFLY, WHAT IS THAT REFERRING TO?

A JUST, YOU KNOW, THE FACT THAT, YOU KNOW, SHE JUST WROTE ME OFF. I MEAN, AFTER ALL THESE YEARS IT'S LIKE, YOU KNOW, WE'VE TALKED AND COMMUNICATED.

Q ARE YOU REFERRING TO JULIE?

A YES. YOU KNOW, AND NOW ALL OF THE SUDDEN I... YOU KNOW, I'M NOT DOING WHAT I AM SUPPOSED TO DO AND I'M NOT GETTING THINGS DONE FAST ENOUGH AND THERE'S NO MONEY COMING. I CAN'T SELL THESE PROPERTIES TO PAY THE DEBTS OVERNIGHT. I MEAN, IT TAKES TIME. NOT BEING FAMILIAR WITH PROPERTIES AND MANAGEMENT OR ANYTHING, SHE WOULDN'T KNOW THAT I GUESS.

Q IS THAT WHAT YOU REFER TO WHEN YOU SAY, "I CAN'T BELIEVE THAT JULIE IS ACTING THIS WAY TO ME?"

A YES. YES. IT WAS DISAPPOINTING. IT WAS HURTFUL.

Q DID THE CONDITION OF THE PROPERTIES MAKE THEM TOUGH TO SELL?

A THEY DID, YES. BECAUSE DON DID NOT MAKE A LOT

OF REPAIRS AND, YOU KNOW, BEFORE THEY COULD BE SOLD, THEY NEEDED TO BE REPAIRED. AND YOU KNOW, REPAINTING. YOU KNOW, WHATEVER NEEDED TO BE FIXED. THE LAST ONE THE MAN LEFT AND HE WAS THERE FOR LIKE SIX YEARS AND HE NEVER COMPLAINED. SO, WHEN HE LEFT THAT PROPERTY I HAD A LOT OF THINGS THAT NEEDED TO BE REPAIRED. I MEAN, HE KEPT TELLING DON HIS REFRIGERATOR WASN'T WORKING, BUT IT KEPT MAKING NOISE AND IT KEPT WAKING HIM UP AT NIGHT. AND DON NEVER DID REPLACE IT. HE GOT A REPAIRMAN OVER THERE, BUT THE MAN SAID, YOU KNOW, THERE WASN'T ANYTHING THAT THEY COULD DO AS LONG AS IT, YOU KNOW, WAS STILL WORKING AND FUNCTIONING. IT WAS JUST NOISY FOR WHATEVER REASON AND THAT COULDN'T BE FIXED. SO, DON JUST... AND HE HAD BEEN THERE A LONG TIME. HE WAS JUST SUCH A DEAR MAN. AND HE'S SAID, WELL, YOU KNOW, "JUST GET USED TO IT. YOU KNOW, I'M NOT GOING TO REPLACE THE REFRIGERATOR" AND THAT'S, YOU KNOW, KIND OF THE ATTITUDE HE HAD. UNLESS SOMETHING WAS REALLY FALLING APART, BUT AS LONG AS IT WAS STILL FUNCTIONING, YOU KNOW, HE JUST SAID, YOU KNOW, "IT'S NOT THAT BAD, IS IT?" AND THE GUY SAID, "WELL, MAYBE NOT, YOU KNOW. SO...

Q IF IT AIN'T BROKE...

A YEAH. IT WASN'T BROKEN IT WAS JUST SO NOISY.
IT WAS LOUD.

Q LET ME ASK YOU... LET'S TURN TO THE INVOLVEMENT
THAT YOU MENTIONED ONCE THE ATTORNEYS BECAME
INVOLVED, A COUPLE TIMES. LET ME ASK YOU ABOUT
THE INVOLVEMENT OF JACK SCOVILLE IN THIS CASE.
DID YOU UNDERSTAND WHY JACK SCOVILLE BECAME
INVOLVED?

A NOT REALLY. YOU KNOW, HE CAME TO YOUR OFFICE
AND WE HAD A MEETING. I DON'T KNOW. I THOUGHT
EVERYTHING WAS GOING TO BE OKAY. YOU KNOW, THEY
WERE TALKING BETWEEN THEMSELVES AND I DON'T
KNOW. I THOUGHT EVERYTHING WAS BEING WORKED
OUT. I WAS HOPING, BUT I GUESS THAT FELL
THROUGH. I DON'T REALLY UNDERSTAND WHY.

Q WHAT WERE THE PRACTICAL IMPACTS OF MR.
SCOVILLE'S INVOLVEMENT AS YOU UNDERSTOOD IT?
JUST PRACTICALLY SPEAKING, HOW DID --

A I JUST FEEL LIKE THEN, YOU KNOW, WITH HER NOT
TALKING TO ME, NOW EVERYBODY'S NOT TALKING TO
ME. NOW, I'M REALLY OUT ON THIS ISLAND BY
MYSELF, YOU KNOW, I DON'T KNOW WHAT TO DO. I AM
NOT SUPPOSED TO TALK TO ANYBODY TOO, YOU KNOW.
SAY I'M TRYING TO BE HELPFUL HERE. I'M TRYING

TO, YOU KNOW, WORK THIS OUT. I'M TRYING TO SELL THE PROPERTIES. I'M DOING THE BEST THAT I CAN. I'M GETTING THINGS SOLD THAT ARE COMING OUT OF RENT, YOU KNOW, THE LEASES ARE UP. I COULDN'T DO ANYTHING FASTER.

Q SO, FROM YOUR PROSPECTIVE, DID THAT HAVE AN IMPACT ON YOUR ABILITY TO COMMUNICATE WITH THE BENEFICIARIES?

A YES. YOU KNOW, AT LEAST I COULD... YOU KNOW, I COULD CALL STEVEN OR I COULD TALK TO HIM IF HE CALLED, BUT THEN I WASN'T SUPPOSED TO TALK TO ANYBODY. IT WAS SUPPOSED TO BE... YOU KNOW, BETWEEN THE LAWYERS.

Q DID MR. SCOVILLE'S INVOLVEMENT, AS YOU UNDERSTOOD IT, HAVE AN IMPACT ON YOUR ABILITY TO SELL THE PROPERTIES?

A YES, BECAUSE ONCE HE GOT INVOLVED THEN I WAS TOLD I COULDN'T DO ANYTHING. I COULDN'T SELL ANYTHING. I COULDN'T DO ANYTHING. I COULD MAINTAIN THE PROPERTIES AND THAT'S ALL I COULD DO. SO, THERE WAS NO WAY TO PAY OFF ANYTHING AND GET ANY MONEY INTO THE BANK BECAUSE I COULDN'T SELL ANYTHING. THAT'S THE ONLY PLACE THE MONEY WAS GOING TO COME FROM.

Q LET'S TALK A LITTLE BIT ABOUT CROOKED PINE

DRIVE. WE HAVE ALREADY TALKED A LOT ABOUT THE EVALUATION OF CROOKED PINE. WHETHER THE VALUE WAS GOOD OR BAD OR... BUT LET ME ASK YOU, DO YOU UNDERSTAND HOW THE VALUE OF CROOKED PINE MARITAL RESIDENCE CHANGED FROM THE INITIAL INVENTORY TO THE SUBSEQUENT APPRAISAL THAT WAS PREPARED BY MR. CROMARTIE?

A I UNDERSTAND THAT INITIALLY THE TAX MAP AMOUNT WAS USED AS THE EVALUATION FOR ALL THE PROPERTIES. I DON'T KNOW HOW THAT'S DONE. THAT MADE SENSE SO THAT'S WHAT WAS USED. WHEN HE CAME IN AND SAW ALL THE DAMAGE THAT HAD BEEN DONE, THEN THAT'S WHAT HE PUT THE VALUE AT A LOWER AMOUNT. THEN WHEN I GOT THE PROPERTY, YOU KNOW, THE REPAIRS DONE THEN THAT BOOSTED IT UP WHICH IS, YOU KNOW, NORMAL. THEN IT INCREASED THE VALUE OF IT, BUT IT WAS NOT A \$191,000.00. THEN WHEN THE SECOND APPRAISER CAME AND SAID, 193 I JUST COULDN'T BELIEVE THAT BECAUSE THERE STILL NEEDS TO BE WORK DONE BUT, YOU KNOW, LIKE I SAID EARLIER, I'M JUST A LAYPERSON, THEY'RE PROFESSIONALS. IF THAT'S WHAT HE SAID IT'S WORTH THEN, I MEAN, WHO AM I? I DON'T KNOW. I DON'T KNOW.

Q YOU'RE OBVIOUSLY NOT A REAL ESTATE PROFESSIONAL?

A NO.

Q BUT IS IT FAIR TO SAY WHEN YOU GOT THE CROMARTIE APPRAISAL ON THE CROOKED PINE DRIVE RESIDENCE, DID THAT STRIKE YOU AS REASONABLE OR DID IT STRIKE YOU AS UNREASONABLE? HOW DID IT STRIKE YOU?

A I DIDN'T... I JUST KNEW THAT THERE WAS A LOT OF DAMAGE. I DIDN'T KNOW... I DIDN'T THINK INITIALLY THAT THE TAX AMOUNT NUMBER WAS CORRECT. I MEAN, THAT HOUSE WAS NEVER WORTH 191, WHICH IS WHAT IT SAID, BUT IF THAT'S WHAT WE WERE GOING TO USE FOR ALL THE PROPERTIES THEN, YOU KNOW, I GUESS IT SHOULD BE CONSISTENT FOR ALL THE PROPERTIES. BUT I DID NOT THINK IT WAS EVER WORTH THAT AMOUNT OF MONEY AND THEN WITH ALL THE DAMAGE THEN THAT TO ME EVEN MADE IT WORTH LESS SO.

Q YOU SAY CROOKED PINE WAS THE MARITAL RESIDENCE FOR MANY YEARS?

A YES.

Q IS IT FAIR TO SAY DURING MOST OF THIS ESTATE ADMINISTRATION YOU WANTED TO REMAIN AT CROOKED PINE DRIVE?

A YES, I DID. THAT'S MY HOME OR IT HAS BEEN FOR 20 YEARS.

Q IS IT FAIR TO SAY NOW THAT YOU'RE PREPARED TO MOVE FROM COOKED PINE --

A YES, I AM.

Q -- AND LET OTHERS HAVE IT?

A YES. I'M PREPARED TO MOVE AND GO ON WITH MY LIFE. SEE IF I CAN JUST, YOU KNOW, GO ON TO MY DAILY ROUTINE.

Q WHAT'S INFLUENCED YOUR THINKING ABOUT YOUR HOME OVER THE COURSE OF THIS --

A YOU KNOW, WITH ALL THE CONFLICT AND ALL THE TURMOIL AND ALL THE STRESS THAT THIS HAS PUT ME THROUGH, IT'S LIKE, I DON'T EVEN CARE ANY MORE. I DON'T EVEN CARE. I JUST... YOU KNOW, IT MEANT A LOT TO ME, BUT IT DOESN'T ANY MORE. I'M JUST SAD. YOU KNOW, I'M JUST SAD. SAD ABOUT THE WHOLE SITUATION. SAD THAT IT'S COME TO THIS.

Q I'M SORRY.

A I'M SAD THAT'S IT COME TO THIS.

Q YOU HAVE HEARD MR. TALL SPEAK. HE QUESTIONED YOU AND OTHERS AT LENGTH ABOUT THE VARIOUS EVALUATIONS THAT HAVE BEEN EITHER INFORMALLY AMONGST THE PARTIES OR FORMALLY SUBMITTED TO THE COURT IN ONE FORM OR ANOTHER. OBVIOUSLY, THERE IS THE ORIGINAL INVENTORY. THERE'S THE AMENDED INVENTORY. THERE'S THE CROMARTIE APPRAISAL.

THERE'S THE BURGESS APPRAISAL. THERE'S THE TAX ASSESSED VALUE. I JUST WANT TO ASK YOU THIS, FOR THE COURTS BENEFIT, HAVE YOU EVER SOUGHT TO MISREPRESENT THE VALUE OF CROOKED PINE DRIVE TO ANYONE?

A NO. I NEVER HAVE. NOBODY EVER ASKED ME WHAT IT WAS WORTH, YOU KNOW. THAT'S NOT MY EXPERTISE. I DON'T KNOW.

Q I NOTICED IN THE E-MAIL THAT WAS JUST ENTERED INTO EVIDENCE DURING MR. PARKER'S TESTIMONY THAT MS. IRVING SAID SHE WAS CONFUSED ABOUT SOME OF THESE TAX ISSUES. IS IT FAIR TO SAY THAT SOME OF THIS STUFF IS CONFUSING TO YOU?

A ABSOLUTELY CONFUSING TO ME. I MEAN, I'M NOT --

Q IS IT FAIR TO SAY THAT YOU DON'T UNDERSTAND THE INS AND OUTS OF REAL ESTATE VALUATION?

A NO. I DON'T KNOW. I MEAN, I KNOW HOW TO RENT PROPERTY. I MEAN, I KNOW HOW TO, YOU KNOW, MAKE REPAIRS, GET TENANTS, YOU KNOW, DO THINGS LIKE THAT, BUT I DON'T KNOW AS FAR AS VALUATIONS ARE CONCERNED. DON DID. THAT WAS HIS AREA.

Q IS IT FAIR TO SAY THAT YOU DON'T UNDERSTAND THE INS AND OUTS NECESSARILY OF ESTATE ADMINISTRATION?

A NO, I DON'T. I HAVE NEVER DONE THIS BEFORE. I

KNOW JULIE HAS BECAUSE HER MOTHER'S PASSING, BUT I DON'T KNOW ANYTHING ABOUT THIS.

Q IS IT FAIR TO SAY THAT IN YOUR PROSPECTIVE FROM A LAYPERSON'S POSITION THAT YOU RELY ON EXPERTS FOR ALL THESE THINGS?

A ABSOLUTELY, YES.

COURT REPORT: CAN WE TAKE A BREAK PLEASE?

JUDGE PADGETT: SURE.

(OFF THE RECORD.)

JUDGE PADGETT: MR. BOYD?

MR. BOYD: MAY I PROCEED, YOUR HONOR?

JUDGE PADGETT: YES, SIR.

Q BEFORE THE BREAK, MS. JENE, WE WERE JUST DISCUSSING THE NEED TO RELY ON ADVERTISERS FOR CERTAIN TASKS. TELL ME A LITTLE BIT ABOUT YOUR UNDERSTANDING OF THE TAX RETURNS THAT ARE PREPARED FOR THE ESTATE. CAN YOU TELL ME A LITTLE BIT ABOUT HOW THAT PROCESSES WORKS?

A I JUST GET ALL THE INFORMATION TOGETHER AND, YOU KNOW, ACCORDING TO ALL THE DIFFERENT PROPERTIES, YOU KNOW, I GET ALL THE REPAIRS THAT I PAID FOR ALL THROUGH THE MONTHS AND MARK IT DOWN TO EACH INDIVIDUAL PROPERTY, WHAT IT BELONGS TO. AND IF SOMEBODY MOVED OUT THEN WE HAD TO PAY UTILITY

BILLS LIKE ELECTRIC OR WATER... NO. THE WATER WAS USUALLY INCLUDED IN THE... BUT THE ELECTRIC WASN'T. SO, THEN I WOULD PAID THE UTILITY BILLS AND I, YOU KNOW, HAVE TO... I DID A BREAKDOWN FOR EACH PROPERTY AND GAVE IT TO THE ACCOUNTANT.

Q DO YOU CONSIDER YOURSELF TO BE A TAX EXPERT?

A OF COURSE NOT, NO. I JUST GOT THE INFORMATION TOGETHER AND GIVE IT AWAY AND THAT'S ALL I KNOW ABOUT IT.

MR. TALL: SHARE WITH ME. SEE IF THIS IS PART OF WHAT YOU HAVE SHARED WITH ME BEFORE?

MR. BOYD: IT SHOULD FALL WITHIN THE PRINTOUT SOMEWHERE. I LEFT MY BATES NUMBER COPIES IN THE OFFICE.

MR. TALL: I WOULD HAVE WANTED TO SEE THAT DOCUMENT AND I DON'T RECALL GETTING IT.

MR. BOYD: BEAR WITH ME ONE SECOND, YOUR HONOR?

JUDGE PADGETT: SURE.

MR. BOYD: THAT'S FINE. I WILL MOVE ON.

Q TELL ME A LITTLE BIT ABOUT THE PROCESS? WHAT ACCOUNTING FIRM DID YOU USE FOR THE ESTATE, MS. JENE?

A CLARK PARKER'S FIRM.

Q TELL ME A LITTLE BIT ABOUT... YOU SAID YOU GATHERED THE INFORMATION AND DELIVERED IT TO THE ACCOUNTANT?

A YES.

Q DID YOU HEAR MR. PARKER'S TESTIMONY JUST NOW?

A YES.

Q ANYTHING THAT MR. PARKER SAID THAT YOU DISAGREE WITH?

A NO.

Q TELL ME A LITTLE BIT ABOUT THE PROCESS OF TRYING TO GET SOCIAL SECURITY NUMBERS FOR MR. PARKER. HOW IS THAT PROCESS GOING?

A HE ASKED ME, YOU KNOW, IF I CAN GET SOCIAL SECURITY NUMBERS. WELL, I WASN'T SUPPOSED TO TALK TO ANYBODY. SO, I ASKED BECKY IN YOUR OFFICE IF SHE COULD REACH OUT TO THEM AND ASK THEM TO PROVIDE THE SOCIAL SECURITY NUMBERS BECAUSE THE ACCOUNTANT NEEDED THEM.

Q TO YOUR KNOWLEDGE, WHEN DID THAT PROCESS START?

A MONTHS AGO. I DON'T KNOW. I DON'T REALLY KNOW, BUT, I MEAN, LAST YEAR. I CAN'T REMEMBER A TIME.

Q WOULD THE SUGGESTION OF MARCH SOUND --

A THAT SOUNDS... YEAH. PROBABLY AROUND IN THERE.

Q TO YOUR KNOWLEDGE SINCE THAT TIME, HAVE YOU BEEN SUCCESSFUL IN OBTAINING ALL OF THESE, THE SOCIAL SECURITY NUMBERS OR HAS ANYBODY OBTAINED ALL THE SOCIAL SECURITY NUMBERS FOR MR. PARKER?

A I THINK JUST STEVEN FROM WHAT I UNDERSTAND. HE GAVE HIS RIGHT AWAY, BUT MATT AND JULIE DIDN'T.

Q TO YOUR KNOWLEDGE HAS THAT CREATED ANY PROBLEMS FOR MR. PARKER?

A I BELIEVE IT HAS BECAUSE I KEPT --

MR. TALL: YOUR HONOR, WE HEARD FROM MR. PARKER EARLIER. DO WE NEED TO HEAR SOMEONE'S INTERPRETATION OF HIS TESTIMONY?

MR. BOYD: I'M ASKING HER KNOWLEDGE --

JUDGE PADGETT: I THINK HE'S TESTIFIED SO I'M GOING TO SUSTAIN THE OBJECTION AS TO WHAT SHE UNDERSTANDS IT TO BE BECAUSE MR. PARKER SAID HE STILL DOESN'T HAVE ONE. ISN'T THAT WHAT HE SAID?

MR. BOYD: I'M JUST ASKING HER TO REAFFIRM THAT TESTIMONY, YOUR HONOR.

JUDGE PADGETT: MR. PARKER SAYS THAT HE STILL DOESN'T HAVE JULIE'S?

MR. TALL: NO. BUT HE HAS A LETTER THAT SAYS SHE WANTS TO COOPERATE WITH HIM.

A FINALLY.

MR. BOYD: YOUR HONOR, THE POINT IS THE ANSWER TO THE QUESTION --

JUDGE PADGETT: I WAS GOING TO SAY, AS OF TODAY THAT INFORMATION HAS NOT BEEN PROVIDED?

MR. TALL: THAT'S CORRECT.

MR. BOYD: I'M JUST ASKING IF THAT IS CONSISTENT WITH HER EXPERIENCE AS THE PR OF THE ESTATE, YOUR HONOR.

JUDGE PADGETT: SHE SAID THAT SHE DIDN'T DIRECTLY TALK TO JULIE. IT WAS SOMEBODY I THINK FROM YOUR OFFICE. I THINK THE INFORMATION IS SUFFICIENT.

A AS FAR AS I KNOW HE DOESN'T HAVE MATT'S AND HE DOESN'T HAVE JULIE'S. THAT'S THE LAST I HAVE HEARD.

JUDGE PADGETT: LET ME ASK A QUESTION. MATT, THE GENTLEMEN IN THE WHEELCHAIR THAT CAME IN EARLIER, WAS THAT MATT?

MR. TALL: YES, YOUR HONOR.

JUDGE PADGETT: STEVEN IS THE ONE IN THAILAND?

MR. BOYD: THAT'S CORRECT, YOUR HONOR.

LET ME HAVE ONE SECOND, YOUR HONOR.

JUDGE PADGETT: CERTAINLY.

Q THERE WAS ONE OTHER ITEM THAT I WANTED TO ASK YOU ABOUT, MS. JENE. I WANT THE COURT TO UNDERSTAND FROM YOUR PERSPECTIVE. AFTER THE DISCUSSIONS WITH MR. SCOVILLE THERE WAS SOME DISCUSSION MR. TALL WAS ASKING PREVIOUSLY ABOUT FURTHER DELAYS IN THE SUBMISSION OF CLOSING PAPERS FOR THE ESTATE. DID THE SALE OF THE RESIDENCES THAT'S BEEN OPEN FOR SOME TIME, HAS THAT BEEN ANOTHER DELAY IN THE PROCESS OF CLOSING THIS ESTATE?

A YES, IT HAS.

Q BRIEFLY EXPLAIN TO THE COURT WHAT HAPPENED IN RESPECT TO THE ATTEMPTS TO SELL THAT RESIDENCE IF YOU WOULD PLEASE.

A OKAY. THE LADY THAT HAD BEEN LIVING THERE FOR LIKE SIX YEARS WANTED TO BUY... I SAID, "DO YOU WANT TO BUY IT?" SHE SAID, "YES." SHE WOULD LOVE TO STOP RENTING. SO, SHE WENT TO THE BANK. SHE WENT TO WELLS FARGO TO OBTAIN A LOAN. THEY LOOKED INTO HER CREDIT HISTORY AND THEN SHE HAD THINGS ON THERE THAT SHE DIDN'T EVEN KNOW ABOUT BECAUSE HER IDENTITY HAD BEEN STOLEN A FEW YEARS BEFORE. I DON'T KNOW HOW LONG AGO, BUT THEN SHE WENT TO TRY AND STRAIGHTEN THAT OUT. SHE

CONTACTED DIFFERENT PEOPLE. SHE CAME TO CONWAY AND, I MEAN, SHE JUST DID A LOT OF THINGS TO TRY TO STRAIGHTEN IT OUT. AND THEN FINALLY AFTER SHE THOUGHT EVERYTHING WAS SQUARED AWAY, THEN SHE WAS JUST TOLD THAT THEY TURNED HER DOWN. SO, THEN I SENT HER A LETTER SAYING THAT I WAS WITHDRAWING THE OFFER.

JUDGE PADGETT: WHICH RESIDENT ARE WE SPEAKING OF?

A THAT'S 2210 ANDOVER.

Q MS. JENE, HAVE YOU ATTEMPTED TO FULFILL YOUR DUTIES AS A PERSONAL REPRESENTATIVE?

A TO BEST OF MY ABILITY, YES, I HAVE.

Q HAVE YOU ATTEMPTED TO FOLLOW THE WISHES OF YOUR HUSBAND AS SET FORTH IN THE WILL?

A YES, I HAVE.

Q HAVE YOU TRIED TO BE FAIR TO ALL THE BENEFICIARIES?

A YES, I HAVE. ONCE THEY DECIDED WHAT PROPERTIES THEY WANTED, YOU KNOW, I SAID, "THAT'S FINE WITH ME." I HAD NO OBJECTION AT ALL. TAKE WHICHEVER ONES YOU WANT. I DON'T CARE. AND THEN, YOU KNOW, I THOUGHT WELL, AFTER THAT THEN I CAN, YOU KNOW, PUT THOSE ASIDE, SELL OTHER ONES SO I CAN GET THE MONEY IN THE BANK TO PAY OFF THE DEBTS

AND WHATEVER IS LEFT IN THE BANK WE CAN JUST
DIVIDE AMONG US. THAT JUST NEVER HAPPENED.
THEN ALL OF A SUDDEN EVERYBODY'S MIND WAS
CHANGED. I DON'T WANT THIS PROPERTY FOR WHAT
EVER REASON. I DON'T KNOW, BUT THEN EVERYTHING
WENT DOWN THE TUBES.

Q WHEN THE LAWYERS WEREN'T INVOLVED AND YOU HAD
THE OPTION, IN YOUR ESTIMATION, COMMUNICATING
FREELY WITH ALL THE PARTIES. HAVE YOU TRIED TO
COMMUNICATE OPENLY WITH THE BENEFICIARIES?

A YES. IN FACT, WHEN HE FIRST DID HIS WILL THE
FIRST THING I DID WAS SEND HER A COPY SO THAT
SHE WOULD HAVE IT, YOU KNOW. I MEAN, I DID NOT
WANT TO KEEP ANY INFORMATION AWAY FROM ANYBODY.
THAT WAS 2011, YOU KNOW, WHEN HE FIRST DID THAT.
WE WENT THERE TO THE OFFICE AND, YOU KNOW, DID
THE PAPERWORK AND THE LIVING WILL AND THE WHOLE
NINE YARDS. I SENT HER A COPY OF EVERYTHING
RIGHT AWAY.

Q THANK YOU, MS. JENE.

MR. BOYD: NO FURTHER QUESTIONS, YOUR HONOR.

JUDGE PADGETT: MR. TALL, HOW LONG DO
YOU ANTICIPATE YOUR QUESTIONS?

MR. TALL: YOUR HONOR, I DON'T KNOW,
MAYBE 15 MINUTES.

JUDGE PADGETT: HOW IS MY COURT REPORTER?

COURT REPORTER: I'M FINE.

JUDGE PADGETT: MR. BOYD, DO YOU INTEND TO CALL MR. DAVIS BACK?

MR. BOYD: I WILL RECALL MR. DAVIS BRIEFLY. WE WOULD LOVE TO FINISH TODAY, YOUR HONOR. MR. DAVIS IS FADING FAST.

JUDGE PADGETT: I UNDERSTAND. BUT YOU CAN'T SAY THAT I HAVE INHIBITED YOU FROM NOT FINISHING TODAY. I DON'T KNOW HOW LONG MR. TALL WANTS TO EXAMINE MR. DAVIS AGAIN, BUT MAYBE NOT? LET'S GO FORWARD. YOU SAY YOU'VE GOT ABOUT 15 MINUTES?

MR. TALL: YES, YOUR HONOR.

JUDGE PADGETT: IT'S 5:05 NOW FOR THE RECORD.

CROSS-EXAMINATION BY MR. TALL:

Q MS. JENE, WHO IS IT THAT TOLD YOU COULDN'T SELL ANY MORE REAL PROPERTY WHEN MR. SCOVILLE MADE AN APPEARANCE?

A I UNDERSTAND IT WAS MR. SCOVILLE THAT DECIDED THAT, YOU KNOW, EVERYTHING SHOULD BE ON HOLD AND I SHOULDN'T DO ANYTHING ELSE. I BELIEVE IT CAME FROM HIM.

Q HOW DO YOU EXPLAIN A PROPERTY SALE IN THE FALL OF 2015 WHEN MR. SCOVILLE WAS ON THE SCENE AND YOU COLLECTED \$69,000.00 IN PROCEEDS? I DON'T MEAN TO BE SHOCKING. I HAVE COPIES OF THE DOCUMENTS --

A YOU'RE NOT BEING SHOCKING. I JUST HAVE TO, YOU KNOW, THINK ABOUT WHAT YOU SAID BEFORE I ANSWER.

Q YES, MA'AM.

A I DON'T KNOW. I THINK IT WAS MAYBE ALREADY ON THE MARKET.

Q I'M SORRY, DEAR?

A I SAID MAYBE IT WAS ALREADY ON THE MARKET. I CAN'T REMEMBER.

Q WHILE MR. SCOVILLE WAS ENGAGED WITH THE ESTATE A PROPERTY DID SELL? APPROXIMATELY \$69,000.00 WAS COLLECTED FOR A PROPERTY SALE?

A CORRECT. IF THAT'S WHAT YOU SAY.

Q I'M SORRY?

A IF THAT'S WHAT YOU SAY THEN THAT'S CORRECT. I MEAN, YES, SIR. I'M SURE YOU HAVE THE PAPERWORK THERE. I DON'T BELIEVE YOU WOULD TELL ME SOMETHING THAT WASN'T TRUE.

Q I AM PREPARED FOR YOU TO TELL ME THAT YOU DON'T RECALL.

A NO. I DO RECALL, BUT I DON'T KNOW WHICH ONE IT

WAS.

MR. TALL: I HAVE A SETTLEMENT DOCUMENT
I WOULD PROPOSE, YOUR HONOR. PERHAPS
THE DEFENSE HAS A QUESTION ABOUT IT.

MR. BOYD: NO OBJECTION.

JUDGE PADGETT: WITHOUT OBJECTION. THAT
WILL BE PLAINTIFF'S EXHIBIT 28 WITHOUT
OBJECTION.

PROPERTY SOLD SETTLEMENT
MARKED FOR IDENTIFICATION AND
INTRODUCED INTO EVIDENCE AS
PLAINTIFF'S EXHIBIT 28.

Q MS. JENE, THE PROPERTY SOLD FOR \$75,000.00 AND
THERE WERE SOME EXPENSES.

A OKAY.

Q MR. SCOVILLE WAS ON THE SCENE?

A I SUPPOSE SO.

Q WE'RE TALKING ABOUT IN SEPTEMBER 17, 2015?

A UH-HUH. (AFFIRMATIVE RESPONSE.) OKAY.

Q HOW ABOUT SOME OF THE PROPERTIES... YOUR
PREFERENCE WAS TO TRY AND SELL THEM WHEN THEY
WERE VACANT?

A YES.

Q WHAT ABOUT SOME OF THE PROPERTIES WHERE YOU
RENEWED THE LEASES?

A I JUST NOW RENEWED THE LEASES BECAUSE I COULDN'T SELL ANYTHING. SO, I WAS TOLD JUST GO AHEAD AND RENEW THE LEASES INSTEAD OF HAVING THEM EMPTY.

Q WHO WAS TELLING YOU THIS?

A THE LAW OFFICE. I MEAN, IF I DIDN'T RENEW THE LEASES AND THEY MOVED OUT AND I DIDN'T HAVE ANY LEASES TO RENEW. IF I DIDN'T GET SOMEBODY ELSE IN HERE, I WAS GOING TO BE LOSING A LOT OF MONEY FOR THE ESTATE BANK ACCOUNT IF I HAD EMPTY PROPERTIES.

Q IF I'M AN ESTATE BENEFICIARY AND I AM HEARING THAT THE PROPERTIES HAVE TO GET SOLD TO PAY OFF THE DEBT, BUT I CAN'T SELL THEM UNTIL THE TENANTS MOVED OUT, BUT IF SOMEONE MOVES OUT THEN I HAVE A VACANT PROPERTY, ISN'T THAT A CIRCLE THAT LEADS TO CONFUSION?

A NO. IT WAS MY CHOICE TO SELL THE PROPERTY AFTER THE TENANT MOVED OUT. WE HAD TENANTS THAT HAD BEEN THERE FOR A WHILE. I DID NOT WANT THEM... I WANTED THEM... I FELT AN OBLIGATION TO FULFILL THEIR LEASES. THEN THEY COULD MOVE AND DO WHATEVER. SO, I COULD PUT THE PROPERTY ON THE MARKET. SO, THAT I COULD REPLENISH THE BANK ACCOUNT. THEN I WAS TOLD, "NO. YOU CAN'T SELL ANYTHING ELSE." SO, THEN --

Q WHO TOLD YOU THIS?

A THE LAWYER'S OFFICE SAID THEY TALKED TO MR. SCOVILLE AND IT WOULD BE BETTER IF --

Q MR. SCOVILLE GAVE YOU INSTRUCTIONS?

A NOT ME PERSONALLY. IT CAME THROUGH THE LAWYER'S OFFICE. I DID NOT TALK TO HIM PERSONALLY.

Q SO, WHO YOU HEARD IT FROM WAS YOUR OWN LAWYERS?

A YES.

Q WHETHER THAT CAME FROM MR. SCOVILLE OR CAME FROM SOMEONE ELSE YOU REALLY DON'T KNOW?

A IT CAME FROM MR. SCOVILLE I WAS TOLD.

Q YOU HEARD IT FROM MR. SCOVILLE?

A I HEARD IT FROM MY LAWYER THAT IT WAS SUGGESTED AND THAT... I NOT SELL ANY MORE PROPERTIES. SO, THEN IT WAS EITHER HAVE AN EMPTY UNIT THAT I COULDN'T SELL OR RE-RENT IT. SO, I RE-RENTED IT IN ORDER TO GET THE INCOME TO PAY THE CONDO DUES THAT ARE... I MEAN, THEY ARE DUE EVERY MONTH.

Q ANY PROPERTIES HAVING TENANTS WITH A RENEWAL OF THE LEASE DURING THE FIRST YEAR AND A HALF?

A NO. ONCE THE LEASE WAS UP, I TOLD THEM THEY HAVE... IT WASN'T GOING TO BE RENEWED.

Q THE QUESTION IS WHETHER OR NOT YOU RENEWED ANY LEASES DURING THE FIRST YEAR AND A HALF OF THE ESTATE ADMINISTRATION?

A NO, I DON'T BELIEVE I DID.

Q THANK YOU.

A YOU'RE WELCOME.

MR. TALL: ANOTHER EXHIBIT, YOUR HONOR.

JUDGE PADGETT: EXHIBIT 29 WITHOUT
OBJECTION?

MR. BOYD: NO OBJECTION.

Q MS. JENE, I'M SHOWING YOU AN EXHIBIT DATED
OCTOBER 29, 2016. LET ME ASK YOU ABOUT THE
E-MAIL THAT YOU GOT FROM STEVE IN 2015. YOU
WERE CONCERNED ABOUT IT IF I RECALL CORRECTLY?

A CAN YOU GIVE ME A HINT MAYBE WHAT THAT MIGHT BE?

Q THAT IS THE MARCH 2015 E-MAIL FROM STEVEN WHERE
HE SAID THE ESTATE HAS BEEN OPEN FOR A PERIOD OF
TIME. HE ACTUALLY ASKED YOU IF YOU WERE DOING
ALL RIGHT WITH THE GRIEVING PROCESS?

A OKAY. THE LONG E-MAIL.

Q THAT'S THE E-MAIL WHERE AFTERWORDS YOU SHARED
WITH YOUR LAWYERS THAT YOU DIDN'T FEEL THE
CHILDREN TRUSTED YOU. DO YOU RECALL THAT?

A YES. WHAT DO YOU WANT TO ASK ME ABOUT THIS?

Q YOU RECALL THIS E-MAIL HERE?

A YES.

E-MAIL DATED 10/29/16 MARKED
FOR IDENTIFICATION AND

INTRODUCED INTO EVIDENCE AS
PLAINTIFF'S EXHIBIT 29.

Q SHARE WITH ME THE PURPOSE OF THIS E-MAIL TO
STEVEN IN THAILAND?

A OKAY. HE'S OUT OF THE COUNTRY. I'M NOT
SUPPOSED TO COMMUNICATE WITH ANYBODY, BUT WHEN
THIS DISTRIBUTION WAS ABOUT TO HAPPEN THE
LAWYER'S SECRETARY ASKED ME IF I HAD HIS E-MAIL
ADDRESS BECAUSE THEY DIDN'T HAVE ANY
COMMUNICATION WITH HIM AS FAR AS AN ADDRESS.
THEY NEEDED TO GET THIS MONEY TO HIM. SO, THEY
SAID, "CAN YOU REACH OUT TO HIM AND ASK HIM HOW
HE WANTS IT. DOES HE WANT IT WIRED TO HIM?
DOES HE WANT IT MAILED TO HIM? HOW DOES HE WANT
IT DISTRIBUTED TO HIM?" SO, THAT'S WHAT I DID.

Q THAT'S THE PURPOSE?

A THAT WAS THE PURPOSE.

Q THERE ARE TWO THINGS IN THIS E-MAIL THAT I
WONDER IF YOU CAN ADDRESS THAT YOU HAVEN'T
SPOKEN ABOUT. ONE IS TO SUGGEST... AND I DON'T
HAVE A PROBLEM IF YOU'RE CRITICIZING MY
PARTICIPATION IN THE CASE, BUT THE IDEA IS THAT
JULIE IS CAUSING TROUBLE. ISN'T THAT ONE OF THE
MESSAGES IN THIS E-MAIL?

A WELL, THAT'S ONE OF THE THINGS THAT... YES.

THAT'S WHAT IT SAYS.

Q THAT WAS YOUR FEELING OF COURSE?

A THAT WAS MY FEELING BECAUSE WHEN THE ESTATE DIDN'T CLOSE IN A YEAR, I THINK SHE WAS GETTING PARANOID THAT IT WASN'T GOING TO HAPPEN. THAT'S WHEN SHE HIRED THE FIRST LAWYER. NOW, SHE'S HIRED TWO LAWYERS AND I FELT LIKE, WHAT COULD HAVE BEEN AN EASY SOLUTION TO SELLING THE PROPERTIES, YOU KNOW, GIVE YOU THE PROPERTIES THAT YOU'VE PICKED AS FAR AS MR. SCOVILLE'S LETTER. I HAD NO PROBLEM WITH, YOU KNOW, PICK THOSE PROPERTIES. SELL THE PROPERTIES THAT, YOU KNOW, TO GET SOME MONEY IN THE BANK. PAY OFF THE DEBTS AND THEN SPLIT THE MONEY THAT WAS IN THE BANK FROM THE PROCEEDS AMONG US AND IT COULD HAVE ALL BEEN OVER AND DONE WITH. AND NOW, IT'S JUST BECOME THIS MONSTER FIASCO.

Q YOU WERE INFORMED, WERE YOU NOT, THAT THERE WERE ARRANGEMENTS WITH THE COURT TO SCHEDULE DEPOSITIONS BECAUSE PRIOR TO THIS E-MAIL THE LAWYERS MET WITH THE JUDGE?

A YES.

Q THIS E-MAIL, DOES IT NOT MAKE REFERENCE TO STEVEN POTENTIALLY HAVING TO GIVE HIS E-MAIL? EXCUSE ME, HAVING TO GIVE HIS DEPOSITION?

A YES. IT DID BECAUSE I DID NOT KNOW. I MEAN, ALL OF A SUDDEN, YOU KNOW, YOU'RE ASKING ME, YOU KNOW... I NEEDED TO BE THERE FOR A DEPOSITION. JULIE NEEDED TO BE THERE FOR A DEPOSITION. I DIDN'T KNOW IF HE WAS GOING TO BE ASKED TO GIVE A DEPOSITION. I DIDN'T KNOW UNTIL JUST A LITTLE WHILE AGO IN THE TESTIMONY THAT THE JUDGE SAID THAT HE COULD DO IT BY VIDEO OR WHATEVER. I HAD NO IDEA.

Q LET ME ASK YOU, JUDGE ISSUED AN ORDER ON DECEMBER 10, 2017, AND IN THAT ORDER IT SAYS THAT STEVEN CAN GIVE HIS DEPOSITION BY VIDEO. YOU'RE NOT FAMILIAR WITH THAT ORDER?

A I DON'T RECALL THAT.

Q ARE YOU CONCERNED THAT YOU WEREN'T INFORMED ABOUT THAT?

A NO, I'M NOT CONCERNED. I JUST DIDN'T KNOW IF HE WOULD HAVE TO OR NOT. SO, I THOUGHT I WOULD GIVE HIM A HEADS-UP. I DON'T KNOW. I MEAN, IT'S NOT LIKE YOU'RE OUT OF THE COUNTRY AND YOU HAVE TO MAKE ARRANGEMENTS AND ALL. IT'S NOT LIKE YOU'RE AROUND THE CORNER. I DIDN'T KNOW IF HE WOULD HAVE TO OR NOT. I JUST SAID THIS IS WHAT'S GOING TO HAPPEN.

Q YOU'RE ASKING HIM TO MAKE PLANS TO LEAVE

THAILAND AND COME TO THE UNITED STATES?

A I DIDN'T ASK HIM TO MAKE PLANS. I SAID... I THOUGHT I SAID, YOU KNOW, THIS MIGHT BE IN THE FUTURE. I DON'T KNOW. YOU MIGHT WANT TO THINK ABOUT IT, YOU KNOW, IF IT COMES, YOU KNOW, YOU WILL HAVE TO MAKE PLANS.

Q HAVE YOU SEEN STEVEN'S AFFIDAVIT IN CONNECTION WITH THE MOTION FOR SANCTIONS?

A YES, I SURE DID.

Q DID YOU SEE THE AFFIDAVIT THAT INDICATES THAT THIS KIND OF E-MAIL WAS CONSIDERED BY HIM TO BE DIVISIVE?

A WELL, I DID NOT MEAN IT TO BE DIVISIVE.

Q YOU STILL IN RESPONSE TO QUESTIONS FROM MR. BOYD SAID, "YOU DON'T UNDERSTAND WHAT WENT WRONG WITH THE PLAN FOR APPRAISALS IN OCTOBER 2015." IS THAT A FAIR STATEMENT?

A YES, I GUESS IT'S FAIR.

Q DO YOU HAVE AN UNDERSTANDING THAT IN DECEMBER OF 2010, WITHOUT GIVING JULIE IRVING A COPY OF ANY APPRAISAL, SHE GOT A PROPOSAL FROM YOUR LAW OFFICE THAT YOU WILL TAKE THE RESIDENCE THAT YOU HAVE BEEN LIVING IN FOR A PRICE OF \$95,000.00. DO YOU UNDERSTAND THAT?

A YES.

Q DOES THAT GIVE YOU AN UNDERSTANDING AS TO WHY SOMEONE WHO RECEIVED THAT COMMUNICATION MIGHT GET CONCERNED?

A I SUPPOSE SHE WOULD GET CONCERNED IF SHE DIDN'T KNOW THE CIRCUMSTANCES OF ALL THE DAMAGE AND WHY THE PRICE WAS WHAT IT WAS.

Q THE APPRAISAL MIGHT HAVE TOLD HER THAT, CORRECT?

A CORRECT.

Q TODAY IN COURT IT WAS CLEAR THAT ON DECEMBER 10 THAT PROPOSAL WAS MADE TO HER WITHOUT EXPLAINING TO HER THE PROBLEMS THAT MR. CROMARTIE SAW?

A WELL, WHEN THERE WAS A NEW ROOF AND DAMAGES THAT WERE FIXED, I WOULD THINK THAT SHE WOULD REALIZE THAT THERE WAS A PROBLEM WITH, YOU KNOW, THE RESIDENCE AND --

Q SURE. BUT HOW ABOUT THIS. WHEN THE MOLD WAS FIXED AT THE COST OF THE ESTATE AND A NEW ROOF WAS PUT ON FROM THE COST OF THE ESTATE?

A RIGHT.

Q SHE STILL GETS IN DECEMBER OF 2015, A PROPOSAL FOR YOU TO TAKE THE PROPERTY AT THE PRICE MR. CROMARTIE SAID IT WAS WORTH WHEN IT WAS DAMAGED?

A I THOUGHT THAT THE PRICE WAS ADDED TO BECAUSE OF THE REPAIRS BEING DONE AND IT ADDED TO THE PRICE OF THE HOUSE BEING UPPED FROM WHAT IT WAS.

Q DID YOU EVER THINK THAT AFTER THE HOUSE WAS REPAIRED IT HAD A VALUE GREATER THAN \$95,000.00?

A YES. BECAUSE OF THE DAMAGES THAT WERE REPAIRED. THE REPAIR COSTS WERE ADDED ON TO MAKE THE HOUSE WORTH MORE.

Q DID YOU EVER THINK THAT THE HOUSE HAD GREATER VALUE THAN MR. CROMARTIE'S APPRAISAL AND THE \$20,000.00 ROUGHLY THAT YOU SPENT TO FIX THE HOUSE?

A AFTER IT WAS FIXED THE PRICE, YES. IT WAS ADDED ONTO THE 95.

Q LET'S BE CLEAR ON THE QUESTION. YOU SPENT \$20,000.00 APPROXIMATELY, CORRECT?

A CORRECT. YES.

Q TO FIX HOUSE A HOUSE THAT MR. CROMARTIE SAYS WAS WORTH \$95,000.00?

A YES.

Q IS IT YOUR UNDERSTANDING THAT THE VALUE OF THAT HOUSE WAS GREATER THAN A \$115,000.00 AT THAT TIME BECAUSE ONCE YOU MADE THE REPAIRS, IT WASN'T AN OLD BEAT UP HOUSE? THAT HAD \$20,000.00 ADDED TO IT BECAUSE THE REPAIRS MADE THE VALUE HIGHER?

MR. BOYD: YOUR HONOR, I WANT TO PUT AN

OBJECTION ON THE RECORD. IT'S LATE AND WE ARE ALL READY TO GO, BUT SHE HAS LITERALLY DANCED ON THE HEAD OF THIS PIN FOR A LONG TIME. SHE HAS BEEN ASKED THIS QUESTION A DOZEN DIFFERENT WAYS ALREADY AND HE'S COMING AT HER FROM YET ANOTHER ANGLE. HOW MANY TIMES DOES SHE HAVE TO ANSWER HER OPINION AS TO THIS APPRAISAL? SHE HAS LITERALLY BEEN OVER THIS AT LEAST THE FIFTH TIME SHE HAS TESTIFIED ABOUT THIS APPRAISAL VALUE. JUDGE PADGETT: I AM NOT SURE THIS PARTICULAR QUESTION HAS EVER BEEN AS TO HER. AS I UNDERSTAND, WHAT THE QUESTION IS MR. CROMARTIE'S VALUE IS \$95,000.00. THE REPAIRS WERE 20. SO, THAT WOULD MEAN THAT THE PROPERTY IS WORTH 115. AS I UNDERSTAND HIS QUESTION, DO YOU BELIEVE AFTER THE REPAIRS WERE MADE THAT THE PROPERTY HAD A VALUE IN EXCESS OF \$115,000.00? THAT SEEMS TO ME TO BE VERY SIMPLE QUESTION. SHE EITHER DOES BELIEVE IT'S MORE VALUABLE OR IT IS NOT. I THINK THAT'S WHAT THE QUESTION IS.

A YES.

Q YOUR ANSWER IS YES?

A MY ANSWER IS YES.

Q CAN YOU ACCEPT, NOW THAT YOU THINK ABOUT IT... I DON'T KNOW WHY MS. IRVING WAS UPSET WITH THE PROPOSAL THAT CAME TO HER FOR DISTRIBUTIONS. COULD IT POSSIBLY BE IN THE FIRST DRAFT SENT TO HER IN DECEMBER OF 2015, THERE WASN'T EVEN AN INDICATION THAT YOU WERE GOING TO ACCEPT THE \$20,000.00 EXPENSE ON TOP OF THE \$95,000.00 VALUE AS PART OF YOUR DISTRIBUTION FROM THE ESTATE?

A I DON'T KNOW. I THOUGHT IT WAS ADDED ON.

Q WE CAN LOOK AT IT. IT MIGHT HAVE BEEN ADDED ON AT ANOTHER TIME. WE CAN LOOK TO SEE IF IT'S CLEAR AS TO WHAT THAT IS. BUT CAN YOU IMAGINE MS. IRVING SAYING THAT IF I GET INVOLVED IN A BACK AND FORTH LIKES HAPPENING RIGHT NOW. THIS WAS HER LAWSUIT IN APRIL. YOU SAID IN RESPONSE TO MR. BOYD THAT YOU DON'T UNDERSTAND HER MOTIVATION, IS THAT FAIR?

A OKAY. THAT'S FAIR.

Q AND SHE HAS SAID TO THE COURT ASSOCIATED WITH A HEARING IN MAY THAT WE MIGHT HAVE AN ENDLESS DEBATE ABOUT WHAT KIND OF VALUES WE HAVE AND WHY DON'T WE JUST DISTRIBUTE THE PROPERTY IN QUARTER

SHARES AND WITHOUT THE EXPENSE OF THE ESTATE COUNSEL WITH TWO LAWYERS AND A PARALEGAL, WE WILL ALL WORK IT OUT. WAS THAT NOT MS. IRVING'S PROPOSAL?

A YES. IT WAS HER PROPOSAL. IT WAS.

Q IT DIDN'T HAVE TO BE ACCEPTED, DID IT?

A FOR ME TO OWN PROPERTY WITH THEM KNOWING HOW THEY FEEL ABOUT ME, I MEAN, YOU KNOW --

Q HOW DID THEY FEEL ABOUT YOU?

A GIVE THEM A QUARTER OF WHATEVER, YOU KNOW... I JUST WANT SOMETHING BY MYSELF. I DON'T WANT TO BE INVOLVED ANY MORE. I DON'T WANT TO BE A PART OF THEIR DECISION-MAKING ON WHAT THEY WANTED TO DO WITH THE PROPERTIES. YOU KNOW, GIVE THEM THE PROPERTIES THAT THEY WANT AND I WILL, YOU KNOW, TAKE THE MINIMUM WHICH IS WHAT I HAVE CHOSEN AND GIVE THEM ALL THE REST. I DON'T WANT TO BE A QUARTER INTEREST INVOLVED WITH ANY OF THEM FOR THE REST OF MY LIFE. I DON'T HAVE A LONG TIME TO GO BECAUSE I AM OLD. YOU KNOW, I MEAN, I'M 74, ALMOST 75. I DON'T WANT TO HAVE ANY MORE CONFLICT IN MY LIFE. I JUST WANT TO MOVE ON. I DON'T WANT TO BE INVOLVED WITH THEM AND ME ALTOGETHER OWNING SOMETHING TOGETHER. SHE HAS 75%. I HAVE A QUARTER AND I HAVE NO SAY SO AT

ALL. IF I HAVE THREE PEOPLE OVER-RIDING
WHATEVER MY OPINION IS. I DON'T WANT TO BE IN
THAT POSITION. DOES THAT ANSWER YOUR QUESTION?

Q YES, MA'AM. YOU WERE TALKING ABOUT ALSO... I
THINK THIS IS MY LAST QUESTION.

A THANK YOU.

Q THE LAST INQUIRY, IT'S DELICATE AND I WILL BE AS
GENTLEMANLY AS I CAN. THERE WAS SUGGESTION THAT
AT TIMES YOU HAD A ROUGH RELATIONSHIP WITH DR.
ROTHGEB?

A IT WAS UP AND DOWN, YES.

Q IN FACT, YOU ALL WERE SEPARATED AT ONE TIME?

A YES. IN HER TESTIMONY SHE SAID THAT WE WERE
SEPARATED 2, 3 OR 4 YEARS. I FORGET WHAT IT WAS
--

Q YOU HAD SEPARATE RESIDENCES TOO?

