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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
ROBERT BONDS, CIRCUIT COURT JUDGE

Appellate Case No. 2021-001337

IN THE MATTER OF: Estate of Paul Brandon Barringer II

Hampton Barringer Luzak, ...Appellant,

v.

Merrill U. Barringer, ...Respondent,

**RECORD ON APPEAL
VOLUME XIV OF XVII**

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INDEX (Vols. I – XVII)

Volume I

Orders and Decisions

Order for Consolidation of Actions by Consent dated May 19, 2017	7
Order Granting Defendants’ Motion for Protective Order filed April 24, 2019.....	12
Order to Compel Filed June 14, 2109	15
Consent Order on Plaintiff’s Motion for Consolidation of Actions, dated December 3, 2019	20
Order dated June 4, 2020	25
Order Denying Motion for Summary Judgment filed November 4, 2020.....	29
Order Denying Merrill Light’s Motion for Summary Judgment, filed December 30, 2020.....	32
Order Granting Defendant’s Summary Judgment filed July 6, 2021	35
Order Denying Plaintiff’s Cross-Motion for Summary Judgment, filed August 20, 2021	55
Order Granting Summary Judgment filed August 20, 2021	57
Order Denying Motion to Reconsider filed October 8, 2021	73

Pleadings

Summons and Complaint (2016-ES-07-00517 became 2019-CP-07-1294), filed August 26, 2016	76
Amended Summons and Complaint (2016-CP-07-1919) filed November 22, 2016	211
Defendant Merrill B. Light and J. Randolph Light Answer to Amended Complaint, filed May 2, 2017	288
Defendant MUB Answer to Amended Complaint filed May 2, 2017	328
Summons and Complaint through Ex. 18 (2019-CP-07-01253) filed May 28, 2019.....	359

Volume II

Summons and Complaint exhibit 19-end (2019-CP-07-01253) filed May 28, 2019	488
Plaintiff Response to MUB 3 rd Set of Interrogatories filed October 22, 2019	515
Defendant's Answer and Counterclaims (2019-CP-07-01253) filed March 18, 2020	553
Defendant's Motion for Summary Judgment (2019-CP-07-01253; 2019-CP-07-01294), filed March 20, 2020.....	585
Plaintiff's Motion to Compel (2019-CP-07-01253; 2019-CP-07-01294), filed August 3, 2020.....	589
Defendant's Memo in Support of Motion for Summary Judgment on Plaintiff's Contract-Based Claims (2019-CP-07-01253; 2019-CP-07-01294), filed September 8, 2020	712
Defendant Merrill Light Motion for Summary Judgment (2016-CP-07-1919), filed September 10, 2020	837
Plaintiff's Memo in Opp. To MUB Motion for Summary Judgment (2019-CP-07-01253; 2019-CP-07-01294), filed September 28, 2020 (partial) (incl. Memorandum and Exhibit A, attachments 1 – 4)	839

Volume III

(cont.)(partial) Plaintiff's Memo in Opp. To MUB Motion for Summary Judgment, Exhibit A, attachments 5 – 26.....	988

Volume IV

(cont.)(partial) Plaintiff's Memo in Opp. To MUB Motion for Summary Judgment, Exhibit A, attachments 27 – 38.....	1435

Volume V

(cont.)(partial) Plaintiff's Memo in Opp. To MUB Motion for Summary Judgment, Exhibit A, attachments 39 – end	1840
Defendant's Reply in Support of Motion for Partial Summary Judgment, (2019-CP-07-01253; 2019-CP-07-01294) filed October 5, 2020.....	2227
Plaintiff's Response in Opposition to Defendant Motion for Summary Judgment	

(2016-CP-07-1919) filed November 9, 2020 (partial).....	2262

Volume VI

(cont.) (partial) Plaintiff’s Response in Opposition to Defendant Motion for Summary Judgment Exhibit A, attachments 1 –15.....	2308

Volume VII

(cont.) (partial) Plaintiff’s Response in Opposition to Defendant Motion for Summary Judgment Exhibit A, attachments 16 –36.....	2746

Volume VIII

(cont.) (partial) Plaintiff’s Response in Opposition to Defendant Motion for Summary Judgment Exhibit A, attachment 37 – Exhibit U.....	3203

Volume IX

(cont.) Plaintiff’s Response in Opposition to Defendant Motion for Summary Judgment, Exhibit V – end	3703
Affidavit of Kevin Luzak filed November 9, 2020.....	1227
Affidavit of Hampton Luzak filed November 9, 2020	1255
Plaintiff’s Memo in Opposition to Motion to Bifurcate Trial (2016-CP-07-1919), filed November 9, 2020	3880
Defendant Light’s Motion and Memorandum in Support of Summary Judgment as to February 29, 2012 Will and amendment to Paul B. Barringer II Revocable Trust (2016-CP-07-1919) filed May 14, 2021	3889
Defendant’s Motion for Summary Judgment of Plaintiff’s Second Cause of Action (2019-CP-07-01253; 2019-CP-07-01294) filed June 14, 2021	3957
Defendant’s Motion for Summary Judgment of Plaintiff’s Third Cause of Action (2019-CP-07-01253; 2019-CP-07-01294) filed June 14, 2021	4014
Plaintiff’s Motion for Summary Judgment (2019-CP-07-01253; 2019-CP-07-01294), filed July 30, 2021.....	4081

Excerpts of Deposition of Kevin Luzak (2019-CP-07-01253; 2019-CP-07-01294), filed August 4, 2021.....	4085
Notice of filing Affidavits of Hampton Luzak and Kevin Luzak (2019-CP-07-01253; 2019-CP-07-01294), filed August 6, 2021	4102
Plaintiff’s Memorandum Supporting Plaintiff’s Motion for Summary Judgment as to Plaintiff’s Second and Third Causes of Action (2019-CP-07-01253; 2019-CP-07-01294), filed August 6, 2021 (partial)(incl. Memorandum and Exhibits 1 – 2).....	4112

Volume X

(cont.) Plaintiff’s Memorandum Supporting Plaintiff’s Motion for Summary Judgment as to Plaintiff’s Second and Third Causes of Action (2019-CP-07-01253; 2019-CP-07-01294), Exhibits 3 – end	4136

Volume XI

Plaintiff’s Opposition to Defendant MUB Motion for Summary Judgment as to Plaintiff’s Second and Third Causes of Action (2019-CP-07-01253; 2019-CP-07-01294), filed August 6, 2021	4600

Volume XII

Defendant’s Reply in Support of her Motions for Summary Judgment on Plaintiff’s Second and Third Causes of Action (2019-CP-07-01253; 2019-CP-07-01294), filed August 9, 2021	5090
Defendant’s Memorandum in Opposition to Plaintiff’s Motion for Summary Judgment as to Plaintiff’s Second and Third Causes of Action (2019-CP-07-01253; 2019-CP-07-01294), filed August 9, 2021.....	5114
Plaintiff’s Motion to Reconsider Order Granting Summary Judgment as to Plaintiff’s Second and Third Causes of Action (2019-CP-07-01253; 2019-CP-07-01294), filed August 30, 2021.....	5191
Defendants’ Response in Opposition to Plaintiff’s Motion to Reconsider and/or Vacate (2019-CP-07-01253; 2019-CP-07-01294) filed September 16, 2021.....	5215
Notice of Appeal filed November 8, 2021.....	5257

Transcripts

Transcript of the Deposition of Merrill U. Barringer p. 1-299 held March 14, 2019....5279

Volume XIII

Transcript of the Deposition of Merrill U. Barringer p. 300-324 held March 14, 2019 5280

Transcript of the Deposition of Rebecca Bostick held December 3, 2020 5305

Transcript of the Deposition of Paul Long, M.D. held January 13, 2021.....5498

Volume XIV

Transcript of the Deposition of John Jolley held March 16, 2021.....5701

Transcript of the Deposition of Neill McBryde held March 26, 2021(partial)
(pp. 1 – 137).....6064

Volume XV

(cont.) Transcript of the Deposition of Neill McBryde held March 26, 2021,
(pp. 138-335).....6201

Transcript of the Deposition of John Jolley held April 21, 2021 (partial)(pp.1 – 302).6399

Volume XVI

(cont.) Transcript of the Deposition of John Jolley held April 21, 2021
(pp. 303 – 349).....6701

Transcript of the Deposition of Kevin Luzak held July 14, 2021.....6748

Volume XVII

Transcript of the Deposition of John Jolley held July 19, 2021 7131

Transcript of Proceedings held August 10, 2021 7437

Transcript of Proceedings held October 7, 2021 7573

Other Documents

Email from Plaintiff's Counsel to Bonds of August 12, 2021 7591

Video of the Deposition of Merrill U. Barringer held March 14, 2019 (submitted separately to Court of Appeals on thumbdrive)

Certificate of Counsel

ROA 005701

Page 1

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

IN THE MATTER OF: ESTATE OF
PAUL BRANDON BARRINGER, II

HAMPTON BARRINGER LUZAK,
Plaintiff,

vs.

CASE NO. 2016-CP-07-1919

MERRILL B. LIGHT, MERRILL U.
BARRINGER, as Personal
Representative of the Estate
of PAUL BRANDON BARRINGER, II,
J. RANDOLPH LIGHT, JR., MERRILL
B. LIGHT as Putative Trustee of
PAUL BRANDON BARRINGER, II
Revocable Trust Dated December 4,
1998, and MERRILL B LIGHT, as
Trustee of the MERRILL BARRINGER
LIGHT Revocable Trust,
Defendants.

(Caption continues on Page 2)

VIDEOTAPED
VIDEOCONFERENCE

DEPONENT: JOHN JOLLEY, ESQUIRE

DATE: March 16, 2021

TIME: 10:08 a.m.

LOCATION: Jolley Law Group
810 Bellawood Road
Columbia, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: KIMBERLY T. POWER, CR

ROA 005702

Page 2

1 (Caption continues)

2

3 HAMPTON BARRINGER LUZAK,
4 Plaintiff,

5 vs.

CASE NO. 2019-CP-07-01253

2019-CP-07-01294

6 MERRILL U. BARRINGER

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ROA 005703

Page 3

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(Appearances Continued on Page 2)

ROA 005704

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ALSO PRESENT: HAMPTON LUZAK, (VIA ZOOM)
ASHLEY BOWLER, VIDEOGRAPHER

(INDEX AT REAR OF TRANSCRIPT)

ROA 005705

Page 5

1 THE VIDEOGRAPHER: Good morning. We
2 are going on record at 10:08 a.m. on March 16, 2021.
3 This is media unit one of the video recorded
4 deposition of John Jolley, Esquire, taken by counsel
5 for the defendant in the matter of consolidated
6 Barringer case filed in the Court of Common Pleas,
7 Case No. 2016-CP-07-1919.

8 This deposition is being held at
9 Jolley Law Group, located at 810 Bellawood Road,
10 Columbia, South Carolina 29205. My name is
11 Ashley Bowler from the firm Veritext and I'm the
12 videographer. The court reporter is Kimberly Power
13 from the firm Veritext.

14 Counsel and all present in the room
15 and everyone attending remotely will now state their
16 appearances and affiliations for the record.

17 MR. TWOMBLEY: Ashley Twombley,
18 counsel for Merrill Barringer.

19 MS. KIRK: Ariaail Kirk with the
20 Jolley Law Group, counsel for John Jolley.

21 MR. TRAXLER: Tom Traxler with Jim
22 Gilreath and Bill Hogan on behalf of the plaintiff.

23 MR. MACLOSKIE: Mike Macloskie on
24 behalf of plaintiff.

25 MS. PAYLOR: Alice Paylor on behalf

ROA 005706

Page 6

1 of Merrill Light.

2 MR. MOLSTER: Charles Molster on
3 behalf of Merrill Light.

4 MR. GHOM: Bijan Ghom on behalf of
5 Merrill Light.

6 MS. WALTERS: This is Lee Walters on
7 behalf of Merrill Barringer.

8 MR. MEDLIN: Alan Medlin on behalf of
9 the plaintiff.

10 MR. SCHRONCE: John Schronce on
11 behalf of Coastal Forest Resources Company.

12 MR. FUHR: Ed Fuhr, also on behalf of
13 Coastal Forest. John and I are both with the law
14 firm of Hunton, Andrews & Kirk.

15 THE VIDEOGRAPHER: Will the court
16 reporter please swear in the witness and we may
17 proceed.

18 JOHN JOLLEY, ESQUIRE,
19 being duly sworn, testified as follows:

20 EXAMINATION

21 BY MR. TWOMBLEY:

22 Q. Good morning, Mr. Jolley. I'm, obviously,
23 Ashley Twombley, counsel for Merrill Barringer.
24 We're here to take your deposition today in some
25 litigation brought by Mr. Barringer's daughter,

ROA 005707

Page 7

1 Hampton Luzak.

2 Have you ever had your deposition taken
3 before?

4 A. I have not.

5 Q. Okay. I'm going to -- I'm going to ask
6 you some questions. The court reporter is going --
7 going to take down your answers. If you have any
8 questions about my questions, you let me know. Okay?

9 A. Okay.

10 Q. If you need a break, let us know. We can
11 take a break at any time you need to. Okay?

12 A. Okay.

13 Q. Since we're on Zoom, you know, I ask that
14 you please let me finish my question. Let everybody
15 have time to object, if they need to lodge an
16 objection, before you give your answer. I'll try to
17 let you finish your answer before you start your --
18 before I start the next question. Fair enough?

19 A. Certainly.

20 Q. Okay. Before I begin asking you any
21 substantive questions, I want to put on the record
22 that Merrill Barringer has identified you as a
23 potential witness in this case. Obviously you are an
24 attorney and you have privileged information and work
25 product information in your possession. By

ROA 005708

Page 8

1 identifying you as a witness and by noticing your
2 deposition, neither Ms. Barringer nor the estate is
3 waiving the attorney-client privilege or the work
4 product protection or any other protection or
5 privilege under the law. Judge -- the trial court
6 has ruled that there is a limited exception to the
7 attorney-client privilege in this case, which is the
8 testamentary exception to the attorney-client
9 privilege. The order from the trial court allows
10 information related to the preparation, execution,
11 and amendment of Mr. Barringer's estate planning
12 documents to be disclosed without waiving the
13 attorney-client privilege or any other protection.
14 Ms. Barringer and the estate intend to extract
15 testimony from you in accordance with that order and
16 is not waiving any privilege or other protection
17 related to the same.

18 MR. MOLSTER: So, Ashley, we'll just
19 make the same statement on behalf of Merrill Light
20 that we're not waiving any privileges. Obviously the
21 testamentary exception doesn't apply to us, but we
22 have -- make the same non-waiver statement. Thank
23 you.

24 MR. SCHRONCE: And this is
25 John Schronce on behalf of Coastal, and we would make

ROA 005709

Page 9

1 the same statement on behalf of the company, that the
2 company is not waiving any privilege with respect to
3 witness.

4 MR. TWOMBLEY: All right. Thank you.
5 BY MR. TWOMBLEY:

6 Q. Mr. Jolley, will you please tell us your
7 full name and where you live?

8 A. My name is John Michael Jolley. I live on
9 Hilton Head at 6 Sawtooth Court, Hilton Head Island,
10 South Carolina.

11 Q. Are you married?

12 A. I am.

13 Q. Okay. Do you have children?

14 A. I do.

15 Q. Who -- who is your wife and what are your
16 children's names?

17 A. My wife is Kellie McPherson Jolley, and I
18 have four children. John Michael Jolley, Jr., Bryant
19 Jolley, Claire Jolley, and Kate Jolley.

20 Q. Great. What's the age range between these
21 children?

22 A. My son, Jack, is 20 years old and at South
23 Carolina, and my youngest daughter is in third grade.
24 So she's nine.

25 Q. Okay. How long have you lived on Hilton

ROA 005710

Page 10

1 Head?

2 A. I've lived on Hilton Head since 2005.

3 Q. Okay. Tell us what you -- what you do for
4 a living?

5 A. I'm an estate planning and tax lawyer.

6 Q. Okay. And how long have you been an
7 estate planning and tax lawyer?

8 A. Since 1998.

9 Q. Can you tell us where you -- where you
10 started your legal career at and just take us through
11 where you work now through the Jolley Law Group,
12 please?

13 A. Sure. I began my legal career -- I
14 graduated in 1998, was admitted to the bar that year,
15 and I practiced in Virginia for several years and I
16 returned to Columbia, South Carolina and practiced
17 for a few years before I moved to Hilton Head in 2005
18 and which I had joined the McNair Law Firm at that
19 point. And in January of 2020, I left the McNair Law
20 Firm, which was, at that point, called Burr, Forman,
21 McNair and joined Jolley Law Group, where I practice
22 to -- I still practice today.

23 Q. Okay. So you were with McNair for
24 approximately 15 years?

25 A. Yes, sir.

ROA 005711

Page 11

1 Q. Okay. What is estate planning?

2 A. Well, estate planning, in general,
3 would -- would describe as what the planning for
4 individuals to transfer their assets in a orderly way
5 and in accordance with their wishes and -- and in an
6 efficient way.

7 Q. Okay. Have you -- since you -- since you
8 started practicing in 1998 through -- through today,
9 have you always practiced in the area of estate
10 planning?

11 A. I have.

12 Q. Okay. Is that -- what percentage of your
13 work is estate planning work? I mean, is that all
14 you do?

15 A. I do estate planning, estate
16 administration and those, what, ancillary activities
17 that come from that.

18 Q. Okay. Do you have any certifications or
19 any special type of education in the area of estate
20 planning?

21 A. Well, I'm a member of the South Carolina
22 and the Virginia state bars. I am a certified
23 specialist for estate planning and probate law in
24 South Carolina. I'm a member of the American College
25 of Trust and Estate Counsel.

ROA 005712

Page 12

1 Q. Okay. Let's talk about a couple of those.
2 What is a -- what does it mean to be certified as a
3 specialist in -- in estate planning in South
4 Carolina?

5 A. Generally the -- the supreme court in
6 South Carolina, through its commission on CLE and
7 specialization, recognizes a few areas of the law in
8 which lawyers may receive this designation as a
9 specialist. Estate planning and probate law is one
10 of those specializations that involves, one, having
11 practiced in the area for a period of time. I
12 believe it's five years, but I'm not sure that I
13 remember that at this point. And that they -- that
14 there is a certain percentage of their practice
15 devoted to the subject matter, and then it would --
16 the -- that lawyer would also have to pass a written
17 test almost as the equivalent of boards with respect
18 to the subject area. And, of course, there's a
19 committee within the -- under the auspices of the
20 supreme court that evaluates a lawyer to see whether
21 or not they should be designated as -- as a certified
22 specialist.

23 Q. Okay. Do you remember approximately when
24 you were certified as a specialist by the Supreme
25 Court of South Carolina in the field of estate

ROA 005713

Page 13

1 planning?

2 A. My recollection is in 2005.

3 Q. Okay. Do you have to periodically renew
4 or reapply for the certification?

5 A. Every five years you have to do a
6 recertification.

7 Q. Okay. So we're 2021 now. I guess
8 approximately three times you've had to apply or
9 reapply?

10 A. That sounds right.

11 Q. Okay. And are you currently still
12 certified as a specialist in estate planning?

13 A. I am. I submitted my recertification in
14 December, and I know that there was some question,
15 that is, there was an error in calculating my CLE
16 credits. And, therefore, I believe that I am still
17 certified. If -- anyway, but I know there was a
18 hiccup in the CLE office about -- or in the
19 commission for specialization office about whether or
20 not I had enough credit hours when, in fact, I had
21 more than were required for recertification.

22 Q. Okay. Do you expect to be recertified?

23 A. I do. And I'm not -- I'm frankly not sure
24 about the timing of that. I'm not sure to what
25 extent that committee has met again to rectify the --

ROA 005714

Page 14

1 what that error would have happened in December.

2 Q. Okay. All right. Good. Have you ever
3 served on any committees or participated in the South
4 Carolina bar?

5 A. I have. I participated -- I was a member
6 of the South Carolina bar committee on professional
7 responsibility.

8 Q. Okay. And do you remember when that was?

9 A. So I was a member of that committee for
10 probably a decade. So certainly from early 2000s
11 through 2010. I don't remember specifically. I know
12 I was on the committee during our effort to study
13 ethics 2000. That was really something that happened
14 in the early 2000s. I was on that committee for
15 several years. I served in a couple of roles.
16 Ultimately was the chair of that committee for at
17 least one year, maybe two years. I can't remember
18 what the cycle is for that.

19 Q. How do you -- how -- how do you become the
20 chair of the professional responsibility committee?
21 I mean, is that something that's voted on or do you
22 get appointed or do you recall?

23 A. Well, after you've been on the committee
24 for some period, then -- I'm not sure of the precise
25 process as far as that goes, but the outgoing chair

ROA 005715

Page 15

1 gets to nominate their successor to serve as chair.
2 And then I believe the state bar chair appoints the
3 new committee chairs for the upcoming cycle.

4 Q. Okay. All right. You mentioned the
5 fellow of American College Trust and Estate Counsel.
6 I think that's frequently referred to as ACTEC; is
7 that right?

8 A. Uh-huh. The American College of Trust and
9 Estate Counsel. We do frequently refer to it as
10 ACTEC.

11 Q. Okay. What is ACTEC for someone who --
12 who has no idea?

13 A. ACTEC is an organization of estate
14 planning lawyers, a national organization, that is
15 made up of lawyers that limit their practice or at
16 least spend the primary amount of their practice in
17 the area of estate planning. It is -- and after you
18 meet certain credentials, you may be nominated to be
19 elected to the college. This is -- and, again, it
20 has similar credentials in terms for the -- the
21 certified specialist, that is, you have to be in
22 practice for -- in the practice in this area for more
23 than ten years. You also have to exhibit what high
24 ethical standards. You also have to show that you
25 have made significant contributions to the practice

ROA 005716

Page 16

1 area, that is, estate planning, generally. And then
2 you may be elected to ACTEC.

3 Q. Okay. Great. Do you remember
4 approximately when you became a member of ACTEC?

5 A. I think it was -- well, five or six years
6 ago.

7 Q. Okay. Great. Let's talk for a minute
8 about Paul Barringer. Tell me when you first
9 remember meeting Paul Barringer.

10 A. I first met Paul Barringer in 2008 or
11 2009.

12 Q. Okay. And do you remember what the
13 circumstances were that led you to meet him?

14 A. Well, I think I first met Paul Barringer
15 in a social sense, that is, I met him -- I was
16 introduced to him when I was at a restaurant or
17 something on Hilton Head. I don't remember the
18 precise location. But in '08 and '09, I -- I spent
19 time with Paul when I began to review his estate
20 planning documents.

21 Q. Okay. Tell me -- well, before I ask you
22 that, tell me in general about Paul Barringer. What
23 type of -- what type of guy was Paul?

24 A. Paul was a gentleman. He was someone who
25 I really enjoyed working with. He was -- I would

ROA 005717

Page 17

1 certainly think of him as a self-made man and who
2 was, what? He was very firm in what he thought
3 should happen, and he really wasn't afraid to tell me
4 what he thought was the right thing to do. I found
5 him -- I found him charming. I thought he was very
6 smart. I think he understood his business. He had a
7 very strong idea about what his business was and
8 should be and had a very strong affinity to his
9 family.

10 Q. Great. Limiting your testimony only to
11 estate planning work that you did for Mr. Barringer
12 in accordance with the court's order in this case,
13 tell us what you recall doing for Mr. Barringer
14 related to his estate plan in the '08/'09 time frame.

15 A. In '08 and '09, I, what? I met with
16 Mr. Barringer and talked about his current -- his
17 then current documents. I reviewed those documents
18 and discussed with him what those documents said. At
19 that time, we -- Mr. Barringer didn't go forward with
20 changes in his documents.

21 Q. Okay. And do you recall actually --
22 approximately how much time you would have spent
23 either reviewing his documents or meeting with him
24 about his documents that existed in that time?

25 A. That's hard for me to say. I -- I would

ROA 005718

Page 18

1 estimate two to three hours worth of time.

2 Q. Okay. Let's move on to the next time you
3 interacted with Mr. Barringer regarding his estate
4 plan. Do you recall the next time that you worked
5 with him after '08/'09?

6 A. In the fall of 2011, my perception was
7 that Paul and Merrill Barringer reengaged with me in
8 the estate planning process.

9 Q. Okay. And do you know what was the
10 impetus for them -- for them doing that or for
11 Mr. Barringer doing that?

12 A. I think Mr. Barringer -- again, we had
13 talked about the documents he had in place when we
14 had reviewed the documents in '08 and '09, and I
15 think it was Mr. Barringer's perception and Mr. and
16 Ms. Barringer's perception that they needed to do an
17 update of those documents.

18 Q. Okay. And did you end up drafting and
19 preparing new documents for Mr. Barringer in 2012?

20 A. We did.

21 Q. Okay. All right. Before we talk about
22 those documents specifically, I want to talk to
23 you -- or ask you some questions about a couple of
24 the claims that Hampton Luzak has made in this case.
25 First of all, can you tell me what your understanding

ROA 005719

Page 19

1 is of testamentary capacity as it relates to someone
2 executing estate planning documents?

3 A. Well, so, I generally would describe
4 testamentary capacity as the client, the person
5 making the documents, having -- knowing the natural
6 objects of their bounty. That is, knowing who
7 they -- we would normally presume they would provide
8 for in their documents, and then I -- they would be
9 required to know or have the ability to know what
10 their property is.

11 Q. And when you say "the documents," can
12 you -- can you explain what you're referring to for
13 someone who is not familiar with the estate planning
14 process?

15 A. Well, in -- in this context, we were
16 talking about updating Mr. Barringer's and Mr. and
17 Ms. Barringer's estate planning documents,
18 specifically their wills and their trust agreements.

19 Q. Okay. All right. And so you mentioned
20 the natural object affection of the capacity to know
21 what assets that you own. Is there anything else
22 that goes into testamentary capacity?

23 A. Well, they have to know what they're
24 doing. That is, they have to know that they are
25 executing a testamentary document.

ROA 005720

Page 20

1 Q. Okay. All right. Great. The -- what is
2 your understanding of whether or not the -- having
3 testamentary capacity, is that a high level of
4 capacity or a low level of capacity in your
5 understanding?

6 A. I would describe it as a low standard.

7 Q. Okay. Why do you -- why is it a low
8 standard?

9 A. Well, I think it's a low standard for
10 several reasons because, one, I believe it has to be
11 that the capacity is measured at the time they
12 execute the documents. And, further, the case law
13 that I've seen about this involves people who are,
14 what, people that we wouldn't -- we wouldn't commonly
15 expect to have capacity or be normally functioning
16 and yet they have been found to have testamentary
17 capacity.

18 Q. Okay. Is -- is -- is there any -- based
19 on your understanding, are there any particular
20 medical diagnoses or medical conditions that would
21 prevent someone or preclude them from executing a
22 will or a trust?

23 A. I am -- assuming they satisfied
24 testamentary capacity standards, I am unaware of any
25 medical diagnosis that would preclude a person from

ROA 005721

Page 21

1 executing testamentary documents.

2 Q. Okay. So as far as you know, can someone
3 who -- who has cancer execute a will or trust if they
4 have testamentary capacity?

5 A. Yes.

6 Q. What about --

7 MR. TRAXLER: This is Tom Traxler.

8 Object to the form.

9 BY MR. TWOMBLEY:

10 Q. What about someone who has had a stroke?

11 A. Someone who has had a stroke could execute
12 testamentary documents.

13 Q. Okay. What about people with cognitive
14 impairment or dementia?

15 A. People with cognitive impairment can
16 execute testamentary documents.

17 Q. Okay. What about someone who has been
18 diagnosed with Alzheimer's disease?

19 A. All -- all subject to the -- their having
20 testamentary capacity, then, yes, they could execute
21 testamentary documents.

22 Q. Okay. When you prepare wills and trusts
23 for clients, what, if any, effort do you make to
24 determine whether or not someone has testamentary
25 capacity?

ROA 005722

Page 22

1 A. I'm sorry, Ashley -- Mr. Twombly. Do you
2 mean at the beginning of the process? I'm not sure I
3 understand.

4 Q. Well, at any point in time during --
5 during the process.

6 A. So one of the things that we do in the
7 process of determining this is, of course, make sure
8 that they are able to identify their property.
9 Right? And so we do that by having an initial
10 investigation where they talk to us -- to me about
11 the assets they have. Further, I interview the
12 clients. I spend time with the clients and -- and
13 have, what, extensive conversations about who the
14 natural objects of their bounty are and their
15 property.

16 Q. Okay. Do you -- do you have -- do you
17 believe you have a lot of experience in representing
18 elderly people and people that have various different
19 medical conditions during the estate planning
20 process?

21 A. I do believe that. Yes.

22 Q. Okay. During the time you've been in
23 Hilton Head, what percentage of your clients would
24 you say are elderly? And by that I mean, you know,
25 70 or above.

ROA 005723

Page 23

1 A. I have no idea what the percentage is. On
2 Hilton Head, I certainly do represent lots of people
3 who are 70 and above. I mean, I also represent
4 people from the age of majority through the age of
5 70. The bulk of my clients certainly are between --
6 the bulk of my clients are older, but I still have
7 significant clients that are under the age of 70.

8 Q. Okay. I want to talk for a minute about
9 undue influence. Ms. Luzak has alleged in this case
10 that her father signed various documents while he was
11 being unduly influenced. Can you tell us what your
12 understanding of undue influence is?

13 A. I think undue influence generally involves
14 the substitution of someone else's desires or will
15 for the -- the client, the principal, the person, the
16 testator, or the settlor. That is, there is -- there
17 is influence -- all of us have influence on those
18 people around us. But in this context, undue
19 influence is when the person exerting the influence,
20 their desires overwhelm and become -- and substitute
21 the client's desires.

22 Q. Okay. When you meet with estate planning
23 clients in general, do you -- do you make an
24 assessment of whether or not you believe someone is
25 being unduly influenced?

ROA 005724

Page 24

1 A. Yes.

2 Q. Okay. How -- how do you do that?

3 A. Well, some of that is just a function of
4 interviewing the client and spending time with the
5 client. In my practice, I certainly have instances
6 where clients are brought to an appointment by a
7 caregiver or by a family member, and I even have
8 instances where family members or caregivers sit in
9 conferences with them -- with me.

10 All of the kind of things I would look for
11 is, one, if someone is speaking for them, and
12 occasionally I certainly have people who try to speak
13 for the client. And also I look to see whether or
14 not I have full access to the client, that is,
15 whether or not I can freely communicate with the
16 client beyond that initial -- those initial
17 communications. And I ask -- and I always -- every
18 single time I represent a client, I meet with that
19 client or those clients individually without anyone
20 else present and impress upon them the fact that I am
21 their lawyer and their lawyer alone and that I -- my
22 only job is to make sure that their desires are
23 effectuated through the planning.

24 I, in fact, always insist that they do, in
25 fact, tell me that this -- that the planning we

ROA 005725

Page 25

1 discussed, it reflects their desires. I always give
2 them -- even when they are brought in by a family
3 member or caregiver, I give them my business card
4 separately. I ask them to reach out to me privately
5 if they have any concerns, and I specifically ask if
6 anyone is telling them what to do or what their plan
7 should say.

8 Q. All right. When you say you have access
9 to the person, could you explain what you mean by
10 that?

11 A. Well, one of those things that I would be
12 alarmed about and that would cause me -- would raise
13 flags for me is if the only interaction with the
14 client was through a third-party and if someone tried
15 to limit my ability to communicate with the client by
16 e-mail, telephone, in person, all of those things.

17 Q. Okay. I'd like to talk just in general
18 terms for a moment before we talk about the specific
19 documents. But during the 2012 to 2015 time frame
20 when you were providing estate planning services to
21 Mr. Barringer, did you ever have any trouble getting
22 access to Mr. Barringer?

23 A. So, Mr. Twombly, when you say 2012, are
24 we really talking about 2011 -- the fall of 2011
25 through 2015?

ROA 005726

Page 26

1 Q. Yes. Let me -- let me correct because
2 I -- I apologize. Between 2011 when you began an
3 earnest the estate planning process through the last
4 documents you prepared for Mr. Barringer in 2015,
5 during that time frame did you ever have any trouble
6 with access to Mr. Barringer?

7 A. No.

8 Q. When you would contact him, how would you
9 do that?

10 A. It depends. It depended. In some -- in
11 some instances, I would pick up the phone and call
12 Paul at -- my recollection is at his -- at his home
13 phone. He's -- he certainly is one of those people
14 that had a landline at the house, and I would call
15 him at the -- at the house. Paul -- I would e-mail
16 him as well, just thinking that Paul was intermittent
17 in terms of responding directly to e-mails, but I
18 would certainly deal with that. And I -- and I met
19 Paul individually both at my client -- at my
20 client -- at my house and at his home.

21 Q. When you would call Mr. Barringer or
22 e-mail him, did you -- did you ever have to get
23 permission from anyone else to speak with him?

24 A. No. The most permission I would get was
25 Ms. Barringer telling me that he was in his office or

ROA 005727

Page 27

1 she had to call him to the phone.

2 Q. All right. When Mr. Barringer was at your
3 office, how would he -- how would he get to your
4 office?

5 A. Well, what -- sometimes Mr. Barringer and
6 Ms. Barringer would come themselves, and I
7 occasionally -- I say -- I'm not sure how he got to
8 our office all the time.

9 Q. Okay. Were there instances when he was
10 there by himself with no one else there?

11 A. Yes. Yeah.

12 Q. And -- and during those instances, how did
13 he -- how did he travel to your office?

14 A. I'm not sure how he -- I don't know how he
15 -- how he traveled to the office.

16 Q. Okay. All right. During the -- from the
17 2011 to the 2015 time frame, did you ever have any
18 concern that Mr. Barringer lacked testamentary
19 capacity?

20 A. I never had any concern about
21 Mr. Barringer's capacity at all in any time when I
22 met with him or dealt with him.

23 Q. Okay. During 2011 to 2015, were you --
24 were you ever concerned that Mr. Barringer was being
25 unduly influenced in any way?

ROA 005728

Page 28

1 A. I was not.

2 Q. Okay. As far as you knew, did it appear
3 that Mr. Barringer understood all of the changes that
4 he was making to his estate planning documents?

5 A. Absolutely.

6 MR. TRAXLER: This is Tom Traxler.
7 Object to the form.

8 BY MR. TWOMBLEY:

9 Q. When it came to Mr. Barringer's estate
10 plan, who communicated to you the decisions about
11 what would happen with Mr. Barringer's estate plan?

12 A. I'm not sure I understand the question.

13 Q. Okay. It was a bad question. Let me --
14 let me try and rephrase it. Was there anyone else
15 communicating to you other than Mr. Barringer about
16 what should go in his estate planning documents?

17 A. The answer is Mr. Barringer is the only
18 one who communicated to me about what his estate plan
19 should say. Mr. Barringer did have people that he
20 relied on that -- that communicated with me about --
21 about his financial assets and conversations about
22 the decisions to be made that Mr. Barringer directed
23 in his estate plan.

24 Q. Okay. But as far as the substantive
25 decisions about who would receive what, would anyone

ROA 005729

Page 29

1 ever give you direction other than Mr. Barringer on
2 those issues?

3 A. Mr. Barringer is -- was the sole director
4 of what happened with his estate plan.

5 Q. Okay. Did you ever observe anyone attempt
6 to manipulate Mr. Barringer?

7 A. No.

8 Q. There were other people at your firm who
9 would have interacted with Mr. Barringer during the
10 2011 to 2015 time frame regarding his estate plan.
11 Would there -- is that correct?

12 A. That is correct.

13 Q. Who are some of the other people at your
14 firm that would have had occasion to either meet with
15 or talk with Paul Barringer during this time frame?

16 A. Well, I mean, beyond Mr. Barringer's
17 interaction with us in terms of calling the
18 receptionist and getting transferred to my extension
19 or coming to the lobby and having things signed,
20 Mr. Barringer and Ms. Barringer were in the habit --
21 I say the habit. It wasn't a problem for us. But
22 they would periodically come by and get things
23 witnessed and notarized that had no relationship to
24 the work I did for them. So, of course, he had
25 interaction -- they had interaction with our staff in

ROA 005730

Page 30

1 that context.

2 Mr. Barringer had interaction with
3 Ms. Becky Bostick, who was my estate planning
4 paralegal at the time, and he would have had at least
5 limited communications with her by telephone in
6 coordination and those kinds of things. And beyond
7 all of that, Becky Bostick, Sharon Potts,
8 Sheree Morris, and Virginia Ritchie all interacted
9 with Mr. Barringer in reception -- in them coming in
10 and being -- coming into the office and them being
11 involved in signings with Mr. Barringer.

12 Q. What, if any, concern did any of these
13 other individuals ever express to you about
14 Mr. Barringer's capacity or whether or not he was
15 being influenced by someone else?

16 A. No one -- no one indicated they thought
17 Mr. Barringer was -- was being unduly influenced or
18 lacked capacity.

19 Q. Okay. Is that something that you would
20 have expected one of these other individuals to
21 communicate to you if they had that concern?

22 MR. TRAXLER: This is Tom Traxler.
23 Object to the form.

24 BY MR. TWOMBLEY:

25 Q. You can answer.

ROA 005731

Page 31

1 A. I certainly would have expected any of our
2 employees who had concerns about our clients'
3 capacity or undue influence to communicate that to me
4 or someone else in the firm -- to me.

5 Q. Okay. I know you represented -- or that
6 Mr. Barringer executed several different documents
7 during the 2012 to 2015 time frame. But, in general,
8 after Mr. Barringer executed one document, did you
9 ever observe Mr. Barringer or hear that he had
10 regretted a previous decision that he had made?

11 A. No.

12 Q. Were you always available to Mr. Barringer
13 to change his estate planning documents if he wanted
14 to make a change?

15 A. Yes. Certainly.

16 Q. Okay. All right. I want to -- I want to
17 talk about some of the specific documents that you
18 helped Mr. Barringer with, and I'd like to start with
19 the February 28, 2012 amendment to his -- to his --
20 or I guess he did a will and a trust. So if you
21 would turn to tab 15 in the binder that was provided
22 by plaintiff's counsel.

23 A. You said tab 15?

24 MS. PAYLOR: Ashley, what page is
25 that?

ROA 005732

Page 32

1 MR. TWOMBLEY: It's tab 15 and it's
2 page 0387.

3 MS. PAYLOR: Thank you.

4 MR. TWOMBLEY: And it's also tab 16,
5 which follows which is 0413.

6 BY MR. TWOMBLEY:

7 Q. So, Mr. Jolley, let me ask you about -- I
8 presume that plaintiff's counsel is going to make
9 this entire notebook an exhibit. And if my
10 assumption is correct, I'm just going to refer to the
11 tabs and the Bates range.

12 MR. TWOMBLEY: Is that okay with you,
13 Tom?

14 MR. TRAXLER: That's fine. You can
15 make it an exhibit now, if you will.

16 (PLF. EXHIBIT 1, Plaintiff's Exhibit
17 Notebook, was marked for identification.)

18 BY MR. TWOMBLEY:

19 Q. So I want to draw your attention to the
20 Bates range in the upper right-hand corner, which
21 right now I want to ask you about 0387 to 0411. Can
22 you tell me what this document is?

23 A. So, I'm sorry, you said the range being
24 0387 to 04...

25 Q. I apologize. Give me one moment. Give me

ROA 005733

Page 33

1 one second. I think I got my pages mixed up. Let's
2 look at 0395 through 0402. Tell me what this
3 document is.

4 MR. TRAXLER: Tom Traxler. You want
5 me to get you oriented?

6 MR. TWOMBLEY: Sure.

7 MR. TRAXLER: You're looking for the
8 2012 will?

9 MR. TWOMBLEY: Yes. I got it. I
10 think it's 0387 -- I didn't realize y'all had all of
11 them. 0387 to 0394.

12 BY MR. TWOMBLEY:

13 Q. I apologize. It's 0387 to 0394.

14 A. Yeah. This is -- this is Mr. Barringer's
15 last will and testament that I assisted -- I prepared
16 for his signature -- for his execution that
17 Mr. Barringer executed on February 28, 2012.

18 Q. Okay. And let me ask you also behind tab
19 16 with a document that starts 0413 through 0442.

20 A. That appears to be the first amendment and
21 restatement of trust of Paul Barringer, II that I
22 assisted Mr. Barringer in preparing and he executed
23 on February 28, 2012.

24 Q. So with respect to the February 28, 2012
25 will and trust, first of all, can you tell me about

ROA 005734

Page 34

1 the process that you would have engaged in with
2 Mr. Barringer related to the preparation and
3 execution of these documents?

4 A. Well, that process was several months
5 long, and that is, we began in the fall of 2011.
6 That involved several meetings with Mr. Barringer and
7 some of his advisors to, one, identify the assets
8 that Mr. Barringer had; and, two, discuss what
9 Mr. Barringer's objectives were for estate planning;
10 and then, three, we created the -- planning the
11 drafts for Mr. Barringer's review. And then
12 ultimately we would -- we did review those documents
13 with Mr. Barringer and ultimately implement and
14 execute those documents in February of 2012.

15 Q. Okay. You say you worked with some of
16 Mr. Barringer's advisors. Can you tell us what you
17 mean by that?

18 A. Yeah. So in this context, Mr. -- I say
19 that. I say this context. In all context,
20 Mr. Barringer, before I was -- before he engaged me
21 had used Mr. Robert Slane as a financial advisor and
22 as an advisor with respect to insurance issues, and
23 Mr. Barringer relied on Mr. Slane to be involved in
24 the conversation and that included Mr. Slane being
25 involved in -- in some of those meetings during which

ROA 005735

Page 35

1 we went through all the various assets that Mr. and
2 Ms. Barringer had and Mr. Barringer told us about
3 assets that weren't on Mr. Slane's list and, in
4 addition, told us about assets that were on
5 Mr. Slane's preliminary list that had been prepared
6 many years before, I understand, with Mr. Barringer.

7 So Mr. Barringer also had what I -- I
8 communicate -- I didn't communicate with Travis
9 Bryant. I understand that Mr. Barringer sometimes
10 communicated with Travis Bryant about -- about tax
11 and estate planning ideas.

12 Q. Okay. Is it unusual for individuals to
13 have advisors or other people that they rely on to
14 help them in the estate planning process?

15 A. Not in this context. Mr. Barringer had --
16 in some of the materials he -- he discussed with me
17 or provided in terms of assets and asset information,
18 he got -- at the time I think he still had
19 Ms. Harrell at CFRC who assisted him with, what, his
20 role with the company, but also personally. So
21 Mr. Barringer would direct other people to provide
22 information to me, whether those were bankers or
23 financial advisors independently, Mr. Slane, or folks
24 at the company being Travis Bryant and Ms. Harrell.
25 But, no, I don't -- I don't find that unusual.

ROA 005736

Page 36

1 Q. Okay. All right. Did you and Mr. Slane
2 have -- meet with Mr. Barringer alone together?

3 A. We did.

4 Q. At any point in time during the estate
5 planning process for the two thousand -- February 28,
6 2012 will and trust, did you ever have any concern
7 that Mr. Barringer didn't have testamentary capacity?

8 A. I did not.

9 Q. Did anyone that you were working with or
10 otherwise communicated with -- whether it was
11 Mr. Bryant, Ms. Harrell, Mr. Slane, anyone else --
12 did anyone else ever suggest that Mr. Barringer
13 lacked testamentary capacity?

14 A. No. No, sir.

15 Q. Okay. Did you ever have any concern that
16 Mr. Barringer didn't understand what he was doing or
17 why he wanted to do it?

18 A. Absolutely not.

19 Q. Let's look at the will. It's, again, 387
20 to 394. And, first of all, can you -- I understand
21 this is what's called a pour-over will; is that
22 correct?

23 A. That's correct.

24 Q. Can you tell us what a pour-over will is,
25 basically?

ROA 005737

Page 37

1 A. Yeah. Mr. Barringer's estate plan was
2 based on -- primarily based on a revocable trust
3 agreement, that is, the dispositive terms of his
4 plan. The plan that -- the parts of the plan that
5 actually provided for distribution of assets were
6 contained in the terms of his revocable trust
7 agreement. So this will -- this will, is what I
8 would have described as a pour-over will, was
9 designed to -- to transfer any assets that had not
10 yet been transferred to Mr. Barringer's trust -- to
11 his trust no later than at the time of his death.

12 Q. I guess another way I've heard that
13 described is that you're pouring over assets in his
14 estate over into his trust. Is that a fair
15 description?

16 A. The will is -- the will pours over any
17 assets remaining at his death to his trust.

18 Q. Okay. And if we turn to page 394. I see
19 here Mr. Barringer's signature is at the top; is
20 that -- is that right?

21 A. That is correct.

22 Q. Okay. And is this where Mr. Barringer is
23 signing his will?

24 A. Yeah. This is where Mr. Barringer signed
25 his will.

ROA 005738

Page 38

1 Q. Okay. All right. Now, there are two
2 signatures up under his signature. Whose signatures
3 are those?

4 A. Well, the first signature following
5 Mr. Barringer's is my signature, and the second
6 signature following Mr. Barringer's is
7 Rebecca L. Bostick.

8 Q. Okay. Now, above your signatures there is
9 a statement. Can you -- can you read the statement
10 into the record, please?

11 A. Certainly. "We, John M. Jolley and
12 Rebecca L. Bostick, the witnesses, sign our names to
13 this instrument being first duly sworn and do hereby
14 declare to the undersigned authority that the
15 testator signs and executes this instrument as his
16 last will and that he signs it willingly or willingly
17 directs another to sign for him and that each of us
18 in the presence and hearing of the testator and in
19 the presence of each other hereby signs this will as
20 witness to the testator signing and that, to the best
21 of our knowledge, the testator is 18 years of age or
22 older, of sound mind, and under no constraint or
23 undue influence."

24 Q. Okay. And who is the testator here?

25 A. Paul B. Barringer, II.

ROA 005739

Page 39

1 Q. Okay. And in this instance, did
2 Mr. Barringer sign his name to the document or did he
3 have someone else do it?

4 A. Mr. Barringer signed his own name to this
5 document.

6 Q. Okay. And Rebecca Bostick, again, is your
7 estate planning --

8 A. Rebecca Bostick is an estate planning
9 paralegal whose worked with me.

10 Q. Okay. Was this statement correct when you
11 signed it?

12 A. Yes.

13 Q. Do you believe it would be correct now?

14 A. Well, I mean, Mr. Barringer is dead. So
15 in that sense, no, it's not correct. I believe that
16 this was his signature, that this was his will, that
17 he signed it, and was an adult, not unduly
18 influenced, and he had capacity to sign.

19 Q. Okay. And I guess I must have asked a bad
20 question, but what I -- what I intended to ask was
21 you believe it was true when you signed it and you
22 continue to believe that on February 28, 2012 that
23 this statement was true?

24 A. Absolutely.

25 Q. Let's go to tab 16, to the first amendment

ROA 005740

Page 40

1 to the trust. And that is -- again, that's 413 to
2 442. All right. Now, can you tell me in general
3 what this first amendment to Mr. Barringer's trust
4 provides?

5 A. This document generally provided that
6 Mr. Barringer -- that the assets -- Mr. Barringer's
7 trust assets would be held for his benefit and during
8 a period of incapacity for the benefit of his wife.
9 It further provides that upon Mr. Barringer's death,
10 the assets would have been provided for
11 Ms. Barringer, whether outright or in trust, and
12 ultimately provides that upon the death of the
13 survivor of Mr. and Ms. Barringer -- in this case, if
14 Ms. Barringer survived, the assets, as I said, were
15 in trust for her benefit. And then to the extent
16 Ms. Barringer didn't redirect where the property went
17 at her death, these assets -- it provided for a
18 payment of money or the discretion to pay money to an
19 irrevocable trust, but otherwise provided for those
20 assets to be divided amongst Mr. Barringer's three
21 children.

22 Q. Okay. So let's -- let me ask you some
23 specific questions. On page -- on page 416 under
24 Article III, there's a section entitled, "Right to
25 Modify Trust Agreement." What -- what is that --

ROA 005741

Page 41

1 what is the purpose of that term?

2 A. I'm sorry. By "term," do you mean this
3 provision, Article III?

4 Q. Yes. I'm sorry. By the -- by the
5 provision?

6 A. So Article III is where Mr. Barringer
7 reserved the right to amend this trust agreement in
8 any way. That is, change the terms at any time
9 throughout the remainder of his life.

10 Q. Is this a typical provision that you find
11 in a trust of this nature?

12 A. It is. In any -- in each instance when we
13 have a revocable trust, this reservation of right to
14 amend or adjust the terms should be contained in the
15 document.

16 Q. Okay. Let's turn to page 415 (sic) under
17 Article V. This deals with specific distributions.
18 What are specific distributions?

19 A. I'm sorry. Which page did you say,
20 Mr. Twombly?

21 Q. 417.

22 A. And you're asking me about Article V. Can
23 you repeat the question?

24 Q. Yes. What -- Article V is entitled
25 "Specific Distributions." What are specific

ROA 005742

Page 42

1 distributions?

2 A. In this context, the specific
3 distributions refer to tangible personal property and
4 household effects, and this provision generally
5 provides that Mr. Barringer had the right to make a
6 list or memo about where he would like his tangible
7 personal property to go. That is, household
8 furniture, furnishings. And to the extent that
9 Mr. Barringer made no such list, then it provides how
10 the tangible personal property would be distributed.
11 In fact, it says it would be distributed to
12 Merrill U. Barringer if she shall survive the
13 settlor.

14 Q. Okay. Other than the specific
15 distribution of personal property and household
16 effects, are there any other specific distributions
17 to any particular people in the trust?

18 A. I don't believe so.

19 Q. Okay. So let's turn to the next article.
20 I believe this is -- this is Article VI. You
21 mentioned that Mr. Barringer's trust estate is held
22 after his death for the benefit of his wife. Can you
23 show us the provision in here where Mr. Barringer
24 directs his trust estate to be held for the benefit
25 of his wife or passed to her outright? And take as

ROA 005743

Page 43

1 much time as you need.

2 A. Article VI, paragraph one, is where if
3 Merrill U. Barringer survives Mr. Barringer, the
4 assets are divided into these two shares.

5 Q. Okay. And what --

6 A. They're further divided, but they are for
7 the benefit of Ms. Barringer as outlined in Article
8 VII, and Article VIII, and Article IX.

9 Q. Okay. And whenever Ms. Barringer dies,
10 what happens to the assets in these trusts?

11 A. In Article VII, with respect to Trust C,
12 paragraph five, Ms. Barringer has a power of
13 appointment over those assets. That is, she may
14 direct where those assets go from amongst
15 Mr. Barringer's issue, espouses of Mr. Barringer's
16 issue in charities. If she did not exercise her
17 power of appointment, then those assets would be
18 distributed pursuant to the Barringer family trust,
19 which is Article VIII.

20 In Article VIII, at Ms. Barringer's later
21 death, Ms. Barringer had a special power of
22 appointment to redirect the assets I amongst
23 Mr. Barringer's issue, espouses of Mr. Barringer's
24 issue in charity. In default of Ms. Barringer's
25 exercise of that power of appointment, this would

ROA 005744

Page 44

1 direct that the assets be divided amongst
2 Mr. Barringer's children if all three survived.

3 And then, lastly, with respect to Article
4 IX, the reverse QTIP trust, paragraph five says that
5 at the time of Ms. Barringer's later death, the
6 remaining portion of the reverse QTIP trust would be
7 distributed pursuant to Ms. Barringer's trust
8 agreement.

9 Q. Okay. When does Ms. Barringer say who she
10 wants the assets and the various trusts to go to?

11 MR. TRAXLER: This is Tom Traxler.
12 Object to the form.

13 THE WITNESS: I'm not -- I'm not sure
14 I understand the question.

15 BY MR. TWOMBLEY:

16 Q. It's my understanding these are
17 testamentary powers of appointment; is that correct?

18 A. The power of appointment that is in
19 Article VII and in Article VIII are, in fact,
20 testamentary powers of appointment.

21 Q. And so at what point in time do we
22 determine whether or not Ms. Barringer has exercised
23 the powers of appointment?

24 A. At the death of Ms. Barringer, if she
25 survives Mr. Barringer.

ROA 005745

Page 45

1 Q. Okay. And how does Ms. Barringer exercise
2 the power of appointment?

3 A. Ms. Barringer would exercise the power of
4 appointment in a will.

5 Q. Okay. I want to ask you about the default
6 clause. If Ms. Barringer does exercise her power of
7 appointment, does the default clause come into play
8 at all?

9 A. Mr. Twombly, I'm not sure which -- are
10 you referring to the default -- the default clause in
11 Article VII, paragraph five?

12 Q. Yes.

13 A. Okay. So with respect to the Trust C
14 under Article VII, paragraph five, if Ms. Barringer
15 survived Mr. Barringer and exercised the power of
16 appointment granted herein, the default language
17 would have no effect.

18 Q. Okay. Why would a spouse like
19 Mr. Barringer want to give another spouse like
20 Ms. Barringer the opportunity to decide in the future
21 who receives the assets from the first spouse's
22 estate or trust?

23 MR. TRAXLER: This is Tom Traxler.
24 Object to the form.

25 THE WITNESS: We would -- for

ROA 005746

Page 46

1 flexibility because we have no idea, nor do any of my
2 clients, know what will happen between the time they
3 execute the documents and the time of the death of --
4 their death or the death of their surviving spouse in
5 this context.

6 Q. Okay. Did you have any discussions with
7 Mr. Barringer about these powers of appointment?

8 A. We discussed each of the dispositive terms
9 and most -- and certainly discussed the powers of
10 appointment, that power to redirect, that
11 Mr. Barringer granted in his trust agreement to his
12 surviving spouse.

13 Q. If you will, I'd like you to turn to page
14 0440 and 0441 and 0442. First of all, on 0440, what
15 is -- what is this page in general?

16 A. It's the execution page where
17 Mr. Barringer signed the trust agreement.

18 Q. Okay. And is that his signature on the
19 top of 0440?

20 A. It is Mr. Barringer's signature.

21 Q. Okay. Now, down under his name under
22 witnesses, who are the two signatures there?

23 A. My signature is the next signature, the
24 first witness, and the second witness would be
25 Rebecca L. Bostick.

ROA 005747

Page 47

1 Q. Okay. And did you witness Mr. Barringer
2 sign this document?

3 A. I did.

4 Q. Okay. And was Ms. Bostick there with you
5 when that -- when that occurred?

6 A. She was.

7 Q. All right. Turn to the next page, 0441.
8 Tell me what this page is.

9 A. These are the notarial -- the
10 acknowledgments for each of -- this really is split
11 out above. It is an acknowledgment that the notary
12 signed, that is Rebecca Bostick as notary, with
13 respect to Paul B. Barringer as settlor, and then
14 below with respect to Paul B. Barringer as trustee.

15 Q. Okay. And did you see Ms. Bostick
16 notarize these documents after Mr. Barringer signed
17 them?

18 A. Yes. That would have happened when we
19 were all together. That is, when Mr. Barringer and
20 myself and Mr. Bostick -- and Ms. Bostick were
21 together.

22 Q. At any point in time prior to
23 Mr. Barringer signing this February 28, 2012 will and
24 trust, did you ever have any concern that
25 Mr. Barringer was being unduly influenced or forced

ROA 005748

Page 48

1 to sign these documents against his will?

2 A. I had no reservations about Mr. Barringer.

3 Q. Did you ever have any concern that he
4 lacked the capacity to understand and sign the
5 documents?

6 A. I did not.

7 Q. Okay. I'd like to -- I'd like to turn now
8 to the second amendment and restatement to
9 Mr. Barringer's trust, which was done on July 20,
10 2012, which is at tab 16 at Bates range 443. And
11 it's 443 through 471. Do you see this?

12 A. I see the second amendment and
13 restatement.

14 Q. Okay. Now, tell me about the
15 circumstances that led to the preparation and
16 execution of an amendment to Mr. Barringer's trust in
17 July of 2012.

18 A. Mr. Barringer told me that he wished for
19 his documents to be changed to provide for the
20 transfer of his voting shares in CFRC -- excuse me,
21 Coastal Forest Resources Company to Merrill Barringer
22 Light.

23 Q. Okay. Do you know why he -- did he tell
24 you why he wanted to do that?

25 A. He did.

ROA 005749

Page 49

1 Q. And what did he say?

2 A. He said he did not want Hampton Luzak to
3 receive voting shares -- any more voting shares in
4 the company because he wanted Merrill Barringer Light
5 to have control -- the voting -- his voting shares.

6 Q. Okay. Do you recall when Mr. Barringer
7 asked you or directed you to prepare this document?

8 A. This document was prepared several days --
9 several days before July 20, the day that we
10 executed -- the document was executed. So it might
11 have been July the 17th or 18th.

12 Q. Okay. Now, if you would turn to page 446
13 and 447, which is the specific devise section of the
14 trust. Can you -- can you show us or tell us what
15 was added to this trust that was not in the one
16 executed in February of 2012?

17 A. It's certainly my recollection, and I
18 believe, that the only addition to this trust was
19 Article V, paragraph two, specific distribution of
20 voting shares.

21 Q. Okay. Can you -- can you read that new
22 provision into the record, please?

23 A. "Specific Distribution of Voting Shares.
24 The trustee shall distribute to Merrill Barringer
25 Light any voting shares of the stock of Coastal

ROA 005750

Page 50

1 Forest Resources Company, of any successor or
2 resulting corporation, and of any subsidiary or
3 related entity which are a part of the settlor's
4 trust estate, whether an asset of the settlor
5 individually or an asset of this revocable trust if
6 she shall survive the settlor. If she shall not
7 survive the settlor, such interest shall pass to the
8 successor trustee of the Merrill Barringer Light
9 revocable trust."

10 Q. Okay. Did anyone other than Paul
11 Barringer ask you, direct you, or have any impact on
12 you making this change to Mr. Barringer's trust?

13 A. No.

14 MR. TRAXLER: This is Tom Traxler.
15 Object to the form.

16 BY MR. TWOMBLEY:

17 Q. When Mr. Barringer asked you to make this
18 change, was there anybody else with him, to your
19 knowledge?

20 A. No.

21 Q. Did you have any question about
22 Mr. Barringer's mental capacity to make such a change
23 to his -- his trust?

24 A. I did not.

25 Q. If you'll turn to page 0469 and 0470. I

ROA 005751

Page 51

1 noticed that on these documents you are not one of
2 the witnesses to the document; is that correct?

3 A. Are you asking if on 0469 I am -- I am --
4 I did not witness on this document on 0469 or
5 otherwise.

6 Q. Okay. Why did you not witness this
7 document when you had served as a witness for the
8 February 2012 documents?

9 A. Mr. Barringer wasn't on Hilton Head at the
10 time of -- at the time he instructed me to make the
11 change and at the time of execution, Mr. Barringer
12 wasn't on Hilton Head.

13 Q. Okay. Tell me what you recall about where
14 Mr. Barringer was, when he asked you to make this
15 change, and what your understanding of where he was
16 when he actually executed the document?

17 A. Mr. Barringer telephoned me and he told me
18 that he was at the -- their home in Linville in North
19 Carolina mountains and he was there for the summer
20 and Mr. Barringer was concerned that if something
21 happened to him precipitously, that is, if he died,
22 that these shares wouldn't -- the voting shares
23 wouldn't go to Merrill Light. When I spoke to
24 Mr. Barringer on the phone, he directed me to make
25 the change to the document and he directed me to give

ROA 005752

Page 52

1 the document -- my recollection is to give the
2 document to Randy Light to take to Mr. Barringer --

3 Q. Okay.

4 A. -- for execution wherever Mr. Barringer --
5 my understanding was Mr. Barringer was going to have
6 it executed at Linville, North Carolina.

7 Q. Okay. Was -- was there any urgency
8 associated with Mr. Barringer's request that his
9 trust be changed to direct the voting shares to
10 Merrill Light?

11 A. Mr. Barringer -- Mr. Barringer had a sense
12 of urgency because he was concerned if he died that
13 the shares wouldn't go where he wanted them to go.

14 Q. Was there anything that -- that you know
15 of that led Mr. Barringer to believe he might die or
16 was this just a general concern that anyone could
17 drop dead at any point in time?

18 MR. TRAXLER: This is Tom Traxler.
19 Object to the form. Leading.

20 THE WITNESS: I do not believe
21 Mr. Barringer was worried about anything in
22 particular.

23 BY MR. TWOMBLEY:

24 Q. Okay. All right. Great. Now, you
25 mentioned that you telephoned Randy Light and asked

ROA 005753

Page 53

1 him to pick up the document. Did you have any
2 discussions with Mr. Light about what was in the
3 document?

4 A. I'm not sure --

5 MS. KIRK: Ariail Kirk. I object to
6 the form.

7 BY MR. TWOMBLEY:

8 Q. Okay. Let me just ask a different -- a
9 different question. Did you follow Mr. Barringer's
10 directive to contact Mr. Light?

11 A. I don't -- I'm not sure if Mr. Light
12 called me or I called him. Mr. Barringer told me
13 that Randy would be -- would take the document to
14 him. I think -- I think Randy was going to fly on
15 the corporate plane with Mr. Barringer and do some
16 visits to corporate facilities, and Mr. Barringer
17 directed me to give those -- the document to
18 Mr. Light.

19 Q. And did you do that?

20 A. I did talk to Mr. Light on the phone and
21 when we -- after I prepared the document, I arranged
22 for -- arranged -- I did arrange for the document to
23 be put at the front desk for Randy Light to pick up.

24 Q. Okay. And as far as you know, did
25 Mr. Light come pick it up?

ROA 005754

Page 54

1 A. As far as I know, Mr. Light did pick it
2 up.

3 Q. Okay. Did Mr. Barringer execute it?

4 A. Yes. I mean, Mr. Barringer didn't execute
5 it in my presence, as we discussed, but we did --
6 yes. I mean, I see his signature on these documents.

7 Q. Okay. At any point in time after
8 Mr. Barringer executed the July 2012 trust amendment,
9 did he ever express any reservation about doing so?

10 A. No.

11 Q. Did he ever ask you to take any -- or
12 what, if any, action did he ever ask you to take to
13 undo this change?

14 A. No action to undo this change.

15 Q. Okay. Were you in frequent communication
16 with him after July of 2012?

17 A. I was.

18 Q. Were there any -- and I think there are
19 not, but just to confirm. Were there any changes
20 made to the powers of appointment that were given to
21 Merrill Barringer in the second amendment to the
22 trust?

23 A. I don't believe so. I don't believe there
24 were any changes to the second amendment other than
25 that provision that we just -- about the voting stock

ROA 005755

Page 55

1 that we just read into the record.

2 Q. Okay. All right. I'd like to take -- I'm
3 at a good stopping point for a five-minute break. So
4 we'll go off the record.

5 THE VIDEOGRAPHER: We are going off
6 record. The time is 11:30 a.m.

7 (Off the record.)

8 THE VIDEOGRAPHER: We are back on
9 record. This is the beginning of media unit two.
10 The time is 11:40 a.m.

11 BY MR. TWOMBLEY:

12 Q. Mr. Jolley, I want to now turn your
13 attention to tab 4, which is Bates range of 279 to
14 281. Do you -- do you recognize these documents?

15 A. The tab for this is 279 through 281?

16 Q. Yes.

17 A. I do recognize these documents.

18 Q. Okay. What -- what -- what are these
19 documents?

20 A. These are the documents that we prepared
21 for Mr. Barringer to transfer his shares -- his
22 voting shares in CFRC, Coastal Forest Resources
23 Company, to Merrill Barringer Light. Excuse me.
24 Merrill Barringer Light. And I say that the bulk of
25 his voting shares because he reserved -- I think he

ROA 005756

Page 56

1 reserved one share -- a voting share to remain a
2 voting shareholder of the company.

3 Q. Okay. What do you recall about your
4 communications with Mr. Barringer about this
5 transfer?

6 A. Mr. Barringer -- can you repeat the
7 question?

8 Q. What do you recall about your
9 conversations with Mr. Barringer that led up to
10 this -- you preparing these documents?

11 A. That my communications with Mr. Barringer
12 had been for several weeks -- actually, several
13 months at the point in September, and Mr. Barringer
14 had indicated to me that he wished to transfer the
15 bulk, all but one, of his voting shares to Ms. Light.
16 He did not -- we talked about it several times before
17 we prepared these documents in September and gave
18 them to Mr. Barringer.

19 Q. Okay. Did Mr. Barringer tell you why he
20 wanted to do this?

21 A. Mr. Barringer wanted Merrill
22 Barringer Light to have control of the company and
23 not Hampton Luzak.

24 Q. Do you know why he wanted Ms. Light to
25 have control of the company?

ROA 005757

Page 57

1 A. Mr. Barringer did not want Hampton or
2 Kevin involved in the running of the company.

3 Q. Okay. How many times did you -- would you
4 estimate that you were able to speak with
5 Mr. Barringer about his desire to transfer this stock
6 up until the time that he actually executed the
7 transfer of documents at tab No. 4?

8 A. I think Paul probably told me about this
9 four or five times during that time period from, say,
10 June through the time we prepared these documents for
11 him.

12 Q. Okay. If he told you about it in June,
13 why didn't you actually prepare the documents and him
14 sign them until September?

15 A. We discussed making that -- making the
16 transfer before, but -- we discussed making the
17 transfer before the September transfer, but he didn't
18 choose to do that before this point.

19 Q. Do you know why he mentioned it to you and
20 told you he wanted to do it, but didn't actually do
21 it until September?

22 A. Mr. Barringer and I discussed whether or
23 not the timing was a good idea at -- during the
24 June/July/August time frame.

25 Q. Okay. And tell me about your discussion

ROA 005758

Page 58

1 with Mr. Barringer about the timing of the transfer.

2 A. Mr. Barringer, in the context of the
3 conflict he had with his daughter, Hampton, and his
4 son-in-law, Mr. Barringer told me that he wanted to
5 make sure Kevin and Hampton didn't get control of the
6 company. He further wanted to make sure that we
7 transfer the -- he wanted to go ahead and gift the
8 shares to Ms. Light, and we discussed whether or not
9 that was a good idea at the time that Ms. Luzak and
10 others, that is Ms. Luzak and Kevin Luzak, were
11 making allegations of his incapacity.

12 Q. Okay. Tell me what Mr. Barringer told you
13 about the allegations that Hampton and Kevin were
14 making.

15 A. Mr. Barringer indicated that he felt
16 betrayed by Mr. -- by Kevin Luzak and then probably,
17 more significantly, by Hampton and that Kevin was
18 trying to take over -- take control of the company
19 and that he didn't want Kevin and Hampton to have
20 control.

21 Q. Okay. Let's look at these two documents.
22 The first one is called an assignment of shares, and
23 the second one is called a stop power. Did you
24 prepare these documents for Mr. Barringer?

25 A. We did.

ROA 005759

Page 59

1 Q. Okay. Did anyone other than Mr. Barringer
2 ask you or otherwise direct you to prepare these
3 documents?

4 A. No. No one other than Mr. Barringer.

5 Q. Okay. What, if any, instructions did
6 Merrill Light, Randy Light, or anyone else give you
7 with respect to this transfer?

8 A. No one other than Mr. Barringer gave me
9 instructions about the transfer of these shares.

10 Q. What, if any, discussions did you have
11 with Mr. Barringer regarding the permanency of
12 transferring these shares from himself to
13 Merrill Light?

14 A. We discussed the fact that in order for
15 him to make this transfer, that this would be a
16 permanent and irrevocable transfer; that it would be
17 treated as a gift; and that once transferred, he
18 couldn't take it back.

19 Q. And did Mr. Barringer appear to understand
20 that?

21 A. Mr. Barringer certainly understood that.

22 MR. TRAXLER: Object to the form.
23 This is Tom Traxler.

24 BY MR. TWOMBLEY:

25 Q. Did you ever see any other person attempt

ROA 005760

Page 60

1 to influence or pressure Mr. Barringer to engage in
2 this transfer?

3 A. No, I did not.

4 Q. Did you have the opportunity to -- to meet
5 and talk with Mr. Barringer after he engaged in this
6 transfer on September the 11th of 2012?

7 A. I did.

8 Q. At any point in time, did Mr. Barringer
9 express any regret about making the transfer?

10 A. Never.

11 Q. Okay. If Mr. Barringer had made a change
12 to his trust that directed the stock to Merrill Light
13 in July, do you know why he wanted to go ahead and
14 give it to her in September?

15 A. The change to the trust in July was based
16 on the fear that something would happen to
17 Mr. Barringer. Right? That is, he would be in a car
18 wreck and get killed and that that -- the shares
19 would not pass to Merrill Light. In September,
20 Mr. Barringer decided that it was appropriate to go
21 ahead and make the gift, and I counseled him to
22 retain the language in the trust agreement that said
23 that if something happened to him and if he had
24 shares in the company -- voting shares, that those
25 would be distributed to Merrill Barringer Light.

ROA 005761

Page 61

1 Q. I want to now turn your attention to tab
2 23. I'll give everybody a second to turn over there.

3 MS. PAYLOR: Ashley, what page is
4 that?

5 MR. TWOMBLEY: I'm going to get to
6 it. It's 0758.

7 MS. PAYLOR: Thank you.

8 BY MR. TWOMBLEY:

9 Q. Can you tell me -- or do you recognize
10 this document at 0758?

11 A. I do.

12 Q. Okay. What is this document?

13 A. This is certification of incapacity.

14 Q. Okay. We actually read the -- I think you
15 misspoke by accident. Can you read the -- read the
16 title?

17 A. I did. Excuse me. This is --

18 MR. TRAXLER: This is Tom Traxler. I
19 object to the form. Coaching.

20 BY MR. TWOMBLEY:

21 Q. I'll just rephrase the question. What is
22 the title of this document, Mr. Jolley?

23 A. The document at 0758 is a Physician's
24 Certification of Competency.

25 Q. Okay. And what -- what is the -- what is

ROA 005762

Page 62

1 this document?

2 A. This is a document that is intended to
3 provide a medical doctor a form in which after
4 examination of a person they can render an opinion
5 about their competency.

6 Q. And this physician certificate of
7 competency is for Mr. Barringer; is that correct?

8 A. This physician certification of competency
9 is for Mr. Barringer.

10 Q. Okay. Why did you prepare this document?

11 A. We prepared the document in light of the
12 allegations made by Mr. and Ms. Luzak about
13 Paul Barringer's competency. This was an effort to
14 be, to some degree, defensive about Mr. Barringer's
15 competency at the time of the transfer.

16 Q. Okay. And when you -- well, tell me what
17 you understood about the allegations that Ms. Luzak
18 and her husband were making about Mr. Barringer and
19 his competency.

20 A. I understood they alleged that he didn't
21 have the competency to be involved in the
22 corporation, its management, nor the competency to
23 make decisions on his own.

24 Q. Okay. Did you agree with those
25 allegations?

ROA 005763

Page 63

1 A. Did I agree with those allegations? I had
2 no doubt after interviewing and spending time with
3 Mr. Barringer that he was competent throughout the
4 time period I met and worked with him.

5 Q. Okay. So if you were confident about his
6 competency, why did you prepare this physician's
7 certificate?

8 A. This was simply in an effort to be, as I
9 said, defensive to the extent that someone came back
10 at a later date and suggested Mr. Barringer wasn't
11 competent, then this -- Mr. Barringer's doctor's
12 certificate I thought would be good to have.

13 Q. Okay. Now, this certificate is signed by
14 Paul Long. Do you know who Paul Long is?

15 A. I do know who Paul Long is.

16 Q. And who -- who is Dr. Paul Long?

17 A. Dr. Long is a medical doctor on Hilton
18 Head.

19 Q. Okay. Do you know how long he's been on
20 Hilton Head and practicing?

21 A. I'm sorry. I don't. Multiple decades.
22 Twenty or 30 years.

23 Q. Okay. All right. Do you know Dr. Long in
24 any --

25 A. I do know Dr. Long.

ROA 005764

Page 64

1 Q. Okay. Did you -- do you know how this
2 certificate got from your office to Dr. Long for him
3 to execute it?

4 A. I know that my office sent this blank form
5 to Merrill Light for printing and for -- for
6 Paul Barringer to take to Dr. Long.

7 Q. Okay. And why did you send it
8 Merrill Light and not send it directly to
9 Mr. Barringer?

10 A. I don't remember.

11 Q. Okay. Now, this -- this certificate says
12 that Mr. Barringer has sufficient mental capacity to
13 understand the nature, scope, and extent of the
14 business in which he was about to transact. Did you
15 draft that language?

16 A. That language is language that I drafted
17 generally in a certification of competency.

18 Q. Okay. And what was the business that
19 Mr. Barringer was about to transact?

20 A. We prepared this in advance of
21 Mr. Barringer making the transfer of the shares.

22 Q. Okay. So the business you were referring
23 to was the gift of stock?

24 A. This document wasn't drafted specific --
25 that is, that language wasn't inserted to refer to

ROA 005765

Page 65

1 the transfer of stock.

2 Q. Okay. But that's what you had in your
3 mind when it was --

4 A. When we prepared -- when we prepared this
5 document and sent it to Mr. -- to Merrill for
6 Mr. Barringer -- for Merrill Light for Mr. Barringer,
7 then, yes, this was in anticipation of Mr. Barringer
8 making the transfer of voting shares.

9 Q. Okay. I notice here that the document is
10 not dated. Do you know why it's not dated?

11 A. I do not.

12 Q. Okay. Do you -- do you remember when you
13 would have received it back executed from Dr. Long
14 after Mr. Barringer had engaged in the stock
15 transaction on September the 11th of 2012?

16 A. I remember this -- I remember the
17 certificate showing up in my office in my in-box
18 within a week to ten days of the time that we
19 prepared and sent the transfer documents -- or gave
20 the transfer documents to Paul.

21 Q. Okay. And did you ever speak to Dr. Long
22 about the certificate?

23 A. I did not speak to Dr. Long about the
24 certificate.

25 Q. What was your understanding about

ROA 005766

Page 66

1 Dr. Long's opinion of Mr. Barringer's capacity at the
2 time that he executed this certificate?

3 A. My understanding --

4 MR. TRAXLER: This is Tom Traxler.
5 Object to form.

6 BY MR. TWOMBLEY:

7 Q. You can answer.

8 A. My understanding is Dr. Long believed that
9 Paul Barringer had capacity to do any business.

10 Q. I'm going to go back for a moment to
11 the -- to the stock transfer documents that we
12 previously talked about at tab 4, page 279.
13 Mr. Jolley, after these three documents were prepared
14 and executed, that being page 279, 280, and 281, what
15 was supposed to happen to have these -- this transfer
16 formalized on the records of the company?

17 A. After Paul signed these documents, he was
18 supposed to give them to the company to update the
19 records of the company to reflect the transfer.

20 Q. Okay. And did you -- did you send them to
21 the company after Mr. Barringer executed them in
22 September of 2012?

23 A. I received these from Mr. Barringer after
24 he signed them and, at that point, I was supposed to
25 update the records to reflect the transfer.

ROA 005767

Page 67

1 Q. Okay. All right. Did you do that?

2 A. Not immediately.

3 Q. Why not?

4 A. In error, I did not. This was something I
5 put aside to deal with and didn't deal with it.

6 Q. Okay. Do you recall approximately when
7 you got around to sending the documents to the
8 company so that the transfer could be recorded? And
9 I'll tell you, let me -- before you answer, I'll just
10 give you a document. I'm going to give you this
11 document that we'll mark as Exhibit No. 2.

12 MR. TWOMBLEY: And, for the record,
13 I'll tell you guys what this is. What I am showing
14 Mr. Jolley is his January 24, 2013 letter to
15 Travis Bryant that's Bates stamped Coastal 64, and
16 this document is in the binder that you provided,
17 Tom. And then I have attached Coastal 65, 66, 67
18 through 71. I don't know if you need a second to get
19 that, Tom.

20 MR. TRAXLER: Yeah. Hold on a
21 second. We're going to get to it. So this
22 contract -- I think it's in our book at 663 under tab
23 18.

24 MR. TWOMBLEY: Okay. Tom, you are
25 correct. I'm happy to use those. There was another

ROA 005768

Page 68

1 place in the documents you guys identified where you
2 had the letter, but, in my opinion, the attachments
3 you had to it were not the correct attachments. But
4 let me look at these one minute to make sure that
5 I -- that these are the correct ones. Just for the
6 record for everybody who's listening in, we're
7 looking at the John Jolley depo Bates range 663
8 through 667.

9 BY MR. TWOMBLEY:

10 Q. All right. So, John, we'll -- we will not
11 mark that as an exhibit, and I will draw your
12 attention to tab No. 18 and documents 663 through
13 670.

14 A. I'm sorry. 0663 through 0670?

15 Q. Correct.

16 A. And, I'm sorry, what's the question?

17 Q. Okay. I'm going to ask you a question. I
18 was just --

19 MR. TWOMBLEY: You there? Are y'all
20 ready, Tom? I just want to make sure everybody had a
21 chance to get on the right page.

22 MR. TRAXLER: Yeah. I'm with you.
23 Thank you.

24 THE WITNESS: Actually, is 0671 and
25 0672 a part of that same letter?

ROA 005769

Page 69

1 BY MR. TWOMBLEY:

2 Q. No. No, it's not.

3 A. Okay. Thank you.

4 Q. So I think the question that was pending
5 was: Do you recall when you ultimately got around to
6 at having these shares at issue transferred? And
7 before you answer that, I would ask you to look at
8 0663 through 0670 and ask you: Does that refresh
9 your memory?

10 A. And January 24, 2013 is when I sent the
11 share certificates for signature along with the
12 underlying documents to Mr. Bryant.

13 Q. Okay. And so it looks like what would
14 have been attached to this letter was an unsigned
15 stock certificate No. 15, which is 0664; is that
16 correct?

17 A. That is correct.

18 Q. Then the next attachment was unsigned
19 stock certificate 16, which is 0665?

20 A. That looks correct.

21 Q. And then the next document is certificate
22 No. 14, which is 666, correct?

23 A. That is certificate No. 14. That looks
24 right.

25 Q. Okay. And then 0667 I think is the back

ROA 005770

Page 70

1 page of 0666?

2 A. That's what it appears to be.

3 Q. Okay. And then what are 668, 669, and
4 670?

5 A. These are copies of those transfer
6 documents that Mr. -- that -- transfer documents
7 where Mr. Barringer transferred his shares to
8 Merrill Light --

9 Q. Okay.

10 A. -- as trustee of her trust.

11 Q. Now, if we go back to the two unsigned
12 share certificates, I note here that both of these
13 share certificates have the date typed in them of
14 December 31, 2012. Do you see that?

15 A. This is 0664 and 0665?

16 Q. Yes.

17 A. Yes.

18 Q. Okay. Why did you put the date of
19 December 31, 2012 on these share certificates?

20 A. It was my perception that Mr. Barringer
21 had delivered the transfer documents to the
22 company -- that is, to me, to have the transfer
23 formalized by being recorded on the books. And in
24 December when I got to that process, what, the
25 document -- we chose to use the 12/31 date as a date

ROA 005771

Page 71

1 so that we would -- the gift that, I think, had
2 happened in 2012 when Mr. Barringer had signed the
3 transfer documents, that was reflected on the books
4 as of 12/31/2012.

5 Q. Okay. Did you discuss with Mr. Barringer
6 the fact that you had failed to have the shares
7 recorded back in September when he signed the
8 transfer documents?

9 MR. KIRBY: Object to form.

10 BY MR. TWOMBLEY:

11 Q. Go ahead.

12 A. I discussed with Mr. Barringer that the
13 documents for transfer had been signed in September
14 and that the -- that transfer hadn't been recorded on
15 the books in September.

16 Q. Okay. Let me just repeat the question.
17 What, if any, conversations did you have with
18 Mr. Barringer about the fact that the transfer
19 documents had not been sent to the company to be
20 formally recorded in September of 2012?

21 MR. TRAXLER: Tom Traxler. Same
22 objection.

23 THE WITNESS: I spoke with Paul about
24 the transfer of the shares. My recollection is that
25 Paul didn't consider this to be a big deal and didn't

ROA 005772

Page 72

1 want to have it being an accounting problem or an
2 issue for Travis Bryant to have to adjust. And,
3 therefore, Mr. Barringer agreed that we should treat
4 that transfer on the books as having occurred on
5 12/31.

6 BY MR. TWOMBLEY:

7 Q. Okay. At any point in time did
8 Mr. Barringer express any regret in making the
9 transfer in September?

10 A. Mr. Barringer never expressed any regret
11 for making the transfer. That is, to me.

12 Q. Are you aware of him expressing regret to
13 anyone else?

14 A. I'm unaware of Mr. Barringer expressing
15 any regret about the transfer of the voting shares to
16 Merrill Light.

17 Q. Okay. I'd now like to turn to tab 15,
18 please. It would appear --

19 MS. PAYLOR: What's the Bates number,
20 please?

21 MR. TWOMBLEY: Yeah. As soon as we
22 get there. It's 0387. It's the start -- let me find
23 the exact one I'm looking at. It's 396 -- hold on
24 one moment, Alice. Yes. It's 396 to 402. Let me
25 just confirm that based on the way they've got them

ROA 005773

Page 73

1 in here. I'm sorry. It's 395 to 402.

2 BY MR. TWOMBLEY:

3 Q. Before I ask you about that document, do
4 you remember having -- or do you remember
5 Mr. Barringer making any other changes to his estate
6 planning documents after the -- the September 2012
7 stock transfer?

8 A. I do.

9 Q. Tell me -- tell me what you remember.
10 When was the next change?

11 A. My recollection is that the next change
12 was made at the time -- as reflected in these
13 documents that you referred to that is dated 12
14 June 2014.

15 Q. And what -- what is this we're looking at
16 at 395 to 402?

17 A. 395 to 402 is Mr. Barringer's last will
18 and testament dated 12 June 2014.

19 Q. Okay. And do you recall any significant
20 changes that were made to Mr. Barringer's estate plan
21 through the June 2014 will?

22 A. I think the change -- my recollection is
23 the only change with respect to the will was those
24 people who would serve as personal representatives of
25 Mr. Barringer's will -- under Mr. Barringer's will.

ROA 005774

Page 74

1 Q. Other than that, do you recall any other
2 changes?

3 A. I do not recall any other changes.

4 Q. Okay. Did Mr. Barringer also execute a
5 new trust in June of 2014?

6 A. I believe so.

7 Q. Let me ask you. I think it's in this
8 binder. The last page is 504 and it starts...

9 A. I think 504 is the fourth amendment, so I
10 think it must be 503 is the end.

11 Q. Yes. I apologize. So the Bates range is
12 472 to 503. And I'll give you a minute to turn there
13 and take a look at those documents.

14 A. Mr. Twombly, when you refer to those
15 documents, do you mean the third amendment and
16 restatement versus the second amendment and
17 restatement?

18 Q. Yeah. I apologize that I wasn't clear.
19 What I'm looking at is the Bates range 472 to 503 --

20 A. Yes, sir.

21 Q. -- which, it's my understanding, is
22 Mr. Barringer's third amendment and restatement of
23 his trust agreement.

24 A. And I'm sorry. What's the question about
25 those documents?

ROA 005775

Page 75

1 Q. Well, the first question is: What is the
2 document?

3 A. Okay. I'm sorry. This is the -- this is
4 Mr. Barringer's third amendment and restatement to
5 his revocable trust -- to Mr. Barringer's revocable
6 trust.

7 Q. Okay. And this was executed by
8 Mr. Barringer, I guess, on June the 12th of 2014?

9 A. Yes, sir.

10 Q. Okay. Tell me about the discussions that
11 you had with Mr. Barringer about the change he wanted
12 to make through his third amendment.

13 A. This document reflected, as I see it, the
14 evolution of Mr. Barringer's desire about how to
15 treat Hampton Luzak in his documents.

16 Q. Okay. And what did -- what did
17 Mr. Barringer's 2012 -- I'm sorry, 2014 amendment to
18 his trust change from where his trust was in 2012?

19 A. The primary difference in -- reflected in
20 this document is that Mr. Barringer wanted a share
21 provided for Hampton to be instead held in further
22 trust for Hampton's son, Wade Hampton Luzak.

23 Q. Okay. Now, was that a specific devise or
24 how did that interact or relate with respect to the
25 power of appointment that Ms. Barringer had?

ROA 005776

Page 76

1 A. So as I mentioned with respect to the
2 earlier trust agreement, that this amended and
3 restated Mr. Barringer continued to first, at his
4 death, provide to or for the benefit of his surviving
5 spouse. So the document continues to reflect
6 Ms. Barringer as the primary beneficiary, and
7 continues to give Ms. Barringer the power to redirect
8 through a power of appointment contained in the -- in
9 this amendment and restatement. So it's the default
10 that was changed for the benefit of Victor and
11 Hampton, Victor's share being in further trust and
12 Hampton's share being in further trust not for
13 Hampton, but for Hampton Luzak's son, Wade Hampton
14 Luzak.

15 Q. Okay. Do you know or did Mr. Barringer
16 tell you why he wanted to make this change?

17 A. Yes. Mr. Barringer, at that point, had
18 determined -- had decided that he didn't expect that
19 he would be able to reconcile with Ms. Luzak, yet he
20 did not want to -- Mr. Barringer and Ms. Barringer
21 had a very good relationship previously with their
22 grandson, Wade, and they still wanted to make sure
23 they provided for Wade for Hampton's share -- the
24 share that would have otherwise passed to Hampton.

25 Q. Okay. And in this document, did -- was

ROA 005777

Page 77

1 the share for Wade required to go to Wade or was it
2 part of the default clause?

3 A. In this document, no -- no one received
4 anything if Ms. -- if Ms. Barringer exercised her
5 power of appointment away from them.

6 Q. Okay. Did you receive instructions or
7 directions from anyone other than Mr. Barringer
8 related to this change to his trust?

9 A. I did not.

10 Q. Okay. Let's look at the notary -- the
11 signature pages on this document at page -- it's
12 around page 503. Actually, it's at page 501. I see
13 at the top under "settlor" and "individual trustee"
14 there's Mr. Barringer -- what appears to be his
15 signature. Is that Mr. Barringer's signature?

16 A. It is.

17 Q. Did you witness him sign this document?

18 A. I did.

19 Q. Okay. And who are the other names who are
20 listed here by his signature?

21 A. There are three names. Mine, Sheree L.
22 Morris, and Rebecca L. Bostick.

23 Q. And were they physically present to watch
24 Mr. Barringer sign this?

25 A. They were. So wait. Becky and I were

ROA 005778

Page 78

1 physically present and when we -- as is evidenced.
2 And when we realized -- and that's why there's three
3 signatures here and not two. When we realized -- my
4 practice is not -- if I'm named in the document in
5 any role, my practice is not to be a witness. And in
6 this -- in this document, I think I have the
7 authority to name a successor trustee -- to nominate
8 a successor trustee. So after we talked to Paul and
9 signed, we realized that we needed someone other than
10 me to witness. And so Mr. Barringer would have
11 acknowledged his signature and this being his trust
12 agreement to Sheree -- with Sheree L. Morris, myself,
13 and Rebecca Bostick being physically present in the
14 same room with Paul Barringer.

15 Q. Thank you. Were you confident that
16 Mr. Barringer had the capacity to understand what he
17 was intending to accomplish in this document?

18 A. Yes.

19 MR. TRAXLER: Tom Traxler. Object to
20 the form.

21 BY MR. TWOMBLEY:

22 Q. I'd like to turn to -- let me just make
23 sure I've got this tab right. Tab 15, 403 through
24 411, which I believe is the next will that
25 Mr. Barringer executed. And also tab 16 at 504,

ROA 005779

Page 79

1 which appears to be the next trust amendment.

2 A. I'm sorry. You're going to have to give
3 me those numbers again.

4 Q. Sure. It's 403 through 411.

5 A. 403.

6 Q. I didn't organize them like this --

7 A. I got it.

8 Q. -- just so you know.

9 A. 0403 through 0411.

10 Q. Right. And also 504 -- 504 through 534.

11 Can you identify these documents for us, please?

12 A. Okay. So the documents identified as 0403
13 through 0411 -- the document, I should say,
14 identified 0403 through 0411 is Mr. Barringer's last
15 will and testament executed on February 5, 2015.
16 That's that first document that you asked me about,
17 being 0403 through 0411. And the next document you
18 asked me about is the fourth amendment and
19 restatement. That's 0504 through 0534 and appears to
20 be -- and that is this fourth amendment and
21 restatement of Mr. Barringer executed on February 5,
22 2015.

23 Q. Hold your fingers there because we're
24 going to come back to them, but I --

25 A. Okay.

ROA 005780

Page 80

1 Q. I want to go back to the -- to the 2014
2 will and trust before I start asking you some
3 substantive questions about the 2015 documents. Back
4 to the two thousand -- June 2014 documents, did you
5 ever have any concern -- or what, if any, concern did
6 you ever have that Mr. Barringer was being unduly
7 influenced in any way related to the 2014 documents?

8 MR. TRAXLER: Tom Traxler. Object to
9 form.

10 THE WITNESS: I had no concerns about
11 Mr. Barringer being unduly influenced or lacking
12 capacity with respect to the -- those documents.

13 BY MR. TWOMBLEY:

14 Q. Okay. Why do you say that?

15 A. I interacted with Mr. Barringer. And in
16 all of my interactions with Mr. Barringer, I believe
17 that he did, in fact, have capacity, and I certainly
18 never believed that he was being unduly influenced.
19 That is, Mr. Barringer did what he wanted to do and
20 what he thought was right throughout that time, not
21 pursuant to someone else's direction.

22 Q. Okay. Let's move back to the 2015
23 documents.

24 A. Okay.

25 Q. 0403 through 0411 and 0504 through 0534.

ROA 005781

Page 81

1 You previously identified these as Mr. Barringer's
2 February 2015 will and trust agreement; is that
3 right?

4 A. February 5, 2015 and February 5, 2015.
5 Yes. That is correct.

6 Q. Okay. Tell me, generally speaking,
7 what -- what changes were made with these documents
8 as far as dispositive provisions go?

9 A. I don't think the will contained changes
10 to the dispositive terms. I believe the will
11 reflected a change in the personal representative.

12 Q. All right. How about the trust, 0504 to
13 0534?

14 A. 0504. So in this fourth amendment and
15 restatement, I believe the changes to the document
16 were that with respect to the tangible personal
17 property, if Ms. Barringer didn't survive
18 Mr. Barringer, it was provided that the tangible
19 personal property would be divided between Victor and
20 Merrill -- Victor Barringer and Merrill Light rather
21 than including Ms. Luzak as a potential beneficiary
22 and remainder beneficiary. And then -- and that's in
23 Article V, the special -- specific distributions.
24 That's paragraph one, generally.

25 And then paragraph two contained an

ROA 005782

Page 82

1 additional -- a new distribution, and this is a
2 \$50,000 gift to Wade Hampton Luzak subject to him
3 being old enough. That's pursuant to Article XVIII,
4 and that would only occur at the death of the
5 survivor. That is at -- that would only occur at
6 Mr. Barringer's death had he been the survivor of
7 Mr. and Ms. Barringer.

8 And then, additionally, with respect to --
9 it's not a change. Everything else was distributed
10 to or in trust for Ms. Barringer. Ms. Barringer
11 continued to have a power of appointment in the trust
12 for her benefit, and the default language is changed
13 because no longer did Mr. Barringer wish to provide
14 the share that would have otherwise passed to Hampton
15 in earlier versions to go in trust for Wade Hampton
16 Luzak. Rather, that the ultimate default
17 distribution of assets under this trust would pass
18 between Victor and -- and Merrill Light -- Victor
19 Barringer and Merrill Light.

20 Q. Do you know why Mr. Barringer wanted to
21 make these changes or what was the impetus for them?

22 A. So, I mean, this is just a continuation of
23 what I described a few minutes ago. I believe that
24 Mr. Barringer in two thousand -- in July of 2012
25 continued to want to reconcile with Hampton -- his

ROA 005783

Page 83

1 daughter, Hampton. And then as time went along, he
2 believed that he couldn't reconcile with Hampton, or
3 wouldn't, and that ultimately he decided that he
4 didn't need to provide for Wade Hampton other than in
5 this \$50,000 specific distribution based on the fact
6 that they were estranged and that Wade would be --
7 receive plenty of other resources.

8 Q. Okay. All right. Were you present when
9 Mr. Barringer signed the 2015 documents, both the
10 will and trust?

11 A. I don't remember. I believe that I was.

12 Q. Okay. Do you recognize the signature box?
13 Let's just start with the -- with the trust on page
14 533 and 534.

15 A. I do see the signature box on 0533, and I
16 see the acknowledgments on 0534.

17 Q. Okay. Who are the two witnesses on 0533?

18 A. This is Virginia Ritchie and Rebecca L.
19 Bostick.

20 Q. And those are the two ladies that worked
21 in your office?

22 A. These are two ladies that worked in my
23 office.

24 Q. Okay. And how about on 0354 -- I'm sorry,
25 0534?

ROA 005784

Page 84

1 A. 0534 reflects the acknowledgment executed
2 by Rebecca Bostick.

3 Q. Okay. And how about for the will which
4 ends at page 411? So I believe the signature blocks
5 are on, yeah, 0411?

6 A. On 0411, Virginia Ritchie and Rebecca
7 Bostick are the witnesses to Mr. Barringer's will.

8 Q. Okay. Who asked you to make these changes
9 to Mr. Barringer's will and trust in 2015?

10 A. Mr. Barringer.

11 Q. Did anyone else have any discussions with
12 you about these changes?

13 A. I discussed the changes with Becky
14 Bostick, but no one outside of my office. No one.
15 Not to any direction other than Paul Barringer.

16 Q. Do you believe that Mr. Barringer had the
17 capacity to know what his estate consisted of and who
18 he wanted to receive his estate at his death in 2015?

19 A. I do.

20 Q. Did you observe anyone try to influence
21 Mr. Barringer in any way regarding his February 2015
22 documents?

23 A. I did not.

24 Q. Do you know of any evidence that
25 Mr. Barringer was under duress when he signed these

ROA 005785

Page 85

1 documents in February 2015?

2 A. I do not.

3 Q. Has anyone ever interfered with your
4 representation of Paul Barringer related to his
5 estate planning?

6 A. No.

7 MR. TRAXLER: Object to form.

8 BY MR. TWOMBLEY:

9 Q. What, if any, influence has there ever
10 been from anyone related to your representation of
11 Paul Barringer and his estate planning?

12 MR. TRAXLER: Tom Traxler. Same
13 objection.

14 THE WITNESS: Can you repeat the
15 question?

16 BY MR. TWOMBLEY:

17 Q. What, if any, interference did you ever
18 observe with respect to your representation of
19 Mr. Barringer regarding his estate plan?

20 MR. TRAXLER: Same objection.

21 THE WITNESS: I never had any
22 interference with my representation of Mr. Barringer.

23 BY MR. TWOMBLEY:

24 Q. Mr. Jolley, I now want to show you -- for
25 the record, we'll mark this as Exhibit No. 2, but

ROA 005786

Page 86

1 this is the complaint that Hampton Barringer Luzak
2 brought against her mother, Merrill Underwood
3 Barringer, that was filed in the Beaufort County
4 Court of Common Pleas on May 28, 2019. Before I hand
5 it to you, I want to first draw your attention to
6 paragraph 142 on page 58.

7 MR. KIRBY: Do you have any more
8 copies?

9 MR. TWOMBLEY: No. I'm sorry. I
10 don't.

11 THE WITNESS: You want -- you're
12 drawing my attention to paragraph 142?

13 BY MR. TWOMBLEY:

14 Q. Right.

15 A. Okay.

16 Q. First of all, will you read paragraph 142
17 into the record?

18 A. 142. "Upon information and belief,
19 decedent, Paul Barringer, and Ms. Barringer entered
20 into a binding contract not to revoke their estate
21 plans. Upon information and belief, other proof
22 could be discerned from a review of Ms. Barringer's
23 estate planning documents, which she has refused to
24 produce in the case of Hampton B. Luzak versus
25 Merrill B. Light, et al., Case No. 2016-CP-07-1919,

ROA 005787

Page 87

1 South Carolina Common Pleas. This contract not to
2 revoke applied to the estate plans in place until his
3 lack of capacity and the undue influence and tortious
4 interference practiced on him as described above."

5 Q. Do you know of any evidence regarding any
6 contract between Mr. and Ms. Barringer regarding
7 their estate plans?

8 A. No.

9 Q. Do you know why anyone would say that?

10 A. I do not.

11 Q. Do you know anything about the terms of
12 any such alleged contract?

13 A. I am unaware of any contract between
14 Mr. and Ms. Barringer to make a will or any other
15 testamentary documents.

16 Q. To your knowledge, is there any language
17 in either Mr. Barringer's wills and trust or
18 Ms. Barringer's wills and trust that was in any way
19 intended to reflect or reference or otherwise
20 memorialize any such contract?

21 A. No. In fact, I think the terms of
22 their -- of Mr. Barringer's documents fly in the face
23 of an argument that there's an agreement not to
24 change their estate plan.

25 Q. Did Mr. Barringer ever mention anything

ROA 005788

Page 88

1 about any agreement with Ms. Barringer regarding
2 their estate plans?

3 A. Mr. Barringer never mentioned to me
4 anything about a contract to -- for their estate
5 plan.

6 Q. Were you aware of any promises that may
7 have been made by Mr. Barringer or Ms. Barringer with
8 respect to the other's estate plan?

9 A. No.

10 Q. Do you know why someone would say that
11 they had made promises to each other about their
12 estate plans that are not reflected in the terms of
13 the estate plan?

14 A. So I'm sorry. Repeat the question.

15 Q. Do you know why anyone would say that
16 Mr. and Ms. Barringer had made promises to each other
17 about their estate plan that are not reflected in the
18 terms of their estate plan?

19 A. The only reason to do that is if there had
20 been a contract to make an estate plan.

21 Q. And since we're not -- I think you
22 testified you're not aware of any such contract,
23 right?

24 A. I am definitely not aware of any contract
25 between the Barringers to make -- you know, with

ROA 005789

Page 89

1 respect to their estate plan.

2 Q. Okay. Do you know why anyone would assert
3 or why Ms. Luzak has asserted that there is some type
4 of promise or a contract regarding their estate plan?

5 A. To the extent that Ms. Luzak had a written
6 contract to make a will that was something that I
7 didn't see and was contrary to the terms of the
8 estate plan, that's the only reason I can imagine
9 asserting such a claim.

10 Q. Have you ever seen this alleged contract?

11 A. I have not seen any -- any contract with
12 respect to Mr. and Ms. Barringer.

13 Q. I'll also represent to you that in this
14 complaint, Hampton Luzak accuses her mother of
15 engaging in a conspiracy to harm Hampton Luzak. Do
16 you know why Hampton Luzak would make that type of
17 allegation about Merrill Barringer?

18 MR. TRAXLER: Object to form. This
19 is Tom Traxler.

20 THE WITNESS: I don't think there's
21 any basis for that. I can't -- I can't answer what
22 Ms. Luzak's motivation for any of that, but I don't
23 believe there's any basis for such a claim.

24 BY MR. TWOMBLEY:

25 Q. Okay. Did you ever observe any type of

ROA 005790

Page 90

1 behavior from Ms. Barringer that led you to believe
2 that she was not acting in Paul's best interest?

3 A. I always believed -- no. I did not. I
4 always believed that Ms. Barringer was acting in
5 Paul's best interest.

6 Q. I think I might be done with my
7 questioning. I'd like to take about a five-minute
8 break and review my notes and use the restroom. And
9 if I've got anything else, I'll hit it when I come
10 back. Otherwise, I might be done. So we'll stand
11 down for about five minutes.

12 THE VIDEOGRAPHER: We are going off
13 record. The time is 12:47 p.m.

14 (Off the record.)

15 THE VIDEOGRAPHER: We are back on
16 record. The time is 12:57 p.m.

17 MR. TWOMBLEY: I have no further
18 questions at this time.

19 MR. TRAXLER: You ready to go ahead?

20 MR. TWOMBLEY: Yeah. I said I don't
21 have any further questions. I'm sorry if y'all
22 didn't hear.

23 MR. TRAXLER: I didn't hear that.
24 Let's take a lunch -- Alice, you got anything? Let's
25 take a lunch break, if we would. I guess it's up to

ROA 005791

Page 91

1 me when we get back; is that right?

2 MR. TWOMBLEY: I don't know what you
3 mean. I've got some lunch here.

4 MR. TRAXLER: Alice, you don't have
5 any questions, do you?

6 MR. MOLSTER: No. We're -- we're
7 good -- we're good, Tom.

8 MR. TRAXLER: All right. Let's take
9 lunch break. How long y'all want? Forty-five
10 minutes?

11 MS. KIRK: How long are you planning
12 on going? We don't need a lunch break.

13 MR. TRAXLER: We do. We have a long
14 way to go. So how much time do you need? Thirty
15 minutes, 45 minutes? Y'all tell me.

16 MS. KIRK: Thirty is plenty for us.

17 MR. TRAXLER: Anybody want more than
18 30? Let's take 45 just to be -- just to be safe.
19 Why don't we come back at 1:45. All right?

20 MR. TWOMBLEY: If y'all want to take
21 a lunch break, then that's fine.

22 MR. TRAXLER: Yeah. We need to take
23 a lunch break. We have a lot to go. A lot of hours.
24 I think it would be best if everybody be fed.

25 MS. KIRK: Well, I'm not objecting to

ROA 005792

Page 92

1 us eating. I'm just telling you we don't need a long
2 time to do it.

3 MR. TRAXLER: I understand.

4 Forty-five minutes is what we're going to take.

5 Anyway, 1:45. Mr. Jolley, you understand that you're
6 not allowed to discuss your testimony with anybody,
7 including your own counsel, right?

8 THE WITNESS: I do.

9 MR. TRAXLER: Okay. Thank you. All
10 right. We'll go off the record, Madam Court
11 Reporter.

12 THE VIDEOGRAPHER: We are going off
13 record. This is the end of media unit two. The time
14 is 1:00 p.m.

15 (Off the record.)

16 THE VIDEOGRAPHER: We are back on
17 record. This is beginning media unit three. The
18 time is 1:48 p.m.

19 MR. TWOMBLEY: And, Tom, before you
20 get started, the court reporter asked for me to make
21 the complaint that I introduced as exhibit
22 Defendant's No. 1 instead of Plaintiff's No. 2. So
23 with your permission, we'll mark that as Defendant's
24 No. 1 and just leave your binder as Plaintiff's No.
25 1. Okay?

ROA 005793

Page 93

1 MR. TRAXLER: What are we going to do
2 about that transcript that refers to it as
3 Plaintiff's 2?

4 MR. TWOMBLEY: Well, I'm sure we can
5 figure it out. I think I referred to it one time or
6 something, but --

7 MR. TRAXLER: Okay. We're on record
8 now. We have noted on the record that that exhibit
9 has been remarked as Defendant's 1.

10 MR. TWOMBLEY: Yes.

11 MR. TRAXLER: Okay. That's fine.

12 MR. TWOMBLEY: Okay. All right.

13 Thank you.

14 MR. TRAXLER: Thank you.

15 EXAMINATION

16 BY MR. TRAXLER:

17 Q. Mr. Jolley, if I ask you a question you
18 don't understand, please tell me, and I'll be happy
19 to repeat it or rephrase it, whatever I need to do to
20 help you understand. All right?

21 A. Yes. Thank you.

22 Q. And it is entirely likely -- in fact, I
23 can guarantee you at some point in time I'm going to
24 ask you a question that is unintelligible. Just tell
25 me and we'll get it straightened out. Okay?

ROA 005794

Page 94

1 A. Yes, sir.

2 Q. And I'm going to assume that if you answer
3 my question, you have understood it. Is that fair?

4 A. It seems fair.

5 Q. Okay. You are here in this deposition
6 today by subpoena?

7 A. Yes.

8 Q. Okay. And was it necessary for you to
9 have a subpoena to show up and testify on
10 Mr. Twombly's questions?

11 MR. TWOMBLEY: Object to the form of
12 the question.

13 MS. KIRK: Also object to the form.
14 This is Ariail Kirk.

15 MS. PAYLOR: Same objection. Alice
16 Paylor.

17 BY MR. TRAXLER:

18 Q. You can answer.

19 A. I don't know.

20 Q. Would you not have come voluntarily to
21 testify in this deposition without a subpoena?

22 A. I'm not sure the answer to that. I would
23 have consulted with my lawyer before I decided
24 whether I was going to appear voluntarily absent
25 being compelled by a subpoena.

ROA 005795

Page 95

1 Q. All right. We don't know exactly when
2 this trial is going to be, Mr. Jolley. Who knows
3 when it's going to with this COVID virus and
4 everything going on. Is there any reason to think or
5 believe that you will not be available for trial this
6 year or next year?

7 A. I expect to be practicing law in South
8 Carolina in the next several years. So, you know,
9 other than scheduling, I don't know why I wouldn't be
10 available.

11 Q. And I don't mean to pry into your personal
12 life, but I'm trying to figure out if there's any --
13 what the chances are that you won't be at trial. It
14 could be because of a serious illness by you. Are
15 you in reasonably good health in the next year or
16 two?

17 A. I think I'm in reasonably good health, but
18 I have no reason to believe I won't be available in
19 the next year or two due to my health.

20 Q. Okay. Great. Thank you. Have you ever
21 given a deposition before?

22 A. No, sir.

23 Q. Have you ever testified in a trial or
24 administrative hearing before?

25 A. I don't believe so.

ROA 005796

Page 96

1 Q. So I guess you have never been qualified
2 as an expert witness in any area before; is that
3 correct?

4 A. So no. I'm sorry. I do -- I'm sorry.
5 Thank you for prompting that. I do believe I
6 appeared as an expert witness in one case.

7 Q. Okay. And tell me what that case was
8 about, how long ago, and where it was.

9 A. I would have to say that it was between
10 2005 and 2010 in the probate court for Beaufort
11 County, South Carolina.

12 Q. And you were an expert on what topics,
13 what opinions?

14 A. My recollection at this time is pretty
15 vague, but my belief is that it was about
16 reasonableness of a fee in an estate planning matter.

17 Q. Did you have to testify in that?

18 A. I did testify in that.

19 Q. All right. Testified in deposition or
20 courtroom or both?

21 A. No. Just -- I'm sorry. In a courtroom.

22 Q. Okay. Thank you. Any other deposition
23 testimony that you recall?

24 A. No, sir.

25 Q. Have you ever been identified as an expert

ROA 005797

Page 97

1 other than that instance you just told us about in
2 probate court in Beaufort County?

3 A. I don't believe so.

4 Q. Have you ever written or published on any
5 legal topics?

6 A. I have.

7 Q. Okay. Can you give me a list of what they
8 were and where they were published, to the best of
9 your recollection?

10 A. I have written several articles for the
11 South Carolina Lawyer. I edited a chapter in the
12 book in South Carolina on estate planning published
13 by the South Carolina bar. Would you consider
14 published being CLE materials for presentations I
15 gave?

16 Q. Let's hold that. I'm going to get to that
17 one next. Okay?

18 A. Okay.

19 Q. Have you written or published anything
20 other than the articles for South Carolina Lawyer
21 magazine and the South Carolina bar for estate
22 planning?

23 A. Not that I recall.

24 Q. What were the titles or the substantive
25 matters of the articles that you wrote for South

ROA 005798

Page 98

1 Carolina Lawyer magazine?

2 A. The chapter in the estate planning book
3 was about estate taxation. I wrote or co-authored an
4 article for the South Carolina Lawyer with regard to
5 the Drayer case in South Carolina. I also wrote an
6 article for the South Carolina Lawyer in which I
7 talked about estate taxes and generation-skipping
8 taxes.

9 Q. All right. Have you ever written on
10 ethics for estate planning?

11 A. I don't recall writing anything on ethics
12 for estate planning.

13 Q. Have you ever written anything on ethics
14 for corporate counsel?

15 A. I have not written anything on ethics for
16 corporate counsel.

17 Q. Okay. And tell me what CLEs you have
18 presented at.

19 A. I've presented a CLE on estate and gift
20 and generation-skipping transfer taxes. I have
21 presented a CLE on irrevocable trusts and collateral
22 attacks on irrevocable trusts. I've been involved in
23 numerous panel presentations. I've presented with
24 respect to guardian -- with respect to planning for
25 incapacitated adults. I'm sure there are others that

ROA 005799

Page 99

1 I'm forgetting.

2 Q. All right. Let me talk to you about what
3 you did to prepare for this deposition today. Can
4 you tell me what you did to prepare for your
5 testimony today?

6 A. I reviewed the materials forwarded to me
7 by your office. I met with my lawyer, and I met with
8 Mr. Twombly, and I met with the attorneys for
9 Coastal Forest Resources.

10 Q. Did you meet with Mr. -- Ms. Paylor or
11 Mr. Molster?

12 A. In preparation for this deposition, I did
13 not.

14 Q. Okay. Did you talk to them, whether you
15 met with them in person or not, in preparation for
16 your deposition?

17 A. I did not.

18 Q. Did you receive any communications from
19 them directly or indirectly in preparation for your
20 deposition?

21 A. I did not.

22 Q. And how long -- who is -- you're presently
23 represented in this deposition; is that correct?

24 A. That is correct.

25 Q. And who is your lawyer? Is she sitting

ROA 005800

Page 100

1 there with you?

2 A. She is. It's Ariail Kirk.

3 Q. And which firm is she with?

4 A. Jolley Law Group.

5 Q. And how long has she represented you?

6 A. My recollection is Ms. Kirk has
7 represented me with respect to this matter as -- as
8 soon as I received any communication with respect to
9 this litigation since I've been at the Jolley Law
10 Group.

11 Q. All right. And how long did you meet with
12 Ms. Kirk to prepare for your deposition? Let me
13 break that down. How many times did you meet with
14 her to prepare for today?

15 A. I think I met with Ms. Kirk either in
16 person or electronically yesterday and one time
17 before that.

18 Q. Okay. And how long did you meet with her
19 yesterday? Bless you. How long did you meet with
20 her yesterday?

21 A. From approximately 11:30 until 6:00 p.m.

22 Q. All right. And at that time, were other
23 counsel present?

24 A. During a portion of that time, other
25 counsel were present.

ROA 005801

Page 101

1 Q. And who -- during that other -- what other
2 counsel were there during that portion of time you're
3 referring to?

4 A. During a portion of that time,
5 Mr. Twombly was present. And during a different
6 portion of that time, Mr. Schronce and Mr. Fuhr were
7 present.

8 Q. How long was each of those other lawyers
9 present in that meeting?

10 A. I think I met with Ms. -- Mr. Twombly for
11 the bulk of the time between 11:30 and 2:30. I
12 believe I met with Mr. Schronce and Mr. Fuhr, as well
13 as my lawyer, from, say, 2:30 to 4:00 or 4:30. And
14 then I met with Mr. Twombly again from 4:30 until,
15 maybe, 5:45.

16 Q. And was Ms. Kirk present in that meeting?

17 A. Throughout my interactions -- throughout
18 this case, yes. Ms. Kirk was present.

19 Q. All right. And you did not review any
20 documents other than the documents we provided to
21 you; is that correct?

22 A. That is correct.

23 Q. You didn't read any depositions?

24 A. I didn't read -- no. I have read the
25 deposition transcript of Rebecca Bostick.

ROA 005802

Page 102

1 Q. Okay. When did you read that?

2 A. Sunday.

3 Q. Any other depositions that you have read?

4 A. Regarding this case?

5 Q. Yes.

6 A. I haven't -- I have not -- I have not
7 reviewed any other transcript or read any other
8 transcript deposition in this case.

9 Q. Did you include in that you have not read
10 any deposition summaries?

11 A. Yes. I would include deposition
12 summaries.

13 Q. Okay. And as a quick aside, do you recall
14 seeing anything in Ms. Bostick's deposition that you
15 saw to be inaccurate or untrue?

16 MR. TWOMBLEY: Object to the form of
17 the question.

18 BY MR. TRAXLER:

19 Q. You can answer.

20 A. I did not see any -- I don't recall
21 anything in Ms. Bostick's deposition that would --
22 that I thought was untrue.

23 Q. So why would Mr. Twombley be there to help
24 you get ready to answer questions?

25 MS. KIRK: Object to the form.

ROA 005803

Page 103

1 MR. TWOMBLEY: I would -- I'm going
2 to instruct not to answer to the extent we were
3 discussing privileged issues that may be raised
4 regarding the subject of your testimony.

5 BY MR. TRAXLER:

6 Q. Did you discuss any issues with
7 Mr. Twombley or in his presence other than privileged
8 issues?

9 A. I'm sorry. I'm not sure I understand that
10 question.

11 Q. Sure. When you were meeting and
12 Mr. Twombley was present, did y'all discuss anything
13 other than privileged issues that might arise with
14 regard to your deposition?

15 A. I don't believe so. We -- I don't believe
16 so.

17 Q. Did you discuss the facts of the case at
18 all?

19 MR. TWOMBLEY: Object to the form of
20 the question. And to the extent they were discussed
21 with respect to privileged issues, I would instruct
22 you not to answer.

23 MS. KIRK: This is Ariail Kirk. I
24 have the same objection.

25

ROA 005804

Page 104

1 BY MR. TRAXLER:

2 Q. You may go ahead. You can answer.

3 MS. KIRK: Whoa, whoa.

4 MR. TWOMBLEY: I'm instructing him
5 not to answer to the extent the facts were discussed
6 related to any privileged issue and I would -- I
7 would -- I would caution the witness to listen to me
8 and not to Mr. Traxler when it comes to what you can
9 answer and what you cannot because I am the only
10 person who can instruct you whether to answer or not
11 when it comes to a privilege associated with the
12 estate. Mr. Traxler is adversary in this case,
13 represents Hampton Luzak. So please be mindful of
14 that.

15 BY MR. TRAXLER:

16 Q. Have you understood that instruction,
17 Mr. Jolley, as to what he just told you?

18 A. I'm not entirely clear what the question
19 is that I can answer.

20 MR. TRAXLER: Mr. Twombley, which --
21 what privilege are you asserting in instructing
22 Mr. Jolley not to answer my question?

23 MR. TWOMBLEY: All available
24 privileges under the law.

25 MR. TRAXLER: And are you willing to

ROA 005805

Page 105

1 articulate them for the record?

2 MR. TWOMBLEY: Not at this time.

3 Attorney-client, work product are the two that jump
4 off my head. We've had this issue come up many times
5 before and, you know, the -- in any event, that's all
6 I'm going to say now.

7 BY MR. TRAXLER:

8 Q. Okay. All right. So was there any
9 discussion with Mr. Twombley beyond privilege issues,
10 Mr. Jolley?

11 MR. TWOMBLEY: Object to the form.
12 Asked and answered.

13 BY MR. TRAXLER:

14 Q. If you would, sir, please answer.

15 A. So I'm sorry. Can you repeat the
16 question?

17 Q. Sure. Did you discuss anything in
18 Mr. Twombley's presence other than privilege issues?

19 A. I don't believe so.

20 Q. Okay.

21 MS. KIRK: Can we -- I'm sorry. I
22 don't mean to interrupt, but I'm having a really hard
23 time hearing. Is there anything we can do with the
24 volume in here?

25 MR. TRAXLER: You're having trouble

ROA 005806

Page 106

1 hearing me?

2 MS. KIRK: Yes.

3 MR. TRAXLER: Okay. Let me see if I
4 can sit a little bit closer.

5 MS. KIRK: Thank you. I'm sorry.

6 MR. TRAXLER: Can you hear me better
7 now?

8 MS. KIRK: Yes. Thank you.

9 MR. TRAXLER: No problem.

10 BY MR. TRAXLER:

11 Q. Who else did you meet with yesterday
12 besides Ms. Kirk and Mr. Twombly?

13 A. Mr. Schronce and Mr. Fuhr.

14 Q. Okay. Did you discuss any issues with
15 them other than privilege issues?

16 A. I don't believe so.

17 Q. All right. How long did you spend
18 reviewing the exhibit notebook we sent to you?

19 A. Several hours.

20 Q. Other than members of your firm, Ms. Kirk,
21 the lawyers here, have you discussed your deposition
22 with anyone else?

23 A. So I'm sorry. The beginning of that,
24 Mr. Traxler?

25 Q. Yes, sir. My question is: Who have you

ROA 005807

Page 107

1 discussed your deposition with before today other
2 than the lawyers that we have discussed already and
3 who may be here today?

4 A. I haven't discussed the substance of my
5 deposition today with anyone other than as I have
6 described to you.

7 Q. Okay. Now, prior to your deposition
8 preparation that you described to me, have you met
9 previously with any of the counsel who are involved
10 in this case to discuss this case itself?

11 A. I have.

12 Q. Okay. Who all have you met with?

13 A. I've met with Chip Molster and I've met
14 with Mr. Twombly, and I don't -- and I've had a
15 telephone conversation with Ms. Paylor.

16 Q. And how many times have you talked to
17 Mr. Molster about this case?

18 A. I -- I think I've spoken to Mr. Molster
19 twice about this case.

20 Q. Okay. Can you give me the best time frame
21 that you can recall?

22 A. I think I spoke to Mr. Molster when this
23 case first started, and then I believe I had -- I did
24 have a short telephone conversation with Mr. Molster
25 I think January of last year.

ROA 005808

Page 108

1 Q. Okay. And when you first talked to him,
2 what did you talk about?

3 A. Mr. Molster asked me questions --
4 interviewed me about the case.

5 MR. MOLSTER: Yeah. So, Alice, I
6 think -- Tom, if you want to stand on ceremony, I'll
7 ask Alice to make the objections or I can make the
8 objections.

9 MR. TRAXLER: You go ahead, Chip. I
10 don't care.

11 MR. MOLSTER: I just instruct you --
12 to the extent that our discussions involved Randy or
13 Merrill Light in your role as their counsel, I
14 instruct you not to answer those questions. Thank
15 you. Thank you, Tom, for the courtesy.

16 MR. TRAXLER: Thank you, Chip.

17 BY MR. TRAXLER:

18 Q. Did you discuss Paul Barringer with
19 Mr. Molster?

20 A. I do not believe so.

21 Q. Did you discuss Merrill Barringer with
22 Mr. Molster?

23 A. I do not believe so.

24 Q. Did you discuss the corporation and
25 corporate affairs with Mr. Molster?

ROA 005809

Page 109

1 A. I don't believe so.

2 Q. Did you discuss anything with him other
3 than matters pertaining to Merrill or Randy Light?

4 A. I don't believe so.

5 Q. Okay. Let me ask you the same questions
6 about the -- I think you described it as a short, I
7 think, short phone call January of last year. Did
8 you discuss anything with Mr. Molster other than
9 Merrill Light and Randy Light?