A IT WASN'T EVEN A YEAR. WE RECONCILED AND I
MOVED BACK IN AND IT WAS OVER WITH.

Q IT WAS A SEPARATE RESIDENCE IN DEERFIELD THAT
WAS PUT INTO YOUR NAME?

A MY NAME?

Q YES, MA'AM.

A YES.

Q SO, COMPLETELY ODD FOR JULIE TO ASK YOU WHETHER
OR NOT THAT SEPARATION RESULTED IN A DIVORCE?

IT WASN'T OUT OF LEFT FIELD, WAS IT?

A I DIDN'T KNOW THAT, THAT HAD ANYTHING TO DO WITH ANYTHING. I MEAN, SHE ASKED ME FOR MY MARRIAGE LICENSE. THERE WAS NEVER A DIVORCE. THERE WAS A SEPARATION FOR A SHORT PERIOD OF TIME. IT WASN'T 2 OR 3 YEARS. IT WASN'T 3 OR 4 YEARS. IT WAS A SHORT PERIOD OF TIME. YOU KNOW, WE CARED TREMENDOUSLY ABOUT EACH OTHER, YOU KNOW. HIS ALCOHOL HAD GOTTEN OUT OF CONTROL. HE REALIZED IT AND HE APOLOGIZED. I APOLOGIZED FOR LEAVING. WE RECONCILED. THEN WE STARTED GOING BACK... HE STARTED GOING BACK TO AA, WHICH HE HAD DONE IN THE PAST AFTER WE GOT DOWN HERE. I STARTED GOING TO AL-ANON, AGAIN, TO HELP MYSELF. AND WE DID THAT FOR A WHILE AND THEN HE STOPPED AND THAT HAPPENED 2 OR 3 TIMES WHEN WE WERE HERE. THROUGH THE YEARS HE STARTED AA AND THEN HE STOPPED. THEN I WOULD GO TO AL-ANON AND, YOU KNOW, FOR SHORT PERIODS OF TIME. HE NEVER STOPPED DRINKING, BUT YOU KNOW, IT NEVER MADE ME STOP LOVING HIM. IT NEVER MADE ME FEEL ANY LESS ABOUT HIM. (CRYING.)

Q THANK YOU, I'M SORRY.

A IT'S JUST A HARD LIFE SOMETIMES, THAT'S ALL.

MR. TALL: YOUR HONOR, NO FURTHER

QUESTIONS.

JUDGE PADGETT: THANK YOU. MR. BOYD,
ANY FURTHER QUESTIONS?

MR. BOYD: NOTHING FURTHER, YOUR HONOR.

JUDGE PADGETT: THANK YOU, MA'AM. YOU
CAN HAVE A SEAT.

(OFF THE RECORD.)

JUDGE PADGETT: ALRIGHT, MR. BOYD.

MR. BOYD: THANK YOU, YOUR HONOR. I
WILL RECALL MR. DAVIS.

DIRECT EXAMINATION BY MR. BOYD:

Q STATE YOUR FULL NAME FOR THE RECORD PLEASE?

A BRET DAVIS.

Q WHERE DO YOU RESIDE?

A MYRTLE BEACH, SOUTH CAROLINA.

Q WHERE ARE YOU EMPLOYED?

A DAVIS AND BOYD, LLC.

Q WHAT DO YOU DO THERE?

A I'M AN ESTATE ATTORNEY.

Q TELL ME A LITTLE BIT ABOUT YOUR EDUCATIONAL
BACKGROUND?

A YES. I HAVE GOT A DEGREE IN FINANCE, DEGREE IN
INSURANCE FROM SOUTH CAROLINA. I WENT BACK AND
DID MY ACCOUNTING CLASSES. I HAVE GOT A
DOCTORATE DEGREE. I HAVE GOT A CPA LICENSE. I

AM LICENSED TO PRACTICE LAW IN SOUTH CAROLINA AND NORTH CAROLINA. I'M A LICENSED REAL ESTATE BROKER, INACTIVE AND I AM LICENSED TO SELL TITLE INSURANCE.

JUDGE PADGETT: IF YOU WOULD PLEASE, PULL THAT MICROPHONE UP TO YOU. I'M HAVING A LITTLE TROUBLE HEARING YOU.

Q CAN YOU TELL THE COURT A LITTLE BIT ABOUT YOUR PRACTICE? WHAT AREAS DO YOU FOCUS ON?

A I FOCUS ON ESTATE PLANNING, ELDER LAW AND PROBATE ADMINISTRATION. AT ANY GIVEN TIME, WE RUN ABOUT 60 TO 65 OPENING OF ESTATES. WE PROBABLY DO 10 OR 15 NEW ESTATE PLANS A MONTH. WE HAVE SOME VARIOUS CORPORATE MATTERS. JUST MOSTLY ESTATE PLANNING AND ELDER LAW AND PROBATE ADMINISTRATION.

Q WHAT PERCENTAGE OF YOUR PRACTICE WOULD YOU SAY YOU DEVOTE TO PROBATE ADMINISTRATION?

A IT'S KIND OF ALL MIXED TOGETHER. I WOULD SAY ESTATES AND PROBATE IS 80% OF WHAT I DO.

Q ANY ADDITIONAL DESIGNATIONS OR PEER REVIEW DESIGNATIONS THAT YOU CAN SHARE WITH THE COURT?

A I'M AN AV RATED ATTORNEY, MARTINDALE HUBBELL.

Q I WILL SHOW YOU WHAT HAS BEEN MARKED PREVIOUSLY AS EXHIBIT 1. DO YOU RECOGNIZE THAT DOCUMENT?

A YES. IT WAS AN OUTLINE THAT I PREPARED FOR THE HORRY COUNTY PROBATE COURT. I WAS ON HORRY COUNTY PROBATE COURT COUNSEL. WE HAD A PLANNING COUNSEL FOR A NUMBER OF YEARS AND I PARTICIPATED IN A NUMBER OF CLES AND PREPARED THIS OUTLINE FOR ONE OF THE CLES IN 2011.

Q DO YOU DO A FAIR AMOUNT OF SPEAKING OR LECTURING ON ESTATE ADMINISTRATION OR RELATED TOPICS?

A I DO A LOT OF CLES. I DON'T KNOW HOW MANY TIMES I HAVE SPOKEN TO DIFFERENT GROUPS; HORRY ELECTRIC, HORRY TELEPHONE, THE POLICE OFFICERS GROUP, DIFFERENT FINANCIAL ORGANIZATIONS. I HAVE DONE A NUMBER OF SPEAKING ON THAT. THERE IS A LITTLE TV SHOW AND I DO THE SPOT OF THE PROBATE AND ESTATE PLANNING SECTION, PART OF IT. SO, YES, I DO A LOT OF TALKING AND SPEAKING ON ESTATE PLANNING AND PROBATE.

Q IS IT FAIR TO SAY THAT YOU POSSESS A SIGNIFICANT LEVEL OF EXPERIENCE IN ESTATE ADMINISTRATION AND PROBATE MATTERS?

A I HAVE DONE THIS FOR OVER 20 YEARS.

Q LET'S TAKE A QUICK LOOK AT THE ARTICLE THAT THE PLAINTIFFS HAVE INTRODUCED AS THEIR EXHIBIT 1. YOU ARE, OF COURSE, FAMILIAR WITH THE ARTICLE, YOU WROTE IT. IS THERE ANY

PARTICULAR STANDARD OR DUTY THAT YOU COULD POINT TO IN THAT ARTICLE THAT YOU BELIEVE THE PERSONAL REPRESENTATIVE HAS FAILED TO ADHERE TO IN THIS CASE?

MR. TALL: YOUR HONOR, I DO HAVE AN OBJECTION. I BELIEVE WITHOUT FIRST IDENTIFYING MR. DAVIS AS A RESPECTIVE EXPERT WITNESS AND NOT QUALIFY HIM AS AN EXPERT WITNESS. WE'RE NOW ASKING QUESTIONS AS IF HE WAS AN EXPERT WITNESS.

JUDGE PADGETT: YOU WANT TO QUALIFY HIM AS AN EXPERT?

MR. TALL: I OBJECT TO THAT.

MR. BOYD: IT'S A LITTLE PROBLEMATIC BECAUSE HE'S REALLY NOTICED AS A FACT WITNESS AND I'M NOT REALLY SURE IF IT'S APPROPRIATE TO DESIGNATE HIM AS AN EXPERT WITNESS. IN ALL FAIRNESS, HE IS BEING HELD TO A STANDARD BASED ON AN ARTICLE THAT HE WROTE. SO, I DID NOT OPEN THIS BOX, YOUR HONOR.

JUDGE PADGETT: MR. TALL, I AM GOING TO ALLOW HIM TO ASK THOSE QUESTIONS. I WANT TO HEAR WHAT HIS RESPONSE IS.

Q DO I NEED TO REPEAT THE QUESTION, BRET?

A NO, THANK YOU. THERE ARE CERTAIN DUTIES THAT A PERSONAL REPRESENTATIVE HAS AS YOU SEE ON PAGE 2 OF THE OUTLINE. "A DUTY TO SETTLE AND DISTRIBUTE THE DECEDENT'S ESTATE IN ACCORDANCE WITH THE TERMS OF THE PROBATE AND EFFECTIVE WILL AND THE PROBATE CODE." THERE ARE SPECIFIC DUTIES THAT HAVE TO BE ADHERED TO. WE HAVE GOT NOTICE OF CREDITORS, POSSESSION OR PROTECTION OF THE ESTATE, INFORMATION TO HEIRS AND DEVISEES, INVENTORY AND APPRAISEMENT, SETTLEMENT OF ESTATE CLAIMS, FINAL ACCOUNTING, PROPOSAL FOR DISTRIBUTIONS AND PETITION FOR SETTLEMENT. AND IN THIS ESTATE... THE ESTATE WAS OPENED... HE DIED THE END OF JANUARY 2014. THE ESTATE WAS OPENED AND MS. POAFPYBITTY WAS APPOINTED MARCH 7, 2014. THE NOTICE TO CREDITORS WAS PUBLISHED 3/14/14. INFORMATION OF HEIRS AND DEVISEES ON 3/26/14. THE INVENTORY AND APPRAISEMENT FILED 7/11/14. THE FIRST SET OF CLOSING DOCUMENTS... PRIOR TO THAT THERE WAS A CLAIM, WELLS FARGO, HAD A CLAIM THAT HAD TO BE RESOLVED, WHICH WAS RESOLVED DURING THAT PROCESS. THE FIRST SET OF CLOSING DOCUMENTS WERE JUNE 3RD 2016. AMENDED CLOSING DOCUMENTS, FEBRUARY 15TH 2017, WHICH THE

CLOSING DOCUMENTS I'M REFERRING TO ARE THE FINAL ACCOUNTING PROPOSAL OF DISTRIBUTION AND PETITION FOR SETTLEMENT.

Q IS IT COMMON IN YOUR EXPERIENCE TO SOMETIMES OR OFTEN TIMES, TO DELAY SUBSTANTIAL TRANSACTIONS OR SUBSTANTIAL DISTRIBUTIONS IN THE ESTATE UNTIL THE FIRST ANNIVERSARY OF THE DECEDENT'S PASSING?

A THERE IS A BOOK THAT WE GO BY, THE AL MOSES BOOK. ACTUALLY I THINK MY MOM USED TO WORK FOR THIS FIRM YEARS AGO.

Q IF I MAY, IS THAT COMMON IN YOUR EXPERIENCE IN YOUR PRACTICE? IN YOUR PROFESSIONAL EXPERIENCE?

A TO WAIT A YEAR BEFORE THE ESTATE IS CLOSED?

Q NO. BEFORE TRANSACTING A SUBSTANTIAL TRANSACTION OR SUBSTANTIAL DISTRIBUTIONS?

A YES. NORMALLY YOU WAIT UNTIL AFTER A YEARS TIME BEFORE YOU SETTLE THE CLAIMS UNLESS YOU ARE CERTAIN THAT THERE ARE NO CLAIMS. REALLY EACH ESTATE IS A CASE BY CASE BASIS. IT DEPENDS ON WHO THE BENEFICIARIES ARE. WHO THE PERSONAL REPRESENTATIVE IS AND THINGS OF THAT NATURE, BUT GENERALLY SPEAKING YOU WANT TO WAIT A FULL YEAR WHEN YOU'VE GOT MULTIPLE BENEFICIARIES WHICH ARE DIFFERENT FROM THE PERSONAL REPRESENTATIVE. AS I MENTIONED, THIS BOOK THAT'S CALLED, **THE SOUTH**

CAROLINA PROBATE PRACTICE MANUAL THAT SO MANY OF US USE ON PAGE 97. I JUST WANT TO SAY ONE THING. IT'S ONE THING FOR ME TO SAY IT, BUT I WANT THE COURT TO HEAR WHAT'S IN THIS BOOK.

"THERE ARE THREE CLAIM PERIODS UNDER THIS SECTION, BUT A CAUTIOUS AND PRUDENT PERSONAL REPRESENTATIVE SHOULD WAIT UNTIL A YEAR AFTER THE DEATH OF THE DECEDENT TO BE SURE THAT ALL PRE-DEATH CLAIMS AGAINST THE ESTATE HAVE BEEN FILED OR ARE BARRED." SO, THERE'S A GENERAL CONSENSUS THAT YOU WANT TO WAIT A GOOD YEAR BEFORE YOU START SETTLING THE ESTATE MATTERS.

Q IS IT YOUR UNDERSTANDING THAT THE BENEFICIARIES OF THIS ESTATE MAY HAVE HAD SOME EXPECTATIONS THAT THE ESTATE SHOULD BE CONCLUDED WITHIN A YEAR?

A I DON'T KNOW. APPARENTLY THEY DID BUT I DON'T EXACTLY KNOW FOR SURE.

Q OKAY.

A I CAN TELL YOU AFTER THE YEAR WE WERE DEFINITELY WORKING TOWARDS CLOSING THE ESTATE.

Q ARE THERE FACTORS YOU CAN POINT TO, BRET, IN YOUR EXPERIENCE ON WORKING ON THIS ESTATE THAT IN YOUR ESTIMATION HAVE DELAYED THE PROCESS OF CLOSING THE ESTATE?

A ABSOLUTELY. WHAT CAUSES ESTATES TO DRAG ON AND SOME DRAG ON FOR TWO YEARS, FIVE YEARS, 10 YEARS, DEPENDING ON WHAT IS IN THE ESTATE. IF THERE IS LITIGATION IN THE ESTATE. IF THERE ARE DIFFERENT TYPES OF ASSETS. IF YOU'VE GOT A LOT OF REAL ESTATE THAT HAS TO BE RESOLVED AND SOMETIMES IT DOES CAUSE THE ESTATE TO TAKE LONGER. IF YOU'VE GOT UNUSUAL BENEFICIARIES SAY THEY ARE INCARCERATED OR IF YOU'VE GOT DISABLED BENEFICIARIES IT CAN CAUSE THE ESTATE TO GO ON LONGER. SO, ABSOLUTELY, THERE ARE FACTS IN THIS CASE THAT WOULD CAUSE THIS TO GO ON MUCH LONGER THAN AN AVERAGE ESTATE. PART OF THAT IS MULTIPLE PROPERTIES AND THE CONDITION OF THE PROPERTIES IN THE ESTATE THAT NEEDED REPAIR AND SO ON. WE DID HAVE SOME LITTLE UNUSUAL FACTS IN THIS CASE.

Q IN YOUR ESTIMATION, THE ESTATE THAT IS AT ISSUE IN THIS PROCEEDING, THE ESTATE OF DR. ROTHGEB, DID YOU APPROACH THIS ESTATE... DID YOUR OFFICE APPROACH THIS ESTATE IN ANY MANNER DIFFERENT FROM WHAT YOUR STANDARD APPROACH TO A FILE WOULD HAVE TYPICALLY BEEN?

A OF COURSE NOT. THE COURT KNOWS BECAUSE WE DO STUFF HERE. WE HAVE APPROXIMATELY 65 OR 70 OPEN

ESTATES AT ANY GIVEN TIME. WE'VE GOT SOME IN SOME COUNTIES IN NORTH CAROLINA. WE HAVE GOT THEM IN GEORGETOWN COUNTY. THE MAJORITY OF THEM ARE IN HORRY COUNTY. WE GET THEM CLOSED ON A REGULAR BASIS. THIS COURT IS ISSUING US CLOSING LETTERS WHERE WE ARE CLOSING ESTATES. SO, WE BRING THEM IN, WE GO THROUGH A SET PROCEDURE. WE ADMINISTER THE ESTATE. ADVISE THE PERSONAL REPRESENTATIVE. GET THE DOCUMENT PREPARED. WE GET THESE THINGS CLOSED AS SOON AS THEY CAN BE CLOSED. I'M REAL PARTICULAR ABOUT NOT LETTING THINGS DRAG ON AND SO IS THE FIRM. BECKY, IN MY OFFICE IS EXCELLENT. SHE'S GOT AN ACCOUNTING BACKGROUND. I'M AN ACCOUNTANT AS WELL. WE ARE VERY ORGANIZED AND DETAILED. WE HAVE A VERY GOOD PROCEDURE TO GET THESE THINGS PUSHED THROUGH.

Q I WANT TO ASK YOU TO TAKE A LOOK AT WHAT WE HAVE MARKED AS DEFENDANT'S EXHIBIT 5, WHICH IS THE WILL OF THE DECEDENT, DR. ROTHGEB. IS THERE ANYTHING IN THAT WILL THAT IS UNUSUAL OR OUT OF THE ORDINARY OR ANYTHING THAT REALLY BEARS ON THE ADMINISTRATION OF THIS ESTATE?

A THERE IS SOMETHING THAT IS A LITTLE UNUSUAL. I DON'T KNOW HOW MANY THOUSAND OF WILLS I HAVE

DRAFTED AND I DON'T HAVE THIS LANGUAGE IN THE WILLS THAT I DRAFT, BUT THIS WILL GOES FURTHER AND GIVES THE PERSONAL REPRESENTATIVE MORE LATITUDE THAN I NORMALLY SEE IN OTHER WILLS. AGAIN, 20 YEARS OF DOING THIS BUSINESS, THIS IS UNUSUAL TO ME. I CAN'T TELL YOU HOW MANY THOUSANDS THAT I HAVE LOOKED AT.

Q WHAT LANGUAGE ARE YOU... POINT THE COURT TO THE LANGUAGE WHICH YOU ARE REFERRING TO?

A ITEM 4.

Q PAGE 2?

A PAGE 2. YES. "PROVIDED, HOWEVER, THAT MY PERSONAL REPRESENTATIVE SHALL HAVE SOLE DISCRETION TO DESIGNATE THE REAL OR PERSONAL PROPERTY COMPRISED IN THE RESPECTIVE SHARES SO ESTABLISHED. SO LONG AS THE VALUE THERE IS APPROXIMATELY EQUAL." SOMETIMES YOU WILL SEE SOME LANGUAGE LIKE THIS IN THE POWERS OF THE PERSONAL REPRESENTATIVE OR THE POWERS OF THE TRUSTEE. HERE THIS IS AN ABBREVIATED WILL. IT'S A 4 PAGE WILL. THE AFFIDAVIT GOES OVER TO PAGE 5 BUT IT'S A BRIEF WILL. SO THE LONG WILLS SOMETIMES YOU WILL SEE SOME OF THESE POWERS STUCK IN THE PERSONAL REPRESENTATIVE POWER SECTION, BUT HERE THIS WAS INCLUDED IN THE

RESIDUARY DEVISE PARAGRAPH, WHICH IS ALSO A LITTLE UNUSUAL.

Q WHAT DID YOU TAKE FROM THE PLACEMENT OF THAT LANGUAGE IN THE WILL?

A THAT THERE WAS APPARENTLY SOME REASON. I DID NOT DRAFT IT. I WASN'T THERE WHEN IT WAS DONE, BUT THE ONLY THING I CAN SURMISE FROM THIS LANGUAGE IS THERE WAS SOME SPECIFIC REASON THAT THE TESTATOR WANTED TO MAKE SURE THAT THE PERSONAL REPRESENTATIVE HAD THE DISCRETION TO CHOOSE WHICH PROPERTY WENT TO WHICH BENEFICIARY.

Q IS THE TESTATOR'S INTENT IMPORTANT TO BE CONSIDERED WHEN YOU'RE ATTEMPTING TO ADMINISTER AN ESTATE?

A IT'S PARAMOUNT, THE MAIN THING.

Q WHAT'S YOUR AUTHORITY FOR THAT STATEMENT?

A CASE LAW. IT'S RAMPANT THROUGHOUT. THE TESTATOR'S INTENT, WE ALL KNOW THAT'S THE MAIN THING.

Q DID YOU UNDERSTAND THAT THERE WAS A FAIR NUMBER OF PROPERTIES IN THIS ESTATE?

A 11 OR 12, YES.

Q DID THE WILL HAVE ANY SPECIFIC DIRECTION AS TO WHAT WAS TO BE DONE WITH THESE PROPERTIES IN PARTICULAR?

A THE WILL DID NOT SPECIFY ANY SPECIFIC PROPERTY TO ANY CERTAIN PERSON.

Q TELL ME A LITTLE BIT ABOUT THE LANGUAGE IN THAT WILL WHICH DISCUSSES THE PAYMENT OF DEBTS VERSUS SOME COMPETING LANGUAGE, WHICH TALKS ABOUT PROPERTIES BEING DISTRIBUTED SUBJECT TO ENCUMBRANCES. CAN YOU TALK A LITTLE BIT ABOUT THAT?

A YES. ITEM ONE, SPECIFICALLY SAYS "I DIRECT THAT ALL MY LEGALLY ENFORCEABLE DEBTS, SECURED AND UNSECURED, BE PAID AS SOON AS PRACTICABLE AFTER MY DEATH." THE SAME PARAGRAPH, "IF AT THE TIME OF MY DEATH ANY OF THE REAL PROPERTY HEREIN DEVISED IS SUBJECT TO A MORTGAGE THEN I DIRECT THAT THE DEVISEE TAKING SUCH MORTGAGE PROPERTY SHALL TAKE IT SUBJECT TO SUCH MORTGAGE AND THAT HE SHALL NOT BE ENTITLED TO HAVE THE OBLIGATIONS SECURED OR PAID OUT OF MY GENERAL ESTATE." THAT LAST SENTENCE RELATES TO SPECIFIC PROPERTY THAT WOULD BE DEVISED IN A WILL. THERE WAS NO SPECIFIC PROPERTY DEVISED IN A WILL. FOR EXAMPLE, IF IT WAS TO SAY PROPERTY "A" GOES TO BOB OR TO SUE AND THAT PROPERTY HAS A MORTGAGE, THEN THAT WOULD GO SUBJECT TO THE MORTGAGE. ALL WE HAVE IS A RESIDUARY CAUSE AND A SENTENCE THAT

SAYS, "PAY ALL THE DEBTS."

Q SO, YOU WILL ACKNOWLEDGE THAT THERE'S A LITTLE INTERNAL TENSION? DO YOU SEE THIS TWO AS CONSISTENT?

A SOME PEOPLE MAY LOOK AT IT AS A LITTLE... MAYBE NOT COMPLETELY CLEAR, BUT IT'S PRETTY CLEAR TO ME.

Q WHAT'S THE CONTROLLING LANGUAGE IN YOUR ESTIMATION?

A WELL, IF THERE WOULD HAVE BEEN A SPECIFIC PIECE OF PROPERTY MENTIONED, THEN I THINK IT WOULD BE CLEAR THAT THE PERSON TAKES IT SUBJECT TO THAT MORTGAGE, BUT THERE IS NO SPECIFIC PROPERTY MENTIONED.

Q SO, IN THE ABSENCE OF SPECIFIC REQUEST, IS IT FAIR TO SAY THAT YOU BELIEVE THE DIRECTION TO PAY THE DEBTS OF THE ESTATE WOULD TRUMP?

A YES. IT'S ABSOLUTELY FAIR TO SAY THAT A REASONABLE PERSONAL REPRESENTATIVE WOULD READ THIS AND SAY THAT THEY BELIEVE THEY WERE SUPPOSED TO PAY THE DEBT. I THINK THAT'S ABSOLUTELY A REASONABLE INTERPRETATION.

Q DID YOU HAVE ANY UNDERSTANDING WHEN THE PERSONAL REPRESENTATIVE BEGAN HER ADMINISTRATION OF THE ESTATE WHAT THE INITIAL INTENT WAS WITH RESPECT

TO THE DEBTS OF THE ESTATE?

A SHE WAS CHARGED WITH MARSHALING ASSETS AND PROTECTING THE ASSETS AND MAKING SURE THAT THE DEBTS WERE PAID. THAT'S WHAT SHE SOUGHT TO DO.

Q DID THE APPROACH TO PAYING OFF THE DEBTS AS YOU UNDERSTOOD IT EVER CHANGE OVER THE COURSE OF ATTEMPTING TO ADMINISTER THIS ESTATE?

A WHEN JACK SCOVILLE GOT INVOLVED AND SORT OF A RESOLUTION WAS WORKED OUT AND SOME ACCOMMODATIONS WERE MADE ON BEHALF OF MS. POAFPYBITTY, SHE WAS TRYING TO BE EASY TO WORK WITH IN EVERY TURN OF THE WAY THAT I CAN RECALL. SHE AGREED TO TAKE THE RESIDENCE SUBJECT TO THE MORTGAGE.

Q LET ME ASK THIS QUESTION. DID YOU HAVE ANY KNOWLEDGE OF THE GENERAL CONDITION OF THE PROPERTIES THAT WERE IN THIS ESTATE?

A I HAVE NOT BEEN TO ANY OF THE PROPERTIES. ALL I HAD TO GO ON WAS WHAT MS. POAFPYBITTY TOLD ME AND WHAT THE APPRAISALS INDICATE.

Q DID YOU UNDERSTAND THE CONDITION OF THE PROPERTIES HINDERED THE EFFORTS TO SELL THEM BY THE PERSONAL REPRESENTATIVE?

A YES.

Q I WANT TO COME BACK TO JACK SCOVILLE FOR THE

MOMENT. I WOULD LIKE TO ASK YOU TO SPEAK TO THE COURT ABOUT THE INITIAL INVENTORY AND APPRAISEMENT THAT WAS FILED? IN YOUR EXPERIENCE IS IT COMMON OR A RELATIVELY COMMON PRACTICE TO USE TAX ASSESSED VALUES FOR THE INITIAL INVENTORY AND APPRAISAL IN AN ESTATE PROCEEDING?

A ABSOLUTELY. IT'S NOT SOMETHING THAT YOU HAVE TO USE EVERY TIME IN EVERY CASE AND SOMETIMES YOU DON'T USE THEM, BUT IT IS ABSOLUTELY COMMON TO USE TAX ASSESSED VALUES, ABSOLUTELY.

Q WHAT'S THE BENEFITS OF USING, FOR INSTANCE, TAX ASSESSED VALUES FOR PURPOSES OF COMPLETING AN INVENTORY IN AN ESTATE ADMINISTRATION?

MR. TALL: YOUR HONOR, IF I MAY. AGAIN, WE ARE QUESTIONING MR. DAVIS AS IF HE IS AN EXPERT WITNESS. I DON'T MIND IF THE QUESTIONS ARE WHAT DID HE DO IN THIS ESTATE AND DID HE THINK IT WAS APPROPRIATE, BUT THE QUESTIONS KEEP COMING AS IF HE IS A PROFESSOR GIVING HIS OPINION ABOUT HOW THINGS ARE TYPICALLY DONE IN A LAW OFFICE.

JUDGE PADGETT: I SUSTAIN YOUR OBJECTION. YOU CAN ASK HIM WHAT HE DID IN THIS CASE, BASED UPON HIS EDUCATIONAL

BACKGROUND. WHATEVER YOU WANT TO DO IN THAT REGARD.

MR. BOYD: CERTAINLY, YOUR HONOR, THAT'S REALLY THE INTENT, BUT SOME QUESTIONS HAVE BEEN RAISED AS TO WHETHER IT WAS APPROPRIATE IN THIS CASE TO USE THE TAX ASSESSED VALUES. WHAT I AM REALLY ASKING MR. DAVIS IS, IS IT UNCOMMON FOR HIM TO DO THAT IN THIS CASE? DID HE THINK IT WAS APPROPRIATE AS THE ATTORNEY WORKING ON THE FILE?

A YES. THE REASON HE DID IT IN THIS CASE WAS FOR SIMPLICITY'S SAKE TO KEEP COSTS DOWN AND WORKED WELL BECAUSE ALL WE REALLY HAD WAS REAL ESTATE. IT WORKED WELL TO KEEP EVERYTHING RELATIVE BECAUSE ALL THE PROPERTIES WOULD USE THE SAME EVALUATION METHOD FOR ALL THE PROPERTIES.

Q IN YOUR EXPERIENCE, IS IT SOMETIMES THE CASE IN YOUR PRACTICE OF ADMINISTERING ESTATES, BRET, THAT THE EVALUATIONS OF PROPERTIES SOMETIMES CHANGE IN THE COURSE OF ADMINISTERING AN ESTATE?

A ABSOLUTELY, YES. ABSOLUTELY.

Q YOU UNDERSTAND THE ISSUE THAT'S BEEN RAISED HERE CONCERNING THE EVALUATION OF CROOKED PINE DRIVE?

A I UNDERSTAND THAT THE APPRAISAL THAT MR. TALL

PROVIDED IS DATED MUCH LATER THAN THE APPRAISAL THAT MR. CROMARTIE PROVIDED.

Q LET'S BACK UP A SECOND. THE FACT IS THERE HAVE BEEN MULTIPLE APPRAISALS SUBMITTED, CORRECT?

A YES.

Q IN THE SENSE OF MULTIPLE EVALUATIONS SUBMITTED FOR THIS PROPERTY OVER THE COURSE OF ADMINISTERING THIS ESTATE, CORRECT?

A YES.

Q YOU HAD THE INITIAL INVENTORY AND APPRAISAL WHICH USED THE TAX ASSESSED VALUE AND YOU HAD A SUBSEQUENT EVALUATION BASED ON MR. CROMARTIE'S APPRAISAL, IS THAT FAIR?

A YES.

Q THEN THERE WAS A SUBSEQUENT EVALUATION BASED ON AN APPRAISAL THAT MR. TALL HAD DONE BY MR. BURGESS, IS THAT FAIR?

A YES.

Q ANYTHING IN PARTICULAR ABOUT THOSE CHANGES THAT SUGGESTS, IN YOUR OPINION, THAT THE PERSONAL REPRESENTATIVE IS NOT DOING HER JOB? WHY DO WE HAVE MANY EVALUATIONS IN THIS CASE? SHOULDN'T WE JUST HAVE ONE EVALUATION?

A YOU'RE GOING TO HAVE TO ASK ME... MS. IRVING HAS ALREADY TESTIFIED. I DON'T KNOW WHY. IT DOES

NOT MAKE SENSE TO ME. I DON'T KNOW WHY WE ARE HERE. I DON'T KNOW.

Q WHY WAS THE CROMARTIE APPRAISAL PREPARED?

A THE CROMARTIE APPRAISAL WAS PREPARED BECAUSE MR. SCOVILLE SUGGESTED THAT THE PROPERTIES BE APPRAISED. SO, THAT ONE MAKES SENSE. I UNDERSTAND WHY WE HAD THE CROMARTIE APPRAISAL, BUT I DON'T UNDERSTAND WHY WE HAVE THE BURGESS APPRAISAL.

Q IS IT FAIR TO SAY NOT EVERYBODY APPRECIATED THE CROMARTIE APPRAISAL?

A YES, THAT'S FAIR TO SAY. I ALSO WANT TO SAY THAT I THINK IT WAS ASKED, "WHY DID WE USE CROMARTIE APPRAISERS?" THE WAY THAT I HAD... THE REASON THAT I USED CROMARTIE IS THEY ARE A NAME THAT I HAD, YOUR HONOR. I HAD A MATTER INVOLVING SOME PEOPLE FROM CHARLESTON AND PAWLEY'S ISLAND AND WE HAD SOME PROPERTY TO BE DISTRIBUTED AND WE NEEDED TO GET A VALUE. THAT ATTORNEY IN CHARLESTON RECOMMENDED CROMARTIE --

MR. TALL: YOUR HONOR, THIS IS ALL HEARSAY.

JUDGE PADGETT: YES.

Q LET ME JUST ASK, YOU OBVIOUSLY HAD SOME EXPERIENCE WITH MR. CROMARTIE OR YOU KNEW OF

HIM? HAD YOU WORKED WITH HIM PRIOR TO THE ADMINISTRATION OF THESE ESTATE?

A YES. HE HAD BEEN REFERRED TO DO AN APPRAISAL FROM AN ADVERSE PARTY. I FELT LIKE WHAT HE DID FOR THE APPRAISALS WAS NEUTRAL AND FAIR AND PROFESSIONAL AND I LIKED WORKING WITH HIM. HE WAS SOMEONE THAT AN ADVERSE PARTY HAD SUGGESTED. SO, I FELT LIKE WELL... I WAS IMPRESSED AT THE WAY HE HANDLED IT EVEN THOUGH HE WASN'T SOMEONE THAT I SUGGESTED. I LIKED HIS WORK AND I THOUGHT HE WAS FAIR AND REASONABLE. I SAID, "LET'S GET THESE GUYS TO DO IT" AND THAT'S WHAT WE DID.

Q WERE YOU SATISFIED WITH THE WORK THAT CROMARTIE DID?

A YES.

Q THE WORK THAT WAS DONE BY MR. CROMARTIE WAS DONE AT THE REQUEST OF WHO?

A MS. IRVING THROUGH MR. SCOVILLE.

Q YOU WERE GENERALLY SATISFIED WITH THE WORK, I TAKE IT?

A I WOULD USE THEM AGAIN. I LIKE MR. CROMARTIE. I THINK THEY DO GOOD WORK, FAIR, REASONABLE WORK.

Q DID YOU CONSIDER APPRAISALS TO BE APPLIES TO

APPLES COMPARISON OF THE PROPERTIES REMAINING IN THE ESTATE THAT NEEDED TO BE APPRAISED?

A YES.

Q HOW DID THE EVALUATIONS CHANGE? I BELIEVE YOU HAVE A DOCUMENT THAT SHOWS THE CHANGES?

A YES. THE PROPERTY THAT WAS SUPPOSED TO GO TO STEVEN WENT FROM 98,000 TO 78,000. THE PROPERTY THAT WAS SUPPOSED TO GO TO JULIE WENT FROM 140,700 TO 100,000. THE PROPERTY FOR MS. POAFPYBITTY WENT FROM 191,200 TO 95,000 WITH ADDING IN THE 23,000 AND IT CAME TO 118. SO, YOU'VE GOT A 20 AND THEN THERE'S ANOTHER ONE. THE ANDOVER PROPERTY, THAT PROPERTY WENT FROM 98,000 TO 72,000. THAT WAS A 27% DECREASE. STEVEN'S WAS A 20% DECREASE. JULIE'S WAS A 29% DECREASE. MS. POAFPYBITTY WAS A 38% DECREASE. SO, ALL OF THEM WERE WITHIN SINGLE DIGITS. THE ONE'S BETWEEN JULIE AND MS. POAFPYBITTY WERE SINGLE DIGITS BETWEEN THE PERCENTAGE DIFFERENCE.

Q DID YOU PREPARE THAT DOCUMENT TO SUMMARIZE THE CHANGES?

A YES. CAN I SAY ONE OTHER THING ABOUT THIS DOCUMENT?

Q SURE.

A IF YOU TAKE THE 9% DIFFERENCE AND MULTIPLE IT BY

191,200, WHICH WAS THE AMOUNT ON THE INVENTORY.
THE 9% DIFFERENCE COMES OUT TO \$17,208. THIS
WHOLE MATTER HAS BEEN BASED ON \$17,208
DIFFERENCE.

MR. BOYD: YOUR HONOR, I WOULD LIKE TO
HAVE THIS IN THE RECORD IF I MAY?

JUDGE PADGETT: MS. TALL? MS. COURT
REPORTER, ARE YOU OKAY TO GO ON?

COURT REPORTER: YES, SIR.

MR. TALL: YOUR HONOR, SO LONG AS WE
UNDERSTAND THIS IS AN ARGUMENT AS
OPPOSED TO EVIDENCE.

MR. BOYD: JUST AN EXHIBIT THAT WE
PREPARED, YOUR HONOR, IN THE OFFICE.

JUDGE PADGETT: WAS THAT NOT ATTACHED TO
THE PROPOSAL THAT WAS SUBMITTED IN
FEBRUARY OF THIS YEAR?

A NO, YOUR HONOR. THAT'S A SUMMARY OF THE VALUES
FROM THE DIFFERENT APPRAISALS.

JUDGE PADGETT: THOSE ARE NOT SHOWN ON
THE DOCUMENTS THAT WERE FILED ON
FEBRUARY OF YEAR?

A YES, YOUR HONOR. THOSE NUMBERS APPEAR IN THE
DOCUMENTS THAT WERE FILED. THEY DON'T APPEAR IN
THAT FORMAT.

JUDGE PADGETT: IF THEY APPEAR ON THOSE OTHER DOCUMENTS, THE FACT THAT HE'S GOT IT THERE TO UNDERSTAND IT AND TESTIFY IS OKAY WITH ME. SO, I OVERRULE THE OBJECTION.

DOCUMENT AUTHORED BY MR. DAVIS MARKED FOR IDENTIFICATION AND INTRODUCED INTO EVIDENCE AS DEFENDANT'S EXHIBIT 11.

Q SO, WE HAVE DISCUSSED THE DROP IN THE EVALUATION OF THE PROPERTY AT CROOKED PINE DRIVE AND IT WASN'T THE ONLY PROPERTY THAT DROPPED. OBVIOUSLY IT DROPPED MORE THAN OTHERS. DID YOU HAVE AN UNDERSTANDING OF WHY THE EVALUATION PROPERTY WAS DROPPED AS A RESULT OF THOSE APPRAISALS?

A YES. AFTER THE APPRAISAL I DID NOT REALIZE THERE WAS THAT MUCH DAMAGE IN THE PROPERTY. AGAIN, I HAVEN'T BEEN TO THE PROPERTY. WE'VE GOT SEVERAL FILES. WE DO WHAT NEEDS TO BE DONE ON THESE FILES AND WE MOVE ON.

MR. TALL: YOUR HONOR, IF THE QUESTION IS, DOES MR. DAVIS, WHO DIDN'T VISIT THE PROPERTY, UNDERSTAND WHY THE APPRAISER DID WHAT HE DID, I DO HAVE AN OBJECTION.

JUDGE PADGETT: I SUSTAIN THAT
OBJECTION.

MR. BOYD: THAT REALLY WASN'T THE
QUESTION, YOUR HONOR.

Q LET'S GO BACK TO MR. SCOVILLE. AS YOU
UNDERSTAND IT, THE APPRAISAL WAS PREPARED AT MR.
SCOVILLE'S REQUEST. HOW DID MR. SCOVILLE COME
TO BE INVOLVED IN THE PROCESS?

A MR. SCOVILLE. I UNDERSTAND, WAS HIRED BY THE
THREE CHILDREN. I UNDERSTAND MR. TALL WAS JUST
HIRED BY MS. IRVING. HE SENT ME SOME
CORRESPONDENCE AND WE TALKED A NUMBER OF TIMES.
WE MET, COMMUNICATED BY E-MAIL, BY PHONE, BY
LETTER. WE HAD THINGS... WHAT I THOUGHT WERE
WORKED OUT AND THEN I GET AN E-MAIL SAYING,
"THAT I'M NO LONGER REPRESENTING THEM. TALK TO
MS. IRVING DIRECTLY."

Q IS IT FAIR TO SAY THAT YOU HAD A... I BELIEVE
THERE'S AN EXHIBIT THAT REFERENCES
CORRESPONDENCE IN APRIL AND OVER THE NEXT
APRIL 2015. IS IT FAIR TO SAY YOU HAD A SERIES
OF COMMUNICATION WITH MR. SCOVILLE?

A ABSOLUTELY, YES. HE ASKED FOR EVERYTHING
CONCEIVABLE IN THE ESTATE ADMINISTRATION.

MR. TALL: I WOULD OBJECT TO THAT

RESPONSE, YOUR HONOR.

JUDGE PADGETT: THAT'S HEARSAY. THAT'S COMMUNICATION AND HE'S NOT HERE. THAT'S EXTRAJUDICIAL OUTSIDE OF THIS COURTROOM.

Q HOW DID THE COMMUNICATIONS GO FROM YOUR PERSPECTIVE? WAS HIS INVOLVEMENT IN ANY WAY HELPFUL?

A IT WAS WELCOME TO BE HONEST WITH YOU. EVEN THOUGH HE WAS AGGRESSIVE AT THE END OF THE DAY, HE WAS REASONABLE. I FELT LIKE I COULD WORK WITH HIM. ONCE HE SAW THERE WAS NO FOUL PLAY IN THIS ESTATE WHATSOEVER --

JUDGE PADGETT: OBJECTION, YOUR HONOR.

MR. BOYD: SUSTAINED.

Q LET ME ASK YOU THIS QUESTION --

A WELL, I NEED --

JUDGE PADGETT: NO. I SUSTAINED THE OBJECTION BECAUSE YOU CAN'T GIVE AN OPINION AS TO THE DECISION THAT I'VE GOT TO MAKE. THAT'S WHAT YOU WERE DOING. YOU GAVE YOUR OPINION THAT NOTHING HAD BEEN DONE WRONG IN THIS ESTATE. IT'S NOT FOR YOU TO DECIDE, IT'S FOR ME TO DECIDE.

Q LET ME ASK YOU THIS QUESTION --

A I'M WITH YOU, BUT I WAS REFERRING TO THE TIME UP TO WHEN MR. SCOVILLE WAS INVOLVED. I WANTED HIM TO SEE THE BANK STATEMENTS AND SEE THE MONEY THAT CAME IN AND THE MONEY THAT WENT OUT. I WANTED MR. SCOVILLE TO SEE WHAT HAD HAPPENED UP UNTIL THE TIME THAT HE GOT INVOLVED. I DON'T WANT TO MAKE THE COURT'S DETERMINATION FOR IT, JUDGE, AS YOU WELL KNOW.

JUDGE PADGETT: WHAT BOTHERED ME THOUGH AS YOU CAN TELL, WAS YOU MADE THE DECISION THAT MRS. SCOVILLE WAS SATISFIED WITH THE INFORMATION THAT YOU SENT IT HIM.

A HE WAS.

JUDGE PADGETT: THAT'S HEARSAY. MR. SCOVILLE HAS GOT TO BE HERE TO TESTIFY.

A OKAY.

JUDGE PADGETT: MR. BOYD, YOU NEED TO BE WRAPPING THIS UP GUYS.

MR. BOYD: YES, SIR.

Q DID YOU PROVIDE ALL THE INFORMATION HE REQUESTED?

A YES.

Q I UNDERSTAND THAT IT'S YOUR IMPRESSION AS A RESULT OF THE INTERACTION WITH MR. SCOVILLE THAT

YOU FELT LIKE YOU HAD RESOLVED THE ISSUES IN THIS ESTATE? IS THAT A FAIR STATEMENT?

A I BELIEVE THAT THEY HAD BEEN RESOLVED.

Q OF COURSE, MR. TALL WAS ASKING QUESTIONS REGARDING WHETHER THERE WERE RIGHTS TO QUESTION THESE APPRAISALS OR OTHER DOCUMENTS, BUT AT THE END OF THE DAY, DID YOU FEEL AS THOUGH THE BENEFICIARIES HAD COME TOGETHER IN AGREEMENT FOR THE RESOLUTION OF THE ESTATE?

MR. TALL: NO, SIR. YOUR HONOR. THERE ARE TWO BENEFICIARIES WHO ARE NOT HERE AND WE HAVE ALREADY HEARD FROM MS. IRVING THAT SHE DID NOT HAVE AN AGREEMENT--

MR. BOYD: YOUR HONOR, I'M NOT ASKING --

MR. TALL: THEN WHAT IS THE PURPOSE OF IT IF THE GENTLEMAN SAID, IT IS WHAT IT IS, THE LETTER FROM MR. SCOVILLE THAT SAYS, "LET'S GET APPRAISALS." THAT'S NOT A SETTLEMENT.

MR. BOYD: I'M ASKING FOR HIS IMPRESSION AT THE TIME, YOUR HONOR. THERE IS NO HEARSAY INVOLVED.

MR. TALL: IT'S BEEN ASKED AND ANSWERED.

JUDGE PADGETT: I WILL LET HIM ANSWER

THE QUESTION. GO AHEAD, MR. BOYD.

Q WHAT WAS YOUR IMPRESSION OF THE STATE OF THE AFFAIRS AS IT RELATED TO RELATIONS OF THE PR AND THE BENEFICIARIES AT THAT TIME WHEN MR. SCOVILLE COMPLETED HIS TASK?

A BASED ON THE LETTERS I RECEIVED FROM MR. SCOVILLE THAT'S BEEN ADMITTED INTO EVIDENCE, I THOUGHT ALL MATTERS HAD BEEN RESOLVED.

Q IN FACT, YOU AT ONE POINT DRAFT A SETTLEMENT AGREEMENT, DID YOU NOT?

A YES.

Q WILL YOU TAKE A LOOK AT THAT?

A YES. THIS IS AN AGREEMENT AMONG BENEFICIARIES UNDER SECTION 6232912.

Q DID YOU DRAFT THAT DOCUMENT TO ENCOMPASS THE TERMS OF THE DISCUSSION WITH MR. SCOVILLE?

MR. TALL: YOUR HONOR, WE ARE NOW EXAMINING THE WITNESS BASED UPON SOMETHING THAT WAS NEVER SHARED WITH ME IN DISCOVERY --

MR. BOYD: YOUR HONOR, HE'S HAD THIS DOCUMENT.

MR. TALL: LET ME TAKE A LOOK AT IT.

MR. BOYD HAS IN THE PAST INDICATED THAT THERE WERE REAMS AND REAMS OF PAPER. I

CAN'T IMAGINE HIM GIVING ME ANYTHING ELSE. LET ME SEE, SIR, THAT THIS IS SOMETHING YOU HAVE SHARED WITH ME BEFORE AND I WILL APOLOGIZE.

MR. BOYD: YOUR HONOR, I DON'T HAVE MY COPIES OF THE BATES DOCUMENTS AND IT'S RATHER HARD TO SEARCH. IT DOESN'T NEED TO BE IN EVIDENCE PER SE, BUT I WOULD LIKE TO ASK THE WITNESS IF HE RECALLS DRAFTING THE AGREEMENT.

MR. TALL: NOT THAT --

JUDGE PADGETT: IF HE'S NOT GOING TO INTRODUCE IT THEN -- IF HE DRAFTED IT, THERE'S NOTHING IMPROPER ABOUT THAT QUESTION.

Q DO YOU RECALL DRAFTING AN AGREEMENT IN AN EFFORT TO SUMMARIZE AND MEMORIALIZE THE DISCUSSION?

A I THINK SO. WE'VE GOT THE AGREEMENT, YES. WE HAD WHAT I THOUGHT WAS AN AGREEMENT. WE WERE GOING TO WORK TOWARDS FORMALIZING IT SO, YES. THAT WOULD HAVE BEEN A DRAFT. WHAT I THOUGHT WAS AN AGREEMENT.

Q DID THE BENEFICIARIES EVER SIGN THE AGREEMENT?

A NO. NOT THAT I'M AWARE OF.

Q DO YOU UNDERSTAND WHY THEY DID NOT SIGN THE

AGREEMENT?

MR. TALL: HOW ABOUT THE FOUNDATION,
YOUR HONOR? WAS THAT AGREEMENT EVER
PRESENTED TO A BENEFICIARY? WHY ARE WE
PLAYING GAMES?

JUDGE PADGETT: IF YOU WILL ASK THAT
QUESTION BECAUSE THAT'S WHAT I WANT TO
KNOW TOO.

Q DO YOU RECALL PRESENTING THAT AGREEMENT TO THE
BENEFICIARIES FOR THEIR CONSIDERATION?

A NO. AS I MENTIONED EARLIER WHEN I TESTIFIED THE
COMMUNICATIONS FROM MS. IRVING, I DID NOT KNOW
HOW TO RESPOND TO THOSE BECAUSE IT WAS SUCH A
CHANGE IN EVERYTHING THAT IT JUST KIND OF PUT
EVERYTHING TO A STOP, STOPPED EVERYTHING.

Q LET ME SHOW YOU WHAT'S BEEN MARKED PREVIOUSLY AS
PLAINTIFF'S 4, 5, 6 AND 7? YOU RECALL RECEIVING
THOSE LETTERS, DO YOU NOT?

A YES. THESE ARE THE ONES THAT I REFERRED TO AS
RAPID FIRE. I THINK JUST TRYING TO BUILD
SOME... I DON'T KNOW WHAT SHE WAS DOING, BUT
YES, I DID RECEIVE THESE. I SEE IN THIS LETTER
FEBRUARY 11TH IT SAYS, "THANKS FOR YOUR LAST
NOTE. I THINK IT'S HELPFUL TO HAVE SOME
DIALOGUE. I HOPE YOU WON'T BE INSULTED, BUT I

HAVE TO DISAGREE WITH YOU ON A COUPLE OF POINTS. I DON'T THINK THERE HAS BEEN ANY PREVIOUS ISSUES." WE HAVE HAD MULTIPLE TESTIMONY ABOUT A NUMBER OF ISSUES. I DIDN'T UNDERSTAND THE CONTENT OF HER LETTERS.

Q MR. TALL ASKED QUITE A FEW QUESTIONS CONCERNING THE FACT THAT AN E-MAIL WAS TRANSMITTED ON JANUARY 29 THAT WAS INCONSISTENT WITH THESE LETTERS. IS IT FAIR TO SAY THAT YOU HAVE A FAIRLY LARGE PRACTICE?

A YES.

Q IS IT FAIR TO SAY THAT NOT EVERYTHING IN THE PRACTICE HAPPENS IN A LINEAR FASHION?

A OF COURSE NOT. I MEAN, THIS TRANSPIRED OVER THE HOLIDAYS TOO. WE HAD CHRISTMAS HOLIDAYS IN THE MIDST OF THAT AND END OF THE YEAR STUFF AS WELL. WE COME UP ON THIS GETTING READY TO MAKE DISTRIBUTIONS AND WE GET THIS IN JANUARY.

Q IS IT FAIR TO SAY THAT IF YOU LINE UP ALL THE COMMUNICATIONS IN THIS FILE WITH THE BENEFICIARIES AND PR, NOT EVERYONE GETS CONSIDERED FULLY BEFORE THE NEXT ONE MAY GO OUT?

A YES. AGAIN, THE DATES OF THIS --

MR. TALL: YOUR HONOR, THIS IS DIRECT EXAMINATION. CAN WE AVOID THE LEADING

AND JUST GET ON?

A --THE DATES OF THIS JANUARY 20TH, JANUARY 29TH, FEBRUARY 8TH, FEBRUARY 11TH.