10 A. No.

11 Q. And Mr. Twombly, how many times have you
12 talked or met with him prior to the preparation of
13 your deposition?

14 A. With respect to this case?

15 Q. Yes, sir.

16 A. I think I have met or talked to
17 Mr. Twombly before the -- I want to say two or three
18 times since 2015.

19 Q. Okay. What -- and sum total, if you can
20 guesstimate that for me, about how much time all
21 total have you spent talking to him prior to the
22 deposition preparation?

23 A. I -- I gave you the time for yesterday.

24 Q. Yes, sir.

25 A. I think I spent an hour or an hour and a

ROA 005810

Page 110

1 half with Mr. Twombley, I would say, two other times
2 since the start of this case.

3 Q. What did y'all -- what did y'all talk
4 about? I'll withdraw that question.

5 Who did you understand Mr. Twombley to be
6 representing when you talked with him?

7 A. Initially, Mr. -- I understood
8 Mr. Twombley was representing Paul and Merrill
9 Barringer.

10 Q. Okay. Did you have any conversations with
11 Mr. Twombley other than conversations about Paul and
12 Merrill Barringer?

13 A. I don't believe so.

14 Q. Did you talk about Merrill Light?

15 A. I did not.

16 Q. Talk about Randy Light?

17 A. I did not.

18 Q. Did you review documents with
19 Mr. Twombley?

20 A. Did I review documents? I don't recall
21 review -- I'm sorry. Yesterday.

22 Q. Excluding yesterday. We don't need to go
23 back through that.

24 A. Okay. I don't recall going through
25 documents with Mr. Twombley.

ROA 005811

Page 111

1 Q. Okay. Are you billing anybody for your
2 deposition today?

3 A. I am not.

4 Q. You will not bill for your time? You will
5 go uncompensated for this time today; is that
6 correct?

7 A. Yes, Mr. Traxler. That's correct.

8 Q. Thank you. I believe the McNair Law Firm
9 received subpoenas in this case prior to your
10 departure from McNair, did it not?

11 A. It did.

12 Q. Tell me what you did, if anything, to
13 participate in the McNair's response to those
14 subpoenas?

15 A. My involvement in the response to
16 subpoenas was limited to turning over any files I had
17 at the firm to the folks at the firm responsible for
18 responding to the subpoena.

19 Q. Who at McNair was responsible for
20 responding to the subpoena?

21 MR. TWOMBLEY: Object to the form of
22 the question.

23 MS. KIRK: This is Ariail Kirk. I
24 also object to the form.

25

ROA 005812

Page 112

1 BY MR. TRAXLER:

2 Q. You can go ahead, Mr. Jolley.

3 A. The person I dealt with was Ann -- Ann --
4 Jane Trinkley.

5 Q. I believe she was in law school with me
6 and Mr. Medlin. Did you have responsible
7 gathering -- responsive documents beyond that which
8 you yourself had that is going to staff assistants or
9 associates or anything beyond what you physically had
10 control of yourself?

11 A. I'm sorry. I need you to repeat that
12 question.

13 Q. Sure. When you were gathering documents
14 and turning them over to Ms. Trinkley, did you simply
15 turn over what you had in your possession or on your
16 computer or did you go do a search beyond what you
17 yourself had?

18 A. I did not -- other than -- anything on my
19 computer would be something that the IT people would
20 have dealt with in the firm. And other than making
21 sure that myself and Becky Bostick cooperated with,
22 you know, any -- anything that Jane would ask for, I
23 didn't have any responsibility other than making sure
24 that anything I had and that anything Becky Bostick
25 had in terms of a physical file was boxed and sent to

ROA 005813

Page 113

1 Ms. Trinkley.

2 Q. Now, did Ms. Trinkley or anyone else at
3 McNair ever come back to you and ask you to review or
4 research again to see if you had produced all the
5 documents?

6 MS. KIRK: I want to be sure -- are
7 you asking him about communications with
8 Ms. Trinkley?

9 MR. TRAXLER: Yeah. Really what I
10 want to know is did anybody come back to him and have
11 him double check, whether Ms. Trinkley or otherwise.
12 Here's -- here's what I want to know. You know,
13 Ariail, if you want to object, we can deal with it.
14 That's fine. I just want to know if it was the
15 initial production of documents or whether there was
16 an effort later on again to make sure everything had
17 been produced.

18 MS. KIRK: Okay. I just want to be
19 sure we're walking the line, you know, because --

20 MR. TRAXLER: Sure.

21 MS. KIRK: -- prior to my involvement
22 in this case, he was represented with the McNair
23 firm.

24 MR. TRAXLER: Yeah. Sure.

25 THE WITNESS: Mr. Traxler, I don't

ROA 005814

Page 114

1 recall.

2 MR. TWOMBLEY: I object to the form
3 of the question just because I don't understand it.
4 Go ahead.

5 MR. TRAXLER: Okay.

6 BY MR. TRAXLER:

7 Q. Go ahead, Mr. Jolley.

8 A. No. I don't recall.

9 Q. Okay.

10 A. So I'm sorry. I did have a follow-up that
11 asked if I had printed all of my e-mails in the case,
12 and I indicated it was not my practice to print every
13 e-mail and put it physically in the file. That's the
14 only follow-up I recall.

15 Q. All right. Did you ever later, after the
16 initial production of documents, turn over any other
17 documents to anyone to be produced in this case?

18 A. I don't recall.

19 Q. Did you participate in the production of
20 the privilege log that was provided to us in this
21 case from McNair?

22 A. I did not.

23 Q. Did you review the privilege log?

24 A. I don't remember reviewing a privilege
25 log.

ROA 005815

Page 115

1 Q. When you reviewed our documents yesterday,
2 was that the first time you had ever seen the McNair
3 privilege log?

4 MR. TWOMBLEY: Object to the form.

5 MS. KIRK: Object to the form.

6 BY MR. TRAXLER:

7 Q. Did you review our documents yesterday and
8 see the privilege logs?

9 A. I did see privilege logs in your
10 documents.

11 Q. Is that the first time you had seen those?

12 A. I didn't recall seeing -- I don't recall
13 seeing those before this production of documents --
14 or before you produced these documents for the
15 deposition.

16 Q. Okay. Do you know who prepared the
17 privilege log?

18 A. I do not.

19 Q. Did Mr. Twombley prepare the privilege
20 log?

21 A. I don't know who prepared the privilege
22 log.

23 Q. Do you know why someone other than McNair
24 would have produced the privilege log?

25 A. I do not.

ROA 005816

Page 116

1 Q. Okay. All right. Now, let's get to who
2 you represented and the like. We know that you
3 represented Paul Barringer and Merrill Barringer,
4 correct?

5 A. That is correct.

6 Q. At various times did you represent Merrill
7 Light?

8 A. I have.

9 Q. And Randy Light?

10 A. I have.

11 Q. And how about Victor Barringer?

12 A. I've never represented Mr. Victor
13 Barringer.

14 Q. And CFRC?

15 A. I have --

16 Q. Go ahead.

17 A. I'm sorry. Can you repeat that question?

18 Q. CFRC.

19 A. And what's the question about CFRC?

20 Q. Have you represented it?

21 A. I have represented the company.

22 Q. All right. Have you ever represented
23 Travis Bryant?

24 A. I have not represented Travis Bryant.

25 Q. Have you ever represented Tom Evans?

ROA 005817

Page 117

1 A. I have not represented Tom Evans.

2 Q. Have you ever represented any other
3 employees, officers, directors, or shareholders of
4 CFRC other than what we have already talked about?

5 A. I don't -- I don't know of anyone other
6 than what you've talked about that I represented.

7 Q. Okay. And I believe you testified on
8 direct with Mr. Twombly that you, I believe, first
9 met Paul Barringer on some social occasion. I'm
10 digging back through my notes. I think it was around
11 2008 or '09 time frame; is that correct?

12 A. That sounds correct.

13 Q. Okay. And do you recall what that social
14 setting was?

15 A. I don't.

16 Q. I'm sorry. Sir?

17 A. I do not.

18 Q. Okay. So I assume you don't remember
19 anything about that encounter other than you met him;
20 is that correct?

21 A. That is correct.

22 Q. All right. When did you first start to
23 represent Merrill Light?

24 A. I believe I started to represent
25 Merrill Light in 2006 or 2007.

ROA 005818

Page 118

1 Q. And how about Randy Light?

2 A. That would have been the same time.

3 Q. And I think you told me you have never
4 represented Victor. Do I recall that correctly?

5 A. I have never represented Victor Barringer.

6 Q. Okay. Thank you. And Paul Barringer,
7 when was the first time you did any substantive legal
8 work for him in terms of estate planning documents or
9 whatever it was?

10 A. In 2008 or 2009.

11 Q. Okay. And I believe you started to
12 undertake reviewing the estate planning documents at
13 that time, correct?

14 A. That is correct. Although, I'd like to
15 note that when I talk about representing
16 Mr. Barringer, I'm talking about John Jolley
17 representing and not my -- the firm I practiced with
18 at the time.

19 Q. And that law firm was which one?

20 A. McNair Law Firm.

21 Q. Had McNair Law Firm done work for
22 Paul Barringer prior to 2008 or '09?

23 A. I'm not sure.

24 Q. Okay. Do you have any reason to believe
25 that they did?

ROA 005819

Page 119

1 MR. TWOMBLEY: I would ask --

2 BY MR. TRAXLER:

3 Q. You seem to qualify it. I just need to
4 know that there was a reason to qualify it.

5 MR. TWOMBLEY: I would just ask and
6 instruct to answer yes or no without disclosing if
7 you know in any way what the nature or substance of
8 any representation might have been other than estate
9 planning.

10 THE WITNESS: Mr. Traxler, can you
11 repeat the question?

12 BY MR. TRAXLER:

13 Q. I believe the question that was pending
14 was in 2008 or '09 when you first got involved with
15 Mr. -- while representing Mr. Barringer and doing
16 work for him, had he been previously represented by
17 McNair that you know of?

18 A. I think he had been previously represented
19 by McNair.

20 Q. Okay. Do you know who at McNair had done
21 work for him?

22 A. I do not.

23 Q. All right. Do you know if anyone had done
24 any estate planning or tax work for him prior to your
25 involvement?

ROA 005820

Page 120

1 MS. KIRK: I object to -- are you
2 asking just about estate-related tax work?

3 MR. TRAXLER: Yeah.

4 MR. TWOMBLEY: I would -- I would
5 agree you should limit your answer to any estate
6 planning tax work.

7 THE WITNESS: I don't -- I don't
8 believe that anyone at McNair represented Paul with
9 respect to estate planning before I represented Paul
10 while at McNair in 2008 or 2009.

11 BY MR. TRAXLER:

12 Q. Do you know if anyone at McNair, prior to
13 your work with CFRC, had done any corporate or
14 business work for Mr. Barringer prior to your
15 involvement?

16 MR. TWOMBLEY: I would instruct you
17 to answer yes or no.

18 MR. SCHRONCE: Same objection from
19 CFRC. You can say yes or no without giving any
20 privilege communications.

21 THE WITNESS: So, Mr. Traxler, can
22 you repeat the question?

23 BY MR. TRAXLER:

24 Q. Sure. Subject to your counsels'
25 objections so you don't have to repeat them every

ROA 005821

Page 121

1 time. I simply want a yes or no to this question:
2 Prior to your work providing legal advice to CFRC, do
3 you know if McNair had provided any corporate or
4 business work for Mr. Barringer?

5 A. Corporate or business work for
6 Mr. Barringer?

7 Q. Yes, sir.

8 A. I don't know the answer to that.

9 Q. When was the first time you did any legal
10 work for CFRC?

11 A. In 2012. I don't -- I believe I did --
12 no. I didn't do any legal work for CFRC before
13 August of 2012.

14 Q. Okay. And that was right after the
15 resignation of Mr. Herring, correct?

16 MR. TWOMBLEY: Object to the form.

17 MR. TRAXLER: I'm sorry. I can't
18 hear you.

19 MS. KIRK: Mr. Twombley and I both
20 objected -- objected to the form.

21 BY MR. TRAXLER:

22 Q. Okay. But I didn't hear Mr. Jolley's
23 answer.

24 A. That was shortly after Mr. Herring
25 resigned.

ROA 005822

Page 122

1 Q. Who do you -- obviously Mr. Barringer is
2 deceased. Do you still represent Merrill Barringer?

3 A. I do not represent Merrill Barringer.

4 Q. When did that representation cease?

5 A. I'm not -- I'm not sure, but I believe it
6 was after this litigation began.

7 Q. Do you know why?

8 A. I think it was due to this litigation and
9 the perception that Ms. Barringer needed separate
10 counsel.

11 Q. Do you still represent Merrill Light?

12 A. I do.

13 MR. MOLSTER: I just advise you yes
14 or no.

15 THE WITNESS: Yes.

16 BY MR. TRAXLER:

17 Q. Do you still send her bills?

18 MR. MOLSTER: Yes or no. Tom, I'm
19 not going very far on this. I'll give you a fair
20 warning.

21 MR. TRAXLER: I'm with you, Chip.

22 THE WITNESS: Yes.

23 BY MR. TRAXLER:

24 Q. And did you send her bills in 2020?

25 A. Yes.

ROA 005823

Page 123

1 MR. MOLSTER: I instruct him not to
2 answer. Thank you.

3 MR. TWOMBLEY: I want to just caution
4 the witness to let the -- Mr. Traxler finish the
5 question and let all the attorneys have an
6 opportunity to hear it and lodge an objection or
7 instruction before you answer.

8 BY MR. TRAXLER:

9 Q. All right. My question was whether he had
10 sent her bills in 2020, and I understand that
11 Mr. Molster has instructed him not to answer that
12 question; is that correct?

13 MR. MOLSTER: If that's directed to
14 me, yes. That's correct. I think we're getting into
15 an area that we should not get into in this case with
16 respect to his representation of Merrill and Randy
17 Light.

18 MR. TRAXLER: Are you instructing him
19 not to answer the question because of a privilege?

20 MR. MOLSTER: I'm instructing him not
21 to answer the question in part -- yes. Because of a
22 privilege. Yes.

23 MR. TRAXLER: All right. I just want
24 to make sure I understood the basis for it.

25

ROA 005824

Page 124

1 BY MR. TRAXLER:

2 Q. How much did you bill Ms. Light for
3 whatever services you provided for her in the year
4 2020?

5 MR. MOLSTER: Same instruction.

6 MR. TRAXLER: And, Mr. Molster, I
7 want to ask him for each year going back to his
8 initial representation. And I assume that if I ask
9 him the question, you are going to instruct him on
10 the basis of privilege not to answer any of those
11 questions for any years; is that correct?

12 MR. MOLSTER: Correct. And so you
13 don't have to go through that process. You're
14 certainly welcome to if you want to make your record,
15 but I'm happy to stipulate to you -- with you that I
16 will give him the same instruction for each question.

17 MR. TRAXLER: More accurately, I've
18 got a sufficient record on that now, can we?

19 MR. MOLSTER: We can.

20 MR. TRAXLER: Okay. Thank you.

21 BY MR. TRAXLER:

22 Q. What kind of legal work have you done for
23 Ms. Light -- Merrill Light this year?

24 MR. MOLSTER: Same instruction.
25

ROA 005825

Page 125

1 MR. TRAXLER: And I want to ask you
2 the same question from the initial year of your
3 representation all the way through the present time.
4 Mr. Molster, do I understand that you're going to
5 direct him not to answer any of those questions on
6 any year because of privilege; is that correct?

7 MR. MOLSTER: Yes, sir. With all due
8 respect.

9 MR. TRAXLER: Certainly.

10 MR. MOLSTER: I'm happy to have the
11 same agreement that we had with respect to the other
12 issue that you don't have to go through each year
13 unless you would like to.

14 MR. TRAXLER: God bless you. That's
15 good enough for me. Thank you.

16 BY MR. TRAXLER:

17 Q. How about -- do you still represent Randy
18 Light? Did you represent Randy Light up until his
19 death?

20 MR. MOLSTER: Yes or no, Mr. Jolley.

21 THE WITNESS: Yes.

22 MR. TRAXLER: And, Mr. Molster, so I
23 understand, if I ask Mr. Jolley the type of legal
24 services he provided each year going back to the
25 initial representation, how much he billed him, how

ROA 005826

Page 126

1 much he collected and all that, each of those
2 questions you are similarly going to instruct him not
3 to answer because of privilege; is that correct?

4 MR. MOLSTER: With all due respect,
5 that is correct. You're welcome to go through those
6 questions, but you certainly don't have to. The same
7 stipulation would apply from my perspective.

8 MR. TRAXLER: That's fine. Does
9 anybody else here, any counsel, anybody, want me to
10 go through every single year and every single
11 question or do we all agree that the record is
12 reserved on that issue?

13 MR. TWOMBLEY: I don't -- I mean, I
14 think whatever questions you need to ask, you ought
15 to ask them. I don't -- quite frankly, I wasn't
16 totally following since it involved another
17 defendant. So if you want to try to explain it to me
18 again, I'll listen carefully and maybe I can agree to
19 it. But I honestly wasn't totally following, Tom.

20 MR. TRAXLER: Mr. Twombley, do you
21 represent or have you ever represented Merrill Light?

22 MR. TWOMBLEY: No. But you --

23 MR. TRAXLER: Are you going to assert
24 a privilege to them?

25 MR. TWOMBLEY: No. But you asked me

ROA 005827

Page 127

1 if I had any -- you know, if I was agreeing. You're
2 trying to make me a party to some type of agreement
3 that I'm not agreeing to.

4 MR. TRAXLER: I just wanted top make
5 sure we have a simple record.

6 MR. TWOMBLEY: I got you.

7 BY MR. TRAXLER:

8 Q. All right. When you were representing the
9 company, you represented the company from August 2012
10 up until when or do you still represent the company,
11 Mr. Jolley?

12 A. I do not -- I no longer represent the
13 company.

14 Q. When did that cease?

15 A. I'm not certain. That occurred, I
16 believe, after this lawsuit was brought.

17 Q. In 2011 -- excuse me. In 2012 -- strike
18 that.

19 2011, when you were doing legal work for
20 Paul and Merrill Barringer, were you also
21 representing Merrill Light and Randy Light? Not in
22 the same legal work necessarily, but at the same time
23 frame providing legal services?

24 MR. MOLSTER: Yes or no, Mr. Jolley.

25 THE WITNESS: Tom, please --

ROA 005828

Page 128

1 Mr. Traxler, please repeat the question.

2 BY MR. TRAXLER:

3 Q. Sure. Reserving your objection,
4 Mr. Molster. In 2011, when you were reviewing the
5 estate planning documents and doing some estate
6 planning work for Paul and Merrill Barringer, were
7 you in that same time frame also providing legal
8 services to Merrill Light or Randy Light?

9 A. Yes.

10 MR. MOLSTER: And, Mr. Jolley, I
11 would just ask that you please limit your question to
12 yes or no, which you obviously just did. Thank you.

13 MR. TRAXLER: Mr. Molster, that's
14 because of privilege, correct?

15 MR. MOLSTER: Yes, sir.

16 BY MR. TRAXLER:

17 Q. Okay. And in 2012, did you represent or
18 do legal work for Merrill Light at various times
19 through 2012?

20 MR. MOLSTER: Same request,
21 Mr. Jolley.

22 THE WITNESS: I didn't --
23 Mr. Traxler, I didn't understand that question.

24 BY MR. TRAXLER:

25 Q. 2012, did you provide any legal services

ROA 005829

Page 129

1 to Merrill Light?

2 A. Yes.

3 Q. All right. Did you provide legal services
4 in 2012 to Randy Light?

5 MR. MOLSTER: Same request,
6 Mr. Jolley. Just a yes or no.

7 THE WITNESS: I don't remember.

8 BY MR. TRAXLER:

9 Q. In 2012, were you on a regular retainer
10 with Merrill Light?

11 A. No.

12 MR. MOLSTER: I instruct you not to
13 answer that, Mr. Jolley.

14 MR. TRAXLER: And if I ask him the
15 same question as to Randy Light, you would impose the
16 same objection, which I assume is all privileged,
17 Mr. Molster?

18 MR. MOLSTER: Correct. Thank you,
19 Mr. Traxler.

20 BY MR. TRAXLER:

21 Q. Were you on retainer with CFRC in --

22 MR. SCHRONCE: I object and instruct
23 the witness not to answer.

24 MR. TRAXLER: Is that on privilege?

25 MR. SCHRONCE: It is.

ROA 005830

Page 130

1 MR. TRAXLER: Okay. And I presume
2 that if I ask Mr. Jolley the same question about
3 whether he was on retainer in subsequent years, y'all
4 would interpose the same objection on the basis of
5 privilege and instruct him not to answer; is that
6 correct?

7 MR. SCHRONCE: That's correct.

8 MR. TRAXLER: Okay. And if I ask
9 Mr. Molster -- Mr. Jolley the questions about Merrill
10 Light and Randy Light and being on retainer with them
11 in each of the years, you would similarly instruct
12 him not to answer, correct?

13 MR. MOLSTER: With all due respect,
14 yes, sir.

15 MR. TRAXLER: Okay.

16 MR. TWOMBLEY: And I would object to
17 the form of the questions regarding being on
18 retainer.

19 THE COURT REPORTER: And I'm having a
20 hard time keeping up with who's speaking because you
21 aren't identifying yourself. So I apologize. I
22 don't know who was just speaking.

23 MR. MOLSTER: This is Charles Molster
24 representing Merrill Light and Randy Light. So any
25 of the questions that have been directed towards

ROA 005831

Page 131

1 Randy Light or Merrill Light and has been an
2 objection or instruction by a lawyer, that has been
3 Charles Molster. I'll try to do better in the
4 future.

5 MR. SCHRONCE: And this is John
6 Schronce on behalf of CFRC. So, similarly, the
7 questions directed towards the company, those were my
8 instructions.

9 THE COURT REPORTER: Thank you.

10 BY MR. TRAXLER:

11 Q. Mr. Jolley, when you began to represent
12 CFRC in 2012, tell me how that came about in terms of
13 who contacted you and what the arrangements were for
14 you to start being corporate counsel?

15 MR. SCHRONCE: And I'm going to
16 object to that and instruct the witness not to answer
17 to the extent that is a discussion with -- with
18 corporate employees. Thank you.

19 MR. TRAXLER: Are you telling him not
20 to answer that because of a privilege?

21 MR. SCHRONCE: I am.

22 MR. TRAXLER: Okay.

23 BY MR. TRAXLER:

24 Q. At the time that you were approached about
25 doing legal services by someone associated with CFRC,

ROA 005832

Page 132

1 were you then representing CFRC?

2 MS. KIRK: Object to the form.

3 MR. TWOMBLEY: Same objection.

4 MR. SCHRONCE: Same objection. This
5 is John Schronce.

6 BY MR. TRAXLER:

7 Q. You can answer, Mr. Jolley.

8 A. Mr. Traxler, I didn't understand that
9 question.

10 Q. Okay. Subject to everybody's objection
11 that they just gave, when you were approached to be
12 legal counsel to CFRC, and those services started in
13 August of 2012, as I recall, tell me how -- you were
14 not representing CFRC at the time you were approached
15 about starting to represent them, were you? I know
16 that sounds kind of stupid, but that's apparently the
17 way we've got to come at it.

18 MS. PAYLOR: Object to the form.

19 MR. SCHRONCE: Same objection. This
20 is John Schronce.

21 MS. KIRK: Object to form.

22 BY MR. TRAXLER:

23 Q. You can answer. You weren't representing
24 CFRC before they approached you to represent them,
25 weren't you -- were you?

ROA 005833

Page 133

1 A. I didn't represent CFRC before they
2 approached me to represent CFRC.

3 Q. And who approached you to represent CFRC?

4 A. Who approached me with respect to
5 representing CFRC?

6 Q. Yes.

7 A. Travis Bryant.

8 Q. Anyone else?

9 A. No.

10 Q. And when was that?

11 A. My recollection is that it was in August
12 of 2012.

13 Q. What did Travis say -- Travis Bryant say
14 to you?

15 MR. SCHRONCE: I'm going to object on
16 the basis of privilege and instruct the witness not
17 to answer.

18 MR. TRAXLER: Mr. Schronce, he hasn't
19 been retained yet. He doesn't represent CFRC.

20 MR. SCHRONCE: I'm instructing the
21 witness not to answer on the basis of privilege.

22 BY MR. TRAXLER:

23 Q. Okay. Did you have conversations with
24 Travis Bryant before you were retained to be CFRC
25 counsel?

ROA 005834

Page 134

1 A. I did.

2 MR. TRAXLER: Mr. Schronce, you're
3 not going to allow that -- the contents of that
4 conversation -- conversation to be testified to; is
5 that correct?

6 MR. SCHRONCE: You're asking for the
7 substance of his conversation with Mr. Bryant as to
8 how the engagement came about and I'm instructing him
9 not to answer that.

10 BY MR. TRAXLER:

11 Q. Did you sign an engagement letter -- sign
12 an engagement letter with CFRC to be started in
13 August 2012?

14 MR. SCHRONCE: I'm going to object
15 and instruct the witness to answer yes or no.

16 THE WITNESS: I'm not sure.

17 BY MR. TRAXLER:

18 Q. Did you have an engagement letter at any
19 point in time with Paul Barringer?

20 MR. TWOMBLEY: I'm going to instruct
21 him not to answer other than to limit your -- you can
22 answer with respect to estate planning and estate
23 planning only.

24 THE WITNESS: I am not sure if we had
25 an engagement letter with Mr. and Ms. Barringer with

ROA 005835

Page 135

1 respect to estate planning.

2 BY MR. TRAXLER:

3 Q. Did you ever have an engagement letter
4 with Merrill Light?

5 MR. MOLSTER: Sorry. I was AWOL.
6 The question was did you ever have an engagement
7 letter with Merrill Light?

8 MR. TRAXLER: Yes.

9 MR. MOLSTER: Thank you, Mr. Traxler.
10 With all due respect, I instruct the witness not to
11 answer the question.

12 MR. TRAXLER: And that's because of
13 privilege; is that correct?

14 MR. MOLSTER: Yes, sir.

15 MR. TRAXLER: And if I ask the same
16 question about Randy Light, you're going to instruct
17 him not to answer on the grounds of privilege,
18 correct?

19 MR. MOLSTER: I would.

20 BY MR. TRAXLER:

21 Q. Did you ever -- strike that.

22 During the year 2012, did you consider
23 your representation of Merrill Light to be continuous
24 throughout that entire year or only as needed on
25 particular issues?

ROA 005836

Page 136

1 MR. MOLSTER: Thank you. I instruct
2 the witness not to -- with all due represent, I
3 instruct the witness not to answer the question,
4 Mr. Traxler.

5 BY MR. TRAXLER:

6 Q. And during 2012, did you have continuous
7 representation of Randy Light throughout the year or
8 was it only with regard to matters as they came up?

9 MR. MOLSTER: Same instruction.

10 BY MR. TRAXLER:

11 Q. Okay. When you started representing CFRC,
12 did you, at the same time, become a secretary of the
13 corporation?

14 A. After -- I became -- I was named assistant
15 secretary I believe on August 29, 2012.

16 Q. Yes, sir. And did you have any duties or
17 responsibilities as assistant secretary of the
18 corporation beyond those as its lawyer?

19 A. I think primarily my role was as lawyer,
20 and I had the -- and I was to help with the minutes
21 and -- but the primary role was as outside counsel.

22 Q. How do you -- how would you distinguish
23 when you were doing work in 2012 and subsequent years
24 for CFRC whether you were acting as assistant
25 secretary or as corporate counsel?

ROA 005837

Page 137

1 MR. SCHRONCE: I'm going to object to
2 the extent that it calls for privileged
3 communications with corporate officers and employees.

4 BY MR. TRAXLER:

5 Q. Do you understand my question, Mr. Jolley?

6 A. I think your question --

7 Q. I can say it again subject to
8 Mr. Schronce's objection, of course. In 2012, after
9 you became assistant secretary, throughout the
10 balance of your representation of CFRC, how did you
11 know whether what you were doing was as assistant
12 secretary or as its corporate counsel?

13 MR. SCHRONCE: Again, same
14 instruction to the extent that it calls for
15 communications with the client.

16 THE WITNESS: I think that the
17 assistant secretary role was really limited to the
18 preparation of the minutes and -- and, you know,
19 certain ministerial functions associated with the
20 company.

21 BY MR. TRAXLER:

22 Q. Okay. Did you ever talk to Merrill Light
23 as corporate counsel?

24 MR. SCHRONCE: Again, I'm going to
25 object and instruct the witness not to answer.

ROA 005838

Page 138

1 Merrill Light is serving as director of the company.

2 MR. TRAXLER: That's a fair
3 objection. I'll withdraw the question.

4 BY MR. TRAXLER:

5 Q. Did you ever have any conversations with
6 Merrill Light beyond her role as director or officer
7 about being corporate counsel?

8 MR. MOLSTER: Thank you, Tom. I
9 respectfully instruct him not to answer.

10 MR. TRAXLER: On the grounds of
11 privilege?

12 MR. MOLSTER: Yes, sir.

13 BY MR. TRAXLER:

14 Q. Did you ever have any discussion with
15 Mr. Randy Light about being corporate counsel at all?

16 MR. MOLSTER: Same instruction.

17 MR. SCHRONCE: And I'm going to --
18 this is John Schronce. I'm going to object and
19 instruct the witness not to answer. Mr. Light is a
20 director of the company.

21 BY MR. TRAXLER:

22 Q. Do you know how Travis Bryant came to you
23 to approach you to be corporate counsel in 2012?

24 MR. SCHRONCE: I'm going to object
25 and instruct the witness not to answer to the extent

ROA 005839

Page 139

1 you're calling for your communications -- or his
2 communications with Mr. Bryant.

3 BY MR. TRAXLER:

4 Q. When you were assistant secretary of the
5 corporation starting August 29, 2012, what duties did
6 you have as assistant secretary to the corporation?

7 MS. KIRK: Object to form.

8 MR. SCHRONCE: And I would object and
9 instruct the witness not to answer to the extent it
10 calls for privileged communications with company's
11 officers and employees.

12 MS. KIRK: That's also been asked and
13 answered.

14 BY MR. TRAXLER:

15 Q. Okay. I'll rephrase it. What duties does
16 an officer of a corporation have to the corporation
17 in terms of duties of loyalty, fiduciary duties, and
18 the like?

19 MR. SCHRONCE: Object to the form of
20 the question.

21 MS. KIRK: I do too.

22 MR. TWOMBLEY: Yes. Same objection.

23 BY MR. TRAXLER:

24 Q. Okay. Go ahead, Mr. Jolley. You can
25 answer the question.

ROA 005840

Page 140

1 A. I think officers of companies have duties
2 to the company.

3 Q. Do they have a fiduciary duty?

4 MR. TWOMBLEY: Object to the form --

5 MR. SCHRONCE: Object to form.

6 MR. TWOMBLEY: -- of the question.

7 It calls for a conclusion -- legal conclusion.

8 BY MR. TRAXLER:

9 Q. You can answer the question.

10 A. I think that in certain -- in some
11 circumstances they have fiduciary duties.

12 Q. What circumstances would those be?

13 MR. SCHRONCE: And I'm going to
14 object to the form. And, again, to the extent that
15 this calls for communications with the company's
16 directors and officers and employees about their
17 responsibilities. You as corporate counsel, I'll
18 instruct you not to answer.

19 MS. KIRK: And I also object to the
20 form.

21 BY MR. TRAXLER:

22 Q. Subject to that objection, you can go
23 ahead and answer, Mr. Jolley.

24 A. So Mr. Traxler, can you rephrase the
25 question?

ROA 005841

Page 141

1 Q. I think I can. Can you tell me what
2 duties an officer of a corporation has to the
3 corporation in terms of, like, fiduciary duty, duty
4 of loyalty, and the like?

5 MR. SCHRONCE: Same objection.

6 MR. TWOMBLEY: Objection.

7 THE WITNESS: I mean, I -- I -- and I
8 can answer that question now? Is that subject to the
9 objections?

10 BY MR. TRAXLER:

11 Q. Yes.

12 A. I think officers of corporations do have
13 duties to the corporation, including a duty of
14 loyalty and including, I think generally, fiduciary
15 obligations as well.

16 Q. All right. Similarly, would you describe
17 to me what duties you think an officer of a
18 corporation has to the shareholders?

19 MR. SCHRONCE: Again, I'm going to
20 make the same objection. Object to the form. Calls
21 for a legal conclusion. And to the extent that it
22 calls for your communications with the company's
23 directors, officers, and employees about their
24 responsibilities, I'll instruct you not to answer.

25 MS. KIRK: Also object to the form.

ROA 005842

Page 142

1 BY MR. TRAXLER:

2 Q. Okay. Mr. Jolley, you can answer the
3 question.

4 A. So Mr. Traxler, I'm sorry. I'm going to
5 need you to repeat or rephrase that question.

6 Q. Sure. You had answered my questions
7 earlier about duties of an officer to a corporation.
8 I'm now asking you about duties of an officer to
9 shareholders. And I'll narrow it down. In a
10 closely-held corporation?

11 MR. SCHRONCE: And I'll make the same
12 objection.

13 MS. KIRK: Same objection here too.

14 MR. SCHRONCE: You can answer.

15 THE WITNESS: I think the officers of
16 a corporation have duties to the shareholders to
17 properly operate the corporation.

18 BY MR. TRAXLER:

19 Q. Is that the sole extent of the duties of
20 an officer to shareholders that you're aware of in a
21 closely-held corporation?

22 MR. TWOMBLEY: Object to the form.

23 MS. KIRK: Object to form.

24 MR. SCHRONCE: Again, I'm going to
25 make the same objection.

ROA 005843

Page 143

1 MR. MOLSTER: I'm going to join those
2 objections as well.

3 THE WITNESS: So, Mr. Traxler, can
4 you repeat your question?

5 BY MR. TRAXLER:

6 Q. Sure. What duties does an officer of a
7 closely-held corporation have to its shareholders?

8 MR. TWOMBLEY: Object to the form of
9 the question.

10 MR. SCHRONCE: Same objection.

11 MS. KIRK: Object to the form.

12 MR. TWOMBLEY: Calls for a legal
13 conclusion.

14 MR. MOLSTER: Same objection. Legal
15 conclusion. Calls for opinion testimony. You can
16 answer.

17 THE WITNESS: I think -- and you
18 asked the officers of a corporation have an
19 obligation -- they have a duty to, what, act on
20 behalf of the company in accordance with the -- want
21 the best interest of the corporation and its
22 shareholders.

23 BY MR. TRAXLER:

24 Q. All right. And when there is a conflict
25 between the best interest of a corporation and

ROA 005844

Page 144

1 certain shareholders, which duty prevails?

2 MR. SCHRONCE: And I'm going to
3 object. This calls for a legal conclusion and we're
4 getting into calling for communications with counsel.
5 So, again, to the extent that you can answer that
6 without getting into privileged communications. But,
7 otherwise, I instruct you not to answer.

8 MR. MOLSTER: I impose my same
9 objections as previously.

10 MS. KIRK: And this is Ariail. I
11 object too.

12 MR. MOLSTER: Tom, can I just say
13 same objection? Do I have to repeat them again?

14 MR. TRAXLER: Sure. That's fine.
15 Sure.

16 MR. MOLSTER: I don't want to
17 interrupt the flow of the mojo.

18 MR. TRAXLER: I appreciate it. Thank
19 you.

20 THE WITNESS: Mr. Traxler, I'm going
21 to need you to repeat the question, please.

22 BY MR. TRAXLER:

23 Q. Okay. What duties does an officer have to
24 the shareholders of a closely-held corporation?

25 MR. TWOMBLEY: Same objection.

ROA 005845

Page 145

1 MR. SCHRONCE: Same objection.

2 MS. KIRK: I object too. That's not
3 -- I don't believe that's the most recent question.

4 MR. TRAXLER: That's okay. I'll go
5 with it.

6 THE WITNESS: And Mr. Traxler, the
7 question is what obligation does an officer of a
8 company have in a closely-held corporation to its
9 shareholders?

10 BY MR. TRAXLER:

11 Q. What duties in terms of loyalty, fiduciary
12 duties, and the like to shareholders? And if you
13 don't believe there are any, tell me. I don't care.
14 I just want to hear what you think.

15 MR. MOLSTER: Same objections by
16 Molster.

17 MR. SCHRONCE: Same objection. This
18 is Schronce.

19 MS. KIRK: And this is Ariail Kirk.
20 I also object to the form.

21 THE WITNESS: I think the
22 directors -- I think the directors have an
23 obligation -- or the officers and directors have an
24 obligation to make decisions with respect to the
25 company, you know, pursuant to the corporate law and

ROA 005846

Page 146

1 the obligation to try to, you know, run the company
2 for the benefit of all the shareholders.

3 BY MR. TRAXLER:

4 Q. Okay. Thank you. That would apply
5 whether the shareholders were voting or non-voting
6 stock; is that correct?

7 MR. MOLSTER: Same objection.

8 MR. SCHRONCE: Same objection.

9 MS. KIRK: Object to form.

10 BY MR. TRAXLER:

11 Q. Right? If I named those duties, would you
12 make a distinction between shareholders with voting
13 stock versus non-voting?

14 MR. MOLSTER: Same objections from
15 Molster.

16 MR. SCHRONCE: Same objections.

17 MS. KIRK: Same objection.

18 THE WITNESS: So I -- Tom, is this --
19 are we talking about with respect to officers of the
20 company?

21 BY MR. TRAXLER:

22 Q. Yes, sir. Of the corporation.

23 A. I think the officers of a closely-held
24 company have an obligation to all of the
25 shareholders.

ROA 005847

Page 147

1 Q. Okay. When you came in -- became
2 corporate counsel in August of 2012, what agreements,
3 if any, were there existing between shareholders of
4 CFRC with regard to voting and any particular voting
5 agreement?

6 MR. TWOMBLEY: Object to the form.

7 MS. KIRK: Form.

8 MR. MOLSTER: Object --

9 MR. SCHRONCE: Again, I'm --

10 MR. MOLSTER: Go ahead, John.

11 MR. SCHRONCE: I was going to object
12 and instruct the witness not to answer beyond the
13 existence of an agreement.

14 MR. MOLSTER: I object and instruct
15 you not to answer to the extent it has anything to do
16 with Merrill Light.

17 BY MR. TRAXLER:

18 Q. Any voting agreements in place when you
19 came in?

20 MR. MOLSTER: Same instruction, John.
21 Don't answer the question.

22 MR. SCHRONCE: Same objection.

23 MR. TRAXLER: If it will save
24 everybody some time, if I just repeat it -- I will --
25 I will consider your objection to be continuing.

ROA 005848

Page 148

1 It's up to y'all.

2 MR. MOLSTER: I think we've got to
3 protect -- I'd love to do it, but I think we've got
4 to protect the record.

5 MR. TRAXLER: Okay. That's fair.

6 MR. MOLSTER: I don't mean to, you
7 know, interfere, but I just think we've got to do it.

8 MR. TRAXLER: That's fine.

9 MR. MOLSTER: I apologize.

10 BY MR. TRAXLER:

11 Q. Yes or no: Were there any voting
12 agreements among any of the shareholders at the time
13 that you became corporate counsel in August of 2012?

14 MR. MOLSTER: Same objection. Same
15 instruction.

16 MR. SCHRONCE: Same objection and
17 instruction.

18 MS. KIRK: Same objection.

19 THE WITNESS: Yes.

20 MR. TWOMBLEY: I just want to be
21 clear. I don't know -- Chip, sometimes it's hard to
22 hear what you're saying. So you need to speak up a
23 little bit because I think Chip said --

24 MR. MOLSTER: Yes. John, I instruct
25 you not to answer the question.

ROA 005849

Page 149

1 THE WITNESS: Okay.

2 MR. MOLSTER: I apologize if I wasn't
3 clear. I'm about as close to this microphone I think
4 as I can get, but I can crawl up closer to it, if
5 necessary.

6 MR. TRAXLER: Chip, let me make sure
7 I understand. You are not going to allow him to
8 answer whether there was or was not a voting
9 agreement?

10 MR. MOLSTER: I just think -- I
11 think, Tom, you're trying to pierce the
12 attorney-client privilege. I don't know where
13 exactly, you know, that line is going to be drawn,
14 but I think out of abundance of caution and
15 representation of my client, you know -- listen, if
16 you will agree that it's not a waiver of
17 attorney-client privilege, you're not going to claim
18 some subject matter waiver, I'm happy to consider
19 that and maybe I'll reverse my decision. Are you
20 willing do that?

21 MR. TRAXLER: I'll do that.

22 MR. MOLSTER: All right. John, I'll
23 let you answer the question just yes or no.

24 THE WITNESS: Yes.

25

ROA 005850

Page 150

1 BY MR. TRAXLER:

2 Q. Was it a signed voting agreement?

3 MR. MOLSTER: Same deal?

4 MR. SCHRONCE: Same instruction from
5 CFRC. In the existence of the agreement, we're
6 drawing a line there.

7 THE WITNESS: And the question is
8 whether or not it was signed?

9 BY MR. TRAXLER:

10 Q. Yes, sir.

11 A. Yes.

12 Q. And do you know when that voting agreement
13 was first executed?

14 MR. MOLSTER: Same deal?

15 MR. TRAXLER: Yeah.

16 MR. SCHRONCE: Same objection and
17 instruction.

18 MR. MOLSTER: Same agreement.

19 THE WITNESS: So I'm sorry. The
20 question for me -- and Mr. Molster, how am I -- you
21 instructed me to answer yes or no?

22 MR. MOLSTER: Answer yes or no. Yes.

23 THE WITNESS: Mr. Traxler, can you
24 tell me what the question is again?

25

ROA 005851

Page 151

1 BY MR. TRAXLER:

2 Q. The question was: When was it signed?

3 Yes or no.

4 MR. TRAXLER: He identified that
5 there was a voting agreement in place when he became
6 corporate counsel. I am asking him if it was signed,
7 and I believe he said yes. And now I think I'm
8 asking him when it was signed. What's it dated?

9 MR. MOLSTER: So you think that yes
10 or no is not an appropriate answer? Is that what
11 you're suggesting? I think that's fair. So subject
12 to the same agreement, John, you can testify only --
13 you can answer the question only as to the date, if
14 you know it.

15 THE WITNESS: I don't know it.

16 MR. MOLSTER: All right. John -- I
17 mean, we've been going for over an hour, Tom. Would
18 you mind if we took a break? I think --

19 MR. TRAXLER: Sure. How much time do
20 you need?

21 MR. MOLSTER: I don't know. Is
22 Thursday morning too -- I'm kidding. I don't know
23 how long it's going to take us.

24 MR. TRAXLER: You must have a golf
25 game tomorrow.

ROA 005852

Page 152

1 MR. MOLSTER: I'm taking the fifth on
2 that, Traxler.

3 MR. TRAXLER: That's fine. Hey,
4 stand up and show us your pants.

5 THE VIDEOGRAPHER: We are going off
6 record. The time is 2:54 p.m.

7 (Off the record.)

8 THE VIDEOGRAPHER: We are back on
9 record. The time is 3:15 p.m.

10 BY MR. TRAXLER:

11 Q. Mr. Jolley, did you talk to anybody during
12 the break?

13 A. I did not.

14 Q. Did anybody try to talk to you?

15 A. They did not.

16 Q. All right. During your -- from 2011
17 through the present time with regard to any of the
18 Barringers or the Lights or CFRC, did you ever have
19 any of your clients sign any waivers of conflict?

20 MS. KIRK: Object to the form.

21 MR. TWOMBLEY: I will object to the
22 form and instruct him not to answer.

23 MR. MOLSTER: Yeah. This is Molster.
24 I instruct him not to answer with respect to
25 Merrill Light or Randy Light.

ROA 005853

Page 153

1 MR. SCHRONCE: And this is John
2 Schronce. Same instruction for CFRC.

3 MR. TWOMBLEY: Same instruction.

4 MR. TRAXLER: Y'all are objecting on
5 the basis of privilege?

6 MR. MOLSTER: Yes, sir.

7 MR. TRAXLER: Mr. Schronce, is that
8 correct?

9 MR. SCHRONCE: That is correct.

10 MR. TRAXLER: Okay. Thank you.

11 BY MR. TRAXLER:

12 Q. Mr. Jolley, when you undertook to
13 represent Paul Barringer and Merrill Barringer back
14 in late 2011, did you discuss possible conflicts of
15 your representation of Merrill Light and Randy Light
16 with them?

17 MR. TWOMBLEY: I'll object and --

18 MS. KIRK: Same objection.

19 MR. TWOMBLEY: -- instruct you not to
20 answer about any of your discussions.

21 MR. TRAXLER: And I assume you're
22 instructing him not to answer on the basis of
23 privilege; is that correct?

24 MR. TWOMBLEY: Correct.

25

ROA 005854

Page 154

1 MR. TRAXLER: Who made that last
2 objection?

3 MR. TWOMBLEY: I did. Ashley.

4 MS. KIRK: This is Ariail Kirk. I
5 also object.

6 BY MR. TRAXLER:

7 Q. Mr. Jolley, do you presently represent any
8 of the Barringers or Lights or the company in
9 connection with this litigation, that is, advising
10 them with regard to the litigation?

11 MR. MOLSTER: Okay. So, Tom, if
12 you'll bear with me. On behalf of Mary -- Merrill,
13 Randy, or anybody whose name ends in Light or Light,
14 I -- assuming that you will agree with me, Tom, it's
15 not a subject matter waiver, I'll let him answer yes
16 or no. Is that okay?

17 MR. TRAXLER: Sure.

18 MR. MOLSTER: Okay. You can answer
19 yes or no for the Lights.

20 MR. TWOMBLEY: Same agreement for
21 Merrill Barringer?

22 MR. SCHRONCE: Tom, can we make that
23 same agreement for CFRC?

24 MR. TRAXLER: Certainly.

25 MR. TWOMBLEY: And for Merrill

ROA 005855

Page 155

1 Barringer?

2 MR. TRAXLER: Sure.

3 MR. TWOMBLEY: Answer yes or no.

4 THE WITNESS: I'm going to need to
5 have the question again.

6 BY MR. TRAXLER:

7 Q. Have you undertook to represent Paul and
8 Merrill Barringer starting in late 2011, did you have
9 any discussions with them about possible conflicts of
10 interest with regards to your representation of the
11 Lights?

12 MS. KIRK: That's --

13 MR. TRAXLER: Subject to their
14 objections.

15 MR. MOLSTER: That was not the
16 question. I think the question was whether or not he
17 was involved in this -- representing anybody in this
18 litigation.

19 MR. TRAXLER: You're right, Chip.
20 I'm sorry. I withdraw that question.

21 BY MR. TRAXLER:

22 Q. Are you representing any of the Lights or
23 Barringers with regard to this litigation?

24 MR. MOLSTER: Subject to our
25 agreement. Same deal.

ROA 005856

Page 156

1 MR. TRAXLER: I agree with all of you
2 on that.

3 THE WITNESS: I'm sorry. I am not
4 representing.

5 BY MR. TRAXLER:

6 Q. And are you representing CFRC with regard
7 to this litigation? Subject to the same agreement.

8 A. No. I'm not representing CFRC.

9 Q. Okay. Thank you. Do you ever socialize
10 with the Lights?

11 MR. MOLSTER: Object to the form.

12 MR. TWOMBLEY: John, if you lean
13 back, I think it will -- it will help with the --

14 THE WITNESS: Oh, I'm sorry. Can you
15 see?

16 MS. KIRK: Object to the form of the
17 question.

18 THE WITNESS: So do I ever socialize
19 with the Lights?

20 BY MR. TRAXLER:

21 Q. Yes, sir.

22 A. I don't know what you mean, "socialize."

23 Q. Do you ever use the word "socialize?"

24 A. Mr. Traxler, I do use the word
25 "socialize."

ROA 005857

Page 157

1 Q. When you use the word "socialize," what do
2 you use it to mean?

3 MR. TWOMBLEY: Object to the form of
4 the question.

5 MS. KIRK: Object to the form.

6 MR. MOLSTER: Same objection.

7 BY MR. TRAXLER:

8 Q. You can answer.

9 A. Mr. Traxler, if you are asking me if I've
10 ever had a meal with any of those people, then in
11 some instances I would consider that to be
12 socializing, and in that -- subject to that, I have
13 certainly had a meal with some of the people you
14 mentioned.

15 Q. Well, actually, my question was: Do you
16 presently? Maybe I did not use that word, but I used
17 the present tense. Do you socialize with the Lights?

18 MS. KIRK: Object to the form.

19 MR. TWOMBLEY: Same.

20 BY MR. TRAXLER:

21 Q. Have you had dinners with the Lights in
22 2021?

23 A. No.

24 Q. And when I say "Lights," I mean Merrill or
25 Randy. Do you agree with that? I'm sorry. Randy is

ROA 005858

Page 158

1 deceased. When I'm talking about dinner with the
2 Lights, it would be with them together or separately.
3 Okay?

4 A. I have not socialized or had dinner with
5 Ms. Light in 2021.

6 Q. How about 2020 with each one of them?

7 A. In 2020, no.

8 Q. How about 2020 -- 2019?

9 A. No.

10 Q. 2018?

11 A. No.

12 Q. Do you recall from 2011 to the present
13 time whether you ever had dinner with Merrill Light?

14 A. I have. Yes, I recall.

15 Q. Tell me what you recall.

16 A. I recall in -- I recall having dinner with
17 Ms. Light and others in 2012 or 2013.

18 Q. How many times?

19 A. One time.

20 Q. What was the occasion?

21 A. My recollection is that either the night
22 before or the night after a board meeting, I was
23 invited to dinner with the directors of the company.

24 Q. All right. Have you had dinner with
25 Merrill Light since 2011 other than that?

ROA 005859

Page 159

1 A. No, sir.

2 Q. Have you had dinner with Randy Light other
3 than that?

4 A. No, sir.

5 Q. Have you had dinner with Paul Barringer
6 since 2001 up until his death other than that?

7 A. No, sir.

8 Q. Have you had dinner with Merrill Barringer
9 from 2011 up until now other than that?

10 A. No, sir.

11 Q. Was anybody at that dinner other than
12 board members?

13 A. No.

14 Q. What was the purpose of the dinner?

15 A. It was a social event to -- for -- with
16 the members of the board and myself.

17 Q. And what did you discuss?

18 MR. SCHRONCE: And I will object and
19 instruct the witness not to answer to the extent it
20 calls for privileged communications about the
21 company's business.

22 MR. MOLSTER: Same instruction with
23 respect to Merrill Light and Randy Light.

24 MR. TWOMBLEY: And same instruction
25 with respect to Paul Barringer as a director of the

ROA 005860

Page 160

1 company.

2 BY MR. TRAXLER:

3 Q. Okay. Subject to their objections, what
4 did y'all talk about?

5 A. I don't recall the substance of any -- any
6 conversation at the dinner. It was simply a meal
7 that we ate together and we -- at that time.

8 Q. Was Hampton there?

9 A. No. Ms. Luzak was not there.

10 Q. Was Kevin Luzak there?

11 A. No. Mr. Luzak was not there.

12 Q. Was this after Mr. Luzak had been run off
13 by the company?

14 MS. KIRK: Object to the form.

15 MS. PAYLOR: Object to the form.

16 MR. TWOMBLEY: Object to form.

17 BY MR. TRAXLER:

18 Q. Did you understand my question?

19 A. It was after Mr. Luzak was gone from the
20 company.

21 Q. Okay. Was that dinner before or after
22 voting stock was given to Merrill Light's revocable
23 trust, September 11, 2012?

24 MS. KIRK: Object to the form.

25 MR. TWOMBLEY: Object to the form.

ROA 005861

Page 161

1 You can answer, if you know.

2 THE WITNESS: My recollection it was
3 after September of 2012.

4 BY MR. TRAXLER:

5 Q. Did y'all talk about Hampton?

6 A. We did not talk about Hampton.

7 Q. Did you talk about Kevin?

8 A. We did not talk about Kevin.

9 Q. Did you hear anybody say anything about
10 Hampton or Kevin at that dinner?

11 A. I did not.

12 Q. When you worked at the McNair Law Firm and
13 you were doing legal work from 2011 up until you left
14 on behalf of the parties in this litigation, I assume
15 the billing was handled by a software billing system
16 inside of McNair; is that correct?

17 MS. KIRK: Object to the form.

18 BY MR. TRAXLER:

19 Q. Do you understand the question?

20 A. We did have billing software at McNair.

21 Q. Okay. And when you recorded time, did you
22 input it into the computer yourself or how did you
23 record it?

24 A. I generally -- well, sometimes I inputted
25 it myself directly and sometimes I wrote down my

ROA 005862

Page 162

1 entries and they were entered into the billing
2 program.

3 Q. Who would enter the time that you manually
4 put down?

5 A. Someone in -- either my administrative
6 assistant or one of my paralegals.

7 Q. Do you know what the archive or policy is
8 of McNair with regard to maintaining billing records?

9 A. I do not. No, no.

10 Q. Do you know what the policy was with
11 respect to preserving your time sheets when you
12 manually put down your time?

13 A. Are you asking me if I know the policy or
14 knew the policy of McNair with respect to that?

15 Q. Yeah.

16 A. I did not.

17 Q. Do you know what happened to them?

18 A. I do not.

19 MR. TWOMBLEY: Object to the form of
20 the question.

21 MS. KIRK: Object to the form.

22 BY MR. TRAXLER:

23 Q. Do they still exist?

24 MR. TWOMBLEY: Object to the form of
25 the question.

ROA 005863

Page 163

1 MS. KIRK: Object to the form.

2 BY MR. TRAXLER:

3 Q. You can answer.

4 A. I'm sorry, Tom. Which question do you
5 want me to answer?

6 Q. Do your time sheets where you manually
7 wrote down your time at McNair still exist?

8 MR. TWOMBLEY: Same objection.

9 MS. KIRK: Object to form.

10 THE WITNESS: I don't know.

11 BY MR. TRAXLER:

12 Q. Do you know if they existed when you left
13 the law firm?

14 MR. TWOMBLEY: Objection.

15 THE WITNESS: I do not.

16 BY MR. TRAXLER:

17 Q. Do you know why they were not produced in
18 response to the subpoena?

19 MS. KIRK: Object to the form.

20 THE WITNESS: I do not.

21 BY MR. TRAXLER:

22 Q. Were all of your meetings with -- were all
23 your meetings with Paul Barringer reflected in the
24 billing?

25 MS. KIRK: Object to the form of the

ROA 005864

Page 164

1 question.

2 MR. TWOMBLEY: Can you repeat the
3 question, Tom?

4 MS. KIRK: And can you also
5 specify -- yeah. Repeating works.

6 BY MR. TRAXLER:

7 Q. The question was: Were all of your
8 meetings with Paul Barringer reflected in your
9 billings?

10 MR. TWOMBLEY: Answer yes or no.

11 THE WITNESS: No.

12 BY MR. TRAXLER:

13 Q. Why not?

14 A. Because I didn't always mark down or enter
15 my time.

16 Q. Did you have meetings with Paul Barringer
17 that might be reflected on your calendar?

18 A. Yes.

19 Q. Do you know how many were not marked down
20 on your calendar?

21 A. No.

22 Q. When you would have a conversation with a
23 client -- any client, whether it be these particular
24 parties or not, would there be memos to the file with
25 regard to that meeting?

ROA 005865

Page 165

1 MS. KIRK: Object to form.

2 THE WITNESS: Not always.

3 BY MR. TRAXLER:

4 Q. Did you always do handwritten notes for
5 all your meetings?

6 A. I did not.

7 Q. What would determine whether you
8 maintained notes or memos or not?

9 A. To some degree, the substance of the
10 meeting.

11 Q. Help me understand how that would be a --
12 a factor in deciding whether to do notes or a memo?

13 MR. TWOMBLEY: Object -- object to
14 the form of the question.

15 MS. KIRK: I also object to the form.

16 BY MR. TRAXLER:

17 Q. Go ahead. You can answer.

18 A. If I had a short telephone conference, for
19 instance, or a short meeting with a client, I might
20 not take notes nor reflect it in my time entry.

21 Q. If you sat down with a client and advised
22 them on documents, would that be reflected in your
23 billing?

24 A. Typically.

25 Q. Were you billing -- would you bill your

ROA 005866

Page 166

1 clients typically for estate planning work on a flat
2 fee or an hourly rate?

3 A. I billed Mr. Barringer on an hourly rate.

4 Q. Did you bill Ms. Barringer on an hourly
5 rate?

6 A. I did.

7 Q. Did you bill Merrill Light on an hourly
8 rate?

9 MR. MOLSTER: Objection. Wait, wait
10 for a second, please, Mr. Jolley. Okay. So you're
11 asking whether he billed her on an hourly rate. If I
12 allow him to answer yes or no, will you agree it's
13 not a subject matter waiver?

14 MR. TRAXLER: Yeah, I agree. That's
15 fine.

16 MR. MOLSTER: You may answer yes or
17 no, please, Mr. Jolley.

18 THE WITNESS: I billed Merrill Light
19 on an hourly rate.

20 BY MR. TRAXLER:

21 Q. Subject to the same agreement, if you
22 want, did you ever do flat rate work for Merrill
23 Light on any item?

24 MR. MOLSTER: Okay. John, just yes
25 or no. Subject to the same agreement.

ROA 005867

Page 167

1 THE WITNESS: No.

2 BY MR. TRAXLER:

3 Q. Did you ever -- same agreement. Did you
4 ever do any flat rate work for Randy Light?

5 MR. MOLSTER: Okay. John, same
6 agreement.

7 THE WITNESS: No.

8 BY MR. TRAXLER:

9 Q. Did you ever do any flat rate work for
10 Paul Barringer?

11 MR. TWOMBLEY: Same agreement?

12 MR. TRAXLER: Yeah.

13 THE WITNESS: No.

14 BY MR. TRAXLER:

15 Q. Did you ever do any flat rate work for
16 Merrill Barringer?

17 MR. TWOMBLEY: Same agreement? Same
18 agreement?

19 MR. TRAXLER: Yes. I'm sorry. Yes.
20 Excuse me.

21 THE WITNESS: No.

22 BY MR. TRAXLER:

23 Q. Did you ever do any flat rate work for
24 CFRC?

25 A. No.

ROA 005868

Page 168

1 MR. SCHRONCE: Same agreement?

2 MR. TRAXLER: Yes. Certainly.

3 THE WITNESS: Sorry. No.

4 BY MR. TRAXLER:

5 Q. So is it fair to say all of the work from
6 late 2011 through the present time for the Barringers
7 or Lights or CFRC would be on an hourly rate? Is
8 that a fair conclusion for me to call?

9 MS. KIRK: Object to form.

10 MR. TRAXLER: Same agreement.

11 THE WITNESS: Yes.

12 BY MR. TRAXLER:

13 Q. All right. And so if there was a meeting
14 or discussion of any substance, it would normally be
15 reflected in your billing, would it not?

16 MR. TWOMBLEY: Object to --

17 MS. KIRK: Object to the form.

18 MR. TWOMBLEY: -- the form of the
19 question. Misstates his testimony.

20 MR. MOLSTER: Yes or no.

21 THE WITNESS: The question again,
22 Mr. Traxler, please.

23 BY MR. TRAXLER:

24 Q. With the agreement, would -- if you did
25 any substantive work for any of the parties in this

ROA 005869

Page 169

1 litigation, it would have been reflected in your
2 billings, wouldn't it?

3 MR. TWOMBLEY: Object to the form of
4 the question. Completely misstates his testimony.

5 MS. KIRK: I also object to the form.

6 MR. TRAXLER: I'll go with that
7 question. I don't care.

8 BY MR. TRAXLER:

9 Q. Go ahead.

10 MR. TWOMBLEY: What do you mean?
11 You're saying you're withdrawing it and you don't
12 care, but now you want him to answer it?

13 MR. TRAXLER: I want him to answer
14 the question I just asked him.

15 MR. MOLSTER: No. He didn't say he
16 was withdrawing, Ashley. He said, "I'll go with that
17 question."

18 MR. TWOMBLEY: Okay. I'm not sure --

19 BY MR. TRAXLER:

20 Q. Again, subject to the agreement, you can
21 answer this yes or no. If you did any substantive
22 work for any of the Barringers or Lights or CFRC from
23 2011 on, would it not be reflected in your billing?

24 MS. KIRK: Same objection.

25 THE WITNESS: I think the bulk of my

ROA 005870

Page 170

1 substantive work would have been reflected in my
2 billing, but I had communications with the people you
3 mentioned that weren't necessarily reflected in my
4 billing.

5 BY MR. TRAXLER:

6 Q. Okay. And did you bill them in increments
7 of a tenth of an hour, quarter of an hour, or what
8 increment? Same agreement.

9 A. We -- we billed -- we kept track of time
10 in tenth of an hour, but I generally didn't track
11 time or bill clients for less than three-tenths of an
12 hour.

13 MR. MOLSTER: May I interpose an
14 observation, Tom?

15 MR. TRAXLER: Sure.

16 MR. MOLSTER: You would have been
17 extremely unpopular at Winston and Strawn, Mr.
18 Jolley. I withdraw that.

19 MR. TRAXLER: We'll talk later, Chip,
20 about how many hours a day there are.

21 MR. MOLSTER: We're going to find out
22 when we get to the pearly gates.

23 BY MR. TRAXLER:

24 Q. All right. Mr. Jolley, you testified for
25 Mr. Twombly as to your understanding of testamentary

ROA 005871

Page 171

1 capacity. Let me switch gears along that line, if
2 you would, please, sir. What kind of capacity does a
3 grantor or settlor of a revocable trust need to have
4 in order to execute a valid revocable trust?

5 MR. TWOMBLEY: Object to the form.

6 THE WITNESS: I believe that the -- I
7 believe that the settlor of a revocable trust must
8 have testamentary capacity. However, I concluded
9 that Mr. Barringer, his capacity certainly exceeded
10 testamentary capacity.

11 BY MR. TRAXLER:

12 Q. And in order to enter a contract, what
13 type of capacity must a party to a contract have for
14 it to be a valid contract?

15 MR. MOLSTER: Object to the form.

16 MS. KIRK: Tom, I'm sorry. This is
17 Ariail Kirk. You're coming through really garbled
18 and it's hard to understand what you're saying.

19 MR. TRAXLER: I'm sorry.

20 MS. KIRK: If it's an audio issue or
21 if there's something blocking it. Just your words
22 are -- they don't sound right.

23 MR. TRAXLER: No. We're just letting
24 you hear what I want you to hear.

25 MS. KIRK: Maybe so.

ROA 005872

Page 172

1 MR. TRAXLER: See if this sounds a
2 little bit better, Ariail.

3 MS. KIRK: Thank you. I appreciate
4 it.

5 MR. TRAXLER: Sure.

6 BY MR. TRAXLER:

7 Q. Mr. Jolley, my question to you was: What
8 kind of capacity a party to a contract has to have in
9 order to enter into a valid contract?

10 MR. MOLSTER: Object to the form.

11 MS. KIRK: I also object to the form,
12 but you can answer.

13 THE WITNESS: I think what we
14 generally refer to as contract capacity.

15 BY MR. TRAXLER:

16 Q. What is that?

17 A. The parties to the agreement must be able
18 to understand the terms of the agreement and have the
19 capacity to understand that they are entering into
20 that agreement.

21 Q. Is that the full -- your full
22 understanding of contractual capacity?

23 MR. MOLSTER: Same objection.

24 MR. TWOMBLEY: Same objection.

25 MS. KIRK: Object to form.

ROA 005873

Page 173

1 THE WITNESS: I think generally that
2 is my understanding of the contract capacity.

3 BY MR. TRAXLER:

4 Q. All right. Describe for me the capacity
5 to determine -- (inaudible).

6 MR. TWOMBLEY: We lost you on that,
7 Tom.

8 THE WITNESS: Mr. Traxler, I didn't
9 get any of that.

10 BY MR. TRAXLER:

11 Q. Okay. We'll try it again. What capacity
12 does a vendor of a gift have to have in order to make
13 it a valid gift?

14 THE WITNESS: Object to the form.

15 MS. KIRK: Object to form.

16 BY MR. TRAXLER:

17 Q. You can answer.

18 A. I believe that the donor of a gift needs
19 to have contract capacity.

20 Q. All right. In order to revoke a will,
21 what kind of capacity must a testator have to revoke
22 his or her will?

23 MR. SCHRONCE: Same objection.

24 MS. KIRK: Object to form.

25 THE WITNESS: I'm not sure I've

ROA 005874

Page 174

1 considered what capacity a settlor -- a testator
2 would have to be required to revoke the terms of a
3 will, although I believe it would be testamentary
4 capacity.

5 BY MR. TRAXLER:

6 Q. All right. And what capacity must the
7 settlor of a trust have to revoke a revocable trust?

8 MR. MOLSTER: Same objection.

9 THE WITNESS: I believe the same
10 standard applies, that is, testamentary capacity.

11 BY MR. TRAXLER:

12 Q. All right. Is a mistake a basis for
13 invalidating a will, a mistake on the part of the
14 testator?

15 MR. TWOMBLEY: Object to the form of
16 the question.

17 MS. KIRK: Object to form.

18 THE WITNESS: Yes.

19 BY MR. TRAXLER:

20 Q. What kind of mistake provides a basis for
21 invalidating a will?

22 MR. TWOMBLEY: Object to the form of
23 the question.

24 MR. MOLSTER: Objection.

25 MS. KIRK: Object to form.

ROA 005875

Page 175

1 MR. TWOMBLEY: Now you can answer it.

2 THE WITNESS: I think the -- a
3 mistake of fact by the testator could be the basis
4 for invalidating a will.

5 BY MR. TRAXLER:

6 Q. Would you -- you would agree with me,
7 wouldn't you, it's just not any fact. It would be a
8 material fact, material disposition, in the will?

9 MR. TWOMBLEY: Object to the --

10 MS. KIRK: Object to form.

11 MR. TWOMBLEY: -- form of the
12 question.

13 BY MR. TRAXLER:

14 Q. Or do you think that the mistake about
15 getting fact material provides a basis for
16 invalidating a will?

17 MS. KIRK: Also object to the form.

18 THE WITNESS: I think the fact would
19 have to be material.

20 BY MR. TRAXLER:

21 Q. All right. So if a testator has a
22 material -- mistake of a material fact with regard to
23 entering into the will that affects the disposition
24 or the terms of that will, that would be a basis for
25 invalidating the will, correct?

ROA 005876

Page 176

1 MR. TWOMBLEY: Object to the form --

2 MS. KIRK: Object to form.

3 MR. TWOMBLEY: -- of the question.

4 MS. PAYLOR: Object to the form.

5 THE WITNESS: I think a mistake as to
6 a material fact could enter into the analysis of the
7 validity of the will.

8 BY MR. TRAXLER:

9 Q. All right. And a mistake of material fact
10 by a settlor would likewise provide a basis for
11 invalidating a revocable trust, would it not?

12 MS. KIRK: Object to the form.

13 MR. TWOMBLEY: Same -- same
14 objection.

15 THE WITNESS: I'm not sure to what
16 extent the rules are with respect to wills. They
17 don't always apply with respect to trusts, but I
18 believe a material fact would be a basis with respect
19 to a trust.

20 BY MR. TRAXLER:

21 Q. Okay. And a mistake of fact with regard
22 to a contract, would that provide a basis for
23 invalidating the contract?

24 MR. MOLSTER: Same objection.

25 MR. TWOMBLEY: Same objection.

ROA 005877

Page 177

1 MS. KIRK: Same objection here as
2 well.

3 THE WITNESS: I suppose.

4 BY MR. TRAXLER:

5 Q. All right. And would a mistake of
6 material fact be a basis for invalidating a gift?

7 MR. MOLSTER: Same objection.

8 MR. TWOMBLEY: Same objection.

9 MS. KIRK: Same objection.

10 THE WITNESS: I'm not sure with
11 respect to a gift, although I suspect the analysis is
12 the same.

13 BY MR. TRAXLER:

14 Q. Is fraud on the -- fraud on the testator a
15 basis for invalidating a will?

16 MR. MOLSTER: Same objection.

17 MR. TWOMBLEY: Same objection.

18 MS. KIRK: Object to the form.

19 THE WITNESS: I think fraud could be
20 a basis for invalidating a will.

21 BY MR. TRAXLER:

22 Q. And could, likewise, fraud on the settlor
23 of a revocable trust be a basis for invalidating the
24 revocable trust?

25 MS. KIRK: Object to form.

ROA 005878

Page 178

1 MR. TWOMBLEY: Same objection.

2 THE WITNESS: I believe so.

3 BY MR. TRAXLER:

4 Q. And would fraud in the inducement of a
5 contract be a basis for voiding the contract?

6 MS. KIRK: Object to the form.

7 MR. MOLSTER: Same objection.

8 THE WITNESS: I believe so.

9 BY MR. TRAXLER:

10 Q. We're all back to law school 101, I
11 believe. Would fraud be a basis for invalidating a
12 gift?

13 MS. KIRK: Object to the form.

14 MS. PAYLOR: Object to the form.

15 THE WITNESS: I suspect. I believe
16 so.

17 BY MR. TRAXLER:

18 Q. And to shortcut things a little bit, would
19 you agree with me that duress and coercion provides a
20 basis for invalidating a will and also a revocable
21 trust, a contract, and a gift?

22 THE WITNESS: Object to the form.

23 And just to be clear, my objection to form, almost
24 every time, includes seeking opinion testimony from a
25 lay witness.

ROA 005879

Page 179

1 MR. TRAXLER: I'm sorry. I didn't
2 hear the last part.

3 THE WITNESS: I apologize. I just
4 want to make it clear for the record that my
5 objection to form includes an objection to -- because
6 I think the questions are seeking an opinion from
7 Mr. Jolley, who is not an expert, but a lay witness.

8 MS. KIRK: This is Ariail Kirk. I
9 have the same objection.

10 MR. TWOMBLEY: Same objection.

11 BY MR. TRAXLER:

12 Q. I'll let everybody have that objection,
13 but go ahead. You can still answer the question.
14 All right. We'll go one by one. Is coercion or
15 duress a basis for invalidating a will?

16 MR. MOLSTER: Same objection.

17 MS. KIRK: Same objection.

18 MR. TWOMBLEY: Same for me.

19 THE WITNESS: Yes.

20 BY MR. TRAXLER:

21 Q. Is fraud or coercion a basis for
22 invalidating a revocable trust?

23 MR. MOLSTER: Same objection.

24 THE WITNESS: Yes.

25

ROA 005880

Page 180

1 BY MR. TRAXLER:

2 Q. Is fraud or coercion a basis for
3 invalidating a contract?

4 MR. MOLSTER: Same objection.

5 THE WITNESS: Yes.

6 BY MR. TRAXLER:

7 Q. And is fraud or coercion a basis for --
8 excuse me, coercion or duress a basis for
9 invalidating a gift?

10 MR. MOLSTER: Same objection.

11 MS. KIRK: Same objection.

12 THE WITNESS: Yes.

13 BY MR. TRAXLER:

14 Q. Have you ever done any estate planning for
15 any client that you thought was -- had diminished
16 mental capacity to such an extent that they did not
17 have testamentary capacity?

18 MS. KIRK: I object to the form.

19 MR. TWOMBLEY: Yeah. I would caution
20 you not to disclose anybody's name. Just answer in
21 general.

22 BY MR. TRAXLER:

23 Q. No, no, no. And Mr. Twombley or whoever
24 it was is right. I don't want you expose details of
25 clients. I just want to know if you have ever run

ROA 005881

Page 181

1 into someone who wanted to do a will or estate
2 planning who lacked capacity?

3 A. Yes.

4 Q. And how many times have you run into that
5 situation?

6 A. Mr. Traxler, that would be very hard for
7 me to judge.

8 Q. Okay. I understand. Can you give me your
9 best thought, though?

10 A. Several times each year I encounter
11 perspective clients or clients whose capacity is what
12 doesn't meet -- in my estimation and my opinion, they
13 don't reach -- they don't have testamentary capacity.

14 Q. When you're meeting with somebody to do a
15 will or any estate planning, do you have a checklist
16 with regard to things like capacity and undue
17 influence and things that can invalidate the
18 instrument you're doing?

19 A. I do not.

20 Q. And if you suspect that a testator does
21 not have testamentary capacity, what do you do?

22 MS. KIRK: I object to the form. And
23 I -- hold on a second. And I -- I want to be clear
24 that you're not asking him for details about anybody.

25 MR. TRAXLER: No, I'm not. No.

ROA 005882

Page 182

1 THE WITNESS: Mr. Traxler, depending
2 on where I am in the engagement and the level of,
3 certainly, my perception of their impairment, that
4 would dictate what I would do.

5 BY MR. TRAXLER:

6 Q. All right. Suppose you're already on the
7 cuff for signing and executing the agreement and then
8 all of a sudden you have concerns about their
9 testamentary capacity, what do you do?

10 A. I don't help them sign.

11 Q. You make that judgment all by yourself?

12 A. Do I make --

13 MS. KIRK: Object to form.

14 BY MR. TRAXLER:

15 Q. I mean, we know that you sent the
16 certification of competency to Dr. Long. Apparently
17 you've done that, I presume, before because you used
18 a cookie cutter form. I don't mean that
19 derogatorily. I understand how we do things.

20 MS. KIRK: I object to the form.

21 BY MR. TRAXLER:

22 Q. When you have somebody getting ready to
23 sign and you have a question about their capacity,
24 you don't just turn them away, do you?

25 MR. TWOMBLEY: Object to the form of

ROA 005883

Page 183

1 the questions and statements.

2 MS. KIRK: I also object.

3 THE WITNESS: So if -- to the extent
4 that someone lacked testamentary capacity, I would
5 not assist them in implementing a plan, executing
6 their plan. So --

7 BY MR. TRAXLER:

8 Q. If you had a question in your mind about
9 whether they had capacity or not, would you take any
10 step to resolve that issue?

11 A. It depends. I might consult with the
12 people that they have in their lives in terms of --
13 to the extent that they have existing documents and
14 they have, for instance, an agent under health care
15 power of attorney or under a durable power of
16 attorney. We -- I might ask to -- I might ask for
17 the doctor certificate in that instance. I also
18 would consider a conversation with the client about
19 whether or not a guardianship or conservatorship was
20 appropriate in those circumstances.

21 Q. All right. Would you ever send somebody
22 to be evaluated by a doctor that you did not have a
23 concern about?

24 MR. TWOMBLEY: Object to the --

25 MS. KIRK: Object to the form.

ROA 005884

Page 184

1 MR. TWOMBLEY: -- form of the
2 question.

3 THE WITNESS: So I need to hear that
4 question again.

5 BY MR. TRAXLER:

6 Q. Would you ever send a client to a doctor
7 or outside for evaluation if you had doubts about
8 their capacity?

9 MS. KIRK: Same objection.

10 MR. TWOMBLEY: Object to the form of
11 the question.

12 BY MR. TRAXLER:

13 Q. I'll rephrase it. That's not the right
14 question. Excuse me. Would you ever send somebody
15 to -- for an outside evaluation unless you had doubt
16 about their capacity?

17 MS. KIRK: Object to the form.

18 MR. TWOMBLEY: Object to the form of
19 the question.

20 THE WITNESS: I wouldn't -- I
21 wouldn't send someone for outside evaluation if I
22 didn't -- if I thought they had capacity.

23 BY MR. TRAXLER:

24 Q. That wasn't my question. Would you send
25 somebody out for outside evaluation if you had doubts

ROA 005885

Page 185

1 about mental capacity?

2 MS. KIRK: Object to form.

3 THE WITNESS: Without -- Mr. Traxler,
4 I'm sorry. Without having doubts about their
5 incapacity. It sounds like the question I just
6 answered, and I may be obtuse, but I'll need help
7 with that question.

8 BY MR. TRAXLER:

9 Q. Let me make this statement. I'm going to
10 ask you if you agree with it. You do not send
11 clients for outside evaluation with regard to
12 capacity unless you have doubts about that capacity;
13 is that correct?

14 MS. KIRK: Object to the form.

15 MR. TWOMBLEY: Object to the form.

16 THE WITNESS: That is not correct.

17 BY MR. TRAXLER:

18 Q. Why not? Why is it incorrect?

19 A. In some instances, because of our desire
20 to be defensive about -- I might suggest they get
21 another opinion about their -- a professional opinion
22 about -- another professional opinion about their
23 capacity.

24 Q. Kind of a CYA evaluation?

25 MR. TWOMBLEY: Object to the form.

ROA 005886

Page 186

1 THE WITNESS: If you mean CYA by
2 covering my -- it's protecting me, then the answer is
3 no.

4 BY MR. TRAXLER:

5 Q. Okay. The outside evaluation so you'll
6 have it in the file in the future if necessary?

7 MS. KIRK: Object to the form.

8 THE WITNESS: One of my obligations
9 is to try to effectuate the intent of my clients. To
10 the extent that we seek outside opinion to try to
11 bolster and protect those instruments or documents
12 that will help effectuate the intent of my client.
13 That doesn't mean I have a concern about their
14 capacity.

15 BY MR. TRAXLER:

16 Q. All right. Does the law with regard to
17 undue influence require that the undue influence be
18 exercised in the room at the time the instrument is
19 being executed?

20 MS. KIRK: Object to form.

21 MR. TWOMBLEY: Same objection.

22 THE WITNESS: No.

23 BY MR. TRAXLER:

24 Q. Undue influence can happen anywhere, any
25 time, correct?

ROA 005887

Page 187

1 MR. TWOMBLEY: Object to the form --

2 MS. KIRK: Object to the form.

3 MR. TWOMBLEY: -- of the questions.

4 THE COURT REPORTER: Can you repeat
5 the question? You broke up a little bit at the
6 beginning.

7 BY MR. TRAXLER:

8 Q. Undue influence can occur any time,
9 anywhere. It does not necessarily occur at the time
10 of the execution of the instrument; is that correct?

11 MR. TWOMBLEY: Object to the --

12 MS. KIRK: Object to form.

13 MR. TWOMBLEY: -- form of the
14 question.

15 THE WITNESS: Yes.

16 BY MR. TRAXLER:

17 Q. Have you ever seen an undue -- a client
18 that you thought was unduly influenced?

19 A. Yes.

20 Q. And how did you know that?

21 MS. KIRK: I want to, again, make
22 sure we're clear that this is a general question, not
23 going after any sort of particular encounter with a
24 client.

25 MR. TRAXLER: That's correct.

ROA 005888

Page 188

1 THE WITNESS: I made sure that I met
2 with the client alone. I made sure that I
3 interviewed the client not only alone, but at
4 multiple times. I made sure that I had -- that I was
5 assured that the documents prepared or the plan
6 requested by the client reflected their wishes prior
7 to helping them sign any of those documents.

8 BY MR. TRAXLER:

9 Q. How many times have you found -- have you
10 seen where you concluded that they were unduly
11 influenced?

12 MS. KIRK: I'm going to --

13 MR. TRAXLER: And I contend with
14 these line of questions I am not seeking the
15 identification of any particular clients or anything
16 like that.

17 BY MR. TRAXLER:

18 Q. The question is: How many clients have
19 you had where you have concluded that they were
20 unduly influenced?

21 A. I think I -- Mr. Traxler, my practice is
22 to avoid those instances when undue influence can
23 result in documents not reflecting my client's
24 wishes.

25 Q. I understand that, but what have -- what

ROA 005889

Page 189

1 have you done -- do you remember any instance where
2 you did not have a client sign documents because you
3 thought the client was unduly influenced?

4 A. I didn't get to the signing conference
5 before -- from my conclusion that someone was being
6 unduly influenced.

7 Q. Okay. At that point in time, did you
8 cease to represent the client with regard to those
9 instances?

10 MS. KIRK: I object to the form.

11 THE WITNESS: Not in --

12 BY MR. TRAXLER:

13 Q. What did you do? What did you do?

14 A. Mr. Traxler, if I perceive a client to be
15 being unduly influenced or in danger of being unduly
16 influenced, I take those steps -- some of those steps
17 I've described to you to try to determine what the
18 client's intent was rather than what the person
19 attempting to unduly influence them was or is.

20 BY MR. TRAXLER:

21 Q. Have you ever refused to proceed with the
22 execution of any instrument because you thought the
23 client was unduly influenced?

24 MR. TWOMBLEY: Object to the form.

25 MS. KIRK: Object to the form.

ROA 005890

Page 190

1 MR. TWOMBLEY: Asked and answered.

2 MS. KIRK: He's answered that.

3 MR. TRAXLER: No. He hasn't answered
4 the question.

5 BY MR. TRAXLER:

6 Q. The question is: Have you ever turned
7 anybody away because of undue influence?

8 MS. KIRK: That's a different
9 question.

10 BY MR. TRAXLER:

11 Q. Okay. It's a different question. Go
12 ahead.

13 A. Yes. I have turned away clients because I
14 thought they were being unduly influenced.

15 Q. Can you give me a guesstimate as to how
16 many?

17 A. Several times each year.

18 Q. Okay. Did you ever suspect -- suspect
19 undue influence on Paul Barringer by anybody at any
20 point in time from 2011 through his death?

21 A. I did not.

22 Q. Did you ever perceive any undue influence
23 on Merrill Barringer at any time from 2011 to the
24 present time?

25 MR. TWOMBLEY: Can you repeat the

ROA 005891

Page 191

1 question?

2 MR. TRAXLER: Yes. Has he ever
3 suspected undue influence on Merrill Barringer, the
4 mother, at any time since 2011?

5 MR. TWOMBLEY: Yeah. I'm going to
6 instruct him not to answer that unless you can tell
7 me why you want to know that in the context of this
8 lawsuit. If you don't want to tell me, that's fine.
9 I'll just rest on my instruction and we can move on.

10 MR. TRAXLER: Are you instructing him
11 not to answer --

12 MR. TWOMBLEY: Yes.

13 MR. TRAXLER: -- on the basis of
14 privilege?

15 MR. TWOMBLEY: Yes. Unless you --

16 MR. TRAXLER: Okay. That's fine.
17 That's fine. Just make your motion and we'll move
18 on.

19 MR. TWOMBLEY: Okay. Let the record
20 reflect I was willing to talk about it, but you
21 didn't want to do that. So now we'll move on.

22 BY MR. TRAXLER:

23 Q. Okay. Do you think a person who is
24 suffering from dementia is more susceptible to undue
25 influence?

ROA 005892

Page 192

1 MS. KIRK: Object to the form.

2 THE WITNESS: I think it depends.

3 BY MR. TRAXLER:

4 Q. On what?

5 A. On to what extent they're suffering from
6 dementia.

7 Q. All right. Let's talk about full-blown
8 Alzheimer's. Is that person more susceptible to
9 undue influence?

10 MS. KIRK: Object to the form.

11 THE WITNESS: I think to the extent
12 that someone is fully incapacitated, then, yes,
13 they're more susceptible to undue influence.

14 Q. All right. We're going to come back to
15 this later. But with regard to this question, did
16 you ever see a change yourself from 2011 until
17 Paul Barringer's death of his cognitive abilities?

18 A. Of his cognitive abilities?

19 Q. Yes, sir.

20 MR. MOLSTER: Object to the form.

21 THE WITNESS: I did -- from 2011
22 through 2015?

23 BY MR. TRAXLER:

24 Q. Yes.

25 A. I did not.

ROA 005893

Page 193

1 Q. So he was -- his cognitive abilities
2 remained static, unchanged, from your work with him
3 in 2011 until he died; is that correct?

4 MS. KIRK: Object to the form.
5 That's asked and answered.

6 MR. TWOMBLEY: Same objection.

7 BY MR. TRAXLER:

8 Q. Go ahead.

9 A. Do you want -- am I supposed to answer
10 that question again?

11 Q. Yes, sir. Answer the question.

12 A. I didn't see a change in Mr. Barringer's
13 cognitive ability during that time period.

14 Q. Did you see any change in any of his
15 mental capacities during that time period, whether we
16 call it cognitive abilities or otherwise?

17 MR. TWOMBLEY: Object to the form.

18 MS. KIRK: Object to the form.

19 THE WITNESS: I'm sorry. You said
20 not cognitive ability -- cognitive impairment, but
21 you said mental abilities? Is that what this
22 question is?

23 BY MR. TRAXLER:

24 Q. I'll rephrase it. You answered the
25 question with regard to his cognitive abilities.

ROA 005894

Page 194

1 A. Yes.

2 Q. I'm trying to figure out whether or not
3 you attach a particular meaning to the term
4 "cognitive abilities." So my question is: Did you
5 observe any change in his mental capacity from 2011
6 until he died?

7 MR. MOLSTER: Object to the form.

8 MS. KIRK: Object to form.

9 MR. TWOMBLEY: Same objection.

10 THE WITNESS: I think throughout that
11 time period, Mr. Barringer's mental capacity well
12 exceeded the capacity necessary.

13 BY MR. TRAXLER:

14 Q. All right. But that's not my question.
15 Did you see any change to that capacity starting late
16 2011 through his death?

17 MR. MOLSTER: Same objection.

18 MR. TWOMBLEY: Same objection.

19 MS. KIRK: Same objection.

20 THE WITNESS: I -- I didn't see
21 Mr. Barringer having mental impairment throughout
22 that time period.

23 BY MR. TRAXLER:

24 Q. That's not my question, Mr. Jolley. My
25 question very simply is: Did you see any change, one

ROA 005895

Page 195

1 way or the other, in his mental capacity from late
2 2011 until he died?

3 MS. KIRK: Object to the form. And
4 he's asked and answered.

5 MR. TWOMBLEY: Same objection.

6 THE WITNESS: I didn't see a
7 difference in his cognitive abilities during that
8 time period.

9 BY MR. TRAXLER:

10 Q. All right. In your mind, are cognitive
11 abilities the same and synonymous with mental
12 capacity?

13 MR. MOLSTER: Object to the form.

14 MR. TWOMBLEY: Object to the form.

15 MS. KIRK: Object to the form.

16 THE WITNESS: You're asking me if I
17 think cognitive ability is the same as capacity?

18 BY MR. TRAXLER:

19 Q. I'm sorry. We've got some background
20 noise, Mr. Jolley. You broke up on me. Can you
21 answer that question again?

22 A. Yeah. I need -- I'm sorry. I need you to
23 repeat the question for me, Mr. Traxler.

24 Q. Did you make any distinction in your mind
25 between the term "cognitive abilities" and "mental

ROA 005896

Page 196

1 capacity?"

2 MR. TWOMBLEY: Object to the form.

3 MS. KIRK: Object to form.

4 THE WITNESS: Cognitive abilities
5 and -- and -- I don't think I draw a distinction
6 between cognitive ability and mental capacity
7 generally.

8 BY MR. TRAXLER:

9 Q. So it would not be incorrect for me to say
10 that you believe that you did not see any change in
11 his mental capacity from late 2011 until he died; is
12 that correct?

13 MR. TWOMBLEY: Object to the form.

14 MR. MOLSTER: Object to the form.

15 MS. KIRK: Object to the form.

16 THE WITNESS: Yes.

17 MR. TRAXLER: Anybody need a break?

18 MR. TWOMBLEY: No.

19 THE VIDEOGRAPHER: We do have about
20 15 minutes.

21 MR. TRAXLER: Oh, you're getting
22 ready to run out of tape, aren't you, Madam Court
23 Reporter?

24 MS. KIRK: She said she's got 15
25 minutes.

ROA 005897

Page 197

1 MR. TRAXLER: Okay. That's fine.

2 BY MR. TRAXLER:

3 Q. Okay. Let me focus on Paul Barringer and
4 your work with him, Mr. Jolley. I believe you said
5 you reviewed documents for him I think around 2008
6 and 2009, estate planning documents, correct?

7 A. Yes.

8 Q. Okay. And were those his will and the
9 trust that he set up back in '98?

10 A. I believe they were.

11 Q. Okay. And those instruments were drawn --
12 prepared by what lawyer, do you know or remember?

13 A. I think those documents were prepared by
14 Neal McBride in Charlotte.

15 Q. Have you ever had any conversations with
16 Mr. McBride?

17 A. Not with respect to this client.

18 Q. How about with regard to any of the
19 Barringers or the company or the Lights?

20 A. I have not.

21 Q. All right. The only thing you have that
22 he was involved in would have been those executed
23 documents, correct?

24 MS. KIRK: Object to the form.

25

ROA 005898

Page 198

1 BY MR. TRAXLER:

2 Q. And those memos, documents, other than
3 those, correct?

4 MS. KIRK: Object to form.

5 THE WITNESS: I don't recall any
6 documents from Mr. McBride other than the documents
7 in place from 1998.

8 BY MR. TRAXLER:

9 Q. All right. And those documents that you
10 reviewed in '98 treated Merrill Light and Hampton
11 Luzak equally, did it not -- did they not?

12 MR. TWOMBLEY: Object to the form.

13 MS. KIRK: Object to the form.

14 MR. TWOMBLEY: Misstates his
15 testimony.

16 THE WITNESS: I don't remember what
17 the document -- what Mr. McBride's documents said
18 from 1998.

19 BY MR. TRAXLER:

20 Q. All right. But no change -- you didn't do
21 any change to the documents, correct?

22 MS. KIRK: Object to the form.

23 MR. TWOMBLEY: Object to the form of
24 the question.

25

ROA 005899

Page 199

1 BY MR. TRAXLER:

2 Q. Excuse me. That's a good objection.

3 At that time, you did not do any changes
4 to his estate plan; is that correct?

5 MR. TWOMBLEY: Objection.

6 MS. KIRK: Object to form.

7 THE WITNESS: I didn't make any
8 change to those documents in '08 or '09 or assist
9 Mr. Barringer with making any changes during that
10 time.

11 BY MR. TRAXLER:

12 Q. That's right. And why not?

13 A. Because Mr. Barringer -- because
14 Mr. Barringer -- we did the review and, at that
15 point, Mr. Barringer didn't go forward at that point
16 with any additional planning with me.

17 Q. Did he have any particular thoughts or
18 plans in mind that he wanted you to review those
19 documents for or was it simply kind of a checkup as
20 to what he had?

21 A. I think it was a checkup based on the fact
22 that Mr. Barringer was now -- was then a resident of
23 South Carolina and the documents previously had been
24 prepared when Mr. Barringer -- they were in 1998, of
25 course, and that they were -- when Mr. Barringer was

ROA 005900

Page 200

1 a resident of another jurisdiction.

2 Q. And how did he get to you?

3 A. I believe that he got to me by -- I think
4 that he spoke to Rip Rose and he got me -- he got my
5 name and interacted with me from that recommendation
6 or that referral.

7 Q. And tell us who Rip Rose is.

8 A. Rip Rose is a lawyer -- was a lawyer at
9 McNair.

10 Q. Did he -- did Mr. Barringer come to you
11 because of Merrill Light?

12 MR. TWOMBLEY: Object to the form.

13 MS. KIRK: Object to the form.

14 THE WITNESS: I don't know. I don't
15 have any basis for knowing why Paul Barringer came to
16 me beyond what I've said.

17 BY MR. TRAXLER:

18 Q. And when you met with Mr. Barringer, was
19 he there with Ms. Barringer?

20 A. He was there with -- well, I believe in --
21 I'm sorry. Tom, are you asking me during '08 and
22 '09?

23 Q. Yes.

24 A. During that time, I believe that I only
25 met with Mr. Barringer.

ROA 005901

Page 201

1 Q. Did you review Ms. Barringer's documents
2 at that time?

3 A. I believe I reviewed their -- their
4 collective documents at that time.

5 Q. And were there documents in terms of being
6 the dispositive provisions and the appointment of
7 fiduciaries in the company?

8 A. I don't remember.

9 Q. Were they -- do you recall whether they
10 were executed at the same time?

11 MS. KIRK: Object to form.

12 THE WITNESS: I don't recall that.

13 BY MR. TRAXLER:

14 Q. All right. So, Mr. Barringer, as I
15 understand it, essentially just came in and said,
16 "How about take a look at these things and see if
17 they still do what I want them to do or need to be
18 changed because of tax law." Is that a
19 fair understanding?

20 MS. KIRK: Object to the form.

21 MR. MOLSTER: Object to the form.

22 THE WITNESS: Mr. Barringer provided
23 me the documents and asked me to review them.

24 BY MR. TRAXLER:

25 Q. For what purpose?

ROA 005902

Page 202

1 MR. MOLSTER: Object to the form.

2 THE WITNESS: Mr. Barringer asked me
3 to review the documents to tell him what they said
4 and to see, yes, what changes might need to be made.

5 BY MR. TRAXLER:

6 Q. Okay. And you did not recommend any
7 changes; is that correct?

8 A. I don't remember if I recommended changes.
9 I know that we did a review of the documents and
10 discussed his then current documents.

11 Q. All right. Had you done legal work for
12 Merrill Light prior to that time?

13 MS. KIRK: Object to the form.

14 MR. MOLSTER: And wait a second.
15 Same agreement?

16 MR. TRAXLER: Sure. Yeah.

17 MR. MOLSTER: Yes or no, please,
18 Mr. Jolley.

19 THE WITNESS: Yes.

20 BY MR. TRAXLER:

21 Q. Had you done Randy --

22 MR. TRAXLER: Same agreement, Chip.

23 BY MR. TRAXLER:

24 Q. Had you done legal work for Randy Light
25 prior to that initial meeting with Mr. Barringer?

ROA 005903

Page 203

1 MR. MOLSTER: Okay.

2 THE WITNESS: Yes.

3 BY MR. TRAXLER:

4 Q. When did your legal work for Merrill Light
5 first begin?

6 MR. TRAXLER: Same agreement.

7 MR. MOLSTER: Okay.

8 THE WITNESS: 2006 or '07.

9 BY MR. TRAXLER:

10 Q. Okay. Would the same answer -- we have
11 the same agreement. Would your answer be the same
12 with regard to Randy Light?

13 A. It would be.

14 Q. Okay. Did you do legal work within the
15 same year of when Paul Barringer came to you in 2008
16 or 2009 in that -- within a year of that meeting,
17 would you have done legal work for Merrill Light?

18 MR. TRAXLER: Same agreement, Chip.

19 MR. MOLSTER: Okay. Okay, Ashley?

20 MR. TWOMBLEY: Yes.

21 BY MR. TRAXLER:

22 Q. That's kind of a convoluted question.
23 Could you follow that, Mr. Jolley?

24 A. I think --

25 Q. Let me start over again. Okay?

ROA 005904

Page 204

1 A. Okay.

2 Q. I did kind of screw that one up. Same
3 agreement. I'm sure that Mr. Molster would stipulate
4 that.

5 MR. TRAXLER: But the same agreement,
6 Chip.

7 MR. MOLSTER: All right.

8 BY MR. TRAXLER:

9 Q. You met with Mr. Barringer in the
10 2008/2009 time frame. Had you done legal work for
11 Merrill Barringer within -- Merrill Light within a
12 year prior to that initial meeting?

13 A. I don't know.

14 Q. I'm sorry. What did you say?

15 A. I said I don't know.

16 Q. Okay. And with the same agreement, I'm
17 going to ask you the same question with regard to
18 Randy Light. What would your answer be?

19 A. My answer would be the same. I don't
20 know.

21 Q. All right. Did Paul Barringer ever get to
22 the point where, in your opinion, he was incompetent
23 to run the company?

24 MS. KIRK: Object to the question.
25 It's already been answered.

ROA 005905

Page 205

1 MR. TRAXLER: No, it hasn't. That
2 question has never been asked.

3 MR. GILREATH: No, ma'am.

4 BY MR. TRAXLER:

5 Q. Go ahead.

6 A. The question is -- so I'm sorry,
7 Mr. Traxler. Ask --

8 Q. At any point in time, in your opinion, did
9 Mr. Barringer become incompetent where he couldn't
10 run -- shouldn't run the company?

11 MR. MOLSTER: Object to the form.

12 MR. SCHRONCE: And I'm going to
13 object and instruct the witness not to answer to the
14 extent that there is -- this invokes confidential
15 communications with officers, directors, and
16 employees of the company.

17 MR. TRAXLER: And this is on the
18 basis of privilege, correct?

19 MR. SCHRONCE: That is correct.

20 BY MR. TRAXLER:

21 Q. Okay. Was there ever -- subject to
22 Mr. Schronce's objection, was there a point in time,
23 in your opinion, where Mr. Barringer became
24 incompetent to run the company?

25 A. Is that during the time period of 2011

ROA 005906

Page 206

1 through 2015?

2 Q. Until he died. Yes, sir.

3 MS. KIRK: What was John Schronce's
4 objection? I'm sorry. I didn't hear it.

5 MR. SCHRONCE: I'm objecting and
6 instructing the witness not to answer to the extent
7 that his answer calls for confidential communications
8 with the directors, officers, and employees of CFRC.

9 BY MR. TRAXLER:

10 Q. Go ahead. You can answer it now.

11 A. I have no way of knowing all the way to
12 Paul Barringer's death about his capacity to run the
13 company.

14 Q. Okay.

15 A. During --

16 Q. Your last involvement with him was when?

17 A. My last involvement with Mr. Barringer or
18 the company?

19 Q. With Mr. Barringer.

20 A. I don't know precisely when my last
21 involvement with Mr. Barringer was.

22 Q. Give me your best guess.

23 A. 2015.

24 Q. Okay. At that point in time, was he
25 competent to run the company, in your opinion?

ROA 005907

Page 207

1 MR. MOLSTER: Object to the form.

2 MR. SCHRONCE: Same objection and

3 instruction, Tom.

4 MR. TRAXLER: Sure.

5 BY MR. TRAXLER:

6 Q. Was he competent to run the company?

7 A. Throughout my interaction with
8 Mr. Barringer, I believed he was competent to run the
9 company.

10 Q. Was he competent to run the day-to-day
11 business operations of the company?

12 MR. SCHRONCE: Same objection and
13 instruction.

14 MS. KIRK: Object to the form.

15 THE WITNESS: I don't know.

16 BY MR. TRAXLER:

17 Q. Why?

18 MR. TWOMBLEY: Object to the form of
19 the question.

20 THE WITNESS: Mr. Traxler, are you
21 asking me whether or not Mr. Barringer was competent
22 to be involved in Havana with the day-to-day
23 operations of the company?

24 BY MR. TRAXLER:

25 Q. Yes, sir. In 2015 when you saw him last.

ROA 005908

Page 208

1 A. I suppose that if Mr. Barringer -- I
2 didn't -- I'm sorry. That feels like a hypothetical
3 question in that sense. I -- throughout my
4 interactions with Mr. Barringer, I believe he had the
5 capacity to run the company.

6 Q. On the day-to-day operations?

7 MS. KIRK: Object to the form.

8 MR. SCHRONCE: Objection and
9 instruction.

10 MR. MOLSTER: Form.

11 THE WITNESS: Mr. Traxler, my --

12 BY MR. TRAXLER:

13 Q. Yes, sir. Yes, sir. I'm sorry. Go
14 ahead.

15 A. Mr. Barringer wasn't -- I don't believe
16 was involved in the day-to-day operations of the
17 company. I believe that they looked to the
18 professional management of the company for that.

19 Q. But my question was whether he ran the
20 company or the day-to-day operations or not, was he
21 competent to do?

22 MS. KIRK: Object to the --

23 MR. SCHRONCE: Same objection and
24 instruction.

25 MS. KIRK: Object to --

ROA 005909

Page 209

1 MR. SCHRONCE: Also asked and
2 answered. He's already said that Mr. Barringer did
3 not run the company on a day-to-day basis.

4 MR. TRAXLER: I'm sorry. Is that
5 objection from you, Chip?

6 MR. SCHRONCE: No. It was from
7 John Schronce.

8 MR. TRAXLER: I'm sorry. What was --
9 what was the comment? I didn't get it.

10 MR. SCHRONCE: Okay. First of all,
11 same instruction to the extent that it calls for
12 privileged communications.

13 MR. TRAXLER: Sure, sure.

14 MR. SCHRONCE: Secondly, asked and
15 answered because he's already testified to
16 Mr. Barringer's role as of 2015.

17 MR. TWOMBLEY: I think he also said
18 he didn't know.

19 BY MR. TRAXLER:

20 Q. That's not my question. The question is:
21 No matter what he was doing, was he competent to run
22 the day-to-day business operations of CFRC in 2015
23 when you last saw him?

24 MS. KIRK: I have objected to that as
25 well because I believe it's been answered.

ROA 005910

Page 210

1 MR. SCHRONCE: And same instruction
2 and objection.

3 BY MR. TRAXLER:

4 Q. Okay. Now you can answer.

5 A. I think that throughout in all of my
6 interactions with Paul Barringer, he was competent to
7 run the day-to-day operations of the company.

8 Q. Okay. Thank you. Thank you. Thank you.
9 Let's see.

10 MS. KIRK: Five minutes on the tape.
11 You want to...

12 MR. TRAXLER: Yeah. I'll take a
13 break now. This will probably be a good place. I
14 can go to my car and get another 32 notebooks.

15 THE VIDEOGRAPHER: We are going off
16 record. This is the end of media unit three. The
17 time is 4:12 p.m.

18 (Off the record.)

19 THE VIDEOGRAPHER: We are back on
20 record. This is the beginning of media unit four.
21 The time is 4:31 p.m.

22 BY MR. TRAXLER:

23 Q. Mr. Jolley, during the break, did you talk
24 to anybody?

25 A. I did not.

ROA 005911

Page 211

1 Q. Okay. Thank you. When you met with
2 Paul Barringer in 2011, do you recall when your first
3 meeting with him was?

4 A. I believe it was in November of 2011.

5 Q. And was that, in your opinion, the first
6 contact you had had with him since your review of his
7 estate planning documents in 2008 or 2009?

8 MS. KIRK: Object to form.

9 MR. TWOMBLEY: I would ask that you
10 only answer with respect to estate planning if you
11 had any other contact with him.

12 THE WITNESS: That was the -- between
13 2009 and November of 2011, that was the only contact
14 I had.

15 BY MR. TRAXLER:

16 Q. I'm sorry. I apologize. The first
17 contact is in 2009 -- was in November of 2011; is
18 that correct?

19 A. The first contact with respect to estate
20 planning matters from 2009. The next contact with
21 Mr. Barringer was in that fall of 2011, I believe
22 November of 2011.

23 Q. Did you do any other legal work for him in
24 that time period?

25 MR. TWOMBLEY: I would just instruct

ROA 005912

Page 212

1 you to answer yes or no.

2 MS. KIRK: Is everybody else on?

3 Okay. Nevermind.

4 THE WITNESS: The question was: Did
5 I do any other legal work for Paul Barringer between
6 2009 and the beginning of my representation of him in
7 estate planning matters of November 2011?

8 BY MR. TRAXLER:

9 Q. Yes, sir.

10 A. No.

11 Q. Did you do any legal work for Merrill
12 Barringer during that same time period?

13 MR. TWOMBLEY: Same objection.
14 Actually, I'm going to instruct him not to answer as
15 to -- as to any part of that question. I think it's
16 privileged, her documents. She's not deceased.
17 There's no testamentary exception of the
18 attorney-client privilege. So I instruct you not to
19 answer.

20 BY MR. TRAXLER:

21 Q. Did you meet with Merrill Barringer at any
22 time between -- strike that.

23 Did you see Merrill Barringer at any time
24 between 2009 and November 2011?

25 A. Yes.

ROA 005913

Page 213

1 Q. Where did you see her?

2 A. I saw her at Sea Pines Country Club.

3 Q. Okay. Any other time?

4 A. I saw her at another restaurant on the
5 island.

6 Q. All right. Did you talk to her on the
7 telephone at any time between 2009 and November 2011?

8 A. No.

9 Q. All right. Tell me how it came about that
10 Mr. Barringer came to see you in November of 2011 for
11 estate planning work.

12 A. Mr. Barringer contacted my office, made an
13 appointment to sit down with me.

14 Q. All right. And you saw him in
15 November 2011, correct?

16 A. I did.

17 Q. All right. And who was in that meeting?

18 A. I had Mr. Barringer and Ms. Barringer.

19 Q. All right. And how long -- do you know
20 how long you met with them?

21 A. I don't remember.

22 Q. Would that be reflected in the time sheets
23 if they still exist at McNair?

24 A. I think it would be reflected in the time
25 entries.

ROA 005914

Page 214

1 Q. It would be reflected in the invoices to
2 Mr. and Ms. Barringer, correct?

3 A. Yeah. I think so.

4 Q. All right. Nobody else in the meeting?

5 A. No. In that meeting -- that meeting it
6 would -- Mr. Slane may have -- may have been
7 involved, but I think the answer is that initial
8 meeting I just met with Mr. and Ms. Barringer.

9 Q. All right. Tell me what was discussed in
10 that meeting.

11 MR. TWOMBLEY: I'm going to let him
12 answer that question with respect to -- well, I think
13 you're entitled to an answer for Mr. Barringer. But
14 for Ms. Barringer, I'm going to let him answer
15 subject to agreement we're not waiving any type of
16 privilege or protection. Okay?

17 BY MR. TRAXLER:

18 Q. All right. Go ahead.

19 A. We discussed their existing planning, and
20 we discussed what their objectives were for their
21 planning going forward, and he discussed generally
22 the assets in their estate.

23 Q. All right. Did Ms. Barringer participate
24 much in the conversation?

25 A. Yes. Ms. Barringer and Mr. Barringer

ROA 005915

Page 215

1 participated in the conversation.

2 Q. When you discussed Mr. Barringer's estate
3 planning, did you have Ms. Barringer step out of the
4 room?

5 A. Initially, I met with Mr. and
6 Ms. Barringer and we talked about their estate
7 planning generally in that information gathering
8 point in the representation.

9 Q. All right. But when you talked to
10 Mr. Barringer about what Mr. Barringer wanted to do,
11 did you have Ms. Barringer leave the room?

12 A. I did not have Ms. Barringer leave the
13 room in that meeting.

14 Q. And when you talked to Ms. Barringer about
15 her estate planning, did you put Mr. Barringer out of
16 the room?

17 A. I did not.

18 Q. Did you discuss with them the possible
19 conflicts of interest in representing them both with
20 respect to estate planning?

21 MS. KIRK: I object to the form. You
22 also -- it went out. So you need to repeat it.

23 BY MR. TRAXLER:

24 Q. Okay. When you met with Mr. and
25 Ms. Barringer the first time in November of 2011, did

ROA 005916

Page 216

1 you discuss with them potential conflicts of interest
2 representing them both?

3 MR. TWOMBLEY: Object to the form.

4 MS. KIRK: Object to the form.

5 THE WITNESS: I discussed -- yeah. I
6 did in the fall of 2011, I discussed a potential
7 conflict of interest.

8 BY MR. TRAXLER:

9 Q. Did you have them sign a conflict waiver?

10 MS. KIRK: Object to form.

11 THE WITNESS: I thought they signed
12 an engagement letter that included a waiver of
13 conflict of interest.

14 BY MR. TRAXLER:

15 Q. And if they had signed one, is there any
16 reason to think that would not have been produced
17 pursuant to the subpoena sent to McNair?

18 MR. TWOMBLEY: Object to the form --

19 MS. KIRK: Object to form.

20 MR. TWOMBLEY: -- of the question.

21 THE WITNESS: I don't -- I don't
22 think so.

23 BY MR. TRAXLER:

24 Q. As far as you know, when you left McNair
25 and went to your own firm, that letter of engagement

ROA 005917

Page 217

1 would have existed?

2 MS. KIRK: Object to the form.

3 THE WITNESS: I don't know to the
4 extent that letter of engagement existed.

5 BY MR. TRAXLER:

6 Q. During that initial meeting, were you
7 representing both Mr. Barringer and Ms. Barringer?

8 A. I was.

9 Q. What kind of potential conflicts did you
10 disclose to them?

11 A. Well, I --

12 MS. KIRK: Object to form.

13 BY MR. TRAXLER:

14 Q. Go ahead. You can answer.

15 A. I discussed the fact that in any
16 representation where I represented spouses that there
17 was a potential conflict of interest. And that by
18 engaging me to represent the two of them with respect
19 to their estate planning, they waived that -- any
20 privilege amongst the three of us. And that if at
21 any time in the future a conflict of interest arose
22 between Mr. and Ms. Barringer, I would be unable to
23 represent either party adversely to the other.

24 Q. In that initial meeting, was Merrill Light
25 there?

ROA 005918

Page 218

1 A. No.

2 Q. Did you ever discuss that meeting with
3 Merrill Light?

4 A. I didn't discuss that meeting with
5 Merrill Light.

6 Q. Do you know if anybody did?

7 A. I sus-- I do not know that.

8 Q. Okay. What do you suspect?

9 MS. KIRK: Object to the form.

10 MR. TWOMBLEY: Same -- same
11 objection.

12 MR. MOLSTER: Wait. Whoa, whoa,
13 whoa. Object to the form. If you're talking about
14 Merrill Light and conversations with Mr. Jolley, I'm
15 going to instruct him not to answer unless, A, we
16 have an agreement and, B, I get a chance to talk to
17 him before he answers the question. Can you say the
18 question again? I apologize for being distracted.

19 MR. TRAXLER: He had testified
20 that -- I asked him about communication with
21 Merrill Light, and I think the question was had they
22 discussed the meeting with Merrill Light. He started
23 off to say "I suspect," but then he said, I don't
24 recall" or something to that effect. My question to
25 him is: Is he aware of anybody discussing that

ROA 005919

Page 219

1 November 2011 meeting in his office, having that
2 discussion with Merrill Light?

3 MR. MOLSTER: And I'm going to still
4 instruct him not to answer. If you want me to take a
5 break and talk to him about it, I'm willing to do it.
6 But on the current record, I'm going to instruct him
7 not to answer.

8 MR. TRAXLER: On the basis of
9 privilege?

10 MR. MOLSTER: Yes, sir. I mean,
11 you're asking him about conversations he had with his
12 client, right? I'm not --

13 MR. TRAXLER: He already answered the
14 question that he did not discuss that meeting with
15 Merrill Light.

16 MR. MOLSTER: So then what are we
17 doing?

18 BY MR. TRAXLER:

19 Q. All right. Let me back up. Mr. Jolley,
20 did you ever discuss that meeting with Paul and
21 Merrill Barringer with Merrill Light?

22 MR. MOLSTER: Yes or no. Subject to
23 our agreement, yes or no?

24 MR. TRAXLER: Yeah.

25 MR. MOLSTER: Okay. You with us,

ROA 005920

Page 220

1 Mr. Jolley?

2 THE WITNESS: I -- no.

3 BY MR. TRAXLER:

4 Q. No, you did not discuss that meeting with
5 her?

6 A. I did not discuss that meeting with
7 Merrill Light.

8 Q. Did you discuss that meeting with
9 Randy Light?

10 MR. TRAXLER: Same agreement, Chip,
11 if you want to.

12 MR. MOLSTER: Okay. Go ahead.

13 THE WITNESS: I did not.

14 BY MR. TRAXLER:

15 Q. Do you know if Paul Barringer or Merrill
16 Barringer discussed the substance of that meeting
17 with either Randy Light or Merrill Light?

18 MR. TRAXLER: Same agreement?

19 MR. MOLSTER: Same agreement?

20 MR. TRAXLER: Yeah.

21 THE WITNESS: I don't know.

22 BY MR. TRAXLER:

23 Q. Now, you started to answer the question
24 with "I suspect." What were you suspecting?

25 MR. MOLSTER: Same agreement?

ROA 005921

Page 221

1 MR. TRAXLER: Yes.

2 MR. MOLSTER: I need to talk to him
3 about this. You're talking about whether or not he
4 had a conversation with Merrill Light?

5 MR. TRAXLER: Well, with anybody. He
6 started to say "I suspect," and then he said "I don't
7 know." And I'm asking him what he was getting ready
8 to say.

9 MR. MOLSTER: I'm not going to let
10 him answer it unless I talk to him first to find out
11 what's behind door No. 3.

12 MR. TRAXLER: That is based on
13 privilege, correct?

14 MR. MOLSTER: Yes, sir.

15 MR. TRAXLER: Okay. That's fine.

16 BY MR. TRAXLER:

17 Q. Did you ever discuss any estate planning
18 of Paul Barringer at any point in time with
19 Merrill Light?

20 MR. MOLSTER: I'm going to instruct
21 him not to answer. I can talk to him, if you like.
22 I can take a break and talk to him, if you like.

23 MR. TRAXLER: Well, I think the
24 question -- he can answer yes or no. I don't have to
25 have an agreement with you. It's not a waiver.

ROA 005922

Page 222

1 MR. MOLSTER: I think it's too close.
2 Sorry. You know as well as anybody in this room
3 where the parameters of attorney-client privilege and
4 waivers and sometimes depending on a particular judge
5 on a particular day. I just -- I can't run the risk
6 of somebody is going to decide down the road that
7 it's waived.

8 MR. TRAXLER: I understand.

9 BY MR. TRAXLER:

10 Q. Did you ever have any --

11 MR. TRAXLER: If I asked this
12 question, I apologize, Chip.

13 BY MR. TRAXLER:

14 Q. Did you ever have any discussions at any
15 point in time with Randy Light about Paul Barringer's
16 estate plan or Merrill Barringer's estate plan?

17 MR. MOLSTER: Same instructions.

18 MS. KIRK: Object to form.

19 MR. TRAXLER: And that's, again,
20 based on privilege, right, Chip?

21 MR. MOLSTER: Yes, sir. But I'm
22 happy to talk to him. If you want me to take a break
23 and talk to him and see if I can --

24 MR. TRAXLER: Yeah. Let's take a
25 break and talk to him. Might as well see if we can

ROA 005923

Page 223

1 save ourselves some time.

2 MR. MOLSTER: Let's figure out what's
3 the question. Let me just make sure. If you've got
4 others that you want to give me a glimpse of, I'm
5 happy. The question is: Did he ever -- essentially,
6 did he ever talk to Merrill or Randy about estate
7 planning issues relating to Mr. Barringer and
8 Ms. Barringer?

9 MR. TRAXLER: Did he ever discuss it
10 with him and it will be a follow-up -- there will be
11 a number of follow-up questions.

12 MR. MOLSTER: Okay.

13 MR. TRAXLER: If you want to -- if
14 you want to talk to him about the scope of those
15 conversations, if any, before I get into it, that is
16 fine. You understand, Mr. Jolley, these discussions
17 are only for -- (inaudible.)

18 MS. KIRK: You totally went out
19 there, Tom.

20 MR. TRAXLER: I will remind you,
21 Mr. Jolley, that under the rules you can only discuss
22 your testimony with Mr. Molster -- (inaudible.)

23 MR. TWOMBLEY: Tom, your mic was -- I
24 guess it was some type of issues. It's not how close
25 you are to it. It was just, I guess, a hiccup in the

ROA 005924

Page 224

1 internet feed. So you -- try again, please.

2 MR. TRAXLER: Okay. Let me try this
3 again. Mr. Jolley, you have the right to confer
4 with -- actually, I'm not sure you do, but I'm going
5 to let you do it -- confer with Mr. Molster about
6 whether or not there is a privilege for him to
7 assert. Mr. Molster, I will allow you to confer with
8 him. Right now you don't represent him. I don't
9 know what right you have to consult with him on a
10 privilege, but I'll give you that courtesy if we can
11 shortcut this a little bit.

12 MR. MOLSTER: I appreciate that. I
13 think I do have the right to talk him since he has my
14 client's privileges. They belong to my client.

15 MR. TRAXLER: That's fine. You and I
16 don't need to --

17 MR. MOLSTER: We don't need to debate
18 it. All right. Maybe the way to do this is --
19 Ashley, if you can give Mr. Jolley the dial-in
20 number, dial in, and then Alice and I will dial in
21 and talk to him and then we'll come back as quick as
22 we can and sort this out. You want to give me any
23 look at the future questions or do you want to go --
24 which is fine. You can go question by question, Tom.
25 Whatever you want to do.

ROA 005925

Page 225

1 MR. TRAXLER: I don't think there's
2 any question, Chip, that there have been
3 communications. We've got documents of
4 communications about Paul and Merrill's estate plan
5 with the Lights. You can go into that, if you want
6 to, with him. I would ask that Mr. Twombly and
7 others be out of the room when y'all are having that
8 conversation.

9 MR. MOLSTER: That's fine.

10 MR. TRAXLER: Ariail can be in there
11 if she wants to. But, otherwise, this is a private
12 conversation just to kind of shortcut things.

13 MR. MOLSTER: Okay.

14 THE VIDEOGRAPHER: We are going off
15 record. The time is 4:48 p.m.

16 (Off the record.)

17 THE VIDEOGRAPHER: We are back on
18 record. The time is 5:07 p.m.

19 BY MR. TRAXLER:

20 Q. All right. Mr. Jolley, I think my
21 question to you had been whether you had ever
22 discussed with Merrill Light or Randy Light the
23 estate planning of Paul Barringer or
24 Merrill Barringer?

25 MR. MOLSTER: And could I ask you, do

ROA 005926

Page 226

1 you mind splitting that up between Randy and Merrill
2 for purposes of this exercise, Tom?

3 BY MR. TRAXLER:

4 Q. Did you ever have any discussions with
5 Merrill Light concerning Paul Barringer or
6 Merrill Barringer's estate planning from the time
7 period of 2011 all the way at least to
8 Mr. Barringer's death and the present time with
9 Ms. Barringer?

10 MR. MOLSTER: And we have our
11 agreement?

12 MR. TRAXLER: It doesn't constitute a
13 blanket waiver?

14 MR. MOLSTER: Sir?

15 MR. TRAXLER: Yes.

16 MS. PAYLOR: We're only asking
17 Mr. Barringer.

18 MR. TRAXLER: Y'all are instructing
19 him not to answer with regard to Merrill Barringer?

20 MR. TWOMBLEY: I didn't hear you
21 ask --

22 MS. PAYLOR: That privilege is still
23 there. I mean, she's not dead.

24 MR. MOLSTER: Wait a second. We're
25 not enforcing Ms. Barringer's privilege. That's

ROA 005927

Page 227

1 Ashley's.

2 MR. TWOMBLEY: Well, I think -- I
3 think the question is whether or not he had any
4 discussions with Randy or Merrill Light, correct?

5 MR. MOLSTER: We're limiting it to --
6 right now we're limiting it to Merrill Light. But
7 my -- my -- my understanding of the question is that
8 it was whether or not he ever had any discussions
9 from 2011 through Mr. Barringer's death with
10 Mr. Barringer or Ms. Barringer about
11 Mr. Barringer's -- either Mr. Barringer's estate
12 plans or their estate plans. And I think what Alice
13 is suggesting is that he shouldn't be answering the
14 question with respect to Ms. Barringer, only with
15 respect to Mr. Barringer because of the testamentary
16 exception. And now I've exhausted my knowledge of
17 the testimony exception. But I -- you know, I will
18 let him answer the question with respect to
19 Merrill Light -- subject to our agreement, I'll let
20 him answer the question with respect to Merrill
21 Light, just Merrill Light, and then you all have to
22 sort out whether it includes with -- regarding
23 Mr. Barringer's estate planning or both, and I assume
24 you just want Mr. Barringer's estate planning.
25

ROA 005928

Page 228

1 BY MR. TRAXLER:

2 Q. My question, Mr. Jolley is: Did you ever
3 have any discussions with Merrill Light at any point
4 in time about -- (inaudible).