Q DID THE JANUARY 29TH COMMUNICATION COME FROM YOU OR SOMEBODY ELSE IN YOUR OFFICE?

A NO. THESE ARE THE LETTERS FROM MS. IRVING. SHE IS RAPID FIRING SENDING THESE LETTERS OUT.

Q WHAT ABOUT THE E-MAIL THAT'S DATED JANUARY 29TH?

A YES. IT WAS SHOWN THAT THE PRINTOUT, THE SPREADSHEET WAS REVISED TO SHOW THE REPAIRS THAT HAD BEEN MADE, BEEN ATTRIBUTED, WHICH IS ALWAYS THE CASE. WHICH WOULD, YOU KNOW, HAVE BEEN SHOWN ON THE FINAL ACCOUNTING DOCUMENTS.

Q DID YOU REALLY INTEND THAT AS A REVISION OF THE DOCUMENTS OR HOW WOULD YOU ASSESS THAT?

A TO BE HONEST WITH YOU, THIS WAS PREPARED BY BECKY AT MY OFFICE. WE JUST WANTED TO SHOW HOW THINGS WERE GOING TO BREAK DOWN BASED ON THAT LETTER THAT WE HAD GOTTEN FROM MR. SCOVILLE. THERE WAS NO INTENT TO HIDE ANYTHING OR NOT DO ANYTHING. WE'RE TRYING TO MOVE THIS THING ALONG. WE SAID, "HERE ARE THE PROPERTIES. THESE ARE THE VALUES THAT WE HAVE GOTTEN, YOU KNOW, LET'S GET THIS RESOLVED." THERE'S BEEN A LOT OF QUESTIONS ABOUT THIS DECEMBER 10TH E-MAIL AND

HOW SHOCKED MS. IRVING WAS AND I DON'T... IT DOESN'T GO WITH WHAT I WOULD THINK WOULD BE REASONABLE OR EXPECTED.

Q IN RESPONSE TO THOSE LETTERS THAT HAVE BEEN MARKED AS EXHIBIT'S 4, 5, 6 AND 7, DID YOU TAKE ANY ADDITIONAL STEPS IN RESPONSE TO RESPOND TO MS. IRVING?

A YES, I DID.

Q WHAT ELSE DID YOU TRY TO DO?

A YES, I DID.

Q DID YOU TRY TO SET UP A MEETING?

A YES, I DID. I WAS TRYING TO READ THE LETTERS AND MAKE SENSE OUT OF THEM. SO, I GET HER LETTERS AND THEY ARE COMPLETELY INCONSISTENT WITH ALL THE STUFF THAT WE HAD GONE THROUGH, IN MY OPINION, AND INFORMATION FROM MR. SCOVILLE. SO, I'M LOOKING AT THEM AND SAYING, "OKAY. WHAT AM I SUPPOSED TO DO WITH THIS?" I HAVE GOT CORRESPONDENCE THAT SHOULD BE IN EVIDENCE FROM STEVE SAYING, YOU KNOW, HE WANTS HIS PROPERTY. AND I GET THIS AND I'M LIKE I WAS CONFUSED BECAUSE IT WAS INCONSISTENT. SO, I SAID, I WANT TO GET TO THE BOTTOM OF THIS. LET'S HAVE A CALL OR A MEETING WITH THE PARTIES AND GET TO THE BOTTOM OF THIS AND BE DONE WITH IT. SO, I SENT

OUT AN E-MAIL REQUEST AND BASICALLY WAS REBUFFED. THEN I INSISTED THAT MS. IRVING PLEASE GIVE ME AN OPPORTUNITY TO TALK WITH HER. FINALLY, SHE AGREED AND HER AND I TALKED ON THE PHONE. THAT'S THE CONVERSATION SHE RECORDED.

Q DID YOU, IN FACT, EXCHANGE A SERIES OF E-MAILS WITH HER TRYING TO SET UP --

A YES. A NUMBER OF E-MAILS. I WAS LIKE, "LET'S TALK. I JUST WANT TO TALK THROUGH THIS" AND SHE DIDN'T WANT TO DO THAT.

Q DID THE MEETING EVER OCCUR?

A WE FINALLY WERE ABOUT TO ARRANGE A PHONE CALL CONFERENCE ON FEBRUARY 12TH.

Q DID YOU HAVE A MEETING?

A WE WERE GOING TO TRY TO HAVE A MEETING, BUT I THINK IT WASN'T CONVENIENT. SO, A CONFERENCE CALL WAS FINE WITH ME, BUT IT ENDED UP BEING JUST ME AND JULIE.

Q AND TELL ME A LITTLE BIT ABOUT THAT CALL. WHO ELSE PARTICIPATED IN IT?

A THAT WAS THE CALL WITH BECKY WEAVER. SHE WAS ON SPEAKERPHONE AND MS. IRVING TOLD ME TO TAKE IT OFF SPEAKERPHONE, WHICH I DID.

Q THAT'S THE CALL THAT'S BEEN ENTERED INTO EVIDENCE?

A YES.

Q DID MS. IRVING TELL YOU THAT SHE WAS RECORDING THE CALL?

A ABSOLUTELY NOT. I WAS DISAPPOINTED TO HEAR THAT. THAT WAS VERY FRUSTRATING.

Q WHAT WAS YOUR GENERAL REACTION TO THE CALL WITH MS. IRVING?

A I WENT INTO THE CALL THINKING I WOULD BE ABLE TO RESOLVE THIS. I WENT IN WITH AN OPTIMISTIC ATTITUDE THINKING I'M NORMALLY REALLY GOOD JUST FINDINGS SOME COMMON GROUND AND GETTING THIS THING RESOLVED. SO, I WENT IN AND SAID, LET ME JUST TALK TO HER. I FEEL LIKE IF I CAN TALK TO HER WE CAN JUST RESOLVE THIS THING. IT WAS A BRICK WALL FROM THE FIRST SECOND OF THE CONVERSATION. IT DIDN'T GET ANY BETTER FROM THERE. SHE HAD ONE THING IN HER MIND AND THAT WAS IT.

Q WHAT WAS THE ONE THING IN HER MIND, IN YOUR OPINION?

A SHE HAD GOTTEN ADVICE THAT SHE WOULD HAVE 75% CONTROL IF EVERYTHING WAS DISTRIBUTED OUT IN EQUAL SHARES TO THE BENEFICIARIES AND THAT'S WHAT SHE WANTED AND NOTHING ELSE.

Q DID YOU TRY TO BULLY MS. IRVING?

A ABSOLUTELY NOT. I'M SO WORRIED ABOUT DOING THINGS LIKE THAT I WAS PULLING BACK. SHE GOT ME ON GUARD FROM THE SECOND THE CALL STARTED AND I WAS LIKE, OKAY. I SAID, SIT BACK AND TAKE A DEEP BREATH AND JUST TAKE IT EASY. TALK THOUGH IT AND SEE IF WE CAN WORK SOMETHING OUT. BUT, NO, ABSOLUTELY NOT. I WASN'T TRYING TO BULLY HER. I FELT LIKE SHE WAS TRYING TO BULLY MS. POAFPYBITTY.

Q BRET, IS THERE ANYTHING ELSE THAT YOU WANT TO SHARE WITH THE COURT THIS EVENING --

A NO.

Q -- ABOUT YOUR EFFORTS TO ADMINISTER THIS ESTATE WITH THE PR?

A NO. I THINK WE HAVE HIT THESE THINGS PRETTY GOOD. I KNOW THE JUDGE IS READY TO GO.

MR. BOYD: NO FURTHER QUESTIONS, YOUR HONOR.

MR. TALL: I HAVE A COUPLE IF I MAY.

CROSS EXAMINATION BY MR. TALL:

Q MR. DAVIS, WOULD YOU AGREE THAT THE FOUR BENEFICIARIES OF THIS ESTATE CAN BE REFERRED TO AS DEVISEES?

A RESIDUARY DEVISEES.

Q THEY ARE DEVISEES, ARE THEY NOT?

A YES.

Q DO YOU HAVE A COPY OF THE WILL?

A YES.

Q IN YOUR LOOKING AT ITEM ONE OF THE WILL IT SEEMS TO ME THAT YOU TRIED TO USE A WORD IN THERE, "SPECIFIC DEVISE" THAT DOESN'T APPEAR, DOES IT?

A NO. I DON'T SEE "SPECIFIC DEVISE" IN HERE.

Q SO, ANY DEVISEE OF ANY PROPERTY CAN TAKE PROPERTIES SUBJECT TO A MORTGAGE OR AM I MISREADING WHAT YOUR INTERPRETATION IS?

A SO, WE TAKE A PROPERTY FOUR WAYS AND FOUR PEOPLE ARE GOING TO RECEIVE IT SUBJECT TO A MORTGAGE?

Q MAYBE WHEN THEY DIVIDE UP THE PROPERTY AND ONE TAKES ONE PROPERTY OR MAYBE TWO TAKE ONE PROPERTY, THEY TAKE THE PROPERTY SUBJECT TO THE MORTGAGE. WHY ISN'T THAT A REASONABLE INTERPRETATION OF THIS ITEM ONE OF THE WILL?

A I STATED MY INTERPRETATION.

Q SO LONG AS THERE IS A WORD, "SPECIFIC" THAT IS NOT THERE?

A NO. I HAVE STATED MY INTERPRETATION.

Q THE JUDGE ISSUED AN ORDER IN JUNE OF 2016. ARE YOU FAMILIAR WITH THE ORDER DATED JUNE 13?

A NO. I AM NOT FAMILIAR WITH IT.

Q ARE YOU NOT FAMILIAR WITH IT? ARE YOU NOT AWARE

THAT THE JUDGE TOOK INTO ACCOUNT THE SPECIAL LANGUAGE THAT YOU SAY IS IMPORTANT IN ITEM TWO OF WILL, "THE SOLE DISCRETION"?

A WHAT PART OF THIS ORDER ARE YOU ASKING ME ABOUT?

Q SURE. LET'S TAKE A LOOK AT THE SECOND PARAGRAPH ON PAGE 5 OF THE JUDGE'S ORDER. DOES NOT THE JUDGE'S ORDER ADDRESS THE LANGUAGE THAT YOU HAVE QUOTED ABOUT SOLE DISCRETION?

A IT ADDRESSES IT, BUT DOESN'T CHANGE IT.

Q DO YOU THINK IT'S MISINTERPRETING?

A IT DOESN'T INTERPRET IT.

Q HAVE YOU EVER THOUGHT TO ASK THE JUDGE TO RECONSIDER THE ORDER?

A WHY?

Q WELL, HOW ABOUT THE SUGGESTION THAT THERE'S FIDUCIARY DUTY OWED BY THE PERSONAL REPRESENTATIVE NOT WITHSTANDING THE LANGUAGE IN THE DECEDENTS WILL? MAYBE YOU AGREE WITH THAT?

A NO. I DON'T AGREE WITH THAT. I DON'T AGREE WITH WHAT YOU'RE SAYING. WE COULDN'T HAVE FINISHED THE ESTATE ADMINISTRATION BECAUSE THERE WAS THIS ONGOING LAWSUIT THAT YOU FILED. SO, WE COULDN'T FINISH THE ESTATE ADMINISTRATION.

Q I'M NOT SURE ANYBODY ASKED YOU ABOUT ESTATE ADMINISTRATION. I ASKED YOU WHETHER OR NOT IN

INTERPRETING THE LANGUAGE, SOLE DISCRETION, THE COURT ORDER TALKS ABOUT THERE BEING FIDUCIARY DUTIES THAT THE PERSONAL REPRESENTATIVE OWES AND RIGHTS AND BENEFICIARIES NOT WITHSTANDING THIS LANGUAGE?

A I'M SORRY. YOU'RE GOING TO HAVE TO SIMPLIFY THE QUESTION. I DON'T KNOW WHAT YOU'RE ASKING. HE SIGNED THIS ORDER AND IT SAYS WHAT IT SAYS.

Q YOU DON'T HAVE A DISAGREEMENT THEN WITH IT?

A THE ORDER SAYS WHAT THE ORDER SAYS.

Q I'M ASKING YOU WHETHER OR NOT YOU AGREE WITH IT?

A THAT'S MY TOTAL FINAL ANSWER.

Q WHICH IS A REFUSAL TO RESPOND TO MY QUESTION.

A NO, IT'S NOT. THAT'S THE BEST I KNOW HOW TO ANSWER IT.

Q I THINK MS. IRVING HAD THE SAME KIND OF EXPERIENCE WITH THE --

A YOUR HONOR, HE KEEPS SAYING THIS --

JUDGE PADGETT: YOU CAN'T OBJECT.

YOU'RE A WITNESS. LET YOUR LAWYER DO IT.

MR. BOYD: I AM BECOMING A LITTLE BIT ADVERSARIAL HERE. I AM NOT SURE I UNDERSTAND EXACTLY WHAT COUNSEL IS TRYING TO SAY.

A YOUR HONOR, HE ASKS ME QUESTIONS I DON'T KNOW HOW TO ANSWER AND WHEN I TELL HIM I DON'T KNOW HOW TO ANSWER, HE SAYS, WELL, IS THIS WHAT MS. IRVING WAS FACED WITH -- THAT'S NOT FAIR, YOUR HONOR.

Q YOU DIDN'T TELL ME YOU DON'T KNOW HOW TO ANSWER. YOU SAID YOUR ANSWER IS WHAT YOUR ANSWER IS.

A I DON'T KNOW HOW TO ANSWER THE QUESTION. THE ORDER STATES WHAT THE ORDER STATES.

Q THERE IS AN ALLEGATION THAT Y'ALL DIDN'T FOLLOW IT, ISN'T THERE?

A I ASSUME. I THINK YOUR PLEADINGS INCLUDE THAT. YOU TELL ME.

MR. TALL: NO. MORE QUESTIONS, YOUR HONOR.

MR. BOYD: YOUR HONOR, I MIGHT NEED TO.

RE-DIRECT EXAMINATION BY MR. BOYD:

Q MR. DAVIS, DID YOU UNDERSTAND WHAT COUNSEL WAS TRYING TO ASK YOU ABOUT THE ORDER?

A HONESTLY, NO. I'M NOT EXACTLY SURE WHAT HE WAS TRYING TO ASK ME.

Q I HAVE NOTHING FURTHER.

JUDGE PADGETT: MR. DAVIS, LET ME ASK YOU JUST ONE QUESTION OR TWO. NEVER MIND, THANK YOU VERY MUCH.

A I WANT TO APOLOGIZE TO YOU. I'M NOT TRYING TO DO YOUR JOB, JUDGE. BRET DAVIS' OPINION IS THAT THE PR HAS NOT DONE ANYTHING WRONG. THAT'S BRET'S OPINION.

JUDGE PADGETT: YOU HAVE MADE THAT CLEAR.

A I DON'T WANT TO TRY TO IMPOSE THAT ON YOU, JUDGE. I'M HOPING YOU SEE IT THE SAME WAY, BUT I DON'T WANT TO UPSET THE COURT.

JUDGE PADGETT: I UNDERSTAND. THANK YOU, MR. DAVIS. ANY OTHER WITNESSES, MR. BOYD?

MR. BOYD: YOUR HONOR, WE REST.

JUDGE PADGETT: ANYTHING IN REPLY, MR. TALL?

MR. TALL: I DON'T HAVE A REPLY WITNESS, YOUR HONOR. I AM WONDERING IF WE CAN THINK ABOUT WHAT WE CAN DO FOR ARGUMENT. EARLIER THERE WAS A DISCUSSION ABOUT MAYBE SEND YOU SOMETHING. I WOULD LIKE TO TAKE THE MICROPHONE --

JUDGE PADGETT: I WOULD BE GLAD FOR Y'ALL TO ARGUE, BUT NOT TONIGHT. IF YOU WANT TO COME BACK, I HAVE MARCH 18 AND MARCH 31?

MR. TALL: YOUR HONOR, IF WE WERE HERE FOR ARGUMENT, I HAVE A CLIENT WITH A SMALL BUSINESS IN VIRGINIA THAT WOULDN'T BE --

JUDGE PADGETT: THAT'S UP TO YOU. WOULD Y'ALL LIKE TO PRESENT AN ORAL ARGUMENT OR JUST WAIVE IT AND PRESENT... AS I HAVE TOLD YOU IN CHAMBERS BECAUSE OF THE ISSUES INVOLVED I WANT A PRESENTATION OF --

MR. BOYD: I AM HAPPY TO DO WHATEVER YOUR HONOR PREFERS. I WOULD LOVE TO STREAMLINE IT IF WE CAN. IF YOUR HONOR WANTS WRITTEN SUBMISSIONS, BUT I AM ALSO HAPPY TO DO AN ORAL ARGUMENT.

JUDGE PADGETT: LET ME PUT IT TO YOU THIS WAY. I WILL LET Y'ALL CHOOSE. I WILL BE HERE OR NOT. YOU CAN PRESENT A LETTER TO ME OF THE ISSUES THAT YOU THINK ARE TO BE RESOLVED BY THIS COURT AND A PROPOSED ORDER FOLLOWING UP THOSE ISSUES. WHAT YOU WOULD LIKE THIS COURT TO SIGN IN THAT REGARD OR EITHER ONE OR BOTH OF YOU WOULD LIKE TO HAVE AN OPPORTUNITY OF AN ORAL ARGUMENT TO

PRESENT SOMETHING TO ME I WILL LET YOU MAKE THAT CHOICE.

MR. DAVIS: WE HAVE HAD TWO FULL DAYS, YOUR HONOR, OF COURT TIME. I THINK WE SHOULD JUST SUBMIT SOMETHING IN WRITING TO BE CONSIDERED.

JUDGE PADGETT: THAT'S FINE. MR. TALL, IS THAT ALL RIGHT WITH YOU?

MR. TALL: THAT'S FINE.

JUDGE PADGETT: VERY GOOD. HOW LONG DO YOU NEED TO DO THE LETTER AS WELL AS THE PROPOSED ORDERS? ARE YOU GOING TO NEED TO HAVE IT TRANSCRIBED BY THIS LOVELY LADY HERE? THE PROPOSED ORDERS WILL BE GIVEN TO ME TWO WEEKS FROM MONDAY. IS THAT ENOUGH TIME?

MR. BOYD: YOUR HONOR, I DON'T WANT TO MAKE THAT DECISION RIGHT NOW. I WOULD LIKE TO GO BACK TO THE OFFICE AND REVIEW MY NOTES. AND I WOULD LIKE TO RESERVE THE OPPOSITION IF WE FEEL LIKE WE NEED TO.

JUDGE PADGETT: IT DOES COMPLICATE IT SOME. CAN BOTH YOU AND MR. TALL DO THAT AND LET ME KNOW SOMETHING BY 5 O'CLOCK

FRIDAY IN REGARD TO WHETHER OR NOT YOU NEED THE TRANSCRIPT? THIS MEANS THAT YOU AND MR. TALL ARE GOING TO HAVE TO TALK ON THE PHONE OR E-MAIL AS TO HOW LONG YOU THINK YOU MAY NEED TO DO THE PROPOSAL. IS THAT ALRIGHT WITH YOU, MR. TALL?

MR. TALL: YES.

MR. BOYD: YES, YOUR HONOR.

JUDGE PADGETT: I WILL LOOK FORWARD TO HEARING FROM YOU AT THAT TIME AND I WILL SEND YOU AN E-MAIL, BOTH IN REGARD TO WHEN I EXPECT THE PROPOSED ORDER IF Y'ALL CAN'T COME UP WITH ANYTHING. IF YOU DO, I WILL GIVE YOU TIME IF YOU DO WANT TO ORDER THE TRANSCRIPT.

UNDERSTAND THIS LADY CAN'T DO IT JUST LIKE THAT. I WILL SET A TIME AFTER THE RECEIPT OF THE TRANSCRIPT TO PRESENT ORAL. I KNOW EACH PARTY WANTS TO GET THIS THING RESOLVED AS QUICKLY AS POSSIBLE. THE WAY TO DO THAT IS FOR US TO MOVE ON. THAT'S WHAT I'M TRYING TO DO. I DO WANT TO TELL BOTH LAW FIRMS AND LAWYERS THAT I THINK Y'ALL HAVE DONE

A TREMENDOUS JOB FOR YOUR CLIENTS. I APPRECIATE THE HARD WORK THAT EACH OF YOU HAS PUT INTO IT. NOW, YOU HAVE LAID THIS MESS IN MY LAP AND THAT'S THE REASON I'M ON THE BENCH. WHEN PARTIES CAN'T COME TO A RESOLUTION AMONGST THEMSELVES SOMEBODY'S GOT TO DO IT. THAT'S WHY I AM HERE. THANK YOU.

DOES EVERYBODY KNOW WHERE WE ARE?

MR. TALL: WE ARE FINE. THANK YOU, YOUR HONOR.

BOYD: THANK YOU.

JUDGE PADGETT: WE ARE ADJOURNED AT 6:34 P.M.

SOUTH CAROLINA,

CERTIFICATE

HORRY COUNTY.

I, PEPPER M. MCCARTHY, A NOTARY PUBLIC AND VERBATIM REPORTER IN AND FOR THE STATE OF SOUTH CAROLINA DO HEREBY CERTIFY THAT THE FOREGOING (FIVE HUNDRED AND THIRTY-FIVE) (535) PAGES CONSTITUTE A TRUE AND ACCURATE TRANSCRIPT OF THE EVIDENCE AS GIVEN BY SAID WITNESSES AND AS TAKEN DOWN AND TRANSCRIBED BY ME. I FURTHER CERTIFY THAT THE PERSONS WERE PRESENT AS STATED IN THE CAPTION.

I FURTHER CERTIFY THAT I AM NOT OF COUNSEL FOR NOR IN THE EMPLOY OF ANY OF THE PARTIES TO THIS ACTION NOR AM I INTERESTED EITHER DIRECTLY OR INDIRECTLY IN THE RESULTS THEREOF.

I FURTHER CERTIFY THAT I AM NOT RELATED BY BLOOD OR MARRIAGE TO ANY OF THE PARTIES TO THIS ACTION. THIS THE 9TH DAY OF SEPTEMBER, 2017.

PEPPER M. MCCARTHY,
VERBATIM REPORTER AND
NOTARY PUBLIC

MY COMISSION EXPIRES:
FEBRUARY 2, 2022.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE PROBATE COURT

) C/A #: 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,

Defendants.

PROBATE HEARING

Friday, June 29, 2018

9:55 a.m. - 4:25 p.m.

The Probate hearing before The Honorable Carroll D. Padgett was taken at the Horry County Court, Courtroom 2-A, 1301 Second Avenue, Conway, South Carolina, on the 29th day of June, 2018, before Roderick S. Fitzgerald, Court Reporter and Notary Public in and for the State of South Carolina.



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EXHIBITS

(No exhibits marked during this hearing.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the South Carolina Rules of Civil Procedure.



CALL TO ORDER:

THE COURT: All right. We're here this morning, Friday, June the 29th, 2018, in the matter of the Estate of Donald Rothgeb, File Number 2014-ES-26-0498. Present in court is Mr. Bret H. Davis and Reese R. Boyd, III representing the Personal Representative of the Estate. Also, Mr. Cliff Tall, Mr. Matt King, a student assistant, Julie Irving, the Plaintiff, and David Burns, the friend of the Plaintiff. Also, the Court Reporter is Mr. Rod Fitzgerald. Welcome. All right. As I understand it, we have two Motions here from Mr. Davis and Mr. Boyd and one from Mr. Tall. Mr. Boyd, if you would just for the record, tell the Court what those Motions are and what we will be talking about today.

MOTION 1 BY MR. DAVIS:

MR. DAVIS: Yes, Your Honor. Thank you. May it please the Court, we have two Motions to share with the Court, Your Honor. The name of the first Motion is our Motion for Reconsideration. The Court's Order on the matter, Your Honor, that Motion is the Motion for Reconsideration. The Court issued, of course, its Order in the



1 matter and we filed our Motion for
2 Reconsideration on March the 29th. There is a
3 Memorandum in Support of that Motion that was
4 filed on May 4th. Your Honor, we also filed a
5 Motion on March the 29th for a mistrial or new
6 trial in the Alternative, and there is a
7 Memorandum in Support of that Motion that was
8 filed June 26th.

9 **THE COURT:** All right. And Mr. -- Mr. Tall?

10 **MR. TALL:** All right. Your Honor, thank you, and I
11 stand ready to respond to those Motions.
12 Mine, essentially, was to speak specifically of
13 the appointment of a Special Administrator,
14 which the Court ordered in its Order of March
15 2nd to become clarified with regard to fees
16 that the Court is awarded and also to speak
17 about Ms. Poafpybitty is commencing to pay for
18 the rental use of a residence that is owned by
19 the Estate for exclusive use. Your Honor, we
20 talked also in Chambers a moment ago, and I'm
21 wondering if we can follow up. In the
22 presentations that Mr. Davis and Mr. Boyd
23 wished to make, I had some evidentiary issues
24 and I thought rather than from time to time in
25 the middle of their presentations to address



1 those evidentiary issues before we get started.
2 Your preference, Your Honor.

3 **THE COURT:** Do you have a preference in one regard
4 or another, Mr. -- Mr. Davis and Mr. Boyd?

5 **MR. DAVIS:** Your Honor, I've since prepared a
6 Memorandum for the -- in support of the Motion
7 for Reconsideration and I'll be the one going
8 through that this morning. And as those come
9 up, as we mentioned in Chambers, there's
10 basically three that I understand Mr. Tall is
11 having problems with. One, the e-mail from
12 Steven Rothgeb was read during the trial, so I
13 feel like that should be allowed. The other is
14 a public index search. The others are e-mails
15 from 2013, which I understand. I believe those
16 are pertinent and can help this Court. I can
17 -- we can -- really, it's up to the Court, Your
18 Honor. If you want to address it now, that's
19 fine. If you want to wait until I bring them
20 up -- bring them up in a way that's offensive
21 to him. So we can wait and see how it comes
22 up, or we can do it now. That's fine.
23 Whatever.

24 **THE COURT:** We just had this discussion in my office
25 and I think probably the proper matter of doing



1 that would be when that issue comes up, and,
2 Mr. Tall, you won't offend me by continuing to
3 stand up and object if you have a valid
4 objection. That's what lawyers are for. And
5 in that regard, that when the matter is
6 presented, if you would put your objection up.
7 I think for the purposes of the appeal, if that
8 is necessary, I will allow Mr. Davis and Mr.
9 Boyd to make a proffer, as we do in Circuit
10 Court, because they may or may not want to
11 include that on any appeal. Assuming I don't
12 grant a new trial, you may want to have that as
13 part of the record if I -- if I do grant that
14 after the testimony is had.

15 **MR. TALL:** If I may, Your Honor ---

16 **THE COURT:** Sure.

17 **MR. TALL:** --- the -- the -- in particular, the
18 Motion for Reconsideration characterizes your
19 Order as missing the mark on almost every point
20 of law and rule and then we have gentlemen who
21 bring to you documents that are not documents
22 that were part of the trial and are not
23 authenticated in any way. And we're going to
24 hear, I imagine, during the presentation
25 reference to documents that -- I understand



1 these gentlemen are officers of the Court, but
2 I don't believe that when you're an officer of
3 the Court you get to make a presentation of
4 documents without authentication. So there's a
5 lot of documents in there. I think they want
6 to make the impression that Matt Rothgeb is the
7 person you'd never want to negotiate with
8 because he has all this criminal record. Well,
9 his criminal record was not substantiated at
10 the trial, and to bring records from the State
11 of Maryland and elsewhere, and they now have
12 the bearing of a Probate Court stamp as if they
13 are exhibits, with no authorization whatsoever.
14 The gentleman says, if you look on the records,
15 Your Honor, the public records, you can find
16 them for yourself. That's not how you conduct
17 trials.

18 **THE COURT:** I understand.

19 **MR. DAVIS:** Your Honor, as -- as we mentioned in
20 Chambers, we have another Motion for mistrial
21 where we said we were not allowed or afforded
22 the opportunity to provide all of the
23 information we felt that was pertinent. So we
24 believe that is part of that as well.

25 **MR. TALL:** I'm gonna jump ---



1 **MR. DAVIS:** And also -- I'm not ---

2 **MR. TALL:** --- in right away here, Your Honor.

3 **MR. DAVIS:** I'm -- I'm not finished, Your Honor. If
4 I may. During the trial, we had testimony from
5 Ms. Poafpybitty and Ms. Irving about the drug
6 issues with Matt. We had testimony about these
7 very issues. So he makes it sound as if this
8 is some brand new issue that's coming up for
9 the first time. This is not a brand new issue.
10 We had it brought out by both parties at -- in
11 their -- in their testimony, sworn testimony.
12 So this is nothing new, Your Honor. I'm simply
13 saying here's the evidence of what was
14 testified to at trial.

15 **THE COURT:** But they were not -- they were not
16 presented at the trial. Is that correct?

17 **MR. DAVIS:** Those Public Index searches, Your Honor,
18 were not presented at the trial, yes.

19 **THE COURT:** Okay. All right.

20 **MR. DAVIS:** Yes, sir. We are ---

21 **THE COURT:** Just at the appropriate time if he seeks
22 to introduce that, you make your -- make your
23 ---

24 **MR. TALL:** I'll offer my comment, Your Honor.

25 **THE COURT:** Yes, sir.



1 **MR. TALL:** And I -- if I -- I don't know if the
2 Court's feeling on this. You were gracious to
3 these gentlemen during the trial. It was a
4 trial that had two different days a week apart.
5 If you didn't think you were prepared for day
6 one, you had a whole week to prepare for day
7 two. And if you looked at how the proceedings
8 ended, everybody was peaceful. Is there
9 anything else you'd like to present? No, Your
10 Honor, we rest. And that's the basis for
11 coming here and asking, that we didn't have
12 enough time, you pressured us. I'm concerned
13 for the Court's reputation when gentlemen come
14 in and make that rep -- that representation.

15 **THE COURT:** And I understand your -- both of ya'll's
16 position. But I like to think -- and I'm sure
17 lawyer's -- when I was on the other side of the
18 bench, sometimes I didn't think the judge was
19 necessarily fair and gave me an opportunity.
20 But I like to think I try to do that as much as
21 possible in these cases. And if it is part of
22 the record, then all parties will be able to
23 present their cases as they -- as they see fit.
24 And if it's not part of the record, the fact
25 that it may be public notice at the time of the



1 trial, if it was introduced as that, then that
2 would be one thing. But if it is not
3 evidentiary documents attached to the
4 transcript, then I -- I'm not sure. I'll
5 certainly listen to you, Mr. Davis, give you a
6 full opportunity and allow you to proffer it
7 for use at a later date if that is necessary.
8 At this point, I don't know what the
9 circumstances are going to be. But I -- I
10 assure you, I'll give you an opportunity to
11 present anything that you want to to the Court.
12 I think our Supreme Court, as well as both
13 Circuit Judges, have done this long enough to
14 where they know what is relevant, what is not
15 relevant, what is and what is not part of the
16 record. So with that in mind, I'm -- I'm not
17 going to tell you right now you can't present
18 it. And even if I say that I don't recall that
19 being a part of the record, I'm still going to
20 allow you to proffer it because I wasn't going
21 to consider it. And I assume that both sides
22 or one side is gonna ask for a transcript of
23 this hearing today and I want to read that and
24 look at the actual transcript of the two-day
25 trial that we had.



1 **MR. DAVIS:** Your Honor, it's no secret. I mean,
2 we're all intelligent attorneys here. We do
3 want this information on the record in case we
4 have to appeal.

5 **THE COURT:** Oh, absolutely.

6 **MR. BOYD:** So I will proffer it and we'll -- we'll
7 argue it to the extent we need to. So, I mean,
8 that's no secret, Your Honor.

9 **THE COURT:** Okay.

10 **MR. DAVIS:** I -- and to address your point, I've
11 known you for a long time, Your Honor.

12 **THE COURT:** Absolutely.

13 **MR. DAVIS:** And I've had nothing but very, very good
14 experience with you. I do believe,
15 notwithstanding that, bt we did not get a fair
16 shake in this trial. And I feel like we -- we
17 were not -- we just weren't given a fair shake
18 and it just was -- we were sort of -- it just
19 didn't go -- I just don't think we were treated
20 fairly, Your Honor ---

21 **THE COURT:** I understand that.

22 **MR. DAVIS:** --- so -- but I -- we have a tremendous
23 and long track record, a wonderful history, so
24 this is a very isolated case. But you see in
25 our Motions and our Memorandums how we feel



1 about it. But that doesn't change the fact
2 that I have the utmost respect for you and we
3 have a long history with you.

4 **THE COURT:** I understand that. And I -- I
5 appreciate lawyers being very, very jealous --
6 zealous for their respective clients. And I
7 wouldn't think any less of anybody or any
8 lawyer for that. If you didn't represent your
9 client and represent them the best you know how
10 and -- and in the way you feel is proper, I
11 would not have the respect for both sets of
12 attorneys that I do have. And I do. All
13 right. Well, is ---

14 **MR. DAVIS:** And may it please the Court, Your Honor
15 ---

16 **THE COURT:** Yes, sir.

17 **MR. DAVIS:** --- I would like to -- and we've added
18 something I don't -- when Ms. Johnson came in,
19 she wasn't aware of putting the screen up, but
20 I'm sure, in your history you have experienced
21 that to some extent or another. I'm not sure
22 if you've had the screen up and exhibits put on
23 in this Court or not.

24 **THE COURT:** This is the first in this Court. I've
25 been -- on the third floor, we've done it a few



1 times and -- but not here. I take that back.
2 There was a case or two in Family Court where
3 I used it one time. I must admit I had a
4 technological person working the computer for
5 me because I am woefully inadequate in doing
6 that, but certainly you're welcome to use that.

7 **MR. DAVIS:** The reason that I've got it, Your Honor,
8 is there are certain provisions of the
9 Memorandum and also certain provisions of some
10 of the exhibits, if Mr. Tall has not -- would
11 not have an objection because they are a part
12 of the record ---

13 **THE COURT:** Uh-huh.

14 **MR. DAVIS:** --- that I want to highlight as we go
15 through them. So I think if we put them up on
16 the screen, then I can highlight them a little
17 better. Also, you did not have to give us the
18 opportunity to come argue the Motion for
19 Reconsideration. So I appreciate the fact that
20 you have done that, Your Honor, and given us
21 the chance to come here and argue. As you
22 obviously can tell from the trial and from all
23 of the correspondence and pleadings that we
24 have a large disagreement between one of --
25 primarily one of the beneficiaries and the



1 Personal Representative. What I'm going to
2 start is the -- and I also will say this, I
3 would ask the Court's indulgence because
4 there's been a lot of information. So I'm just
5 gonna slow down, I'm gonna take it one at a
6 time and -- and I will warn you, I have a lot
7 of information that I'm gonna get to which is
8 related in -- in my Memorandum. That being
9 said, I want to start from a foundational
10 standpoint. In your Order, you have taken --
11 essentially taken away the commission of the
12 Personal Representative. You've made the
13 Personal Representative pay legal fees for the
14 preparation of normal customary closing
15 documents. The Action was filed May 26th, the
16 closing documents were filed June 3rd, there
17 were legal fees incurred between May 26th and
18 June 3rd in preparation of normal estate
19 closing documents. So your Order makes the
20 Personal Representative personally pay for the
21 normal and customary administration of part of
22 the estate administration. Your Order also
23 completely removes her commission, as we
24 discussed. It gives all attorneys' fees to the
25 plaintiff, who we feel like has brought an



1 extremely ill-advised Action. And then not
2 only those attorneys' fees from May 26th to
3 June 3rd, as supposed to be borne by the
4 Personal Representative, all her legal fees
5 after that for the defense of an Action, which
6 we believe the Statute addresses, have to be
7 paid by her. In addition to that, you ordered
8 that -- despite the plain language of the Will,
9 you ordered that all properties are to be
10 devised equally in undivided quarter interests
11 to four beneficiaries, two of which are the
12 personal residences of two of those
13 beneficiaries. To say that -- and in my
14 Memorandum, I did mention that I believe the
15 Order missed it on virtually every mark, and,
16 Your Honor, I do. I believe this was missed by
17 a country mile, not even close. But I say that
18 with updue -- with respect. You know, I -- I'm
19 not saying that as a mean-spirited -- I'm just
20 matter of fact. I believe this Order is about
21 as wrong as I've seen a Judge order, plain and
22 simple. So what I would like to do from the
23 foundational standpoint is look at what are the
24 statutory requirements of a Personal
25 Representative. In this case, the Personal



1 Representative complied with all of her
2 statutory requirements. Most of which that was
3 argued about at the trial was that it wasn't
4 transparency, there was -- she was not
5 communicating, which, she was, which is wrong,
6 that she was not telling us things or not doing
7 this or not doing that. The vast majority, if
8 not all of it is not even required in the
9 Probate Code. Those things are not required.
10 So most of what they even argued about was not
11 even required -- is not required in the Probate
12 Code. And again ---

13 **THE COURT:** This -- this is a 2014 case, is it not?

14 **MR. DAVID:** Yes, Your Honor.

15 **THE COURT:** All right.

16 **MR. BOYD:** And I will explain ---

17 **THE COURT:** But you're not -- you're not saying that
18 the Personal Representative of Estate and the
19 beneficiaries, for that matter, don't have a
20 duty and responsibility of fair dealings, do
21 you?

22 **MR. DAVIS:** They absolutely do.

23 **THE COURT:** Okay. Very good.

24 **MR. DAVIS:** Absolutely.

25 **THE COURT:** Okay.



1 **MR. DAVIS:** But that's not what I'm talking -- I'm
2 talking about the -- these hours that we went
3 on about e-mails and communications and
4 countless time that we spent with those things,
5 which are not a requirement. We obviously know
6 any trustee or any personal representative or
7 any fiduciary always -- and I, as an Officer of
8 the Court, and you as the Judge. We all have
9 to deal fair. I mean, that's -- that's -- that
10 goes without saying. All right. So if we
11 could look at Section 62-3-704. And, Reese, on
12 Page 19 of the Memorandum. There's certain
13 various specific requirements that the Personal
14 Representative has to comply with. Let me get
15 my law book, Your Honor.

16 **THE COURT:** Yes, sir.

17 **MR. DAVIS:** They are charged with filing the Will
18 for Probate with an application, which we know.
19 They're filed -- they're charged with filing
20 inventory -- excuse me, Notice to creditors,
21 which the Court now does for us. When I first
22 started practicing we used to have to do it and
23 you probably remember that as well. Also, they
24 had to do an inventory, appraisement, they have
25 to do state closing documents and also in the



1 meantime deal with any creditor claims. And
2 that, again, 62-3-704 and you could go -- it
3 starts at 63-703 and it goes on to 705 and 706
4 and so on. All right. In this case, the
5 decedent died January 26th, 2014. Thereafter,
6 the defendant took the following actions in
7 compliance with her statutory requirements,
8 Your Honor. She filed the decedent's Will,
9 Last Will and Testament, with the Application
10 of Probate on March 7th, 2014, which is
11 certainly customary in anybody's view, I'm
12 certain. She was appointed as Personal
13 Information. Information to Heirs and Devisees
14 was sent out on March 26th, 2014, with
15 accompany proof of delivery, which was set
16 forth in the Probate Court's file. Notice to
17 Creditors was published by this Court March 14,
18 2014. Inventory and Appraisement was filed
19 July 11, 2014, and, again, which is absolutely
20 customary in our -- in every Probate practice.
21 And you as a Probate lawyer, I'm sure you're
22 aware of that as well. There was one creditor
23 claim which she negotiated and then it would
24 have been paid. And that was done on August --
25 it was drawn August 7th, 2014. During that



1 process, and I'm going to get into more detail,
2 there were -- there was an agreement about how
3 the property was to be distributed. And Ms.
4 Irving, as I'll point out, changed her mind.
5 Still I don't know for what reason she changed
6 her mind. But that is why the final closing
7 documents were delayed, in part. Also, the
8 Estate was comprised almost exclusively of 12
9 pieces of rental property -- of properties and
10 one residence. A lot of which where -- were
11 neglected substantially. So they had a lot of
12 repairs that had to be done, they had
13 Mortgages. And we've got a Will that says that
14 all debts and Mortgages need to be -- need to
15 be satisfied. So there were absolute, without
16 question, plausible reasons why Estate
17 documents were not filed about two or three
18 months sooner because we had a number of
19 intervening issues that we were trying to
20 resolve, which I'm going to go into in great
21 detail, Your Honor. All right. So she met her
22 statutory requirements and -- and dealt with
23 extraordinary circumstances, a number of
24 properties that were neglected, and I -- as the
25 factual background shows, Dr. Rothgeb was an



1 interesting individual, and there was testimony
2 as to his drinking issues, and there was
3 testimony about how he treated Ms. Poafpybitty,
4 how she had to move out at times, and there
5 was also very sensitive testimony about Ms.
6 Irving, about some sensitive encounters and she
7 -- some of which she did not want to go into.
8 So it was clear to me -- and I -- I hope it
9 would have been clear to the Court, that there
10 was a delicate situation with Dr. Rothgeb,
11 which would also indicate that he probably
12 would not have maintained the properties to the
13 extent they would have needed to be maintained.
14 So after he passed away we had a mess on the
15 hands of Ms. Poafpybitty. She had to go in and
16 deal with a number of tenants, deal with a
17 number of properties. Not to mention, Your
18 Honor, I think that the main thing that points
19 to the neglect is the actual residence that she
20 lived in. The residence that she lived in had
21 mold, it had water coming into the house, it
22 was in terrible, terrible condition. And as
23 you recall -- I'm hoping you recall from the
24 trial, we had the appraiser that appraised it
25 prior to any repairs being made, about how bad



1 it was. A number of repairs had to be made to
2 make it livable. Ms. Poafpybitty lived in the
3 house, not because she liked those
4 circumstances, but because that was the hand
5 that she was dealt with the relationship she
6 had with Dr. Rothgeb. What that indicates is
7 these properties were substantially neglected
8 and required a lot of attention. If we had an
9 Estate, Your Honor, with just money in the
10 Estate, it is very easy to administer. As you
11 well know, you just divide the money up,
12 distribute the money in four shares and close
13 the Estate. It's easy. I've done Estate work
14 for years, over 20 years, as you have, Mr. Tall
15 has, Mr. Boyd has. I've written articles on
16 it. I've talked on it. And as Mr. Tall
17 referred to me as a -- what'd he call me, an
18 expert or something when I was on the stand.
19 I'm not sure exactly what he called me. It is
20 very common when you've got unusual assets, for
21 an Estate to take longer than one year. As
22 I've testified -- as the testimony indicated,
23 we've got two creditor claim periods. We have
24 a eight month creditor claim period, and we
25 also have a one year creditor claim period.



1 The overwhelming commentary on the issue -- and
2 I -- it was somewhat presented at trial, is
3 that you want to wait until at least after one
4 year to make sure there's no hidden claim or
5 nothing so you're done. So we had that. So
6 after one year things got really -- pretty
7 screwy, and I'm going to go into that again,
8 but the overview is that we've had a number of
9 properties, we had an unusual Estate, and we
10 had some -- some circumstances that would have
11 caused the closing documents to -- or the
12 Estate to be closed a little later than one
13 that just had a little bit of property or one
14 with just money. All right. So I want to go
15 -- go back to the Memorandum, one goes through
16 the -- the facts and I'm gonna -- I'm gonna --
17 do a high-level view, Your Honor. I'm not
18 gonna spend -- I'm not gonna bore you with all
19 of the details or the facts, but I do want to
20 get a few of the -- a few of the paragraphs.
21 As I mentioned, Dr. Rothgeb died on January
22 26th, 2014. He and Ms. Poafpybitty started
23 dating in 1978, Your Honor, 1978. Your Honor,
24 I was born in 1968. I'm 50 years old. 1978
25 was 40 years ago. Now, he's been deceased for



1 a couple of years. But they have been together
2 a long time, Your Honor. When I do Estate
3 plans, part of what I look at is the longevity
4 of the relationship. That is an important part
5 of how I do an Estate plan. Because it
6 determines what kind of Trust I want to use and
7 what kind of provisions I put in the Trust. It
8 is very important to an Estate plan and to a
9 probate administration. How long were they
10 together? For 35 years or so, Your Honor. So
11 this is not a new, young wife that just came in
12 the picture at the last minute. That's not
13 what we have here. We have a long, long
14 relationship. They remained married for 25
15 years, Your Honor. They did get together after
16 Mr. -- Dr. Rothgeb's divorce. She was not the
17 cause of their divorce. Ms. Poafpybitty had a
18 -- as was testified to by her -- and I believe
19 Ms. Irving -- Mr. Tall can say what he wants to
20 about that. They had a -- she had a good
21 relationship with all three of the kids. They
22 had three children. They had Ms. Irving, had
23 Matt and Steve. As I've got mentioned here,
24 they -- there was -- and I will just say it
25 generally. I won't refer to these e-mails



1 specifically, which I will proffer, but I won't
2 refer to them specifically. They had
3 countless, countless communications, Your
4 Honor, phone calls, texts, e-mails, a lot of
5 which was presented at trial. Now, during the
6 trial Mr. Boyd held up a large binder, a 3-inch
7 binder, and said we have communications, Your
8 Honor. We made a technical mistake. We
9 believe the Court understood how what we
10 believed were preposterous the action of the
11 Plaintiff was. So we didn't feel it necessary
12 to introduce 100 or 200 exhibits of evidence of
13 communication. Obviously, that turned out to
14 be a tactical mistake. We also let up on Ms.
15 Irving out of respect for her, which turned out
16 to be a tactical mistake, Your Honor, because
17 the Court was not able to see what we believe
18 is the whole and true picture. We did that.
19 We took the high road out of respect for her
20 and it came back and did not serve us well.
21 Nonetheless, we're gonna -- we're gonna move
22 forward. To illustrate the relationship
23 between Ms. Poafpybitty and one of the
24 children, Steven, he lived there nine -- for
25 nine months after the death of his father. It



1 would be hard for someone to live with their
2 stepmother for nine months without there being
3 some meaningful relationship. And as you
4 recall from the hearing, and as was shown
5 during the testimony, all three of the children
6 hired Mr. Scoville, as been indicated, there's
7 no question about that. Mr. Scoville was
8 fired. Only Julie Irving hired Mr. Tall. Now,
9 there's been additional information that's
10 floating because I suspect that they find that
11 as troubling as I do, and they've been trying
12 to fix that in some way. But it's clear here
13 that Ms. Irving is the genesis, the reason, of
14 these problems. She's the only one of the
15 three that hired Mr. Tall. And we've gotten,
16 as -- as I'm gonna get into in later in great
17 detail, she sent an ex parte e-mail to this
18 Court trying to explain some of that. It was
19 also affidavits that Mr. Tall -- that -- that
20 suspiciously sounded exactly in the tone and
21 tenor language sounded exactly the same as his
22 lawsuit. So I suspect that Mr. Tall crafted
23 those and did a pretty good job of it. They
24 did not -- they both sounded the same and they
25 both sounded in tone and tenor to the language



1 set forth in the pleadings. So I suspect Mr.
2 Tall drafted that.

3 **THE COURT:** Let me just say one thing. I hate to
4 stop your thought. But with the e-mail, did we
5 not or did my secretary not send you or Mr.
6 Tall and ultimately you a copy of the e-mail
7 where that e-mail says that the Court, me, have
8 not read that e-mail, don't intend to read that
9 e-mail, and will tell you right now I haven't
10 read it to this day.

11 **MR. DAVIS:** I believe you.

12 **THE COURT:** Is that -- is ---

13 **MR. DAVIS:** Yes, you did. And I ---

14 **THE COURT:** Okay.

15 **MR. DAVIS:** --- believe you.

16 **THE COURT:** All right.

17 **MR. DAVIS:** What I'm saying is just the fact that
18 she did that. And I ---

19 **THE COURT:** Okay.

20 **MR. DAVIS:** You did do that, and yes, we're -- we're
21 on the same page, Your Honor.

22 **THE COURT:** Okay. Excuse me.

23 **MR. DAVIS:** But that doesn't change the fact that
24 she did it.

25 **THE COURT:** I understand.



1 **MR. DAVIS:** And I have substantial relevance, which
2 I will, again, get to. Back to the -- the
3 facts. Steven lived there and -- and also they
4 -- Julie hired her -- the new counsel after Mr.
5 Scoville was fired. The other two did not hire
6 the other counsel. Even if it was a matter of
7 financial means, if Julie was -- if Ms. Irving
8 was the only one with the financial means to
9 pay for another attorney, that makes no
10 difference whatsoever. She could still pay for
11 the other attorney and the other attorney could
12 still represent all three of them. That is not
13 ---

14 **THE COURT:** Mr. Scoville didn't file a Notice of
15 Representation in the Probate Court, did he,
16 representing the other two?

17 **MR. DAVIS:** I don't believe he did earlier.

18 **THE COURT:** He -- he certainly didn't appear for
19 trial, did he?

20 **MR. DAVIS:** Right. He did not appear at the trial.

21 **THE COURT:** Okay.

22 **MR. DAVIS:** And as to the letter -- I'm going to get
23 to that later. He -- he represented all three
24 of the children, no question about that. That
25 has been absolutely substantiated. Mr. Tall



1 only represented Ms. Irving. So if this was an
2 issue between the beneficiaries, Mr. Tall
3 should have represented all three
4 beneficiaries. That indicates to me that the
5 problem rests with Ms. Irving, not with the
6 other two children and not with Ms.
7 Poafpybitty. All right. As I've mentioned the
8 -- the issues with Matt, and I -- I don't want
9 to pile on the guy. I'm only going to state
10 what is important for our case. We've got
11 testimony, we've got the public index searches
12 which you need -- which Your Honor will rule
13 on. There's a clear record, Your Honor, with
14 testimony that Matt has got drug issues. There
15 was also testimony about work that was gonna be
16 done at his residence that couldn't be done
17 because of drug parapyhanalia in the residence.
18 Couple that with his incarceration. It would
19 be hard to maintain a meaningful relationship
20 with Matt. Again, I don't want to pile on the
21 guy. I'm not here to beat Matt up. I just
22 want to make sure that the record is clear that
23 Matt is -- has substantial issues, Your Honor.
24 Okay. For some reason, and I don't -- and I'll
25 just state the facts. I won't give too much



1 commentary. Steven has relocated to Thailand,
2 which is a long ways away. For whatever reason
3 ---

4 **MR. TALL:** Your Honor, if we're going to hear
5 something about Mr. Davis's speculation as to
6 why someone lives in Thailand, I've been real
7 patient in listening to him give us his
8 opinion, and he says, I'm gonna stick to the
9 facts, as if that's something special. How
10 about we just stick to the facts and what's in
11 the record?

12 **MR. DAVIS:** I did, Your Honor. I've -- I stopped
13 and I said he relocated to Thailand.

14 **THE COURT:** I'm gonna -- I'm gonna let him.

15 **MR. TALL:** Thank you, Your Honor.

16 **THE COURT:** I'm gonna deny that specific Motion that
17 ---

18 **MR. TALL:** Forgive me if I'm ---

19 **THE COURT:** It's all right. No, no, no. It's all
20 right.

21 **MR. TALL:** --- abusive.