5 THE COURT REPORTER: I'm sorry.

6 Someone was --

7 MR. MOLSTER: Subject to our
8 agreement, Mr. Jolley, you can answer yes or no.

9 THE WITNESS: I'm sorry.

10 Mr. Traxler, your question was covered in a flurry of
11 paper -- the sound of paper. So I got part of that,
12 but not all of that.

13 BY MR. TRAXLER:

14 Q. At any point in time, did you ever discuss
15 with Merrill Light the estate planning of Paul
16 Barringer?

17 MR. MOLSTER: Per the agreement, you
18 may answer yes or no.

19 THE WITNESS: Yes.

20 BY MR. TRAXLER:

21 Q. How many times? Subject to --

22 MR. TRAXLER: This line of
23 questioning, Chip, will be subject to that agreement.

24 THE WITNESS: Thank you.

25

ROA 005929

Page 229

1 BY MR. TRAXLER:

2 Q. How many times?

3 A. Two or three.

4 Q. And what was the time frame of those
5 conversations?

6 A. My recollection of those conversations
7 would have been in the spring of 2012.

8 Q. Did Mr. Barringer authorize you to discuss
9 his estate planning with his daughter, Merrill Light?

10 A. Yes.

11 Q. Did he place any limitations on that
12 discussion?

13 A. He did not.

14 Q. What was the purpose of him giving you
15 authority to discuss his estate plan with Merrill
16 Light?

17 MR. MOLSTER: Object to the form.

18 BY MR. TRAXLER:

19 Q. You can answer.

20 A. I think he wished for me to talk to
21 Merrill Light about her new roles she might have
22 under his planning.

23 Q. Was there any other purpose of you having
24 discussions with Merrill Light that you can remember
25 about Paul Barringer's estate plan?

ROA 005930

Page 230

1 MR. MOLSTER: Object to the form.

2 MS. KIRK: Object to form.

3 THE WITNESS: I'm sorry. Mr.

4 Traxler, are you still talking about the time period
5 of 2011 through 2015?

6 BY MR. TRAXLER:

7 Q. Yes.

8 A. No. I think that's what Ms. -- I think
9 Ms. Light, as a trustee, had a copy of some of those
10 documents during that time period, but I believe
11 the -- the communication I had with Ms. Light was
12 really in 2012 -- the beginning of 2012. Initially
13 that was related to Mr. -- Ms. Light's role as -- in
14 the new documents.

15 Q. Did you have any discussion with her in
16 2012 about Mr. Barringer's plan beyond her being
17 named in the documents and the role that she would
18 play in those documents?

19 A. Not beyond the fact that those documents
20 were being drafted -- being prepared.

21 Q. Did she ask you why she was being named at
22 all?

23 MR. MOLSTER: Wait a second. I think
24 that's a question that I think she's asking her
25 lawyer. I think that's privileged.

ROA 005931

Page 231

1 BY MR. TRAXLER:

2 Q. Mr. Jolley, were you having these
3 conversations with her as Paul Barringer's lawyer or
4 Merrill Light's lawyer?

5 A. I'm not sure.

6 Q. Well, how did -- these conversations, how
7 did you ever distinguish who you were representing?

8 MS. KIRK: I object to the form.

9 MR. TWOMBLEY: Same objection.

10 MS. KIRK: To the extent --

11 BY MR. TRAXLER:

12 Q. These conversations, subject to their
13 objections, how did they -- how did you know which
14 hat you were wearing?

15 MS. KIRK: To the extent that you're
16 trying to dig into something outside of the
17 testamentary exception, I would instruct him not to
18 answer it.

19 BY MR. TRAXLER:

20 Q. Go ahead and answer it subject to that
21 instruction.

22 MR. MOLSTER: Object to form.

23 THE WITNESS: I -- I think that -- to
24 the extent that Mr. Barringer asked me and authorized
25 and directed me to communicate with Ms. Light about

ROA 005932

Page 232

1 her new roles, I think that would be in my capacity
2 as Mr. Barringer's lawyer.

3 BY MR. TRAXLER:

4 Q. All right. So when you were telling
5 Merrill Light about his estate planning, you were not
6 telling her as your client. You were telling her
7 because you were the lawyer for Mr. Barringer in
8 those conversations. Isn't that fair?

9 MS. KIRK: Object to form.

10 THE WITNESS: I think that's correct.

11 BY MR. TRAXLER:

12 Q. All right. In these conversations, did
13 Merrill Light provide any input as to Mr. Barringer's
14 estate plan?

15 MR. MOLSTER: Same agreement?

16 MR. TRAXLER: Yeah.

17 MR. MOLSTER: Continuing?

18 BY MR. TRAXLER:

19 Q. Let me back up. Did you have a
20 conversation -- did she ever give you any suggestions
21 or recommendations or instructions with regard to
22 Mr. Barringer's estate plan?

23 A. No.

24 Q. She never provided any input in what he
25 ought to do; is that correct?

ROA 005933

Page 233

1 MS. KIRK: Object.

2 BY MR. TRAXLER:

3 Q. Is that what you're telling me?

4 MS. KIRK: He's answered that.

5 THE WITNESS: Mr. Traxler, are you
6 asking again whether Ms. Light gave me input with
7 respect to Mr. Barringer's estate plan?

8 BY MR. TRAXLER:

9 Q. Yes.

10 A. I never saw Ms. Light give any input to
11 Mr. Barringer's estate plan.

12 Q. She never discussed it with you in terms
13 of recommendations or suggestions; is that correct?

14 MR. MOLSTER: Object to form.

15 MS. KIRK: Object again.

16 THE WITNESS: I'm not sure -- I don't
17 understand that question. I need you to rephrase or
18 repeat it for me, please.

19 BY MR. TRAXLER:

20 Q. Did she ever make any suggestions to you
21 as to what Mr. Barringer ought to do with his estate
22 either while he was alive or dead?

23 MR. TWOMBLEY: Object to the form.

24 MS. KIRK: Objection.

25 MR. TWOMBLEY: Asked and answered.

ROA 005934

Page 234

1 THE WITNESS: Am I now supposed to
2 answer that question?

3 MR. TWOMBLEY: Yeah.

4 MS. KIRK: Yes.

5 MR. TWOMBLEY: Again.

6 THE WITNESS: Yeah. No.

7 BY MR. TWOMBLEY:

8 Q. All right. Did you ever discuss Paul
9 Barringer's estate plans with Randy Light?

10 MR. MOLSTER: Same agreement?

11 MR. TRAXLER: Yeah.

12 THE WITNESS: No.

13 BY MR. TRAXLER:

14 Q. You gave Randy Light the documents on or
15 about July 20 to take to Ms. Light, didn't you? You
16 testified to that earlier in regard to Mr. Twombley's
17 question.

18 MR. TWOMBLEY: Object to the form of
19 the question.

20 MS. KIRK: Same objection.

21 THE WITNESS: I believe I...

22 MR. MOLSTER: Same objection.

23 THE WITNESS: I believe I testified
24 that pursuant to Mr. Barringer's direction, that I
25 made the change to his documents and put them at the

ROA 005935

Page 235

1 front desk or arranged for them to be put at the
2 front desk for Mr. Light to pick up pursuant to
3 Mr. Barringer's direction.

4 BY MR. TRAXLER:

5 Q. All right. Let me show you just one
6 document. Look at the notebook you've got there in
7 front of you and I want to look at tab 7, Bates No.
8 0297.

9 MR. MOLSTER: Sorry. Could you give
10 it -- 0297?

11 MR. TRAXLER: Yes.

12 MR. MOLSTER: Does it have anything
13 to do with Merrill Light?

14 MR. TRAXLER: No.

15 MS. PAYLOR: No.

16 THE WITNESS: I'm sorry. I have page
17 0297 in front of me.

18 BY MR. TRAXLER:

19 Q. All right. This is an invoice from McNair
20 Law Firm to Paul Barringer dated December 12, 2013
21 for work that McNair did for Mr. Barringer, correct?

22 A. That is what this looks like.

23 Q. And it's estate planning work that you did
24 for Mr. Barringer or your law firm did for
25 Mr. Barringer, correct?

ROA 005936

Page 236

1 A. Yes, sir.

2 Q. And on July 18, 2012, the first entry
3 shows that you prepared a restatement for Paul
4 Barringer's revocable trust agreement and you had a
5 telephone conference with Randy Light. What was that
6 conference about?

7 MR. TWOMBLEY: Object to the form.
8 Asked and answered.

9 MS. KIRK: Object to the form.

10 BY MR. TRAXLER:

11 Q. What was that conversation?

12 MR. TWOMBLEY: Same objection.

13 MR. MOLSTER: Hold for a second. I'm
14 sorry. I may need to be -- you're asking him about a
15 conversation that Jolley had with Randy Light, his
16 client?

17 MS. PAYLOR: He's already testified
18 about it. He's already testified about it. Not his
19 client.

20 MR. TRAXLER: Okay. How about y'all
21 don't coach him. Okay? You got an objection, just
22 state it. You got an inquiry, state it. But let's
23 not coach Mr. Jolley.

24 MR. MOLSTER: I apologize. I don't
25 think I'm coaching him. I'm just trying to figure

ROA 005937

Page 237

1 out what the question you're asking --

2 MS. PAYLOR: I'm not coaching.

3 MR. MOLSTER: -- whether Mr. Jolley
4 had a conversation with my client/his client, Randy
5 Light; is that correct?

6 MR. TRAXLER: Do you have -- Chip, do
7 you have the documents in front of you?

8 MR. MOLSTER: I'm looking at "Prepare
9 restatement of Paul Barringer's revocable trust
10 agreement, telephone conference with Randy Light."
11 That's a telephone conference between my client --

12 MR. TRAXLER: I'm asking Mr. Jolley
13 what that conversation was about.

14 MR. MOLSTER: Right. And I'm not
15 going to let him answer that question unless you --
16 unless I can talk to him and find out what the answer
17 is. I don't know if it's privileged or not. If it
18 doesn't -- you know, I'm not unreasonable, but I
19 can't let him waive the privilege, even if you give
20 me the agreement, without knowing what the -- whether
21 or not there's a potential -- whether there's
22 attorney-client privilege under that answer.

23 MR. TRAXLER: No. Given the coaching
24 that's going on, Chip, I think I just need to --
25 either you let him answer or assert the privilege and

ROA 005938

Page 238

1 we'll deal with it. Okay?

2 THE WITNESS: Tom, I'm trying to be
3 agreeable here and work with you, but I can't just
4 stumble into a waiver without knowing about it. So I
5 think what the rules provide is that I can talk to
6 the witness to find out whether or not there's a
7 privilege issue that I need to protect. If you want
8 to refuse me that opportunity, you leave me no choice
9 but to instruct him. If that's what you're trying to
10 get --

11 MR. TRAXLER: I'll let you have that
12 opportunity. I'm just worried about whether somebody
13 is going to try to coach him.

14 MR. MOLSTER: Listen, you can ask him
15 about the last conversation I had with him. I'm not
16 trying to coach him. It's about privileges.

17 MR. TRAXLER: You go talk to him and
18 I trust that nobody tries to coach him. You go talk
19 to him about whether to assert privilege or not.

20 MR. MOLSTER: Same procedure as last
21 time. Thank you, Tom.

22 MR. TRAXLER: No problem.

23 THE VIDEOGRAPHER: We are going off
24 the record. The time is 5:20 p.m.

25 (Off the record.)

ROA 005939

Page 239

1 THE VIDEOGRAPHER: We are back on
2 record. The time is 5:23 p.m.

3 BY MR. TRAXLER:

4 Q. All right. Mr. Jolley, the question was
5 what did you talk about -- talk to Randy Light about
6 on July 18, 2012?

7 A. I talked to -- I talked to Randy Light
8 about picking up the document that I had prepared for
9 Mr. Barringer.

10 Q. Otherwise you didn't ever have any
11 conversations with Randy Light about Paul Barringer's
12 estate plan, correct?

13 A. That is --

14 MR. TWOMBLEY: Object to the form.

15 MS. KIRK: Object to the form.

16 BY MR. TRAXLER:

17 Q. Did I -- did I understand that answer or
18 recall that answer correctly?

19 A. I did not discuss Mr. Barringer's estate
20 plan with Randy Light.

21 Q. Did Mr. Barringer ever give you permission
22 to discuss his estate planning with Randy Light
23 regardless of whether you actually discussed it with
24 Randy Light or not?

25 A. I don't recall Mr. Barringer expressly

ROA 005940

Page 240

1 authorizing me to discuss his estate plan with
2 Randy Light.

3 Q. Did you ever discuss with Merrill Light at
4 any point in time the estate planning for Merrill
5 Barringer?

6 MR. MOLSTER: Object to the form.

7 MR. TWOMBLEY: Yeah. I -- I'm happy
8 to talk about why you think you're entitled to ask
9 that question in this case. If you don't want to do
10 that, I will instruct him not to answer.

11 MR. TRAXLER: Well, part of our cause
12 of action in the lawsuit is that there was an
13 agreement in coordination between Paul Barringer or
14 Merrill Barringer on estate planning, the wills, and
15 all the testamentary instruments. And if they have a
16 coordinated estate planning, I think I have the right
17 to go into what she understood the testamentary
18 intent to be -- or her testamentary intent to be.

19 MR. TWOMBLEY: Tell me the question
20 again.

21 MR. TRAXLER: Did Mr. Jolley ever
22 discuss with Randy Light, Merrill Barringer's estate
23 plan?

24 MR. TWOMBLEY: I don't think that's
25 got anything to do with what you just talked about,

ROA 005941

Page 241

1 but I'll be happy to -- I'll be happy to --

2 MR. TRAXLER: -- not to answer the
3 question.

4 MR. TWOMBLEY: Okay. Well, what I'm
5 going to do is -- I think I'm going to instruct him
6 not to answer.

7 MR. TRAXLER: All right. Is that
8 instruction based on an assertion of a privilege?

9 MR. TWOMBLEY: Yes. I think it's
10 partially based on a privilege. I think it's also
11 partially based on the fact that I don't think that's
12 got anything to do with this case. I don't think
13 you're entitled to go into it.

14 BY MR. TRAXLER:

15 Q. All right. Mr. Jolley, did you discuss
16 the estate planning of Paul Barringer with Mr. Slane?

17 A. Yes.

18 Q. Did Mr. Barringer give you permission to
19 discuss his estate planning with Mr. Slane?

20 A. He did.

21 Q. What was the purpose of you discussing
22 Paul Barringer's estate plan with Mr. Slane?

23 A. Mr. Barringer relied on Robert Slane to
24 give him financial advice, and I believe he wanted me
25 to communicate with Robert Slane so that Mr. Slane

ROA 005942

Page 242

1 and I could help advise Mr. Barringer with respect to
2 his estate planning.

3 Q. Okay. And when did Mr. Slane first get
4 involved in these discussions?

5 A. I think Mr. Slane was involved early on,
6 that is, in 2011, and was involved certainly with
7 these discussions through the signing of these
8 documents in 2012 -- that is, in February of 2012.

9 Q. All right. And were there any limitations
10 put on you by Mr. Barringer as to what you could tell
11 Mr. Slane or not tell him?

12 A. There were no limitations placed on me
13 with communications with Robert Slane.

14 Q. Was Robert Slane an agent of yours in
15 these conversations?

16 MS. KIRK: Object to the form.

17 MR. TWOMBLEY: Same objection. Calls
18 for a legal conclusion.

19 THE WITNESS: I don't believe
20 Robert Slane was an agent of mine.

21 BY MR. TRAXLER:

22 Q. Did you discuss the details of
23 Paul Barringer's estate planning with Mr. Slane as to
24 what you were planning to do?

25 A. Mr. Slane was a part of the conversations

ROA 005943

Page 243

1 about the details of Mr. Barringer's estate plan.

2 Q. All right. And did Mr. Slane make
3 suggestions or ideas as to what his estate plan might
4 look like or what you should consider?

5 A. He did.

6 Q. Okay. And did you send drafts of estate
7 planning documents to Mr. Slane to review prior to
8 their execution?

9 A. I believe --

10 MS. KIRK: Object to form. You can
11 answer it.

12 THE WITNESS: I believe so.

13 BY MR. TRAXLER:

14 Q. Did Mr. Slane ever express any questions
15 to you about the capacity or competency of
16 Mr. Barringer?

17 A. He did not.

18 Q. Did he ever express any opinions to you
19 about diminished mental capacity on the part of
20 Mr. Barringer?

21 MS. KIRK: Object to the form. He
22 just went through that.

23 THE WITNESS: I don't recall that.

24 BY MR. TRAXLER:

25 Q. Did he ever discuss with you whether there

ROA 005944

Page 244

1 was a possibility of undue influence on
2 Mr. Barringer?

3 A. I don't recall that.

4 Q. Did you have the same conversation -- same
5 types of conversation with Mr. Slane about
6 Ms. Barringer's estate plan?

7 MR. TWOMBLEY: Tom, I want to take a
8 break a second and talk to John about whether or not
9 a privilege should be raised in that. And also I
10 wrote down the time, just so I could ask you about
11 it. But back just a moment ago at 5:27, is what I
12 wrote down, can you tell me again what that question
13 was and let me talk with John about whether or not a
14 privilege needs to be asserted so we can kill two
15 birds with one stone? I think you asked him if he
16 ever talked with Randy Light about Ms. Barringer's
17 estate plan -- planning.

18 MR. TRAXLER: Yeah. You can ask --
19 you can also talk to him about Merrill Light at the
20 same time if you want to.

21 MR. TWOMBLEY: Okay.

22 MR. TRAXLER: Y'all don't go in there
23 and coach him. Just ask him what you need to ask him
24 to decide whether you need to assert a privilege.

25 MR. TWOMBLEY: I'm familiar with my

ROA 005945

Page 245

1 obligations.

2 MR. MOLSTER: Can you -- can you --
3 can you elucidate me on what you're talking about
4 Merrill Light?

5 MR. TRAXLER: Yeah. Whether he had
6 discussions with Merrill Light about Merrill
7 Barringer's estate planning.

8 THE WITNESS: Oh, okay. Thank you.

9 MR. TWOMBLEY: I'm just writing down
10 the question so we got it.

11 MR. TRAXLER: Sure.

12 THE VIDEOGRAPHER: We are going off
13 record. The time is 5:30 p.m.

14 (Off the record.)

15 THE VIDEOGRAPHER: We are back on
16 record. The time is 5:34 p.m.

17 MR. TWOMBLEY: Okay. I talked to
18 John about both of these questions, the one you
19 asked -- answered -- asked previously and the current
20 one pending about Mr. Slane, and we're going to let
21 him answer subject to an agreement we're not waiving
22 any privilege. Is that agreed, Tom?

23 MR. TRAXLER: Well, I'm thinking.
24 Yeah. I'll do that.

25 MR. TWOMBLEY: Okay.

ROA 005946

Page 246

1 MR. TRAXLER: All right. So --

2 MR. GILREATH: You have to get back
3 on the record.

4 MR. TRAXLER: Oh, I thought we are on
5 the record, aren't we?

6 MR. TWOMBLEY: We are.

7 BY MR. TRAXLER:

8 Q. All right. Did you have conversations
9 with Mr. Slane about Merrill Barringer's estate
10 planning?

11 A. To the same extent I had conversations
12 about Mr. Barringer. Yes. To the extent -- the same
13 extent I had conversations about Mr. Barringer's
14 planning.

15 Q. And during this time period, this was --
16 was this in 2011 or are we already in 2012?

17 A. I met with and communicated with the
18 Barringers and Mr. Slane really during that period of
19 November 2011 through -- certainly through February
20 through the spring of 2012.

21 Q. And also into 2014, didn't you?

22 A. I'm sorry. I did. I continued to have
23 communications with Mr. Barringer into 2014 -- excuse
24 me, Mr. Slane.

25 Q. All right. And that was with regard to

ROA 005947

Page 247

1 both Mr. Barringer and Ms. Barringer's estate,
2 correct?

3 A. That is correct.

4 Q. All right. Did you -- when you were --
5 started representing Mr. Barringer and Ms. Barringer
6 with their estate planning and doing the documents in
7 2011, did you discuss with each one of them
8 confidentiality? I know you talked about conflicts,
9 but did you talk about confidentially?

10 MS. KIRK: Object to the form.

11 MR. TWOMBLEY: I'll let him answer
12 for each of them pursuant to our agreement. He's not
13 waiving any privilege.

14 MR. TRAXLER: Okay.

15 THE WITNESS: I did speak about
16 confidentiality as a part of my conversation --
17 further conversation about conflict and the privilege
18 with respect to the two of them.

19 BY MR. TRAXLER:

20 Q. Well, you say privilege. Do you mean by
21 that confidentiality or do you make a distinction --
22 or tell me what you talked to them about.

23 A. Well, I think I described to you what I
24 just said to them --

25 MR. TWOMBLEY: Hold on. Same -- same

ROA 005948

Page 248

1 agreement, Tom?

2 MR. TRAXLER: Yeah.

3 BY MR. TRAXLER:

4 Q. You've already discussed with me the
5 conflicts, and I don't need to replot that with you,
6 Mr. Jolley. But, if you would, tell me what you
7 discussed with them in terms of confidentiality or
8 privilege.

9 MS. KIRK: Object to the form, but go
10 ahead.

11 THE WITNESS: I discussed with them
12 that in spite of the conflict -- or potential
13 conflict, that their information remained
14 confidential and I would treat it in a confidential
15 manner.

16 BY MR. TRAXLER:

17 Q. All right. Now, your initial meeting with
18 them in November 2011, was that at your office?

19 A. I believe so.

20 Q. Nobody else was there, I believe you told
21 me, correct?

22 A. Yeah. That sounds right.

23 Q. Did you ever meet with them about their
24 estate planning in their home?

25 A. I did.

ROA 005949

Page 249

1 Q. When?

2 A. During that time period of November 2011
3 through February of 2012.

4 Q. Did you ever discuss the estate planning
5 of Merrill Barringer or Paul Barringer with Victor?

6 A. No.

7 Q. Did you ever share estate planning
8 documents with Victor for Paul or Merrill Barringer?

9 MS. KIRK: Well -- can you -- I
10 object to the form, I think. I'm not sure I
11 understood what you said, though.

12 MR. TWOMBLEY: Yeah. Can you
13 rephrase the question?

14 BY MR. TRAXLER:

15 Q. Did you ever share with Victor Barringer
16 the estate planning documents for Paul Barringer or
17 Merrill Barringer?

18 A. I don't believe so.

19 Q. All right. Now, after you met with them
20 in November of 2011 --

21 MR. TRAXLER: I don't have COVID.
22 Don't y'all worry about that.

23 BY MR. TRAXLER:

24 Q. In 2011, how many times --

25 MR. TRAXLER: I got vaccinated last

ROA 005950

Page 250

1 night and I'm pulsating with antibodies right now.

2 MR. TWOMBLEY: That's -- that's --
3 that's good because if it gets within about 100 feet
4 of Gilreath, I think he's going to blow over. So...

5 MR. TRAXLER: He may be sick for
6 other reasons, but it ain't going to be COVID.

7 BY MR. TRAXLER:

8 Q. Mr. Jolley, how many times in 2011 did you
9 meet with Paul Barringer or Merrill Barringer about
10 their estate planning?

11 A. I don't recall the number, Mr. Traxler.

12 Q. All right. But those meetings and that
13 work culminated in documents executed after the first
14 of the year, correct?

15 A. That is correct.

16 Q. February 14 or 13 or 12, I believe?

17 A. I believe that's correct.

18 Q. All right. Walk me through the process of
19 from the initial meeting with them to the execution
20 of those documents. How many times did you meet with
21 them? Where? What was discussed?

22 MR. TWOMBLEY: Object to the form of
23 the question.

24 MS. KIRK: I also object to form.

25

ROA 005951

Page 251

1 BY MR. TRAXLER:

2 Q. All right. We'll break it down then.
3 When was the next time you met with them after
4 November 2011?

5 A. I'm not -- I'm not sure.

6 Q. Well, if you look at your invoice, would
7 that tell you?

8 A. It would show me the time -- it would show
9 me, certainly, the times that I billed for time I sat
10 with them.

11 Q. Well, you wouldn't have met with them
12 without billing them, would you?

13 MR. TWOMBLEY: Object to the form of
14 the question. Asked and answered and misstates his
15 testimony.

16 MS. KIRK: Same objection.

17 BY MR. TRAXLER:

18 Q. Okay. You can answer.

19 A. I'm sorry. You're going to have to repeat
20 that question.

21 Q. You would not have met with Mr. or
22 Ms. Barringer about their estate planning without
23 billing them for it, would you?

24 MR. TWOMBLEY: Object to the form of
25 the question. Asked and answered and misstates his

ROA 005952

Page 252

1 prior testimony.

2 MS. KIRK: Same objection.

3 THE WITNESS: I might.

4 BY MR. TRAXLER:

5 Q. You don't know whether you did, huh?

6 A. I know that --

7 MR. TWOMBLEY: Object to the form of
8 the question.

9 MS. KIRK: Same objection.

10 BY MR. TRAXLER:

11 Q. Would it be on your calendar if you met
12 with them?

13 MR. TWOMBLEY: Object to the form of
14 the question.

15 MS. KIRK: I also object to form.

16 BY MR. TRAXLER:

17 Q. You can answer it. Go ahead.

18 A. So generally when I met with Mr. and
19 Ms. Barringer, that would be reflected in my time
20 sheets. And generally to the extent that I met with
21 Mr. and Ms. Barringer, that would be reflected on my
22 calendar.

23 Q. We'll take this meeting by meeting if we
24 need to. How about go to tab 7 for me. Let's look
25 at your invoices, and I'm going to repeat the

ROA 005953

Page 253

1 question: How many times did you meet with
2 Mr. Barringer --

3 A. Okay.

4 Q. -- in 2011 with regard to his estate
5 planning?

6 A. So I'm sorry. You want me to start at tab
7 7?

8 Q. Yes, sir. I want you to look at tab 7,
9 those are the invoices that have been produced to us,
10 to see if that refreshes your recollection as to
11 when -- how many times you met with Mr. Barringer on
12 his estate planning in the year 2011.

13 A. So from this invoice, I see that on
14 11/10/2011 I met with the Barringer's at their home.

15 Q. All right. Let's talk about that one.
16 Who was there?

17 A. My recollection is that the Barringers
18 were there, and I don't remember if Mr. Slane was
19 there at that meeting or not.

20 Q. Was Merrill Light in that meeting?

21 A. I don't believe so.

22 Q. Was Randy Light in that meeting?

23 A. I don't believe so.

24 Q. Mr. Slane in that meeting?

25 A. I don't remember if Mr. Slane was at that

ROA 005954

Page 254

1 meeting or not.

2 Q. All right. You testified that you thought
3 the first meeting in November of 2011 was in your
4 office. Where is that reflected in the invoices?

5 MR. TWOMBLEY: Object to the form.

6 MS. KIRK: Object to the form.

7 THE WITNESS: Yeah. I'm sorry.

8 That's not -- that's not reflected on -- it's not
9 reflected on this invoice.

10 BY MR. TRAXLER:

11 Q. All right. When you met with them in
12 their home on November 10, 2011, what was discussed?

13 A. I'm sorry, Mr. Traxler. In looking at
14 this invoice, I spoke too soon.

15 Q. Okay. If we need to correct the
16 testimony, go ahead.

17 A. So...

18 MR. TWOMBLEY: Object to the form of
19 the question.

20 THE WITNESS: So you asked how many
21 times I met with the Barringers about their estate
22 planning in 2011, and on the bill reflects that I met
23 with them at their home on November 10th of 2011, and
24 further reflects on December 15th I met with the
25 clients -- with Mr. and Ms. Barringer in my office.

ROA 005955

Page 255

1 Q. All right. Thank you. I'm not trying to
2 trap you, Mr. Jolley. I just want to get clear in my
3 mind do you think your first meeting with them about
4 the estate planning in 2011 was at their home or do
5 you think I'm missing a meeting on the invoice?

6 A. No. I think that it's reflected in
7 this -- this November 10th entry on the bill.

8 Q. All right. So when you discussed with me
9 the initial meeting which you thought was at your
10 office, if I ask you about this November 10 meeting,
11 that's the meeting that you have already told me
12 about. It just occurred most probably at their home.

13 MS. KIRK: I object to --

14 BY MR. TRAXLER:

15 Q. Is that correct?

16 MS. KIRK: I object to the form, but
17 you may answer.

18 THE WITNESS: I think that is
19 correct.

20 BY MR. TRAXLER:

21 Q. Okay. All right. Thank you. How do we
22 know how much time you spent at that meeting?

23 A. This -- how do we know?

24 Q. Yes, sir.

25 A. The -- at the -- I can't tell from this

ROA 005956

Page 256

1 invoice how much time I spent at that meeting.

2 Q. Well, when you send an invoice to Mr. and
3 Ms. Barringer, you wouldn't show how much time you
4 were charging them for on each item, would you?

5 MS. KIRK: Object to the form.

6 THE WITNESS: I think this -- this --
7 as far as I know, this bill reflects what was
8 presented to Mr. Barringer.

9 BY MR. TRAXLER:

10 Q. All right. But my question was: You did
11 not show them how much time you were billing them for
12 for these activities -- each of these activities, did
13 you?

14 MS. KIRK: Object to form.

15 THE WITNESS: This bill doesn't
16 reflect the time spent on each entry.

17 BY MR. TRAXLER:

18 Q. All right. Other than your time sheets
19 from which the data was entered into the computer, is
20 there any way to reconstruct or determine how much
21 time you spent with them on November 10, 2011 in
22 their home?

23 A. At the time, that is, in 2012, I
24 certainly -- if -- if I had requested or
25 Mr. Barringer had requested a detailed bill, we could

ROA 005957

Page 257

1 have produced one. I don't know if there's any -- if
2 that's possible to do now.

3 Q. All right. So when you left the meeting
4 on November 10, 2011, what was the plan on going
5 forward then in terms of what you were going to do?

6 A. I -- I don't recall the detail of what
7 my -- our plan was at the end -- conclusion of this
8 November 10 meeting -- November 10, '11 meeting other
9 than generally I met with them as I do and gather
10 information and talk about what might be a plan that
11 met their objectives.

12 Q. How about do me a favor and see if we
13 can't shortcut this a little bit. Look at the time
14 entries on your invoice after November 10. See if
15 that doesn't refresh your recollection as to what you
16 were doing going forward after the November 10
17 meeting.

18 A. Well, I think what I just described is
19 what I did. That is, I did, in fact, go through and
20 look at the materials that had been presented. I
21 did, in fact, prepare diagrams of the proposed
22 planning. I did, in fact, put in place -- at least
23 prepare, as it's reflected, the lifetime documents
24 for the Barringers. And then I sent -- it looks like
25 I sent drafts of those documents to the Barringers.

ROA 005958

Page 258

1 Q. Okay. And did you share the documents
2 with Mr. Slane?

3 A. I don't know if I shared the -- the
4 lifetime document drafts with Mr. Slane at this
5 point.

6 Q. All right. And the lifetime documents are
7 what?

8 A. Health care powers of attorney, durable
9 powers of attorney, and a declaration of a desire for
10 a natural death.

11 Q. All right. And those documents were
12 executed on December 15, 2011 in your office; is that
13 correct?

14 A. That's -- that's -- yeah. That looks like
15 that appointment on 12/15/2011 was when we reviewed
16 those documents and signed those documents.

17 Q. All right. At that point in time, did you
18 record the durable power of attorney?

19 MR. TWOMBLEY: Object to the form of
20 the question.

21 MS. KIRK: I also object to form.

22 BY MR. TRAXLER:

23 Q. Do you understand what I mean when I say
24 "record the durable power of attorney?"

25 MR. TWOMBLEY: For who? Whose

ROA 005959

Page 259

1 durable power of attorney?

2 BY MR. TRAXLER:

3 Q. We'll start with Paul. When did you
4 record the durable power of attorney for Paul?

5 A. I don't know.

6 Q. Did you ever have -- do you know when you
7 recorded it for her?

8 A. I'm sorry. Do you -- are you referring to
9 Ms. Barringer?

10 Q. Yes.

11 A. I do not know when a power of attorney was
12 recorded for Ms. Barringer.

13 Q. Did you discuss with either of the
14 Barringers that their durable power of attorney was
15 not effective until recorded?

16 MR. TWOMBLEY: Object to the form of
17 the question.

18 MS. KIRK: Object to the form.

19 THE WITNESS: I generally discuss the
20 fact that it's not perfected. It's not of record
21 until recorded.

22 BY MR. TRAXLER:

23 Q. For the jury, tell them what you mean that
24 it's not perfected or a record until recorded.

25 A. That is, before a third-party must rely on

ROA 005960

Page 260

1 the power of attorney, then the power of attorney
2 must be recorded in the county courthouse in South
3 Carolina.

4 Q. All right. And why would you wait and
5 record a durable power of attorney later after --
6 much later after it was executed?

7 MS. KIRK: Object to the form.

8 THE WITNESS: Because we didn't
9 perceive it necessary at that time.

10 BY MR. TRAXLER:

11 Q. You recorded it when you perceived it to
12 be necessary; is that correct?

13 MR. TWOMBLEY: Object to the form of
14 the question.

15 MS. KIRK: I object to that.

16 THE WITNESS: Or when it was
17 convenient for the client.

18 BY MR. TRAXLER:

19 Q. Well, which happened here?

20 A. Mr. Traxler, I don't -- as I've said, I
21 don't remember when the powers of attorney were
22 recorded in this case.

23 Q. Let me get you to go, Mr. Jolley, to tab
24 14 for me. I'm looking at Bates No. 0363.

25 MS. PAYLOR: Could you say that

ROA 005961

Page 261

1 again?

2 MR. TRAXLER: Yeah. 0363.

3 MS. PAYLOR: Thank you.

4 THE WITNESS: I'm sorry. I'm at
5 0353.

6 BY MR. TRAXLER:

7 Q. This is the durable power of attorney for
8 Paul Barringer, correct?

9 A. It is.

10 Q. And this durable power of attorney was
11 executed December 15, 2011, correct?

12 A. So, Mr. Traxler, this is 0372?

13 Q. Right.

14 A. Your question is about this power -- the
15 ending on 372?

16 Q. Yes.

17 A. Yeah. That was executed on 15
18 December 2011.

19 Q. Okay. And I believe if you go back to
20 page 0363, you will see that it was not recorded
21 until May 11, 2012, correct?

22 A. Yes.

23 Q. All right. Why?

24 A. Mr. Traxler, it's not my practice nor --
25 nor is it the practice, I think, of estate planners

ROA 005962

Page 262

1 generally to always record powers of attorney when
2 executed.

3 Q. All right. In this particular case, why
4 was it not recorded then; do you know?

5 A. I do not know.

6 Q. Did you discuss with Mr. Barringer or
7 Ms. Barringer that this could not be used with regard
8 to third-parties until it had been filed of record?

9 A. I believe at the conclusion of the signing
10 I mentioned that we could record it or not.

11 Q. All right. And did you tell them the
12 effect of not recording it right away?

13 A. The effect being that it wasn't -- that
14 third-parties didn't have to rely on it?

15 Q. Yeah. Did you discuss that with them?

16 A. I think, yes, I did. I think I did
17 describe that as why we would consider recording or
18 not recording the power of attorney.

19 Q. So what did they tell you about recording
20 it and when to record it?

21 A. Well, from the fact that I didn't record
22 it in December, I would conclude they didn't -- they
23 told me not to record it.

24 Q. All right. So what happened on or about
25 May 11, 2012 to prompt you to record it?

ROA 005963

Page 263

1 A. I was -- I must have been asked to record
2 it at that point.

3 Q. Do you remember that conversation or
4 communication?

5 A. I do not.

6 Q. Do you recall whether that communication
7 came to you from Paul Barringer or someone else?

8 A. I do not.

9 Q. Was this before or after you had had
10 discussions with Merrill Light about his estate
11 planning?

12 MS. KIRK: Object to the form.

13 BY MR. TRAXLER:

14 Q. Was this before or after you discussed
15 Paul Barringer's estate planning with Merrill Light?

16 A. This was --

17 MS. KIRK: Object to the form, but go
18 ahead and answer.

19 THE WITNESS: This was after I
20 discussed with Merrill Light her role with respect to
21 these documents.

22 BY MR. TRAXLER:

23 Q. All right. Did you tell Merrill Light
24 that she was the alternate agent under the power of
25 attorney?

ROA 005964

Page 264

1 MR. MOLSTER: Pursuant to our
2 agreement, Tom?

3 MR. TRAXLER: Yeah.

4 MR. MOLSTER: Go ahead, Mr. Jolley.

5 THE WITNESS: I believe I told
6 Ms. Light each of the roles that she was being asked
7 to fill in Mr. Barringer's estate planning documents.
8 BY MR. TRAXLER:

9 Q. Okay. After you reported it -- strike
10 that.

11 After it was executed, did you give
12 Merrill Light a copy of it?

13 A. I'm sorry, Mr. Traxler. When you say
14 "it," what -- what do you refer?

15 Q. I'm referring to the durable power of
16 attorney that was executed on December 15, 2011.

17 A. I don't believe so.

18 MR. MOLSTER: Continuing agreement,
19 Tom? I'll shut up if have a continuing agreement.

20 MR. TRAXLER: Yeah. Hold on a
21 second, Chip. I somehow lost everything. I hate to
22 get you excited and hopeful.

23 MR. MOLSTER: Exactly.

24 MR. TRAXLER: We lost all of our --
25 do y'all still see each other?

ROA 005965

Page 265

1 MR. TWOMBLEY: Yeah. We see you.

2 MS. KIRK: We can see you.

3 MR. TWOMBLEY: We see you fine.

4 MR. TRAXLER: There we go. All
5 right. I won't do anything to embarrass myself.

6 MR. MOLSTER: Continuing agreement
7 and I'll pipe down.

8 MR. TRAXLER: Yeah. Yes, sir.

9 MR. MOLSTER: Thank you.

10 THE WITNESS: I don't believe that I
11 gave Ms. Light a copy of the power -- of
12 Mr. Barringer's power of attorney.

13 BY MR. TRAXLER:

14 Q. Did you tell her that she was the
15 alternate agent?

16 A. I already testified that I discussed with
17 her the roles her parents were putting -- putting her
18 in or considering putting her in the documents, but I
19 don't --

20 Q. Excuse me. Go ahead.

21 A. But I don't believe that I otherwise
22 informed Ms. Light that she had, in fact, been placed
23 in those roles.

24 Q. All right. Now, I asked you those
25 questions in connection to the execution. Let me go

ROA 005966

Page 266

1 back and ask you now: Did you give a copy of the
2 durable power of attorney executed in December of
3 2011 to Merrill Light after it was recorded?

4 A. I don't -- I don't remember.

5 Q. All right. So if anybody were to suggest
6 any sinister reasons for delaying the recording of
7 this or it not being recorded until May of 2011, you
8 would not be in a position to challenge or refute
9 that; is that correct?

10 MS. KIRK: Object to the form of the
11 question.

12 MR. MOLSTER: Object to form.

13 MR. TWOMBLEY: Object to the form.

14 MS. PAYLOR: I have 2012.

15 MR. TRAXLER: I'm sorry. You're
16 right. Thank you, Alice.

17 MR. MOLSTER: Still object to the
18 form.

19 MS. KIRK: Yeah. My objection wasn't
20 related to the date.

21 THE WITNESS: So I'm sorry. You're
22 saying -- you're asking me if I can testify about
23 sinister motives about recording the power of
24 attorney?

25

ROA 005967

Page 267

1 BY MR. TRAXLER:

2 Q. No, sir. If you want to testify to that,
3 go right ahead, but I think you're going to have
4 everybody going nuts on your side.

5 A. Okay. I'm not -- I'm sorry I missed the
6 thread of that question.

7 MR. TWOMBLEY: That's assuming he
8 would testify there's some sinister reason. Go
9 ahead.

10 BY MR. TRAXLER:

11 Q. You don't have any recollection as to why
12 this was not recorded until May of 2012; is that
13 correct?

14 MR. MOLSTER: Object to the form.

15 MS. KIRK: Object to the form of the
16 question. You may answer.

17 THE WITNESS: I testified that I
18 discussed with the Barringers whether or not to
19 file -- to record the power of attorney at the time
20 they executed the power of attorney. Beyond that, I
21 don't have any information.

22 BY MR. TRAXLER:

23 Q. I understand that, but you understand this
24 was recorded and things were kind of hot and heavy in
25 terms of running Kevin out -- Kevin Luzak out of the

ROA 005968

Page 268

1 company, right?

2 MS. KIRK: I absolutely object to the
3 form of that question. Mischaracterization of any
4 testimony.

5 MR. TWOMBLEY: Same objection.

6 BY MR. TRAXLER:

7 Q. You understand that it's in that time
8 frame, correct?

9 MR. TWOMBLEY: Object to the form.

10 MS. KIRK: Object to the form.

11 THE WITNESS: I'm not sure of the --
12 I'm not sure what was happening in May of 2012.

13 BY MR. TRAXLER:

14 Q. Do you remember the June 28, 2012 board of
15 directors meeting, don't you?

16 MR. TWOMBLEY: Object to the form of
17 the question. Misstates --

18 MS. KIRK: I also object to the form.

19 MR. TWOMBLEY: -- testimony in
20 evidence.

21 BY MR. TRAXLER:

22 Q. You remember that meeting?

23 A. I...

24 Q. Were you there?

25 A. I'd have to refer to the record to know

ROA 005969

Page 269

1 whether or not -- to remember whether or not I was
2 there at that meeting.

3 Q. You don't remember when Kevin Luzak was
4 ousted from the company as an officer and as a
5 director?

6 MS. KIRK: I object to the form of
7 that question.

8 MR. TWOMBLEY: Same objection.

9 THE WITNESS: I do -- I do remember
10 that -- what you've -- that Mr. Luzak was removed
11 from the company.

12 BY MR. TRAXLER:

13 Q. And what time frame was that in?

14 A. My recollection is that happened during
15 the summer of 2012.

16 Q. Right. This was all -- so this power of
17 attorney was recorded just before that, right?

18 MS. KIRK: Object to the form of that
19 question.

20 MS. PAYLOR: Object to the form.

21 THE WITNESS: This power of attorney
22 was recorded on May 11, 2012.

23 BY MR. TRAXLER:

24 Q. It was recorded -- it was recorded before
25 Kevin Luzak was ousted from the company as an officer

ROA 005970

Page 270

1 and as a director, correct?

2 MS. PAYLOR: Mr. Traxler?

3 MS. KIRK: Object to the form.

4 THE WITNESS: Mr. Traxler, I do
5 believe that it was later -- I mean, I think it was
6 later near the end of June or July when Mr. -- when
7 those actions happened with respect to the company.

8 BY MR. TRAXLER:

9 Q. All right. Now that -- that refreshes
10 your recollection as to why the durable power of
11 attorney was recorded then, right?

12 MS. KIRK: Object to the form of the
13 question.

14 BY MR. TRAXLER:

15 Q. Go ahead. You can answer. Does that
16 refresh your recollection?

17 A. That does not refresh my recollection.

18 Q. All right. Do you have any recollection
19 whatsoever as to any circumstances that prompted this
20 recording in May of 2011?

21 MR. TWOMBLEY: Object to the form of
22 the question.

23 MS. KIRK: Same objection.

24 THE WITNESS: I don't recall the
25 circumstances around the recording of the power of

ROA 005971

Page 271

1 attorney.

2 BY MR. TRAXLER:

3 Q. All right. Now, let's go back to your
4 invoices. Let's go back and look at the next meeting
5 that happened. I believe it's tab 7.

6 MR. MOLSTER: Excuse me, Tom. Do you
7 have a page number that goes with that?

8 MR. TRAXLER: We're at tab 7, and my
9 question to him had been the meetings in 2011, which
10 I think he discussed. I'm asking -- I'm getting him
11 oriented on the invoices. We had been at page 292.

12 MR. MOLSTER: Thank you.

13 BY MR. TRAXLER:

14 Q. My question to you, Mr. Jolley, is: When
15 is the next time you had a meeting with Mr. Barringer
16 about his estate planning?

17 A. It appears my -- it appears my next
18 meeting after December the 15th was a conference with
19 the Barringers and Mr. Slane on the 23rd of February.

20 Q. All right. And Mr. Slane is out of
21 Florida, correct?

22 A. Mr. -- yeah. I believe Mr. Slane -- I
23 mean, Mr. Slane lives and practices in Florida, as
24 far as I know.

25 Q. And he came up here for the meeting?

ROA 005972

Page 272

1 A. I believe so.

2 Q. Is that correct?

3 A. I believe so.

4 Q. All right. And what was the purpose of
5 Mr. Slane at that meeting? The same as before?

6 A. Yes.

7 Q. All right. And do you know how long that
8 meeting lasted?

9 A. I don't remember the length of that
10 meeting.

11 Q. Do you know where it was?

12 A. I don't. I know I had one meeting with
13 Mr. Slane -- I had one meeting with Mr. Slane at the
14 Barringers' home, but I don't know if it was this one
15 or another -- a different meeting.

16 Q. All right. Do you have any recollection
17 of what was discussed or what transpired at the
18 February 23, 2012 meeting?

19 A. So you're asking me -- I'm sorry. I need
20 you to -- oh, you're asking me with respect to this
21 meeting, as reflected on 2/23/12 with the conference
22 with the Barringers and Robert Slane, what the
23 details of that meeting were?

24 Q. Yes, sir.

25 A. Other than going over the proposed

ROA 005973

Page 273

1 documents and the proposed planning, I don't remember
2 the details of that conference.

3 Q. Who was at that meeting other than
4 Mr. Slane and the Barringers and yourself?

5 A. I believe it was only the Barringers and
6 Mr. Slane.

7 Q. All right. No documents were executed at
8 that meeting that you recall; is that correct?

9 A. I think that's correct.

10 Q. The next meeting was when with
11 Mr. Barringer?

12 A. I believe the next meeting was on
13 February 28, 2012.

14 Q. That was the execution of the documents, I
15 believe, that Mr. Twombly was asking you about on
16 direct examination this morning; is that correct?

17 MS. KIRK: I object to the form.

18 THE WITNESS: I'm not -- I mean, the
19 2/28 meeting is a meeting in which I met with the
20 clients and reviewed the documents and ultimately
21 helped them sign them.

22 BY MR. TRAXLER:

23 Q. I'm sorry. Which meeting are you talking
24 about?

25 A. The 2/28/12, the revisions to revocable

ROA 005974

Page 274

1 trust agreements, finalize pour-over wills, assist
2 with document signing.

3 Q. I'm sorry. You're right. I apologize. I
4 was looking at the wrong line. All right. You were
5 doing estate planning for Merrill Light at the same
6 time?

7 MS. KIRK: I object to the form.

8 MR. TWOMBLEY: Same objection.

9 MR. MOLSTER: Just say yes or no,
10 please, Mr. Jolley. And same agreement, Tom?

11 MR. TRAXLER: Yeah.

12 MR. MOLSTER: Thank you.

13 THE WITNESS: I don't remember.

14 BY MR. TRAXLER:

15 Q. Well, you have a time entry the next day
16 on your invoice for review signed originals in
17 preparation for execution for Merrill Light. You see
18 that?

19 A. I do see that.

20 Q. What was that for?

21 A. Beyond what the -- beyond what the
22 language of that time entry says, I don't remember.
23 I mean, I don't independently remember that.

24 Q. All right. You --

25 A. And what that refers to.

ROA 005975

Page 275

1 Q. Excuse me. I didn't meant to cut you off.
2 You were doing the instruments for the Lights -- I
3 mean, the Barringers that were executed in February
4 2012. Did you work in conjunction with both of them,
5 Merrill and Paul Barringer, on the estate planning at
6 the same time?

7 A. Are you asking me if I worked on the
8 preparation of the documents for Merrill Barringer
9 and Paul Barringer at the same time?

10 Q. Yes, sir.

11 A. I did.

12 Q. You did her documents and his documents at
13 the same time, didn't you?

14 A. I did.

15 Q. And their estate -- their testamentary
16 instructions, the will and the revocable trust,
17 reflected each other's terms, didn't they?

18 MR. TWOMBLEY: Object to the form of
19 the question.

20 MS. KIRK: I object as well.

21 THE WITNESS: I believe the documents
22 were mirror images.

23 BY MR. TRAXLER:

24 Q. Yeah. They were united and concerted in
25 their estate planning, weren't they?

ROA 005976

Page 276

1 MR. TWOMBLEY: Object to the form of
2 the question.

3 MS. KIRK: Object to the form of the
4 question.

5 THE WITNESS: I think the Barringers
6 had -- I think they were united in want -- in their
7 estate planning. Yes.

8 BY MR. TRAXLER:

9 Q. Yeah. And they both, at that point in
10 time, treated their children equally in these
11 instruments, weren't they?

12 MR. TWOMBLEY: Object to the form --

13 MS. KIRK: Object to the form.

14 MR. TWOMBLEY: -- of the question.

15 THE WITNESS: My recollection of the
16 documents executed in two thousand -- in February of
17 2012 is that they were treating their children the
18 same under these documents.

19 BY MR. TRAXLER:

20 Q. All right. Give me some sense of how much
21 Ms. Barringer participated in the conversation with
22 you about what her estate plan would look like.

23 A. Ms. --

24 Q. There's one extreme where she sat there
25 and said nothing. There's another extreme where she

ROA 005977

Page 277

1 was the only one talking on behalf of the clients.
2 I'm trying to get some sense of how active she was in
3 those discussions.

4 MR. TWOMBLEY: Okay. I'm going to
5 object to that question and instruct him not to
6 answer. I think that's going beyond your need to
7 probe him about whether or not this make-believe
8 agreement existed or not, and I'm not going to let
9 you get into that. We'll file a motion if we need
10 to.

11 MR. TRAXLER: I'm sorry. I didn't
12 get that last part, Mr. Twombley.

13 MR. TWOMBLEY: I'm instructing him
14 not to answer. I believe that you're going beyond
15 what you need to to probe these claims that you've
16 made about a contract or a promise, and I'm
17 instructing him not to answer.

18 MR. TRAXLER: Is that instruction
19 based on an assertion of a privilege?

20 MR. TWOMBLEY: Yes. The attorney --
21 the attorney-client privilege between Ms. Barringer
22 and her attorney related to legal work he was doing
23 for her.

24 BY MR. TRAXLER:

25 Q. Mr. Jolley, did Ms. Barringer ever express

ROA 005978

Page 278

1 any disagreement with the estate planning that her --
2 that her husband was doing?

3 A. Not to me.

4 Q. Did she ever express any disagreement
5 about having hers as a mirror image of his plan?

6 A. She never -- I never heard Ms. Barringer
7 express anything like that.

8 Q. How much -- what did she discuss with you
9 in terms of their estate plan?

10 MR. TWOMBLEY: Object to the -- I'm
11 going to object and I'm going to instruct you not to
12 answer unless there was any discussion about a
13 contract or agreement or promise that they wouldn't
14 change. If you know anything about that, by all
15 means, tell us.

16 MR. TRAXLER: Are you instructing him
17 not to answer?

18 MR. TWOMBLEY: Yes. Other than if he
19 knows anything --

20 MR. TRAXLER: On the basis of
21 privilege?

22 MR. TWOMBLEY: I'm sorry?

23 MR. TRAXLER: Is this on the basis of
24 privilege?

25 MR. TWOMBLEY: Yes.

ROA 005979

Page 279

1 MR. TRAXLER: Okay.

2 MR. TWOMBLEY: But, again, I do think
3 you can ask him about whether or not he knows
4 anything about a contract or agreement or promise
5 that went back in 1998 through the present time that
6 she wouldn't change her will.

7 BY MR. TRAXLER:

8 Q. Mr. Jolley, was there much conversation
9 between Paul Barringer and Merrill Barringer about
10 the estate planning between the two of them in front
11 of you in these meetings?

12 MS. KIRK: I object to the form.

13 MR. TWOMBLEY: I would ask you to
14 answer yes or no. See what the next question is.

15 THE WITNESS: I'm sorry. Can you --
16 can you -- you don't have to restate it. Just repeat
17 the question.

18 BY MR. TRAXLER:

19 Q. Was there much conversation between
20 Paul Barringer and Merrill Barringer in front of you
21 about the estate plan? Not to you, but between each
22 other.

23 A. Yes.

24 Q. And tell me what those discussions were.

25 MR. TWOMBLEY: I'm going to

ROA 005980

Page 280

1 instruct -- well, actually, I think what I'm going to
2 do is take a break and discuss with him whether or
3 not we want to waive -- or whether or not we want to
4 claim privilege related to any of those discussions.
5 So I'm going to exercise my right to talk with him
6 about that and we'll be right back.

7 MR. TRAXLER: All right.

8 THE VIDEOGRAPHER: We are going off
9 record. This is the end of media unit four. The
10 time is 6:11 p.m.

11 (Off the record.)

12 THE VIDEOGRAPHER: We are back on
13 record. This is the beginning of media unit five.
14 The time is 6:29 p.m.

15 MR. TWOMBLEY: All right. Tom, this
16 is Ashley. It is my opinion that simply because your
17 client has made this claim about a purported contract
18 or other promise that exists, that that in and of
19 itself does not waive the attorney-client privilege
20 and any other privileges that might apply or might be
21 at issue. You weren't involved in the case at that
22 point in time, but, you know, my memory is Judge
23 Mullin ordered Ms. Barringer to produce these
24 documents -- her documents solely because y'all were
25 taking the position that there was some evidence of a

ROA 005981

Page 281

1 contractual agreement in them, which it's our opinion
2 that there is no such evidence and I do not think you
3 can -- we're not waiving any privilege and I'm not
4 agreeing that you can ask any question that you want
5 to.

6 I do think that if you want to ask a
7 general question about the level of Ms. Barringer's
8 involvement in the estate planning process or whether
9 or she not she was involved in general, did she ask
10 questions, did she participate, I think you can ask
11 that without going into the specifics. And I also,
12 obviously, think you can ask him any question about
13 your client's allegations which she made upon
14 information and belief asserting that evidence of
15 some contract could be discerned from a review of
16 Ms. Barringer's documents.

17 So I think you can go into those two
18 issues and nothing else, and I'll take your questions
19 question by question. And, obviously, if you
20 disagree with me, we can, you know, raise it with the
21 court. If you've got a better way to proceed, just
22 let me know.

23 BY MR. TRAXLER:

24 Q. All right. Mr. Jolley, did -- when you
25 were working with Paul Barringer on his estate plan

ROA 005982

Page 282

1 in late 2011, early 2012, I presume as his estate
2 planning lawyer you had to glean from him what his
3 testamentary intent with his documents was, correct?

4 MS. KIRK: I object to the form, but
5 you can answer.

6 THE WITNESS: Yes.

7 BY MR. TRAXLER:

8 Q. And I assume you had to do the same thing
9 with Ms. Barringer and her testamentary intent,
10 correct?

11 MR. TWOMBLEY: Just answer yes or no
12 in general.

13 THE WITNESS: Yes.

14 BY MR. TRAXLER:

15 Q. Did you discern any difference whatsoever
16 in the testamentary intent of Mr. Barringer and Ms.
17 Barringer?

18 MR. TWOMBLEY: I'm sorry. Can you
19 repeat the question, Tom?

20 MR. TRAXLER: Can he discern any
21 difference in the testamentary intent of Paul
22 Barringer and Merrill Barringer?

23 BY MR. TRAXLER:

24 Q. You can answer the question.

25 MR. TWOMBLEY: Well, I'd ask that you

ROA 005983

Page 283

1 hold on a minute and let me think about that question
2 and see whether or not I want to instruct you not to
3 answer. I am going to instruct you not to answer
4 that question. However, if any portion of your
5 answer would reveal, mention, or discuss, have
6 anything to do with or otherwise address any
7 contractual agreement between Mr. and Ms. Barringer
8 or promise they made not to revoke their estate plan,
9 you're free to answer. Otherwise, I'm going to
10 instruct you not to answer.

11 BY MR. TRAXLER:

12 Q. Okay. You heard Mr. Twombly. What's
13 your answer?

14 A. I'm sorry. I understood the instruction
15 to not answer unless I had some evidence of this
16 contract or agreement.

17 Q. Okay. And you are going to follow
18 Mr. Twombly's instructions; is that correct?

19 A. I am.

20 MR. TRAXLER: Okay. Mr. Twombly,
21 your objection is based on a privilege; is that
22 correct?

23 MR. TWOMBLY: It's based on
24 privilege. It's based on the confidentiality and
25 protections of -- that Ms. Barringer has in the

ROA 005984

Page 284

1 estate planning process. It's based on the fact that
2 your client has asserted as the reason she's entitled
3 to Ms. Barringer's estate planning documents is that
4 there be evidence of a contract in them, which
5 there's not. And, you know, it's my opinion that you
6 just can't make that type of claim and then run
7 rampant through all of her documents, everything she
8 told her lawyer, everything she said to her husband,
9 you know, simply because your client has got this
10 claim that she can't support with any evidence. And
11 I know you disagree with me, but, you know, we'll
12 have to just take that up in front of the judge. And
13 if he disagrees with my position, then he'll let us
14 know and you can get the questions answered.

15 But I want to make clear -- crystal
16 clear that if Mr. Jolley has any information
17 whatsoever regarding any type of promise or agreement
18 that Ms. Barringer would never change her estate
19 plan, would always treat the kids equally no matter
20 what, he is free to talk -- you can ask him any
21 questions about that that you want, but I don't think
22 you're entitled to go further, respectfully.

23 MR. TRAXLER: I'll let that answer
24 stand for whatever it stands for. We need to see
25 about doing supper -- take a supper break.

ROA 005985

Page 285

1 MS. PAYLOR: Well, let's ask Ariail
2 and the witness what they want to do. It's kind of
3 their -- their call whether they want to keep going
4 tonight.

5 MS. KIRK: How much longer do you
6 have?

7 MR. TRAXLER: Probably need to talk
8 to the court reporter too. We've got a long way to
9 go.

10 MS. KIRK: What does that mean?

11 MR. TRAXLER: I don't know, to be
12 honest with you. I'm not fussing at you, but I think
13 y'all spent more time talking to the witness this
14 afternoon than I have. I know y'all are going to
15 push that back on me. But we've been at it five and
16 a half hours, and I bet if I add up the time I
17 actually got to ask questions, I'm not sure I even
18 get to the amount of time y'all spent this morning.

19 MR. TWOMBLEY: Well, I think the
20 question is how much longer do you think you have?

21 MR. TRAXLER: I don't think we finish
22 today. I just don't see that happening at all. But
23 I'm not going to sit there and say, okay, I've got
24 six hours, and then all of a sudden y'all try to hold
25 me to it. I can tell y'all we don't have enough time

ROA 005986

Page 286

1 tonight to do it. I am willing to come back
2 tomorrow. I can come back Friday. However you want
3 to do it, but we're -- it's not going to finish
4 tonight.

5 I suspect if we -- when we go, I
6 suspect it's another -- it has potential for being
7 another day. But, again, it depends on how much time
8 y'all spend talking to the witness.

9 MS. KIRK: I mean, why in the world
10 would you need two days with a non-party?

11 MR. TRAXLER: Quite frankly, like I
12 said, I don't think -- I may be wrong. I don't think
13 I've spent more time asking questions than y'all did
14 today. Y'all are taking up all the time.

15 MR. TWOMBLEY: Well, I disagree with
16 that.

17 MS. KIRK: Yeah. I would strongly
18 disagree with that to the extent that, you know,
19 there's a lot of fishing going around the privilege
20 issue.