22 **MR. DAVIS:** I would -- I would simply ask the Court
23 to consider the possible reasons and let the
24 Court make its own determination about why he
25 may have relocated to Thailand. I -- and I



1 don't personally know. I've got my own ideas
2 which probably would be obvious. But ---

3 **MR. TALL:** He's a Mormon missionary, Your Honor.

4 **MR. DAVIS:** Your Honor, I object. I object.

5 **MR. TALL:** Do we know whether that's true or not?

6 **THE COURT:** I allowed ---

7 **MR. DAVIS:** I have no -- I have no ---

8 **THE COURT:** I allowed you to put that into ---

9 **MR. DAVIS:** I've never heard of that. I've never
10 heard of that, Your Honor. He could be a Dalai
11 Lama. I don't know. He could be the Prime
12 Minister of Thailand. I -- well, I know he's
13 not the Prime Minister, or whatever of
14 Thailand. But he has relocated to Thailand for
15 whatever reason. My -- given this Mormon
16 thing, I think he would want to be removed from
17 all this -- this dysfunction, but for whatever
18 reason, he's in Thailand. All right. So on
19 Page -- on Page 4, we've got -- down at the
20 bottom. I think it's -- it's really important
21 -- and again, I'm going to be talking for a
22 while, so I'm going to lay some more
23 foundation. Within weeks after Dr. Rothgeb
24 died, Ms. Poafpybitty was advised that she had
25 an elective share right, Your Honor, protected



1 by a Statute. And we -- we talked about this
2 in great detail during the trial. This Estate
3 is -- it's from 25 percent to a third, 33
4 percent, right, Your Honor?

5 **THE COURT:** Where at?

6 **MR. DAVIS:** Briefly down at Page 4, the bottom of
7 Page 4.

8 **THE COURT:** Bottom of Page 4.

9 **MR. DAVIS:** That Last paragraph, the -- your Order,
10 your e-mail ruling and then your -- later your
11 Order indicates that Ms. Poafpybitty
12 manipulated assets to her benefit to the
13 exclusion of the beneficiaries. I don't see
14 that at all. I can't for the life of me see
15 it. That's what has me scratching my head
16 beyond belief. I just can't for the life of me
17 understand how you got to that opinion. She
18 had a statutorily protected right for elective
19 share, one-third. She knew this long before
20 the time period ran for her to file for her
21 elective share. One-third is a lot more than
22 25 percent. Thirty-three and a third is a lot
23 more than 25 percent. It's, what, 8 -- 8
24 percent difference. Okay. If you've got about
25 a million dollar estate -- 8 percent, what is



1 8 percent of a million dollars? \$80,000. If
2 she knew that she could have \$80,000 more
3 dollars and consciously chose not to get
4 \$80,000 more dollars, how could she possibly
5 try to get more from the Estate to the
6 exclusion of the other beneficiaries. The
7 elective share was a slam dunk. It was 100
8 percent protected. There was no defense
9 anywhere on the planet that would have kept her
10 from getting her elective share. It was an
11 absolute slam dunk winner. No question. It is
12 completely protected by statute. There is no
13 defense that would have kept her from getting
14 her elective share. So she consciously chose
15 to give up her elective share. So how could
16 somebody who consciously gave up \$80,000 be
17 found to do things that would benefit her to
18 the exclusion of the other beneficiaries? I
19 cannot for the life of me understand how you
20 arrived at that decision, Your Honor. That has
21 befuddled me beyond belief. All right. As
22 time began to approach the one year mark after
23 the decedent's death, the relationship between
24 the plaintiff and the defendant obviously began
25 to sour. It's like the switch turned off, Your



1 Honor, it just flipped. It's like they were
2 getting along, they were e-mailing each other,
3 they were communicating. The one year mark
4 came and Ms. Irving was like I want my assets
5 right now. All right. Well, okay. All right.
6 Well, hold on a second. You know, we've still
7 got all of these properties. We've still got
8 all of these -- these issues. We got these
9 tenants. And we're trying to -- we don't have
10 a lot of cash in the Estate. We're trying to
11 sell some. We got some Mortgages we've got to
12 pay off. Okay. Just chill, hold on a second.
13 Well, that little hold n a second thing didn't
14 work with her. She wanted it and she wanted it
15 then and she wanted it on her terms, period, no
16 questions asked. Well, obviously she was not
17 satisfied because a couple months later, she
18 and her brothers went and hired Mr. Scoville.
19 As set forth during the testimony in the trial,
20 Mr. Scoville was provided every single bit of
21 information related to the Estate.

22 **MR. TALL:** Here's my objection, Your Honor. You
23 will not find that in Mr. Scoville's testimony.
24 Mr. Davis at trial tried to say that all
25 pertinent information was prevented --



1 presented to Mr. Scoville. I raised the
2 objection. Mr. Scoville is the one that talks
3 about what's pertinent to him. And if you're
4 trying to suggested that Mr. Scoville was
5 satisfied, Mr. Scoville made an agreement that
6 Ms. Irving turned her back on. Mr. Scoville
7 found no misconduct contrary to what Ms. Irving
8 was saying. You're making Mr. Scoville
9 testify. Your Honor, this is not the first
10 time I'm raising this issue on hearsay, it was
11 sustained. And Mr. Davis says at trial he's
12 going to rely upon two letters that are in the
13 Court file as exhibits. You won't find in
14 those two letters anything about what Mr.
15 Scoville was satisfied with or dissatisfied
16 with. And we're wasting the Court's time for
17 Mr. Davis raising this hearsay issue once more
18 after it was already established.

19 **MR. DAVIS:** Your Honor, I do -- I appreciate -- and
20 he makes a good point. But that's not what I'm
21 saying. He's -- he's on the wrong side of
22 that. I'm saying that Ms. Poafpybitty provided
23 everything that was requested and there's
24 nothing, no hearsay made to that ---

25 **MR. TALL:** Requested by whom? If it's requested by



1 Mr. Scoville, we don't know what he requested
2 other than those two letters.

3 **MR. DAVIS:** Your Honor, it's in the -- it's in the
4 testimony from the witnesses. The information
5 was requested. Every single thing was
6 provided. That is in the testimony.

7 **THE COURT:** Well ---

8 **MR. DAVIS:** I don't know what went through the brain
9 -- I -- I do know what went through Mr.
10 Scoville's brain, but I can't testify or I
11 can't provide it to the Court because that
12 would be hearsay. And I can't say what he told
13 me. But I can tell you what was going on ---

14 **MR. TALL:** And you can't hint at hearsay either.

15 **MR. DAVIS:** I can tell you what happened from the
16 Personal Representative's side, what they did,
17 and what our office did. I certainly can tell
18 you that all day long, Your Honor, and that's
19 all I'm doing.

20 **THE COURT:** I'm going to allow you to go ahead and
21 proffer this testimony because I did sustain
22 the objection as to hearsay and direct quotes
23 from Mr. Scoville during the trial. I remember
24 specifically that, and you even highlighted
25 that, I believe, or what is Mr. Tall in your --



1 in your Memorandum. But I want you to -- to
2 have the opportunity to present what you think
3 was appropriate to me. So ---

4 **MR. DAVIS:** Well, I ---

5 **THE COURT:** --- and also Mr. Tall to make any
6 objection that he has so that he protects his
7 record.

8 **MR. DAVIS:** And I -- and I appreciate what he's
9 saying. I would probably say the same thing.
10 So what I'm gonna do is, limit it from the
11 Personal Representative's side. I can tell you
12 that the Personal Representative provided
13 everything that was -- everything related to
14 the Estate. I can say that. Whether it was --
15 if he has a problem with me saying it was
16 requested by Mr. Scoville, fine. I can tell
17 you that everything related to the Estate was
18 sent to Mr. Scoville, either by Mr. Poafpybitty
19 or by my office, everything. He had everything
20 related to this Estate. All right. So I can't
21 -- I'll move on from there. After one year
22 after the -- Mr. -- Dr. Rothgeb passed away,
23 right after Ms. Irving was demanding that the
24 Estate be resolved and she receive her share,
25 Ms. Poafpybitty tried to explain that the



1 Estate was comprised -- numerous times, that
2 the Estate was comprised exclusively, almost
3 exclusively, of rental properties that had all
4 kinds of issues, Mortgages, tenants,
5 negligence, repairs. All right. There was --
6 there was a lot of discussion -- Your Honor,
7 Exhibit C is the -- is the first page of the
8 Will, which is offered as an exhibit. There
9 was a lot of discussion about raising money to
10 pay off the Mortgages. And as I'm going to get
11 to a little later, the definition of good
12 faith is whether you do -- you have some
13 colorable legal right to do that or a reason to
14 do that. And I'll get into that in more
15 detail. Well, there was absolutely a horrible
16 reason to do what -- what she did. On the
17 Will, it says, I direct -- under Item 1, I
18 direct that all of my legally enforceable
19 debts, secured and unsecured, be paid as soon
20 as practical after my death. There was also
21 some discussion from Mr. Tall about this last
22 sentence. It says, If and at any time of my
23 death, any of the real property herein devised
24 is subject to a Mortgage, I direct that the
25 devisee, singular, taken such mortgage property



1 shall be taken subject to such Mortgage.
2 There's a question. Should the property --
3 should the Mortgage be paid off before it is
4 distributed, or does this language mean that
5 the properties should be distributed subject to
6 a Mortgage? I can tell you as an expert what
7 I believe, according to Mr. Tall, authority, he
8 called me an authority. As an authority of
9 Probate law, that's not clear. So is there a
10 colorable reason, legal reason, for her to do
11 what she did? Absolutely. Positively. It
12 says right here in the first sentence, I direct
13 that all my legally enforceable debts, secured
14 and unsecured, be paid as soon as practical
15 after my death. That tells me that she needs
16 to liquidate some things and pay off the debts.
17 That's what the Will Says. That's what it says
18 to me and that's what it says to the Personal
19 Representative. Well, this last sentence, as
20 it was testified to at trial appears to say, Is
21 it a specific piece of property as devised to
22 a certain person, then they take that property
23 subject to the Mortgage. Here we didn't have
24 any specific devises. We only had a residuary
25 devise. So that residuary devise does not say



1 this person gets that piece of property. So I
2 still believe this first sentence has
3 application. And in the very least, is
4 questionable. So it's not -- it's not set --
5 well, it -- to me it looks like she needs to
6 raise cash to pay off these Mortgages, which
7 she was trying to do and sell some properties
8 which meant there were still Mortgages and
9 debts owed after the one year mark, meaning she
10 could not distribute all the properties. All
11 right.

12 **THE COURT:** And I believe you indicated it before,
13 but the Estate was cash poor ---

14 **MR. DAVIS:** Cash poor.

15 **THE COURT:** --- basically amounted to the properties
16 of the Estate?

17 **MR. DAVIS:** Yes, Your Honor.

18 **THE COURT:** Okay.

19 **MR. DAVIS:** All right. That letter from Mr.
20 Scoville, I won't -- I won't add commentary
21 because I understand Mr. Tall's position and
22 it's a good position. So I'll -- I just want
23 to read from his letter as part of the record.
24 Exhibit D, the letter from Mr. Scoville, the
25 very first sentence, it says ---



1 **THE COURT:** What's -- what's the date of that letter?

2 **MR. DAVIS:** This date is October 6th, 2015. So he
3 died -- again, the time line, Your Honor. He
4 died at the end of January 2014. February --
5 late February/March was when the Estate really
6 started. It went around for a year. Ms.
7 Irving got upset, hired Mr. Scoville in March,
8 April, May, somewhere around there, so this is
9 the result of that. All right. The first
10 sentence says, My clients have had time to
11 reflect on the distribution of the Estate
12 assets. This is the attorney representing
13 Julie Irving, Matthew Rothgeb, and Steven
14 Rothgeb. Okay. He wrote me a letter after a
15 lot of communication between the two, which I
16 can't go into for obvious reasons. After
17 receiving whatever he received, and whatever
18 analysis he made, he wrote me a letter, Your
19 Honor, and he said, My clients have had time to
20 reflect on the distribution of the Estate
21 assets. So that -- that tells me, your Honor,
22 that he has looked at whatever he had, that he
23 has talked to his clients, the clients have
24 thought about all of this and they have come to
25 some kind of conclusion. Is that what it would



1 say to you, Your Honor?

2 **THE COURT:** That's not a proper thing to do is to
3 ask the Court.

4 **MR. DAVIS:** Okay. I won't do that again. That's
5 what it says to me, Your Honor, that he has
6 taken the time, met with the clients, and they
7 have come to some kind of an understanding or
8 some kind of an agreement. So I get this
9 letter after communications with Mr. Scoville.
10 We're like, okay. They say -- well, we did an
11 inventory based on the tax assessed value of
12 all of the properties. That was not sufficient
13 for them for distribution purposes. Mr.
14 Scoville requested an appraisal of all of the
15 properties. We said, Okay. We agreed on an
16 appraisal. The appraiser appraised all the
17 properties, all of them, same appraiser,
18 mutually agreed upon appraiser. When we got
19 the appraisals back and it was time to make
20 distributions to close the Estate in November
21 and December of 2015, Ms. Poafpybitty was ready
22 to close the Estate, Your Honor. It was Ms.
23 Irving that kept the Estate from being closed.
24 It was Ms. Irving that kept the Estate from
25 being closed. All right. Let me -- Reese, can



1 you pull up the telephone conversation? Also,
2 as I mention before we look at the telephone
3 conversation, that one of the reasons was the
4 residence was valued a little bit lower than
5 the tax assessed value, and that caused some
6 heart burn, as we -- as we've been over. Well,
7 as indicated in the Memorandum and in the
8 spreadsheet, Your Honor -- Reese, can you --
9 before we get that, go to Exhibit E, the
10 spreadsheet. And I understand that, Your
11 Honor. If I were to get something back and the
12 person in charge, the asset that they were
13 getting went down substantially, I would be a
14 little suspicious too. I mean, just from --
15 just looking at a piece of paper, that would --
16 that would make me a little suspicious also.

17 **MR. TALL:** May we be clear, Your Honor, on the date
18 of this spreadsheet?

19 **THE COURT:** Sure. What date was the spreadsheet
20 done or sent to everyone? Do you recall?

21 **MR. DAVIS:** This was sent, I think, in January or
22 February of 2000 ---

23 **THE COURT:** '16.

24 **MR. DAVIS:** --- '16, months before Ms. Irving hired
25 Mr. Tall. Actually, this -- no. This -- this



1 -- this one, this spreadsheet, Your Honor, is
2 similar to a spreadsheet that was done, I think
3 ---

4 **MR. TALL:** I raised the issue, Your Honor, because
5 there was one in December of 2015. There was
6 another one in January of 2016 and there was
7 another one presented at trial.

8 **MR. DAVIS:** Right. Exactly.

9 **MR. TALL:** And so -- just so that we're all clear as
10 to what we're talking about.

11 **MR. DAVIS:** He's right, Your Honor. The first one
12 was sent by my probate paralegal without the
13 repairs on it. And about a month later it was
14 updated to show how the repairs would be
15 charged by Ms. Poafpybitty. And then this is
16 the third one. This is the one that I added to
17 for trial purposes.

18 **THE COURT:** Okay. So this is ---

19 **MR. DAVIS:** Mr. Tall is exactly right. That's what
20 happened.

21 **THE COURT:** This is the ---

22 **MR. TALL:** Let's be clear. What we're looking at
23 right now was never presented in 2015 or 2016
24 to Ms. Irving.

25 **MR. DAVIS:** It -- the majority of it was.



1 **MR. TALL:** We can't get confused about this, Your
2 Honor.

3 **MR. DAVIS:** The part about the percentage of change
4 in value was not.

5 **THE COURT:** But what -- the exhibit itself was ---
6 **(Multiple speakers speaking simultaneously.)**

7 **MR. TALL:** This is just an argument that he ---

8 **MR. DAVIS:** This part -- these parts ---

9 **MR. TALL:** --- that the Defendant's made.

10 **MR. DAVIS:** These parts here, Your Honor, were
11 provided to Ms. Irving. This part here ---

12 **MR. TALL:** I'll object, Your Honor. We can put up
13 what Ms. Irving received and I insist that we
14 show what she received and how she reacted to
15 them.

16 **MR. DAVIS:** These -- this was provided. I've got --
17 we've got both of them.

18 **MR. TALL:** Let them -- let them -- present them.

19 **MR. DAVIS:** They're exhibits. They're both
20 exhibits. This -- and I'll just -- we can come
21 back and address -- I'm telling the Court,
22 this and this information and this was all
23 provided. Ms. Irving had that. I did this for
24 trial, right here. Okay. All right. So Ms.
25 Irving gets information about a proposal for a



1 distribution with Ms. Poafpybitty getting the
2 residence with a substantial decrease in value.
3 So the residence, Your Honor, would be the
4 Crooked Pine property.

5 **THE COURT:** Which is Number 6 of that Exhibit?

6 **MR. DAVIS:** Yes, Your Honor. This one here. She
7 gets this showing that there's a substantial
8 decrease in value. And bear in mind, she also
9 got this right here showing the difference. So
10 if I were just getting the appraised value
11 without more information about the residence,
12 that would probably make me suspicious too. I
13 was like, okay, well, then let's get some more
14 information. But she had a -- well, also,
15 let's look at the other properties. So the
16 property -- which one was Ms. Irving supposed
17 to get? I think this one.

18 **MR. TALL:** Your Honor, we're clear we're not looking
19 at something that was presented to Ms. Irving?

20 **THE COURT:** No. This was -- this was the ---

21 **MR. DAVIS:** It was.

22 **THE COURT:** --- document at trial.

23 **MR. TALL:** Thank you, Your Honor.

24 **MR. DAVIS:** Well, the majority of it was presented,
25 Your Honor.



1 **THE COURT:** But his particular document ---

2 **MR. DAVIS:** This particular document was ---

3 **THE COURT:** --- was presented at trial.

4 **MR. DAVIS:** --- was at trial.

5 **THE COURT:** Right.

6 **MR. DAVIS:** So the letter from Mr. Scoville would
7 indicate which one. Do you have that? Which
8 one was it?

9 **MR. BOYD:** In ...

10 **THE COURT:** Column F on your exhibit -- oops.
11 Excuse me. Column F on the exhibit is all
12 decreases in value; is that correct?

13 **MR. DAVIS:** Yes, Your Honor.

14 **THE COURT:** Okay. They're all decreases. No -- no
15 property increased after the appraisal was
16 done.

17 **MR. DAVIS:** So Ms. Irving was supposed to get the
18 Hanover property.

19 **MS. IRVING:** No.

20 **MR. DAVIS:** Which one was it?

21 **MS. IRVING:** Plantation.

22 **MR. DAVIS:** Plantation. All right. Plantation.
23 Thank you, Julie. Ms. Irving was supposed to
24 get the -- the Plantation Drive property, which
25 was -- the inventory was \$140,700, right, prior



1 to the appraisals. So we got them all
2 appraised. The appraisal came back. The
3 property that Ms. Irving was supposed to get
4 went down \$40,000, \$40,700, so she was getting
5 more, I guess, for a lack of a better way to
6 put it. Because what the tax assessed value
7 was this(indicating), now the appraised value
8 the appraiser did, the mutually agreed upon
9 appraiser did, for all the properties, the
10 property Ms. Irving was getting went down
11 \$40,700. The property that Ms. Poafpybitty was
12 supposed to get went down substantially, but
13 then you had to add back in these -- these --
14 it was like 100 -- it went down 61.93 percent.
15 Hers went down 40.7 percent, right? It's not
16 like Ms. Poafpybitty was getting something --
17 the only one getting something that went down
18 in value. I mean, these were -- it was -- it
19 was understandable. It was especially
20 understandable when you give them -- given the
21 mold and the roof, the water damage, all that
22 stuff. I mean, it was a mess. So I want to
23 point out to the Court that there was a
24 decrease as in value and not only Ms.
25 Poafpybitty's but also the property going to



1 Ms. Irving, and the other properties, I mean,
2 these properties went down, also. They were
3 going to other beneficiaries. So Ms.
4 Poafpybitty wasn't trying to get anything more.
5 But I understand Ms. Irving's suspicion. If
6 she had got left -- but she had all this
7 information, Your Honor, prior to hiring Mr.
8 Tall. All right. Let's go to the phone
9 conversation, Your Honor. I've got a
10 transcript of the phone conversation. You --
11 you listened to this phone conversation, Your
12 Honor, during the ---

13 **THE COURT:** Trial.

14 **MR. DAVIS:** During the trial. As indicated in the
15 e-mails that are part of the record and part of
16 this Memorandum, counsel for Ms. Poafpybitty,
17 me, in my office, made a number of attempts to
18 -- see, I knew something wasn't right, Your
19 Honor. When I got this letter from Mr.
20 Scoville, we got all the appraisals done, and
21 then all of the sudden out of the blue -- out
22 of the wherever, it's like, no, I don't want to
23 do that. I'm like, wait a minute. What do you
24 mean? Wait a minute. I didn't know what to
25 say. I was like, What do you mean? I mean, I



1 was flabbergasted. I didn't know how to
2 respond. I was like, Wait a minute. We spent
3 all this time, did everything that y'all asked
4 us to do and you just don't want to do it
5 anymore? So we're like what are we supposed to
6 do? We've got a Will that says that the
7 Personal Representative has the authority --
8 additional language that's not in any of the
9 Wills that I've ever used, that says a Personal
10 Representative can choose who gets what piece
11 of property, extra language, not customary
12 normal language.

13 **THE COURT:** You did not prepare the Will?

14 **MR. DAVIS:** I did not prepare the Will.

15 **THE COURT:** Do you know who did?

16 **MR. DAVIS:** David Martin.

17 **THE COURT:** David Martin.

18 **MR. DAVIS:** We have extra language in there giving
19 the -- the Personal Representative the sole
20 right to choose who gets which piece of
21 property. So she did not -- the Personal
22 Representative did not even exercise that
23 right. She said, Okay, I don't want a problem.
24 Y'all tell me what properties you want. So she
25 had the right, prior to Mr. Scoville's



1 intervention, to just say you're gonna get
2 these properties. But she did not do that.
3 She said, no, I want everybody to get along.
4 Let's resolve this thing. So we got all of
5 that done and out of the sudden, out of the
6 blue, no I don't. -- Ms. Irving's like, no, I
7 don't want to do that. Give all the properties
8 in equal shares four ways. We're like -- as
9 you would probably assume, Your Honor, you
10 don't know what to do. You're like holy moley.
11 So I saw a problem arising. We got a couple
12 letters -- I got a couple letters from Ms.
13 Irving and I could tell she was building some
14 kind of a case. It was obvious to me that she
15 was upset and she was building a case and she
16 was heading somewhere. And I said, all right.
17 What can I reasonably do to stop this from
18 happening? I said, let me just have a meeting
19 with all of them.

20 **THE COURT:** As a good lawyer would.

21 **MR. DAVIS:** As a good lawyer would.

22 **THE COURT:** What can we do to try and ---

23 **MR. DAVIS:** What can we do ---

24 **THE COURT:** --- help them.

25 **MR. DAVIS:** --- to just finish this Estate, close



1 it, and get it off my -- out of my office.

2 **THE COURT:** Let me ask you a question. And, Mr.
3 Boyd, could you put back up the letter of Mr.
4 Scoville of ---

5 **MR. BOYD:** Certainly, Your Honor.

6 **THE COURT:** --- October the 6th, 2015? Is that
7 possible? I don't know how y'all do that.

8 **MR. DAVIS:** Yes, we can.

9 **MR. BOYD:** Do I need to go to microscope?

10 **THE COURT:** That's good. In that -- in that letter,
11 does it not say that -- it says, It is
12 unfortunate that your client, the Personal
13 Representative, has not included the children
14 in discussions about all of this because we
15 feel that that is certainly what Mr. Rothgeb
16 would have wanted. And then in that letter --
17 and this is all prior to the inventories that
18 I believe the first one, according to my
19 records, was in December of '15, 2015. Then
20 there was one in January of 2016. And then the
21 one that we -- we've just been looking at
22 trial. I mean, that's what it says, is it not?
23 So this is not the first time that there has
24 obviously been some problem between the PR and
25 the children.



1 MR. BOYD: October.

2 THE COURT: Is it ---

3 MR. DAVIS: October what? The Inventory and
4 Appraisement was filed ---

5 THE COURT: October 6th, 2015.

6 MR. DAVIS: --- July 11th ---

7 MR. TALL: Your Honor ---

8 MR. DAVIS: 2014.

9 MR. TALL: --- you've used the term Inventory. I
10 think you're meaning the Proposal for the
11 Distribution of the Property.

12 THE COURT: Yes, the proposed two documents.

13 MR. TALL: Thank you, Your Honor.

14 MR. DAVIS: The Inventory and Appraisement was filed
15 August 7th, 2014.

16 THE COURT: '14, okay.

17 MR. DAVIS: 14. So they ---

18 THE COURT: And that's the one that had the inflated
19 values?

20 MR. DAVIS: No. That is the one that had all the
21 assets in the Estate.

22 THE COURT: I understand, but ---

23 MR. DAVIS: Based on the taxes.

24 THE COURT: --- the representations of that were ---

25 MR. DAVIS: The taxes.



1 **THE COURT:** --- substantially higher than actually -
2 --

3 **MR. DAVIS:** Yes.

4 **THE COURT:** --- we found out once the appraisal was
5 done?

6 **MR. DAVIS:** Yes.

7 **THE COURT:** Okay. That makes sense.

8 **MR. DAVIS:** They had -- they had a full inventory of
9 all the Estate assets.

10 **THE COURT:** Correct. And that is ---

11 **MR. DAVIS:** Prior to ---

12 **THE COURT:** --- nobody objected to -- to that at
13 that time?

14 **MR. DAVIS:** That was the tax assessed value ---

15 **THE COURT:** Correct.

16 **MR. DAVIS:** --- prior to hiring Mr. Scoville.

17 **THE COURT:** Right.

18 **MR. DAVIS:** And as far as that assertion goes, Your
19 Honor, obviously we disagree with you
20 completely because ---

21 **THE COURT:** I understand.

22 **MR. DAVIS:** --- of those numerous communications.

23 **THE COURT:** Certainly.

24 **MR. DAVIS:** And that is -- that is the attorney
25 representing those beneficiaries, sir. And



1 again, we were -- just prior to him being
2 hired, she was still within the eight month to
3 one year period where she was still trying to
4 get all the Estate stuff done. So there wasn't
5 really an opportunity to say we're gonna
6 distribute, because there wasn't time to
7 distribute them anyway. So that -- that is
8 part of the reason that, you know, distribution
9 was not discussed sooner. All right. Let's go
10 to the Exhibit I, I think it's I. All right.
11 So seeing that there was an issue, Your Honor,
12 I said, listen, let's -- I told my paralegal,
13 I said, Schedule a meeting with Ms.
14 Poafpybitty, Steven, Matthew and Julie and
15 let's get done with this. I want this out of
16 my office. I want to talk to them face to
17 face. We're gonna figure out who wants --
18 because Ms. Poafpybitty didn't really care.
19 She wanted to resolve this Estate just like we
20 all did on our side. So I said let's get a
21 meeting and let's be done with it. So I sent
22 e-mails, we sent Notices, anything we can do,
23 let's meet and let's talk about who gets what.
24 Let's distribute it and let's close this Estate
25 and move on down the road. I could not get



1 them to agree to meet. They wouldn't for
2 whatever reason. So I said, Okay. What do I
3 do? So I kept insisting. I said, I've got to
4 at least talk to Julie. I said if I could just
5 talk to Julie, we can come to some kind of
6 terms. I -- we can resolve this thing.

7 **MR. TALL:** Your Honor, so long as Mr. Davis is
8 quoting from the record of the trial, I don't
9 mind. But if he's testifying, again, I have a
10 little concerns.

11 **THE COURT:** I understand your objection, but I think
12 the Court can ---

13 **MR. TALL:** Thank you.

14 **THE COURT:** --- can realize what is -- is being said
15 and whether it conforms with -- with the
16 transcript.

17 **MR. TALL:** Thank you, Your Honor.

18 **MR. DAVIS:** So the least I could get -- or the most
19 I could get was a phone conference with Ms.
20 Irving. We did schedule that. And as you'll
21 see from the e-mails, we went back and forth,
22 and I said we've got to do something because I
23 could tell there was a problem brewing. I said
24 how can I shortcut this? So we scheduled a
25 phone conference. On February 12th, 2016, we



1 have it. So I go in -- we go in the office and
2 as testimony has and as this transcript will
3 indicate, it's me, Becky Weaver, Probate
4 Paralegal, on a phone in the conference room
5 and Ms. Irving on the other side. So we call
6 -- or she calls us, or I call her, I can't
7 recall who called who -- which. First
8 question, I -- I immediately say, We have you
9 on speaker phone, I've got my Paralegal in the
10 office, she takes notes, helps me with the
11 file. Are you okay with -- it's just the two
12 of us in a closed conference room, are you okay
13 with being on a speaker phone. She says, No,
14 take me off the speaker phone. I have never
15 experienced that, Your Honor. I don't recall
16 experiencing somebody telling me to take them
17 off of the speaker phone in that setting. I
18 think I've had other people not like the -- the
19 -- the way the reverberations may have sounded,
20 you know, but I haven't had anybody that I can
21 recall say no because -- for whatever reason,
22 so. She insisted that we take her off speaker
23 phone. So I said, Okay, not a problem. Again,
24 I'm trying to resolve this thing so I'm like
25 whatever. So we start talking and as you've



1 learned and as I learned for the first time
2 late in discovery in this matter, she was
3 recording that phone call. She didn't tell me
4 she was recording the phone call. She didn't
5 ask for my permission to record the phone call.
6 She didn't tell my paralegal she was recording
7 the phone call. She didn't tell anybody in my
8 office ever that she was recording the phone
9 call or asked for permission. And didn't even
10 tell me after the phone call. It wasn't until
11 Mr. Tall provided it in discovery. I was
12 flabbergasted, obviously. So this call, I had
13 no idea it was being recorded so you're getting
14 the raw information. There was -- I was --
15 there was nothing I was -- that I was trying to
16 hide because I thought something was being
17 recorded, which I wouldn't do anyway. So
18 you're gonna -- you're getting -- you're
19 getting the right, you know, as it happened.
20 Real time, I guess if I could put it some way.
21 All right. Let's go down to the -- there's a
22 -- this first part where we're exchanging some
23 pleasantries, she's telling me not to have her
24 on speaker phone. I said I had some ideas, she
25 said so you said you had some ideas. And, of



1 course, the first thing I brought up was this
2 letter from Mr. Scoville why it was -- why had
3 things changed since we got this letter. We go
4 on, she tells me it's -- that it's her
5 brothers, but her brothers, again, would not
6 participate in the phone call. Her brothers
7 would not participate in the meeting. But she
8 tells me she's representing her brothers. And
9 then also bear in mind that the distributions
10 included two residences, Your Honor. The one
11 that Ms. Poafpybitty was gonna live in and the
12 one that Matt was gonna live in. So Matt was
13 gonna be a 100 percent owner of his own
14 personal residence and Ms. Poafpybitty was
15 gonna be 100 percent owner of her own personal
16 residence. That was part of the plan. The
17 house that she had lived in with Dr. Rothgeb
18 for 20 years or more, or whatever. It's around
19 20 years that she had lived in this house.
20 Okay. This is not some Estate property that
21 just popped up that she had moved into. She
22 had been living in it for a long time. All
23 right. Let's scroll down some more. All
24 right. She -- she goes on -- Your Honor, I --
25 I -- we've pointed this out to the Court a



1 number of times. And I will say without
2 question I am convinced that this case is an
3 issue of control. A beneficiary wanting to
4 control the Estate. She and her brothers
5 represent 75 percent of this Estate. It was
6 clear from this -- the transcript here. We
7 keep going back to the 75 percent. None of
8 that's not true. Like I said, we own three-
9 fourths of the Estate, three-fourths of the
10 Estate. Go down. And some -- during the --
11 and in here she says that she talked to counsel
12 and then -- during the testimony there was
13 something about counsel. Whoever gave her that
14 counsel is miserable advice. So I explained to
15 her, Your Honor, during this call, that even
16 though you may own 25 percent of undivided
17 interest and with your brothers y'all represent
18 75 percent of undivided interest. That doesn't
19 mean anything with real estate. You can't go
20 mortgage a piece of real estate with a 75
21 percent interest. They're going to require all
22 of the owners or you're not going to be able
23 to get title insurance from a bank. You're not
24 going to be able to get a price on it. You're
25 not going to be able to sell the property



1 unless all four people sign the property --
2 sign the deed. You know that. We all know
3 that. So just having a 75 percent undivided
4 interest -- interest in real estate doesn't
5 give you control. If you have an LLC or a
6 Corporation and you've got Minutes that say
7 that you have control, you've got a 51 percent
8 vote, or whatever, is one thing. But if you
9 own a personal, undivided interest in real
10 estate, you don't have any real right to do
11 that. And then the other thing parties have a
12 right to partition, which means they sue the
13 other owners and they have a lawsuit, they sell
14 the property, they pay the legal fees and they
15 distribute what's left over. So we've got this
16 ---

17 **THE COURT:** Was a partition action ever suggested by
18 the PR to any of the other beneficiaries?

19 **MR. DAVIS:** It was discussed in great detail in this
20 phone conversation.

21 **THE COURT:** In this phone conversation?

22 **MR. DAVIS:** Absolutely. Absolutely. I went in
23 great detail and I'll show -- let me show you.
24 I'll go right to it.

25 **THE COURT:** Another thing, the partition provision,



1 there is a provision that one of the owners, no
2 matter how small the percentage, can upon the
3 proper documentation file and say I want to buy
4 it and get it appraised and whatever the
5 specific language of the Statute is, if nobody
6 else wants it and buy it. Is that -- isn't
7 that correct?

8 **MR. DAVIS:** Yes, Your Honor.

9 **THE COURT:** Okay.

10 **MR. DAVIS:** And you know what? In your -- your
11 experience with partition actions, those
12 normally take about a year or so. So let's
13 look at two -- two different scenarios. If we
14 agree -- if we know people want a certain piece
15 of property in the Estate and we distribute
16 those properties to them today and they own 100
17 percent of that piece of property, okay, that
18 will happen immediately, right now, noo
19 questions. If we distributed that in equal
20 four interests and then they are forced to
21 bring a partition action, that is much worse
22 than agreeing right now to a distribution and
23 getting the property.

24 **THE COURT:** I would agree with that. But the PR has
25 the right to bring the partition action,



1 doesn't -- doesn't it?

2 **MR. DAVIS:** Well, there was no need to bring a
3 partition action. She also has the right to
4 choose who gets which piece of property. The
5 Will, under the exact black and white language
6 of the Will. So it was not necessary. The
7 only reason that she was even involved in all
8 this stuff was that she was trying to work with
9 the beneficiaries. She didn't have to.

10 **THE COURT:** You're not saying that the PR, under
11 these circumstances, has unfettered right to do
12 whatever she wants to do, do you?

13 **MR. DAVIS:** She has -- no, of course, not.

14 **THE COURT:** Okay.

15 **MR. DAVIS:** Nobody ever does. She has the right to
16 choose who gets which piece of property so long
17 as the values are equal -- are approximately
18 equal.

19 **THE COURT:** Equal. _____

20 **MR. DAVIS:** Based on what the Will -- sure she
21 can't. That's not what she was gonna -- yes,
22 I mean, that goes without saying, Your Honor.

23 **THE COURT:** All right.

24 **MR. DAVIS:** All right. Let's see. I didn't
25 highlight the part about the partition, but I



1 can -- I can find it, Your Honor. Reese, can
2 you scroll through there also and see if you
3 see the part about a partition? All right.
4 Let me just -- let me just go through here. I
5 think there's a lot of other pertinent
6 information ---

7 **THE COURT:** Certainly, certainly. Please.

8 **MR. DAVIS:** --- in this phone call. Because this is
9 -- this is critical, Your Honor. This is an
10 attempt to resolve the Estate. And this is
11 where apparently it really took a left turn.
12 And I want you to see the information that was
13 provided prior to that left turn. And I still
14 completely don't understand why that left turn
15 happened. All right. On Page 1, I say, All
16 right, let's take it off speaker phone. She
17 says, So you have some ideas? I said, Yes, the
18 idea was going to go along with the letter that
19 I got from Jack that says that South Bay Lake
20 would go to Steven, Deerfield would go to you,
21 and the house where Matt lives would go to him,
22 based on that letter. The letter from Jack was
23 back in -- this is Ms. Irving. The letter from
24 Jack was back in September. I've sent you
25 several letters in the past 30 days. As I



1 mentioned, I believe, she was building a case.
2 I said, Okay, you would rather own something
3 with all four of you being owners? She says,
4 It's not just me, this is coming from all three
5 of us. We're trying to follow my Dad's Will at
6 this point. Like I said, the Estate, the
7 monies, the have -- you know, there's still
8 debt that has not been paid down. Again, part
9 of the reason they're selling the property.
10 The last sentence, There's condos that have
11 been sold, several condos, line of credit needs
12 to be paid off -- has not been paid off. So
13 that's why we made a decision at this point in
14 time, the fact that the Estate has been open
15 two years. Open for two years, Your Honor. It
16 could have been closed a whole lot sooner. And
17 it wasn't because of the Personal
18 Representative. We decided between the three
19 of us owning 75 percent of the Estate, that
20 this is the decision we made collectively,
21 being three-quarters of the Estate. Bear in
22 mind, they did not, again, did not participate
23 in this call or meeting. And then I say, Well,
24 Matt -- Matt, as the record reflects, Matt and
25 Steven indicated to me that they wanted their



1 properties. Steven indicated in a e-mail as
2 part of this that he wanted his property. So
3 that's inconsistent with what Ms. Irving is
4 saying. And Matt indicated through Jack that
5 that's what he wanted in this letter. So I've
6 got information that -- that Steven and Matt
7 wanted their properties. Okay. So that's
8 confusing to me. So and it says, Okay, Matt
9 does not want the place where he lives. I was
10 like, Well, what changed? Ultimately he does.
11 So why would we not distribute the property to
12 him now if he wants the property where he
13 lives? There's no reason why we can't.

14 **THE COURT:** Were the Mortgages on all seven or eight
15 pieces of property?

16 **MR. DAVIS:** No. There was only two -- a couple of
17 Mortgages. There weren't Mortgages on all of
18 the properties.

19 **THE COURT:** Okay. Were there Mortgages on the home?

20 **MR. DAVIS:** On the home.

21 **THE COURT:** On both residences? Or do you recall?

22 **MR. DAVIS:** There's one on the residence I ---

23 **MR. BOYD:** Deerfield and Crooked Pine.

24 **MR. DAVIS:** Deerfield and Crooked Pine. The
25 residence is Crooked Pine and the Deerfield



1 property also. All right. My brother was
2 paying rent for years prior to my father
3 passing. And although he has not paid on the
4 house the last couple of years, he does want to
5 stay in that house, so my brothers and I will
6 work that out with him at a later date. Okay.
7 Something -- this doesn't make any sense to me.
8 If you and your brothers are gonna -- you and
9 your -- and Matt and Steven are gonna work out
10 that Matt is gonna get the house at a later
11 date, Jeanne is gonna be a 25 percent owner of
12 that house. Why are -- why would we even
13 conceivably think about it? Just give Matt the
14 property. If Matt wants it, let's give it to
15 him. He gets 25 percent of the Estate. I
16 said, Yes -- or Yeah, but it wouldn't be you
17 working it out. You would have to have Jeanne
18 to work it out with you. No, that's not true.
19 No, that's not true. Like I say, We own three-
20 quarters of the Estate and that property is
21 only valued at 55,000, so she doesn't have to.
22 Again, she got miserable advice, legal advice,
23 or whatever kind of advice. Because she thinks
24 because they have a 34 -- or a 75 percent
25 undivided personal ownership of the property,



1 she can control the property. I said, Well,
2 you would, though. You may need to confirm
3 that with your attorney. But the law would be
4 that if we were to put the property in all
5 four names, you can't do anything without
6 everybody's signature. Everybody has to sign.
7 Well, you can't -- and I said, You can't stop
8 something with a 75 percent vote. It's not
9 like a company. You cannot transfer any
10 property unless Jeanne signs off on any of
11 them. Well, if you own it four ways -- we can
12 deal with that when the Estate closes. You --
13 you're a very wise Judge, Your Honor, and
14 attorney. Why would you create a problem when
15 you can resolve it today? And I say, Well, why
16 wouldn't you deal with it now? Because we want
17 to close the Estate. The Estate's been open
18 for two years and we don't want to continue to
19 pay. I mean, we put this in a letter and have
20 you written -- have you read the letters I have
21 written? We don't want to keep the Estate open
22 any longer. We don't want to. And I'm like,
23 Why? Why do you not want to distribute the --
24 and I'll just leave it at why, for the stuff
25 I already mentioned. Why would we want to keep



1 the Estate open any longer. It's been two
2 years? Well, eventually, you're gonna have to
3 resolve who owns what property. Eventually,
4 it's gonna have to be done. Why would you put
5 it off when it can be done now? Okay. You
6 said you had some -- she didn't like that idea.
7 Obviously. Okay, you said you had some ideas.
8 I'm just -- I'm on the telephone, I'm giving
9 you time, so what is your idea? The idea is to
10 agree on who wants -- who wants what properties
11 and distribute the properties out and then
12 close the Estate. Well, I saw the
13 distribution, the sales spreadsheet a couple of
14 months ago, and the three of us, my brothers
15 and I, don't agree with the distribution sheet.
16 All right. Okay. Okay. And that's fair.

17 **THE COURT:** What's the date of this conversation? I
18 honestly read ---

19 **MR. DAVIS:** February of 2016.

20 **THE COURT:** '16.

21 **MR. DAVIS:** Long before she hired Mr. Tall,
22 obviously.

23 **THE COURT:** All right.

24 **MR. DAVIS:** This was shortly after she fired Mr.
25 Scoville. Okay. Okay. So I got -- I got this



1 thing, she doesn't like the spreadsheet,
2 doesn't like the properties.

3 **MR. TALL:** Your Honor, we'll be clear, it's not the
4 spreadsheet that Mr. Davis put on the board a
5 moment ---

6 **THE COURT:** I understand.

7 **MR. TALL:** --- a moment ago.

8 **THE COURT:** Right. I understand.

9 **MR. TALL:** It was one that was forwarded.

10 **THE COURT:** The one that was done in December.

11 **MR. TALL:** Okay.

12 **MR. DAVIS:** All right. So, Your Honor, I'm looking
13 at this thing and I said, Okay, you don't like
14 the spreadsheet after these appraisals that
15 your attorney asked for, you don't like it.
16 And I understand that, and it's fine if she
17 didn't like it after we got it back, whatever,
18 for whatever reasons she had -- I didn't even
19 know hers went down in value and the other ones
20 went down in value. So this is what I offered
21 to her, Your Honor. I said, Okay, let's make
22 some adjustments. Let's close the Estate.
23 Let's make some adjustments in a spirit of
24 resolution. So what did -- this is what I get
25 back. The adjustment is -- is -- is that we



1 are following my dad's Will and in following my
2 dad's Will, we own three-quarters of the Estate
3 and doing what we want, the property divided in
4 equal parts, and that's what we wrote in the
5 letter. Completely unmoving, would not even
6 consider distribution of the properties, Your
7 Honor. And that's what the Will calls for.
8 The problem in this case, Your Honor, is Ms.
9 Irving completely unmoving and obsessed with
10 control. All right. So let's go -- let's keep
11 going. On Page 4, she goes on -- Ms. Irving
12 goes on. It says, This is about -- the top of
13 Page 4. This is about -- this is about closing
14 the Estate. We want closure. Okay. So I'm --
15 I'm trying -- when you try to resolve things,
16 you try to find out from the parties what is
17 their -- what's important to them, right?
18 What's important to these people? When I find
19 out what's important to these people, then I
20 can resolve it. I can say, well -- I'm like,
21 Okay, closing the Estate is important to Ms.
22 Irving. All right. That's where I'm going to
23 move to because I want this out of my office.
24 All right. So this is what I say in response
25 to this -- on the top of Page 4. We want



1 closure. I say, Yeah, the pain for that issue
2 is somebody brings a partition action and it's
3 then partitioned, you sell the property, pay
4 legal fees, and split the proceeds. Well, like
5 I said, we're willing to deal with that. That
6 doesn't sound like closure. So I'm confused.
7 My brothers and I, this is what we want
8 collectively, we want to close the Estate. So
9 you know, this is what we want. She's the
10 Personal Representative at this point, we want
11 to close the Estate, the three of us. So she
12 hammers it home again, she wants to close the
13 Estate. So I'm like, Okay. I'm like, Oh,
14 well, I'm gonna just roll with this the best I
15 can. So let me make sure I understand what
16 you're saying. If we do -- if we distribute
17 the properties like we suggested or a way that
18 we can agree, we can close the Estate
19 immediately. So if she was concerned with
20 closing the Estate, why wouldn't she agree to
21 the distribution of properties. The Estate
22 could have been closed in the beginning of
23 2016.

24 **THE COURT:** If the PR had -- had signed the Deed to
25 all the property that remained at that point,



1 25 percent interest each, you could have closed
2 the Estate, couldn't you?

3 **MR. DAVIS:** But we've already been over that, Your
4 Honor. If we have ---

5 **THE COURT:** No, no, no. Just answer the question
6 first. I'll be glad to let you explain. If
7 she had issued a Deed for the properties, 25
8 percent each, which was what her -- would that
9 not been what the closing -- with the filing
10 of the closing documents, wouldn't that have
11 closed the Estate?

12 **MR. DAVIS:** It could have affected the closure of
13 the Estate, but it wouldn't have been
14 consistent with the terms of the Will. And
15 also, what you have forced Ms. Poafpybitty to
16 do and Matt is to own a piece of real estate
17 with other people. Their home, their own --
18 their own personal residence.

19 **THE COURT:** That's what they owned immediately upon
20 the death of Mr. -- of Dr. Rothgeb, was it not?

21 **MR. DAVIS:** Your Honor, we have a disconnect here.
22 Let's go back to the terms of the Will.

23 **THE COURT:** No, no, no. No, no, no. When Mr.
24 Rothgeb died ---

25 **MR. DAVIS:** And we have a Will.



1 **THE COURT:** --- and we have a Will.

2 **MR. DAVIS:** Okay. Let's look at the Will.

3 **THE COURT:** Divide by each of the four people, his
4 wife and the three children, get one -- a
5 fourth interest in his Estate.

6 **MR. DAVIS:** Again -- again, let's put the Will up on
7 our -- we have a disconnect, Your Honor. And
8 I wanna -- I'd like to resolve this disconnect.

9 **THE COURT:** Okay.

10 **MR. DAVIS:** Can you put the Will up on -- on the
11 screen for me, please? And this may be the
12 reason why this -- this ruling came down.
13 Because this -- we need to correct this
14 disconnect here. Again, we've established that
15 it's much better to own the property and get it
16 distributed now versus having a lingering
17 partition action later. I think we've
18 established that is a much better idea.

19 **THE COURT:** I would agree that's a much better idea,
20 but if you can't get everyone to agree as to
21 what properties go to what person and you can't
22 force -- and I don't think that will says it is
23 unfettered discretion of the PR exactly to do
24 what she wants to do, when it says in there
25 that each of them is to be as close as equal to



1 one-fourth of the Estate as possible.

2 **MR. DAVIS:** Okay. Well, I want -- we'll -- which
3 one? That -- the whole Will. We need to take
4 a look at the whole Will.

5 **MR. BOYD:** Yeah, we don't -- I don't think we've got
6 an electronic copy of the whole Will.

7 **MR. TALL:** I have a copy of the Will, Your Honor, if
8 you'd like to see it.

9 **THE COURT:** Let -- let me see. Let me see that so
10 that he can talk about the provisions if he
11 wants to.

12 **MR. TALL:** All right.

13 **THE COURT:** He's probably got a copy.

14 **MR. DAVIS:** As I was researching this, this
15 Memorandum, one thing that kept coming back,
16 Your Honor, over and over and over again was
17 the intent of the testator, as you obviously
18 would know. So when we try to determine the
19 intent of the testator, we look at the plain
20 language of the Will. So when I look at this
21 Will, I'm gonna show you what I believe is the
22 clear intent of the testator. All right. May
23 we read the residuary clause of the Will, Your
24 Honor.

25 **THE COURT:** Uh-huh.



1 **MR. DAVIS:** I give, devise and bequeath to Donald
2 Matthew Rothgeb, Julie Christine -- Kristen
3 Irving, Steven Taylor and Jeanne Poafpybitty an
4 approximately equal shares. Approximately.
5 It's important that we say approximately. That
6 means it's not gonna be exact. It doesn't
7 have to be exact. It says approximately. All
8 right. That's the plain language of the Will.
9 Approximately equal shares. And that's
10 critical, Your Honor. Approximately. All the
11 rest residue and remainder of my property of
12 every kind and description, including last
13 legacies and devises, wherever situate and
14 wherever require before the execution of this
15 Will, absolute and fee simple, provided
16 however. As Mr. Tall referred to me as an
17 authority, I draft thousands of Wills and
18 Trusts. That's what I do for a living. That's
19 generally where I stop when I have a residuary
20 clause. This residuary clause goes beyond
21 that. I haven't seen language as specific as
22 this, until this. Maybe I've seen some similar
23 language, but I don't know if it's been this
24 specific. Provided however, that means
25 provided however, that notwithstanding what was



1 already said, this is more important. Provided
2 however. It must be subject to what's coming
3 after this. That my Personal Representative
4 shall have sole, sole, S-O-L-E, and we all know
5 what sole means, just her. Sole discretion to
6 designate the real or personal property
7 comprising the respective shares so established
8 so long as the value thereof is approximately
9 equal. All right. What that means and my --
10 I'm 100 percent convinced, and obviously the
11 Court is not and I don't know why it's not.
12 That contemplates that the Estate will include
13 pieces of property and that beneficiaries may
14 get different pieces of property. Nothing in
15 here, nothing, says that they have to agree on
16 the properties. Nothing. It says the Personal
17 Representative, regardless if they agree or
18 don't agree. And you keep on this thing if
19 they can't agree, that has nothing to do with
20 it. It says the Personal Representative has
21 the sole discretion to designate the real or
22 personal property comprising the respective
23 shares so established. If it said that the
24 parties had to agree on it, it would say it in
25 the Will.



1 **THE COURT:** So long as it is approximately equal.

2 **MR. DAVIS:** And they were. The distributions were
3 approximately equal. So the Court, in my
4 opinion, is adding language that doesn't exist
5 in the Will.

6 **THE COURT:** You admit that the intent of the
7 testator must be brung from the four corners of
8 the document, did you not?

9 **MR. DAVIS:** Absolutely.

10 **THE COURT:** Isn't that the letter of the law?

11 **MR. DAVIS:** That -- of course, it is That's what
12 we're doing.

13 **THE COURT:** All right. Okay.