21 MR. TRAXLER: We don't -- we don't
22 need to get into a gaddyack (phonetic) contest on
23 this thing. The long point -- the long and short of
24 it is I have a bunch of hours to go. I suspect
25 another day gets it done or maybe short of a day. I

ROA 005987

Page 287

1 don't think it takes more than a day, but it might.
2 But if I sit here and say, okay, I'm going to get it
3 done in so many hours --

4 MS. KIRK: So you're contemplating a
5 non-party deposition taking potentially three days?

6 MR. TRAXLER: I'm not sure where we
7 get three days.

8 MS. KIRK: Well, you said I might be
9 finished in another day. I might not. So today plus
10 two.

11 MR. TRAXLER: I said may. I mean,
12 it's an important witness. We've got a bunch of
13 documents.

14 MR. GILREATH: He's just the lawyer
15 that did the estate plan.

16 MR. TRAXLER: We've got a lot of
17 stuff to talk about. A lot of documents to go over.

18 MS. KIRK: Well, why don't you start
19 talking and I'll think about what we want to do.

20 MR. TRAXLER: Well, we're going to
21 get supper first.

22 MS. KIRK: How long do you want to
23 break for for that?

24 MR. TRAXLER: Forty-five minutes like
25 we did the lunch break. See if we can get stuff

ROA 005988

Page 288

1 brought in.

2 MR. GILREATH: We can probably get
3 something brought here. Yeah. An hour at the most,
4 we can get what we got -- get delivered needed, gear
5 up, and be ready to go in the wee hours of the night
6 until everybody wants to stop or until we agree what
7 our next stop break is going to be.

8 MS. PAYLOR: Why don't we look at
9 when we can reconvene if we stop.

10 MR. TRAXLER: Alice, I think -- I
11 think reconvening allows -- I think it has much,
12 much, much more likely chance of paring the hours of
13 the deposition down. It's not going to increase it.

14 MS. KIRK: When are you -- when did
15 you -- when would you potentially want to do that,
16 Tom?

17 MR. TRAXLER: I don't know about my
18 side. I'm available Friday.

19 MS. KIRK: Do you want us to stay on
20 the record or do you want to discuss this off the
21 record?

22 MR. TWOMBLEY: I think -- I think we
23 need something --

24 MR. TRAXLER: We could be available
25 Friday.

ROA 005989

Page 289

1 MR. TWOMBLEY: I think it would be
2 helpful to have some indication of how much longer
3 you need to go. I know nobody is going to hold you
4 to it. It's not written in stone. But, I mean,
5 we've got about ten lawyers on this call. We've got
6 a non-party who's got a lawyer. I mean, it just
7 seems as a matter of courtesy, it would be helpful to
8 know if you think you got another two hours, ten
9 hours, what? I mean, I know...

10 MR. GILREATH: We'll let you know
11 when it's over.

12 MR. TWOMBLEY: Well, you know, Jim,
13 if that's the position you want to take, I think you
14 ought to go tell it to Judge Price, is what my
15 opinion is. But it's not my witness, so -- I tell
16 you, this nonsense of you just saying you'll tell us
17 when it's over and then laughing about it.

18 MR. GILREATH: Forget that. My best
19 guesstimate is --

20 MR. TWOMBLEY: It's totally,
21 completely unprofessional, and I think --

22 MS. PAYLOR: Okay. Ashley, he's
23 given us his estimate.

24 MR. TRAXLER: I would be surprised if
25 it didn't finish in another day. I really would. It

ROA 005990

Page 290

1 might very well be done in three-quarters of a day.

2 I don't see it being done in a half a day.

3 MS. PAYLOR: Well, I have a conflict
4 Friday afternoon.

5 MR. MOLSTER: Yeah. I've got a court
6 hearing on Friday in the EBDA. Mr. Gilreath's
7 favorite court. It won't take long, but -- it's
8 Zoom, so I don't have to go there. Well, actually,
9 it may -- I'm not sure if it's Zoom or not, actually.
10 Right now it's still scheduled for in-person.

11 MR. TWOMBLEY: Why don't we just --
12 let's just take a five-minute break so we can talk to
13 Ariail and come up with some type of plan off the
14 record.

15 THE VIDEOGRAPHER: We're going off
16 record. The time is 6:41 p.m.

17 (Off the record.)

18 THE VIDEOGRAPHER: We are back on
19 record. The time is 6:53 p.m.

20 MS. KIRK: Y'all, I talked -- or we
21 checked on April 21st. We're agreeable to, you know,
22 postponing until then to do, you know, a half a day.
23 But we -- I think it's ridiculous with him being a
24 non-party and the testimony that you can elicit being
25 limited to what's available under the testamentary

ROA 005991

Page 291

1 exception going any longer than that. And so I just
2 want you to know I'll be inclined to stop and get a
3 protective order at that point.

4 MR. TRAXLER: Why don't we start it
5 at 8:00 in the morning?

6 MR. GILREATH: Yeah. That's what I
7 say. Let's just reconvene.

8 MR. TRAXLER: Let's just do it
9 tomorrow and we finish when we finish.

10 MR. GILREATH: 8:00 in the morning,
11 9:00. Whatever suits y'all. We ain't putting up
12 with that.

13 MS. KIRK: You ain't putting up with
14 what?

15 MR. TRAXLER: Be quiet, Gilreath.
16 We'll be back here tomorrow morning. What time do
17 you want to start?

18 MS. KIRK: I thought you wanted us to
19 check on the 21st?

20 MR. TRAXLER: We were, but we were
21 just told we get half a day and we might as well just
22 follow the deposition notice and go day-to-day.

23 MR. GILREATH: Y'all noticed it
24 convening from day-to-day. That's what we'll go by.

25 MR. TWOMBLEY: When you say "y'all

ROA 005992

Page 292

1 noticed it," I mean --

2 MR. TRAXLER: What time y'all want to
3 start in the morning?

4 MR. TWOMBLEY: -- you're not
5 referring to Ariail Kirk and her client, are you? I
6 mean, you come on now.

7 MR. TRAXLER: I going to supper or
8 home. You coming back tomorrow?

9 MR. GILREATH: That's what the notice
10 said.

11 MR. TWOMBLEY: Well, just -- just for
12 the record, I think I noticed the deposition. I
13 don't know that that -- because of what's in a notice
14 that that's binding on anybody. I think that's kind
15 of standard language that everybody puts in the
16 notice. I could be wrong about that.

17 MR. GILREATH: It's your language.

18 MR. TRAXLER: Shut up.

19 MR. TWOMBLEY: What did you say, Jim?

20 MR. TRAXLER: Nothing. He didn't say
21 anything. I mean, we got that choice. If Ariail's
22 position is --

23 MS. KIRK: Well, I mean, my position
24 about how long, I think you are, you know, getting to
25 the point of abusing the process isn't going to

ROA 005993

Page 293

1 change whether or not that's March 15th, 16th, 17th,
2 or April 21st.

3 MR. TRAXLER: Well, as I understand
4 it, you -- if we postpone it and resume, you are
5 going to shut it down after half a day; is that
6 correct?

7 MR. TWOMBLEY: I think what she's
8 saying is she's going to shut you down after half a
9 day no matter when you resume.

10 MR. TRAXLER: All right. Well, we're
11 prepared to come back tomorrow and keep going. What
12 time we all want to get back tomorrow? 9:00?

13 MS. KIRK: We're not available to
14 come back tomorrow.

15 MR. TRAXLER: Who is not?

16 MS. KIRK: I'm not.

17 MR. GILREATH: Who is that?

18 MS. KIRK: This is Ariail Kirk.

19 MR. TRAXLER: Well, let's go to
20 supper and come back and we'll keep going. It's
21 going to be tomorrow before we finish anyway. How
22 long y'all want for supper? It's 7:00. What y'all
23 want to do about -- how long you need?

24 MR. MACLOSKIE: I don't need more
25 than ten minutes.

ROA 005994

Page 294

1 MR. TRAXLER: Everybody's getting
2 pissy and sour. We need to get our blood sugar up.

3 MR. FUHR: I've got a plan, guys.
4 This witness -- this is Ed. This witness has been in
5 the saddle now for 11 hours, and I know there's also
6 the breaks and all of that. Now you're going to take
7 a meal break or whatever. So, you know, by the time
8 we get everybody resaddled up, that's going to be
9 8:00 p.m. Say you go to midnight, I mean...

10 MS. KIRK: And, Tom, I'm not trying
11 to be sour, this is Ariail, about tomorrow. I've
12 got a --

13 MR. FUHR: I think to sit in there
14 and take questions from 10:00 a.m. to midnight
15 strikes me as cruel and unusual.

16 MR. TRAXLER: I don't disagree.

17 MR. TWOMBLEY: And I would --

18 MR. TRAXLER: That's why we're ready
19 to come back another day, but --

20 MR. FUHR: Yeah. I agree with you.

21 MR. TWOMBLEY: Well, Tom, I would --
22 Tom, I would suggest --

23 MS. PAYLOR: Well, let's move to for
24 the 21st, April 21st, and see what happens.

25 MR. TWOMBLEY: I mean, there's two

ROA 005995

Page 295

1 issues here. You know, number one, when is a
2 convenient time to reconvene? And hopefully we could
3 all agree on that so nobody has got to file for a
4 protective order tomorrow morning. So if we can
5 agree on a day to reconvene, let's try to do that.

6 The second issue is how much more
7 time everybody gets, and I think that's an
8 independent issue, is it not, than when we reconvene.
9 And I don't think the answer to the second question
10 is impacted by whether we take a 45-minute lunch
11 break tonight and start again or if we start again
12 tomorrow morning.

13 And so, I mean, if what -- it sounds
14 like what y'all are saying is that if we don't agree
15 that y'all get more time, then I guess that Ariaail
16 has said she's going to give you, that you're going
17 to then to decline to consider anybody else's
18 schedule and assist on going forward at a time that
19 pleases you without considering anyone else's
20 schedule. I don't think that's proper and we ought
21 to do it -- and if there's a disagreement about how
22 much time you get, then Ariaail can file a motion and
23 y'all can file a response and the judge can decide
24 whether or not you get more time. It can all be done
25 in a organized and orderly fashion without, you know,

ROA 005996

Page 296

1 refusing to consider everybody else's schedule.

2 That's just my opinion.

3 MR. MEDLIN: Ariail, you can
4 represent your client however you want. We're not
5 trying to interfere with that. But just for your
6 information, we had two meet and confers on John's
7 deposition. One in December, one a couple of weeks
8 ago. And one of the issues we raised a couple of
9 weeks ago is to make sure that plaintiff got ten and
10 a half hours with the witness because we thought that
11 had been a convention with important witnesses. And
12 we understood and we were told that no, there was no
13 set limit agreed upon for every other deposition.
14 That we get the time we needed to get.

15 So I would ask you, as you think
16 about trying to limit the time with John, he is a
17 critical witness and there is a lot to ask him about.
18 And it would, I think, be nice if everybody could
19 agree that we give this another shot at a time
20 convenient for everybody and see if we can get
21 through with John in the time Tom thinks we can.

22 MS. KIRK: Well, sure, Alan. And
23 it's interesting, you know, that you say that because
24 I think that's pretty much exactly what I proposed.
25 So I'm not really sure where the disconnect here is.

ROA 005997

Page 297

1 MR. MEDLIN: We heard a half a day
2 from you.

3 MS. KIRK: Well, you've already had
4 half a day.

5 MR. MEDLIN: We heard that we get
6 another half a day and that's it.

7 MS. KIRK: I think that would come
8 to --

9 MR. MOLSTER: Let's just be -- sorry
10 to interrupt, but let's be clear that we're going to
11 have some redirect.

12 MR. GILREATH: You talked about half
13 a day. You've got to include in that redirect.

14 MR. TWOMBLEY: And -- and, Alan, I
15 agree we did have some meet and confers, and I agree
16 you did express your opinion that there was, you
17 know, an unwritten agreement about the length of
18 depositions, but --

19 MS. KIRK: And I certainly wasn't a
20 party to any agreement about that.

21 MR. TWOMBLEY: In all -- in all
22 fairness, we did, you know, tell you that we
23 disagreed with you on that, number one. And we also,
24 you know, stated candidly that we didn't represent
25 Mr. Jolley. He had his own attorney and that we

ROA 005998

Page 298

1 couldn't enter into any type of agreement on how much
2 time he would sit for a deposition. And so, you
3 know, I don't know what happened after that with
4 respect to how much time y'all wanted or if there was
5 any discussion with you, Ariail. But I just wanted
6 you to know that we --

7 MS. KIRK: No. I'm not privy to any
8 agreement about time.

9 MR. TWOMBLEY: Yeah.

10 MS. PAYLOR: We don't have an
11 agreement.

12 MS. KIRK: Or a party to one.

13 MR. TWOMBLEY: Yeah.

14 MR. MEDLIN: Yeah. I told you,
15 Ariail, you represent your client however you want.
16 I was just giving you some information on our
17 discussion, and my understanding was that there was
18 no agreement about a ten and a half hour limit
19 because I think that the defendants are looking
20 forward to deposing Kevin for quite a while. And so
21 we were told the depositions take as long --

22 MS. PAYLOR: He's as good as a party.

23 MR. MEDLIN: I understand. But we
24 were talking about John's deposition and, Alice, I
25 believe you said depositions take as long as they

ROA 005999

Page 299

1 need. That's what I heard.

2 MS. PAYLOR: Well, I don't remember
3 that.

4 MR. MEDLIN: You're not -- you're not
5 bound to that. Again, I understand that, but I'm
6 just letting you know what all the parties were
7 talking about outside of your presence.

8 MR. TWOMBLEY: Well, I would propose
9 that if the 21st works for the deponent and his
10 counsel, we come back on the 21st. You see how much
11 you can get through. If there's a disagreement, you
12 know, you need more time, we'll take that up at that
13 time and we'll -- we'll go from there. I mean,
14 again, that's just an option. If anybody's got a
15 better idea other than unilaterally agreeing to each
16 other's position, I'm happy to hear it.

17 MS. PAYLOR: Well, let's reconvene
18 and see if we can finish it in whatever time you give
19 us.

20 MR. TRAXLER: That's probably the
21 better thing to do. Reconvene and whatever time we
22 get, whoever gets shorted, go back to the judge?

23 MR. TWOMBLEY: Yeah.

24 MS. PAYLOR: Yeah.

25 MR. TWOMBLEY: That's what I think.

ROA 006000

Page 300

1 So are we talking about the 13th or the 21st?

2 MS. KIRK: I thought the 21st was the
3 one we checked on.

4 MR. TWOMBLEY: Okay. 21st.

5 MS. KIRK: Do you want me to go check
6 on the 13th?

7 MR. TWOMBLEY: No. I mean, the 21st
8 is fine with me.

9 MS. KIRK: Do you want to go check
10 your calendar?

11 THE WITNESS: For the 13th of April?

12 MS. KIRK: Uh-huh. Do y'all want to
13 go off record while he's checking his calendar?

14 MR. TWOMBLEY: Yeah. That's fine.

15 MS. KIRK: Or do y'all want to stay
16 on the record?

17 MR. FUHR: (Inaudible.)

18 MS. KIRK: I didn't understand any of
19 that.

20 MS. PAYLOR: Well, are we agreeing
21 that we're quitting now, then we can go off the
22 record and just figure out when we're reconvening.

23 MS. KIRK: Well, I'm confused. Do
24 you want me to go check on the -- I thought we were
25 checking on the -- I thought y'all asked for him to

ROA 006001

Page 301

1 check on the 13th?

2 MS. PAYLOR: I think we're all fine
3 with the 21st if he can do that.

4 MR. FUHR: Yeah, the 21st.

5 MS. PAYLOR: I think you said he
6 could do the 21st, right? Why don't we just plan on
7 that. What time do y'all want to start?

8 MR. TRAXLER: 8:00. Is that too
9 early? Alice, you awake by then?

10 MS. PAYLOR: I get up at 5:20. So
11 I'm okay. So you want to do 8:00 on the 21st?

12 MR. MOLSTER: I have a board meeting
13 at 8:00. Can we do it at 9:00?

14 MS. PAYLOR: 9:00? Going once, going
15 twice.

16 MR. MOLSTER: Verify with John --
17 John Jolley.

18 MS. KIRK: He stepped out of the room
19 because he didn't have a calendar in here.

20 MR. MOLSTER: I can make sure
21 Schronce is aware.

22 MR. SCHRONCE: Schronce has a baby --
23 had the baby and put the baby back down by that
24 point.

25 MR. GILREATH: Are we talking about

ROA 006002

Page 302

1 Wednesday, the 21st now?

2 MR. TRAXLER: Yeah.

3 THE WITNESS: Are you asking about
4 the 21st? April the 21st?

5 MS. KIRK: Yeah.

6 THE WITNESS: This 21st is fine with
7 my schedule. April the 21st is fine with my
8 schedule.

9 MS. KIRK: Okay. So -- so...

10 MR. TWOMBLEY: I hereby declare an
11 agreement that we reconvene on April the 21st at
12 9:00.

13 MS. KIRK: And we don't need to
14 file -- I want to be sure we're clear on any motions
15 for protective order with instructions, you know,
16 since we're not ending the deposition. Our time to
17 file that will not be running?

18 MR. TWOMBLEY: Good point. Tom?

19 MR. TRAXLER: You're talking about on
20 the privilege issue?

21 MS. KIRK: Or anything. I don't know
22 what else there is, though.

23 MR. TWOMBLEY: Do you want us to go
24 ahead and file it now or wait?

25 MR. TRAXLER: No. That's okay.

ROA 006003

Page 303

1 We'll start in five days. Yeah.

2 MR. TWOMBLEY: Okay. All right.
3 Everybody have a good night.

4 MR. TRAXLER: We don't have -- we do
5 not have an agreement on how long it's going to be,
6 but we are going to get back together on the 21st at
7 8:00, right?

8 MR. TWOMBLEY: 9:00.

9 MR. TRAXLER: 9:00.

10 MR. TWOMBLEY: Yes. Thank y'all for
11 your help working this out. I think it's a
12 reasonable solution.

13 THE VIDEOGRAPHER: We are off the
14 record. The time is 7:07 p.m. This concludes day
15 one of the video recorded testimony of John Jolley
16 and will be retained by Veritext.

17 (DFT. EXHIBIT 1, Complaint, was
18 marked for identification.)

19 (The witness, after having been
20 advised of his right to read and sign this
21 transcript, does not waive that right.)

22 (The deposition recessed at 7:07 p.m.)
23
24
25

ROA 006004

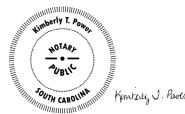
Page 304

CERTIFICATE OF REPORTER

I, Kimberly T. Power, Court Reporter
and Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed by official seal this 19th day of March,
2021, at Lexington, Lexington County, South Carolina.



Kimberly T. Power, Court Reporter
My Commission Expires: 4/24/2025

ROA 006005

Page 305

I N D E X

	Page	Line
JOHN JOLLEY, ESUIQRE	6	18
EXAMINATION	6	20
BY MR. TWOMBLEY:		
EXAMINATION	93	15
BY MR. TRAXLER:		
CERTIFICATE OF REPORTER	304	1

E X H I B I T S

	Page	Line
PLAINTIFF'S		
EXHIBIT 1, Plaintiff's Exhibit Notebook	32	16
DEFENDANT'S		
EXHIBIT 1, Complaint	303	17

ROA 006006

Page 306

1 Ariail Kirk c/o John Jolley

2 akirk@jolleylawgroup.com

3 5/10/2021

4 RE: Luzak, Hampton v. Light, Merrill B., Et Al.

5 3/16/2021, John Jolley , Esq. (#4502903)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 cs-carolinas@veritext.com

16
17 Return completed errata within 30 days from
18 receipt of testimony.

19 If the witness fails to do so within the time
20 allotted, the transcript may be used as if signed.

21
22 Yours,
23 Veritext Legal Solutions

ROA 006007

Page 307

Luzak, Hampton v. Light, Merrill B., Et Al.

John Jolley , Esq. (#4502903)

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PAGE_____ LINE_____ CHANGE_____

REASON_____

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REASON_____

PAGE_____ LINE_____ CHANGE_____

REASON_____

PAGE_____ LINE_____ CHANGE_____

REASON_____

John Jolley , Esq. Date

ROA 006008

Page 308

Luzak, Hampton v. Light, Merrill B., Et Al.

John Jolley , Esq. (#4502903)

ACKNOWLEDGEMENT OF DEPONENT

I, John Jolley , Esq., do hereby declare that I
have read the foregoing transcript, I have made any
corrections, additions, or changes I deemed necessary as
noted above to be appended hereto, and that the same is
a true, correct and complete transcript of the testimony
given by me.

John Jolley , Esq.

Date

*If notary is required

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&	0672 68:25	12:47 90:13	2/28 273:19
	07 203:8	12:57 90:16	2/28/12 273:25
	07-01253 2:5	12th 75:8	20 9:22 48:9 49:9
& 3:3,19 4:12 6:14	07-01294 2:5	13 250:16	234:15 305:4
0	07-1919 1:6 5:7	13th 300:1,6,11	308:15
0297 235:8,10,17	86:25	301:1	2000 14:13
0353 261:5	0758 61:6,10,23	14 69:22,23 250:16	20007 4:8
0354 83:24	08 16:18 17:14,15	260:24	2000s 14:10,14
0363 260:24 261:2	18:5,14 199:8	142 86:6,12,16,18	2001 159:6
261:20	200:21	15 10:24 31:21,23	2005 10:2,17 13:2
0372 261:12	09 16:18 17:14,15	32:1 69:15 72:17	96:10
0387 32:2,21,24	18:5,14 117:11	78:23 196:20,24	2006 117:25 203:8
33:10,11,13 72:22	118:22 119:14	258:12 261:11,17	2007 117:25
0394 33:11,13	199:8 200:22	264:16 305:5	2008 16:10 117:11
0395 33:2			118:10,22 119:14
04 32:24	1	151 4:5	120:10 197:5
0402 33:2	1 32:16 92:22,24	15th 254:24	203:15 211:7
0403 79:9,12,14,17	92:25 93:9 303:17	271:18 293:1	2008/2009 204:10
80:25	305:7,13,16	16 1:18 5:2 32:4	2009 16:11 118:10
0411 32:21 79:9,13	10 254:12 255:10	33:19 39:25 48:10	120:10 197:6
79:14,17 80:25	256:21 257:4,8,8	69:19 78:25	203:16 211:7,13
84:5,6	257:14,16	305:13	211:17,20 212:6
0413 32:5 33:19	100 250:3	16th 293:1	212:24 213:7
0440 46:14,14,19	101 178:10	17 305:16	2010 14:11 96:10
0441 46:14 47:7	10828 3:4	1713 3:14	2011 18:6 25:24,24
0442 33:19 46:14	10:00 294:14	17th 49:11 293:1	26:2 27:17,23
0469 50:25 51:3,4	10:08 1:19 5:2	18 38:21 67:23	29:10 34:5 127:17
0470 50:25	10th 254:23 255:7	68:12 236:2 239:6	127:19 128:4
0504 79:19 80:25	11 160:23 257:8	305:3	152:16 153:14
81:12,14	261:21 262:25	18th 49:11	155:8 158:12,25
0533 83:15,17	269:22 294:5	1998 1:11 10:8,14	159:9 161:13
0534 79:19 80:25	11/10/2011 253:14	11:8 198:7,18	168:6 169:23
81:13 83:16,25	11:30 55:6 100:21	199:24 279:5	190:20,23 191:4
84:1	101:11	19th 304:10	192:16,21 193:3
0663 68:14 69:8	11:40 55:10	1:00 92:14	194:5,16 195:2
0664 69:15 70:15	11th 60:6 65:15	1:45 91:19 92:5	196:11 205:25
0665 69:19 70:15	12 73:13,18 235:20	1:48 92:18	211:2,4,13,17,21
0666 70:1	250:16	2	211:22 212:7,24
0667 69:25	12/15/2011 258:15	2 1:14 3:25 67:11	213:7,10,15
0670 68:14 69:8	12/31 70:25 72:5	85:25 92:22 93:3	215:25 216:6
0671 68:24	12/31/2012 71:4	2/23/12 272:21	219:1 226:7 227:9

[2011 - 5:34]

ROA 006010

Page 2

230:5 242:6 246:16,19 247:7 248:18 249:2,20 249:24 250:8 251:4 253:4,12 254:3,12,22,23 255:4 256:21 257:4 258:12 261:11,18 264:16 266:3,7 270:20 271:9 282:1 2012 18:19 25:19 25:23 31:7,19 33:8,17,23,24 34:14 36:6 39:22 47:23 48:10,17 49:16 51:8 54:8 54:16 60:6 65:15 66:22 70:14,19 71:2,20 73:6 75:17,18 82:24 121:11,13 127:9 127:17 128:17,19 128:25 129:4,9 131:12 132:13 133:12 134:13 135:22 136:6,15 136:23 137:8 138:23 139:5 147:2 148:13 158:17 160:23 161:3 229:7 230:12,12,16 236:2 239:6 242:8 242:8 246:16,20 249:3 256:23 261:21 262:25 266:14 267:12 268:12,14 269:15 269:22 272:18 273:13 275:4	276:17 282:1 2013 67:14 69:10 158:17 235:20 2014 73:14,18,21 74:5 75:8,17 80:1 80:4,7 246:21,23 2015 25:19,25 26:4 27:17,23 29:10 31:7 79:15,22 80:3,22 81:2,4,4 83:9 84:9,18,21 85:1 109:18 192:22 206:1,23 207:25 209:16,22 230:5 2016 1:6 5:7 86:25 2018 158:10 2019 2:5,5 86:4 158:8 2020 10:19 122:24 123:10 124:4 158:6,7,8 2021 1:18 5:2 13:7 157:22 158:5 304:11 2141 4:7 2147 3:7 21884 304:16 21st 290:21 291:19 293:2 294:24,24 299:9,10 300:1,2,4 300:7 301:3,4,6,11 302:1,4,4,6,7,11 303:6 23 61:2 272:18 23219 4:14 23rd 271:19 24 67:14 69:10 279 55:13,15 66:12 66:14	28 31:19 33:17,23 33:24 36:5 39:22 47:23 86:4 268:14 273:13 280 3:11 66:14 281 55:14,15 66:14 29 136:15 139:5 292 271:11 29205 3:15 4:20 5:10 29402 4:5 29602 3:8 29603 3:4 29901 3:11 29902 3:21 2:30 101:11,13 2:54 152:6 3 3 221:11 3/16/2021 306:5 30 63:22 91:18 306:17 303 305:16 304 305:7 31 70:14,19 311 3:21 32 210:14 305:13 372 261:15 387 36:19 394 36:20 37:18 395 73:1,16,17 396 72:23,24 3:15 152:9 4 4 1:10 55:13 57:7 66:12 4/24/2025 304:19 402 72:24 73:1,16 73:17	403 78:23 79:4,5 411 78:24 79:4 84:4 413 40:1 415 41:16 416 40:23 417 41:21 442 40:2 443 48:10,11 446 49:12 447 49:13 45 91:15,18 295:10 4502903 306:5 307:2 308:2 471 48:11 472 74:12,19 4:00 101:13 4:12 210:17 4:30 101:13,14 4:31 210:21 4:48 225:15 5 5 79:15,21 81:4,4 5/10/2021 306:3 50,000 82:2 83:5 501 77:12 503 74:10,12,19 77:12 504 74:8,9 78:25 79:10,10 533 83:14 534 79:10 83:14 58 86:6 5:07 225:18 5:20 238:24 301:10 5:23 239:2 5:27 244:11 5:30 245:13 5:34 245:16

5:45 101:15	a	actions 270:7	afternoon 285:14
6	a.m. 1:19 5:2 55:6	active 277:2	290:4
6 9:9 305:3,4	55:10 294:14	activities 11:16	age 9:20 23:4,4,7
64 67:15	abilities 192:17,18	256:12,12	38:21
65 67:17	193:1,16,21,25	add 285:16	agent 183:14
66 67:17	194:4 195:7,11,25	added 49:15	242:14,20 263:24
663 67:22 68:7,12	196:4	addition 35:4	265:15
666 69:22	ability 19:9 25:15	49:18	ago 16:6 82:23
667 68:8	193:13,20 195:17	additional 82:1	96:8 244:11 296:8
668 70:3	196:6	199:16	296:9
669 70:3	able 22:8 57:4	additionally 82:8	agree 62:24 63:1
67 67:17	76:19 172:17	additions 308:6	120:5 126:11,18
670 68:13 70:4	absent 94:24	address 283:6	149:16 154:14
6:00 100:21	absolutely 28:5	adjust 41:14 72:2	156:1 157:25
6:11 280:10	36:18 39:24 268:2	administration	166:12,14 175:6
6:29 280:14	abundance 149:14	11:16	178:19 185:10
6:41 290:16	abusing 292:25	administrative	288:6 294:20
6:53 290:19	access 24:14 25:8	95:24 162:5	295:3,5,14 296:19
7	25:22 26:6	admitted 10:14	297:15,15
7 235:7 252:24	accident 61:15	adult 39:17	agreeable 238:3
253:7,8 271:5,8	accomplish 78:17	adults 98:25	290:21
70 22:25 23:3,5,7	accounting 72:1	advance 64:20	agreed 72:3
71 67:18	accuracy 306:9	adversary 104:12	245:22 296:13
7:00 293:22	accurate 304:5	adversely 217:23	agreeing 127:1,3
7:07 303:14,22	accurately 124:17	advice 121:2	281:4 299:15
8	accuses 89:14	241:24	300:20
810 1:21 4:19 5:9	acknowledged	advise 122:13	agreement 37:3,7
8:00 291:5,10	78:11	242:1	40:25 41:7 44:8
294:9 301:8,11,13	acknowledgement	advised 165:21	46:11,17 60:22
303:7	308:3	303:20	74:23 76:2 78:12
9	acknowledgment	advising 154:9	81:2 87:23 88:1
93 305:5	47:11 84:1 306:12	advisor 34:21,22	125:11 127:2
951 4:14	acknowledgments	advisors 34:7,16	147:5,13 149:9
98 197:9 198:10	47:10 83:16	35:13,23	150:2,5,12,18
9:00 291:11	act 143:19	affairs 108:25	151:5,12 154:20
293:12 301:13,14	actec 15:6,10,11	affection 19:20	154:23 155:25
302:12 303:8,9	15:13 16:2,4	affiliations 5:16	156:7 166:21,25
	acting 90:2,4	affinity 17:8	167:3,6,11,17,18
	136:24	affixed 304:10	168:1,10,24
	action 54:12,14	afraid 17:3	169:20 170:8
	240:12		172:17,18,20

182:7 202:15,22 203:6,11,18 204:3 204:5,16 214:15 218:16 219:23 220:10,18,19,25 221:25 226:11 227:19 228:8,17 228:23 232:15 234:10 236:4 237:10,20 240:13 245:21 247:12 248:1 264:2,18,19 265:6 274:10 277:8 278:13 279:4 281:1 283:7 283:16 284:17 297:17,20 298:1,8 298:11,18 302:11 303:5 agreements 19:18 147:2,18 148:12 274:1 ahead 58:7 60:13 60:21 71:11 90:19 104:2 108:9 112:2 114:4,7 116:16 139:24 140:23 147:10 165:17 169:9 179:13 190:12 193:8 205:5 206:10 208:14 214:18 217:14 220:12 231:20 248:10 252:17 254:16 263:18 264:4 265:20 267:3,9 270:15 302:24 ain't 250:6 291:11 291:13	akirk 4:20 306:2 al 86:25 306:4 307:1 308:1 alan 3:14 6:8 296:22 297:14 alarmed 25:12 alice 4:4 5:25 72:24 90:24 91:4 94:15 108:5,7 224:20 227:12 266:16 288:10 298:24 301:9 alive 233:22 allegation 89:17 allegations 58:11 58:13 62:12,17,25 63:1 281:13 alleged 23:9 62:20 87:12 89:10 allotted 306:20 allow 134:3 149:7 166:12 224:7 allowed 92:6 allows 8:9 288:11 alternate 263:24 265:15 alzheimer's 21:18 192:8 amedlin 3:15 amend 41:7,14 amended 76:2 amendment 8:11 31:19 33:20 39:25 40:3 48:8,12,16 54:8,21,24 74:9,15 74:16,22 75:4,12 75:17 76:9 79:1 79:18,20 81:14 american 11:24 15:5,8	amount 15:16 285:18 analysis 176:6 177:11 ancillary 11:16 andrews 4:12 6:14 ann 3:20 112:3,3 answer 7:16,17 28:17 30:25 66:7 67:9 69:7 89:21 94:2,18,22 102:19 102:24 103:2,22 104:2,5,9,10,19,22 105:14 108:14 119:6 120:5,17 121:8,23 123:2,7 123:11,19,21 124:10 125:5 126:3 129:13,23 130:5,12 131:16 131:20 132:7,23 133:17,21 134:9 134:15,21,22 135:11,17 136:3 137:25 138:9,19 138:25 139:9,25 140:9,18,23 141:8 141:24 142:2,14 143:16 144:5,7 147:12,15,21 148:25 149:8,23 150:21,22 151:10 151:13 152:22,24 153:20,22 154:15 154:18 155:3 157:8 159:19 161:1 163:3,5 164:10 165:17 166:12,16 169:12 169:13,21 172:12 173:17 175:1	179:13 180:20 186:2 191:6,11 193:9,11 195:21 203:10,11 204:18 204:19 205:13 206:6,7,10 210:4 211:10 212:1,14 212:19 214:7,12 214:13,14 217:14 218:15 219:4,7 220:23 221:10,21 221:24 226:19 227:18,20 228:8 228:18 229:19 231:18,20 234:2 237:15,16,22,25 239:17,18 240:10 241:2,6 243:11 245:21 247:11 251:18 252:17 255:17 263:18 267:16 270:15 277:6,14,17 278:12,17 279:14 282:5,11,24 283:3 283:3,5,9,10,13,15 284:23 295:9 answered 105:12 139:13 142:6 185:6 190:1,2,3 193:5,24 195:4 204:25 209:2,15 209:25 219:13 233:4,25 236:8 245:19 251:14,25 284:14 answering 227:13 answers 7:7 218:17 antibodies 250:1

anticipation 65:7 anybody 50:18 91:17 92:6 111:1 113:10 126:9,9 152:11,14 154:13 155:17 159:11 161:9 181:24 190:7,19 196:17 210:24 218:6,25 221:5 222:2 266:5 292:14 295:17 anybody's 180:20 299:14 anyway 13:17 92:5 293:21 apologize 26:2 32:25 33:13 74:11 74:18 130:21 148:9 149:2 179:3 211:16 218:18 222:12 236:24 274:3 apparently 132:16 182:16 appear 28:2 59:19 72:18 94:24 appearances 3:1 3:25 4:1 5:16 appeared 96:6 appears 33:20 70:2 77:14 79:1 79:19 271:17,17 appended 308:7 applicable 306:8 applied 87:2 applies 174:10 apply 8:21 13:8 126:7 146:4 176:17 280:20 appointed 14:22	appointment 24:6 43:13,17,22,25 44:17,18,20,23 45:2,4,7,16 46:7 46:10 54:20 75:25 76:8 77:5 82:11 201:6 213:13 258:15 appoints 15:2 appreciate 144:18 172:3 224:12 approach 138:23 approached 131:24 132:11,14 132:24 133:2,3,4 appropriate 60:20 151:10 183:20 approximately 10:24 12:23 13:8 16:4 17:22 67:6 100:21 april 290:21 293:2 294:24 300:11 302:4,7,11 archive 162:7 area 11:9,19 12:11 12:18 15:17,22 16:1 96:2 123:15 areas 12:7 argument 87:23 arial 4:19 5:19 53:5 94:14 100:2 103:23 111:23 113:13 144:10 145:19 154:4 171:17 172:2 179:8 225:10 285:1 290:13 292:5 293:18 294:11 295:15,22 296:3 298:5,15	306:1 arial's 292:21 arose 217:21 arrange 53:22 arranged 53:21,22 235:1 arrangements 131:13 article 40:24 41:3 41:6,17,22,24 42:19,20 43:2,7,8 43:8,11,19,20 44:3 44:19,19 45:11,14 49:19 81:23 82:3 98:4,6 articles 97:10,20 97:25 articulate 105:1 ashley 3:20 4:22 5:11,17 6:23 8:18 22:1 31:24 61:3 154:3 169:16 203:19 224:19 280:16 289:22 ashley's 227:1 aside 67:5 102:13 asked 39:19 49:7 50:17 51:14 52:25 79:16,18 84:8 92:20 105:12 108:3 114:11 126:25 139:12 143:18 169:14 190:1 193:5 195:4 201:23 202:2 205:2 209:1,14 218:20 222:11 231:24 233:25 236:8 244:15 245:19,19 251:14 251:25 254:20	263:1 264:6 265:24 300:25 asking 7:20 41:22 51:3 80:2 113:7 120:2 134:6 142:8 151:6,8 157:9 162:13 166:11 181:24 195:16 200:21 207:21 219:11 221:7 226:16 230:24 233:6 236:14 237:1,12 266:22 271:10 272:19,20 273:15 275:7 286:13 302:3 assert 89:2 126:23 224:7 237:25 238:19 244:24 asserted 89:3 244:14 284:2 asserting 89:9 104:21 281:14 assertion 241:8 277:19 assessment 23:24 asset 35:17 50:4,5 assets 11:4 19:21 22:11 28:21 34:7 35:1,3,4,17 37:5,9 37:13,17 40:6,7,10 40:14,17,20 43:4 43:10,13,14,17,22 44:1,10 45:21 82:17 214:22 assignment 58:22 assist 183:5 199:8 274:1 295:18 assistant 136:14 136:17,24 137:9 137:11,17 139:4,6

162:6 assistants 112:8 assisted 33:15,22 35:19 associated 52:8 104:11 131:25 137:19 associates 112:9 assume 94:2 117:18 124:8 129:16 153:21 161:14 227:23 282:8 assuming 20:23 154:14 267:7 assumption 32:10 assured 188:5 ate 160:7 attach 194:3 attached 67:17 69:14 306:11 attachment 69:18 attachments 68:2 68:3 attacks 98:22 attempt 29:5 59:25 attempting 189:19 attending 5:15 attention 32:19 55:13 61:1 68:12 86:5,12 attorney 7:24 8:3 8:7,8,13 105:3 149:12,17 183:15 183:16 212:18 222:3 237:22 258:8,9,18,24 259:1,4,11,14 260:1,1,5,21 261:7 261:10 262:1,18	263:25 264:16 265:12 266:2,24 267:19,20 269:17 269:21 270:11 271:1 277:20,21 277:22 280:19 297:25 306:13 attorneys 3:2,18 4:2,11,17 99:8 123:5 audio 171:20 august 57:24 121:13 127:9 132:13 133:11 134:13 136:15 139:5 147:2 148:13 auspices 12:19 authored 98:3 authority 38:14 78:7 229:15 authorize 229:8 authorized 231:24 authorizing 240:1 available 31:12 95:5,10,18 104:23 288:18,24 290:25 293:13 306:6 avenue 4:7 avoid 188:22 awake 301:9 aware 72:12 88:6 88:22,24 142:20 218:25 301:21 awol 135:5	baby 301:22,23,23 back 55:8 59:18 63:9 65:13 66:10 69:25 70:11 71:7 79:24 80:1,3,22 90:10,15 91:1,19 92:16 110:23 113:3,10 117:10 124:7 125:24 152:8 153:13 156:13 178:10 192:14 197:9 210:19 219:19 224:21 225:17 232:19 239:1 244:11 245:15 246:2 261:19 266:1 271:3,4 279:5 280:6,12 285:15 286:1,2 290:18 291:16 292:8 293:11,12 293:14,20 294:19 299:10,22 301:23 303:6 background 195:19 bad 28:13 39:19 balance 137:10 bankers 35:22 bar 10:14 14:4,6 15:2 97:13,21 barringer 1:3,4,7 1:8,10,11 2:3,6 3:18 5:6,18 6:7,23 7:22 8:2,14 16:8,9 16:10,14,22 17:11 17:13,16,19 18:3,7 18:11,12,19 25:21 25:22 26:4,6,21,25 27:2,5,6,18,24	28:3,15,17,19,22 29:1,3,6,9,15,20 29:20 30:2,9,11,17 31:6,8,9,12,18 33:17,21,22 34:2,6 34:8,13,20,23 35:2 35:2,6,7,9,15,21 36:2,7,12,16 37:22 37:24 38:25 39:2 39:4,14 40:6,11,13 40:14,16 41:6 42:5,9,12,23 43:3 43:3,7,9,12,18,21 44:9,22,24,25 45:1 45:3,6,14,15,19,20 46:7,11,17 47:1,13 47:14,16,19,23,25 48:2,18,21 49:4,6 49:24 50:8,11,17 51:9,11,14,17,20 51:24 52:2,4,5,11 52:11,15,21 53:12 53:15,16 54:3,4,8 54:21 55:21,23,24 56:4,6,9,11,13,18 56:19,21,22 57:1,5 57:22 58:1,2,4,12 58:15,24 59:1,4,8 59:11,19,21 60:1,5 60:8,11,17,20,25 62:7,9,18 63:3,10 64:6,9,12,19,21 65:6,6,7,14 66:9 66:21,23 70:7,20 71:2,5,12,18 72:3 72:8,10,14 73:5 74:4 75:8,11,20,25 76:3,6,7,15,17,20 76:20 77:4,7,14,24 78:10,14,16,25 79:21 80:6,11,15
	b b 1:7,9,11 4:2 38:25 47:13,14 86:24,25 218:16 305:10 306:4 307:1 308:1		

[barringer - behavior]

ROA 006015

Page 7

80:16,19 81:17,18 81:20 82:7,10,10 82:13,19,20,24 83:9 84:10,15,16 84:21,25 85:4,11 85:19,22 86:1,3,19 86:19 87:6,14,25 88:1,3,7,7,16 89:12,17 90:1,4 108:18,21 110:9 110:12 116:3,3,11 116:13 117:9 118:5,6,16,22 119:15 120:14 121:4,6 122:1,2,3 122:9 127:20 128:6 134:19,25 153:13,13 154:21 155:1,8 159:5,8,25 163:23 164:8,16 166:3,4 167:10,16 171:9 190:19,23 191:3 194:21 197:3 199:9,13,14 199:15,22,24,25 200:10,15,18,19 200:25 201:14,22 202:2,25 203:15 204:9,11,21 205:9 205:23 206:17,19 206:21 207:8,21 208:1,4,15 209:2 210:6 211:2,21 212:5,12,21,23 213:10,12,18,18 214:2,8,13,14,23 214:25,25 215:3,6 215:10,10,11,12 215:14,15,25 217:7,7,22 219:21 220:15,16 221:18	223:7,8 225:23,24 226:5,9,17,19 227:10,10,14,15 228:16 229:8 231:24 232:7 233:21 235:20,21 235:24,25 239:9 239:21,25 240:5 240:13,14 241:16 241:18,23 242:1 242:10 243:16,20 244:2 246:12,23 247:1,5,5 249:5,5 249:8,15,16,17 250:9,9 251:22 252:19,21 253:2 253:11 254:25 256:3,8,25 259:9 259:12 261:8 262:6,7 263:7 271:15 273:11 275:5,8,9 276:21 277:21,25 278:6 279:9,9,20,20 280:23 281:25 282:9,16,17,22,22 283:7,25 284:18 barringer's 6:25 8:11 18:15,16 19:16,17 27:21 28:9,11 29:16 30:14 33:14 34:9 34:11,16 37:1,10 37:19 38:5,6 40:3 40:6,9,20 42:21 43:15,15,20,23,23 43:24 44:2,5,7 46:20 48:9,16 50:12,22 52:8 53:9 62:13,14 63:11 66:1 73:17	73:20,25,25 74:22 75:4,5,14,17 77:15 79:14 81:1 82:6 84:7,9 86:22 87:17,18,22 192:17 193:12 194:11 201:1 206:12 209:16 215:2 222:15,16 226:6,8,25 227:9 227:11,11,23,24 229:25 230:16 231:3 232:2,13,22 233:7,11 234:9,24 235:3 236:4 237:9 239:11,19 240:22 241:22 242:23 243:1 244:6,16 245:7 246:9,13 247:1 253:14 263:15 264:7 265:12 281:7,16 284:3 barringers 88:25 152:18 154:8 155:23 168:6 169:22 197:19 246:18 253:17 254:21 257:24,25 259:14 267:18 271:19 272:14,22 273:4,5 275:3 276:5 bars 11:22 based 20:18 37:2,2 60:15 72:25 83:5 199:21 221:12 222:20 241:8,10 241:11 277:19 283:21,23,24 284:1	basically 36:25 basis 89:21,23 123:24 124:10 130:4 133:16,21 153:5,22 174:12 174:20 175:3,15 175:24 176:10,18 176:22 177:6,15 177:20,23 178:5 178:11,20 179:15 179:21 180:2,7,8 191:13 200:15 205:18 209:3 219:8 278:20,23 bates 32:11,20 48:10 55:13 67:15 68:7 72:19 74:11 74:19 235:7 260:24 bear 154:12 beaufort 1:2 3:11 3:21 86:3 96:10 97:2 becky 30:3,7 77:25 84:13 112:21,24 began 10:13 16:19 26:2 34:5 122:6 131:11 beginning 22:2 55:9 92:17 106:23 187:6 210:20 212:6 230:12 280:13 behalf 5:22,24,25 6:3,4,7,8,11,12 8:19,25 9:1 131:6 143:20 154:12 161:14 277:1 behavior 90:1

[belief - bunch]

ROA 006016

Page 8

belief 86:18,21 96:15 281:14 believe 12:12 13:16 15:2 20:10 22:17,21 23:24 39:13,15,21,22 42:18,20 49:18 52:15,20 54:23,23 74:6 78:24 80:16 81:10,15 82:23 83:11 84:4,16 89:23 90:1 95:5 95:18,25 96:5 97:3 101:12 103:15,15 105:19 106:16 107:23 108:20,23 109:1,4 110:13 111:8 112:5 117:7,8,24 118:11,24 119:13 120:8 121:11 122:5 127:16 136:15 145:3,13 151:7 171:6,7 173:18 174:3,9 176:18 178:2,8,11 178:15 196:10 197:4,10 200:3,20 200:24 201:3 208:4,15,17 209:25 211:4,21 230:10 234:21,23 241:24 242:19 243:9,12 248:19 248:20 249:18 250:16,17 253:21 253:23 261:19 262:9 264:5,17 265:10,21 270:5 271:5,22 272:1,3 273:5,12,15	275:21 277:7,14 298:25 believed 66:8 80:18 83:2 90:3,4 207:8 bellawood 1:21 4:19 5:9 belong 224:14 beneficiary 76:6 81:21,22 benefit 40:7,8,15 42:22,24 43:7 76:4,10 82:12 146:2 best 38:20 90:2,5 91:24 97:8 107:20 143:21,25 181:9 206:22 289:18 bet 285:16 betrayed 58:16 better 106:6 131:3 172:2 281:21 299:15,21 beyond 24:16 29:16 30:6 105:9 112:7,9,16 136:18 138:6 147:12 200:16 230:16,19 267:20 274:21,21 277:6,14 big 71:25 bijan 4:4 6:4 bill 5:22 111:4 124:2 165:25 166:4,7 170:6,11 254:22 255:7 256:7,15,25 billed 125:25 166:3,11,18 170:9 251:9	billing 111:1 161:15,15,20 162:1,8 163:24 165:23,25 168:15 169:23 170:2,4 251:12,23 256:11 billings 164:9 169:2 bills 122:17,24 123:10 binder 31:21 67:16 74:8 92:24 binding 86:20 292:14 birds 244:15 bit 106:4 148:23 172:2 178:18 187:5 224:11 257:13 blank 64:4 blanket 226:13 bless 100:19 125:14 blocking 171:21 blocks 84:4 blood 294:2 blow 250:4 blown 192:7 board 158:22 159:12,16 268:14 301:12 boards 12:17 bolster 186:11 book 67:22 97:12 98:2 books 70:23 71:3 71:15 72:4 bostick 30:3,7 38:7,12 39:6,8 46:25 47:4,12,15 47:20,20 77:22	78:13 83:19 84:2 84:7,14 101:25 112:21,24 bostick's 102:14 102:21 bound 299:5 bounty 19:6 22:14 bowler 4:22 5:11 box 3:4,7,11 65:17 83:12,15 boxed 112:25 brandon 1:3,8,10 break 7:10,11 55:3 90:8,25 91:9,12,21 91:23 100:13 151:18 152:12 196:17 210:13,23 219:5 221:22 222:22,25 244:8 251:2 280:2 284:25 287:23,25 288:7 290:12 294:7 295:11 breaks 294:6 broke 187:5 195:20 brought 6:25 24:6 25:2 86:2 127:16 288:1,3 bryant 9:18 35:9 35:10,24 36:11 67:15 69:12 72:2 116:23,24 133:7 133:13,24 134:7 138:22 139:2 bulk 23:5,6 55:24 56:15 101:11 169:25 bunch 286:24 287:12

[burr - change]

ROA 006017

Page 9

burr 10:20 business 17:6,7 25:3 64:14,18,22 66:9 120:14 121:4 121:5 159:21 207:11 209:22 byrd 4:14	171:10,13 172:8 172:14,19,22 173:2,4,11,19,21 174:1,4,6,10 180:16,17 181:2 181:11,13,16,21 182:9,23 183:4,9 184:8,16,22 185:1 185:12,12,23 186:14 194:5,11 194:12,15 195:1 195:12,17 196:1,6 196:11 206:12 208:5 232:1 243:15,19	18:24 20:12 23:9 40:13 86:24,25 96:6,7 98:5 101:18 102:4,8 103:17 104:12 107:10,10,17,19 107:23 108:4 109:14 110:2 111:9 113:22 114:11,17,21 123:15 240:9 241:12 260:22 262:3 280:21 cause 25:12 240:11 304:7 caution 104:7 123:3 149:14 180:19 cease 122:4 127:14 189:8 ceremony 108:6 certain 12:14 15:18 127:15 137:19 140:10 144:1 certainly 7:19 14:10 17:1 23:2,5 24:5,12 26:13,18 31:1,15 38:11 46:9 49:17 59:21 80:17 124:14 125:9 126:6 154:24 157:13 168:2 171:9 182:3 242:6 246:19 251:9 256:24 297:19 certificate 62:6 63:7,12,13 64:2,11 65:17,22,24 66:2 69:15,19,21,23	183:17 304:1 305:7 certificates 69:11 70:12,13,19 certification 13:4 61:13,24 62:8 64:17 182:16 certifications 11:18 certified 11:22 12:2,21,24 13:12 13:17 15:21 certify 304:4,6 cfrc 4:11 35:19 48:20 55:22 116:14,18,19 117:4 120:13,19 121:2,10,12 129:21 131:6,12 131:25 132:1,12 132:14,24 133:1,2 133:3,5,19,24 134:12 136:11,24 137:10 147:4 150:5 152:18 153:2 154:23 156:6,8 167:24 168:7 169:22 206:8 209:22 chair 14:16,20,25 15:1,2 chairs 15:3 challenge 266:8 chance 68:21 218:16 288:12 chances 95:13 change 31:13,14 41:8 50:12,18,22 51:11,15,25 54:13 54:14 60:11,15 73:10,11,22,23
c			
c 43:11 45:13 306:1 calculating 13:15 calendar 164:17 164:20 252:11,22 300:10,13 301:19 call 26:11,14,21 27:1 109:7 168:8 193:16 285:3 289:5 called 10:20 36:21 53:12,12 58:22,23 calling 29:17 139:1 144:4 calls 137:2,14 139:10 140:7,15 141:20,22 143:12 143:15 144:3 159:20 206:7 209:11 242:17 cancer 21:3 candidly 297:24 capacities 193:15 capacity 19:1,4,20 19:22 20:3,4,4,11 20:15,17,24 21:4 21:20,25 27:19,21 30:14,18 31:3 36:7,13 39:18 48:4 50:22 64:12 66:1,9 78:16 80:12,17 84:17 87:3 171:1,2,8,9	caption 1:14 2:1 car 60:17 210:14 card 25:3 care 108:10 145:13 169:7,12 183:14 258:8 career 10:10,13 carefully 126:18 caregiver 24:7 25:3 caregivers 24:8 carolina 1:1 5:10 9:10,23 10:16 11:21,24 12:4,6,25 14:4,6 51:19 52:6 87:1 95:8 96:11 97:11,12,13,20,21 98:1,4,5,6 199:23 260:3 304:3,11 carolinas 306:15 carter 3:3 carteret 3:21 carterlawpa.com 3:5 case 1:6 2:5 5:6,7 7:23 8:7 17:12		

[change - commission]

ROA 006018

Page 10

75:11,18 76:16 77:8 81:11 82:9 87:24 192:16 193:12,14 194:5 194:15,25 196:10 198:20,21 199:8 234:25 278:14 279:6 284:18 293:1 307:4,7,10 307:13,16,19 changed 48:19 52:9 76:10 82:12 201:18 changes 17:20 28:3 54:19,24 73:5,20 74:2,3 81:7,9,15 82:21 84:8,12,13 199:3,9 202:4,7,8 306:10 308:6 chapter 97:11 98:2 charging 256:4 charities 43:16 charity 43:24 charles 3:10 4:6,7 6:2 130:23 131:3 charleston 4:5 charlotte 197:14 charming 17:5 check 113:11 291:19 300:5,9,24 301:1 checked 290:21 300:3 checking 300:13 300:25 checklist 181:15 checkup 199:19 199:21	children 9:13,18 9:21 40:21 44:2 276:10,17 children's 9:16 chip 107:13 108:9 108:16 122:21 148:21,23 149:6 155:19 170:19 202:22 203:18 204:6 209:5 220:10 222:12,20 225:2 228:23 237:6,24 264:21 choice 238:8 292:21 choose 57:18 chose 70:25 circumstances 16:13 48:15 140:11,12 183:20 270:19,25 claim 89:9,23 149:17 280:4,17 284:6,10 claims 18:24 277:15 claire 9:19 clause 45:6,7,10 77:2 cle 12:6 13:15,18 97:14 98:19,21 clear 74:18 104:18 148:21 149:3 178:23 179:4 181:23 187:22 255:2 284:15,16 297:10 302:14 cles 98:17 client 8:3,7,8,13 19:4 23:15 24:4,5 24:13,14,16,18,19	25:14,15 26:19,20 105:3 137:15 149:12,15,17 164:23,23 165:19 165:21 180:15 183:18 184:6 186:12 187:17,24 188:2,3,6 189:2,3 189:8,14,23 197:17 212:18 219:12 222:3 224:14 232:6 236:16,19 237:4,4 237:11,22 260:17 277:21 280:17,19 284:2,9 292:5 296:4 298:15 client's 23:21 188:23 189:18 224:14 281:13 clients 21:23 22:12 22:12,23 23:5,6,7 23:23 24:6,19 31:2 46:2 152:19 166:1 170:11 180:25 181:11,11 185:11 186:9 188:15,18 190:13 254:25 273:20 277:1 close 149:3 222:1 223:24 closely 142:10,21 143:7 144:24 145:8 146:23 closer 106:4 149:4 club 213:2 cmolster 4:8 coach 236:21,23 238:13,16,18 244:23	coaching 61:19 236:25 237:2,23 coastal 6:11,13 8:25 48:21 49:25 55:22 67:15,17 99:9 coercion 178:19 179:14,21 180:2,7 180:8 cognitive 21:13,15 192:17,18 193:1 193:13,16,20,20 193:25 194:4 195:7,10,17,25 196:4,6 collateral 98:21 collected 126:1 collective 201:4 college 11:24 15:5 15:8,19 columbia 1:21 3:15 4:20 5:10 10:16 come 11:17 27:6 29:22 45:7 53:25 79:24 90:9 91:19 94:20 105:4 113:3 113:10 132:17 192:14 200:10 224:21 286:1,2 290:13 292:6 293:11,14,20 294:19 297:7 299:10 comes 104:8,11 coming 29:19 30:9 30:10 171:17 292:8 comment 209:9 commission 12:6 13:19 304:19

committee 12:19 13:25 14:6,9,12,14 14:16,20,23 15:3 committees 14:3 common 1:1 5:6 86:4 87:1 commonly 20:14 communicate 24:15 25:15 30:21 31:3 35:8,8 231:25 241:25 communicated 28:10,18,20 35:10 36:10 246:17 communicating 28:15 communication 54:15 100:8 218:20 230:11 263:4,6 communications 24:17 30:5 56:4 56:11 99:18 113:7 120:20 137:3,15 139:1,2,10 140:15 141:22 144:4,6 159:20 170:2 205:15 206:7 209:12 225:3,4 242:13 246:23 companies 140:1 company 6:11 9:1 9:2 35:20,24 48:21 49:4 50:1 55:23 56:2,22,25 57:2 58:6,18 60:24 66:16,18,19 66:21 67:8 70:22 71:19 116:21 127:9,9,10,13 131:7 137:20	138:1,20 140:2 143:20 145:8,25 146:1,20,24 154:8 158:23 160:1,13 160:20 197:19 201:7 204:23 205:10,16,24 206:13,18,25 207:6,9,11,23 208:5,17,18,20 209:3 210:7 268:1 269:4,11,25 270:7 company's 139:10 140:15 141:22 159:21 compelled 94:25 competency 61:24 62:5,7,8,13,15,19 62:21,22 63:6 64:17 182:16 243:15 competent 63:3,11 206:25 207:6,8,10 207:21 208:21 209:21 210:6 complaint 86:1 89:14 92:21 303:17 305:16 complete 304:5 308:8 completed 306:17 completely 169:4 289:21 computer 112:16 112:19 161:22 256:19 concern 27:18,20 30:12,21 36:6,15 47:24 48:3 52:16 80:5,5 183:23 186:13	concerned 27:24 51:20 52:12 concerning 226:5 concerns 25:5 31:2 80:10 182:8 concerted 275:24 conclude 262:22 concluded 171:8 188:10,19 concludes 303:14 conclusion 140:7,7 141:21 143:13,15 144:3 168:8 189:5 242:18 257:7 262:9 conditions 20:20 22:19 confer 224:3,5,7 conference 165:18 189:4 236:5,6 237:10,11 271:18 272:21 273:2 conferences 24:9 confers 296:6 297:15 confident 63:5 78:15 confidential 205:14 206:7 248:14,14 confidentiality 247:8,16,21 248:7 283:24 confidentially 247:9 confirm 54:19 72:25 conflict 58:3 143:24 152:19 216:7,9,13 217:17 217:21 247:17	248:12,13 290:3 conflicts 153:14 155:9 215:19 216:1 217:9 247:8 248:5 confused 300:23 conjunction 275:4 connection 154:9 265:25 conservatorship 183:19 consider 71:25 97:13 135:22 147:25 149:18 157:11 183:18 243:4 262:17 295:17 296:1 considered 174:1 considering 265:18 295:19 consisted 84:17 consolidated 5:5 conspiracy 89:15 constitute 226:12 constraint 38:22 consult 183:11 224:9 consulted 94:23 contact 26:8 53:10 211:6,11,13,17,19 211:20 contacted 131:13 213:12 contained 37:6 41:14 76:8 81:9 81:25 contemplating 287:4 contend 188:13 contents 134:3

contest 286:22 context 19:15 23:18 30:1 34:18 34:19,19 35:15 42:2 46:5 58:2 191:7 continuation 82:22 continue 39:22 continued 3:25 76:3 82:11,25 246:22 continues 1:14 2:1 76:5,7 continuing 147:25 232:17 264:18,19 265:6 continuous 135:23 136:6 contract 67:22 86:20 87:1,6,12,13 87:20 88:4,20,22 88:24 89:4,6,10,11 171:12,13,14 172:8,9,14 173:2 173:19 176:22,23 178:5,5,21 180:3 277:16 278:13 279:4 280:17 281:15 283:16 284:4 contractual 172:22 281:1 283:7 contrary 89:7 contributions 15:25 control 49:5 56:22 56:25 58:5,18,20 112:10	convenient 260:17 295:2 296:20 convening 291:24 convention 296:11 conversation 34:24 107:15,24 134:4,4,7 160:6 164:22 183:18 214:24 215:1 221:4 225:8,12 232:20 236:11,15 237:4,13 238:15 244:4,5 247:16,17 263:3 276:21 279:8,19 conversations 22:13 28:21 56:9 71:17 110:10,11 133:23 138:5 197:15 218:14 219:11 223:15 229:5,6 231:3,6,12 232:8,12 239:11 242:15,25 246:8 246:11,13 convoluted 203:22 cookie 182:18 cooperated 112:21 coordinated 240:16 coordination 30:6 240:13 copies 70:5 86:8 306:14 copy 230:9 264:12 265:11 266:1 corner 32:20 corporate 53:15 53:16 98:14,16 108:25 120:13 121:3,5 131:14,18	136:25 137:3,12 137:23 138:7,15 138:23 140:17 145:25 147:2 148:13 151:6 corporation 50:2 62:22 108:24 136:13,18 139:5,6 139:16,16 141:2,3 141:13,18 142:7 142:10,16,17,21 143:7,18,21,25 144:24 145:8 146:22 corporations 141:12 correct 26:1 29:11 29:12 32:10 36:22 36:23 37:21 39:10 39:13,15 44:17 51:2 62:7 67:25 68:3,5,15 69:16,17 69:20,22 81:5 96:3 99:23,24 101:21,22 111:6,7 116:4,5 117:11,12 117:20,21 118:13 118:14 121:15 123:12,14 124:11 124:12 125:6 126:3,5 128:14 129:18 130:6,7,12 134:5 135:13,18 146:6 153:8,9,23 153:24 161:16 175:25 185:13,16 186:25 187:10,25 193:3 196:12 197:6,23 198:3,21 199:4 202:7 205:18,19 211:18	213:15 214:2 221:13 227:4 232:10,25 233:13 235:21,25 237:5 239:12 247:2,3 248:21 250:14,15 250:17 254:15 255:15,19 258:13 260:12 261:8,11 261:21 266:9 267:13 268:8 270:1 271:21 272:2 273:8,9,16 282:3,10 283:18 283:22 293:6 308:8 corrections 308:6 correctly 118:4 239:18 counsel 1:22 3:1 5:4,14,18,20 6:23 11:25 15:5,9 31:22 32:8 92:7 98:14,16 100:23 100:25 101:2 107:9 108:13 122:10 126:9 131:14 132:12 133:25 136:21,25 137:12,23 138:7 138:15,23 140:17 144:4 147:2 148:13 151:6 299:10 304:7 306:14 counseled 60:21 counsels 120:24 country 213:2 county 1:2 86:3 96:11 97:2 260:2 304:11

couple 12:1 14:15 18:23 296:7,8 course 12:18 22:7 29:24 137:8 199:25 court 1:1 5:6,12 6:15 7:6 8:5,9 9:9 12:5,20,25 86:4 92:10,20 96:10 97:2 130:19 131:9 187:4 196:22 228:5 281:21 285:8 290:5,7 304:2,19 court's 17:12 courtesy 108:15 224:10 289:7 courthouse 260:2 courtroom 96:20 96:21 covered 228:10 covering 186:2 covid 95:3 249:21 250:6 cp 1:6 2:5,5 5:7 86:25 cr 1:23 crawl 149:4 created 34:10 credentials 15:18 15:20 credit 13:20 credits 13:16 critical 296:17 cruel 294:15 crystal 284:15 cs 306:15 cuff 182:7 culminated 250:13 current 17:16,17 202:10 219:6	245:19 currently 13:11 cut 275:1 cutter 182:18 cya 185:24 186:1 cycle 14:18 15:3 d d 305:1 danger 189:15 data 256:19 date 1:18 63:10 70:13,18,25,25 151:13 266:20 307:24 308:12 dated 1:10 65:10 65:10 73:13,18 151:8 235:20 daughter 6:25 9:23 58:3 83:1 229:9 day 49:9 170:20 207:10,10,22,22 208:6,6,16,16,20 208:20 209:3,3,22 209:22 210:7,7 222:5 274:15 286:7,25,25 287:1 287:9 289:25 290:1,2,22 291:21 291:22,22,24,24 293:5,9 294:19 295:5 297:1,4,6,13 303:14 304:10 308:15 days 49:8,9 65:18 286:10 287:5,7 303:1 306:17 dc 4:8 dead 39:14 52:17 226:23 233:22	deal 26:18 67:5,5 71:25 113:13 150:3,14 155:25 238:1 deals 41:17 dealt 27:22 112:3 112:20 death 37:11,17 40:9,12,17 42:22 43:21 44:5,24 46:3,4,4 76:4 82:4 82:6 84:18 125:19 159:6 190:20 192:17 194:16 206:12 226:8 227:9 258:10 debate 224:17 decade 14:10 decades 63:21 deceased 122:2 158:1 212:16 decedent 86:19 december 1:10 13:14 14:1 70:14 70:19,24 235:20 254:24 258:12 261:11,18 262:22 264:16 266:2 271:18 296:7 decide 45:20 222:6 244:24 295:23 decided 60:20 76:18 83:3 94:23 deciding 165:12 decision 31:10 149:19 decisions 28:10,22 28:25 62:23 145:24 declaration 258:9	declare 38:14 302:10 308:4 decline 295:17 deemed 308:6 default 43:24 45:5 45:7,10,16 76:9 77:2 82:12,16 defelt 45:10 defendant 1:22 3:18 4:2,11 5:5 126:17 defendant's 92:22 92:23 93:9 305:15 defendants 1:13 298:19 defensive 62:14 63:9 185:20 definitely 88:24 degree 62:14 165:9 delaying 266:6 delivered 70:21 288:4 dementia 21:14 191:24 192:6 departure 111:10 depended 26:10 depending 182:1 222:4 depends 26:10 183:11 192:2 286:7 depo 68:7 deponent 1:17 299:9 306:13 308:3 deposing 298:20 306:13 deposition 5:4,8 6:24 7:2 8:2 94:5 94:21 95:21 96:19