14 **MR. DAVIS:** Again, the will does not say the parties
15 have to agree. That it -- it contemplates --
16 specifically contemplates that if there is an
17 impasse, that we have one person with the
18 authority to resolve that impasse. The
19 Personal Representative that this Court
20 appointed. This language, the Order, is
21 absolutely not consistent with the plain
22 language of the Will. So what we're saying is
23 this Court has reformed the Will with no
24 allegation, no pleading, no testimony to reform
25 the Will, on its own has basically reformed the



1 Will. Even though the Personal Representative
2 was not required to get approval or consent
3 from the beneficiaries, she did it anyway. And
4 not only did she do it, she -- we have a
5 letter from their attorney saying what they
6 wanted. At the end of the day each person was
7 going to get what they wanted and the values
8 were going to be equal on the bottom. How can
9 that not be consistent with the terms of the
10 Will? It is. That's a big part of my
11 frustration with Your Honor's ruling. I can't
12 disagree with it more. I think it's flat
13 wrong, respectfully, Your Honor. All right.
14 Let's go back to Page 4 of the transcript from
15 the telephone call. All right. She wants to
16 close the Estate. In my opinion, she wanted
17 control of the property, for whatever reason.
18 I said, We can do that, we can close the
19 Estate, we can make distributions like we
20 talked about, we can close the Estate in 30
21 days. Is that sufficient? For whatever
22 reason, Ms. Irving was not interested in
23 distributing the properties to the individual
24 beneficiaries in closing the Estate. She was
25 not interested in that, Your Honor. She was



1 interested in gaining control. This is about
2 Ms. Irving gaining control. That's all it's
3 about. Let's just go down that street for a
4 minute. So we distribute all four of the
5 properties out in equal shares. For the life
6 of me, I cannot surmise how the Court thinks
7 that's a good idea. That is one of the most
8 short-sighted thoughts that I think evolved --
9 evolved in this case. We're creating a problem
10 that is going to continue for a year, two,
11 three, four years down the road. Why would we
12 create a problem? All right. We go on. I'm
13 questioning her about why she wants to maintain
14 control, how she wants to be in control. I try
15 to say let's just try to work it out. She
16 doesn't want to work it out. On Page 7, I say,
17 Okay. I -- I say, you know, Please tell me
18 what happened since October, because I couldn't
19 figure it out. She says in that second to last
20 paragraph, because we have flat out changed our
21 minds. At the end -- later down it says,
22 Outside influence actually from legal
23 assistance and this was the direction we want
24 to take. She didn't want to resolve this
25 Estate. She wanted to see an attorney and see



1 what she could do. She said, Well, you can be
2 in control. You can do whatever you want to
3 do. Well, that's not what Dr. Rothgeb would
4 want to do. He wants to resolve this Estate,
5 close it, and move on down the road. He
6 doesn't want to have lawsuits going on for the
7 next four years. All right. There was a
8 discussion about why some supplemental
9 inventory was not filed after we got the
10 appraisals. We filed an Inventory ready to
11 close the Estate. The reason that the
12 appraisals were done was for -- to make the
13 distributions approximately equal. And that's
14 why we did them. It was requested by Ms.
15 Irving and her brothers. We said, Okay. We
16 agreed on an appraiser. That's why we did it.
17 We already had an inventory filed, we were
18 ready to close the Estate. That's why we
19 didn't file a Supplemental Inventory. It was
20 just for the purposes of making distributions.
21 In their minds, what they thought, would be
22 equal. We did not, as the testimony indicated,
23 nobody instructed any appraiser to do anything
24 with any property. As a matter of fact, as
25 you'll see from a second set of closing



1 documents, Ms. Poafpybitty was so distraught
2 about all this stuff, she said, Listen, I'll
3 just change it. We'll give them the
4 residences. They want the residences. Give me
5 a couple properties and deed the rest in three
6 -- in undivided interest to the three of them
7 and they can have the residences. If they
8 think it's worth this, they can have it for
9 this. I'll move out of my residence because I
10 want to close this Estate. I will pack up my
11 personal belongings from the house I've lived
12 in for 20 years and move out because I can't
13 deal with this anymore. All right. So we've
14 indicated a number of times that we believe
15 this is an argument for control, that we
16 believe Ms. Irving, not Steven and not Matt and
17 not Jeanne Poafpybitty ,are concerned about
18 control, that it's about Ms. Irving. All
19 right. So if you look back, you know, we got
20 to law school and we got the pancakes. You
21 have the pancakes, you know, who has got the
22 most pancakes, an argument on this side, an
23 argument on that side. You may have had
24 something different than pancakes. You may
25 have had waffles. You may have -- who knows



1 what you had when you went to school. We had
2 pancakes. All right. So the pancakes on the
3 side of Ms. Irving being difficult. We
4 obviously found out from her testimony that she
5 felt like she couldn't get along with Ms.
6 Poafpybitty. All right. She established that,
7 right, that she could not get along with Ms.
8 Poafpybitty. Okay. Well, I tried to get along
9 with her. And indicated in this telephone
10 transcript that I couldn't get along with her
11 and satisfy her. Okay. So, then she hires an
12 attorney, Mr. Scoville, she couldn't get along
13 with Mr. Scoville.

14 **MR. TALL:** Objection, Your Honor. There's nothing
15 in the transcript that indicates anything about
16 the relationship between Ms. Irving and Mr.
17 Scoville other than they parted company.

18 **MR. DAVIS:** Okay.

19 **THE COURT:** I understand. I understand your -- your
20 objection, but I'm gonna allow Mr. Davis to --
21 to characterize it as he sees it. Because this
22 is a lawyer's argument, this is not a testimony
23 in court.

24 **MR. TALL:** Thank you, Your Honor.

25 **THE COURT:** Go ahead, Mr. Davis.



1 **MR. DAVIS:** So she couldn't get along with Jack
2 Scoville and fired Mr. Scoville. All right.
3 So then we've got Mr. Tall, who she appears to
4 get along with, but didn't -- apparently didn't
5 believe he did a good enough job because after
6 the trial and prior to Your Honor's ruling ---

7 **MR. TALL:** I have an objection, Your Honor.

8 **MR. DAVIS:** --- she sent you an e-mail -- an e-mail
9 to the Court, a detailed e-mail to the Court.
10 So apparently she was not satisfied with Mr.
11 Tall's efforts and felt like she had to do
12 something on her own. So we've got evidence
13 that she couldn't get along with Ms.
14 Poafpybitty, basically couldn't get along with
15 me from this phone call, apparently didn't get
16 along with Scoville and didn't think Mr. Tall
17 -- unfortunately, didn't think Mr. Tall didn't
18 do a good enough job, so she had to send --
19 send you her own information. That is a
20 pattern of somebody who is the genesis of the
21 problem in this case. Ms. Irving is the
22 problem. And that's clear indication that
23 she's the one that people can't get along with,
24 not Ms. Poafpybitty.

25 **THE COURT:** And that's the e-mail that I've already



1 said I think on record and I want to be sure
2 that I have not read it and that I sent back to
3 Mr. Tall and Mr. Tall or my office, I forgot,
4 to -- sent it to you so you would know exactly
5 what happened. And to this day, I still never
6 read that e-mail.

7 **MR. TALL:** Yes, all counsel were copied by the
8 Court, Your Honor.

9 **MR. DAVIS:** Yes, Your Honor. I'm with you. We're
10 on the same page. I'm gonna offer my own
11 opinion as a lawyer's argument.

12 **THE COURT:** Absolutely.

13 **MR. DAVIS:** I believe that she fired Mr. Scoville
14 because he -- he talked sense to her, talked
15 common sense to her. She didn't want to hear
16 that. She wanted to hear what she wanted to
17 hear, Your Honor. And it wasn't common sense.
18 It was about control, it was about -- it was
19 about just strife and other issues. Mr.
20 Scoville probably sat down and tried to tell
21 her some common sense. And she didn't want to
22 hear it from him, and that's why she fired him.
23 She would have heard from him the same thing
24 she heard from me, all right, listen, you're
25 barking up the wrong tree. You're not making



1 sense here. And she didn't like it. So she
2 went and hired an attorney that would bring on
3 a lawsuit, an ill-advised lawsuit, Your Honor.
4 It's important to also remind the Court that
5 she had all this -- that Ms. Irving had all of
6 this information prior to hiring Mr. Tall. All
7 the appraisals, all the spreadsheets,
8 everything she needed, Your Honor. All right.
9 So moving to the arguments basically I've
10 already covered, the first argument on Page 12
11 -- on 13, I will -- I will point out, Your
12 Honor, that there is a -- there was some
13 testimony from Clark Parker, CPA. There was a
14 charge, hired by Ms. Poafpybitty to do the tax
15 returns. There were certain losses in the
16 Estate that were going to be passed down to the
17 different beneficiaries. But they needed the
18 beneficiaries' Social Security number. Ms.
19 Irving flatly refused to provide her Social
20 Security -- not to me. I didn't want her
21 Social Security number. And I didn't even care
22 if she gave it to me or my paralegal. We -- I
23 don't care. We didn't care. But she needs to
24 give it to the CPA for the Estate that she's a
25 beneficiary to. She would not give the CPA her



1 Social Security number. I'm like, Well, I've
2 got it from Matt, I've got Steven, I've got Ms.
3 Poafpybitty. Why won't Ms. Irving do this?
4 No idea. I still -- she still has not provided
5 it.

6 **MR. TALL:** Your Honor, I object to this testimony.
7 What are we talking about? Mr. Davis is gonna
8 tell us what happened in January of 2017 and
9 '18 as if he's a witness?

10 **MR. DAVIS:** Your Honor, we have testimony from Clark
11 Parker, CPA. I'm simply ---

12 **MR. TALL:** Since 2017, Your Honor.

13 **MR. DAVIS:** --- summarizing ---

14 **MR. TALL:** He's telling us what happened today in
15 2018. He wants the Court to consider him a
16 serious advocate.

17 **MR. DAVIS:** Your Honor, I -- I'm simply -- that's --
18 that doesn't make any sense. I'm simply
19 summarizing what Clark Parker said, that she
20 did not provide the ---

21 **MR. TALL:** Mr. Parker did not tell us what happened
22 in 2018 and Mr. Davis can apologize for making
23 that confusion.

24 **MR. DAVIS:** I think the ---

25 **MR. TALL:** He's telling us what happened today when



1 not -- it didn't happen today and he's
2 referring to trial testimony of 2017.

3 **MR. DAVIS:** Okay. Let me rephrase it this way.

4 **MR. TALL:** Just apologize, Bret.

5 **MR. DAVIS:** There's no need to apologize. What
6 you're saying doesn't make any sense. What
7 I'll say is this. In the draft Order that Mr.
8 Tall submitted to the Court, he said that Ms.
9 Irving was willing to provide her Social
10 Security number.

11 **MR. TALL:** And Mr. Davis is unqualified to tell us
12 what happened afterwards ---

13 **MR. DAVIS:** Okay.

14 **MR. TALL:** --- and no one else in the Court is.

15 **THE COURT:** I note -- I note your objection.

16 **MR. TALL:** Thank you, Your Honor.

17 **THE COURT:** Go ahead, Mr. Davis. I'm gonna assume
18 that you're talking about the testimony that
19 Mr. Parker gave during the trial as the -- the
20 ---

21 **MR. CLARK:** Yes.

22 **THE COURT:** --- difficulty in adding the Social
23 Security number ---

24 **MR. CLARK:** Yes.

25 **THE COURT:** --- at that time.



1 **MR. CLARK:** And what Mr. Tall included in his draft
2 Order. That it had still not been provided.

3 **MR. TALL:** How do you know that?

4 **MR. CLARK:** Because you wrote it in the Order.

5 **MR. TALL:** I wrote something in 2017 and you're
6 telling us that that's relevant about what
7 happened today? Your Honor, how much of this
8 advocacy are we going to listen to?

9 **THE COURT:** I've heard -- I've heard enough, Mr.
10 Tall. Go ahead, Mr. Davis.

11 **MR. DAVIS:** Thank you. And -- and that's fine. I -
12 - I -- he's right. I don't know what happened
13 from the time he wrote that with Ms. Irving
14 until now. I -- I don't know. I can say that
15 as of the time he submitted that to the Court,
16 she still had not provided her Social Security
17 number. So what happened after that is
18 whatever happened after that is whatever
19 happened after that. And he's got a -- he's
20 got a point there. I'll give him that point.
21 But that indicates that she's difficult to deal
22 with, Your Honor. That's the point I was
23 making with the Social Security number. Also,
24 there is mechanism, if you don't feel like the
25 Personal Representative is doing what they're



1 supposed to be doing. You know, there is a
2 Statute, Section 62-3-1001, read and say the
3 beneficiary can bring an Action. And we didn't
4 have any of those Actions. And we didn't have
5 an action filed that day. We also never had a
6 Notice for demand filed and -- and we've had --
7 we've got some video from the Supreme Court
8 argument and one of the Supreme Court Justices
9 makes particular attention -- pays -- makes
10 particular note to whether a Notice for demand
11 was ever filed because I don't have that file
12 in this case. I don't think it's necessary,
13 but this Justice makes a point of it. All
14 right. That slowed down the administration of
15 the Estate, not having all the tax information
16 we needed to compete the tax returns. All
17 right. That was not Ms. Poafpybitty that
18 slowed down the Estate. That was Ms. Irving
19 that slowed down that part of the Estate. All
20 right. Again, I'll go back over the terms of
21 the Will that I read earlier. I won't read the
22 terms of the Will again, but I'll read a part
23 of the Statute. 62-2-601, I'm on Page 15,
24 Roman Numeral 2. The Statute says, The
25 intention of the testator, as expressed in the



1 testator's Will, controls the legal effect of
2 the testator's dispositions. The Rules of
3 Construction expressed in the succeeding
4 succession -- sections of this part applying
5 unless a contrary intention is indicated by the
6 Will. Okay. In this case, the main Estate
7 assets are several pieces of real estate, the
8 terms of the Will specifically and
9 unambiguously grant the Personal Representative
10 the right to determine which beneficiary
11 receives which piece of real estate and their
12 satisfaction of their devise. Section 62-2-601
13 goes on in B and says, Notwithstanding -- this
14 is on Page 16, Notwithstanding, Subsection A,
15 the Court may reform the terms of the Will,
16 even if unambiguous, to conform to the terms of
17 the testator's intention. If it is proved --
18 well, before it is proved it has to be brought
19 up. And it was not ever brought up. If it is
20 proved by clear and convincing evidence that
21 the testator's intent and the terms of the Will
22 were affected by a mistake of fact or law,
23 whether an expression or inducement. In this
24 case, not only was it not pled, not only was it
25 not argued, not only was it not clear and



1 convincing evidence of anything in this regard,
2 there was absolutely no mistake of fact and no
3 mistake of law. So I believe, without
4 question, that the Court simply cannot reform
5 this Will. That I believe on appeal it will be
6 overturned quickly because the Court does not
7 have authority based on the record in this case
8 to reform the Will. I feel certain of that.
9 Maybe I'm wrong. I could be wrong. But I feel
10 certain that the Court overstepped its bounds
11 in reforming the Will. All right. Paragraph
12 -- and I say, Your Honor, this and I will say
13 it again. I say these items respectfully
14 because I think a tremendous amount of you, but
15 you're gonna get the full passion of Bret
16 Davis. And I hope that you respect that as
17 well. All right. The Court's ruling
18 wrongfully requires the Personal Representative
19 to bear all of the Estate's legal fees after
20 March 25th, 2016. The actions -- on Page 16,
21 the actions filed by the Plaintiff were not
22 necessary for the administration of the Estate.
23 To the contrary, Your Honor. Plaintiff's
24 actions have actually lengthened the amount of
25 time that the Estate has been -- has had to be



1 open and has proved the accumulation of
2 substantial legal fees on both sides.
3 Decreased the amount that each beneficiary will
4 receive. These actions were caused by and
5 instituted by the Plaintiff as a result of her
6 refusal to communicate and work with the
7 Personal Representative and her retention of
8 multiple legal counsel to represent her in the
9 Estate. The Plaintiff had one resolution to
10 the Estate, which was not consistent with the
11 terms of the Will and if it were not done that
12 way she was not going to be happy. The action
13 brought in this case was brought by the
14 Plaintiff and defended by the Personal
15 Representative. All right. Let's go to your
16 Order. Your Order basically took away the PR's
17 permission, which I don't understand, and
18 charged her with all the legal fees. In three
19 different Statutes, sections in the Probate
20 Code, which we have to go by, Your Honor, the
21 Court has to go by it and the attorneys have to
22 go by it. Section 62-1-201, Paragraph --
23 Subparagraph 13 specifically provides that the
24 attorneys' fees are an expense to
25 administration. Section 62-3-715, Subparagraph



1 19 specifically authorizes a Personal
2 Representative to employ attorneys and pay for
3 such attorneys from Estate funds. Section 62-
4 3-720 provides that a Personal Representative
5 that is prosecuting or defending an Action is
6 entitled to have her legal fees paid from
7 Estate funds. All right. So 62-3-720 says, If
8 any Personal Representative or person nominated
9 as a Personal Representative defends or
10 prosecutes any proceeding in good faith, bear
11 in mind, your Order does not find that there is
12 any bad faith or lack of good faith on the part
13 of Ms. Poafpybitty. It makes one reference to
14 some transparency thing, but it does not find
15 that there was a lack of good faith. All
16 right. So ---

17 **THE COURT:** So you don't think that that's implicit
18 in my Order?

19 **MR. DAVIS:** Absolutely not.

20 **THE COURT:** You don't think it's implicit when I
21 said that her credibility is in question? In
22 my e-mail that I sent to Mr. Tall in
23 preparation of the proposed Order?

24 **MR. DAVIS:** Well, I appreciate the e-mail, but, Your
25 Honor, it has virtually no relevance when we go



1 to appeal and we've got the signed Order.
2 That's what we're -- we're gonna ---

3 **THE COURT:** Absolutely.

4 **MR. DAVIS:** But I -- I -- and I appreciate your
5 comment. She did -- she acted in good faith.
6 I'm 100 percent positive. So I completely
7 disagree with that assertion by the Court.

8 **THE COURT:** Well ---

9 **MR. DAVIS:** But not -- not withstanding that ---

10 **THE COURT:** --- my Order itself -- basically, the
11 Order -- the language of the Order and the
12 result of the Order that I wrote implicitly
13 said, as far as I'm concerned, that I didn't
14 think she did it in good faith. I want that to
15 be on the record, too.

16 **MR. DAVIS:** Well, that -- that is -- boy, then
17 that's a major oversight on the part of Mr.
18 Tall because the Order that he drafted nowhere
19 in there does it say she acted in bad faith,
20 nowhere. And then nowhere does it say that she
21 didn't act in good faith. So that's a --
22 that's a real problem.

23 **THE COURT:** Well, that was the same thing that the
24 Supreme Court said in the Kay case, wasn't it?
25 Miriam Kay?



1 **MR. DAVIS:** Well, I mean, not only -- not only that,
2 Your Honor, we have to go -- the -- the Court
3 -- they've already dispensed with the two Judge
4 rule. The Court -- the Appeals Court -- the
5 Court of Appeals and the Supreme Court can
6 look at the facts and make their own
7 determination of whether the Personal
8 Representative acted in good faith or not. And
9 I've got a definition of good faith here which
10 she clearly absolutely acted within good faith,
11 without question. The Court is dead wrong
12 about that but that's the Court's decision.
13 But I -- we'll -- we'll deal with that as we
14 need to deal with it. It will be better to
15 deal with it now and save all the money in
16 appeals and possible reversals on appeal. And
17 I will mention the Kay case, the Kay case --
18 Sullivan. Eddie Sullivan. I called Eddie
19 Sullivan. The call went into great detail. I
20 won't go into anything that he said because it
21 would be hearsay.

22 **THE COURT:** He's an attorney, isn't he?

23 **MR. DAVIS:** He's an attorney. He was a Personal
24 Representative. In that case that you cited in
25 your -- in your e-mail. Well, that case has



1 been completely reversed. All of it was --
2 just about every part of it has been reversed.
3 That case is very similar to the case we have
4 here. The trial judge got something in his
5 mind and ruled in a certain way, Your Honor.
6 They reduced the commission, they granted
7 attorneys' fees to the plaintiffs and didn't
8 grant attorneys' fees to the Personal
9 Representative. The first appeal to the
10 Circuit Court, the Circuit Court affirmed.
11 They appealed then to the Court of Appeals.
12 The Court of Appeals took away the legal fees
13 for the plaintiff, took them away, all of them.
14 They had to bear their own legal fees. But did
15 not grant him legal fees. So he said, well,
16 I'm not satisfied. So he appealed to the South
17 Carolina Supreme Court. The South Carolina
18 Supreme Court then reversed the last part and
19 granted him attorneys' fees. So the same thing
20 happened in that case that happened, I believe,
21 in this case. The trial judge made substantial
22 mistakes and it took him to the Court of
23 Appeals and the Supreme Court to reverse what
24 the trial judge in Sullivan did not do
25 correctly. And I'm hoping to avoid that in



1 this case. So he -- the legal fees were
2 removed for the plaintiff. Legal fees were
3 granted for the Personal Representative. And
4 the commission was upheld at 10 percent. The
5 commission in this case was reduced to
6 basically zero. The PR's commission in the
7 Sullivan case was 10 percent, twice the
8 customary amount. Reese, can you find that
9 video?

10 **MR. BOYD:** I was gonna do that at the end. Do you
11 want to do it now? I can ---

12 **MR. DAVIS:** All right. Well, what we've got, Your
13 Honor, we've got video of the argument for the
14 Sullivan case on this section here. And I'll
15 read it again. If any Personal Representative
16 or person nominated as Personal Representative
17 defends or prosecutes any proceeding in good
18 faith. All right. How -- and there's another
19 nuance here, Your Honor, that I think that the
20 Court has failed to under -- failed to
21 recognize. And that is a Personal
22 Representative defends or prosecutes any
23 proceeding in good faith. That doesn't say did
24 they act in good faith from the time they were
25 born. This says in the lawsuit did they act in



1 good faith. What did Ms. Poafpybitty do during
2 the defense of that lawsuit that was not in
3 good faith? That's the little nuance I think
4 the Court should consider. We can ---

5 **THE COURT:** In the Kay case, the Court cited Section
6 62-3-720. It said it does not apply in
7 instances where the Personal Representative
8 primarily acts for the benefit of himself
9 procuring the services for the Estate.

10 **MR. BOYD:** Okay. Is that the -- Your Honor, may I
11 ask you, if I may inquire, is that the Court of
12 Appeals' Opinion or is that the ---

13 **MR. TALL:** Supreme Court.

14 **THE COURT:** I believe that's the Supreme Court.

15 **MR. DAVIS:** Okay. Well, that's fine, Your Honor.
16 But again, back to one of the very first
17 arguments or points that I made, how can you
18 say that the Personal Representative is acting
19 for her own personal benefit when she gave up
20 \$80,000. How can somebody give up \$80,000 and
21 be acting for their own benefit? It doesn't
22 make any sense. It doesn't -- I can't get it
23 to get through my skull. I -- it does not make
24 any sense. She wasn't -- absolutely -- I'm
25 telling you point blank she wasn't. For the



1 life of me, I can't understand how the Court
2 does see that. Whatever. I'm hoping you'll go
3 back and you'll carefully consider these --
4 these arguments. Because I feel like the Court
5 just flat missed this one by a country mile.
6 All right. So Ms. Poafpybitty was -- I think
7 the only allegation that said that she was
8 doing something to her benefit was that she was
9 living in a residence and not paying rent.
10 Okay. Matt was also living in the Estate
11 property and not paying rent. She was not
12 charging him rent either. So that alone is
13 insufficient. Also, Steven lived in the house
14 for nine months rent free. So if you're gonna
15 hang -- if the Court or Mr. Tall are gonna hang
16 their hat on the fact that she was using the
17 residence rent free as the reason that she was
18 doing something for her benefit to the
19 exclusion of others, you can't use it because
20 Matt was also living in the property rent free.
21 So that's -- you can't use it. So what else is
22 there? Only thing that was left was this --
23 the argument about she didn't tell us this or
24 she didn't tell us that. Which, first of all,
25 was not even required by statute and secondly,



1 she did do that.

2 **THE COURT:** Didn't my Order say that she was not
3 required to pay rent?

4 **MR. DAVIS:** Your Order said -- your Order -- well,
5 the Order said a whole bunch of 45 pages worth
6 of stuff. And I don't attribute that to you.
7 I just -- it said a whole bunch of stuff. But
8 it ---

9 **MR. BOYD:** I'll -- I'll ---

10 **MR. DAVIS:** --- went into great detail.

11 **MR. BOYD:** I'll address that question, Your Honor,
12 in my ...

13 **THE COURT:** Okay.

14 **MR. DAVIS:** It went into great detail about the use
15 of the residence and throughout the discussion,
16 as a hoarder. It was a -- basically went back
17 there almost the whole trial it seemed like.
18 All right. Let's go to the bottom of Page 18.
19 Will you go to Page 18 ---

20 **MR. BOYD:** Yes.

21 **MR. DAVIS:** --- Reese? And again, Your Honor, it
22 says -- the statute says, The Personal
23 Representative defends or prosecutes any, even
24 if you think she acted in bad faith or didn't
25 act in good faith during the administration --



1 I don't think -- I think she did, I'm certain
2 she did. But here you got -- this statute
3 says, Defends or prosecutes any proceeding. So
4 we're talking about the defense or prosecution
5 of a proceeding in good faith. There's nothing
6 that says during the defense of the action did
7 she act in bad faith. All right. Down at the
8 bottom Footnote 6, can you bring that up? All
9 right. Obviously, you can tell from my passion
10 and fervor that I completely disagree with any
11 idea that the PR acted in bad faith. So I've
12 got a pretty long -- and it's not in the Order
13 anywhere. I've got a -- it's not specifically
14 in the Order anywhere. So we've got it here,
15 Section 68-8-1024 of the South Carolina Probate
16 Code states that good faith means honesty in
17 fact. There's no testimony. There is no --
18 anything that says Ms. Poafpybitty lied about
19 anything. There was one assertion that was
20 corrected that Ms. Poafpybitty told Matt that
21 she didn't sell something or sold something.
22 That was cleared up. There was no evidence of
23 any lies or false statements. Zero. Our Code
24 says good faith means honesty in fact. We had
25 that. We have honesty in fact. All right.



1 Delaney v. Casepro, Inc. Citing Rutherford v.
2 Cannon. With all the -- term -- the term bad
3 faith is not defined in the Federal Rules of
4 Civil Procedure. Courts upheld that the term
5 bad faith co-notes an action taken without any
6 colorable, legal or factual basis. As I
7 mentioned before, Ms. Poafpybitty complied with
8 every statutory requirement in the probate
9 Code. That's legal basis. She also complied
10 with the terms of the Will. Again, the Will
11 says to pay all debts, secured and unsecured.
12 The Will says that you can choose who gets
13 which piece of property. No appeals Court, in
14 my opinion, could say that there was not
15 colorable, legal or factual basis for every
16 single thing she did. So even if this Court
17 finds, which I don't believe it did, that there
18 was not good faith or bad faith, I think it's
19 dead wrong. Because I think under the
20 definitions that pertain to South Carolina law,
21 we do not have dishonesty in fact and we
22 clearly have colorable, legal or factual basis
23 for every single thing that she did. All
24 right. Page 25. All right. I strongly
25 believe the Court erred in granting attorneys'



1 fees to the plaintiff. Plaintiff should bear
2 these expenses personally. This lawsuit was
3 absolutely unnecessary with the distribution of
4 this Estate and the closure of this Estate, as
5 pointed out in that phone conversation that was
6 had and from all of the other stuff that I've
7 -- I've mentioned. It was absolutely
8 unnecessary. Also, in that case, in the
9 Sullivan case, the trial judge got something on
10 his mind similar to what I believe this -- this
11 Court has done, which I believe is incorrect,
12 and it went in a direction that it wanted to
13 go. It took the Court of Appeals and the
14 Supreme Court to basically reverse everything
15 that the trial court judge did. My hope is
16 that we don't have to go that route, but we
17 certainly will if we need to, Your Honor,
18 because I feel that strongly about how wrong
19 this case was ruled. All right. That case,
20 the judge on its own volition, came up and
21 said, Well, there's a common fund doctrine and
22 we should give the plaintiff's attorneys' fees.
23 Well, the Court of Appeals said, Wait a minute.
24 Wait a minute, wait a minute. You can't just
25 give the plaintiffs legal fees. You know,



1 there's got to be some kind of equitable reason
2 for doing that. So what are the equitable
3 reasons for doing that? All right. The Court
4 was very specific. And these equit -- bear in
5 mind, this is the Common Fund Doctrine. And
6 bear in mind, we have a statute section that
7 came after the Common Fund Doctrine. But also
8 bear in mind that statute section that you have
9 at your disposal is based on equitable
10 principles, right, you have is based on
11 equitable principles. Those same equitable
12 principles that control that statute section
13 are the same ones that are applied to the
14 Common Fund Doctrine. So let's see what the
15 Court says about the equitable provisions. It
16 says, The Common Fund Doctrine allows the Court
17 in its equitable jurisdiction, which you have
18 under that new code section, to awarded
19 reasonable attorneys' fees to a party who, at
20 his own expense, successfully maintains the
21 suit for the creation, recovery, preservation
22 or increase of a common fund or a common
23 property. In this case, the actions of Ms.
24 Irving did just the opposite. It did not
25 assist the administration of this case, it did



1 not increase the amount to be distributed. It
2 prolonged the administration of the Estate and
3 it decreased the amount to be distributed. So
4 she should bear all of her expenses. All
5 right. It went on, it says, However, the
6 allowance and attorneys' fees that have come to
7 a subject to abuse, it can be allowed
8 sometimes, but is subject to abuse and is only
9 permitted in exceptional cases when required to
10 promote justice. All right. Well, then it
11 goes on to say, Although the attorneys'
12 services might have benefitted all parties,
13 even if it did benefit all parties, fees cannot
14 be awarded when the interests of the parties
15 are adverse. I -- I mean, I read that pretty
16 clearly. That is just pretty clear.
17 Obviously, her efforts hurt every beneficiary,
18 without question. Every beneficiary will
19 receive substantially less than they would
20 receive had Mr. Tall never been involved.
21 Also, the parties are clearly adverse. That's
22 without question, the parties are adverse.
23 We've established that at the trial. They --
24 Ms. Irving is not happy with Ms. Poafpybitty.
25 The parties are adverse. So the Estate has not



1 been improved and the parties are adverse. And
2 these are the equitable principles based from
3 which your equitable jurisdiction is based. So
4 legal fees for Ms. Irving have to be borne by
5 her individually. Now, I'll say the Defendant,
6 Ms. Poafpybitty, was prepared to close this
7 Estate long, long, long ago, long before Mr.
8 Tall got involved. Your Honor -- Your Honor,
9 I'll close with this. Mr. Boyd is gonna argue
10 the other Motion. I've been doing this a long
11 time, Your Honor, and I'm gonna say it as clear
12 as I can say it. I think you missed it by a
13 country mile. I ask you please to carefully go
14 back and consider the points that we've made.
15 I don't want to waste these people's money --
16 money going to appeal and appeal. And I will
17 not let this Order stand. It is wrong. So I
18 ask you to please carefully review all this
19 information, Your Honor. I believe every part
20 of the Order should be changed. There should
21 be a distribution based on what they said.
22 They should be approximately equal. I believe
23 Ms. Irving should pay all of her own legal fees
24 personally. I believe Ms. Poafpybitty is
25 entitled to every bit of her 5 percent



1 commission in dealing with all those neglected
2 properties, in dealing with all of this stuff
3 that she's had to deal with. And I believe
4 every bit of legal fees that Ms. Poafpybitty
5 has had to incur defending this Action should
6 be borne by the Estate. And I believe -- I'm
7 certain in my -- and I'm not saying this as an
8 argument, I am certain in my mind that that's
9 what the law, the Will, the case law, the
10 facts, the statutory law, even the case that
11 Your Honor presented to us, says. Thank you
12 for your time, Your Honor.

13 **THE COURT:** Thank you, Mr. Davis. Yes, sir, Mr.
14 Boyd.

15 **MR. BOYD:** Your Honor, Mr. Davis spoke slightly, but
16 I do have a few points that Mr. Davis did not
17 cover with respect to the Motion for
18 Reconsideration. If I can address those
19 briefly?

20 **THE COURT:** Sure, sure.

21 **MR. BOYD:** And I do -- it's a purely demonstrative
22 exhibit, but I did prepare a demonstrative
23 exhibit with respect to a few of these points
24 that he covered, Your Honor. The first thing
25 I would -- I would -- I would note, Your Honor,



1 and Mr. Davis addressed the concern, the
2 Court's ruling in our estimation, Your Honor,
3 wrongly reduces the PR -- the PR's commission
4 in this case to \$10,000. And based on the
5 value of the Estate, which the Court's
6 acknowledged, it's in the evidence, the PR fee
7 on that basis is approximately 1 percent. When
8 you consider, Your Honor, the balance of which
9 is also in Your Honor's Order, the balance of
10 the proposed commission being paid to the other
11 beneficiaries of the Estate, what that
12 effectively does, Your Honor, is it reduces the
13 -- the PR's commission from Ms. Poafpybitty in
14 this case to nothing, zero. And the Court
15 cites -- in that provision of its Order, Your
16 Honor, the Court cites the case of -- the case
17 we discussed in great deal, Sullivan v. Brown
18 and Moses. And, as Mr. Davis observed, and
19 I'll remind the Court that Sullivan was
20 ultimately upheld both at the Appeals Court
21 level in 2016 and in the recent Supreme Court
22 Decision, Your Honor. The PR commission for
23 the PR in that case of 10 percent, which is
24 twice the amount that's set in the statute.
25 And so the PR who was an attorney in that case



1 and was actually paid a fee for his services,
2 it doubled the rates set by the Statute. And
3 it's interesting -- what I find interesting in
4 that case, Your Honor, is essentially the PR in
5 that case was accused of the same thing. It's
6 hard to find, as Mr. Davis indicated, it's hard
7 to find what the PR did wrong here, Your Honor.
8 It's a lot of nitpicking, but in essence ---

9 **THE COURT:** The PR in the Kay case was an attorney
10 who was not a beneficiary of the Estate,
11 correct?

12 **MR. BOYD:** That's correct. And the essence -- and
13 the essence of the claim against the PR in that
14 -- in the Kay case, Your Honor, was that he
15 wrongfully, imprudently, and improperly and for
16 whatever reason wrongly pursued the partition
17 action, which the -- which the two
18 beneficiaries that litigated the claim took
19 issue with. Essentially, that's the -- that's
20 the -- the similarities between the cases are
21 striking, Your Honor. Essentially, that's the
22 complaint that the Court levels at the PR here.
23 And you have -- you have to get to that point,
24 or otherwise you have -- you have to take the
25 position that Ms. Poafpybitty should not have



1 defended the action that Mr. Tall brought. Or
2 you can't get there. I mean, that really is
3 where the Court has to go if she's not entitled
4 to any of her fees and if she's not entitled to
5 a PR commission. In Sullivan, the Supreme
6 Court made it clear. Both -- both of the
7 Appellate Courts, Your Honor, upheld the --
8 upheld the PR's fee and it was twice the
9 statutory rate.

10 **THE COURT:** How many of the properties of this
11 Estate were sold by the PR?

12 **MR. BOYD:** The initial number of properties in the
13 Estate were a dozen, as I recall, Your Honor.
14 And I think one -- there were other -- I should
15 note, Your Honor, there have been multiple
16 sales that we have attempted to accomplished
17 which have actually been stymied by this
18 litigation. I believe one property has sold,
19 if I'm not mistaken. And we had one closing or
20 two. There's one -- there was another offer.
21 I don't think we ever got to closing. I think
22 one has closed, Your Honor.

23 **THE COURT:** Was her commission based upon the
24 personal property in the Estate, the initial
25 commission?



1 **MR. BOYD:** The initial commission is based at 5
2 percent, Your Honor.

3 **THE COURT:** Other than personal property?

4 **MR. DAVIS:** And real estate sold, Your Honor.

5 **MR. BOYD:** I believe it was based on real estate
6 sold and personal property. I don't have the
7 commission in front of me, Your Honor. I don't
8 believe it was based on the income of the
9 Estate. I think it left that piece of it out
10 of the equation.

11 **MR. DAVIS:** It left the value of the unsold real
12 estate off also, Your Honor. That is -- it
13 went right by the Statute, what the Statute
14 said, personal property and real estate sold.

15 **MR. BOYD:** But I don't think there was a calculation
16 for income is my recollection.

17 **THE COURT:** All right. Very good.

18 **MR. BOYD:** The other item that was briefed in the
19 Motion that Mr. Davis did not address, Your
20 Honor. Well, perhaps he did touch on it, but
21 he asked me to address it, Your Honor, as well.
22 The Order -- the Court's Order wrongfully seeks
23 to collect rent on the marital residence from
24 the Personal Representative. The Personal
25 Representative testified that she has lived at



1 the Crooked Pines Drive residence, they marital
2 home, for almost 20 years. The Crooked Pine
3 Drive property has been open to other
4 beneficiaries. Steven Rothgeb -- it's on --
5 this is in the record, I'm not testifying, Your
6 Honor. It was well discussed at trial that Mr.
7 Rothgeb spent approximately nine months there.
8 And frankly, Your Honor, if he needed to go
9 back into the house today, it would be open to
10 him. Matthew Rothgeb, as has been discussed,
11 has lived in his residence for the entirety of
12 the pendency of these proceedings. And his --
13 it's never been suggested that Matthew Rothgeb
14 pay rent. Nobody -- the PR has never demanded
15 rent. Mr. Tall mentions this in his Order. Or
16 in his -- in the Court's Order. And so we're
17 holding the PR to an entirely different
18 standard in the Order, Your Honor. Also, I
19 would note that in the Court's -- the final --
20 the Order that Mr. Tall drafted and what the
21 Court has now signed is inconsistent with Your
22 Honor's e-mail ruling of May 26, 2017. Your e-
23 mail ruling of May 26, 2017, Your Honor, says,
24 and I'm quoting from your e-mail. And again,
25 there's no way that this can be evidence, I'm



1 -- I'll get to this in the second Motion. This
2 could not be evidence because this e-mail did
3 not exist at trial. But it's an e-mail from
4 the Court conveying Your Honor's initial ruling
5 on the matter. So my position is it should be
6 clearly be part of the record in this case and
7 however Your Honor would like to address that,
8 we're certain -- but this -- it must be part of
9 the record in this case, Your Honor. It's a
10 communication from the Court to counsel. There
11 -- your e-mail says there was raised an issue
12 about rental to be paid by the wife PR to the
13 Estate. I find no reimbursement is appropriate
14 and, therefore, deny any adjustment. Your
15 Honor, those are your words in your e-mail. Or
16 repayment from the PR wife. Somehow in
17 translation, Your Honor, when we ultimately saw
18 the proposed Order from Mr. Tall, if Your Honor
19 will turn to Page ---

20 **MR. TALL:** Your Honor, I do have an objection,
21 please. It's not as if it came out of nowhere.
22 I gave a proposed Order to you and my e-mail
23 told you additions that I offered for your
24 consideration. And for this counsel to suggest
25 that it came out of the sky or I was



1 disrespectful in suggesting to the Court that
2 you might consider something else, we don't
3 need that kind of advocacy.

4 **THE COURT:** I -- I ---

5 **MR. BOYD:** Your Honor, I -- I understand the
6 process. I understand the process. I'm simply
7 saying that from Your Honor's initial ruling to
8 the -- to the Order that we have ---

9 **MR. TALL:** So stipulated, Your Honor.

10 **THE COURT:** Very good.

11 **MR. BOYD:** --- the language is substantially
12 different. The lang -- the Order at Page 43
13 states no continuing exclusive use of the
14 residence by Ms. Poafpybitty shall be freed
15 from adjustment and compensation to the other
16 co-owners following the issuance of this Order.
17 And I would just remind Your Honor that that
18 aspect of the Order treats the beneficiaries of
19 the Estate differently. We don't feel that
20 it's equitable. And it holds the PR to a
21 higher and different standard. Item -- or
22 Section Number ---

23 **MR. DAVIS:** How come mine didn't do that whenever
24 you were doing my own little outline, it didn't
25 roll around like that.



1 **MR. BOYD:** You didn't ask for that. You've got to
2 pay extra for that. Item -- the Section 6 of
3 the Brief, Your Honor, directs the PR to ignore
4 the testator's intent and divide the properties
5 equally. I'm not going to spend much time on
6 this because Mr. Davis has -- has thoroughly
7 addressed the issue, Your Honor, but there's no
8 -- as -- I will summarize what Mr. Davis said,
9 there's no basis in the record for ignoring the
10 testator's intent, which is clearly set forth
11 in the Will and, therefore, no basis -- our
12 argument is no basis at all under the statute
13 for reforming the Will in this regard. Your
14 Honor, the testator must have had a reason for
15 drafting the Will in the manner that he did.
16 In fact, the Personal Representative, frankly,
17 has been attempting to divide the properties
18 equally since 2015. And the -- the -- the
19 trial transcript, the evidence, at trial
20 clearly supports that, Your Honor. There's no
21 evidence anywhere indicating that Dr. Rothgeb --
22 -- Dr. Rothgeb, excuse me, Your Honor. There's
23 no evidence anywhere, Your Honor, that suggests
24 Dr. Rothgeb wanted these parties to own these
25 properties together as tenants in common. As



1 a matter of fact, the Will goes to great
2 lengths to prevent that from happening. As Mr.
3 Davis said, he's never seen language drafted
4 with quite that level of discretion delegated
5 to the Personal Representative. Nonetheless,
6 that is what the Order directs at Page 44, Your
7 Honor. We don't think there's a basis for
8 that. We don't think there's a basis here
9 under the Statute to reform the clear and
10 unambiguous intent of the testator that's laid
11 down very clearly on the four corners of the
12 Will. Section 7, Your Honor, is, we think --
13 Mr. Davis briefly addressed this, but I'll --
14 I'll highlight the Court erred in granting
15 costs and fees to the Plaintiff. The Court
16 cited the Sullivan case, Your Honor, as the
17 Appeals -- at that time we were dealing with
18 the Appeals Opinion from 2016 and the Common
19 Fund Doctrine as the basis for the reward. In
20 fact, the trial court in Sullivan did grant
21 fees and costs to the disgruntled
22 beneficiaries. That award was based on the
23 Common Fund Doctrine, but the reward was
24 reversed by the Court of Appeals in 2016, Your
25 Honor. The Court of the -- the Court of



1 Appeals' reversal was also later upheld by the
2 recent Supreme Court opinion in the case and
3 the -- the opinion is quite clear, Your Honor,
4 that the Common Fund Doctrine simply doesn't
5 apply. And it -- and I'm -- this is Page 75 of
6 the Slip Opinion, Your Honor, and the recent
7 Supreme Court Decision. The Court says, To
8 recover under the doctrine, there must be an
9 expressed or implied contract of employment
10 between the successful party's counsel and all
11 individuals who hold an interest in the fund.
12 There is no such agreement here. Your Honor
13 will see that Ms. Irving is the only party
14 listed as the Plaintiff. The other parties are
15 listed as Defendants. And when Mr. Tall files
16 something, he serves those other parties. Mr.
17 Tall doesn't speak for those parties. The --
18 the Reply that Mr. Tall served on the 26th,
19 served all the parties, as he should. The --
20 the evidence is clear. The record is clear.
21 He doesn't represent all the parties. The
22 Common Fund Doctrine does not apply under
23 Sullivan. The -- the -- the law was clear. It
24 doesn't apply.

25 **THE COURT:** Mr. Boyd.



1 **MR. BOYD:** Yes, sir.

2 **THE COURT:** Under a partition action, when a
3 plaintiff -- let's say, Mr. Tall and you and
4 Mr. Davis and I own a piece of property
5 together and I bring a partition action and one
6 of you objects to it being sold. If it's sold
7 by Master-in-Equity, or whatever, and we all
8 divide the proceeds, the attorney who brings
9 the action and usually the defense attorney
10 split that fee, do they not, so for all intents
11 and purposes, it is for the benefit of all the
12 beneficiaries. I agree with you the common
13 fund by the Supreme Court in the Kay case ---

14 **MR. BOYD:** Uh-huh.

15 **THE COURT:** --- does not apply.

16 **MR. BOYD:** Yeah. I think the partition -- I think
17 the -- I think the -- I think the ---

18 **THE COURT:** So what I'm saying is ---

19 **MR. BOYD:** --- that the basis on the -- in the -- in
20 the partition setting is slightly different.

21 **THE COURT:** Ms. Irving is the only Plaintiff listed
22 in the partition action, you also join anybody
23 else who would have an interest. If she -- if
24 the PR had divided all this property that's
25 left and divided 25 percent for all the



1 parties, if one of them brings that Action,
2 like in this case, Ms. Irving brought the
3 Action, if the result is for the benefit of all
4 the parties ---

5 **MR. BOYD:** Uh-huh.

6 **THE COURT:** --- then that would be. But I'm not
7 saying that's the case in here, and I agree
8 with you, in the Kay case clearly, there were
9 adversary parties and I think this case that
10 deserves is obviously adverse to the PR, Ms.
11 Poafpybitty.

12 **MR. BOYD:** Absolutely. And -- and, Your Honor,
13 there may be, as with any case, there is an
14 allegiance in areas of disagreement between any
15 and all parties. And I think there's -- I'm
16 not gonna get into the e-mails, but there's
17 obviously, we had e-mails -- there were e-mails
18 from Steven that came in. There were other
19 communications. I -- I don't think it's fair
20 to say that all of these -- all of these
21 Defendants, certainly not the PR, marched in
22 lock step with the Plaintiff. And, frankly,
23 the language in Sullivan is quite clear. It
24 says while all the beneficiaries arguably
25 benefitted from what the disgruntled



1 beneficiaries attempted to do in challenging
2 Sullivan's compensation, we find the
3 beneficiaries of the Estate were not united in
4 pursuit of the cause. And I think -- and I
5 really think Sullivan is -- it's very, very
6 interesting, Your Honor, the similarities
7 between the two cases. It's -- it -- in many
8 ways, it's striking. The other interesting
9 thing that I would point out to Your Honor, I'm
10 just gonna switch gears to the Special
11 Administrator. I thought there was one more
12 slide on the Common Fund Doctrine. But, I
13 guess I'll move to the appointment of the
14 special administrator. I just want to observe
15 briefly, Your Honor ---

16 **THE COURT:** Certainly.

17 **MR. BOYD:** --- that the Petition of April 25, 2016,
18 does not request that a Special Administrator
19 be appointed or that the Personal
20 Representative be removed. And this is in our
21 Motion, Your Honor, and -- and in the
22 Memorandum. This is Section 7. The Court
23 erred in ordering that the PR be removed and
24 the Special Administrator be appointed. Again,
25 the relief is not sought in the 2016 Petition.



1 The Plaintiff did not seek appointment of a
2 Special Administrator or removal, of the
3 Personal Representative at trial. The Court's
4 original e-mail ruling of May 26, 2017, does
5 not mention the removal of Ms. Poafpybitty. It
6 does not mention the appointment of a Special
7 Administrator. The first time that Ms.
8 Poafpybitty had an opportunity to learn that
9 she might be removed as the Personal
10 Representative of this Estate is when we read
11 the draft proposed Order prepared by
12 Plaintiff's counsel. That order came to us
13 approximately eight months after the trial. It
14 came to us approximately five months after Your
15 Honor issued your e-mail ruling of May 26,
16 2017. Up until that moment we had no
17 knowledge, no notice, no indication, no
18 concern, frankly, that the appointment of the
19 Special Administrator or the removal of Ms.
20 Poafpybitty was in the cards. And we -- I --
21 I think that is clearly in error, Your Honor.
22 And if -- if Ms. Poafpybitty -- if we had known
23 that Ms. Poafpybitty was going to be likely
24 removed, that counsel, for instance, we would
25 have briefed in our pretrial documents, we



1 would have argued at trial, authorities such as
2 the Blackman case, which say clearly the
3 standard for removing the PR is exceptionally
4 high, Your Honor. The Blackman case
5 specifically, which again, we didn't spend time
6 at trial or in the pretrial briefing discussing
7 significantly Blackman, because these issues,
8 again, came to us eight months after the trial,
9 Your Honor. But Blackman says clearly the
10 power to remove a personal Representative
11 should be executed with great caution and not
12 at all unless it is made to appear to be
13 necessary for the protection of the Estate to
14 prevent loss or injury to it from
15 misappropriation without administration or
16 fraud. I know there is probably some reason
17 for -- or some basis for disagreement, Your
18 Honor, but I don't think there's any reasonable
19 basis for the -- the conclusion that there's
20 been fraud on the part of the Personal
21 Representative. She's not misappropriated any
22 Estate funds. And while we may argue over
23 whether she has properly administered the
24 Estate or not, frankly, if you read the
25 Blackman case, the -- the -- the standards that



1 the Court lays out, they simply have not been
2 established. And they weren't established at
3 trial, Your Honor, and we think, therefore,
4 that aspect of the Court's Order is improper.
5 I just want to briefly review, Mr. Davis talked
6 about this some. I want to briefly review.
7 There's an interesting -- again, Your Honor, I
8 think this case represents a real challenge.
9 It's difficult to ascertain exactly and in what
10 moment things ran off the rails. It's -- I
11 think again not much of a disagreement at this
12 moment that sitting here today, we understand,
13 we are substantially off the rails. But it's
14 hard to look back at this case and see exactly
15 when and where the PR made a mistake. The
16 decedent died in January of 2014. Ms.
17 Poafpybitty was appointed in March that year.
18 Notice of Publication started seven days later.
19 So if you go to the -- the -- the two
20 benchmarks that we looked to to close the
21 creditor claim period, eight months from
22 publication or one year from the date of death,
23 you've got January 2015, actually very close to
24 February of 2015, or mid-November of 2014, Your
25 Honor. Nobody in their right mind would have



1 started -- and we've discussed how this Estate
2 is very -- when you have the potential for a
3 late-breaking claim or some blatant issue to
4 emerge in an Estate that has as little
5 liquidity as this one, no attorney in their
6 right mind is gonna advise the PR to start
7 paying out disbursements to beneficiaries,
8 certainly not until the claim period has locked
9 down and the claims that are there have been --
10 had been addressed and sorted and prioritized.
11 And the very earliest moment, and Your Honor
12 understands this, I won't beat a dead horse,
13 the earliest moment anybody prudently looking
14 at this Estate would have even thought about
15 considering moving to closure, would have been
16 early 2015. As I said, there are a dozen
17 properties in this estate. As Mr. Davis
18 discussed the Will instructed the PR to pay the
19 debts. We could have some disagreement. The
20 question ultimately becomes where does that
21 discretion reside. I think the -- that the
22 testator's intent is clear, regardless of
23 whether that issue is of any merit n the
24 Court's mind, just the fact that we had a dozen
25 properties in the estate, Your Honor, and very



1 little liquidity to pay for their maintenance
2 and upkeep created problems for this PR, which
3 are well documented in the transcript. So my
4 point is this. We have a very complex Estate,
5 very cash leaning Estate, a very complex
6 administration under most reasonable standards,
7 and by March of 2015, as is well established in
8 the record, Ms. Poafpybitty had essentially
9 ceased communication with the PR, she had
10 delegated her representative -- representation
11 to Mr. Scoville. I'm not gonna go back through
12 that. I certainly don't want to testify on Mr.
13 Scoville's -- but I think that when Your Honor
14 looks at the record in this case and the
15 totality of testimony that has been offered,
16 what this case is about is Ms. Poafpybitty
17 simply, the Plaintiff, jumped the gun, she
18 hired a lawyer, she lawyered up. It became a
19 series of unfortunate events, Your Honor. But
20 it doesn't amount to the -- the -- the totality
21 of the remedy that's being assessed against the
22 PR in the Court's Order. Frankly, I wish the
23 parties had hung in there a little bit longer,
24 but they didn't, Your Honor. But Ms. Poafpy --
25 excuse me. Ms. Irving bears a large measure of



1 the responsibility in that, Your Honor. This
2 is not entirely on the PR. Frankly, this case
3 was moving along, I think with all due course
4 that could have been accomplished under the
5 circumstances when Ms. Irving retained counsel,
6 started demanding additional appraisals, and
7 I'm not gonna go back through all those
8 discussions, Bret covered them extensively, but
9 that's the issue, Your Honor. That is the
10 issue. That is where this case ran off the
11 rails. And that is not entirely on the
12 Personal Representative. How was Ms.
13 Poafpybitty supposed to respond? Was she just
14 supposed to pack up and go home, Your Honor,
15 because she had a disgruntled beneficiary that
16 was very difficult to deal with? I think under
17 the law the answer is clear. She was appointed
18 the Personal Representative by the testator,
19 not Ms. Irving. We -- yes, we have a duty of
20 good faith, fair dealing, all the things that
21 Your Honor talked about. But the inmates do
22 not run the asylum. Somebody has to be in
23 charge. And the law is clear. It's the
24 Personal Representative. Lastly, Your Honor,
25 I'll cover this point. I've understood Your



1 Honor to say that Sullivan, a few moments ago,
2 which was why I asked whether Your Honor was
3 reading from the Court of Appeals Opinion or
4 the Supreme Court Opinion, I understood Your
5 Honor to say earlier that Sullivan stands for
6 the proposition that fees are not recoverable
7 under 62-3-720 if the Court finds that the
8 fiduciary was not acting in the interest of the
9 Estate. I would submit to you, if that's what
10 Your Honor said, with all due respect, Your
11 Honor is wrong. What Sullivan says, and
12 particularly in the Supreme Court Opinion, is
13 -- and this is Page 73 from the Slip Opinion,
14 under the Probate Code when a Personal
15 Representative defends or prosecutes any
16 proceeding in good faith, whether successful or
17 not, she is entitled to receive from the Estate
18 her necessary expenses and disbursements
19 including reasonable attorney fees incurred.
20 Each Court below concluded that 62-3-720 does
21 not apply to instances where the Personal
22 Representative primarily acts for the benefit
23 of himself in procuring compensation for his
24 services. And essentially, that's the
25 allegation here, Your Honor ---



1 **THE COURT:** That's exactly right.

2 **MR. BOYD:** --- is that Ms. Poafpybitty was acting in
3 her own interest. Your Honor's Order says
4 that. However, and I'm continuing in summary,
5 however, under the plain language of the
6 Statute, it applies when, one, the PR defends
7 or prosecutes; two, any proceeding in good
8 faith, whether successful or not, here citing
9 a different statute, 62-3-715 -- 62-3-715,
10 Subjection 20, the Court of Appeals stressed,
11 and this is where I thought Your Honor was
12 citing the Opinion for this proposition, the
13 Court of Appeals stressed that 62-3-720 was
14 intended to apply only to proceedings when the
15 Personal Representative acted reasonably and
16 for the benefit of the Estate as opposed to
17 requesting approval of the PR's compensation.
18 We find this distinction erroneous as applied
19 to Sullivan. In fact, what the -- and again,
20 the -- the -- the similarities between the two
21 cases are uncanny, but what the Supreme Court
22 Opinion makes clear, Your Honor, is that as
23 long as the PR acts in good faith in defending
24 an action, she is entitled to her fees. That
25 is the plain language of the Statute. And



1 again, once requested by Brown and Moses, those
2 are the disgruntled beneficiaries in Sullivan,
3 they requested a hearing on the settlement --
4 on the settlement petition, it was incumbent on
5 Sullivan to attend the settlement hearing and
6 he necessarily incurred attorneys' fees and
7 costs to prepare -- again, the PR -- and again,
8 the allegation there was that the PR was
9 pursuing legal proceedings essentially for his
10 own benefit. And that is in essence what your
11 Honor would say. The Court says when Brown and
12 Moses filed their pleadings, it was incumbent
13 on Sullivan to attend the settlement hearing
14 and he necessarily incurred fees and costs to
15 prepare for the hearing and travel to Laurens
16 County. At the hearing Sullivan was called
17 upon and then talked to about the stuff that
18 Sullivan had to do in defense of his position.
19 Your Honor, that's exactly -- what was the --
20 what was Sullivan supposed to do? What would
21 this Court have had Sullivan do? You've got
22 two disgruntled beneficiaries. They file a
23 Petition. What is the PR supposed to do, pack
24 up and go home? Oh, well. I've got these two
25 people out here that don't like what I did. I



1 can't defend myself. I've got to go home.
2 Game over. That, Your Honor, is exactly what
3 cannot happen. That's the inmates running the
4 asylum. The same thing happened here. Ms.
5 Irving -- you've heard Mr. Davis explain at
6 great and detailed length the effort that he
7 went to to try and negotiate these parties
8 through a non-litigation resolution to the
9 logger heads that we were experiencing. I say
10 we as a firm. But the logger heads that the
11 firm was experiencing, you've heard that at
12 great length this morning. Ms. Poafpybitty was
13 in exactly the same position as Sullivan when
14 Ms. Irving filed her position -- her Petition
15 when Mr. Tall filed his Petition, rather. What
16 was Ms. Poafpybitty supposed to do? Was she
17 supposed to pack up her bags and go home? That
18 doesn't work, Your Honor. She had to defend
19 the position that the PR -- she was the PR.
20 She was appointed the PR. She had to defend
21 the Petition that Mr. -- that Mr. Tall brought.
22 I don't think she had any choice, Your Honor.
23 And I think if the Court will study the record
24 and -- and frankly study Sullivan and the
25 Sullivan record, I think the Court will see the



1 striking similarities between the two cases and
2 I think Sullivan demands -- demands, Your
3 Honor, I don't think there's any latitude here.
4 I think Sullivan demands that Ms. Poafpybitty
5 not be forced to bear her fees, which have
6 largely -- you can -- you can nitpick -- Your
7 Honor, we can nitpick individual e-mails and we
8 can talk about how to address that issue. We
9 can nitpick individual actions of the PR here
10 and there. But as Mr. Davis pointed out, what
11 we are doing is we are nitpicking in the
12 greater scheme of things, in the full art of
13 everything that Ms. Poafpybitty has done for
14 this Estate, it is impossible to imagine how
15 she can be perceived in my mind as not acting
16 generally in good faith. I'm talking about the
17 totality of the evidence, Your Honor. I'm
18 talking about everything that's in the record.
19 I'm talking about starting with not accepting
20 your elective share and going right up until
21 the moment that Clark Parker explained all the
22 details he had dealing with Ms. Irving in -- in
23 getting simple information to move this Estate
24 forward toward closure. When you look at the
25 full art of everything that we've heard and



1 everything that we've talked about, I don't see
2 how this Court can reach a conclusion other
3 than Ms. Poafpybitty acted generally in good
4 faith. And as Bret explained, I think she
5 meets the definition -- she meets the statutory
6 and case law definition of good faith. So I
7 really don't think there's any question. She
8 has not been dishonest. There is no evidence
9 in the record anywhere that she was dishonest.
10 So I think, Your Honor, if you will study
11 Sullivan and particularly this case, as a
12 matter of fact, Your Honor, I've got a copy of
13 the Opinion that we e-mailed. I'm sure Your
14 Honor has and I'll -- I'll -- I'll pass that
15 up.

16 **THE COURT:** I've got it, okay?

17 **MR. BOYD:** Lastly, Your Honor, this is a little
18 unusual, Mr. Davis suggested this. There --
19 we have the video. I think this is
20 appropriate, nearly as a demonstrative. We
21 obviously don't offer this for the truth of
22 whatever is being asserted. It's not offered
23 as factual information, but I think Your Honor
24 will find we have a couple of clips of the
25 Supreme Court's discussion of the Sullivan case



1 available on the computer. If the Court would
2 indulge us, we'd be happy to play those. I --
3 -

4 **THE COURT:** How long are they?

5 **MR. BOYD:** They're a total of about four minutes,
6 Your Honor.

7 **THE COURT:** All right. I'll let you play it if -- I
8 mean, if you want to play it.

9 **MR. BOYD:** Thank you. Give me just one second, Your
10 Honor. There's one clip that's approximately
11 two minutes, Your Honor, two minutes, actually
12 closer to three minutes that we wanted the
13 court to hear. I'll start it.

14 **(Video is played.)**

15 **MR. DAVIS:** Your Honor, this is the attorney for Ms.
16 Brown and Ms. Moses. He's arguing for the
17 Plaintiff, which would be in a similar
18 situation as Mr. Tall. And ---

19 **MR. TALL:** Gentlemen, I've -- I've been patient.
20 But we're gonna have things potentially taken
21 out of context. Traditionally, we've got an
22 Opinion, we can review the Opinion and deal
23 with it ---

24 **MR. BOYD:** Your Honor, I -- I'm sorry.

25 **MR. TALL:** Tell you what. Why don't I just be quiet



1 and let you guys run the whole show?

2 **MR. BOYD:** Okay.

3 **THE COURT:** Excuse me. Go ahead, Mr. Tall.

4 **MR. TALL:** Your Honor, I'd hate to think at some
5 future date we're going to have discussions
6 about what was presented, what parts of the
7 hearing were presented, what other things were
8 omitted. I don't mind defending whatever is
9 presented by gentlemen, but this is rather
10 untraditional and I'm -- I'm not sure it's
11 gonna help us at all. We've got an Opinion and
12 we can all read it.

13 **MR. DAVIS:** This shows the discussion, Your Honor,
14 with Judge Hearn about this specific statute
15 section. Because if we have to appeal, this is
16 the type of information that's gonna be
17 exchanged. I think it would be helpful to this
18 Court to see how the Supreme Court looks at
19 this statute section. They talk about it in
20 detail here. I think it would be helpful to
21 the Court.

22 **THE COURT:** Is it Ms. Hearn? That's not ---

23 **MR. DAVIS:** He's getting ready to pass it over to
24 Judge Hearn, Your Honor.

25 **THE COURT:** All right. I'm gonna -- I'm gonna allow



1 it.

2 **MR. BOYD:** Thank you, Your Honor.

3 **(Video is played.)**

4 **MR. BOYD:** And, Your Honor, that, again that --
5 that's our point. This was required. Ms.
6 Poafpybitty -- again, we may cherry pick things
7 that Ms. Poafpybitty did here and there. It
8 may not have been perfect, but that's not the
9 standard. Ms. Poafpybitty was faced with a
10 Petition filed by Ms. Irving. Practically
11 speaking, her response was required. Her
12 alternative was literally fold up the tents and
13 go home and let the Plaintiff run the show or
14 respond. She did what was required. There's
15 one other little piece, Your Honor, that I
16 would love for the Court to indulge me on if we
17 can do that. It's about a two minute clip at
18 20 minutes into the argument. And it's a
19 little clip that reminds us, Your Honor, that
20 the load stone in all of these proceedings is
21 the testator's intent, Your Honor, and I think
22 if the Court would bear that in mind.

23 **(Video is played.)**

24 **MR. BOYD:** But that was what we wanted the Court to
25 hear, Your Honor, I think Sullivan is very



1 instructive. I mean, frankly, there are
2 aspects of the Opinion -- Your Honor's Opinion
3 that I think Sullivan is dispositive and not in
4 a positive way, Your Honor. I think this Court
5 should pay careful attention to Sullivan. I
6 would encourage the Court to listen to the
7 arguments in their entirety. We don't mean to
8 be selective. I wanted the -- I wanted the
9 Court to hear the specific points that were
10 relevant to the arguments that we were just
11 making, but I'd encourage the Court to listen
12 to the entirety of the argument. Obviously,
13 it's available online. And I think, Your
14 Honor, that Sullivan demands -- demands that
15 this Court carefully review it's Order with a
16 -- with a fresh eye. And take a very hard look
17 at what it's -- what it's provided in the way
18 of remedy to Ms. Irving and -- and frankly
19 sanction to Ms. Poafpybitty. Thank you.

20 **MR. BOYD:** In regard to the Motion, do you want to -
21 --

22 **THE COURT:** I understand there is a lot of sanctions
23 for Ms. Irving and -- and ---

24 **MR. BOYD:** I'm sorry. I may have mispoke. _____

25 **THE COURT:** You got it exactly backwards. I



1 understand, yeah.

2 **MR. BOYD:** Backwards. Sanctions for Ms. Poafpybitty
3 and -- and remedies for Ms. Irving.

4 **THE COURT:** Okay.

5 **MR. DAVIS:** Would you, Your Honor, here in chambers
6 you mentioned something in our previous meeting
7 -- not today, but previously, you wanted to
8 have -- hear something and have a rebuttal or
9 something. Are we done with our first Motion?

10 **MR. BOYD:** That's -- that's -- as far as I'm
11 concerned, Your Honor ---

12 **THE COURT:** Are all ---

13 **MR. BOYD:** --- that's our Motion.

14 **THE COURT:** --- arguments before the Supreme Court,
15 are they Online now?

16 **MR. BOYD:** They are, Your Honor, yes.

17 **THE COURT:** Okay.

18 **MR. BOYD:** Not -- I'd have been a much better
19 student in law school if they had had that when
20 I was in law school.

21 **THE COURT:** Amen to that.

22 **MR. BOYD:** It's makes it much more -- much more
23 approachable now.

24 **MR. DAVIS:** Your Honor, would you like -- would you
25 like to have rebuttal on this Motion before we



1 go to the next Motion, or would you like to
2 break for lunch and have the next Motion after
3 lunch? What would -- would Your Honor like to
4 do?

5 **THE COURT:** I'll ask Mr. Tall. Mr. Tall, do you
6 want to respond now or do you want -- I mean,
7 it is a quarter 'til 1:00. I'm good to do
8 whichever you attorneys would like.

9 **MR. DAVIS:** I can say I want to eat some fried
10 chicken, Your Honor. I -- I -- I need to eat
11 lunch.

12 **THE COURT:** Do you have ---

13 **MR. TALL:** I'm -- I'm inclined to take a break, Your
14 Honor. Do we understand that as it relates to
15 the Motion for Reconsideration that the -- that
16 the defense has rested?

17 **MR. BOYD:** We have, Your Honor.

18 **THE COURT:** Okay. Yes, they have rested so are you
19 ---

20 **MR. TALL:** All right. I'd be happy to respond after
21 lunch, Your Honor.

22 **THE COURT:** All right.

23 (Off the Record)

24 **THE COURT:** All right. I believe when we left for
25 lunch the first Motion had been ended on behalf



1 of the Personal Representative; is that
2 correct?

3 **MR. BOYD:** Correct, Your Honor.

4 **THE COURT:** All right. Mr. Tall, are you ready to
5 proceed?

6 **MR. TALL:** Thank you. May it please the Court?

7 **THE COURT:** Yes, sir.

8 **MR. TALL:** Your Honor, perhaps to align this case of
9 Rothgeb with our Supreme Court's recent
10 decision, Ms. Poafpybitty's team states in its
11 Memo and to the Court that our Judge on May --
12 March 2, 2018, found no fiduciary breach. You
13 want to avoid trouble. You want to secure fees
14 and costs under 62-3-720. You'll want clean
15 hands when you come into an equity court.
16 We've had difficulty in having communications
17 back and forth. When I read the Order that
18 you've issued, and when the team for the
19 Personal Representative says no fiduciary
20 breach was found, specifically this Court found
21 the manipulation of at least one_asset, a
22 personal residence, two sworn inventory forms
23 with the Probate Court, Mr. Davis highlighted
24 how Ms. Poafpybitty did her duty, a suggestion
25 of an appraisal is referred to as an insistence



1 on an appraisal as if Ms. Jeanne didn't want to
2 do it, but she was forced to do it. We can all
3 read what Mr. Scoville's letter said. Might
4 have been helpful. And what we have is an
5 appraisal of that residence which formed not
6 the schedule that was on the board today, on
7 the screen today, but one that was delivered to
8 Ms. Irving in December of 2009 when she didn't
9 have counsel at that time. Lawyers are
10 expensive. She explained to the Court why she
11 decided to go it alone at some point.

12 **THE COURT:** All right. You said 2009. Do you mean
13 2015?

14 **MR. TALL:** '15.

15 **THE COURT:** Okay.

16 **MR. TALL:** Pardon me. December of 9, 2015. Thank
17 you, Your Honor. That appraisal lists without
18 expla -- excuse me. That schedule lists
19 without appraisal, without explanation, \$95,000
20 for the value of a residence that the Personal
21 Representative has already said to the Court
22 under oath is worth more than twice that much.
23 A lot has been said about how Ms. Poafpybitty
24 was convinced that Ms. Irving is a difficult
25 person. And how there's chaos in this family.



1 And maybe I'll have to read the transcript, but
2 I think I heard Mr. Davis say, if someone told
3 him the property was worth \$95,000 without any
4 supporting data, he'd be surprised. Indeed,
5 Ms. Irving was surprised and for an eight week
6 perio. We do have in final documents that were
7 encouraged, if not Ordered by the Court, in May
8 of 2016 and also again in November of 2016. We
9 have a notation that says post-appraisal
10 repairs. And a lot is made about being
11 accountable for the costs of those repairs made
12 by Ms. Poafpybitty with Estate funds to improve
13 the residence that she herself wanted to
14 acquire. December 9, 2015, a schedule was
15 provided to Ms. Irving with no explanation and
16 no reference to post-appraisal repairs.

17 **MR. DAVIS:** Your Honor, I -- I object. We -- we do
18 have in the record that on July -- on January
19 29, 2016 ---

20 **MR. TALL:** No one is talking about January 29, 2016.
21 And I'm -- '15. Excuse me. Excuse me, January
22 29, 2016. So if Mr. Davis is going go object
23 to what I said about December 9, Your Honor,
24 this is the tactic. This is the good faith
25 that I'm having to deal with in defense.



1 **THE COURT:** What ---

2 **MR. DAVIS:** See ---

3 **THE COURT:** Excuse me, Mr. -- Yes, sir, Mr. Davis.

4 **MR. DAVIS:** Mr. Tall said that she was -- Ms. Irving
5 was given a schedule of values in December
6 2015. And then he jumped forward until the
7 final accounting documents, but he failed to
8 mention that in January she was given
9 indication that the repairs would be charged to
10 Ms. Poafpybitty. He did not mention that.
11 He's misleading the Court, Your Honor.

12 **MR. TALL:** If Mr. Davis will allow me to finish my
13 comments, I'll take the Judge through it.

14 **THE COURT:** All right.

15 **MR. TALL:** All I was talking about was December, I'm
16 talking about the shock on December 9, 2015,
17 when Ms. Irving is given a schedule and it has
18 nothing in there about repairs. And eight
19 weeks later, I will give to Mr. Davis that
20 there is a reference to post-appraisal repairs.

21 **THE COURT:** That was in January 2000 ---

22 **MR. TALL:** January 29, eight weeks later.

23 **THE COURT:** Okay.

24 **MR. TALL:** And let me move ahead in my argument,
25 Your Honor. In this case, associated with Ms.



1 Poafpybitty wanting to try and secure for
2 herself an advantage while she's the Personal
3 Representative. It appears that no one on the
4 defense recognizes that when you spend over
5 \$20,000 on a \$95,000 residence, you might
6 improve it beyond the \$25,000, the \$23,000 that
7 you used to repair. It's a whole industry
8 called house flipping. You take a house that's
9 beat up and difficult, you put some money into
10 it, and you wind up having a house that's worth
11 \$193,000.

12 **MR. BOYD:** Your Honor, is -- Mr. Tall, is he an
13 expert on this?

14 **MR. DAVIS:** Well, I have to specifically object
15 also, Your Honor. We were in chambers after
16 this all began and I suggested in chambers that
17 we get a new appraiser to appraise all the
18 properties all over again, which would have
19 been after the repairs. That was not -- Mr.
20 Tall did not want to do that. That would have
21 wiped out any issue that he had with these
22 appraisals. I suggested that in chambers. All
23 right. That's fine. Don't cherry pick one
24 property. If you don't like the appraisals,
25 then fine. They're all linked together. Let's



1 get every one re-appraised post repairs. And
2 that was rebuffed.

3 **THE COURT:** Okay. Mr. Tall.

4 **MR. TALL:** Somehow I must have said something
5 inappropriate, Your Honor. There will be more
6 than enough time for rebuttal.

7 **THE COURT:** Go ahead, Mr. Tall.

8 **MR. TALL:** I can pick up on something Mr. Boyd said,
9 am I an expert. We had an expert who offered
10 an Affidavit. And Mr. Burgess's efforts and my
11 efforts were mocked. On May 27, 2016, first
12 page of Mr. Boyd's comments, I love it when a
13 lawyer comes to court, it makes things more
14 difficult, referring to Ms. Irving's team.

15 **MR. BOYD:** I'm sorry, Your Honor, what -- what is he
16 citing?

17 **THE COURT:** I'm sorry, what did -- you said -- Mr.
18 Tall, you're referring to what? A memo of some
19 kind?

20 **MR. TALL:** I'm referring to the transcript of 27,
21 May 19 -- '16, and I said on the first page
22 where Mr. Boyd was making comments, the effort
23 to bring Mr. Burgess to the attention of the
24 Court, an expert who had looked at this
25 property were mocked, M-O-C-K-E-D.



1 **MR. BOYD:** Your Honor, I don't -- I don't think the
2 transcript itself is in the record. I may have
3 said that, but ---

4 **MR. TALL:** The record -- the transcript is an
5 exhibit, Your Honor, and we do have it. And
6 I'm happy to give you the page.

7 **MR. BOYD:** That's fine, Your Honor, no objection.

8 **THE COURT:** Gentlemen, I don't mind anybody making
9 an objection, but I want everyone to have a
10 full opportunity to tell me whatever they --
11 they want to tell me. But if you need an
12 objection to protect the record, unfortunately
13 I think both sides would admit, at least from
14 the Court's standpoint that I have tried to
15 get you gentlemen to resolve this matter for
16 quite some time. And you were not able to do
17 that. And so I want to go ahead and allow you
18 at this time, both sides, to tell me or show me
19 practically anything that is relevant to this
20 matter so that we can proceed and get an Order
21 that one or both sides is going to appeal.
22 Okay? Are we -- are we clear? I just don't
23 want y'all back and forth. You need to be --
24 and I think everybody has, addressing your
25 objections to me, which is appropriate. But I



1 want to make it clear and do that to protect
2 the record for your client -- your respective
3 clients. But I'm gonna allow maybe more
4 latitude than I would normally do, whether
5 that's a mistake on my part or not, I'm gonna
6 do that for both sides. Go ahead, Mr. Tall.

7 **MR. TALL:** Thank you, Your Honor. When you're
8 looking to get fees from the -- I call it the
9 72-3-720.

10 **THE COURT:** 62-3-720?

11 **MR. TALL:** Yes, Your Honor. The Statute talks about
12 necessary. Statute talks about reasonable.
13 Statute talks about good faith. And I don't
14 think that's anything revolutionary. I think
15 it is the old traditional clean hands when you
16 come to an equity court and ask for relief. It
17 looked as though on May 27, 2016, we might have
18 gotten close to a resolution. The Personal
19 Representative's team said we're willing to
20 close the Estate, recognize what Ms. Irving was
21 attempting to do. Today in Court, there was
22 still justification from Ms. Ir -- Ms.
23 Poafpybitty's team that the appropriate thing
24 to do was to sell enough properties to wipe out
25 the Mortgages and then make a distribution. 27



1 May, 2016, the transcript has Mr. Boyd saying
2 the intention of Ms. Jeanne was to sell all of
3 the properties and distribute the proceeds.
4 These are shocking notions to someone like Ms.
5 Irving, you can call her difficult, you can
6 call her greedy. Ms. Poafpybitty suggested
7 that there was plenty of harmony up until the
8 first anniversary of her husband's passing.
9 Actually, we'll talk about that. What happened
10 in her March 2015 communications where she was
11 responding to what the Court determined to be
12 a polite letter from Steven Rothgeb about it's
13 been over a year, what's happening, can you
14 share with us? The point about Ms. Irving
15 being demanding or difficult or in one case I'm
16 looking at the Memo provided by Ms. Jeanne's
17 team, and suggesting that Ms. Irving had done
18 something inappropriate or harmful to herself.
19 She had not filed the kind of Demand Notice
20 that creditors typically file asking for
21 information with the Court. That it's not
22 enough, apparently, to have a communication
23 with Ms. Jeanne where she says give me a week
24 and I'll give you the information. And in that
25 same communication, Exhibit 2 in our trial,



1 where Ms. Jeanne responds to the polite letter
2 of Stephen Rothgeb. First of all, we have e-
3 mail that the -- Ms. Poafpybitty's team
4 delivered during discovery, where Ms.
5 Poafpybitty expresses frustration. Why do I
6 have to answer these kinds of inquiries?
7 Number two, in that e-mail in March of 2015 to
8 Ms. Irving. The answer there's nothing to
9 tell. According to Mr. Davis, there's plenty
10 to tell. We have any number of tenants. We
11 have properties that are falling. We have
12 rents that we're collecting. We have
13 properties that are sold. Ms. Poafpybitty says
14 there's nothing to tell. Ms. Poafpybitty in
15 capital letters mocks Ms. Irving, suggesting
16 that she didn't have the best relationship with
17 her father. And remember when you said to your
18 father that you weren't interested in anything
19 from his Estate. This is a response to an
20 inquiry a year after Estate administration is
21 commenced. According to Ms. Poafpybitty's
22 October 2016 Affidavit, exactly, why use the
23 word exactly? Exactly one year and a day after
24 my husband passed away, Mr. Irving was there.
25 What is it about trying to characterize and



1 villainize Ms. Irving? That's fiduciary care?
2 It is someone who is naturally interested in
3 the million dollar Estate? That's what Mr.
4 Davis was talking about earlier. You divide
5 that up into quarter shares. Somebody was
6 getting somewhere close to \$200,000 of an
7 inheritance she might be naturally inquiring
8 about it. A polite inquiry from Steven
9 Rothgeb. Finally, after whatever it is that
10 we've seen in Exhibit 2 of the Plaintiff's
11 Exhibit 2, Ms. Jeanne says give me a while and
12 I'll -- give me a week and I'll get you
13 information. Information was delivered with
14 next to no financial information. It talked
15 about tax assessed values, taxes, it had
16 nothing to do with expenses, had nothing to do
17 with income, had nothing to do with rents that
18 were collected. What was in Ms. Jeanne's mind,
19 and she had a talented team, when they decided
20 to send -- think of this, Your Honor, to send
21 somebody that you already characterized as
22 difficult.

23 **MR. DAVIS:** Your Honor, may I -- may I object? And
24 I do think it's ---

25 **THE COURT:** Certainly.



1 **MR. DAVIS:** --- pertinent. Mr. Tall is going on in
2 great length about information from Steven
3 Rothgeb and the Personal Representative. His
4 client is Ms. Irving. So I'm not sure the
5 relevance of his going on and on about
6 information or exchanges of information between
7 the PR and Steven. Steven is not here arguing
8 the case. He's here representing Ms. Irving.

9 **MR. TALL:** Exhibit 2 is an e-mail to Jeanne -- to
10 Julie Irving and Mr. Davis knows it's so. So
11 if he wants to ask about the relevance in his
12 objection, Mr. Steven Rothgeb writes a letter
13 and Ms. Jeanne responds to Ms. Irving.

14 **THE COURT:** That was an exhibit at trial, wasn't it?

15 **MR. TALL:** It's a trial exhibit and I don't
16 understand why I'm being interrupted to suggest
17 that the things I'm saying are irrelevant.

18 **THE COURT:** Okay. Go right ahead, Mr. Tall. It's
19 all right.

20 **MR. TALL:** In that Exhibit 2, Jeanne Poafpybitty
21 lies.

22 **MR. DAVIS:** I object. I object, Your Honor. What -
23 - what is he talking about? What are ---

24 **MR. TALL:** If it wasn't for the objection, I'd be
25 telling.



1 **THE COURT:** Okay. Go right ahead. Go ahead, Mr.
2 Tall.

3 **MR. TALL:** Whatever the personal expenses I have, I
4 take care of that. That's the way it's always
5 been. And we find -- by the way, this is not
6 just me speaking. This is your Order, Your
7 Honor. And we find that after you finally get
8 accountings, we didn't even need Mr. Scoville.
9 Why is Ms. Irving hiring lawyers? You find
10 that utilities, insurance, taxes on a residence
11 which is largely used exclusively by Ms.
12 Poafpybitty are being paid by the Estate.
13 That's in response to a request for Ms. Jeanne
14 to explain what's going on in the Estate and,
15 oh, by the way, what's happening with personal
16 expenses and she says I take care of them.
17 Now, instead of suggesting that she made an
18 error, we have repeated explanations as to why
19 she should be entitled. I don't mind someone
20 arguing that they're entitled to something, but
21 don't tell me that you never took the
22 entitlement and if you're the Personal
23 Representative, that's shocking. There's a
24 very attractive housing development in Carolina
25 Forrest called Water Bridge. And one of the



1 attractive features is that the dug lakes.
2 Almost every lot is a lakefront lot, very
3 attractive. The developers better know that
4 when they went into that property to dig,
5 Carolina Forrest is well-known for having
6 unexploded ordinances. It used to be a bombing
7 range. And so if you're gonna dig in the back
8 to create some lakes, you better prepare for
9 it. If Ms. Jeanne is delivering information to
10 people that she thinks is part of the
11 dysfunctional family, how about being accurate?
12 How about being compassionate? How about being
13 responsive? How about avoiding lying? And she
14 says in Court in testimony she doesn't
15 understand why she's been sued. Following an
16 apparent resolution, it seemed that way. In
17 May of 2016, Ms. Jeanne's team follows the
18 Court's Order to deliver closing documents.
19 Think about what Ms. Irving accomplished.
20 According to representations from the Estate,
21 either properties were going to be sold to get
22 rid of the mortgages before any distributions
23 could be made. Mr. Davis and I could disagree
24 as to whether or not that paragraph in the
25 Will, you can read the top part of it and



1 ignore the bottom of it or consider that
2 there's a conflict and just resolve it
3 yourself. So either the Mortgages were going
4 to be paid off according to Ms. Jeanne's
5 thinking, or as Ms. Boyd -- Mr. Boyd suggested
6 on 27 May, all of the properties were going to
7 be sold before there would be a distribution.
8 Only \$5,000 apiece was paid to these three
9 other individuals who were anticipating
10 somewhere close to \$200,000 distribution
11 depends on how things go. Nothing is precise
12 in this area. But Ms. Irving was able to
13 accomplish on 27, '16 the Estate making a
14 proposal for closure. The Estate did not ask
15 the Court for any extension of time on June 3,
16 2016. They were supposed to deliver billing
17 records, also, that came six weeks later.
18 Arguably, there would be things that would be
19 examined to see if we could reach some
20 resolution the Court talked about all of the
21 parties getting some resources, all of the
22 parties being able to get their own counsel.
23 We're talking about some people who don't have
24 a lot of money, so some money came from the
25 Estate so that folks could get proper advice.



1 Still we have a concern about whether that
2 \$95,000 is appropriate. And eight weeks after
3 it was first proposed, about a trial shock, on
4 December 15, 2015, could that have been
5 potentially what the Estate was doing? Well,
6 we had some repairs, so we want to put those in
7 eight weeks later. But what about how the
8 effect of those repairs were? Mr. Burgess told
9 us what he thought it was. The Estate doubled
10 down on its \$95,000 appraisal in the June 3
11 closing documents. Still something that struck
12 Ms. Irving as being \$95,000 off the mark. So
13 there are opportunities to see if we can work
14 things out, work things together. You know,
15 one of the things you're supposed to do, Ms. --
16 Ms. Jeanne's team talks about this 1001 Statute
17 that talks about all the things the Personal
18 Representative is supposed to do, information
19 to Heirs and Devises, lists an Inventory, deal
20 with the creditors, all of the things that are
21 supposed to be done that's there. Implicit in
22 the Probate Code is to avoid conflict. Here
23 you have a beneficiary that says I'm familiar
24 with that home. Ms. Personal Representative,
25 you yourself says it's worth 192. My appraiser



1 says that the way in which your appraisal was
2 done is inappropriate, says Mr. Burgess. So
3 why don't we try and work things out? And the
4 Court said to these individuals, see if you can
5 mediate it and the Estate is not to make any
6 additional expenditures until further notice.
7 We learned at a Motion for Sanctions that Ms.
8 Jeanne's team said that they didn't think that
9 applied to legal fees. Certainly couldn't
10 apply to legal fees. It said expenses, all
11 expenses. And the transcript of 27 May says
12 specifically, I'm not going to allow -- Your
13 Honor said you're not going to allow the Estate
14 to pay for this process where we tried to see
15 if things work out.

16 **MR. DAVIS:** Your Honor, I -- I object. That's not
17 something that we brought up in our Motion for
18 Reconsideration. That was not ruled. We were
19 not ordered for any kind of sanctions, it was
20 not -- that's not relevant to what we're doing
21 now. It's not even part of the Order. That
22 was cashiered out of the way in the Order, so
23 we didn't put it in our Motion for
24 Reconsideration. I don't know why he's
25 bringing it up now.



1 **MR. TALL:** If he'd like to ask, I have an answer.
2 It is in your Court Order, Your Honor. In your
3 Court Order where you said you were trying to
4 balance and make a -- a -- a -- a balanced
5 Order. You acknowledged that there was
6 evidence at the sanctions Motion of the taking
7 of fees, which Ms. Irving felt was contrary to
8 your Court Order not to take fees. So we have
9 an imbalance here where Ms. Poafpybitty has all
10 the fees she wants to consider what she's going
11 to do in this contest where it's her personal
12 contest. I want that residence and I think
13 it's worth \$95,000. And I bet there's no way
14 for Ms. Irving to be as polite and as much of
15 a Catholic school girl as she possibly could be
16 to say I politely disagree. Can we work this
17 out as individuals? Because when you try to
18 secure for yourself a property at half the
19 value that -- this is a property that has
20 \$130,000 Mortgage on it. This is a property
21 that the tax assessor says is worth more. This
22 is a property that Ms. Irving had specifically
23 reviewed, at least had Mr. Cromartie's
24 appraisal reviewed by a professional. We got
25 a horse race that's here. The essence I



1 maintain of the June 13, 2016, Order that Your
2 Honor signed in connection with the 27 May
3 hearing was, You folks work this out as four
4 individuals. It's not fair. There is a
5 conflict of interest with the Personal
6 Representative using Estate funds to try and
7 negotiate how we're gonna work this thing out.
8 I don't believe that I'm using hyperbole or
9 exaggerating what was taking place in May and
10 June of 2016. In connection with the securing
11 of funds, there was an effort in May to see
12 maybe that the Estate beneficiaries could get
13 some funds to help them with their efforts in
14 resolving issues with the Personal
15 Representative. A property didn't get sold.
16 The anticipation was the sale proceeds of the
17 property could be split in four ways, everybody
18 could have some money. Everybody could get
19 some advice, maybe there would be some
20 progress. In connection with a Motion to the
21 Court, and Ms. Irving recognizes and she
22 recognized it from the beginning, she put an
23 Affidavit in in April of 2016. It might be
24 ironic for me to raise questions now because
25 I'm going to be pointed to as the person who's



1 causing problems by raising these questions.
2 Earlier today Ms. Poafpybitty's team said if it
3 wasn't for Ms. Irving, this Estate would be
4 closed as of December of 2015. She's the only
5 problem. There's no such problem associated
6 with an underevaluation of a property where
7 more than \$20,000 was spent of Estate money to
8 get it back into shape. In October of 2016 --
9 so we have January of 2000 -- excuse me,
10 December of 2015, January of 2016, May of 2016,
11 June of 2016, October of 2016, all five of
12 those indi- -- of those situations, that was a
13 repaired residence. And in all of those five
14 situations, Ms. Poafpybitty's team was claiming
15 it was a \$95,000 residence, Ms. Poafpybitty's
16 Affidavit submitted to the Court in October of
17 2016 talks about roof problems, leaking, mold
18 as if we're still talking about an old, moldy
19 difficult property which Ms. Poafpybitty
20 admitted in February of 2016 -- excuse me, 2017
21 when we had trial was a repaired residence. We
22 have the receipts from the roofer, we have the
23 receipts from the mold remediation. What is
24 the purpose? We spoke a moment ago about
25 relevancy. What is the relevancy of making Mr.



1 Cromartie a champion with this \$95,000
2 appraisal. If not to suggest to others that
3 this is a property that is in much trouble.
4 And as late as October of 2016, that's what Ms.
5 Poafpybitty was doing while she's the Personal
6 Representative. Again, to your Court's Order,
7 Your Honor, in the finding of misconduct or
8 difficulty or what I'm calling unclean hands.
9 And improper response to a Request for
10 Admissions where we asked in late 2016 as we're
11 getting ready to prepare for trial in 2017, are
12 y'all still holding on to the values that you
13 listed in June? And we have an objection to
14 that Request for Admissions with the debate of
15 what the word listed could mean. And your
16 Court Order found that that prevented Ms.
17 Irving from preparing for trial. Maybe when
18 you allow Mr. Burgess to get in the inside, he
19 was mocked because he didn't get a chance to
20 look at the inside of this residence. Finally,
21 he got a chance to look at the inside of this
22 residence. He did an appraisal, he came up
23 with over \$193,000 of value.

24 **MR. BOYD:** Your Honor, if I may. I'm just gonna
25 object for the record. Nobody mocked Mr.



1 Burgess. I mean, the counsel does not need to
2 use these prejudicial terms to disparage. We
3 didn't mock Mr. Burgess. All we did was
4 observe that Mr. Burgess's initial assessment
5 of the residence was based on the drive by
6 appraisal. That's all we did. We simply
7 reminded the Court that one appraisal was based
8 on an actual appraisal and one -- the competing
9 appraisal was based on the drive by. That's
10 all we did. Nobody -- nobody disparaged Mr.
11 Burgess. Nobody mocked him.

12 **MR. TALL:** The term drive by, Your Honor, is a well-
13 known term to suggest that someone was not
14 careful. That someone was casual. I don't
15 think that Mr. Burgess would characterize his
16 Affidavit in either of those two terms. He
17 gave what he gets -- said was a professional
18 opinion. Be that as it may, however you want
19 to characterize the criticism, he was
20 criticized. He got a chance to look at the
21 inside of that residence in the fall of 2016.
22 Our inquiry as we're getting ready for trial is
23 maybe Mr. Burgess made an impression on y'all.
24 We found out that there was an impression that
25 was made. Your November 2016 Court Order says



1 delivered no later than 10 days before the 17
2 February hearing. A final distribution
3 proposal that was delivered two and a half days
4 before the hearing, not much time to prepare
5 for it. The Court wasn't asked for an
6 extension. Here's an example, again, I'm
7 calling for clean hands when you come to an
8 equity court, or was this some gainesmanship
9 just like the denial of the objection to the
10 Request for Admissions for getting ready. And
11 then what we have at trial with the \$193,000
12 admission by the Estate in the 2014 -- excuse
13 me, the February 14, 2017, final distribution
14 proposal filed with the Court on the 15th of
15 February, two days before the hearing. There's
16 193-. Ms. Poafpybitty asked at Court, Do you
17 agree that the property's worth 193-? The
18 answer is no. We are left with chaos. The
19 Personal Representative who has the duty and we
20 have two Court Orders, the one you just signed
21 in March and the one that was signed in June
22 13, 2016, reminding the Personal Representative
23 of her obligation under -708, 62-3-708 of the
24 code. If you have the opinion that a property
25 that you once appraised in an Inventory has a



1 changed value, you have a preference, a duty to
2 inform the Court. She did not. Can we deal
3 with it? We can deal with it. I moved us
4 ahead to the trial in February of 2017. Let me
5 back track. With the words necessary,
6 reasonable, and in good faith. A counter claim
7 against Ms. Irving, think about this, Your
8 Honor, a counter claim against Ms. Irving. Ms.
9 Irving files a Summons and Complaint in April
10 of 2016 and says, This Estate has been open
11 long enough. All of these arguments about
12 selling properties so that you can pay off the
13 Mortgage or selling all of the properties so
14 you can distribute proceeds is an unreasonable
15 lengthening of the Estate administration.
16 Maybe before the Court even issued its own
17 opinion of agreement, we heard from the Estate
18 in May of 2016. We can close it right now.
19 And we'll close it subject to Mortgages and
20 we'll close it without selling any more
21 properties, and that's apparently where we were
22 headed in June of 2016. Except for holding on
23 to that property value. Do we get a chance to
24 get together and see if there would be some
25 resolution? Mr. Davis wants to talk about how,



1 as he described it in his Memo, a line in the
2 sand. Ms. Irving didn't want to come to his
3 office to speak with him about how to resolve
4 these matters. He was -- she was talking to
5 someone who had already been the author of a
6 schedule that didn't show post-appraisal,
7 repairs that didn't embrace the concept that
8 maybe we'd have a property that was repaired
9 beyond a deplorable state, \$23,000
10 approximately used to fix it and then it became
11 something else. And Ms. Irving observed, every
12 time I speak to Mr. Davis, three-quarters of
13 the bill are paid for by my brothers and I --
14 my brothers and me. My mother was an English
15 major. Your Honor, that idea of distributing
16 property subject to Mortgage was apparently
17 agreed to by the Estate following Mr.
18 Scoville's employment, reminding the Court that
19 Mr. Scoville just didn't come along because Ms.
20 Irving was demanding. Ms. Irving's brother
21 wrote a polite letter to Ms. Poafpybitty. Ms.
22 Poafpybitty promised to deliver accountings.
23 What she delivered was hollow. The three
24 children decided to hire an attorney. By the
25 way, the three children are not asking for



1 reimbursement of what they paid Mr. Scoville.
2 They paid him something. And in May of 2016,
3 Mr. Davis's office sent a letter agreeing with
4 Mr. Scoville, we will distribute properties
5 subject to Mortgage, and discussions went back
6 and forth. The Court has a request for an
7 extension from Ms. Jeanne's team. Maybe it's
8 a mistake, don't know what it is. But it uses
9 as a reason for extension Personal
10 Representative needs more time to sell Estate
11 properties. September of 2016 is where this
12 Request for Admission is there. So you say to
13 Mr. Scoville, we're going to distribute
14 property subject to mortgage. You tell the
15 Court that the Personal Representative needs
16 additional time to sell the properties. That's
17 inconsistent. Ms. Jeanne says there's nothing
18 to tell but give me a week and I'll tell you.
19 And Ms. Jeanne delivers hollow schedules that
20 don't give you the information. This is a
21 nightmare for beneficiaries who Ms. Jeanne says
22 are already people that are challenged. They
23 have emotional issues, one has a drug issues.
24 The more I listen to this, the more I say to
25 myself, yes, all the more reason for you as



1 Personal Representative to be careful. I'm not
2 saying that you have to spoon feed everybody.
3 But when you promise to do something, follow
4 through. And when we get to a point like today
5 where we're asking the Judge to reconsider his
6 Order -- forgive me, Your Honor. Take me a
7 moment. How much did Ms. Jeanne's team pay and
8 how much does Ms. Jeanne's team want my client
9 and her brothers to pay for making the argument
10 that the form I just handed to you, Your Honor.
11 It's important to note, says Ms. Jeanne's
12 Memorandum, that Ms. Irving was not demanding
13 enough. Ms. Irving is demanding, but
14 apparently she's not demanding enough because
15 she didn't file this demand form. That's the
16 advocacy that we have to respond to when Ms.
17 Jeanne's team tells us that there's been no
18 fiduciary breach, there's been proper service
19 and that there's been clean hands that deserves
20 to be reimbursed. After the Court issued its
21 Order on June 13, 2016, essentially agreeing
22 with proposals that were made by Ms. Irving to
23 Mr. Davis in letters that were sent to him in
24 the first part of 2016, this Memorandum says
25 that Ms. Irving only wanted one thing and one



1 thing only and boy she was gonna get it, a
2 division of properties in quarter shares. You
3 read the letters, Your Honor. She said if you
4 felt comfortable with that notion, how about
5 letting some of the other beneficiaries who
6 have only gotten \$5,000, how about letting them
7 have a little bit of money and get their own
8 advisors, and don't bring the Estate advisor to
9 the meeting that we'll all have so that one of
10 the people of the four that are trying to work
11 things out won't be having their attorneys'
12 fees be covered by the other three people.
13 It's a classic conflict of interest situation.
14 When I read Ms. Poafpybitty's team's Memorandum
15 and they say that Ms. Irving only demanded one
16 thing -- by the way, they're polite letters.
17 They're in the Court file. How do I address
18 someone who says your client only wanted one
19 thing. Well, did you read the other part of
20 the letter where she had an alternative? And
21 my point is that we've got folks that when they
22 don't like what they hear they pretend like
23 they didn't hear it, but more than that that
24 proposal was essentially adopted by the Court's
25 Order of June 13, 2016. So when you have Ms.



1 Irving's proposal to see if we can work things
2 out, but please don't let me go get another
3 attorney like we did with Mr. Scoville, don't
4 make me go get another attorney without any
5 resources. The Estate has some resources. Two
6 and a half years of administration, not one
7 Mortgage has been paid off. Property has been
8 sold, you got money in the bank, how about
9 letting go of a little bit of money so that we
10 can go get our attorney, and when Ms.
11 Poafpybitty shows up, please don't make me pay
12 for part of her attorney's bill. Not an
13 unreasonable proposal and the first part of
14 2016 adopted in June of 2016. And what we have
15 in the latter part of 2016 and I'm using the
16 terms, Your Honor, necessary, reasonable, and
17 good faith, Ms. Irving is handed a Summons
18 which says you have a counterclaim against you
19 because the main purpose of your bringing any
20 action in April of 2016 was vengeance against
21 Ms. Poafpybitty. That's the reason why you
22 brought your action in April. Imagine the
23 thinking, Your Honor, if someone was even
24 potentially open to the motivations of this
25 Court issuing its Order in June 13, 2016, you



1 could see it right there. The Court, whether
2 the Court's right or not, but it's clear the
3 Court found that this was an Estate that could
4 be and should be closed. And with the
5 cooperation of four beneficiaries, neither of
6 them bringing along the burden of Estate
7 expenses when they have their own lawyer like
8 the other three have to have lawyers. That's
9 right there in our Court's Order of June 13,
10 2016. And Ms. Irving is months later.
11 Delivered with a Summons that says you will
12 have to answer because we are accusing you of
13 bringing your lawsuit of April of 2016 for no
14 other good reason than vengeance against your
15 stepmother. That is a counterclaim which your
16 Court Order of March 2, 2018 found to be a
17 wasteful use of fiduciary authority. How much
18 of that Summons, Complaint and everything else
19 that came about it which essentially challenged
20 the June 13, 2016, Order, and think about that
21 June 13, 2016 Order. If you read the
22 transcript, you have the Estate saying you know
23 what, we pretty much agree. We should close
24 this Estate. We can close this Estate. In
25 response to something else that the Personal



1 Representative's team offered, I will note that
2 our April 2016 Summons and Complaint did not
3 ask for Ms. Poafpybitty's removal. Where's the
4 vengeance? The Estate could be closed two and
5 a half years are going on. Ms. Irving spoke
6 about being a small business person. Everybody
7 can use a little financial shot in the arm.
8 What's happening? We've got a Personal
9 Representative on the one hand that says get a
10 grip, there's no money. That's in your Order.
11 That's supported by an Exhibit. We have one
12 representation that says we've got to pay off
13 these Mortgages, even though the balance of the
14 paragraph in that Will indicates that you can
15 and I think should distribute property subject
16 to a Mortgage. We have one representation that
17 says we've got a pay off these Mortgages, even
18 though the balance of the paragraph in that
19 Will indicates that you can and I think should
20 distribute property subject to a mortgage. And
21 you got a representation in May of 2016 that
22 what we were really thinking about until Ms.
23 Irving came along is selling all the property
24 and just distributing proceeds. The suggestion
25 is that Dr. Rothgeb knew that everybody in this



1 family was difficult, difficult, difficult,
2 difficult and only Ms. Poafpybitty could be the
3 person who would preside over everything. Ms.
4 Irving is listed as the Successor Personal
5 Representative. She didn't try to become the
6 Personal Representative. It just was -- let's
7 say it, enough is enough. We got that
8 counterclaim. That counterclaim was seen in
9 your Court Order as a waste and I'm here in
10 Court today listening as Ms. Poafpybitty's team
11 say the Court found no inappropriate actions on
12 the part of the Personal Representative.
13 Regarding the Statute that ends with 1001, the
14 Memorandum says -- I don't know what that might
15 mean, that we didn't cite the Statute? It
16 says, Within a reasonable period of time close
17 the Estate. That's what the April 2016 Summons
18 and Complaint was all about. Maybe I'm to
19 fault because I didn't put the Statute in
20 there. The Memorandum that you've been handed
21 up in Support of Reconsideration suggests that
22 there's nothing associated with 1001.
23 Forgetting about the fact that elsewhere in the
24 Code it talks about avoiding selfishness,
25 avoiding conflicts of interest, and generically



1 you have to answer for those things when you're
2 the Personal Representative. This is in your
3 Court Order. In March of 2016, you issued an
4 Order, Your Honor, following consultations with
5 Counsel in this matter allowing \$17,500 to be
6 given to each of the beneficiaries and
7 specifically ordering that if anybody wanted to
8 take Steven Rothgeb's deposition, they could do
9 it by telephone. Ms. Poafpybitty writes to
10 Steven and tells him the plan for an
11 international trip because someone is likely to
12 ask for his deposition and that's what he's got
13 to do in response. And it's all the fault of
14 Ms. Irving. Mr. Rothgeb offers in connection
15 with our Motion for Sanctions his Affidavit
16 about an attempt to try and divide the
17 beneficiaries, no breach of fiduciary duties,
18 says Ms. Poafpybitty's team. Your Honor, if I
19 can speak a little bit to the Common Fund
20 Doctrine. This is associated with your Court's
21 Order that says if you can see that someone who
22 has been a champion in the Court has done
23 something beneficial, that there can be this
24 common fund and an award associated with that.
25 And if you take what Ms. Poafpybitty's team



1 says at face value in any situation where one
2 of the co-beneficiaries is also a Personal
3 Representative and that person is found to be
4 -- I don't want to use the word guilty, I just
5 did, responsible for wrong doing, you could
6 never have a Common Fund Doctrine because after
7 all that Personal Representative who has gone
8 sideways is one of the beneficiaries and
9 there's an adverse situation. There is not in
10 this case any adverse situation between Ms.
11 Irving and her two brothers. Her two brothers
12 have both signed Answers, they're in the Court
13 file, and they say further I hereby express my
14 agreement with all terms expressed in
15 Plaintiff's Complaint and join in Plaintiff's
16 prayer for relief. Ms. Irving is acting on
17 behalf of herself and those similarly situated,
18 which are two brother beneficiaries who are
19 both being harmed by the manipulation of an
20 asset to get advantage, by a defense that can't
21 really, if it wants to be honest, call itself
22 in good faith. And in those situations, if
23 what the Personal Representative's team says is
24 true, you could have a rogue Personal
25 Representative so long as that Personal



1 Representative is one of the several
2 beneficiaries, then you'd never have a Common
3 Fund Doctrine applied. In the case of Kay and
4 Sullivan, the gentleman was not also a
5 beneficiary, and there was disagreement between
6 beneficiaries in addition -- in -- in the
7 class. So you had some beneficiaries who were
8 happy and some beneficiaries who were not happy
9 with the action that was taken by the plaintiff
10 and that's not what we have in this case, Your
11 Honor. Your Honor, I don't think I understand
12 you to be much of a golfer.