96:22 99:3,12,16 99:20,23 100:12 101:25 102:8,10 102:11,14,21 103:14 106:21 107:1,5,7 109:13 109:22 111:2 115:15 287:5 288:13 291:22 292:12 296:7,13 298:2,24 302:16 303:22 depositions 101:23 102:3 297:18 298:21,25 derogatorily 182:19 describe 11:3 19:3 20:6 141:16 173:4 262:17 described 37:8,13 82:23 87:4 107:6 107:8 109:6 189:17 247:23 257:18 description 37:15 designated 12:21 designation 12:8 designed 37:9 desire 57:5 75:14 185:19 258:9 desires 23:14,20 23:21 24:22 25:1 desk 53:23 235:1,2 detail 257:6 detailed 256:25 details 180:24 181:24 242:22 243:1 272:23 273:2	determine 21:24 44:22 165:7 173:5 189:17 256:20 determined 76:18 determining 22:7 devise 49:13 75:23 devoted 12:15 dft 303:17 diagnosed 21:18 diagnoses 20:20 diagnosis 20:25 diagrams 257:21 dial 224:19,20,20 dictate 182:4 die 52:15 died 51:21 52:12 193:3 194:6 195:2 196:11 206:2 dies 43:9 difference 75:19 195:7 282:15,21 different 22:18 31:6 53:8,9 101:5 190:8,11 272:15 dig 231:16 digging 117:10 diminished 180:15 243:19 dinner 158:1,4,13 158:16,23,24 159:2,5,8,11,14 160:6,21 161:10 dinners 157:21 direct 35:21 43:14 44:1 50:11 52:9 59:2 117:8 125:5 273:16 directed 28:22 49:7 51:24,25 53:17 60:12 123:13 130:25	131:7 231:25 direction 29:1 80:21 84:15 234:24 235:3 directions 77:7 directive 53:10 directly 26:17 64:8 99:19 161:25 director 29:3 138:1,6,20 159:25 269:5 270:1 directors 117:3 140:16 141:23 145:22,22,23 158:23 205:15 206:8 268:15 directs 38:17 42:24 disagree 281:20 284:11 286:15,18 294:16 disagreed 297:23 disagreement 278:1,4 295:21 299:11 disagrees 284:13 discern 282:15,20 discerned 86:22 281:15 disclose 180:20 217:10 disclosed 8:12 disclosing 119:6 disconnect 296:25 discretion 40:18 discuss 34:8 71:5 92:6 103:6,12,17 105:17 106:14 107:10 108:18,21 108:24 109:2,8 153:14 159:17	215:18 216:1 218:2,4 219:14,20 220:4,6,8 221:17 223:9,21 228:14 229:8,15 234:8 239:19,22 240:1,3 240:22 241:15,19 242:22 243:25 247:7 249:4 259:13,19 262:6 262:15 278:8 280:2 283:5 288:20 discussed 17:18 25:1 35:16 46:8,9 54:5 57:15,16,22 58:8 59:14 71:12 84:13 103:20 104:5 106:21 107:1,2,4 202:10 214:9,19,20,21 215:2 216:5,6 217:15 218:22 220:16 225:22 233:12 239:23 248:4,7,11 250:21 254:12 255:8 263:14,20 265:16 267:18 271:10 272:17 discussing 103:3 218:25 241:21 discussion 57:25 105:9 131:17 138:14 168:14 219:2 229:12 230:15 278:12 298:5,17 discussions 46:6 53:2 59:10 75:10 84:11 108:12

153:20 155:9 222:14 223:16 226:4 227:4,8 228:3 229:24 242:4,7 245:6 263:10 277:3 279:24 280:4 disease 21:18 disposition 175:8 175:23 dispositive 37:3 46:8 81:8,10 201:6 distinction 146:12 195:24 196:5 247:21 distinguish 136:22 231:7 distracted 218:18 distribute 49:24 distributed 42:10 42:11 43:18 44:7 60:25 82:9 distribution 37:5 42:15 49:19,23 82:1,17 83:5 distributions 41:17,18,25 42:1,3 42:16 81:23 divided 40:20 43:4 43:6 44:1 81:19 doctor 62:3 63:17 183:17,22 184:6 doctor's 63:11 document 19:25 31:8 32:22 33:3 33:19 39:2,5 40:5 41:15 47:2 49:7,8 49:10 51:2,4,7,16 51:25 52:1,2 53:1 53:3,13,17,21,22	61:10,12,22,23 62:1,2,10,11 64:24 65:5,9 67:10,11,16 69:21 70:25 73:3 75:2,13,20 76:5,25 77:3,11,17 78:4,6 78:17 79:13,16,17 81:15 198:17 235:6 239:8 258:4 274:2 documents 8:12 16:20 17:17,17,18 17:20,23,24 18:13 18:14,17,19,22 19:2,5,8,11,17 20:12 21:1,12,16 21:21 23:10 25:19 26:4 28:4,16 31:6 31:13,17 34:3,12 34:14 46:3 47:16 48:1,5,19 51:1,8 54:6 55:14,17,19 55:20 56:10,17 57:7,10,13 58:21 58:24 59:3 65:19 65:20 66:11,13,17 67:7 68:1,12 69:12 70:6,6,21 71:3,8,13,19 73:6 73:13 74:13,15,25 75:15 79:11,12 80:3,4,7,12,23 81:7 83:9 84:22 85:1 86:23 87:15 87:22 101:20,20 110:18,20,25 112:7,13 113:5,15 114:16,17 115:1,7 115:10,13,14 118:8,12 128:5 165:22 183:13	186:11 188:5,7,23 189:2 197:5,6,13 197:23 198:2,6,6,9 198:17,21 199:8 199:19,23 201:1,4 201:5,23 202:3,9 202:10 211:7 212:16 225:3 230:10,14,17,18 230:19 234:14,25 237:7 242:8 243:7 247:6 249:8,16 250:13,20 257:23 257:25 258:1,6,11 258:16,16 263:21 264:7 265:18 273:1,7,14,20 275:8,12,12,21 276:16,18 280:24 280:24 281:16 282:3 284:3,7 287:13,17 doing 17:13 18:10 18:11 19:24 36:16 54:9 119:15 127:19 128:5 131:25 136:23 137:11 161:13 181:18 209:21 219:17 247:6 257:16 274:5 275:2 277:22 278:2 284:25 donor 173:18 door 221:11 double 113:11 doubt 63:2 184:15 doubts 184:7,25 185:4,12 dr 63:16,17,23,25 64:2,6 65:13,21,23	66:1,8 182:16 draft 64:15 drafted 64:16,24 230:20 drafting 18:18 drafts 34:11 243:6 257:25 258:4 draw 32:19 68:11 86:5 196:5 drawing 86:12 150:6 drawn 149:13 197:11 drayer 98:5 drop 52:17 due 95:19 122:8 125:7 126:4 130:13 135:10 136:2 duly 6:19 38:13 durable 183:15 258:8,18,24 259:1 259:4,14 260:5 261:7,10 264:15 266:2 270:10 duress 84:25 178:19 179:15 180:8 duties 136:16 139:5,15,17,17 140:1,11 141:2,13 141:17 142:7,8,16 142:19 143:6 144:23 145:11,12 146:11 duty 140:3 141:3,3 141:13 143:19 144:1

[e - et]

ROA 006024

Page 16

e	elucidate 245:3	equally 198:11	135:1 166:1
e 25:16 26:15,17	embarrass 265:5	276:10 284:19	180:14 181:1,15
26:22 114:11,13	employees 31:2	equivalent 12:17	197:6 199:4 211:7
305:1,10 307:3,3,3	117:3 131:18	errata 306:11,13	211:10,19 212:7
earlier 76:2 82:15	137:3 139:11	306:17	213:11 214:22
142:7 234:16	140:16 141:23	error 13:15 14:1	215:2,6,15,20
early 14:10,14	205:16 206:8	67:4	217:19 221:17
242:5 282:1 301:9	encounter 117:19	espouses 43:15,23	222:16,16 223:6
earnest 26:3	181:10 187:23	esq 306:5 307:2,24	225:4,23 226:6
east 4:14	ends 84:4 154:13	308:2,4,12	227:11,12,23,24
eating 92:1	enforcing 226:25	esquire 1:17 3:3,7	228:15 229:9,15
ebda 290:6	engage 60:1	3:10,14,20,20 4:4	229:25 232:5,14
ed 6:12 294:4	engaged 34:1,20	4:4,7,13,13,19 5:4	232:22 233:7,11
edited 97:11	60:5 65:14	6:18	233:21 234:9
education 11:19	engagement 134:8	essentially 201:15	235:23 239:12,19
edward 4:13	134:11,12,18,25	223:5	239:22 240:1,4,14
effect 45:17	135:3,6 182:2	estate 1:3,8 8:2,11	240:16,22 241:16
218:24 262:12,13	216:12,25 217:4	8:14 10:5,7 11:1,2	241:19,22 242:2
effective 259:15	engaging 89:15	11:9,13,15,15,19	242:23 243:1,3,6
effects 42:4,16	217:18	11:23,25 12:3,9,25	244:6,17 245:7
effectuate 186:9	enjoyed 16:25	13:12 15:5,9,13,17	246:9 247:1,6
186:12	enter 162:3 164:14	16:1,19 17:11,14	248:24 249:4,7,16
effectuated 24:23	171:12 172:9	18:3,8 19:2,13,17	250:10 251:22
efficient 11:6	176:6 298:1	22:19 23:22 25:20	253:4,12 254:21
effort 14:12 21:23	entered 86:19	26:3 28:4,9,11,16	255:4 261:25
62:13 63:8 113:16	162:1 256:19	28:18,23 29:4,10	263:10,15 264:7
efuhr 4:15	entering 172:19	30:3 31:13 34:9	271:16 274:5
either 17:23 29:14	175:23	35:11,14 36:4	275:5,15,25 276:7
87:17 100:15	entire 32:9 135:24	37:1,14 39:7,8	276:22 278:1,9
158:21 162:5	entirely 93:22	42:21,24 45:22	279:10,21 281:8
217:23 220:17	104:18	50:4 73:5,20	281:25 282:1
227:11 233:22	entitled 40:24	84:17,18 85:5,11	283:8 284:1,3,18
237:25 259:13	41:24 214:13	85:19 86:20,23	287:15
elderly 22:18,24	240:8 241:13	87:2,7,24 88:2,4,8	estimate 18:1 57:4
elected 15:19 16:2	284:2,22	88:12,13,17,18,20	289:23
electronically	entity 50:3	89:1,4,8 96:16	estimation 181:12
100:16	entries 162:1	97:12,21 98:2,3,7	estranged 83:6
elicit 290:24	213:25 257:14	98:10,12,19	esuiqre 305:3
else's 23:14 80:21	entry 165:20	104:12 118:8,12	et 86:25 306:4
295:17,19 296:1	236:2 255:7	119:8,24 120:2,5,9	307:1 308:1
	256:16 274:15,22	128:5,5 134:22,22	

[ethical - failed]

ROA 006025

Page 17

ethical 15:24 ethics 14:13 98:10 98:11,13,15 evaluated 183:22 evaluates 12:20 evaluation 184:7 184:15,21,25 185:11,24 186:5 evans 116:25 117:1 event 105:5 159:15 events 304:8 everybody 7:14 61:2 68:6,20 91:24 147:24 179:12 212:2 267:4 288:6 292:15 294:8 295:7 296:1,18,20 303:3 everybody's 132:10 294:1 evidence 84:24 87:5 268:20 280:25 281:2,14 283:15 284:4,10 evidenced 78:1 evolution 75:14 exact 72:23 exactly 95:1 149:13 264:23 296:24 examination 6:20 62:4 93:15 273:16 305:4,5 exceeded 171:9 194:12 exception 8:6,8,21 212:17 227:16,17 231:17 291:1	excited 264:22 excluding 110:22 excuse 48:20 55:23 61:17 127:17 167:20 180:8 184:14 199:2 246:23 265:20 271:6 275:1 execute 20:12 21:3 21:11,16,20 34:14 46:3 54:3,4 64:3 74:4 171:4 executed 31:6,8 33:17,22 49:10,10 49:16 51:16 52:6 54:8 57:6 65:13 66:2,14,21 75:7 78:25 79:15,21 84:1 150:13 186:19 197:22 201:10 250:13 258:12 260:6 261:11,17 262:2 264:11,16 266:2 267:20 273:7 275:3 276:16 executes 38:15 executing 19:2,25 20:21 21:1 182:7 183:5 execution 8:10 33:16 34:3 46:16 48:16 51:11 52:4 187:10 189:22 243:8 250:19 265:25 273:14 274:17 exercise 43:16,25 45:1,3,6 226:2 280:5	exercised 44:22 45:15 77:4 186:18 exerting 23:19 exhausted 227:16 exhibit 15:23 32:9 32:15,16,16 67:11 68:11 85:25 92:21 93:8 106:18 303:17 305:13,13 305:16 exist 162:23 163:7 213:23 existed 17:24 163:12 217:1,4 277:8 existence 147:13 150:5 existing 147:3 183:13 214:19 exists 280:18 expect 13:22 20:15 76:18 95:7 expected 30:20 31:1 experience 22:17 expert 96:2,6,12 96:25 179:7 expires 304:19 explain 19:12 25:9 126:17 expose 180:24 express 30:13 54:9 60:9 72:8 243:14 243:18 277:25 278:4,7 297:16 expressed 72:10 expressing 72:12 72:14 expressly 239:25 extension 29:18	extensive 22:13 extent 13:25 40:15 42:8 63:9 64:13 89:5 103:2,20 104:5 108:12 131:17 137:2,14 138:25 139:9 140:14 141:21 142:19 144:5 147:15 159:19 176:16 180:16 183:3,13 186:10 192:5,11 205:14 206:6 209:11 217:4 231:10,15 231:24 246:11,12 246:13 252:20 286:18 extract 8:14 extreme 276:24,25 extremely 170:17 f face 87:22 facilities 53:16 fact 13:20 24:20 24:24,25 42:11 44:19 59:14 71:6 71:18 80:17 83:5 87:21 93:22 175:3 175:7,8,15,18,22 176:6,9,18,21 177:6 199:21 217:15 230:19 241:11 257:19,21 257:22 259:20 262:21 265:22 284:1 factor 165:12 facts 103:17 104:5 failed 71:6

[fails - form]

ROA 006026

Page 18

fails 306:19 fair 7:18 37:14 94:3,4 122:19 138:2 148:5 151:11 168:5,8 201:19 232:8 fairness 297:22 fall 18:6 25:24 34:5 211:21 216:6 familiar 19:13 244:25 family 17:9 24:7,8 25:2 43:18 far 14:25 21:2 28:2,24 53:24 54:1 81:8 122:19 216:24 256:7 271:24 fashion 295:25 father 23:10 favor 257:12 favorite 290:7 fear 60:16 february 31:19 33:17,23,24 34:14 36:5 39:22 47:23 49:16 51:8 79:15 79:21 81:2,4,4 84:21 85:1 242:8 246:19 249:3 250:16 271:19 272:18 273:13 275:3 276:16 fed 91:24 fee 96:16 166:2 feed 224:1 feels 208:2 feet 250:3 fellow 15:5 felt 58:15	fiduciaries 201:7 fiduciary 139:17 140:3,11 141:3,14 145:11 field 12:25 fifth 152:1 figure 93:5 95:12 194:2 223:2 236:25 300:22 file 112:25 114:13 164:24 186:6 267:19 277:9 295:3,22,23 302:14,17,24 filed 5:6 86:3 262:8 files 111:16 fill 264:7 finalize 274:1 financial 28:21 34:21 35:23 241:24 find 35:25 41:10 72:22 170:21 221:10 237:16 238:6 fine 32:14 91:21 93:11 113:14 126:8 144:14 148:8 152:3 166:15 191:8,16 191:17 197:1 221:15 223:16 224:15,24 225:9 265:3 300:8,14 301:2 302:6,7 fingers 79:23 finish 7:14,17 123:4 285:21 286:3 289:25 291:9,9 293:21	299:18 finished 287:9 firm 3:6,10,19 5:11,13 6:14 10:18,20 17:2 29:8,14 31:4 100:3 106:20 111:8,17,17 112:20 113:23 118:17,19,20,21 161:12 163:13 216:25 235:20,24 first 16:8,10,14 18:25 33:20,25 36:20 38:4,13 39:25 40:3 45:21 46:14,24 58:22 75:1 76:3 79:16 86:5,16 107:23 108:1 115:2,11 117:8,22 118:7 119:14 121:9 150:13 203:5 209:10 211:2,5,16 211:19 215:25 221:10 236:2 242:3 250:13 254:3 255:3 287:21 fishing 286:19 five 12:12 13:5 16:5 43:12 44:4 45:11,14 55:3 57:9 90:7,11 91:9 92:4 210:10 280:13 285:15 287:24 290:12 303:1 flags 25:13 flat 166:1,22 167:4 167:9,15,23	flexibility 46:1 florida 271:21,23 flow 144:17 flurry 228:10 fly 53:14 87:22 focus 197:3 folks 35:23 111:17 follow 53:9 114:10 114:14 203:23 223:10,11 283:17 291:22 following 38:4,6 126:16,19 follows 6:19 32:5 forced 47:25 foregoing 304:4 308:5 forest 6:11,13 48:21 50:1 55:22 99:9 forget 289:18 forgetting 99:1 form 21:8 28:7 30:23 44:12 45:24 50:15 52:19 53:6 59:22 61:19 62:3 64:4 66:5 71:9 78:20 80:9 85:7 89:18 94:11,13 102:16,25 103:19 105:11 111:21,24 114:2 115:4,5 121:16,20 130:17 132:2,18,21 139:7 139:19 140:4,5,14 140:20 141:20,25 142:22,23 143:8 143:11 145:20 146:9 147:6,7 152:20,22 156:11 156:16 157:3,5,18

[form - gift]

ROA 006027

Page 19

160:14,15,16,24 160:25 161:17 162:19,21,24 163:1,9,19,25 165:1,14,15 168:9 168:17,18 169:3,5 171:5,15 172:10 172:11,25 173:14 173:15,24 174:15 174:17,22,25 175:10,11,17 176:1,2,4,12 177:18,25 178:6 178:13,14,22,23 179:5 180:18 181:22 182:13,18 182:20,25 183:25 184:1,10,17,18 185:2,14,15,25 186:7,20 187:1,2 187:12,13 189:10 189:24,25 192:1 192:10,20 193:4 193:17,18 194:7,8 195:3,13,14,15 196:2,3,13,14,15 197:24 198:4,12 198:13,22,23 199:6 200:12,13 201:11,20,21 202:1,13 205:11 207:1,14,18 208:7 208:10 211:8 215:21 216:3,4,10 216:18,19 217:2 217:12 218:9,13 222:18 229:17 230:1,2 231:8,22 232:9 233:14,23 234:18 236:7,9 239:14,15 240:6	242:16 243:10,21 247:10 248:9 249:10 250:22,24 251:13,24 252:7 252:13,15 254:5,6 254:18 255:16 256:5,14 258:19 258:21 259:16,18 260:7,13 263:12 263:17 266:10,12 266:13,18 267:14 267:15 268:3,9,10 268:16,18 269:6 269:18,20 270:3 270:12,21 273:17 274:7 275:18 276:1,3,12,13 279:12 282:4 formalized 66:16 70:23 formally 71:20 forman 10:20 forty 91:9 92:4 287:24 forward 17:19 199:15 214:21 257:5,16 295:18 298:20 forwarded 99:6 found 17:4,5 20:16 188:9 four 9:18 57:9 210:20 280:9 fourth 74:9 79:18 79:20 81:14 frame 17:14 25:19 26:5 27:17 29:10 29:15 31:7 57:24 107:20 117:11 127:23 128:7 204:10 229:4	268:8 269:13 frankly 13:23 126:15 286:11 fraud 177:14,14 177:19,22 178:4 178:11 179:21 180:2,7 free 283:9 284:20 freely 24:15 frequent 54:15 frequently 15:6,9 friday 286:2 288:18,25 290:4,6 front 53:23 235:1 235:2,7,17 237:7 279:10,20 284:12 fuhr 4:13 6:12,12 101:6,12 106:13 294:3,13,20 300:17 301:4 full 9:7 24:14 172:21,21 192:7 fully 192:12 function 24:3 functioning 20:15 functions 137:19 furnishings 42:8 furniture 42:8 further 20:12 22:11 40:9 43:6 58:6 75:21 76:11 76:12 90:17,21 247:17 254:24 284:22 304:6 fussing 285:12 future 45:20 131:4 186:6 217:21 224:23	g gaddyack 286:22 game 151:25 garbled 171:17 gates 170:22 gather 257:9 gathering 112:7 112:13 215:7 gear 288:4 gears 171:1 general 11:2 16:22 23:23 25:17 31:7 40:2 46:15 52:16 180:21 187:22 281:7,9 282:12 generally 12:5 16:1 19:3 23:13 40:5 42:4 64:17 81:6,24 141:14 161:24 170:10 172:14 173:1 196:7 214:21 215:7 252:18,20 257:9 259:19 262:1 generation 98:7 98:20 gentleman 16:24 getting 25:21 29:18 123:14 144:4,6 175:15 182:22 196:21 221:7 271:10 292:24 294:1 ghom 4:4 6:4,4 gift 58:7 59:17 60:21 64:23 71:1 82:2 98:19 173:12 173:13,18 177:6 177:11 178:12,21 180:9

[gilreath - guys]

ROA 006028

Page 20

gilreath 3:6,7 5:22 205:3 246:2 250:4 287:14 288:2 289:10,18 291:6 291:10,15,23 292:9,17 293:17 297:12 301:25 gilreath's 290:6 gilreathlaw.com 3:8 give 7:16 25:1,3 29:1 32:25,25 45:19 51:25 52:1 53:17 59:6 60:14 61:2 66:18 67:10 67:10 74:12 76:7 79:2 97:7 107:20 122:19 124:16 181:8 190:15 206:22 223:4 224:10,19,22 232:20 233:10 235:9 237:19 239:21 241:18,24 264:11 266:1 276:20 295:16 296:19 299:18 given 54:20 95:21 160:22 237:23 289:23 308:9 giving 120:19 229:14 298:16 glean 282:2 glimpse 223:4 go 17:19 28:16 39:25 42:7 43:14 44:10 51:23 52:13 52:13 55:4 58:7 60:13,20 66:10 70:11 71:11 77:1 80:1 81:8 82:15	90:19 91:14,23 92:10 104:2 108:9 110:22 111:5 112:2,16 114:4,7 116:16 124:13 125:12 126:5,10 139:24 140:22 145:4 147:10 165:17 169:6,9,16 179:13,14 190:11 193:8 199:15 205:5 206:10 208:13 210:14 214:18 217:14 220:12 224:23,24 225:5 231:20 238:17,18 240:17 241:13 244:22 248:9 252:17,24 254:16 257:19 260:23 261:19 263:17 264:4 265:4,20,25 267:3 267:8 270:15 271:3,4 281:17 284:22 285:9 286:5,24 287:17 288:5 289:3,14 290:8 291:22,24 293:19 294:9 299:13,22 300:5,9 300:13,21,24 302:23 god 125:14 goes 14:25 19:22 271:7 going 5:2 7:5,5,6,7 32:8,10 52:5 53:14 55:5 61:5 66:10 67:10,21 68:17 79:2,24	90:12 91:12 92:4 92:12 93:1,23 94:2,24 95:2,3,4 97:16 103:1 105:6 110:24 112:8 122:19 124:7,9 125:4,24 126:2,23 131:15 133:15 134:3,14,20 135:16 137:1,24 138:17,18,24 140:13 141:19 142:4,24 143:1 144:2,20 147:11 149:7,13,17 151:17,23 152:5 155:4 170:21 185:9 187:23 188:12 191:5 192:14 204:17 205:12 210:15 212:14 214:11,14 214:21 218:15 219:3,6 221:9,20 222:6 224:4 225:14 237:15,24 238:13,23 241:5,5 245:12,20 250:4,6 251:19 252:25 257:4,5,16 267:3,4 272:25 277:4,6,8 277:14 278:11,11 279:25 280:1,5,8 281:11 283:3,9,17 285:3,14,23 286:3 286:19 287:2,20 288:7,13 289:3 290:15 291:1 292:7,25 293:5,8 293:11,20,21 294:6,8 295:16,16	295:18 297:10 301:14,14 303:5,6 golf 151:24 good 5:1 6:22 14:2 55:3 57:23 58:9 63:12 76:21 91:7 91:7 95:15,17 125:15 199:2 210:13 250:3 298:22 302:18 303:3 grade 9:23 graduated 10:14 grandson 76:22 granted 45:16 46:11 grantor 171:3 great 9:20 16:3,7 17:10 20:1 52:24 95:20 greenville 3:4,8 grounds 135:17 138:10 group 1:20 4:18 5:9,20 10:11,21 100:4,10 guarantee 93:23 guardian 98:24 guardianship 183:19 guess 13:7 31:20 37:12 39:19 75:8 90:25 96:1 206:22 223:24,25 295:15 guesstimate 109:20 190:15 289:19 guy 16:23 guys 67:13 68:1 294:3

[h - iii]

ROA 006029

Page 21

h	happy 67:25 93:18 124:15 125:10 149:18 222:22 223:5 240:7 241:1 241:1 299:16 hard 17:25 105:22 130:20 148:21 171:18 181:6 hargray.com 3:12 harm 89:15 harrell 35:19,24 36:11 hat 231:14 hate 264:21 havana 207:22 he'll 284:13 head 9:9,9 10:1,2 10:17 16:17 22:23 23:2 51:9,12 63:18,20 105:4 health 95:15,17,19 183:14 258:8 hear 31:9 90:22,23 106:6 121:18,22 123:6 145:14 148:22 161:9 171:24,24 179:2 184:3 206:4 226:20 299:16 heard 37:12 278:6 283:12 297:1,5 299:1 hearing 38:18 95:24 105:23 106:1 290:6 heavy 267:24 held 5:8 40:7 42:21,24 75:21 142:10,21 143:7 144:24 145:8 146:23	help 35:14 93:20 102:23 136:20 156:13 165:11 182:10 185:6 186:12 242:1 303:11 helped 31:18 273:21 helpful 289:2,7 helping 188:7 hereto 308:7 hereunto 304:9 herring 121:15,24 hey 152:3 hiccup 13:18 223:25 high 15:23 20:3 hilton 9:9,9,25 10:2,17 16:17 22:23 23:2 51:9 51:12 63:17,20 hit 90:9 hogan 5:22 hold 67:20 72:23 79:23 97:16 181:23 236:13 247:25 264:20 283:1 285:24 289:3 home 26:12,20 51:18 248:24 253:14 254:12,23 255:4,12 256:22 272:14 292:8 honest 285:12 honestly 126:19 hopeful 264:22 hopefully 295:2 hot 267:24 hour 109:25,25 151:17 170:7,7,10	170:12 288:3 298:18 hourly 166:2,3,4,7 166:11,19 168:7 hours 13:20 18:1 91:23 106:19 170:20 285:16,24 286:24 287:3 288:5,12 289:8,9 294:5 296:10 house 26:14,15,20 household 42:4,7 42:15 huh 15:8 252:5 300:12 hunton 4:12 6:14 huntonak.com 4:15,15 husband 62:18 278:2 284:8 hypothetical 208:2
		i	
h 305:10 307:3 habit 29:20,21 hagood 4:3 half 110:1 285:16 290:2,22 291:21 293:5,8 296:10 297:1,4,6,12 298:18 hampton 1:4 2:3 4:22 7:1 18:24 49:2 56:23 57:1 58:3,5,13,17,19 75:15,21,22 76:11 76:13,13,13,24 82:2,14,15,25 83:1 83:2,4 86:1,24 89:14,15,16 104:13 160:8 161:5,6,10 198:10 306:4 307:1 308:1 hampton's 75:22 76:12,23 hand 32:20 86:4 304:9 handled 161:15 handwritten 165:4 happen 17:3 28:11 46:2 60:16 66:15 186:24 happened 14:1,13 29:4 47:18 51:21 60:23 71:2 162:17 260:19 262:24 269:14 270:7 271:5 298:3 happening 268:12 285:22 happens 43:10 294:24		idea 15:12 17:7 23:1 46:1 57:23 58:9 299:15 ideas 35:11 243:3 identification 32:17 188:15 303:18 identified 7:22 68:1 79:12,14 81:1 96:25 151:4 identify 22:8 34:7 79:11 identifying 8:1 130:21 ii 1:3,8,10 33:21 38:25 iii 4:6,7 40:24 41:3 41:6	

illness 95:14 image 278:5 images 275:22 imagine 89:8 immediately 67:2 impact 50:11 impacted 295:10 impairment 21:14 21:15 182:3 193:20 194:21 impetus 18:10 82:21 implement 34:13 implementing 183:5 important 287:12 296:11 impose 129:15 144:8 impress 24:20 inaccurate 102:15 inaudible 173:5 223:17,22 228:4 300:17 incapacitated 98:25 192:12 incapacity 40:8 58:11 61:13 185:5 inclined 291:2 include 102:9,11 297:13 included 34:24 216:12 includes 178:24 179:5 227:22 including 81:21 92:7 141:13,14 incompetent 204:22 205:9,24 incorrect 185:18 196:9	increase 288:13 increment 170:8 increments 170:6 independent 295:8 independently 35:23 274:23 index 4:25 indicated 30:16 56:14 58:15 114:12 indication 289:2 indirectly 99:19 individual 77:13 individually 24:19 26:19 50:5 individuals 11:4 30:13,20 35:12 inducement 178:4 influence 23:9,12 23:13,17,17,19,19 31:3 38:23 60:1 84:20 85:9 87:3 181:17 186:17,17 186:24 187:8 188:22 189:19 190:7,19,22 191:3 191:25 192:9,13 244:1 influenced 23:11 23:25 27:25 30:15 30:17 39:18 47:25 80:7,11,18 187:18 188:11,20 189:3,6 189:15,16,23 190:14 information 7:24 7:25 8:10 35:17 35:22 86:18,21 215:7 248:13 257:10 267:21 281:14 284:16	296:6 298:16 informed 265:22 initial 22:9 24:16 24:16 113:15 114:16 124:8 125:2,25 202:25 204:12 214:7 217:6,24 248:17 250:19 255:9 initially 110:7 215:5 230:12 input 161:22 232:13,24 233:6 233:10 inputted 161:24 inquiry 236:22 inserted 64:25 inside 161:16 insist 24:24 instance 39:1 41:12 97:1 165:19 183:14,17 189:1 instances 24:5,8 26:11 27:9,12 157:11 185:19 188:22 189:9 instruct 103:2,21 104:10 108:11,14 119:6 120:16 123:1 124:9 126:2 129:12,22 130:5 130:11 131:16 133:16 134:15,20 135:10,16 136:1,3 137:25 138:9,19 138:25 139:9 140:18 141:24 144:7 147:12,14 148:24 152:22,24 153:19 159:19 191:6 205:13	211:25 212:14,18 218:15 219:4,6 221:20 231:17 238:9 240:10 241:5 277:5 278:11 280:1 283:2,3,10 instructed 51:10 123:11 150:21 instructing 104:4 104:21 123:18,20 133:20 134:8 153:22 191:10 206:6 226:18 277:13,17 278:16 instruction 104:16 123:7 124:5,16,24 131:2 136:9 137:14 138:16 147:20 148:15,17 150:4,17 153:2,3 159:22,24 191:9 207:3,13 208:9,24 209:11 210:1 231:21 241:8 277:18 283:14 instructions 59:5 59:9 77:6 131:8 222:17 232:21 275:16 283:18 302:15 instrument 38:13 38:15 181:18 186:18 187:10 189:22 instruments 186:11 197:11 240:15 275:2 276:11 insurance 34:22

[intend - jolley]

ROA 006031

Page 23

intend 8:14 intended 39:20 62:2 87:19 intending 78:17 intent 186:9,12 189:18 240:18,18 282:3,9,16,21 interact 75:24 interacted 18:3 29:9 30:8 80:15 200:5 interaction 25:13 29:17,25,25 30:2 207:7 interactions 80:16 101:17 208:4 210:6 interest 50:7 90:2 90:5 143:21,25 155:10 215:19 216:1,7,13 217:17 217:21 interested 304:8 interesting 296:23 interfere 148:7 296:5 interfered 85:3 interference 85:17 85:22 87:4 intermittent 26:16 internet 224:1 interpose 130:4 170:13 interrupt 105:22 144:17 297:10 interview 22:11 interviewed 108:4 188:3 interviewing 24:4 63:2	introduced 16:16 92:21 invalidate 181:17 invalidating 174:13,21 175:4 175:16,25 176:11 176:23 177:6,15 177:20,23 178:11 178:20 179:15,22 180:3,9 investigation 22:10 invited 158:23 invoice 235:19 251:6 253:13 254:9,14 255:5 256:1,2 257:14 274:16 invoices 214:1 252:25 253:9 254:4 271:4,11 invokes 205:14 involved 30:11 34:6,23,25 57:2 62:21 98:22 107:9 108:12 119:14 126:16 155:17 197:22 207:22 208:16 214:7 242:4,5,6 280:21 281:9 involvement 111:15 113:21 119:25 120:15 206:16,17,21 281:8 involves 12:10 20:13 23:13 irrevocable 40:19 59:16 98:21,22	island 9:9 213:5 issue 43:15,16,23 43:24 69:6 72:2 104:6 105:4 125:12 126:12 171:20 183:10 238:7 280:21 286:20 295:6,8 302:20 issues 29:2 34:22 103:3,6,8,13,21 105:9,18 106:14 106:15 135:25 223:7,24 281:18 295:1 296:8 item 166:23 256:4 ix 43:8 44:4 j j 1:9 3:20 jack 9:22 james 3:7 jane 112:4,22 january 10:19 67:14 69:10 107:25 109:7 jim 3:8 5:21 289:12 292:19 job 24:22 john 1:17 5:4,20 6:10,13,18 8:25 9:8,18 38:11 68:7 68:10 118:16 131:5 132:5,20 138:18 147:10,20 148:24 149:22 151:12,16 153:1 156:12 166:24 167:5 206:3 209:7 244:8,13 245:18 296:16,21 301:16 301:17 303:15	305:3 306:1,5 307:2,24 308:2,4 308:12 john's 296:6 298:24 johnathan 4:13 join 143:1 joined 10:18,21 jolley 1:17,20 4:18 5:4,9,20,20 6:18 6:22 9:6,8,17,18 9:19,19,19 10:11 10:21 32:7 38:11 55:12 61:22 66:13 67:14 68:7 85:24 92:5 93:17 95:2 100:4,9 104:17,22 105:10 112:2 114:7 118:16 125:20,23 127:11 127:24 128:10,21 129:6,13 130:2,9 131:11 132:7 137:5 139:24 140:23 142:2 152:11 153:12 154:7 166:10,17 170:18,24 172:7 179:7 194:24 195:20 197:4 202:18 203:23 210:23 218:14 219:19 220:1 223:16,21 224:3 224:19 225:20 228:2,8 231:2 236:15,23 237:3 237:12 239:4 240:21 241:15 248:6 250:8 255:2 260:23 264:4

[jolley - know]

ROA 006032

Page 24

271:14 274:10 277:25 279:8 281:24 284:16 297:25 301:17 303:15 305:3 306:1,5 307:2,24 308:2,4,12 jolley's 121:22 jolleylawgroup.... 4:20 306:2 jr 1:9 9:18 jschronce 4:15 judge 8:5 181:7 222:4 280:22 284:12 289:14 295:23 299:22 judgment 182:11 july 48:9,17 49:9 49:11 54:8,16 57:24 60:13,15 82:24 234:15 236:2 239:6 270:6 jump 105:3 june 57:10,12,24 73:14,18,21 74:5 75:8 80:4 268:14 270:6 jurisdiction 200:1 jury 259:23	kidding 151:22 kids 284:19 kill 244:14 killed 60:18 kimberly 1:23 5:12 304:2,19 kind 24:10 124:22 132:16 171:2 172:8 173:21 174:20 185:24 199:19 203:22 204:2 217:9 225:12 267:24 285:2 292:14 kinds 30:6 kirby 71:9 86:7 kirk 4:19 5:19,19 6:14 53:5,5 91:11 91:16,25 94:13,14 100:2,6,12,15 101:16,18 102:25 103:23,23 104:3 105:21 106:2,5,8 106:12,20 111:23 111:23 113:6,18 113:21 115:5 120:1 121:19 132:2,21 139:7,12 139:21 140:19 141:25 142:13,23 143:11 144:10 145:2,19,19 146:9 146:17 147:7 148:18 152:20 153:18 154:4,4 155:12 156:16 157:5,18 160:14 160:24 161:17 162:21 163:1,9,19 163:25 164:4 165:1,15 168:9,17	169:5,24 171:16 171:17,20,25 172:3,11,25 173:15,24 174:17 174:25 175:10,17 176:2,12 177:1,9 177:18,25 178:6 178:13 179:8,8,17 180:11,18 181:22 182:13,20 183:2 183:25 184:9,17 185:2,14 186:7,20 187:2,12,21 188:12 189:10,25 190:2,8 192:1,10 193:4,18 194:8,19 195:3,15 196:3,15 196:24 197:24 198:4,13,22 199:6 200:13 201:11,20 202:13 204:24 206:3 207:14 208:7,22,25 209:24 210:10 211:8 212:2 215:21 216:4,10 216:19 217:2,12 218:9 222:18 223:18 230:2 231:8,10,15 232:9 233:1,4,15,24 234:4,20 236:9 239:15 242:16 243:10,21 247:10 248:9 249:9 250:24 251:16 252:2,9,15 254:6 255:13,16 256:5 256:14 258:21 259:18 260:7,15 263:12,17 265:2	266:10,19 267:15 268:2,10,18 269:6 269:18 270:3,12 270:23 273:17 274:7 275:20 276:3,13 279:12 282:4 285:5,10 286:9,17 287:4,8 287:18,22 288:14 288:19 290:20 291:13,18 292:5 292:23 293:13,16 293:18,18 294:10 296:22 297:3,7,19 298:7,12 300:2,5,9 300:12,15,18,23 301:18 302:5,9,13 302:21 306:1 kirth 4:12 knew 28:2 162:14 know 7:8,10,13 13:14,17 14:11 18:9 19:9,9,20,23 19:24 21:2 22:24 27:14 31:5 46:2 48:23 52:14 53:24 54:1 56:24 57:19 60:13 63:14,15,19 63:23,25 64:1,4 65:10 67:18 76:15 79:8 82:20 84:17 84:24 87:5,9,11 88:10,15,25 89:2 89:16 91:2 94:19 95:1,8,9 105:5 112:22 113:10,12 113:12,14,19 115:16,21,23 116:2 117:5 119:4 119:7,17,20,23 120:12 121:3,8
k			
kate 9:19 keep 285:3 293:11 293:20 keeping 130:20 kellie 9:17 kept 170:9 kevin 57:2 58:5,10 58:13,16,17,19 160:10 161:7,8,10 267:25,25 269:3 269:25 298:20			

[know - light]

ROA 006033

Page 25

122:7 127:1 130:22 132:15 137:11,18 138:22 145:25 146:1 148:7,21 149:12 149:13,15 150:12 151:14,15,21,22 156:22 161:1 162:7,10,13,17 163:10,12,17 164:19 180:25 182:15 187:20 191:7 197:12 200:14 202:9 204:13,15,20 206:20 207:15 209:18 213:19 216:24 217:3 218:6,7 220:15,21 221:7 222:2 224:9 227:17 231:13 237:17,18 247:8 252:5,6 255:22,23 256:7 257:1 258:3 259:5,6,11 262:4,5 268:25 271:24 272:7,11,12,14 278:14 280:22 281:20,22 284:5,9 284:11,11,14 285:11,14 286:18 288:17 289:3,8,9 289:10,12 290:21 290:22 291:2 292:13,24 294:5,7 295:1,25 296:23 297:17,22,24 298:3,3,6 299:6,12 302:15,21 knowing 19:5,6 200:15 206:11	237:20 238:4 knowledge 38:21 50:19 87:16 227:16 knows 95:2 278:19 279:3 I I 38:7,12 46:25 77:21,22 78:12 83:18 lack 87:3 lacked 27:18 30:18 36:13 48:4 181:2 183:4 lacking 80:11 ladies 83:20,22 landline 26:14 language 45:16 60:22 64:15,16,16 64:25 82:12 87:16 274:22 292:15,17 large 304:4 lasted 272:8 lastly 44:3 late 153:14 155:8 168:6 194:15 195:1 196:11 282:1 laughing 289:17 law 1:20 3:6,10,13 3:19 4:6,18 5:9,20 6:13 8:5 10:11,18 10:19,21 11:23 12:7,9 20:12 58:4 95:7 100:4,9 104:24 111:8 112:5 118:19,20 118:21 145:25 161:12 163:13 178:10 186:16 201:18 235:20,24	lawsuit 127:16 191:8 240:12 lawyer 10:5,7 12:16,20 24:21,21 94:23 97:11,20 98:1,4,6 99:7,25 101:13 131:2 136:18,19 197:12 200:8,8 230:25 231:3,4 232:2,7 282:2 284:8 287:14 289:6 lawyers 12:8 15:14,15 101:8 106:21 107:2 289:5 lay 178:25 179:7 leading 52:19 lean 156:12 leave 92:24 215:11 215:12 238:8 led 16:13 48:15 52:15 56:9 90:1 lee 3:20 6:6 left 10:19 161:13 163:12 216:24 257:3 legal 10:10,13 97:5 118:7 121:2,9,12 124:22 125:23 127:19,22,23 128:7,18,25 129:3 131:25 132:12 140:7 141:21 143:12,14 144:3 161:13 202:11,24 203:4,14,17 204:10 211:23 212:5,11 242:18 277:22 306:23	length 272:9 297:17 letter 67:14 68:2 68:25 69:14 134:11,12,18,25 135:3,7 216:12,25 217:4 letting 171:23 299:6 level 20:3,4 182:2 281:7 lexington 304:11 304:11 life 41:9 95:12 lifetime 257:23 258:4,6 light 1:7,9,9,11,12 4:2 6:1,3,5 8:19 48:22 49:4,25 50:8 51:23 52:2 52:10,25 53:2,10 53:11,18,20,23,25 54:1 55:23,24 56:15,22,24 58:8 59:6,6,13 60:12,19 60:25 62:11 64:5 64:8 65:6 70:8 72:16 81:20 82:18 82:19 86:25 108:13 109:3,9,9 110:14,16 116:7,9 117:23,25 118:1 122:11 123:17 124:2,23,23 125:18,18 126:21 127:21,21 128:8,8 128:18 129:1,4,10 129:15 130:10,10 130:24,24 131:1,1 135:4,7,16,23 136:7 137:22

138:1,6,15,19 147:16 152:25,25 153:15,15 154:13 154:13 158:5,13 158:17,25 159:2 159:23,23 166:7 166:18,23 167:4 198:10 200:11 202:12,24 203:4 203:12,17 204:11 204:18 217:24 218:3,5,14,21,22 219:2,15,21 220:7 220:9,17,17 221:4 221:19 222:15 225:22,22 226:5 227:4,6,19,21,21 228:3,15 229:9,16 229:21,24 230:9 230:11 231:25 232:5,13 233:6,10 234:9,14,15 235:2 235:13 236:5,15 237:5,10 239:5,7 239:11,20,22,24 240:2,3,22 244:16 244:19 245:4,6 253:20,22 263:10 263:15,20,23 264:6,12 265:11 265:22 266:3 274:5,17 306:4 307:1 308:1 light's 160:22 230:13 231:4 lights 152:18 154:8,19 155:11 155:22 156:10,19 157:17,21,24 158:2 168:7 169:22 197:19	225:5 275:2 likewise 176:10 177:22 limit 15:15 25:15 120:5 128:11 134:21 296:13,16 298:18 limitations 229:11 242:9,12 limited 8:6 30:5 111:16 137:17 290:25 limiting 17:10 227:5,6 line 113:19 149:13 150:6 171:1 188:14 228:22 274:4 305:2,11 307:4,7,10,13,16 307:19 linville 51:18 52:6 list 35:3,5 42:6,9 97:7 listed 77:20 listen 104:7 126:18 149:15 238:14 listening 68:6 litigation 6:25 100:9 122:6,8 154:9,10 155:18 155:23 156:7 161:14 169:1 little 106:4 148:23 172:2 178:18 187:5 224:11 257:13 live 9:7,8 lived 9:25 10:2 lives 183:12 271:23	living 10:4 llc 4:3 llp 4:12 lobby 29:19 located 5:9 location 1:20 16:18 lodge 7:15 123:6 log 114:20,23,25 115:3,17,20,22,24 logs 115:8,9 long 9:25 10:6 34:5 63:14,14,15 63:16,17,19,23,25 64:2,6 65:13,21,23 66:8 91:9,11,13 92:1 96:8 99:22 100:5,11,18,19 101:8 106:17 151:23 182:16 213:19,20 272:7 285:8 286:23,23 287:22 290:7 292:24 293:22,23 298:21,25 303:5 long's 66:1 longer 82:13 127:12 285:5,20 289:2 291:1 look 24:10,13 33:2 36:19 58:21 68:4 69:7 74:13 77:10 201:16 224:23 235:6,7 243:4 251:6 252:24 253:8 257:13,20 271:4 276:22 288:8 looked 208:17 looking 33:7 68:7 72:23 73:15 74:19	237:8 254:13 260:24 274:4 298:19 looks 69:13,20,23 235:22 257:24 258:14 lost 173:6 264:21 264:24 lot 22:17 91:23,23 286:19 287:16,17 296:17 lots 23:2 love 148:3 low 20:4,6,7,9 loyalty 139:17 141:4,14 145:11 lunch 90:24,25 91:3,9,12,21,23 287:25 295:10 luzak 1:4 2:3 4:22 7:1 18:24 23:9 49:2 56:23 58:9 58:10,10,16 62:12 62:17 75:15,22 76:14,19 81:21 82:2,16 86:1,24 89:3,5,14,15,16 104:13 160:9,10 160:11,12,19 198:11 267:25 269:3,10,25 306:4 307:1 308:1 luzak's 76:13 89:22
m			
m 38:11 ma'am 205:3 macloskie 3:10,10 5:23,23 293:24 macloskielawfirm 3:12			

[madam - mentioned]

ROA 006035

Page 27

madam 92:10 196:22 magazine 97:21 98:1 mail 25:16 26:15 26:22 114:13 mails 26:17 114:11 maintained 165:8 maintaining 162:8 majority 23:4 making 19:5 28:4 50:12 57:15,15,16 58:11,14 60:9 62:18 64:21 65:8 72:8,11 73:5 112:20,23 199:9 man 17:1 management 62:22 208:18 manipulate 29:6 manner 248:15 manually 162:3,12 163:6 march 1:18 5:2 293:1 304:10 mark 67:11 68:11 85:25 92:23 164:14 marked 32:17 164:19 303:18 married 9:11 mary 154:12 material 175:8,8 175:15,19,22,22 176:6,9,18 177:6 materials 35:16 97:14 99:6 257:20 matter 1:3 5:5 12:15 96:16 100:7 149:18 154:15	166:13 209:21 284:19 289:7 293:9 matters 97:25 109:3 136:8 211:20 212:7 mcbride 197:14 197:16 198:6 mcbride's 198:17 mcnair 10:18,19 10:21,23 111:8,10 111:19 113:3,22 114:21 115:2,23 118:20,21 119:17 119:19,20 120:8 120:10,12 121:3 161:12,16,20 162:8,14 163:7 200:9 213:23 216:17,24 235:19 235:21 mcnair's 111:13 mcpherson 9:17 meal 157:10,13 160:6 294:7 mean 11:13 12:2 14:21 22:2,24 23:3 25:9 29:16 34:17 39:14 41:2 54:4,6 74:15 82:22 91:3 95:11 105:22 126:13 141:7 148:6 151:17 156:22 157:2,24 169:10 182:15,18 186:1 186:13 219:10 226:23 247:20 258:23 259:23 270:5 271:23 273:18 274:23	275:3 285:10 286:9 287:11 289:4,6,9 292:1,6 292:21,23 294:9 294:25 295:13 299:13 300:7 meaning 194:3 means 278:15 meant 275:1 measured 20:11 media 5:3 55:9 92:13,17 210:16 210:20 280:9,13 medical 20:20,20 20:25 22:19 62:3 63:17 medlin 3:14 6:8,8 112:6 296:3 297:1 297:5 298:14,23 299:4 meet 15:18 16:13 23:22 24:18 29:14 36:2 60:4 99:10 100:11,13,18,19 106:11 181:12 212:21 248:23 250:9,20 253:1 296:6 297:15 meeting 4:5 16:9 17:23 101:9,16 103:11 158:22 164:25 165:10,19 168:13 181:14 202:25 203:16 204:12 211:3 213:17 214:4,5,5,8 214:10 215:13 217:6,24 218:2,4 218:22 219:1,14 219:20 220:4,6,8 220:16 248:17	250:19 252:23,23 253:19,20,22,24 254:1,3 255:3,5,9 255:10,11,22 256:1 257:3,8,8,17 268:15,22 269:2 271:4,15,18,25 272:5,8,10,12,13 272:15,18,21,23 273:3,8,10,12,19 273:19,23 301:12 meetings 34:6,25 163:22,23 164:8 164:16 165:5 250:12 271:9 279:11 member 11:21,24 14:5,9 16:4 24:7 25:3 members 24:8 106:20 159:12,16 memo 42:6 165:12 memorialize 87:20 memory 69:9 280:22 memos 164:24 165:8 198:2 mental 50:22 64:12 180:16 185:1 193:15,21 194:5,11,21 195:1 195:11,25 196:6 196:11 243:19 mention 87:25 283:5 mentioned 15:4 19:19 42:21 52:25 57:19 76:1 88:3 157:14 170:3 262:10

merriam 3:3 merrill 1:7,7,9,11 1:11 2:6 3:18 4:2 5:18 6:1,3,5,7,23 7:22 8:19 18:7 42:12 43:3 48:21 49:4,24 50:8 51:23 52:10 54:21 55:23,24 56:21 59:6,13 60:12,19 60:25 64:5,8 65:5 65:6 70:8 72:16 81:20,20 82:18,19 86:2,25 89:17 108:13,21 109:3,9 110:8,12,14 116:3 116:6 117:23,25 122:2,3,11 123:16 124:23 126:21 127:20,21 128:6,8 128:18 129:1,10 130:9,24 131:1 135:4,7,23 137:22 138:1,6 147:16 152:25 153:13,15 154:12,21,25 155:8 157:24 158:13,25 159:8 159:23 160:22 166:7,18,22 167:16 190:23 191:3 198:10 200:11 202:12 203:4,17 204:11 204:11 212:11,21 212:23 217:24 218:3,5,14,21,22 219:2,15,21,21 220:7,15,17 221:4 221:19 222:16 223:6 225:22,24	226:1,5,6,19 227:4 227:6,19,20,21 228:3,15 229:9,15 229:21,24 231:4 232:5,13 235:13 240:3,4,14,22 244:19 245:4,6,6 246:9 249:5,8,17 250:9 253:20 263:10,15,20,23 264:12 266:3 274:5,17 275:5,8 279:9,20 282:22 306:4 307:1 308:1 merrill's 225:4 met 13:25 16:10 16:14,15 17:15 26:18 27:22 63:4 99:7,7,8,15 100:15 101:10,12,14 107:8,12,13,13 109:12,16 117:9 117:19 188:1 200:18,25 204:9 211:1 213:20 214:8 215:5,24 246:17 249:19 251:3,11,21 252:11,18,20 253:11,14 254:11 254:21,22,24 257:9,11 273:19 mic 223:23 michael 9:8,18 microphone 149:3 midnight 294:9,14 mike 5:23 mind 38:22 65:3 151:18 183:8 195:10,24 199:18 226:1 255:3	mindful 104:13 mine 77:21 242:20 ministerial 137:19 minute 16:7 23:8 55:3 68:4 74:12 90:7 283:1 290:12 295:10 minutes 82:23 90:11 91:10,15,15 92:4 136:20 137:18 196:20,25 210:10 287:24 293:25 mirror 275:22 278:5 mischaracterizat... 268:3 missed 267:5 missing 255:5 misspoke 61:15 misstates 168:19 169:4 198:14 251:14,25 268:17 mistake 174:12,13 174:20 175:3,14 175:22 176:5,9,21 177:5 mixed 33:1 modify 40:25 mojo 144:17 molster 4:6,7 6:2,2 8:18 91:6 99:11 107:13,17,18,22 107:24 108:3,5,11 108:19,22,25 109:8 122:13,18 123:1,11,13,20 124:5,6,12,19,24 125:4,7,10,20,22 126:4 127:24 128:4,10,13,15,20	129:5,12,17,18 130:9,13,23,23 131:3 135:5,9,14 135:19 136:1,9 138:8,12,16 143:1 143:14 144:8,12 144:16 145:15,16 146:7,14,15 147:8 147:10,14,20 148:2,6,9,14,24 149:2,10,22 150:3 150:14,18,20,22 151:9,16,21 152:1 152:23,23 153:6 154:11,18 155:15 155:24 156:11 157:6 159:22 166:9,16,24 167:5 168:20 169:15 170:13,16,21 171:15 172:10,23 174:8,24 176:24 177:7,16 178:7 179:16,23 180:4 180:10 192:20 194:7,17 195:13 196:14 201:21 202:1,14,17 203:1 203:7,19 204:3,7 205:11 207:1 208:10 218:12 219:3,10,16,22,25 220:12,19,25 221:2,9,14,20 222:1,17,21 223:2 223:12,22 224:5,7 224:12,17 225:9 225:13,25 226:10 226:14,24 227:5 228:7,17 229:17 230:1,23 231:22