13 **THE COURT:** It was either give up golf or my
14 religion and I figured my eternity was more
15 important than my golf game, so.

16 **MR. TALL:** Well, I do want to address one issue.
17 And the -- the Personal Representative's team
18 in their Memorandum suggested that I was
19 failing, that we'd been failing to carry a
20 burden that I don't believe is our burden. We
21 didn't prove to you that Ms. Poafpybitty had a
22 -- a motive in mind to harm the other
23 beneficiaries. I didn't get inside her mind
24 and show you intent. And the idea that she,
25 for whatever reason, generous maybe, maybe she



1 wanted to be the Personal Representative. I'm
2 not sure you can continue to be the Personal
3 Representative if you take an elective share,
4 which is against the Will. You have to align
5 yourself as someone who's electing to take
6 against the terms of the Will. Whatever her
7 motivation was, not to take an elective share.
8 By the way, I think we're all aware there's a
9 section in your Order of March 2nd which says
10 that you were aware Ms. Poafpybitty did not
11 take the elective share. She elected to go
12 along with the terms of the Will. So
13 presumably, that absolves her of all future
14 misconduct or I'll use the term temptation.
15 Getting back to golf, tomorrow is the second
16 week anniversary of Phil Michelson's 48th
17 birthday, hall of Fame golfer. If there was no
18 Tiger Woods, he would be the epitome of who you
19 would want your 12 year old to be. I have a
20 13-year-old nephew watching golf on Saturday.
21 His birthday, millions of dollars he gives to
22 charity. Fortune 500 companies clamor to have
23 him as their spokesperson. He's playing the
24 U.S. Open. It's on his birthday. Every time
25 he steps to the tee, every time he comes to the



1 green, people singing happy birthday to him.
2 It should be a happy event. He wasn't playing
3 very well and he had it in his mind that the
4 folks that set up this golf tournament tricked
5 it up too bad because the greens were very
6 slippery. If you miss it by just a little bit,
7 instead of the put going past 3 feet, and this
8 is what happened to him, his put got hit a
9 little hard and it's tumbling over the hill
10 towards a muddy ditch. Goodness knows what it
11 will be able to do when it gets there. And
12 this Hall of Fame stalwart that I want to show
13 my 13-year-old nephew and say, you want to be
14 like that guy, walked up and hit the ball as it
15 was rolling. Hit it back towards the hole so
16 that it didn't go into the muddy ditch. He
17 caved to temptation. On the day of that --
18 it's his birthday, he finished his round.
19 Curtis Strange, who's won the U.S. Open twice,
20 put a microphone to him and said what would you
21 say to people that claimed you kind of
22 disrespected the game of golf, this is the
23 Hallmark guy. He says, I knew what I was
24 doing. I know it's a two stroke penalty. And
25 I was gonna take the two stroke penalty rather



1 than let the ball go down in the ditch. Then
2 there were clamors of out -- maybe he should be
3 disqualified, because unlike -- I don't really
4 understand basketball too much, that you have
5 to actually use your team's fouls. Isn't that
6 a strange concept? I know that my man can foul
7 somebody a few times before he's bounced out
8 and I'm not a good coach if I don't instruct
9 him to give a foul every once in a while. It
10 kills the momentum from the other side, maybe
11 you can get an advantage. That's not a concept
12 in golf. Four days later, Mr. Michelson
13 apologizes and says he had a meltdown. He
14 shouldn't have said that that was a calculated
15 effort and deny the fact that he had succumbed
16 to temptation. I don't know. This is a
17 difficult case enough without my hiring a
18 psychologist and having Ms. Jeanne examined.
19 I don't know what prompted her to try and take
20 a property for \$95,000. I don't know what
21 prompted her not to, whenever it was in the
22 fall of 2016, say, you know what, Ms. Irving's
23 really got a point. This probably is a
24 \$193,000 property, but I've said it so many
25 times, I don't know what I can do. You look at



1 the distribution proposed that was filed with
2 the Court on 15th February. There is Mr.
3 Davis's signature under oath. We all have to
4 sit and think what does that mean, because Ms.
5 Jeanne doesn't think that property's worth 193.
6 She's not signing the form. And we're left
7 with Ms. Jeanne saying as it relates to that
8 property, I'm on the sidelines. I have no
9 leadership role. I've decided she was candid
10 in Court. She said, Mr. Tall, no, I don't
11 agree that's the value, but that's the value
12 that's put in. And now she doesn't want to get
13 the -- the residence her -- at all herself.
14 The Memorandum says that there's a kind of a
15 shock here. The Memorandum in Support of the
16 Defendants' Motion for Reconsider says, Your
17 Order, which says everybody's gonna own things
18 in four shares, will have the effect of Ms.
19 Jeanne owning her home with three other people.
20 You know, that's what Dr. Rothgeb put in his
21 Will. We want to talk about reforming a Will.
22 You can see in the Memorandum Ms. Jeanne is
23 held up as a -- as stalwart, that she didn't
24 force her husband to put her name on the deed.
25 She did get every nickle of \$65,000 in the



1 joint account, which was used for Dr. Rothgeb's
2 business. Not sure every business man has his
3 bride as a joint owner with right of
4 survivorship, but that came to her directly.
5 That made her more comfortable. She has a
6 house with no utilities, insurance and taxes.
7 She got \$65,000 in the bank and you compare
8 that to the other beneficiaries who are trying
9 to scrape by with \$5,000 distribution and
10 wondering. We want to make them out to be
11 monsters after a year of administration where
12 you write that polite letter from Steven
13 Rothgeb? You wanna really make these people
14 out to be people that are just so difficult you
15 can't get along with them? I don't understand
16 the psychology, Your Honor. Got two more
17 points. Similar to suggesting to Ms. Irving
18 that she didn't meet her burden of proving Ms.
19 Poafpybitty's intent. I don't know what her
20 intent was, but I can certainly see her
21 actions. I don't think that's a component that
22 I have to prove. If you buy in to what the
23 Estate Counsel says, any time a Court finds
24 that discretion has been given by the Will and
25 by the Statute to a Personal Representative and



1 that Personal Representative goes rogue, when
2 the Court tries to take corrective action, they
3 are necessarily reforming the Will. The logic
4 goes as follows. The Decedent wanted the
5 Personal Representative to have the discretion
6 and the Court took away that discretion. And
7 unless you can find that the Decedent had a
8 mistake of fact or a mistake of law, you can't
9 reform the Will. I agree that's what you need
10 to reform a Will. You need to find a mistake
11 of fact and you need to find a mistake of law.
12 And if you don't find those, you don't have any
13 business reforming the Will. On the strength
14 of that logic, however, Ms. Poafpybitty's team
15 is giving to me in what they call is a
16 necessary good faith and reasonable defense.
17 The obligation to remind the Court that when
18 you take corrective action for someone who's
19 gone out of bounds. What out of bounds? A
20 baseless counterclaim. Manipulating a property
21 for your own personal wishes. Telling the
22 beneficiaries that you pay your own way, but
23 when you find out that you're not paying your
24 own way, switching and saying, well, I should
25 be, because this is how my husband always had



1 it for 20 years. He always paid the Mortgage.
2 He always paid the electric bill. He always
3 took care of the insurance. So I'm just
4 continuing what he's done. Ignoring the fact
5 that that residence was not given to Ms.
6 Poafpybitty. Dr. Rothgeb could have, if he
7 wanted to, said my Personal Representative goes
8 to my bride. He did not do it. It struck me,
9 Your Honor, that it's Ms. Poafpybitty who'd
10 like to reform Dr. Rothgeb's Will. So that
11 that residence should have come to her. And
12 where is any gratitude for the Court saying for
13 four years you've had it rent free. But from
14 here on out, no. I'm hoping we won't need any
15 here on out, because if you follow what the
16 Court says to be done, there won't be any
17 further Estate administration. Is that chaos?
18 The -- Ms. Poafpybitty's team will tell you it
19 is. These four people are gonna own this
20 property together and, boy, they just can't get
21 along. The alternative is endless responses to
22 defenses such as that demand form. It's
23 important to note that Ms. Irving didn't file
24 one of these demand forms. And I've got to
25 make an argument about that. Ms. Irv -- Ms.



1 Poafpybitty didn't do anything associated with
2 fiduciary breach. And, therefore, good faith
3 in the -3-720 Statute applies. We'll have more
4 arguments like this, Your Honor, and that is
5 going to create -- don't know if you're a fan,
6 I'm a fan of Charles Dickens, and he wrote a
7 book called Bleak House. In the unfortunate
8 story of Bleak House is there was this sweat
9 couple that really needed to -- a good shake
10 and they finally at the end after they thought
11 they won their case, but no more money because
12 the lawyers took it all. That's where we're
13 headed in this case. Last point, if I may,
14 Your Honor, as it relates to -- I'm proud to
15 say that Ms. Irving did not call for the
16 removal of Ms. Jeanne as Personal
17 Representative in her April 2016 Summons and
18 Complaint, but she did ask for it at the May 27
19 hearing. She said, could we please stop Ms.
20 Poafpybitty from arguing about this \$95,000
21 value when others say it's worth twice as much
22 and Ms. Poafpybitty herself has said it was
23 worth twice as much twice in sworn inventories.
24 Rule 15(b) of the Rules of Civil Procedure
25 allow us to recognize that what takes place at



1 trials can be conformed and have a modification
2 of a request. These gentlemen say that it's
3 unfair. They wanted time to prepare for a
4 defense against the removal proposal. I submit
5 to you, Your Honor, that the case law that was
6 cited by the defense and the arguments that
7 were made that what Ms. Irving is doing is
8 essentially removing the Personal
9 Representative. That was all addressed during
10 the hearing. Excuse me. What more would you
11 say about a Personal Representative in the --
12 in that she did everything appropriate, she
13 dealt with difficult situations, she's been
14 efficient, she has done nothing to deserve
15 removal. Those arguments were made prior to
16 November of 2017 when a proposed Order was sent
17 to Your Honor. There was argument which was
18 made after my proposing that our -- that --
19 that Order to you. So I ask you to consider
20 that the issue of removing -- and this is only
21 an enforcement issue as Mr. Davis and Mr. Boyd
22 suggest, this case is gonna go up for Appeal
23 for quite a while. I hope it doesn't, but if
24 it does, someone who has demonstrated
25 themselves to be untrustworthy. Why? Because



1 they've used their fiduciary power to try and
2 personally enrich themselves. And to give us
3 arguments such as that demand form should have
4 been signed and submitted by Ms. Irving and
5 that's one of the reasons why she has a silly
6 position. We have someone who's going to make
7 those kind of legalistic arguments and have
8 taken the positions that Ms. Poafpybitty has
9 taken, this Estate has a chance of spinning
10 off. Your Honor, the Court itself, on its own
11 initiative, can Order the removal of a Personal
12 Representative. I refer you to Section 62-7-
13 706 of the Code that talks about Trustees. I
14 think we're all clear that the fiduciary
15 obligations and remedies associated with
16 Trustees apply also to Personal
17 Representatives. And further in the section
18 that deals specifically with Personal
19 Representatives, Section 62-3-704(g). It says,
20 Upon such notice, as the Court deems
21 appropriate, the Personal Representative
22 neglects his -- in this case, her, inventory
23 duties. The Court can fix as a penalty the
24 removal of the Personal Representative. Now,
25 that refers specifically to -3-706 of the Code,



1 which is the initial inventory, and I'm
2 referring, Your Honor, to -3-708, which I think
3 is in tandem with -3-706. This is an Estate
4 where, if the Personal Representative was
5 really truthful to everyone, they'd say to the
6 Court, I'm the one that's going to sign under
7 oath and say that this property, which at once
8 upon a time might have been worth \$95,000, but
9 where Estate money was used to improve it to
10 where Mr. Burgess says it's worth 193. And
11 think of this, Your Honor. Mr. Cromartie was
12 observing what Mr. Burgess did at the request
13 of Ms. Poafpybitty's team. And he was called
14 to Court. Why call him to Court? Is he going
15 to contest what Mr. Burgess had to say when
16 asked what do you think the value of this
17 repaired residence is? I think he was able to
18 say I don't think it's worth 193, but he didn't
19 give an opinion. Why? He told us he wasn't
20 asked to give an opinion. So the Estate is
21 engaging this appraiser and requiring all of us
22 to arrange so he can be present when Mr.
23 Burgess sees the interior, because without
24 seeing the interior, Mr. Burgess was
25 incompetent to give an opinion. And then Mr.



1 Cromartie is called to Court. How much are we
2 paying for all of this that results in no
3 contesting opinion? It certainly seemed
4 contesting in May of 2016 when the Personal
5 Representative's team said that this is just an
6 effort to make things more difficult. And here
7 less than a year later the Personal
8 Representative's team is agreeing with Mr.
9 Burgess. Or dare I say, agreeing with Ms.
10 Irving. One last matter, Your Honor, if I may.
11 How much did the Court spend -- Excuse me.
12 How much did the Personal Representative spend
13 to cobble together and forward a Rule 68 Offer
14 of Judgment, which the Rule says is to be
15 forwarded no less than 20 days before the
16 hearing. Think we've got about 12 days. It's
17 something that says take our offer or you'll
18 have consequences. And it's a useful tool, but
19 not when it's given beyond the period of time
20 that the Statute says it's supposed to be
21 given. Ms. Irving and I have dealt with the
22 kitchen sink of defenses. And she hasn't been
23 perfect. And she's done the best she can with
24 her emotions. But when Ms. Poafpybitty and her
25 team have the fiduciary duty and care and want



1 to come to Court with -- with a request. I
2 haven't seen the bill yet, I've asked for it.
3 Presumably the Personal Representative's team
4 has a bill to present to the Court. I've heard
5 that it's way north of \$100,000, which was way
6 south of \$30,000 in July of 2016.

7 **MR. BOYD:** Your Honor, I object. If he's talking
8 about the bill for our firm, I don't know where
9 that information is coming from, but ---

10 **MR. TALL:** Oh, it's speculation, Your Honor. I'm
11 sorry.

12 **THE COURT:** Okay.

13 **MR. TALL:** I think I've -- I think I've heard ---

14 **THE COURT:** I -- I took that as speculation.

15 **MR. BOYD:** It -- yes. Thank you, Your Honor.

16 **THE COURT:** Yes, sir.

17 **MR. TALL:** I can offer a little bit. Mr. Davis says
18 I disagreed with something that we said in
19 Chambers. I don't know where the record of
20 that is, I don't know what I disagreed about.
21 It's in the Memorandum as if that's something
22 else that Ms. Irving didn't do appropriately.
23 Get everything appraised, I suppose. I'm not
24 sure if I recall how that presentation was
25 made. It's not part of a record somewhere.



1 And to that extent, I think I heard over
2 \$100,000 when we were in conference at one
3 time. But whatever it is, I presume we'll see
4 a bill that will be presented. And we'll know
5 how much money was spent on a counterclaim and
6 how much money was spent on an untimely Rule 68
7 Motion and how much money was spent on other
8 kinds of things that the Court specifically
9 addressed in it's March 2, 2018, Order. Your
10 Honor, I think in total, am I patting myself on
11 the back, I've heard this called Mr. Tall's
12 Order. Certainly, I drafted it. But it was
13 adopted by the Court. I consider it to be a
14 measured Order that was designed to try and get
15 this resolution. I understand what the
16 Personal Representative's counsel will say,
17 which is that when you have four people owning
18 these properties together, it will be the most
19 difficult thing. It will at least relieve the
20 process of one person saying in spite of my
21 errors, such as the manipulation of one
22 property for my own personal gain. When you
23 relieve -- in spite of her own errors, I can
24 still be the one mediator, somebody who watches
25 as the attorney swears to a number that you



1 don't think is appropriate as you're walking
2 into Court. That person doesn't belong being
3 the one. Dr. Rothgeb would not be pleased.
4 I submit to see the way that this Estate's been
5 run and to see how Ms. Poafpybitty has defended
6 herself. I ask you please to confirm your
7 Order.

8 **THE COURT:** Okay. Mr. Tall. Yes, sir. Mr. Davis,
9 if you would to reply.

10 **MR. DAVIS:** Thank you, Your Honor. And I do
11 appreciate the fact that we gave Mr. Tall ample
12 time to continue on. There are a number things
13 that I've reserved for comment now instead of
14 jumping in, as you requested, Your Honor.

15 **THE COURT:** Sure. Come -- come up to the microphone
16 to help this gentleman for our recording
17 purposes, please.

18 **MR. DAVIS:** All right. Mr. -- if it may please the
19 Court again ---

20 **THE COURT:** Certainly.

21 **MR. DAVIS:** --- Your Honor.

22 **THE COURT:** Certainly.

23 **MR. DAVIS:** Mr. Tall, the best you've come up with
24 as far as any kind of breach of fiduciary duty,
25 as far as I understand his argument, was that



1 Ms. Poafpybitty manipulated one of the Estate
2 assets for her benefit and then made an
3 assertion that she's taken care of her own
4 stuff, which I'm assuming he -- he said that
5 she lied. I completely cannot disagree with
6 that any more than -- than I do. She pays her
7 own personal car insurance, she pays for her
8 own food, she does those things, she doesn't
9 pay for her Personal expenses out of the
10 Estate. The Estate has continued to maintain
11 the property just as it had been all along. So
12 any -- any inconsistency there, that is not an
13 outright lie, like he characterizes. That's
14 just not inappropriate, Your Honor. The best
15 thing he could come up with is she manipulated
16 a piece of property and -- for her benefit,
17 and/or she wasn't fully transparent in
18 communications. Again, on the -- the property,
19 Matt lives in the piece of property that's in
20 the Estate and has not paid rent also. Steven
21 lived in the house with Ms. Poafpybitty for
22 nine months and did not pay rent. They
23 experienced the benefit of the utilities as
24 well. So we can't say one thing against one
25 person without also considering the same



1 benefit that another beneficiary received. So
2 that's the best he can come up with, that the
3 reason that she breached her fiduciary duty,
4 then I can't see how the Court can find that
5 she acted in bad faith. That's simply not
6 enough. And the overriding question that I
7 would want to ask the Court and Mr. Tall is
8 what Statute section did she violate? You
9 know, we've got a Probate Code, and I don't --
10 we've got sort of like our Bible for Probate
11 Attorneys we go by. We -- we've got a Personal
12 Representative and we've got to explain to them
13 how to administer an Estate. And we've got
14 case law and we've got Statutes. What he
15 relies on is in the -- I'm trying to write down
16 what he said. I think he said implicit --
17 something an implicit rule in the Probate Code
18 of the way you deal with beneficiaries. That
19 -- that -- how can a Personal Representative
20 comply with something that they don't even know
21 what it says? So he's -- the best he's got is
22 an implicit rule in the Probate Code, we don't
23 have a specific Statute section. We've got
24 manipulation of a residence and her being unfit
25 that she'd been a resident in for 20 years



1 while Matt's also living in the property
2 without paying rent. Steven was there. As I
3 mentioned before, I absolutely cannot see bad
4 faith. And there's absolutely no evidence of
5 fraud, misappropriation, or factual -- not
6 telling the truth factually, I'd have to hear
7 the actual language, but there's no evidence of
8 that in the record. During -- during a
9 meeting, we -- we had a discussion. And I
10 can't recall what the over \$100,000 comment,
11 I'm not sure what you're referring to. And --
12 and I used the term cherry pick. We cherry
13 picked the one residence. I said, If we're
14 gonna cherry pick the one residence, it's not
15 gonna be an accurate reflection of the
16 appraisals. Let's get every property re-
17 appraised if they don't like the appraisals.
18 It wasn't about locking in on \$95,000 or
19 115,000 you add on -- or whatever the number
20 was adding on to improvements. It was about
21 trying to get to some value that was fair
22 across the board. Again, the Personal
23 Representative would have been happy and
24 suggested using the tax assessed values. It
25 was Ms. Irving and her brothers who wanted the



1 appraisals, not the Personal Representative.
2 The Personal Representative was going to use
3 the tax assessed values. So then we complied
4 with their request and now it's being held
5 against us. That's just not fair, Your Honor.
6 That's simply not fair. All right. Again,
7 he's talking about an e-mail from Steven, Mr.
8 Tall is, and -- and how Ms. -- Ms. -- he did
9 admit Ms. Poafpybitty did respond. But Ms.
10 Irving was not happy with Ms. Poafpybitty's
11 response to Steven, which is odd to counter
12 that way. And again, I ask, why didn't Steven
13 or Matt participate in the trial? Why didn't
14 they come to the trial and say whatever they
15 wanted to say? And I -- I believe they didn't
16 because they were not on the same page as Ms.
17 Irving. Of course, we've got these Affidavits,
18 which I do believe were drafted by Mr. Tall.
19 So if they really wanted to be a part of this,
20 they would have shown up for trial and they
21 would have testified, Your Honor. They did not
22 do that. Neither one of them did. Matt showed
23 up for a few minutes during trial, and he did
24 not testify. Okay. This -- this -- this is
25 the part that as a practitioner you, I get so



1 frustrated with another practitioner. We've
2 got -- he -- he went on -- Mr. Tall went on and
3 on about a proposal for distribution was sent
4 in December and then eight weeks later another
5 proposal was sent showing the -- the improved
6 -- the repairs that would be charged to Ms.
7 Poafpybitty. Then he says there was a six week
8 thing done in June. I can't remember who said
9 that, an eight week -- and I've got a note
10 here, there was another thing that somebody had
11 to wait six weeks to get something, and then
12 two and a half days before hearing a proposal
13 was submitted. He goes on and on about these
14 weeks that are causing problems, that is
15 causing Ms. Irving to be shocked because
16 there's so much time that has elapsed between
17 receiving information. We're all lawyers and
18 we know that we get busy and that kind of
19 stuff. I want to remind the Court that the
20 Court took several months to issue its Ruling,
21 as the Court knows. I also want to remind the
22 Court that Mr. Tall took nearly five months to
23 present a draft Order, Your Honor. It does not
24 take five months to draft an Order. So he
25 wants to absolutely beat us to death over a few



1 weeks when he takes five months to submit a
2 draft Order that this Court requested of him to
3 repair. That is what just really flies all
4 over me as a practitioner. And I find it to be
5 disingenuous. All right. Your Honor, there's
6 another thing that is -- that's very important
7 that this Court understands in this case. We
8 had a -- we have a precedent in this Court on
9 the payment of legal fees in a contested
10 matter, in this very courtroom. So we have a
11 precedent that we're going on in a previous
12 case that we've had with Mr. Tall there was
13 this -- Judge Evans ordered -- he -- Mr. Tall
14 filed an Action for a removal of a Personal
15 Representative.

16 **MR. TALL:** I'm sorry, Your Honor. If we don't have
17 a -- a reported case, we're going ---

18 **MR. DAVIS:** It is ---

19 **MR. TALL:** --- going into uncharted territory.

20 **MR. DAVIS:** You've got the Order.

21 **MR. TALL:** I'll defend whatever I have to defend.
22 But I -- this is an unreliable source. If
23 we've got something in writing, I'd be happy to
24 address it.

25 **MR. DAVIS:** We have it in writing, it's in the



1 Court's -- the Court's file.

2 **MR. TALL:** Bring me to it and we'll deal with it.

3 **THE COURT:** I think the Order -- the Order in that
4 case is what you're talking about?

5 **MR. DAVIS:** Yes.

6 **THE COURT:** The Order that is filed? I don't -- I
7 didn't know ---

8 **MR. DAVIS:** Well, I ---

9 **THE COURT:** --- what we had local precedent and ---

10 **MR. DAVIS:** Well, I'm gonna tell you what happened
11 and you consider ---

12 **MR. TALL:** No, sir, your Honor. I'm not -- I'm not
13 -- he wants to testify about what something
14 happened. This is not me being personally
15 offended by anything, but I'm not gonna -- I
16 don't think it's appropriate for Mr. Davis to
17 stand up and give testimony about what he
18 thinks happened in ---

19 **MR. DAVIS:** I'm not giving testimony.

20 **MR. TALL:** --- some other case.

21 **MR. DAVIS:** I'm simply stating what the Order
22 states, Your Honor. We have an Order in a
23 case.

24 **THE COURT:** I know, but that Order doesn't have a
25 thing in the world to do with this case other



1 than whatever legal theory that -- that was
2 placed in ---

3 **MR. DAVIS:** It has something to do with a PR's right
4 to hire and pay attorneys during the pendency
5 of an Action against the PR. That's ---

6 **THE COURT:** You may tell me ---

7 **MR. DAVIS:** --- exactly what came up.

8 **THE COURT:** --- what you think the law is in that
9 regard. I'll be glad to hear it.

10 **MR. DAVIS:** Well, that issue came up in this Court,
11 in this very Court under a previous judge, said
12 that the PR can pay for the attorneys fees
13 during the pendency during the Action, and it
14 was a Removal Action. So we had precedent in
15 this Court with a previous case with Mr. Tall.
16 That's why we took the liberty of having the PR
17 pay the legal fees during the pendency of the
18 action. We had the exact issue come up in this
19 exact court, Your Honor.

20 **THE COURT:** I think I remember you or Mr. Boyd
21 arguing that or presenting that argument to me
22 in -- after that other Order was done. I don't
23 know whether or not we issued an Order after
24 that and I've honestly forgotten, there's been
25 -- there's been so many hearings and Motions in



1 this case that I can't keep them all straight
2 at this particular point. But I understand
3 where you're coming from.

4 **MR. DAVIS:** So it wasn't just something we came up
5 with out of our hat. All right. This -- this
6 is -- this -- again, I -- I want to address
7 something directly with Ms. -- Ms. Irving. And
8 I'm not trying to pile on Ms. Irving, I'm
9 really not. And I hate litigation for the
10 record.

11 **MR. TALL:** Your Honor, so long as he stays with the
12 facts, I don't have any problems with it.

13 **MR. DAVIS:** When you get in litigation, you've got
14 to point out things that have to be pointed out
15 and then sometimes it's pleasant, sometimes
16 it's not pleasant. So Mr. -- Mr. Tall stands
17 up and he -- he refers to Ms. Irving as a
18 Catholic school girl.

19 **MR. TALL:** No, I did not, Your Honor.

20 **MR. DAVIS:** Yes, he did. I wrote it down exactly
21 verbatim what he said.

22 **MR. TALL:** I suggested that that was a
23 characterization of someone who is pure and
24 questioned as to whether or not she met some
25 standard that way.



1 **MR. DAVIS:** That's not what he said.

2 **MR. TALL:** I did not characterized her that way.
3 The transcript can be written.

4 **MR. DAVIS:** He did.

5 **MR. TALL:** Can be -- can be read to see what I was
6 saying that ---

7 **MR. DAVIS:** That's ---

8 **MR. TALL:** --- that -- in that regard.

9 **MR. DAVIS:** --- how he tries to ---

10 **THE COURT:** He -- he can comment as to how he heard
11 it and I think I remember how I heard it and --
12 -

13 **MR. TALL:** Thank you, Your Honor.

14 **MR. DAVIS:** That's the way that I wrote it down and
15 that's the way I heard it. If the Court heard
16 it differently, I understand. But I understood
17 him to refer to his client as having the
18 characteristics of a Catholic school girl.
19 Again, not to pile on Ms. Irving, but we'll --
20 as will be shown that post, that Facebook post,
21 that she made is nothing like a Catholic school
22 girl. She said a very vulgar post on Facebook.
23 So I just want to correct that. And I'm --
24 again, I'm not trying to pile on Ms. Irving.
25 I'm simply pointing out the ---



1 **MR. TALL:** You're trying to misrepresent what I've
2 said.

3 **MR. DAVIS:** All right. Again, I -- I think it was
4 made clear that during my phone call with Ms.
5 Irving I tried to desperately for her to make
6 -- consider any adjustments to the
7 distributions so we could resolve this Estate.
8 I'm not sure what Mr. Tall's talking about --
9 about improper response to Request for
10 Admission on the evaluation. He mentioned that
11 we had chaos. We did have chaos. We had --
12 did not know what to do with Ms. Irving. We
13 didn't know what to do with Mr. Tall, with all
14 of the stuff he was asking. Yes, we had chaos.
15 We were like, okay, which value do you want it?
16 If you want the house, if you think the house
17 is worth so much, we'll give you the house.
18 Yes, we did not know what to do, Your Honor,
19 with what they were trying to do. They would
20 tell us they want one thing from Mr. Scoville
21 and then change their mind. And then we'd try
22 to work something out, and then they'd hire Mr.
23 Tall and he starts filing all these things.
24 Yes, there was chaos, because of Ms. Irving.
25 We didn't know what -- did not know what to do



1 with her. So any chaos we had, it was caused
2 by, in our opinion, Ms. Irvin. And we were
3 basically exasperated. All right. The
4 counterclaim, the other thing that Mr. Tall
5 says is a -- is an illustration of bad faith
6 was this counterclaim. That does not make any
7 sense to me. If the Personal Representative is
8 there to preserve the Estate assets and
9 somebody is trying to do something or cause
10 damage to the Estate assets or deplete the
11 Estate assets, then you have to do something
12 to preserve the Estate assets. We made a
13 counterclaim stating that anything that you
14 cost, you're going to have to pay for. So that
15 clearly does not indicate any kind of bad faith
16 or breach. We were simply trying to preserve
17 the Estate, which is a good faith thing to do.
18 So I -- I'm not sure what -- what he's talking
19 about there. All right. The Demand for Notice
20 that Mr. Tall made a big -- big deal about.
21 Let me tell you, that's not something from Bret
22 Davis. You know where that came from? You'll
23 see if you -- if go back, and Mr. Tall, I
24 encourage you also to listen to this Supreme
25 Court argument, that came from one of the



1 Justices of the South Carolina Supreme Court.
2 That is a question that she had that the law --
3 I think Amy McCullough, is her name?

4 **MR. BOYD:** Judge McCullough.

5 **MR. DAVIS:** Judge McCullough. That was a question
6 that she had. That came from the Supreme
7 Court. So if he has an issue with it, then
8 that is the kind of questions that the Supreme
9 Court's gonna be asking on appeal if it ever
10 gets to that point. So he needs to take that
11 up with the Supreme Court and not me or -- or
12 not me or Mr. Boyd. I hope that you find the
13 telephone call to be the highest amount of
14 credibility because I had no idea that anything
15 was being recorded. I had no idea there would
16 be any record of the call. So everything you
17 have on that call came from me just as it is in
18 there, no pretense. There was pretense on the
19 part of Ms. Irving because she knew she was
20 recording the phone call. On my part, you've
21 got raw, unedited and what I believe completely
22 credible information. I was trying desperately
23 to resolve this Estate. In this case, what
24 I've said about Mr. Tall, he -- he -- he's done
25 a good job with his advocacy. Any case in



1 litigation, we are going to have issues where
2 people don't get along, they have differences
3 of opinion, or else you wouldn't have
4 litigation. In this case, we clearly know Mr.
5 Tall has made a, in my opinion, a huge deal out
6 of very small virtually insignificant things
7 that happen in most every Estate. We don't
8 have any malfeasance. We don't have any
9 misappropriation of funds. We don't have
10 misfeasance. We don't have theft, lying, any
11 of that stuff that you normally see. So he's
12 made it basically a big deal out of small
13 things. So the Statute section that deals with
14 attorneys' fees assumes that people are going
15 to be in litigation. That Statute section
16 should entitle Ms. Poafpybitty to all of her
17 legal fees. That Statute section, if it
18 doesn't apply now, I don't know when it will
19 apply, Your Honor. It has to apply in this
20 case, or else it would not even need to be in
21 the Probate Code. Because it assumes by the
22 very nature of that section that you're gonna
23 be in litigation.

24 **THE COURT:** Are you talking about -720?

25 **MR. DAVIS:** -720.



1 **THE COURT:** Okay.

2 **MR. DAVIS:** And you wouldn't be in litigation unless
3 you had at least some issues where people
4 didn't agree. And here we've got very
5 minuscule, very small things that Mr. Tall has
6 held his hat on. You're gonna have -- those
7 are already assumed in that statute. You have
8 to have those, or else you wouldn't be in
9 litigation to begin with. So the Statute
10 section has to apply, Your Honor. I can't see
11 how it couldn't apply. And -- and lastly, I'll
12 say that the -- the appraiser that we used was
13 asked -- we were asked to get the properties
14 appraised by Mr. Scoville. And the appraiser
15 we used was a mutually agreed upon appraiser.
16 It wasn't somebody that we just said we're
17 gonna use this appraiser. It was a mutually
18 agreed upon appraiser. And the -- and the
19 really -- the sad thing, Your Honor, this is
20 the sad -- the sad part. Okay. Say Ms. Irving
21 had a problem with the evaluation, say she had
22 a problem with the evaluation of the residence,
23 say she had a problem with the evaluation of
24 the other property. Had we kept Mr. Scoville
25 and Mr. Scoville would have been on the case,



1 all he and I would have had to do was sit down
2 for a few minutes and say, okay, well, why is
3 it this way, and work out a settlement. We
4 were never afforded that opportunity. I didn't
5 even get a chance to talk to him again. Next
6 thing, I know, I get information from Ms.
7 Irving saying I fired Mr. Scoville. So I've
8 got this guy that I worked out an -- we worked
9 out an agreement with and if she had an issue
10 with the evaluation, she could have at least
11 told Mr. Scoville and I could have worked it
12 out -- we could have worked it out with Mr.
13 Scoville and resolved this Estate. But we
14 didn't have that opportunity. So they're like,
15 no, you know, we're not -- you know, he's
16 fired. Anyway. Thank you very much, Your
17 Honor.

18 **THE COURT:** Thank you. Thank you, Mr. Davis. All
19 right, Mr. Boyd.

20 **MR. BOYD:** Thank you, Your Honor.

21 **THE COURT:** This is the second Motion.

22 **MR. BOYD:** Yeah. Your Honor, I would like to add
23 one thing in rebuttal, if I may, just a couple
24 of quick points and then I'll move to my -- our
25 -- our second Motion ---



1 **MR. TALL:** Is that a rebuttal to me or a rebuttal to
2 Mr. Davis, Your Honor?

3 **THE COURT:** I -- I think it's a rebuttal to you, Mr.
4 Tall.

5 **MR. TALL:** All right. I'll take double duty.

6 **THE COURT:** Is that not correct?

7 **MR. BOYD:** It's called clarification.

8 **THE COURT:** Clarification.

9 **MR. BOYD:** Well, let me just clarify. I may offend
10 my partner, but it is rebuttal of Mr. -- to Mr.
11 Tall. Your Honor, like so many of us, Mr. Tall
12 sometimes, I think we all sometimes see the
13 spec in our neighbor's eye so plainly, while
14 failing to see the plank that's in our own.
15 Legalism is so easy to see in others.

16 **THE COURT:** Isn't that why -- why we have Judges?

17 **MR. BOYD:** That's why we have judges, Your Honor.
18 That's why we have judges. The interesting
19 thing, though, is -- is so much more -- is so
20 much more palatable when it's in the eye of the
21 other beholder. Mr. Tall complains that we do
22 things like, hey, did you file a notice of --
23 of -- a Demand for Notice? Mr. Davis explained
24 that. Other things that we do that we're
25 alleged to -- to be legalistic or hard to deal



1 with or not -- again, Your Honor, the issue in
2 the counterclaim, which has been dealt with --
3 the issue in the counterclaim has been dealt
4 with -- is to our position from the outset was
5 taht this litigation was frivolous and
6 meritless. It was without merit. It was
7 harassment. It was a beneficiary attempting to
8 hijack the Estate administration progress by
9 hiring Mr. Tall and bogging this Estate
10 administration down. And frankly, it has, Your
11 Honor. The record speaks for itself in that
12 regard. Now, interestingly enough, one of the
13 few things -- one of the few things that the PR
14 can do during the pendency of a legal
15 proceeding is protect, preserve and safeguard
16 Estate property. Which is exactly what she did
17 in spending the \$20,000 on Crooked Pine that
18 Mr. Tall wants to make such a big deal out of,
19 Your Honor. There's testimony. It's in the
20 trial transcript. I don't know where, off the
21 top of my head, but there were multiple -- I
22 think witnesses who testified, Ms. Poafpybitty
23 certainly testified, that there was water
24 coming into the house. And I want to say one
25 thing. Again, Mr. Tall wants to suggest that



1 Ms. Poafpybitty has created some sort of -- has
2 purgered herself or created a fiduciary duty --
3 a breach by signing on -- I think Bret Davis
4 technically signed it, but submitting an
5 evaluation that she didn't believe in. I want
6 to remind the Court, Your Honor, that both of
7 the appraisers, Mr. -- Mr. Cromartie and Mr.
8 Burgess both told the Court when they were on
9 the stand that neither one of them would buy
10 the property in question at the value they put
11 on their appraisal, neither of them wanted it
12 at that price. They both said that. And as
13 far as why we didn't ask for additional work
14 out of Mr. Cromartie, I will remind the Court,
15 yeah, Mr. Scoville didn't demand it. Mr.
16 Scoville was quite reasonable to work with. As
17 Mr. Tall said, Mr. Scoville suggested it. But
18 Mr. Cromartie was a mutually selected
19 appraiser. And he appraised the property and
20 it's his number, there's ample testimony in the
21 record, nobody from the Estate, not Ms.
22 Poafpybitty, nobody on the team, tried to
23 influence in any way what Mr. Cromartie thought
24 about that -- that property.

25 **THE COURT:** Is that an agreement between you and Mr.



1 Scoville or Mr. Tall?

2 **MR. BOYD:** I wasn't even involved at the time. It
3 was an informal understanding, Your Honor. But
4 that's how the number came to pass. If -- if
5 Ms. Irving doesn't like the number that Mr.
6 Cromartie came up with, I'm sorry, but that's
7 how the number came up.

8 **MR. TALL:** We have not objected about Mr.
9 Cromartie's \$95,000, Your Honor.

10 **MR. BOYD:** Well, Mr. -- Mr. Tall just a few moments
11 ago, Your Honor, said it was somehow another
12 example of the Estate behaving imprudently or
13 irresponsibly by bringing Mr. Cromartie to the
14 -- to the Court. I brought Mr. Cromartie to
15 the Court to make him available to answer any
16 questions that the Court may have about the
17 appraisal, to let the Court hear from Mr.
18 Cromartie's own mouth why the appraisal was
19 what it was. And again, both appraisers --
20 both ---

21 **THE COURT:** I think I remember his testimony being
22 that when he initially went there, the \$95,000
23 he thought was the way it was in such bad
24 condition ---

25 **MR. BOYD:** Exactly.



1 **THE COURT:** --- and then after he went back after
2 the 23,000, he agreed that it was substantially
3 ---

4 **MR. BOYD:** It didn't have any ---

5 **THE COURT:** --- invaluable ---

6 **MR. BOYD:** Yes.

7 **THE COURT:** --- but he didn't agree with the 193,000
8 of Mr. Burgess.

9 **MR. BOYD:** I -- I think that's a fair -- I think
10 that's a fair summary, Your Honor.

11 **THE COURT:** So that could have been ---

12 **MR. BOYD:** And -- and ---

13 **THE COURT:** --- substantial.

14 **MR. BOYD:** --- and the key there, Your Honor, is --
15 again, we were essentially grasping at straws,
16 Your Honor. There were appraisals going
17 around, Mr. Scoville suggested an appraisal,
18 that wasn't sufficient. Nobody -- I say
19 nobody, we didn't have a problem with it,
20 nobody liked the numbers. Then there was Mr.
21 Burgess's appraisal, and his number at 193,
22 substantially higher. Frankly, Ms. Poafpybitty
23 knows the house isn't worth that much, she
24 knows that. And Mr. Tall wants to suggest that
25 she somehow breached her duty by submitting it



1 to the Court. We were frankly just grasping at
2 straws, Your Honor, all these appraisals flying
3 around. Again, I go back to once the Estate
4 runs off the rails and we're just trying to
5 come up -- as Bret suggested, we're just trying
6 to come up with a solution to this Estate
7 conundrum. How can we get this thing solved?
8 And frankly, I thought the idea had some merit.
9 If they're so committed to the Burgess
10 Affidavit -- excuse me, the Burgess appraisal,
11 and they think Crooked Pine is worth really
12 worth \$193,000, let's submit the -- the enth
13 round of accountings, the enth round of -- of
14 assessments of all these properties and let's
15 suggest that Ms. Irving take the Crooked Pine
16 property at the price set forth in her
17 appraiser's appraisal, at the Burgess number.
18 Well, surprisingly, Your Honor, that idea
19 didn't set very well with Ms. Irving. And
20 suddenly Ms. Poafpybitty has yet again breached
21 her fiduciary duty by submitting a -- a number
22 that she didn't believe in. All I can think of
23 is duh, Your Honor, duh. We knew that number
24 was too high. But that was the appraisal that
25 Ms. Irving was very happy with when the



1 property was going to the Personal
2 Representative. But if the Personal
3 Representative suggested that the property come
4 back to Ms. Irving, then suddenly the Burgess
5 Affidavit doesn't need to be anywhere in sight.
6 The Burgess appraisal is of no use at that
7 point. So I'm simply saying, Your Honor,
8 what's good for the goose is good for the
9 gander. And I want to say one thing. The --
10 the sanctions issue is not on the table, in my
11 opinion. And I don't -- it's -- the Court
12 Order put it to rest. When we had the hearing,
13 the initial hearing and the initial Order that
14 -- that Your Honor issued, and we did discuss
15 this in our office, it was -- and Mr. Tall
16 suggested that the transcript makes it very
17 clear. It may. I frankly I won't even argue
18 the point. I don't know when I got a
19 transcript of that hearing, Your Honor, but it
20 was substantially after the fact. What I will
21 tell the Court is what Your Honor's Order does
22 say, it says, The Personal Representative is
23 directed to file by June 3rd of 2016, proposed
24 filing, yaddy yaddy yadda. And again, Your
25 Honor, Mr. Tall, oh, you were two and a half



1 days late. I want to -- I want to testify for
2 a moment, Your Honor. I think we had some
3 people out, but our staff was in the office
4 working around the clock that week to get that
5 work done and get it to Mr. Tall's office. And
6 again, legalism is so easy to see when it's the
7 -- when it's the Personal Representative who is
8 being legalistic. But I want to just tell the
9 Court that there were many late nights that
10 week, we had paralegals -- I don't want to do
11 too much, but let me just say, we busted rear
12 end to get that package out and to Mr. Tall's
13 office. And if it -- it was 48 hours late or
14 56 hours late or 72 hours late, I apologize.
15 The Order directed her to produce those filings
16 and it did give her a deadline of June 3rd and
17 I do I think we missed it by a number of days.
18 We did our best, Your Honor. Counsel for the
19 Estate, together with Paragraph 1 shall produce
20 billing outlines, et cetera, et cetera. They
21 have provided services to Jeanne Poafpybitty.
22 Those records may have been later on. They
23 were produced. But except this further as set
24 forth, it says, In the event of -- it says --
25 with regard to legal fees, Your Honor, and



1 here's what I want -- all beneficiaries may
2 participate with counsel of their own choosing,
3 they bear their own expenses, with the consent
4 of all beneficiaries the firm Davis & Boyd may
5 -- may participate as separate counsel for the
6 beneficiary, Jeanne Poafpybitty. But she was
7 to bear her own expense in that regard. And --
8 and we did, in fact, Your Honor, set up a -- a
9 file in our office for individual services to
10 the beneficiary -- to the Personal
11 Representative in her capacity as a
12 beneficiary. And the -- the -- the short of it
13 is, Your Honor, there was nothing in this Order
14 that I've understood to -- to -- to prevent the
15 -- the PR in the Estate from continuing to have
16 Estate counsel and to pay those bills. We --
17 we had had a previous experience with the
18 Court, but I -- I will say this. When it came
19 up at -- at -- at some juncture that there was
20 ambiguity or uncertainty on this question, we
21 took no further payments, Your Honor. Our firm
22 has received no payments on this file since
23 January of 2017. So I just want to make sure
24 that that's in the record. When we did realize
25 that there was a disagreement as to what this



1 Order meant or didn't mean, we have since taken
2 no further payments. And I think the last
3 payment that we received on the matter, as I
4 have previously disclosed to Mr. Tall, I
5 believe was January 2017.

6 **THE COURT:** You ready to move to Motion Number 2
7 now?

8 **MR. BOYD:** Yes, Your Honor.

9 **THE COURT:** Okay. Where ---

10 **MR. DAVIS:** May I run to the restroom real quick,
11 Your Honor?

12 **MR. BOYD:** One -- one -- one minor point here, Your
13 Honor.

14 **THE COURT:** Okay.

15 **MR. BOYD:** Real quick, if I may. Mr. Tall also made
16 a rather significant issue, which I frankly, I
17 don't think we heard much about it at trial,
18 but apparently -- and I think there may be
19 something in the record about it, about the
20 63,000 -- I'm looking for the number. I'm not
21 seeing it in my notes. I believe the number is
22 63,000 that was held in a cash account or some
23 type of demand account that was on which Ms.
24 Poafpybitty was a -- a JTROS Joint Owner. And
25 that money did transfer to her. That money did



1 transfer to her on -- as payable on death as a
2 POD. I'm -- my understanding with regard to
3 that money, Your Honor, is that Ms. Poafpybitty
4 loaned that money to the Estate because, as
5 there's been much testimony to this fact, the
6 Estate was extremely illiquid.

7 **THE COURT:** Right.

8 **MR. BOYD:** Running this Estate has not been easy,
9 Your Honor. And Ms. Poafpybitty had to
10 essentially loan the Estate money. She used
11 money -- she could have taken that money and
12 flown to Europe, but she didn't. She loaned
13 the money to the Estate. Now, I believe over
14 time the accountings on file reflect that she
15 was paid back. But it wasn't immediate.

16 **THE COURT:** I do recall ---

17 **MR. BOYD:** And that's not the ---

18 **THE COURT:** --- it was \$63,000 that she forked out
19 at the beginning to help start the Estate, 63
20 and some change.

21 **MR. BOYD:** Yes. And so that too, Your Honor --
22 there were many factors that went into --
23 that's something we haven't even discussed
24 today, but Mr. Tall brought it up. I -- I want
25 to make sure the Court understands that that's



1 the story behind that POD payment to Ms.
2 Poafpybitty. And again, those entanglements --
3 these issues together created a circumstance
4 that were a difficult situation, as I've said
5 several times today. The last thing I will say
6 is Mr. Tall quoted me on something that I don't
7 remember saying. He says that I suggested the
8 PR at that initial hearing that we discussed
9 just a moment ago from which this Order arose,
10 that I suggested the PR wanted to sell
11 everything. Frankly, Your Honor, again, the PR
12 had to take her personal money, loan the Estate
13 money, just to prime the pump to keep the
14 Estate afloat. This has been a difficult
15 situation. Ms. Poafpybitty has been, again,
16 grasping at straws. We've been grasping at
17 straws just to come up with a common solution
18 that would satisfy all these beneficiaries and
19 get us through this. Ms. Poafpybitty also
20 grasping straws to a degree, trying to come up
21 with a solution that would work, and -- and --
22 and satisfy all of the interested parties. So
23 that's -- I just wanted to clarify those two
24 points, Your Honor.

25 **MR. DAVIS:** Your Honor, could I run to the restroom



1 real quick?

2 **THE COURT:** Certainly. All right. Let's take a
3 five minute break.

4 (Off the Record)

5 **THE COURT:** All right. Mr. Boyd. This is as to the
6 Motion 2, which I assume is the mistrial or -

7 **MOTION 2 BY MR. BOYD:**

8 **MR. BOYD:** Yes, Mistrial Motion. I think it's -- I
9 think it is styled, Your Honor, as a Motion for
10 Mistrial and/or New Trial.

11 **THE COURT:** I -- I understand. All right, sir.

12 **MR. BOYD:** May it please the Court?

13 **THE COURT:** Yes, sir, please.

14 **MR. BOYD:** Your Honor, I -- I believe what I would
15 say, this is a little bit of a different
16 matter. I know Mr. Tall has raised issues.
17 And let me also say, we appreciate the Court's
18 patience. I know this has been a long day, and
19 I appreciate that the Court has been so
20 gracious. Speaking of grace, you've been so
21 gracious with your time today, Your Honor. I
22 was hoping that we would hopefully be out of
23 here before now, but we'll -- I think I can
24 keep this fairly brief.

25 **THE COURT:** That's fine.



1 **MR. BOYD:** The -- the second Motion is a little
2 different, Your Honor, because it does relate
3 to some things that have happened since the
4 trial. I know Mr. Tall has suggested that he's
5 got some evidentiary concerns and we certainly
6 want to be mindful of those. I -- Mr. Tall
7 mentioned to the Court several times during his
8 last rebuttal, reminding the Court that it's
9 sitting in -- you are sitting in equity. And
10 I would frankly agree and second that motion.
11 This Court is -- this Court is both the arbiter
12 of the law in this case, Your Honor, and the
13 finder of fact. And this Court can take its
14 own view of the facts of this case. And this
15 Court is free to look at the evidence that it
16 sees here in the courtroom today and -- and
17 make it's own conclusions as to the facts of
18 this case. So yes, while we are constrained by
19 the Rules of Evidence and we're bound to follow
20 the Rules of Civil Procedure, as Your Honor
21 knows, we are not so tightly bound as if we
22 were in the Court of Common Pleas and there was
23 a jury over here that we had to be concerned
24 about. Certainly, there's some things that Mr.
25 Tall said that I don't disagree with, quite



1 frankly, but I do -- I do think that what has
2 happened since the trial is relevant, that this
3 Court can take note of. Frankly, Your Honor,
4 we've tried in our -- Mr. Tall took great issue
5 with the fact that we raised a counterclaim in
6 the matter. But we have tried, Your Honor,
7 when possible to streamline matters and to
8 minimize the cost for this Estate because we
9 recognize that this is and has been a costly
10 undertaking. And we don't -- we don't do that
11 lightly, Your Honor. And I'm -- I am -- I can
12 assure you, I am not happy being here today,
13 not having been paid in approximately a year
14 and a half. It's not fun, Your Honor. And so
15 we are certainly not trying to do anything
16 that's imprudent. I explained briefly,
17 previously, Mr. Cromartie was here because I
18 thought the Court might want to hear from him.
19 But I didn't want Mr. Cromartie to do any more
20 work than was necessary. I -- we brought him
21 to trial because their appraiser was gonna be
22 here to answer questions. You never go to
23 trial when one side has an expert and the other
24 side doesn't have a rebuttal expert to address
25 the same topic, Your Honor. So it's imprudent



1 to think that I would make a decision on behalf
2 of the Estate to come to trial, to come to the
3 hearing without my -- without my appraiser when
4 Ms. Irving's appraiser is gonna be here. But
5 having said that, we have tried -- I didn't
6 give Mr. Cromartie any additional work to do
7 because I didn't want to, Your Honor. I'm
8 trying to minimize the cost ultimately to this
9 Estate and to all the beneficiaries. What I
10 would say about some of the things that have
11 happened since the trial, and the reason for
12 the Motion, as Your Honor knows, there was the
13 e-mail that was forwarded by Ms. Irving the
14 Plaintiff. We didn't know about it, but it --
15 it happened and we -- we knew about it very
16 soon because the Court forwarded it to us with
17 Your Honor's stipulation that you had not read
18 it. And -- and, Your Honor, we don't -- I --
19 I -- I -- when the Court says you haven't read
20 it, I -- I don't question that, Your Honor.
21 And we are comfortable that you have not read
22 it. I would note that we never saw the
23 attachments to the actual e-mail that Ms.
24 Irving sent to the Court because when the Court
25 replied -- or I should say when Ms. Johnson



1 replied, the attachment didn't go with the
2 reply. It dropped off the e-mail. So I never
3 actually saw what Ms. Irving sent the Court.
4 If the Court didn't read it, it's fine, Your
5 Honor. But I think ultimately, what I think
6 these issues show, Your Honor, again -- it's a
7 question of the Court has to look at this and
8 figure out how did this Estate get to where we
9 are today? And what were the contributing
10 factors? And again, perhaps Mr. Tall -- I look
11 at it as a death by a thousand cuts. And
12 perhaps, frankly, Mr. Tall can kill the PR with
13 a thousand cuts. I -- I tend to think it's a
14 collection of nit picking by and large. A
15 think a lot of it is legalism, frankly. But
16 having said that, if the Court sees it, and
17 this Court is -- has got to make the decision
18 on what facts are credible and what facts are
19 not. If the Court sees it and believes it's
20 there, then the Court, as I said, it's the
21 finder of fact. But I think all these issues
22 are relevant. Frankly, Your Honor, the idea of
23 a new trial, if the Court wants to do a new
24 trial, but I frankly wouldn't want to see the
25 Estate. I don't want to argue against myself.



1 But just to prove my point, I don't even know
2 that frankly we want that remedy. I don't want
3 the Estate to have to bear the burden of trying
4 this Estate -- trying this matter again. If
5 the Court thinks that's the appropriate remedy,
6 we'll do what the Court wants to do. I would
7 actually prefer to see the Court take a hard
8 look at its Order. I think the Court's -- Mr.
9 Tall says the -- the Order is balanced. I find
10 it to be very imbalanced. I find it to see a
11 lot of collected nits that have been assembled
12 against the Personal Representative and to
13 overlook a lot of the -- of the factors frankly
14 on the part of the Plaintiff that contributed
15 to this situation. And, again, it's not my
16 place to be personal. I don't mean this
17 personally against Ms. Irving. I'm -- I'm sure
18 she's a very nice lady. But there is such a
19 thing as an eggshell plaintiff, Your Honor, and
20 there are certain types, certain personalities
21 that contribute to litigious outcomes. And I
22 do think the Plaintiff's behavior since the
23 trial, these issues are relevant, the Court can
24 look at these issues, the Court can take its
25 own view of the facts, you are sitting in



1 equity. Ultimately, what the Court, I would
2 hope, would want to do is issue an Order that
3 is as close to the actual reality of what has
4 happened as possible. And I think when you --
5 when you look at the -- the ex parte
6 communication of March 23rd, which we didn't
7 see, when the Court looks at the Facebook
8 communications that Ms. Irving made in May
9 following the e-mail Order that the Court
10 issued, you know. Again, Your Honor, I don't
11 know, frankly, that any one of these issues
12 standing alone -- I know my client felt
13 prejudiced. The first item, we didn't see.
14 The second item, everybody saw.

15 **MR. TALL:** You know, Your Honor, this is about the
16 fourth time that I've heard Mr. Boyd testify
17 today about what he received from his e-mail.
18 He's here to argue to you, Your Honor, that
19 they didn't get a fair trial. And in doing so
20 is suggesting for the first time that we've
21 ever heard that communications between the
22 Court and his office was incomplete. Can we
23 get to the point where you prejudiced these
24 gentlemen? Isn't that the nature of the
25 Motion?



1 **MR. BOYD:** Your Honor, I'm -- I'm just explaining
2 that -- that Ms. Poafpybitty did feel that the
3 Facebook post prejudiced her position in this
4 case and ---

5 **THE COURT:** Was that the one that was posted after I
6 had sent my e-mail about my decision?

7 **MR. BOYD:** That is correct, Your Honor.

8 **THE COURT:** Okay.

9 **MR. BOYD:** Um ---

10 **THE COURT:** We had a meeting in my office, didn't we
11 not, about that e-mail?

12 **MR. TALL:** It was a telephone ---

13 **MR. BOYD:** No.

14 **MR. TALL:** --- conversation and it ---

15 **MR. BOYD:** We had a telephone conference.

16 **MR. TALL:** --- took about almost a month to set up
17 because Mr. Boyd was out of town. It wasn't
18 enough to have just Mr. Davis on the phone.

19 **THE COURT:** Well, I believe and I'll take this
20 opportunity to make sure everybody understands
21 that I thought that was highly improper. And
22 I believe I admonished Mr. Tall to get in touch
23 with his client and express to her how very
24 upset I was about the fact that -- that would
25 happen. And also I don't -- I don't know,



1 don't care how that information was given to
2 her. It was improper and I have changed my e-
3 mail notices to that effect. Now, whether or
4 not that is enforceable or not, it certainly
5 would influence me later on in a -- in a
6 hearing and a case if that has happened. And
7 both of you lawyers I've known both sets of
8 lawyers for a lot longer than I'd like to know.
9 I was 40 years, as you know, 45 years
10 practicing law before I took the bench, so I'm
11 an old man. And that's just not something that
12 you do until an Order is issued by a Court to
13 provide that to your client. So I want
14 everybody to know I was real disappointed about
15 that and I hope I never see that again as long
16 as I am here. All right. Go ahead, Mr. Boyd.

17 **MR. BOYD:** Thank you, Your Honor. And so we had
18 those issues and I do think, Your Honor, the
19 Court can look to that and take your own view
20 of the facts and -- and -- and the one thing I
21 would say about the trial, Your Honor, and I
22 think certainly we respect and appreciate what
23 this Court has tried to do in this case, your
24 Honor. And I think, frankly, that the Court
25 had a difficult job. It is a relatively



1 difficult and dysfunctional situation. I will
2 say, Your Honor, after the trial, Mr. Davis and
3 I both came away from the proceeding sort of
4 somewhat scratching our heads, Your Honor. I
5 -- I feel like at the end of the -- of the
6 proceeding Mr. Tall said there was -- earlier
7 he said there was plenty of time. Frankly,
8 there were a couple of times when we did feel
9 a little bit rushed. The -- the bulk, when I
10 looked at the transcript, Your Honor, and I'll
11 give the Court a copy of the transcript so that
12 the Court can review it, as needed, should it
13 so wish to do that. We've got summaries of --
14 of the index to the transcript that's attached
15 as Exhibit C to our Motion, Your Honor.
16 Frankly, the bulk of the trial was taken up
17 with the presentation of the Plaintiff's case.
18 And we did feel a little bit rushed toward the
19 end. Perhaps that could have been handled a
20 little bit differently. There were two days --
21 they were a week apart, as I understand things,
22 I actually don't think that's ideal. Mr. Tall
23 pointed out one of the advantages of it. I'd
24 rather try a case in continuity, get into it,
25 get it done, and get out of it. But that's



1 just a personal preference, Your Honor. The
2 one thing I would say is we had the issue -- it
3 seems that one of the issues. So we did feel
4 a little bit rushed, Your Honor, and I think
5 that may have contributed to the last issue,
6 the last item, which I will raise as part of --
7 of this Motion. Which is that -- that much has
8 -- Mr. Tall's made much of what items are in
9 the record, what items are not in the record.
10 And, again, ultimately I would think this Court
11 is sitting in equity. You're a finder of fact.
12 You're the arbiter of law. And ultimately what
13 I would hope this Court wants to do is get it
14 right, Your Honor. There seems to be much made
15 by the Plaintiff in this case about the failure
16 of communication, the inaccurate
17 communications, and again, Your Honor, this was
18 a complex case. There were multiple appraisals
19 flying -- you know, being circulated. There
20 were multiple inventories and accountings that
21 were filed. Many, many that were filed at the
22 behest of the Court. There were a lot of
23 moving pieces in this administration. There
24 were a dozen properties. And so I would take
25 it as a given that some communication is going



1 to be inaccurate, that some communication is
2 going to be delayed, that sometimes there are
3 gonna be e-mails that get lost, overlooked, or
4 to respond to. That is the -- but the sum
5 total of that -- first of all, every instance
6 of that is not an instance of malfeasance.
7 Every instance of that is not a breach of the
8 Personal Representative's fiduciary duty. But
9 I would suggest, Your Honor, and this is my
10 thought having heard Mr. Tall's comments this
11 morning, there were ---

12 **MR. TALL:** Your Honor, I've offered very little
13 comments as it relates to mistrial or new
14 trial.

15 **MR. BOYD:** Again ---

16 **MR. TALL:** It's another summation.

17 **MR. BOYD:** I'm not sure why I'm being interrupted,
18 Your Honor, I'm about to explain what I'm --
19 where I'm going.

20 **MR. TALL:** Thank you.

21 **MR. BOYD:** What I would request the Court -- I think
22 what the appropriate remedy, what makes the
23 most sense, Your Honor, because frankly I don't
24 think necessarily trying this matter from
25 scratch is in anyone's interest, Ms.



1 Poafpybitty's or the Estate's. If that's what
2 the Court thinks is the best way to handle this
3 situation, we -- we've asked for that and
4 certainly we're willing to do that again, if
5 that's what the Court wants to do. I would --
6 there was discussion, Your Honor, on the record
7 over the course of about six to seven pages of
8 trial transcript testimony in Court on the
9 record a communication. We kept the
10 communications log of all communications
11 between the PR and the Estate. Excuse me.
12 Between the PR and the beneficiaries to the
13 extent that we had copies of those
14 communications and also between our office and
15 those beneficiaries. There was discussion in
16 Court about offering the -- the Court the
17 opportunity to review the binder in Chambers or
18 possibly admitting the entire binder into
19 evidence. I'm not entirely sure why we left
20 that subject, Your Honor, without getting that
21 binder formally admitted into the record.
22 Perhaps I can speculate. But I think one of
23 the things that I would suggest if there is an
24 issue again, Your Honor, these are the
25 cumulative affects of 1,000 little cuts. One



1 way to cut that issue cleanly is for the Court
2 to say I will open the record. I'm going to
3 allow these items to come in onto the record so
4 that there's no doubt they're part of the
5 record and then the Court can have as part of
6 its record every communication in that binder
7 back and forth because what the Court has
8 frankly is a selection of communications from
9 the PR to the beneficiaries, including the
10 Plaintiff. So I think that would be an
11 appropriate remedy under these circumstances,
12 Your Honor. For the Court to open this record
13 and let us submit that binder to make sure that
14 every communication that occurred in this case
15 to the extent that we have it is in the record.
16 I -- again, if the Court wants to issue an
17 Order giving us a new trial, certainly we're
18 happy to do it again, Your Honor. But I do
19 think it's important that this Court get it
20 right. And Mr. Davis kept indicating this
21 morning that he thought Your Honor had missed
22 it by a country mile. I -- what I'm gonna
23 suggest, Your Honor, is I see a lot of one side
24 in that Order and I don't see what I know to be
25 a lot of the counter bailing and mitigating



1 circumstances. I don't think the Court got it
2 right. I think the Court needs to be very
3 careful and give us an opportunity to make sure
4 that we get this Order right. And we thank the
5 Court for your time and your consideration.

6 **THE COURT:** Thank you, Mr. Boyd.

7 **MR. BOYD:** Yes, sir.

8 **THE COURT:** Mr. Tall.

9 **MR. TALL:** Are we going to hear any more from Mr.
10 Davis or is that -- that the whole
11 presentation?

12 **THE COURT:** I think that's all at this point.

13 **MR. BOYD:** That's it, Your Honor.

14 **MR. TALL:** Your Honor, I have copies for the Court
15 of State versus Wasson and Aakjer versus
16 Spagnoli. It talks about the standard for
17 mistrial generally.

18 **THE COURT:** You'll have to provide the spelling to
19 the Court Reporter.

20 **MR. TALL:** I'm so sorry.

21 **THE COURT:** I'm sure of that.

22 **MR. TALL:** I -- I -- I'll provide something to you,
23 may I?

24 **COURT REPORTER:** Yes, sir.

25 **MR. TALL:** Thank you. Without stopping here. I've



1 heard about trying to minimize costs. I read
2 a Memorandum that was just prepared two days
3 ago in support of a motion that wasn't really
4 supported by advocacy this afternoon. Your
5 Honor, we're all professionals and when we put
6 together a case, we make judgments about what
7 we want to present, what we think the impact of
8 those presentations are going to be, and at the
9 end of the day we're entitled to a fair trial,
10 but not a perfect trial. I think there was
11 quite a lot of research that my office had to
12 go through to determine the basis for Ms.
13 Poafpybitty's team saying that essentially the
14 Court was unfair to them. And I'm prepared.
15 I used a lot of time and effort to get ready to
16 respond to allegations that the Court was
17 unfair and didn't permit Ms. Poafpybitty's team
18 from presenting their case. I didn't hear any
19 of that advocacy this afternoon. A suggestion
20 again that the Personal Representative is
21 disappointed and disagrees with the result and
22 these gentlemen officers of the Court really,
23 really believe that there's some other things
24 that they could present to the Court, but
25 showing no circumstances which would permit



1 under the Rules. Again, in the other motion,
2 they're suggesting to the Court that you've
3 missed all of the Rules. That the efficacy of
4 our legal system is undermined by your judgment
5 of March 2, 2018. I feel as though I've been
6 teed up to get ready for a fight that now
7 didn't happen. And when Mr. Boyd says if the
8 Court feels it's appropriate, it's not for the
9 Court to determine whether or not it wants to
10 give the Personal Representative's team another
11 shot, a mulligan, to get back to my golfing
12 reference. There's been no demonstration to
13 the Court this afternoon that matches the
14 rhetoric either of the motion or the
15 Memorandum. How much was spent on the
16 Memorandum for a team that says they're
17 concerned they haven't been paid since January
18 2018? Your Honor, I don't believe that there's
19 been a case presented to you which meets the
20 standard for your granting a mistrial or a new
21 trial. And on that basis, I'd ask you to deny
22 the motion.

23 **THE COURT:** Anything in response?

24 **MR. BOYD:** Yes, Your Honor. I was very clear. I
25 mean, I -- it's entirely -- it happened, Your



1 Honor, that we sometimes make motion and upon
2 further reflection we realized that maybe the
3 relief that we're seeking may not be actually
4 what's best. And -- and that, in fact, was the
5 thought that occurred to me that there was much
6 about the trial that was fair, Your Honor. Mr.
7 Davis and I both came away from the trial.
8 There's been testimony to that affect today.
9 Both of us came away from the trial feeling
10 that we were rushed. It's referenced in the
11 motion, Your Honor. Your Honor will see that
12 there were times when Your Honor frankly has
13 said we need to move this along. We need to
14 wrap this up. OI think generally, yes, the
15 trial in the sum total of all its parts, Your
16 Honor did a -- did a -- a -- a -- an admirable
17 job trying what has been a difficult case.
18 Yes, I think there are aspects of the trial
19 that were not fair. I laid those out, Your
20 Honor. The -- the -- I don't have the
21 transcript right in front of me, but there was
22 specific discussion in the -- in the case,
23 which I've explained and I think Your Honor
24 will recall. We had the notebook. I think
25 that notebook should be in the record. I think



1 that what's happened in this case is Mr. Tall
2 has suggested that we have to legalistically
3 stick to the Memorandum that were submitted,
4 the e-mails that are submitted, the letters
5 that are submitted, and part of the record.
6 And one of the issues that he's raised in
7 response to the Memorandum in Support of the
8 Motion for Reconsideration is that some of
9 those items are not technically in the record.
10 My point being, Your Honor, that, yes, there
11 was discussion at trial of admitting that
12 notebook into the record. I think if the Court
13 wanted a complete record in this case, we
14 should probably reopen the record and allow us
15 to submit that record. That -- the binder as
16 part of the record in this case. I wish we had
17 completed that discussion. It runs for several
18 pages in the transcript about five to six pages
19 in the transcript. I wish we'd completed that
20 thought. The -- the -- it wasn't done, Your
21 Honor. The Court did press us to conclude on
22 the second day of trial. We did feel slightly
23 rushed. I'm concerned that yes, we could have
24 done a better job with a little more time of
25 getting some more information in.



1 **THE COURT:** Mr. Boyd.

2 **MR. BOYD:** Yes.

3 **THE COURT:** Did you ask the Court for additional
4 time on the record?

5 **MR. BOYD:** I don't believe we did, Your Honor. I
6 don't believe we did. So my point being, Your
7 Honor, that after further thought having filed
8 the motion, I' not sure that frankly a new
9 trial is really the best route. I'm not sure
10 that it's in the best interest of this Estate
11 or the parties. And, therefore, I'm not up
12 here advocating my believe for a new trial. If
13 -- if -- if the new trial is -- is 00 yes. If
14 the Court in its discretion believes that some
15 of the issues that we've addressed here today
16 could best be remedied by just giving the
17 parties a chance to come back and try this
18 matter anew, we're certainly willing to do
19 that. So what I've suggested to the Court is
20 what I think is a middle ground solution that
21 will resolve the issues that we have raised in
22 a -- in a manner that's moderate, fair and
23 amicable. I do believe that the best outcome
24 is for the Court to take a hard look at the
25 Order that it's issued and -- and -- and come



1 back with some adjustment to that Order.

2 **THE COURT:** Well, I assure you, I will certainly do
3 that. Let me ask you one question.

4 **MR. BOYD:** Yes, Your Honor.

5 **THE COURT:** Not asking you whether you think that is
6 appropriate or not or whether your client would
7 have agreed to it or not, but in February of
8 2017, that's the month where we tried the case,
9 I think on the 17th, and on the 24th, if I'm
10 not badly mistaken, if your client had agreed
11 to and done issued a deed for all the
12 properties in quarter shares, would we be here
13 today? I'm not asking you whether you think
14 it's fair, whether your client would agree with
15 it or not. Would we be here today? What is
16 your feeling in that ---

17 **MR. BOYD:** I think -- I don't think we would be here
18 today, Your Honor. I think we would be in --
19 in another Court having another host of
20 problems that would probably be more difficult
21 to resolve than the -- than the knot we're
22 trying to untie here today.

23 **THE COURT:** But everyone would be -- if they chose
24 to do that, everyone would be paying their own
25 expenses, would they not?



1 **MR. BOYD:** The Estate would be taken out of out the
2 equation.

3 **THE COURT:** Okay. That's my thinking and that's the
4 reason I asked you that question. I appreciate
5 your ---

6 **MR. BOYD:** But ---

7 **THE COURT:** --- candor in that regard.

8 **MR. BOYD:** But again, Your Honor.

9 **THE COURT:** Well, I understand your position.

10 **MR. BOYD:** My position is that the PR had simply
11 been trying to do from the outset what the Will
12 says and we have the overarching guidepost in
13 this entire scheme of law is attempting to
14 honor the testator's intent, as set forth on
15 the four quarters of the Will. And that is
16 what the PR tried to do. And yes, you can nit
17 pick her administration of this Estate, if you
18 can get the 1,000 cuts and that rises to the
19 level in this Court's mind of something that is
20 sufficient. Again, th is Court finds the facts
21 of the case. I don't think the facts are
22 there, Your Honor. I think there's a lot more
23 to it than Ms. -- Ms. Poafpybitty breaching her
24 fiduciary duties. It seems to be -- and I keep
25 coming back to, that it seems to be that if you



1 throw enough against the PR, that it's a
2 contest of the beneficiary and the fiduciary,
3 and therefore the fiduciary loses. That's not
4 the way it's supposed to work, Your Honor.
5 Again, back to my point this morning, there
6 have -- Ms. Poafpybitty was chosen to
7 administer the Estate for a reason. And that
8 was the decedent's call.

9 **MR. DAVIS:** Your Honor, I would like to maybe say
10 one thing. I know, you keep going back to this
11 distribute it out in equal shares, 25 percent
12 to each beneficiary, if you go back and look at
13 the Sullivan case, that trial judge did not
14 like the fact that Eddie Sullivan filed a
15 partition action. And he makes everything that
16 he did on his -- the fact that he didn't like
17 that partition action. Well, his ruling was
18 reversed all the way up to the Court of Appeals
19 and then the Supreme Court. That -- that
20 Judge's fixation with not liking that partition
21 action sounds a little bit like this Court's
22 fixation with distributing all the properties
23 in equal shares. So I'm just asking you to
24 please pay careful attention to that when you
25 look at the Sullivan case specifically.



1 Because even if you think that it would have
2 been good to distribute everything in four
3 ways, the Will didn't say that. And there was
4 no requirement for the PR to do that. And
5 we've got clear testimony that that would have
6 been disastrous with some of the beneficiaries
7 that we've got that's been in and out of jail
8 and drug problems. So it was a very short
9 sided remedy that was gonna end them up in some
10 other litigation. So why you may think that's
11 a great solution, that's not consistent with
12 the Will. And it's similar to what the trial
13 judge did in the Sullivan case.

14 **THE COURT:** I understand your position.

15 **MR. BOYD:** Thank you, Your Honor.

16 **THE COURT:** Thank you. Mr. Tall.

17 **MR. TALL:** Your Honor, I wonder if I just heard Mr.
18 -- I don't mean to anger. It seems like I
19 anger people because I just disagree with them.
20 I didn't mean to anger Mr. Boyd, but maybe I'll
21 do it now. Did I hear him withdraw his motion
22 for a mistrial or for a new trial?

23 **THE COURT:** I did not understand it to be that way.
24 I understood him to give me the discretion to
25 do whatever I feel ---



1 **MR. TALL:** All right. I would submit, Your Honor,
2 that he had a burden of proof that he didn't
3 make this afternoon. And that's why I asked
4 you do deny that.

5 **THE COURT:** All right. Thank you.

6 **MR. TALL:** Thank you.

7 **THE COURT:** All right.

8 (Off the Record)

9 **MR. TALL:** Your Honor, would you entertain the idea
10 of Counsel from both sides -- I actually have
11 my Motion as well and this -- so this is in
12 furtherance of that in terms can we get clear
13 on attorneys' fees. It's one thing to sa,
14 these attorneys fees will be approved and these
15 will not be. But we're sort of doing them in
16 a vacuum. I'm prepared to give you my fees, I
17 presume the Personal Representative's
18 attorney's fees can be presented for review.
19 Is that an issue that we could address this
20 afternoon?

21 **MR. DAVIS:** Your Honor, I would -- I would -- I'm
22 hopeful that this Court goes back and reviews
23 the record and Finds that the Order needs to be
24 adjusted substantially. I would think that we
25 would need to hear from the Court on what it's



1 gonna do before we submit any kind of fee
2 Affidavits?

3 **THE COURT:** All right. I will -- I will defer to
4 Mr. Davis in that regard. If you've got yours
5 prepared, you certainly may submit yours,
6 whatever. And as soon as I make my final
7 decision on this, then we can address those
8 issues. That ---

9 **MR. TALL:** And, Your Honor, how about addressing the
10 evidentiary issues of a moment ago Mr. Boyd was
11 talking about a whole booklet of things ---

12 **THE COURT:** Yeah.

13 **MR. TALL:** He'd like you to see. How about the
14 three things that he added to his Memorandum
15 that I consider to be inappropriate.

16 **THE COURT:** I'm not inclined to allow any of the e-
17 mails to go in become part of the -- the
18 transcript. It's record is closed as far as
19 I'm concerned.

20 **MR. TALL:** That would include the -- and Mr. Boyd
21 has said that anybody can look on the public
22 record to see Matthew Rothgeb's ---

23 **THE COURT:** I haven't done that and nothing was
24 presented ---

25 **MR. TALL:** If these folks are taking something to



1 appeal, can we make that plain that they were
2 merely proffered, but not accepted by the Court
3 as evidence?

4 **THE COURT:** It's certainly proffered and that way it
5 would be there if they want to address it on
6 appeal. I don't know that once the Notice of
7 Appeal is filed, then the -- the Appellate
8 Court would have jurisdiction over what goes in
9 the transcript and what does not, I think. So
10 ---

11 **MR. DAVIS:** The one -- the one e-mail, Your Honor,
12 from -- from Steven Rothgeb was read from the
13 witness stand. So I would think that one would
14 be allowed. The public index searches, that's
15 public indexes. We -- the other one, you know,
16 how the Court wants to rule on that. I
17 understand Mr. Tall's position, but I certainly
18 ---

19 **MR. TALL:** I'm happy to address them, but to suggest
20 that you can at a hearing such as this stick
21 them in the Probate Court file and consider
22 them to be evidence, I am concerned about that
23 practice.

24 **THE COURT:** I think that what Mr. Davis was saying
25 was the e-mail that the physical e-mail



1 document was read into the record. I remember
2 that.

3 **MR. DAVIS:** Yeah.

4 **THE COURT:** I don't know that there's any need for
5 the e-mail if it was read into the record.

6 **MR. DAVIS:** Well, would it help that -- if we need
7 to go to appeal, it will help that to be part
8 of the record, Your Honor.

9 **THE COURT:** Well, I'm -- I'm not -- I'm not gonna
10 grant that Motion. I'll let you address that
11 on appeal. And I think that the number of
12 times that I've appealed they allowed it and I
13 agree transcripts and I've forgotten the
14 technical name. It's been a long, long time
15 since I've appealed a case, but another
16 document on record supplemental record that the
17 Court can or Court cannot consider on appeal.

18 **MR. BOYD:** Well ---

19 **THE COURT:** Is that correct?

20 **MR. BOYD:** I -- I think -- I think the issues can be
21 dealt with at the appellate level. There's
22 nothing I think before you. Our -- our
23 memorandum was filed with the Probate Court.
24 It is part of the file, Your Honor, but whether
25 it can be an evidentiary item in an appeal is



1 a separate issue, but again, the issues that
2 were attached -- the items that were attached
3 are items that have arisen, occurred, since the
4 -- the trial on the matter. So you know, there
5 would have been not way for those items to be
6 a part of the evidentiary record at the trial.
7 But I think we can deal with those issues at
8 the appellate level if it comes to that.

9 **THE COURT:** All right. Very good. Anything
10 further, gentlemen?

11 **MR. DAVIS:** Your Honor, I guess ---

12 **THE COURT:** Yes.

13 **MR. DAVIS:** --- the time line anticipating your
14 review of this matter and get the transcript
15 from the Court Reporter and then you're gonna
16 review it.

17 **RULING BY THE COURT:**

18 **THE COURT:** Within less -- within less than five
19 business days from the time I get the
20 transcript I will have you an Opinion.

21 **MR. DAVIS:** Okay.

22 **MR. BOYD:** Okay.

23 **THE COURT:** Okay? Or I will notify one of you
24 counsel to prepare the appropriate Order.

25 **MR. DAVIS:** Okay.



1 **THE COURT:** Okay?

2 **MR. DAVIS:** Thank you, Your Honor.

3 **THE COURT:** All right. Thank you all very much. I
4 want to commend each of you lawyers for your
5 zealousness and your heart-felt belief in your
6 client's position and I hope you understand
7 that as Judge, I have a decision to make and
8 not everybody can win everything all the time.
9 And I do take each of your clients' positions
10 and your clients very seriously. And I hope
11 you understand that the Court always wants the
12 issue correct or sometimes we don't, and that's
13 what the appellate courts are for. And to be
14 honest with you, sometimes the trial court
15 doesn't believe the appellate court is correct.
16 But they are the appellate court. They are the
17 last word in this matter. And so we all have
18 to abide by the rules or we have total anarchy
19 and we don't want that. But I do want to
20 commend all of you attorneys for your zealous
21 representations of your respective clients and
22 the very professional job that you -- you've
23 all done. Thank you on behalf of the Court, on
24 behalf of our profession, you make it look
25 good. Thank you. All right. That will end



1 the hearing.

2 (There being nothing further, the probate hearing
3 concluded at 4:25 p.m.)
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2018-CP-26-06416

Julie Irving,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	
	)	JANUARY 22, 2020
Jeanne Poafpybitty,	)	
Personal Representative	)	
Of The Estate Of Donald	)	
M. Rothgeb,	)	
	)	
AND	)	
	)	
Jeanne Poafpybitty,	)	
Donald Matthew Rothgeb,	)	
And Steven Taylor	)	
Rothgeb,	)	
	)	
Defendants.	)	
	)	

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Clifford H. Tall, Esquire
Attorney for Plaintiff

Reese R. Boyd, III, Esquire
Bret H. Davis, Esquire
Attorneys for Defendant Poafpybitty and the Estate of Donald
M. Rothgeb

Sallie Beth Todd
Circuit Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

(THERE WERE NO WITNESSES CALLED DURING THIS HEARING.)

Certificate of Court Reporter 149

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE</u>

(THERE WERE NO EXHIBITS MARKED DURING THIS HEARING.)

1 **THE COURT:** All right. Are we ready?

2 **MR. TALL:** Your Honor, if I may? A point of procedure --

3 -

4 **THE COURT:** Okay. First, let me go ahead and put this on
5 the record. This is case 2018-CP-26-6416, Jeanne Poafpybitty

6 ---

7 **MR. BOYD:** Poafpybitty, Your Honor.

8 **THE COURT:** Poafpybitty, Personal Representative of the
9 Estate of Donald M. Rothgeb, R-O-T-H-G-E-B, versus Julie
10 Irving. The matter is before the Court on an appeal from the
11 Probate Court. Please give the court reporter your names and
12 who you represent.

13 **MR. BOYD:** Your Honor, Reese Boyd along with Bret Davis.
14 Reese Boyd and Bret Davis representing the appellant, the
15 personal representative of the estate, Jeanne Poafpybitty.

16 **THE COURT:** All right.

17 **MR. TALL:** Clifford Tall representing Ms. Julie Irving.

18 **THE COURT:** All right. And the appellant is Jeanne
19 Poafpybitty; correct?

20 **MR. TALL:** Yes, Your Honor.

21 **MR. BOYD:** Yes, Your Honor.

22 **THE COURT:** All right. Anything preliminary before we
23 get started?

24 **MR. TALL:** Your Honor, we have a probate code that tells
25 us the appeal must be strictly on the basis of things that

1 were presented at trial. The brief made reference in three
2 situations to new material. I can bring it up now, or if Your
3 Honor prefers, when this is addressed by these gentlemen, I
4 can bring it up then.

5 **THE COURT:** Well, no I mean I think I agree with you. As
6 I look, basically my standard is if there are issues of law,
7 then I simply look to see if there is any evidence that
8 supports the Probate Judge's decision. If it is an issue of
9 equity, then I can make my own finding based upon a
10 preponderance of the evidence. But I think it is still
11 limited to what was presented in the Probate Court.

12 **MR. BOYD:** I agree.

13 **THE COURT:** All right.

14 **MR. TALL:** When it comes up or if it comes up, I can tell
15 you about them now or when it comes up, I would raise the
16 objection.

17 **THE COURT:** Well, which would you be easier?

18 **MR. TALL:** Talking about things as if they were new
19 evidence entered in ---

20 **THE COURT:** Okay. What is the evidentiary matters they
21 want to introduce?

22 **MR. TALL:** The Probate Court made reference to a filing
23 under oath at the Court. These gentlemen, after the trial,
24 want to tell us why that was a mistake and that someone made a
25 mistake wasn't presented in front of Judge Padgett.

1 **THE COURT:** What do you mean a filing?

2 **MR. TALL:** It was an accounting with the Court.

3 **THE COURT:** And it was not in front of the Probate Court
4 then?

5 **MR. TALL:** It was a Probate Court accounting that was
6 presented in front of Judge Padgett. Part of his ruling was
7 that Ms. Irving could look at the Probate Court filing, that
8 it wasn't the same as accountings that she was receiving.
9 We're talking about Ms. Irving having been the counterclaim
10 defendant and suggesting she had no reason to bring any of
11 these actions. So what we're having, not in front of the
12 Probate Court, but here on appeal, an explanation as to how
13 the Probate Court received an inaccurate accounting under
14 oath. If that was important it could have been presented at
15 trial. Why are we dealing with it at the present time?

16 **THE COURT:** So the ---

17 **MR. BOYD:** I'm not sure what he's referring to, Your
18 Honor.

19 **THE COURT:** He's saying that y'all are going to present
20 an accounting here that was not presented to the Probate
21 Judge.

22 **MR. BOYD:** We're not going to do that.

23 **MR. DAVIS:** We're not.

24 **MR. BOYD:** What is in the record is in the record, Your
25 Honor, we're not presenting anything new.

1 **MR. DAVIS:** I'm not sure what he's referring to.

2 **THE COURT:** Okay.

3 **MR. TALL:** And I can be specific and be happy to share
4 with you gentlemen.

5 **THE COURT:** Let's just wait and bring it up when they get
6 to it and then we'll ---

7 **MR. TALL:** Okay. And other situations there are
8 documents that have just been put into the record, they
9 weren't evidence at trial and they are all post-trial and
10 these gentlemen may want to rely on them as if they had been.
11 I've got the ---

12 **MR. DAVIS:** Are we talking about the Facebook posts?
13 Which ones are you referring to?

14 **THE COURT:** I think there's something about someone's
15 criminal record. There's something about an e-mail that took
16 place and something that you all claim is a Facebook post.

17 **MR. DAVIS:** Yes ---

18 **MR. TALL:** Judge Padgett has ruled that those are not
19 part of the record, they were not presented during trial.

20 **MR. DAVIS:** And we would bring that up before Your
21 Honor. Yes, we do have that issue to bring before Your Honor.

22 **THE COURT:** All right. Well go ahead and tell me what
23 allows you to present it now on appeal if it's not ---

24 **MR. DAVIS:** Well what we had, Your Honor, we had a trial
25 and then we had a ruling. And Mr. Tall's client posted

1 something on a public domain, on Facebook. And we contacted
2 the Probate Court, and the main elected Probate Judge, not the
3 Judge assigned to this case, who is an associate judge. The
4 main Probate Judge contacted all of the attorneys on her own
5 volition and asked to have a conference call based on this
6 very vulgar probate post -- or, or Facebook post that Mr.
7 Tall's client ---

8 **MR. TALL:** Allegedly posted.

9 **MR. DAVIS:** It's not allegedly. It's from her account.
10 It's clearly obvious that she posted it.

11 **MR. TALL:** Again, we don't have evidence of that. We
12 have Mr. Davis telling us it took place.

13 **MR. DAVIS:** The Probate -- the elected Probate Judge, on
14 her own volition, called a conference call, or requested a
15 conference call with the three of us, and -- to discuss this
16 Facebook post that was taking place. Mr. Tall forwarded the
17 e-mail ruling from Judge Padgett to his client. Judge Padgett
18 admonished him and said he should not have done that and then
19 the Judge ---

20 **THE COURT:** Wait a minute, he did what now?

21 **MR. DAVIS:** The Probate -- the associate Probate Judge
22 that ruled on this case, who is no longer a judge by the way,
23 sent an e-mail ruling, about a page long e-mail ruling. Mr.
24 Tall forwarded that to his client.

25 **THE COURT:** Okay.

1 **MR. DAVIS:** Verbatim. And then after she received that,
2 she posted a vulgar post about what happened on Facebook. We
3 brought that to the attention of the Probate Court. The
4 probate elected judge, Judge Ward ---

5 **MR. BOYD:** Chief Judge.

6 **MR. DAVIS:** Chief Judge stepped in and said I want to
7 take this back for a moment. She called for a conference call
8 between the three of us to discuss what was going on and we
9 talked at length. She had thought about at that time, and her
10 comment was maybe I will refer this to another county. It got
11 pretty gnarly, Your Honor. That post is a clear indication of
12 a few things that are very pertinent in this case, and that
13 was part of the Probate matter at that time and then it was
14 also part of our motion for reconsideration. And the other
15 part that he ---

16 **THE COURT:** So wait, so it was presented -- it went up on
17 a motion to reconsideration and then the Facebook post was
18 presented to the Judge on reconsideration?

19 **MR. DAVIS:** Prior to that, Your Honor. It was presented
20 to -- it was presented to the Court after the e-mail ruling,
21 but before the final written order.

22 **THE COURT:** Okay. And then after the written order there
23 was a motion for reconsideration.

24 **MR. DAVIS:** Yes, Your Honor. And it was discussed again
25 at length.

1 **THE COURT:** At length. And so the Judge that issued the
2 ruling had it in front of him or her; who was the Judge?

3 **MR. DAVIS:** Padgett.

4 **THE COURT:** Padgett.

5 **MR. DAVIS:** Yes, Your Honor.

6 **THE COURT:** Had it in front of him.

7 **MR. DAVIS:** Absolutely. And the main elected Judge.

8 **THE COURT:** And then denied the reconsideration.

9 **MR. DAVIS:** Yes, Your Honor.

10 **THE COURT:** Okay. Well if it was presented during a
11 reconsideration, why is it not available now?

12 **MR. DAVIS:** We believe it is, Your Honor.

13 **MR. TALL:** At the reconsideration that document, as well
14 as others that were just placed into the record by the motion
15 for reconsideration. There's no evidentiary presentation for
16 those matters. So we have an e-mail that was never presented
17 at trial attached to the motion for reconsideration.

18 **THE COURT:** Without being authenticated as evidence?

19 **MR. TALL:** That's right, Your Honor.

20 **MR. DAVIS:** Your Honor, that one was ---

21 **MR. TALL:** Wait, wait, wait. Hold on a moment. We're
22 having a conversation.

23 **MR. DAVIS:** --- are we doing them one at a time or are we
24 doing all three of them at one time?

25 **THE COURT:** Okay. If it was not authenticated and

1 admitted into evidence during the probate trial, then it's not
2 admissible on review.

3 **MR. DAVIS:** Okay. And I -- certainly, Your Honor, I
4 understand that.

5 **THE COURT:** All right.

6 **MR. DAVIS:** Let me tell you what was done, and you see if
7 this is -- I think it's consistent with what you're saying.
8 It was read during testimony. The e-mail was read during a
9 person's -- a sworn testimony during the trial.

10 **THE COURT:** During the trial of the case?

11 **MR. DAVIS:** During the trial of the case the e-mail was
12 read out loud during the trial.

13 **THE COURT:** Okay. Well if it was -- if it was admitted
14 into evidence as testimony, then you can recite what it says
15 unless there was an objection and the Probate Judge ruled that
16 it was inadmissible.

17 **MR. DAVIS:** There was no objection, just the paper itself
18 was not admitted, and he's correct. But the content was read
19 ---

20 **MR. TALL:** I don't have a problem if they want to refer
21 to testimony, Your Honor ---

22 **THE COURT:** Yeah.

23 **MR. TALL:** --- it's in the record. No authentication for
24 somebody that was convicted of a crime, that was thrown in
25 there.

1 **THE COURT:** Okay. That's fine. Yeah.

2 **MR. TALL:** And no authentication of anybody posting
3 something on Facebook.

4 **THE COURT:** Yeah. If it was not presented as evidence
5 before the Probate Judge and ruled upon by the Probate Judge,
6 then you can't get it here.

7 **MR. DAVIS:** So the e-mail I guess we would -- so you're
8 saying we would just rely on the transcript of the testimony -
9 --

10 **THE COURT:** Right.

11 **MR. DAVIS:** --- for the content of that e-mail.

12 **THE COURT:** That's correct.

13 **MR. DAVIS:** No problem, Your Honor. I understand that.

14 **THE COURT:** Yeah.

15 **MR. DAVIS:** The other item was during the trial it was
16 discussed at length that one of the beneficiaries had had a
17 long drug and criminal record. That's clearly in the --
18 multiple times in testimony.

19 **MR. TALL:** Again, I don't have a problem with talking
20 about testimony, Your Honor, but you take records that are not
21 authenticated that look as though they come from Horry
22 County, and you stuff it in without it being presented at
23 trial, I've got a problem with that.

24 **MR. DAVIS:** Well, let me tell you what we did, Your
25 Honor. We searched the Maryland records, public records, just

1 on the internet to get the criminal record of this individual,
2 and the Horry County Public Record Index.

3 **THE COURT:** This was subsequent to the ruling?

4 **MR. DAVIS:** This was part of our motion -- our memorandum
5 in support of our motion for reconsideration. We show --
6 during the trial it was pointed out by more than one witness
7 that this beneficiary had had a long criminal record.

8 **THE COURT:** Yeah.

9 **MR. DAVIS:** And what we did is we supplemented that with
10 a public record index.

11 **THE COURT:** If it's not authenticated and introduced into
12 evidence in the Probate Court, it's not ---

13 **MR. DAVIS:** Okay.

14 **THE COURT:** --- unless you're arguing -- unless you're
15 arguing that the Probate Judge denied it's admissibility when
16 it was admissible evidence.

17 **MR. DAVIS:** No. I mean, the -- I understand. The record
18 was clear. It was obvious that he had a long criminal record,
19 and that's fine. If the Court does not want to allow us to
20 have the actual public index search paper, that's fine.

21 **THE COURT:** Yeah. If that was -- if that search paper
22 was not introduced into evidence in a contested Probate Court
23 hearing and either admitted or denied admission as evidence,
24 you can't bring it up for the first time on this appeal.

25 **MR. DAVIS:** No problem, Your Honor. I completely

1 understand. We got the information in testimony so we're
2 comfortable with that. The Facebook post, that was something
3 that actually was brought up by the elected Probate Judge and
4 I think that's clear. That's a public domain. She brought it
5 up, it was part of the whole process. I don't see how we can
6 exclude that.

7 **THE COURT:** Well, are you appealing a decision she made?

8 **MR. DAVIS:** I'm appealing -- we're appealing the decision
9 that the associate Probate Judge made.

10 **THE COURT:** Okay. Well my review, as I understand my
11 standard of review is, I take what was presented to the Judge
12 that made the ruling.

13 **MR. TALL:** At trial, Your Honor.

14 **THE COURT:** At trial.

15 **MR. DAVIS:** Well that's a good point, Your Honor. I'm
16 sorry ---

17 **THE COURT:** And if what was presented to the Judge at
18 trial, if it's an issue of law and there's anything in there
19 that supports his decision then I have to affirm his decision.
20 If it's an issue of equity, I can view whatever was presented
21 to him at trial and draw my own conclusions by a preponderance
22 of the evidence. I can't consider anything that was not
23 presented to the Probate Judge.

24 **MR. DAVIS:** Well, let me help you here, Your Honor. Let
25 me help you. We have a -- as you'll see, this is a very

1 unusual case and you will understand why we have so many
2 hours, because we have a lot of yarn to untangle. It is
3 really bizarre as you will find out. We almost have, by
4 virtue of these orders, we almost have two cases. We have the
5 initial case, and we had a 45-page order from the initial
6 case. So we filed a motion -- we filed several extensive
7 communications between counsel and the Judge, prior to that we
8 also filed a formal motion for reconsideration. In that
9 motion for reconsideration the Judge -- he said, all motions
10 are denied. We're going to come back to that because Mr. Tall
11 assumed that his motion wasn't denied even though it says it
12 was. We actually sort of had another matter -- he came and
13 said in an e-mail all motions are denied. That ended up being
14 a 25-page order that Mr. Tall drafted. Twenty-five pages,
15 Your Honor, to say all motions are denied and we have -- what
16 happened is they went back and reverse engineered problems
17 with the trial, so we basically had two things. In our appeal
18 we mentioned both matters. We're appealing the initial order,
19 and we're appealing the later 25-page order on the motion for
20 reconsideration. The Facebook post was a very critical part,
21 essential part of the motion for reconsideration and it was
22 discussed at length during the motion for reconsideration. So
23 you have those ---

24 **THE COURT:** Presented to the Judge and shown to the Judge
25 and the Judge looked at it, at the Facebook post without

1 required -- so basically accepted that as part of the record?

2 **MR. DAVIS:** Yes. Yes. And the main elected Probate
3 judge did. So it is part of what we are appealing, Your
4 Honor. I understand about the public index search and about
5 the e-mail not being -- and that's fine, but the Facebook post
6 is incorporated and integrated into that second order.

7 **THE COURT:** So it's going to be ---

8 **MR. TALL:** In the second order the Judge said if this is.

9 **THE COURT:** Well let me look and see. We've got a very
10 voluminous record on appeal. Is it in that?

11 **MR. DAVIS:** Yes, Your Honor. It should -- oh, it's
12 definitely in there. And I -- I wish we didn't have to do it
13 but, Your Honor, I'm sorry we sent so much documents to you
14 but you will see as we go through this why we did it that way.

15 **THE COURT:** Well if it's on the record on appeal then I
16 can ---

17 **MR. BOYD:** Are you looking for the Facebook post, Your
18 Honor.

19 **THE COURT:** Yeah.

20 **MR. TALL:** Your Honor, it doesn't appear in the record
21 except for an e-mail that's forwarded to the Trial Court after
22 the trial took place by these gentlemen.

23 **THE COURT:** Wait a minute, let me -- who prepared the
24 record on appeal?

25 **MR. TALL:** The appellants.

1 **THE COURT:** Okay. Let me go back. Is it in the return
2 from the Probate Court?

3 **MR. DAVIS:** It should be, Your Honor. That ---

4 **THE COURT:** All right. Let me look.

5 **MR. DAVIS:** -- we can't speak with any authority because
6 we don't know exactly what they did, but I understand they
7 sent the whole case to you.

8 **THE COURT:** Well, let me look and see if it's in the
9 return from the Probate Court.

10 **MR. TALL:** Your Honor, it's in the return. It's the
11 Court saying this is what we received after trial by
12 appellant's counsel.

13 **THE COURT:** Well but still. You can still make the same
14 argument as you made at your motion for reconsideration, but
15 if it's in the record on appeal -- I mean, on the return from
16 the Probate Court, then I think I can consider it.

17 **MR. TALL:** Okay.

18 **THE COURT:** You can still argue that it shouldn't be
19 considered or whatever, but I can't rule as a matter of law
20 it's excluded if it's in this. And y'all are going to have to
21 wait, it's pretty voluminous. It's going to take me a pretty
22 good while.

23 **MR. BOYD:** It should be in here, Your Honor. If you will
24 bear with me, I will locate it.

25 **THE COURT:** Not on your record of appeal that you

1 prepared, but on the return form the Probate Court.

2 **MR. TALL:** Your Honor, if that's driven by dates, it
3 would have been in June of 2018.

4 **THE COURT:** Well see it was all filed, e-filed the same
5 date. So all I've got is that the return was all filed on
6 December 27th.

7 **MR. BOYD:** If it helps Your Honor, it was Exhibit J to
8 the personal representative's exhibits in support of the
9 memorandum or exhibits to the memorandum in support of the
10 motion for reconsideration.

11 **THE COURT:** See it's not set up this way. All I have got
12 is one, two, three, four, five, six, seven filings on December
13 27th, 2018 titled Return from Probate Court.

14 **MR. DAVIS:** If you see anything in there from us titled
15 Memorandum in support of our motion for reconsideration, it
16 should be attached to that document.

17 **THE COURT:** That doesn't matter.

18 **MR. DAVIS:** It doesn't matter.

19 **THE COURT:** No. It doesn't matter whether it appears in
20 anything that you produced as far as a record on appeal, a
21 memorandum, a motion to reconsider, anything like that. I am
22 limited to the return from the Probate Court as to what the
23 Probate Court considered.

24 **MR. DAVIS:** That's what I'm saying. As you scroll
25 through it, I'm saying it you ---

1 **THE COURT:** Oh, well this is thousands and thousands and
2 thousands of pages. So all I've seen now is some transcripts.

3 **MR. DAVIS:** If you -- in the -- what you've got in the
4 return, if you see our memorandum then that's where it will
5 be.

6 **MR. BOYD:** It should be in the last portion of the
7 record, Your Honor, the last portion of return would be my ---

8 **MR. DAVIS:** I'm not sure if your computer system will
9 allow you to search that document or not.

10 **THE COURT:** No. I'm having to scroll down and so far,
11 like this one filing here looks like to be a thousand and
12 something pages. Well I'm not going to be able to find
13 through this. It's going to take me hours just to go through
14 this. All right. So let's go ahead and get started. I'll
15 just make a decision when it comes up and I'll have to jot it
16 and then look back to see through whether it's on the record
17 on appeal -- I mean, not the record on appeal, but on the
18 return from the Probate Court. If it is not in the return
19 from the Probate Court, then I'm not going to consider it.
20 All right.

21 **MR. DAVIS:** Yes, Your Honor. That's an acceptable
22 course.

23 **THE COURT:** All right. So what do we want to do first?
24 Who wants to go for the appellant?

25 **MR. BOYD:** I'll start, Your Honor. If you'll bear with

1 me.

2 **MR. DAVIS:** One little matter of housekeeping, Your
3 Honor. Mr. Boyd has got all of the arguments except for one,
4 argument number seven, issue number seven, I've got that one.
5 I'm sorry, section four, issue four.

6 **THE COURT:** I don't under -- where are you -- what is
7 argument seven, section four?

8 **MR. BOYD:** Our brief is divided -- there's an appellant's
9 brief, Your Honor, it's got approximately nine sections in it
10 that are set forth and this is the appellant's brief dated
11 January 25, 2019, Your Honor.

12 **MR. DAVIS:** The fourth -- the fourth issue is the one
13 that I was going to ---

14 **THE COURT:** Appellant brief, got it right here. Well I
15 thought I had it. It looks like my computer has frozen up
16 again.

17 **MR. TALL:** I have a clean copy, Your Honor, if I could --
18 -

19 **THE COURT:** Let me try to bring it up one more time.

20 **MR. BOYD:** And I've got a ---

21 **THE CLERK:** The initial appellant brief?

22 **MR. BOYD:** Yes, ma'am. Yes, ma'am.

23 **THE COURT:** I've got it.

24 **THE CLERK:** You've got it.

25 **THE COURT:** I've got it right here. Initial brief of