[molster - object]

ROA 006037

Page 29

232:15,17 233:14 234:10,22 235:9 235:12 236:13,24 237:3,8,14 238:14 238:20 240:6 245:2 264:1,4,18 264:23 265:6,9 266:12,17 267:14 271:6,12 274:9,12 290:5 297:9 301:12,16,20 molsterlaw.com 4:8 moment 25:18 32:25 66:10 72:24 244:11 money 40:18,18 months 34:4 56:13 morning 5:1 6:22 151:22 273:16 285:18 291:5,10 291:16 292:3 295:4,12 morris 30:8 77:22 78:12 mother 86:2 89:14 191:4 motion 191:17 277:9 295:22 motions 302:14 motivation 89:22 motives 266:23 mountains 51:19 move 18:2 80:22 191:9,17,21 294:23 moved 10:17 mullin 280:23 multiple 63:21 188:4	n n 305:1 name 5:10 9:7,8 39:2,4 46:21 78:7 154:13 180:20 200:5 named 78:4 136:14 146:11 230:17,21 names 9:16 38:12 77:19,21 narrow 142:9 national 15:14 natural 19:5,20 22:14 258:10 nature 41:11 64:13 119:7 neal 197:14 near 270:6 necessarily 127:22 170:3 187:9 necessary 94:8 149:5 186:6 194:12 260:9,12 308:6 need 7:10,11,15 43:1 67:18 83:4 91:12,14,22 92:1 93:19 110:22 112:11 119:3 126:14 142:5 144:21 148:22 151:20 155:4 171:3 184:3 185:6 195:22,22 196:17 201:17 202:4 215:22 221:2 224:16,17 233:17 236:14 237:24 238:7 244:23,24 248:5 252:24	254:15 272:19 277:6,9,15 284:24 285:7 286:10,22 288:23 289:3 293:23,24 294:2 299:1,12 302:13 needed 18:16 78:9 122:9 135:24 288:4 296:14 needs 173:18 244:14 neither 8:2 304:6 never 27:20 60:10 72:10 80:18 85:21 88:3 96:1 116:12 118:3,5 205:2 232:24 233:10,12 278:6,6 284:18 nevermind 212:3 new 15:3 18:19 49:21 74:5 82:1 229:21 230:14 232:1 nice 296:18 night 158:21,22 250:1 288:5 303:3 nine 9:24 noise 195:20 nominate 15:1 78:7 nominated 15:18 non 8:22 146:5,13 286:10 287:5 289:6 290:24 nonsense 289:16 normally 19:7 20:15 168:14 north 51:18 52:6 notarial 47:9 notarize 47:16	notarized 29:23 notary 47:11,12 77:10 304:3 308:13,19 note 70:12 118:15 306:10 notebook 32:9,17 106:18 235:6 305:13 notebooks 210:14 noted 93:8 308:7 notes 90:8 117:10 165:4,8,12,20 notice 65:9 291:22 292:9,13,16 noticed 51:1 291:23 292:1,12 noticing 8:1 november 211:4 211:13,17,22 212:7,24 213:7,10 213:15 215:25 219:1 246:19 248:18 249:2,20 251:4 254:3,12,23 255:7,10 256:21 257:4,8,8,14,16 number 72:19 223:11 224:20 250:11 271:7 295:1 297:23 numbers 79:3 numerous 98:23 nuts 267:4 nw 4:7
o			
o 306:1 object 7:15 19:20 21:8 28:7 30:23 44:12 45:24 50:15 52:19 53:5 59:22			

[object - office]

ROA 006038

Page 30

61:19 66:5 71:9 78:19 80:8 85:7 89:18 94:11,13 102:16,25 103:19 105:11 111:21,24 113:13 114:2 115:4,5 120:1 121:16 129:22 130:16 131:16 132:2,18,21 133:15 134:14 137:1,25 138:18 138:24 139:7,8,19 140:4,5,14,19 141:20,25 142:22 142:23 143:8,11 144:3,11 145:2,20 146:9 147:6,8,11 147:14 152:20,21 153:17 154:5 156:11,16 157:3,5 157:18 159:18 160:14,15,16,24 160:25 161:17 162:19,21,24 163:1,9,19,25 165:1,13,13,15 168:9,16,17 169:3 169:5 171:5,15 172:10,11,25 173:14,15,24 174:15,17,22,25 175:9,10,17 176:1 176:2,4,12 177:18 177:25 178:6,13 178:14,22 180:18 181:22 182:13,20 182:25 183:2,24 183:25 184:10,17 184:18 185:2,14 185:15,25 186:7	186:20 187:1,2,11 187:12 189:10,24 189:25 192:1,10 192:20 193:4,17 193:18 194:7,8 195:3,13,14,15 196:2,3,13,14,15 197:24 198:4,12 198:13,22,23 199:6 200:12,13 201:11,20,21 202:1,13 204:24 205:11,13 207:1 207:14,18 208:7 208:22,25 211:8 215:21 216:3,4,10 216:18,19 217:2 217:12 218:9,13 222:18 229:17 230:1,2 231:8,22 232:9 233:1,14,15 233:23 234:18 236:7,9 239:14,15 240:6 242:16 243:10,21 247:10 248:9 249:10 250:22,24 251:13 251:24 252:7,13 252:15 254:5,6,18 255:13,16 256:5 256:14 258:19,21 259:16,18 260:7 260:13,15 263:12 263:17 266:10,12 266:13,17 267:14 267:15 268:2,9,10 268:16,18 269:6 269:18,20 270:3 270:12,21 273:17 274:7 275:18,20 276:1,3,12,13	277:5 278:10,11 279:12 282:4 objected 121:20 121:20 209:24 objecting 91:25 153:4 206:5 objection 7:16 71:22 85:13,20 94:15 103:24 120:18 123:6 128:3 129:16 130:4 131:2 132:3 132:4,10,19 137:8 138:3 139:22 140:22 141:5,6,20 142:12,13,25 143:10,14 144:13 144:25 145:1,17 146:7,8,17 147:22 147:25 148:14,16 148:18 150:16 153:18 154:2 157:6 163:8,14 166:9 169:24 172:23,24 173:23 174:8,24 176:14 176:24,25 177:1,7 177:8,9,16,17 178:1,7,23 179:5,5 179:9,10,12,16,17 179:23 180:4,10 180:11 184:9 186:21 193:6 194:9,17,18,19 195:5 199:2,5 205:22 206:4 207:2,12 208:8,23 209:5 210:2 212:13 218:11 231:9 233:24 234:20,22 236:12	236:21 242:17 251:16 252:2,9 266:19 268:5 269:8 270:23 274:8 283:21 objections 108:7,8 120:25 141:9 143:2 144:9 145:15 146:14,16 155:14 160:3 231:13 objectives 34:9 214:20 257:11 objects 19:6 22:14 obligation 143:19 145:7,23,24 146:1 146:24 obligations 141:15 186:8 245:1 observation 170:14 observe 29:5 31:9 84:20 85:18 89:25 194:5 obtuse 185:6 obviously 6:22 7:23 8:20 122:1 128:12 281:12,19 occasion 29:14 117:9 158:20 occasionally 24:12 27:7 occur 82:4,5 187:8 187:9 occurred 47:5 72:4 127:15 255:12 office 13:18,19 26:25 27:3,4,8,13 27:15 30:10 64:2 64:4 65:17 83:21

[office - originals]

ROA 006039

Page 31

83:23 84:14 99:7 213:12 219:1 248:18 254:4,25 255:10 258:12 officer 138:6 139:16 141:2,17 142:7,8,20 143:6 144:23 145:7 269:4,25 officers 117:3 137:3 139:11 140:1,16 141:12 141:23 142:15 143:18 145:23 146:19,23 205:15 206:8 offices 4:6 official 304:10 oh 156:14 196:21 245:8 246:4 272:20 okay 7:5,8,9,11,12 7:20 9:13,25 10:3 10:6,23 11:1,7,12 11:18 12:1,23 13:3,7,11,22 14:2 14:8 15:4,11 16:3 16:7,12,21 17:21 18:2,9,18,21 19:19 20:1,7,18 21:2,13 21:17,22 22:16,22 23:8,22 24:2 25:17 27:9,16,23 28:2,13,24 29:5 30:19 31:5,16 32:12 33:18 34:15 35:12 36:1,15 37:18,22 38:1,8,24 39:1,6,10,19 40:22 41:16 42:14,19 43:5,9 44:9 45:1,5	45:13,18 46:6,18 46:21 47:1,4,15 48:7,14,23 49:6,12 49:21 50:10 51:6 51:13 52:3,7,24 53:8,24 54:3,7,15 55:2,18 56:3,19 57:3,12,25 58:12 58:21 59:1,5 60:11 61:12,14,25 62:10,16,24 63:5 63:13,19,23 64:1,7 64:11,18,22 65:2,9 65:12,21 66:20 67:1,6,24 68:17 69:3,13,25 70:3,9 70:18 71:5,16 72:7,17 73:19 74:4 75:3,7,10,16 75:23 76:15,25 77:6,10,19 79:12 79:25 80:14,22,24 81:6 83:8,12,17,24 84:3,8 86:15 89:2 89:25 92:9,25 93:7,11,12,25 94:5 94:8 95:20 96:7 96:22 97:7,17,18 98:17 99:14 100:18 102:1,13 105:8,20 106:3,14 107:7,12,20 108:1 109:5,19 110:10 110:24 111:1 113:18 114:5,9 115:16 116:1 117:7,13,18 118:6 118:11,24 119:20 121:14,22 124:20 128:17 130:1,8,15 131:22 132:10	133:23 136:11 137:22 139:15,24 142:2 144:23 145:4 146:4 147:1 148:5 149:1 153:10 154:11,16 154:18 156:9 158:3 160:3,21 161:21 166:10,24 167:5 169:18 170:6 173:11 176:21 181:8 186:5 189:7 190:11,18 191:16 191:19,23 197:1,3 197:8,11 202:6 203:1,7,10,14,19 203:19,25 204:1 204:16 205:21 206:14,24 209:10 210:4,8 211:1 212:3 213:3 214:16 215:24 218:8 219:25 220:12 221:15 223:12 224:2 225:13 236:20,21 238:1 241:4 242:3 243:6 244:21 245:8,17,25 247:14 251:18 253:3 254:15 255:21 258:1 261:19 264:9 267:5 277:4 279:1 283:12,17,20 285:23 287:2 289:22 300:4 301:11 302:9,25 303:2	old 9:22 82:3 older 23:6 38:22 once 59:17 301:14 ones 68:5 operate 142:17 operations 207:11 207:23 208:6,16 208:20 209:22 210:7 opinion 62:4 66:1 68:2 143:15 178:24 179:6 181:12 185:21,21 185:22 186:10 204:22 205:8,23 206:25 211:5 280:16 281:1 284:5 289:15 296:2 297:16 opinions 96:13 243:18 opportunity 45:20 60:4 123:6 238:8 238:12 option 299:14 order 8:9,15 17:12 59:14 171:4,12 172:9 173:12,20 291:3 295:4 302:15 ordered 280:23 orderly 11:4 295:25 organization 15:13,14 organize 79:6 organized 295:25 oriented 33:5 271:11 originals 274:16

ought 126:14 232:25 233:21 289:14 295:20 ousted 269:4,25 outgoing 14:25 outlined 43:7 outright 40:11 42:25 outside 84:14 136:21 184:7,15 184:21,25 185:11 186:5,10 231:16 299:7 overwhelm 23:20	paragraph 43:2 43:12 44:4 45:11 45:14 49:19 81:24 81:25 86:6,12,16 paralegal 30:4 39:9 paralegals 162:6 parameters 222:3 parents 265:17 paring 288:12 part 50:3 68:25 77:2 123:21 174:13 179:2 212:15 228:11 240:11 242:25 243:19 247:16 277:12 partially 241:10 241:11 participate 111:13 114:19 214:23 281:10 participated 14:3 14:5 215:1 276:21 particular 20:19 42:17 52:22 135:25 147:4 164:23 187:23 188:15 194:3 199:17 222:4,5 262:3 parties 161:14 164:24 168:25 172:17 262:8,14 299:6 parts 37:4 party 25:14 127:2 171:13 172:8 217:23 259:25 286:10 287:5 289:6 290:24	297:20 298:12,22 304:7 pass 12:16 50:7 60:19 82:17 passed 42:25 76:24 82:14 paul 1:3,8,10 16:8 16:9,10,14,19,22 16:23,24 18:7 26:12,15,16,19 29:15 33:21 38:25 47:13,14 50:10 57:8 62:13 63:14 63:14,15,16 64:6 65:20 66:9,17 71:23,25 78:8,14 84:15 85:4,11 86:19 108:18 110:8,11 116:3 117:9 118:6,22 120:8,9 127:20 128:6 134:19 153:13 155:7 159:5,25 163:23 164:8,16 167:10 190:19 192:17 197:3 200:15 203:15 204:21 206:12 210:6 211:2 212:5 219:20 220:15 221:18 222:15 225:4,23 226:5 228:15 229:25 231:3 234:8 235:20 236:3 237:9 239:11 240:13 241:16,22 242:23 249:5,8,16 250:9 259:3,4 261:8 263:7,15	275:5,9 279:9,20 281:25 282:21 paul's 90:2,5 pay 40:18 paylor 4:4 5:25,25 31:24 32:3 61:3,7 72:19 94:15,16 99:10 107:15 132:18 160:15 176:4 178:14 226:16,22 235:15 236:17 237:2 260:25 261:3 266:14 269:20 270:2 285:1 288:8 289:22 290:3 294:23 298:10,22 299:2,17,24 300:20 301:2,5,10 301:14 payment 40:18 pearly 170:22 pending 69:4 119:13 245:20 304:8 people 20:13,14 21:13,15 22:18,18 23:2,4,18 24:12 26:13 28:19 29:8 29:13 35:13,21 42:17 73:24 112:19 157:10,13 170:2 183:12 perceive 189:14 190:22 260:9 perceived 260:11 percentage 11:12 12:14 22:23 23:1 perception 18:6 18:15,16 70:20 122:9 182:3
p			
p.m. 90:13,16 92:14,18 100:21 152:6,9 210:17,21 225:15,18 238:24 239:2 245:13,16 280:10,14 290:16 290:19 294:9 303:14,22 p.o. 3:4,7,11 page 1:14 3:25 31:24 32:2 37:18 40:23,23 41:16,19 46:13,15,16 47:7,8 49:12 50:25 61:3 66:12,14 68:21 70:1 74:8 77:11 77:12,12 83:13 84:4 86:6 235:16 261:20 271:7,11 305:2,11 307:4,7 307:10,13,16,19 pages 33:1 77:11 panel 98:23 pants 152:4 paper 228:11,11			

[perfected - point]

ROA 006041

Page 33

perfected 259:20 259:24 period 12:11 14:24 40:8 57:9 63:4 193:13,15 194:11,22 195:8 205:25 211:24 212:12 226:7 230:4,10 246:15 246:18 249:2 periodically 13:3 29:22 permanency 59:11 permanent 59:16 permission 26:23 26:24 92:23 239:21 241:18 person 19:4 20:25 23:15,19 25:9,16 59:25 62:4 99:15 100:16 104:10 112:3 189:18 191:23 192:8 290:10 personal 1:7 42:3 42:7,10,15 73:24 81:11,16,19 95:11 personally 35:20 perspective 126:7 181:11 pertaining 109:3 phelps 3:14 phone 26:11,13 27:1 51:24 53:20 109:7 phonetic 286:22 physical 112:25 physically 77:23 78:1,13 112:9 114:13	physician 62:6,8 physician's 61:23 63:6 pick 26:11 53:1,23 53:25 54:1 235:2 picking 239:8 pierce 149:11 pin 213:2 pipe 265:7 pi 294:2 place 18:13 68:1 87:2 147:18 151:5 198:7 210:13 229:11 257:22 placed 242:12 265:22 plaintiff 1:5 2:4 3:2 5:22,24 6:9 296:9 plaintiff's 31:22 32:8,16 92:22,24 93:3 305:12,13 plan 17:14 18:4 25:6 28:10,11,18 28:23 29:4,10 37:1,4,4,4 73:20 85:19 87:24 88:5 88:8,13,17,18,20 89:1,4,8 183:5,6 188:5 199:4 222:16,16 225:4 229:15,25 230:16 232:14,22 233:7 233:11 239:12,20 240:1,23 241:22 243:1,3 244:6,17 257:4,7,10 276:22 278:5,9 279:21 281:25 283:8 284:19 287:15 290:13 294:3	301:6 plane 53:15 planners 261:25 planning 8:11 10:5,7 11:1,2,3,10 11:13,15,20,23 12:3,9 13:1,12 15:14,17 16:1,20 17:11 18:8 19:2 19:13,17 22:19 23:22 24:23,25 25:20 26:3 28:4 28:16 30:3 31:13 34:9,10 35:11,14 36:5 39:7,8 73:6 85:5,11 86:23 91:11 96:16 97:12 97:22 98:2,10,12 98:24 118:8,12 119:9,24 120:6,9 128:5,6 134:22,23 135:1 166:1 180:14 181:2,15 197:6 199:16 211:7,10,20 212:7 213:11 214:19,21 215:3,7,15,20 217:19 221:17 223:7 225:23 226:6 227:23,24 228:15 229:9,22 232:5 235:23 239:22 240:4,14 240:16 241:16,19 242:2,23,24 243:7 244:17 245:7 246:10,14 247:6 248:24 249:4,7,16 250:10 251:22 253:5,12 254:22 255:4 257:22	263:11,15 264:7 271:16 273:1 274:5 275:5,25 276:7 278:1 279:10 281:8 282:2 284:1,3 plans 86:21 87:2,7 88:2,12 199:18 227:12,12 234:9 play 45:7 230:18 pleas 1:1 5:6 86:4 87:1 please 6:16 7:14 9:6 10:12 38:10 49:22 72:18,20 79:11 93:18 104:13 105:14 127:25 128:1,11 144:21 166:10,17 168:22 171:2 202:17 224:1 233:18 274:10 pleases 295:19 plenty 83:7 91:16 plf 32:16 plus 287:9 point 10:19,20 12:13 22:4 36:4 44:21 47:22 52:17 54:7 55:3 56:13 57:18 60:8 66:24 72:7 76:17 93:23 134:19 189:7 190:20 199:15,15 204:22 205:8,22 206:24 215:8 221:18 222:15 228:3,14 240:4 258:5,17 263:2 276:9 280:22 286:23 291:3

[point - privilege]

ROA 006042

Page 34

292:25 301:24 302:18 policy 162:7,10,13 162:14 portion 44:6 100:24 101:2,4,6 283:4 position 266:8 280:25 284:13 289:13 292:22,23 299:16 possession 7:25 112:15 possibility 244:1 possible 153:14 155:9 215:18 257:2 postpone 293:4 postponing 290:22 potential 7:23 81:21 216:1,6 217:9,17 237:21 248:12 286:6 potentially 287:5 288:15 potts 30:7 pour 36:21,24 37:8 274:1 pouring 37:13 pours 37:16 power 1:23 5:12 43:12,17,21,25 44:18 45:2,3,6,15 46:10 58:23 75:25 76:7,8 77:5 82:11 183:15,15 258:18 258:24 259:1,4,11 259:14 260:1,1,5 261:7,10,14 262:18 263:24 264:15 265:11,12	266:2,23 267:19 267:20 269:16,21 270:10,25 304:2 304:19 powers 44:17,20 44:23 46:7,9 54:20 258:8,9 260:21 262:1 practice 10:21,22 12:14 15:15,16,22 15:22,25 24:5 78:4,5 114:12 188:21 261:24,25 practiced 10:15,16 11:9 12:11 87:4 118:17 practices 271:23 practicing 11:8 63:20 95:7 precipitously 51:21 precise 14:24 16:18 precisely 206:20 preclude 20:21,25 preliminary 35:5 preparation 8:10 34:2 48:15 99:12 99:15,19 107:8 109:12,22 137:18 274:17 275:8 prepare 21:22 49:7 57:13 58:24 59:2 62:10 63:6 99:3,4 100:12,14 115:19 237:8 257:21,23 prepared 26:4 33:15 35:5 49:8 53:21 55:20 56:17 57:10 62:11 64:20	65:4,4,19 66:13 115:16,21 188:5 197:12,13 199:24 230:20 236:3 239:8 293:11 preparing 18:19 33:22 56:10 presence 38:18,19 54:5 103:7 105:18 299:7 present 4:22 5:14 24:20 77:23 78:1 78:13 83:8 100:23 100:25 101:5,7,9 101:16,18 103:12 125:3 152:17 157:17 158:12 168:6 190:24 226:8 279:5 presentations 97:14 98:23 presented 98:18 98:19,21,23 256:8 257:20 presently 99:22 154:7 157:16 preserving 162:11 pressure 60:1 presume 19:7 32:8 130:1 182:17 282:1 pretty 96:14 296:24 prevails 144:1 prevent 20:21 previous 31:10 previously 66:12 76:21 81:1 107:9 119:16,18 144:9 199:23 245:19	price 289:14 primarily 37:2 136:19 primary 15:16 75:19 76:6 136:21 principal 23:15 print 114:12 printed 114:11 printing 64:5 prior 47:22 107:7 109:12,21 111:9 113:21 118:22 119:24 120:12,14 121:2 188:6 202:12,25 204:12 243:7 252:1 private 225:11 privately 25:4 privilege 8:3,5,7,9 8:13,16 9:2 104:11,21 105:9 105:18 106:15 114:20,23,24 115:3,8,9,17,19,21 115:24 120:20 123:19,22 124:10 125:6 126:3,24 128:14 129:24 130:5 131:20 133:16,21 135:13 135:17 138:11 149:12,17 153:5 153:23 191:14 205:18 212:18 214:16 217:20 219:9 221:13 222:3,20 224:6,10 226:22,25 237:19 237:22,25 238:7 238:19 241:8,10 244:9,14,24

245:22 247:13,17 247:20 248:8 277:19,21 278:21 278:24 280:4,19 281:3 283:21,24 286:19 302:20 privileged 7:24 103:3,7,13,21 104:6 129:16 137:2 139:10 144:6 159:20 209:12 212:16 230:25 237:17 privileges 8:20 104:24 224:14 238:16 280:20 privy 298:7 probably 14:10 57:8 58:16 210:13 255:12 285:7 288:2 299:20 probate 11:23 12:9 96:10 97:2 probe 277:7,15 problem 29:21 72:1 106:9 238:22 procedure 238:20 proceed 6:17 189:21 281:21 process 14:25 18:8 19:14 22:2,5,7,20 26:3 34:1,4 35:14 36:5 70:24 124:13 250:18 281:8 284:1 292:25 produce 86:24 280:23 produced 113:4 113:17 114:17 115:14,24 163:17 216:16 253:9	257:1 product 7:25 8:4 105:3 production 113:15 114:16,19 115:13 professional 14:6 14:20 185:21,22 208:18 program 162:2 promise 89:4 277:16 278:13 279:4 280:18 283:8 284:17 promises 88:6,11 88:16 prompt 262:25 prompted 270:19 prompting 96:5 proof 86:21 proper 295:20 properly 142:17 property 19:10 22:8,15 40:16 42:3,7,10,15 81:17 81:19 propose 299:8 proposed 257:21 272:25 273:1 296:24 protect 148:3,4 186:11 238:7 protecting 186:2 protection 8:4,4 8:13,16 214:16 protections 283:25 protective 291:3 295:4 302:15 provide 19:7 35:21 48:19 62:3 76:4 82:13 83:4 128:25 129:3	176:10,22 232:13 238:5 provided 31:21 35:17 37:5 40:5 40:10,17,19 67:16 75:21 76:23 81:18 101:20 114:20 121:3 124:3 125:24 201:22 232:24 provides 40:4,9,12 42:5,9 174:20 175:15 178:19 providing 25:20 121:2 127:23 128:7 provision 41:3,5 41:10 42:4,23 49:22 54:25 provisions 81:8 201:6 pry 95:11 public 304:3 308:19 published 97:4,8 97:12,14,19 pulsating 250:1 purported 280:17 purpose 41:1 159:14 201:25 229:14,23 241:21 272:4 purposes 226:2 pursuant 43:18 44:7 80:21 82:3 145:25 216:17 234:24 235:2 247:12 264:1 push 285:15 put 7:21 53:23 67:5 70:18 114:13	162:4,12 215:15 234:25 235:1 242:10 257:22 301:23 putative 1:9 puts 292:15 putting 265:17,17 265:18 291:11,13 q qtip 44:4,6 qualified 96:1 qualify 119:3,4 quarter 170:7 quarters 290:1 question 7:14,18 13:14 28:12,13 39:20 41:23 44:14 50:21 53:9 56:7 61:21 68:16,17 69:4 71:16 74:24 75:1 85:15 88:14 93:17,24 94:3,12 102:17 103:10,20 104:18,22 105:16 106:25 110:4 111:22 112:12 114:3 116:17,19 119:11,13 120:22 121:1 123:5,9,12 123:19,21 124:9 124:16 125:2 126:11 128:1,11 128:23 129:15 130:2 132:9 135:6 135:11,16 136:3 137:5,6 138:3 139:20,25 140:6,9 140:25 141:8 142:3,5 143:4,9 144:21 145:3,7 147:21 148:25

[question - recall]

ROA 006044

Page 36

149:23 150:7,20 150:24 151:2,13 155:5,16,16,20 156:17 157:4,15 160:18 161:19 162:20,25 163:4 164:1,3,7 165:14 168:19,21 169:4,7 169:14,17 172:7 174:16,23 175:12 176:3 179:13 182:23 183:8 184:2,4,11,14,19 184:24 185:5,7 187:5,14,22 188:18 190:4,6,9 190:11 191:1 192:15 193:10,11 193:22,25 194:4 194:14,24,25 195:21,23 198:24 203:22 204:17,24 205:2,6 207:19 208:3,19 209:20 209:20 212:4,15 214:12 216:20 218:17,18,21,24 219:14 220:23 221:24 222:12 223:3,5 224:24,24 225:2,21 227:3,7 227:14,18,20 228:2,10 230:24 233:17 234:2,17 234:19 237:1,15 239:4 240:9,19 241:3 244:12 245:10 249:13 250:23 251:14,20 251:25 252:8,14 253:1 254:19	256:10 258:20 259:17 260:14 261:14 266:11 267:6,16 268:3,17 269:7,19 270:13 270:22 271:9,14 275:19 276:2,4,14 277:5 279:14,17 281:4,7,12,19,19 282:19,24 283:1,4 285:20 295:9 questioning 90:7 228:23 questions 7:6,8,8 7:21 18:23 40:23 80:3 90:18,21 91:5 94:10 102:24 108:3,14 109:5 124:11 125:5 126:2,6,14 130:9 130:17,25 131:7 142:6 179:6 183:1 187:3 188:14 223:11 224:23 243:14 245:18 265:25 281:10,18 284:14,21 285:17 286:13 294:14 quick 102:13 224:21 quiet 291:15 quite 126:15 286:11 298:20 quitting 300:21 r r 307:3,3 raise 25:12 281:20 raised 103:3 244:9 296:8 rampant 284:7	ran 208:19 randolph 1:9 randy 52:2,25 53:13,14,23 59:6 108:12 109:3,9 110:16 116:9 118:1 123:16 125:17,18 127:21 128:8 129:4,15 130:10,24 131:1 135:16 136:7 138:15 152:25 153:15 154:13 157:25,25 159:2 159:23 167:4 202:21,24 203:12 204:18 220:9,17 222:15 223:6 225:22 226:1 227:4 234:9,14 236:5,15 237:4,10 239:5,7,11,20,22 239:24 240:2,22 244:16 253:22 range 9:20 32:11 32:20,23 48:10 55:13 68:7 74:11 74:19 rate 166:2,3,5,8,11 166:19,22 167:4,9 167:15,23 168:7 reach 25:4 181:13 read 38:9 49:21 55:1 61:14,15,15 86:16 101:23,24 101:24 102:1,3,7,9 303:20 306:9 308:5 ready 68:20 90:19 102:24 182:22 196:22 221:7	288:5 294:18 realize 33:10 realized 78:2,3,9 really 14:13 16:25 17:3 25:24 47:10 105:22 113:9 137:17 171:17 230:12 246:18 289:25 296:25 reapply 13:4,9 rear 4:25 reason 88:19 89:8 95:4,18 118:24 119:4 216:16 267:8 284:2 306:11 307:6,9,12 307:15,18,21 reasonable 303:12 reasonableness 96:16 reasonably 95:15 95:17 reasons 20:10 250:6 266:6 rebecca 38:7,12 39:6,8 46:25 47:12 77:22 78:13 83:18 84:2,6 101:25 recall 14:22 17:13 17:21 18:4 49:6 51:13 56:3,8 67:6 69:5 73:19 74:1,3 96:23 97:23 98:11 102:13,20 107:21 110:20,24 114:1,8 114:14,18 115:12 115:12 117:13 118:4 132:13 158:12,14,15,16 158:16 160:5

[recall - relate]

ROA 006045

Page 37

198:5 201:9,12 211:2 218:24 239:18,25 243:23 244:3 250:11 257:6 263:6 270:24 273:8 receipt 306:18 receive 12:8 28:25 49:3 77:6 83:7 84:18 99:18 received 65:13 66:23 77:3 100:8 111:9 receives 45:21 reception 30:9 receptionist 29:18 recertification 13:6,13,21 recertified 13:22 recessed 303:22 recognize 55:14 55:17 61:9 83:12 recognizes 12:7 recollection 13:2 26:12 49:17 52:1 71:24 73:11,22 96:14 97:9 100:6 133:11 158:21 161:2 229:6 253:10,17 257:15 267:11 269:14 270:10,16,17,18 272:16 276:15 recommend 202:6 recommendation 200:5 recommendations 232:21 233:13 recommended 202:8	reconcile 76:19 82:25 83:2 reconstruct 256:20 reconvene 288:9 291:7 295:2,5,8 299:17,21 302:11 reconvening 288:11 300:22 record 5:2,16 7:21 38:10 49:22 55:1 55:4,6,7,9 67:12 68:6 85:25 86:17 90:13,14,16 92:10 92:13,15,17 93:7,8 105:1 124:14,18 126:11 127:5 148:4 152:6,7,9 161:23 179:4 191:19 210:16,18 210:20 219:6 225:15,16,18 238:24,25 239:2 245:13,14,16 246:3,5 258:18,24 259:4,20,24 260:5 262:1,8,10,20,21 262:23,25 263:1 267:19 268:25 280:9,11,13 288:20,21 290:14 290:16,17,19 292:12 300:13,16 300:22 303:14 304:5 recorded 5:3 67:8 70:23 71:7,14,20 161:21 259:7,12 259:15,21,24 260:2,11,22 261:20 262:4	266:3,7 267:12,24 269:17,22,24,24 270:11 303:15 recording 262:12 262:17,18,19 266:6,23 270:20 270:25 records 66:16,19 66:25 162:8 rectify 13:25 redirect 40:16 43:22 46:10 76:7 297:11,13 reengaged 18:7 refer 15:9 32:10 42:3 64:25 74:14 172:14 264:14 268:25 reference 87:19 referenced 306:6 referral 200:6 referred 15:6 73:13 93:5 referring 19:12 45:10 64:22 101:3 259:8 264:15 292:5 refers 93:2 274:25 reflect 66:19,25 76:5 87:19 165:20 191:20 256:16 reflected 71:3 73:12 75:13,19 81:11 88:12,17 163:23 164:8,17 165:22 168:15 169:1,23 170:1,3 188:6 213:22,24 214:1 252:19,21 254:4,8,9 255:6 257:23 272:21	275:17 reflecting 188:23 reflects 25:1 84:1 254:22,24 256:7 refresh 69:8 257:15 270:16,17 refreshes 253:10 270:9 refuse 238:8 refused 86:23 189:21 refusing 296:1 refute 266:8 regard 98:4 103:14 136:8 147:4 152:17 154:10 155:23 156:6 162:8 164:25 175:22 176:21 181:16 185:11 186:16 189:8 192:15 193:25 197:18 203:12 204:17 226:19 232:21 234:16 246:25 253:4 262:7 regarding 18:3 29:10 59:11 84:21 85:19 87:5,6 88:1 89:4 102:4 103:4 130:17 227:22 284:17 regardless 239:23 regards 155:10 regret 60:9 72:8 72:10,12,15 regretted 31:10 regular 129:9 relate 75:24

related 8:10,17 17:14 34:2 50:3 77:8 80:7 85:4,10 104:6 120:2 230:13 266:20 277:22 280:4 304:7 relates 19:1 relating 223:7 relationship 29:23 76:21 relied 28:20 34:23 241:23 rely 35:13 259:25 262:14 remain 56:1 remainder 41:9 81:22 remained 193:2 248:13 remaining 37:17 44:6 remarked 93:9 remember 12:13 12:23 14:8,11,17 16:3,9,12,17 64:10 65:12,16,16 73:4,4 73:9 83:11 114:24 117:18 129:7 189:1 197:12 198:16 201:8 202:8 213:21 229:24 253:18,25 260:21 263:3 266:4 268:14,22 269:1,3,9 272:9 273:1 274:13,22 274:23 299:2 remind 223:20 remotely 5:15	removed 269:10 render 62:4 renew 13:3 repeat 41:23 56:6 71:16 85:14 88:14 93:19 105:15 112:11 116:17 119:11 120:22,25 128:1 142:5 143:4 144:13,21 147:24 164:2 187:4 190:25 195:23 215:22 233:18 251:19 252:25 279:16 282:19 repeating 164:5 rephrase 28:14 61:21 93:19 139:15 140:24 142:5 184:13 193:24 233:17 249:13 replow 248:5 reported 1:23 264:9 reporter 5:12 6:16 7:6 92:11,20 130:19 131:9 187:4 196:23 228:5 285:8 304:1 304:2,19 305:7 represent 23:2,3 24:18 89:13 116:6 117:23,24 122:2,3 122:11 125:17,18 126:21 127:10,12 128:17 131:11 132:15,24 133:1,2 133:3,19 136:2 153:13 154:7 155:7 189:8	217:18,23 224:8 296:4 297:24 298:15 representation 85:4,10,18,22 119:8 122:4 123:16 124:8 125:3,25 135:23 136:7 137:10 149:15 153:15 155:10 212:6 215:8 217:16 representative 1:8 81:11 representatives 73:24 represented 31:5 99:23 100:5,7 113:22 116:2,3,12 116:20,21,22,24 116:25 117:1,2,6 118:4,5 119:16,18 120:8,9 126:21 127:9 217:16 representing 22:17 110:6,8 118:15,17 119:15 127:8,21 130:24 132:1,14,23 133:5 136:11 155:17,22 156:4,6,8 215:19 216:2 217:7 231:7 247:5 represents 104:13 request 52:8 128:20 129:5 requested 188:6 256:24,25 require 186:17 required 13:21 19:9 77:1 174:2	308:13 resaddled 294:8 research 113:4 reservation 41:13 54:9 reservations 48:2 reserved 41:7 55:25 56:1 126:12 reserving 128:3 resident 199:22 200:1 resignation 121:15 resigned 121:25 resolve 183:10 resources 6:11 48:21 50:1 55:22 83:7 99:9 respect 9:2 12:17 33:24 34:22 43:11 44:3 45:13 47:13 47:14 59:7 73:23 75:24 76:1 80:12 81:16 82:8 85:18 88:8 89:1,12 98:24,24 100:7,8 103:21 109:14 120:9 123:16 125:8,11 126:4 130:13 133:4 134:22 135:1,10 145:24 146:19 152:24 159:23,25 162:11,14 176:16 176:17,18 177:11 197:17 211:10,19 214:12 215:20 217:18 227:14,15 227:18,20 233:7 242:1 247:18 263:20 270:7 272:20 298:4

respectfully 138:9 284:22	90:8 101:19 110:18,20,21	69:24 78:23 79:10 80:20 81:3,12	253:15 254:2,11 255:1,8,21 256:10
responding 26:17 111:18,20	113:3 114:23 115:7 199:14,18	83:8 86:14 88:23 91:1,8,19 92:7,10	256:18 257:3 258:6,11,17 260:4
response 111:13 111:15 163:18 295:23	201:1,23 202:3,9 211:6 243:7 274:16 281:15 306:7	93:12,20 95:1 96:19 98:9 99:2 100:11,22 101:19 105:8 106:17	261:13,23 262:3 262:11,12,24 263:23 265:5,24 266:5,16 267:3
responsibilities 136:17 140:17 141:24	reviewed 17:17 18:14 99:6 102:7 115:1 197:5 198:10 201:3 258:15 273:20	114:15 116:1,22 117:22 119:23 121:14 123:9,23 127:8 129:3 141:16 143:24 146:11 149:22 151:16 152:16 155:19 158:24 168:13 170:24 171:22 173:4,20 174:6,12 175:21 176:9 177:5 179:14 180:24 182:6 183:21 184:13 186:16 192:7,14 194:14 195:10 197:21 198:9,20 199:12 201:14 202:11 204:7,21 213:6,9 213:14,17,19 214:4,9,18,23 215:9 219:12,19 222:20 224:3,8,9 224:13,18 225:20 227:6 232:4,12 234:8 235:5,19 237:14 239:4 240:16 241:7,15 242:9 243:2 246:1 246:8,25 247:4 248:17,22 249:19 250:1,12,18 251:2	268:11 269:16,17 270:9,11,18 271:3 271:20 272:4,7,16 273:7 274:3,4,24 276:20 280:5,6,7 280:15 281:24 290:10 293:10 301:6 303:2,7,20 303:21
responsibility 14:7,20 112:23	reviewing 17:23 106:18 114:24 118:12 128:4		rip 200:4,7,8
responsible 111:17,19 112:6	revisions 273:25		risk 222:5
responsive 112:7	revocable 1:10,12 37:2,6 41:13 50:5 50:9 75:5,5 160:22 171:3,4,7 174:7 176:11 177:23,24 178:20 179:22 236:4 237:9 273:25 275:16		ritchie 30:8 83:18 84:6
rest 191:9			road 1:21 4:19 5:9 222:6
restate 279:16			robert 34:21 241:23,25 242:13 242:14,20 272:22
restated 76:3			rogers 3:3
restatement 33:21 48:8,13 74:16,17 74:22 75:4 76:9 79:19,21 81:15 236:3 237:9	revoke 86:20 87:2 173:20,21 174:2,7 283:8		role 35:20 78:5 108:13 136:19,21 137:17 138:6 209:16 230:13,17 263:20
restaurant 16:16 213:4	richmond 4:14		roles 14:15 229:21 232:1 264:6 265:17,23
restroom 90:8	ridiculous 290:23		room 5:14 78:14 186:18 215:4,11 215:13,16 222:2 225:7 301:18
result 188:23	right 9:4 13:10 14:2 15:4,7 17:4 18:21 19:19 20:1 22:9 25:8 27:2,16 31:16 32:20,21 36:1 37:20 38:1 40:2,24 41:7,13 42:5 47:7 52:24 55:2 60:17 63:23 67:1 68:10,21		rose 200:4,7,8
resulting 50:2			
resume 293:4,9			
retain 60:22			
retained 133:19 133:24 303:16			
retainer 129:9,21 130:3,10,18			
return 306:13,17			
returned 10:16			
reveal 283:5			
reverse 44:4,6 149:19			
review 16:19 34:11,12 86:22			

[rosen - settlor]

ROA 006048

Page 40

rosen 4:3 ruled 8:6 rules 176:16 223:21 238:5 run 146:1 160:12 180:25 181:4 196:22 204:23 205:10,10,24 206:12,25 207:6,8 207:10 208:5 209:3,21 210:7 222:5 284:6 running 57:2 267:25 302:17	scheduling 95:9 school 3:13 112:5 178:10 schronce 4:13 6:10,10 8:24,25 101:6,12 106:13 120:18 129:22,25 130:7 131:5,6,15 131:21 132:4,5,19 132:20 133:15,18 133:20 134:2,6,14 137:1,13,24 138:17,18,24 139:8,19 140:5,13 141:5,19 142:11 142:14,24 143:10 144:2 145:1,17,18 146:8,16 147:9,11 147:22 148:16 150:4,16 153:1,2,7 153:9 154:22 159:18 168:1 173:23 205:12,19 206:5 207:2,12 208:8,23 209:1,6,7 209:10,14 210:1 301:21,22,22 schronce's 137:8 205:22 206:3 scope 64:13 223:14 screw 204:2 sea 213:2 seal 304:10 search 112:16 second 33:1 38:5 46:24 48:8,12 54:21,24 58:23 61:2 67:18,21 74:16 166:10 181:23 202:14	226:24 230:23 236:13 244:8 264:21 295:6,9 secondly 209:14 secretary 136:12 136:15,17,25 137:9,12,17 139:4 139:6 section 40:24 49:13 see 12:20 24:13 37:18 47:15 48:11 48:12 54:6 59:25 70:14 75:13 77:12 83:15,16 89:7 102:20 106:3 113:4 115:8,9 156:15 172:1 192:16 193:12,14 194:15,20,25 195:6 196:10 201:16 202:4 210:9 212:23 213:1,10 222:23 222:25 253:10,13 257:12,14 261:20 264:25 265:1,2,3 274:17,19 279:14 283:2 284:24 285:22 287:25 290:2 294:24 296:20 299:10,18 seeing 102:14 115:12,13 seek 186:10 seeking 178:24 179:6 188:14 seen 20:13 89:10 89:11 115:2,11 187:17 188:10	self 17:1 send 64:7,8 66:20 122:17,24 183:21 184:6,14,21,24 185:10 243:6 256:2 sending 67:7 sense 16:15 39:15 52:11 208:3 276:20 277:2 sent 64:4 65:5,19 69:10 71:19 106:18 112:25 123:10 182:15 216:17 257:24,25 306:14 separate 122:9 separately 25:4 158:2 september 56:13 56:17 57:14,17,21 60:6,14,19 65:15 66:22 71:7,13,15 71:20 72:9 73:6 160:23 161:3 serious 95:14 serve 15:1 73:24 served 14:3,15 51:7 services 25:20 124:3 125:24 127:23 128:8,25 129:3 131:25 132:12 serving 138:1 set 197:9 296:13 setting 117:14 settlor 23:16 42:13 47:13 50:4,6,7 77:13 171:3,7 174:1,7 176:10
s			
s 3:14 305:10 307:3 saddle 294:5 safe 91:18 sat 165:21 251:9 276:24 satisfied 20:23 save 147:23 223:1 saw 102:15 207:25 209:23 213:2,4,14 233:10 sawtooth 9:9 saying 148:22 169:11 171:18 266:22 289:16 293:8 295:14 says 42:11 44:4 64:11 274:22 sc 1:21 3:4,8,11,15 3:21 4:5,20 sc.rr.com 3:15 schedule 295:18 295:20 296:1 302:7,8 scheduled 290:10			

177:22 settlor's 50:3 share 56:1,1 69:11 70:12,13,19 75:20 76:11,12,23,24 77:1 82:14 249:7 249:15 258:1 shared 258:3 shareholder 56:2 shareholders 117:3 141:18 142:9,16,20 143:7 143:22 144:1,24 145:9,12 146:2,5 146:12,25 147:3 148:12 shares 43:4 48:20 49:3,3,5,20,23,25 51:22,22 52:9,13 55:21,22,25 56:15 58:8,22 59:9,12 60:18,24,24 64:21 65:8 69:6 70:7 71:6,24 72:15 sharon 30:7 sheet 306:11 sheets 162:11 163:6 213:22 252:20 256:18 sheree 30:8 77:21 78:12,12 short 107:24 109:6 109:7 165:18,19 286:23,25 shortcut 178:18 224:11 225:12 257:13 shorted 299:22 shortly 121:24 shot 296:19	show 15:24 42:23 49:14 85:24 94:9 152:4 235:5 251:8 251:8 256:3,11 showing 65:17 67:13 shows 236:3 shut 264:19 292:18 293:5,8 sic 41:16 sick 250:5 side 267:4 288:18 sign 38:12,17 39:2 39:18 47:2 48:1,4 57:14 77:17,24 134:11,11 152:19 182:10,23 188:7 189:2 216:9 273:21 303:20 306:12 signature 33:16 37:19 38:2,4,5,6 39:16 46:18,20,23 46:23 54:6 69:11 77:11,15,15,20 78:11 83:12,15 84:4 304:16 signatures 38:2,2 38:8 46:22 78:3 signed 23:10 29:19 37:24 39:4,11,17 39:21 46:17 47:12 47:16 63:13 66:17 66:24 71:2,7,13 78:9 83:9 84:25 150:2,8 151:2,6,8 216:11,15 258:16 274:16 306:20 significant 15:25 23:7 73:19	significantly 58:17 signing 37:23 38:20 47:23 182:7 189:4 242:7 262:9 274:2 signings 30:11 signs 38:15,16,19 similar 15:20 similarly 126:2 130:11 131:6 141:16 simple 127:5 simply 63:8 112:14 121:1 160:6 194:25 199:19 280:16 284:9 single 24:18 126:10,10 sinister 266:6,23 267:8 sir 10:25 36:14 74:20 75:9 94:1 95:22 96:24 105:14 106:25 109:15,24 117:16 121:7 125:7 128:15 130:14 135:14 136:16 138:12 146:22 150:10 153:6 156:21 159:1,4,7 159:10 171:2 192:19 193:11 206:2 207:25 208:13,13 212:9 219:10 221:14 222:21 226:14 236:1 253:8 255:24 265:8 267:2 272:24	275:10 sit 24:8 106:4 213:13 285:23 287:2 294:13 298:2 sitting 99:25 situation 181:5 six 16:5 285:24 skipping 98:7,20 slane 34:21,23,24 35:23 36:1,11 214:6 241:16,19 241:22,23,25,25 242:3,5,11,13,14 242:20,23,25 243:2,7,14 244:5 245:20 246:9,18 246:24 253:18,24 253:25 258:2,4 271:19,20,22,23 272:5,13,13,22 273:4,6 slane's 35:3,5 smart 17:6 smith 3:3 social 16:15 117:9 117:13 159:15 socialize 156:9,18 156:22,23,25 157:1,17 socialized 158:4 socializing 157:12 software 161:15 161:20 sole 29:3 142:19 solely 280:24 solution 303:12 solutions 306:23 somebody 181:14 182:22 183:21 184:14,25 222:6

[somebody - strikes]

ROA 006050

Page 42

238:12 son 9:22 58:4 75:22 76:13 soon 72:21 100:8 254:14 sorry 22:1 32:23 41:2,4,19 63:21 68:14,16 73:1 74:24 75:3,17 79:2 83:24 86:9 88:14 90:21 96:4 96:4,21 103:9 105:15,21 106:5 106:23 110:21 112:11 114:10 116:17 117:16 121:17 135:5 142:4 150:19 155:20 156:3,14 157:25 163:4 167:19 168:3 171:16,19 179:1 185:4 193:19 195:19,22 200:21 204:14 205:6 206:4 208:2,13 209:4,8 211:16 222:2 228:5,9 230:3 235:9,16 236:14 246:22 251:19 253:6 254:7,13 259:8 261:4 264:13 266:15,21 267:5 272:19 273:23 274:3 277:11 278:22 279:15 282:18 283:14 297:9 sort 187:23 224:22 227:22	sound 38:22 171:22 228:11 sounds 13:10 117:12 132:16 172:1 185:5 248:22 295:13 sour 294:2,11 south 1:1 5:10 9:10,22 10:16 11:21,24 12:3,6,25 14:3,6 87:1 95:7 96:11 97:11,12,13 97:20,21,25 98:4,5 98:6 199:23 260:2 304:3,11 speak 24:12 26:23 57:4 65:21,23 148:22 247:15 speaking 24:11 81:6 130:20,22 special 11:19 43:21 81:23 specialist 11:23 12:3,9,22,24 13:12 15:21 specialization 12:7 13:19 specializations 12:10 specific 25:18 31:17 40:23 41:17 41:18,25,25 42:2 42:14,16 49:13,19 49:23 64:24 75:23 81:23 83:5 specifically 14:11 18:22 19:18 25:5 specifics 281:11 specify 164:5 spend 15:16 22:12 106:17 286:8	spending 24:4 63:2 spent 16:18 17:22 109:21,25 255:22 256:1,16,21 285:13,18 286:13 spite 248:12 split 47:10 splitting 226:1 spoke 51:23 71:23 107:22 200:4 254:14 spoken 107:18 spouse 45:18,19 46:4,12 76:5 spouse's 45:21 spouses 217:16 spring 229:7 246:20 staff 29:25 112:8 stamped 67:15 stand 90:10 108:6 152:4 284:24 standard 20:6,8,9 174:10 292:15 standards 15:24 20:24 stands 284:24 start 7:17,18 31:18 72:22 80:2 83:13 110:2 117:22 131:14 203:25 253:6 259:3 287:18 291:4,17 292:3 295:11,11 301:7 303:1 started 10:10 11:8 92:20 107:23 117:24 118:11 132:12 134:12 136:11 218:22	220:23 221:6 247:5 starting 132:15 139:5 155:8 194:15 starts 33:19 74:8 state 1:1 5:15 11:22 15:2 236:22 236:22 304:3 stated 297:24 statement 8:19,22 9:1 38:9,9 39:10 39:23 185:9 statements 183:1 static 193:2 stay 288:19 300:15 step 183:10 215:3 stepped 301:18 steps 189:16,16 stipulate 124:15 204:3 stipulation 126:7 stock 49:25 54:25 57:5 60:12 64:23 65:1,14 66:11 69:15,19 73:7 146:6,13 160:22 stone 244:15 289:4 stop 58:23 288:6,7 288:9 291:2 stopping 55:3 straightened 93:25 strawn 170:17 street 3:14,21 4:5 4:14 strike 127:17 135:21 212:22 264:9 strikes 294:15

stroke 21:10,11 strong 17:7,8 strongly 286:17 study 14:12 stuff 287:17,25 stumble 238:4 stupid 132:16 subject 12:15,18 21:19 82:2 103:4 120:24 132:10 137:7 140:22 141:8 149:18 151:11 154:15 155:13,24 156:7 157:12 160:3 166:13,21,25 169:20 205:21 214:15 219:22 227:19 228:7,21 228:23 231:12,20 245:21 submitted 13:13 subpoena 94:6,9 94:21,25 111:18 111:20 163:18 216:17 subpoenas 111:9 111:14,16 subscribed 308:14 subsequent 130:3 136:23 subsidiary 50:2 substance 107:4 119:7 134:7 160:5 165:9 168:14 220:16 substantive 7:21 28:24 80:3 97:24 118:7 168:25 169:21 170:1	substitute 23:20 substitution 23:14 successor 15:1 50:1,8 78:7,8 sudden 182:8 285:24 suffering 191:24 192:5 sufficient 64:12 124:18 sugar 294:2 suggest 36:12 185:20 266:5 294:22 suggested 63:10 suggesting 151:11 227:13 suggestions 232:20 233:13,20 243:3 suits 291:11 sum 109:19 summaries 102:10 102:12 summer 51:19 269:15 sunday 102:2 supper 284:25,25 287:21 292:7 293:20,22 support 284:10 suppose 177:3 182:6 208:1 supposed 66:15,18 66:24 193:9 234:1 supreme 12:5,20 12:24 sure 10:13 12:12 13:23,24 14:24 22:2,7 24:22 27:7 27:14 28:12 33:6	44:13 45:9 53:4 53:11 58:5,6 68:4 68:20 76:22 78:23 79:4 93:4 94:22 98:25 103:9,11 105:17 112:13,21 112:23 113:6,16 113:19,20,24 118:23 120:24 122:5 123:24 127:5 128:3 134:16,24 142:6 143:6 144:14,15 149:6 151:19 154:17 155:2 169:18 170:15 172:5 173:25 176:15 177:10 187:22 188:1,2,4 202:16 204:3 207:4 209:13,13 223:3 224:4 231:5 233:16 245:11 249:10 251:5 268:11,12 285:17 287:6 290:9 296:9 296:22,25 301:20 302:14 surprised 289:24 survive 42:12 50:6 50:7 81:17 survived 40:14 44:2 45:15 survives 43:3 44:25 surviving 46:4,12 76:4 survivor 40:13 82:5,6 sus 218:7	susceptible 191:24 192:8,13 suspect 177:11 178:15 181:20 190:18,18 218:8 218:23 220:24 221:6 286:5,6,24 suspected 191:3 suspecting 220:24 swear 6:16 switch 171:1 sworn 6:19 38:13 308:14 synonymous 195:11 system 161:15
t			
t 1:23 304:2,19 305:10 307:3,3 tab 31:21,23 32:1 32:4 33:18 39:25 48:10 55:13,15 57:7 61:1 66:12 67:22 68:12 72:17 78:23,23,25 235:7 252:24 253:6,8 260:23 271:5,8 tabs 32:11 take 6:24 7:7,11 10:10 42:25 52:2 53:13 54:11,12 55:2 58:18,18 59:18 64:6 74:13 90:7,24,25 91:8,18 91:20,22 92:4 151:23 165:20 183:9 189:16 201:16 210:12 219:4 221:22 222:22,24 234:15 244:7 252:23			

[take - thank]

ROA 006052

Page 44

280:2 281:18 284:12,25 289:13 290:7,12 294:6,14 295:10 298:21,25 299:12 taken 1:22 5:4 7:2 takes 287:1 talk 12:1 16:7 18:21,22 22:10 23:8 25:17,18 29:15 31:17 53:20 60:5 99:2,14 108:2 110:3,14,16 118:15 137:22 152:11,14 160:4 161:5,6,7,8 170:19 191:20 192:7 210:23 213:6 218:16 219:5 221:2,10,21,22 222:22,23,25 223:6,14 224:13 224:21 229:20 237:16 238:5,17 238:18 239:5,5 240:8 244:8,13,19 247:9 253:15 257:10 280:5 284:20 285:7 287:17 290:12 talked 17:16 18:13 56:16 66:12 78:8 98:7 107:16 108:1 109:12,16 110:6 117:4,6 215:6,9,14 239:7,7 240:25 244:16 245:17 247:8,22 290:20 297:12 talking 19:16 25:24 109:21	118:16 146:19 158:1 218:13 221:3 230:4 245:3 273:23 277:1 285:13 286:8 287:19 298:24 299:7 300:1 301:25 302:19 tangible 42:3,6,10 81:16,18 tape 196:22 210:10 tax 10:5,7 35:10 119:24 120:2,6 201:18 taxation 98:3 taxes 98:7,8,20 telephone 25:16 30:5 107:15,24 165:18 213:7 236:5 237:10,11 telephoned 51:17 52:25 tell 9:6 10:3,9 16:8 16:21,22 17:3,13 18:25 23:11 24:25 32:22 33:2,25 34:16 36:24 40:2 47:8 48:14,23 49:14 51:13 56:19 57:25 58:12 61:9 62:16 67:9,13 73:9,9 75:10 76:16 81:6 91:15 93:18,24 96:7 98:17 99:4 111:12 131:12 132:13 141:1 145:13 150:24 158:15 191:6,8 200:7 202:3 213:9 214:9	240:19 242:10,11 244:12 247:22 248:6 251:7 255:25 259:23 262:11,19 263:23 265:14 278:15 279:24 285:25 289:14,15,16 297:22 telling 25:6 26:25 92:1 131:19 232:4 232:6,6 233:3 ten 15:23 65:18 289:5,8 293:25 296:9 298:18 tense 157:17 tenth 170:7,10 tenths 170:11 term 41:1,2 194:3 195:25 terms 15:20 25:18 26:17 29:17 35:17 37:3,6 41:8,14 46:8 81:10 87:11 87:21 88:12,18 89:7 112:25 118:8 131:12 139:17 141:3 145:11 172:18 174:2 175:24 183:12 201:5 233:12 248:7 257:5 267:25 275:17 278:9 test 12:17 testament 33:15 73:18 79:15 testamentary 8:8 8:21 19:1,4,22,25 20:3,16,24 21:1,4 21:12,16,20,21,24	27:18 36:7,13 44:17,20 87:15 170:25 171:8,10 174:3,10 180:17 181:13,21 182:9 183:4 212:17 227:15 231:17 240:15,17,18 275:15 282:3,9,16 282:21 290:25 testator 23:16 38:15,18,20,21,24 173:21 174:1,14 175:3,21 177:14 181:20 testified 6:19 88:22 95:23 96:19 117:7 134:4 170:24 209:15 218:19 234:16,23 236:17,18 254:2 265:16 267:17 testify 94:9,21 96:17,18 151:12 266:22 267:2,8 testimony 8:15 17:10 92:6 96:23 99:5 103:4 143:15 168:19 169:4 178:24 198:15 223:22 227:17 251:15 252:1 254:16 268:4,19 290:24 303:15 306:9,18 308:8 thank 8:22 9:4 32:3 61:7 68:23 69:3 78:15 92:9 93:13,14,21 95:20 96:5,22 106:5,8 108:14,15,16

[thank - time]

ROA 006053

Page 45

111:8 118:6 123:2 124:20 125:15 128:12 129:18 131:9,18 135:9 136:1 138:8 144:18 146:4 153:10 156:9 172:3 210:8,8,8 211:1 228:24 238:21 245:8 255:1,21 261:3 265:9 266:16 271:12 274:12 303:10 thereof 304:8 thing 17:4 197:21 282:8 286:23 299:21 things 22:6 24:10 25:11,16 29:19,22 30:6 178:18 181:16,17 182:19 201:16 225:12 267:24 think 15:6 16:5,14 17:1,6 18:12,15 20:9 23:13 33:1 33:10 35:18 53:14 53:14 54:18 55:25 57:8 61:14 67:22 69:4,25 71:1 73:22 74:7,9,10 78:6 81:9 87:21 88:21 89:20 90:6 91:24 93:5 95:4 95:17 100:15 101:10 107:18,22 107:25 108:6 109:6,7,16,25 117:10 118:3 119:18 122:8	123:14 126:14 136:19 137:6,16 140:1,10 141:1,12 141:14,17 142:15 143:17 145:14,21 145:22 146:23 148:2,3,7,23 149:3 149:10,11,14 151:7,9,11,18 155:16 156:13 169:25 172:13 173:1 175:2,14,18 176:5 177:19 179:6 188:21 191:23 192:2,11 194:10 195:17 196:5 197:5,13 199:21 200:3 203:24 209:17 210:5 212:15 213:24 214:3,7,12 216:16,22 218:21 221:23 222:1 224:13 225:1,20 227:2,3,12 229:20 230:8,8,23,24,25 231:23 232:1,10 236:25 237:24 238:5 240:8,16,24 241:5,9,10,11,12 242:5 244:15 247:23 249:10 250:4 255:3,5,6,18 256:6 257:18 261:25 262:16,16 267:3 270:5 271:10 273:9 276:5,6 277:6 279:2 280:1 281:2 281:6,10,12,17 283:1 284:21	285:12,19,20,21 286:12,12 287:1 287:19 288:10,11 288:11,22,22 289:1,8,13,21 290:23 292:12,14 292:24 293:7 294:13 295:7,9,20 296:15,18,24 297:7 298:19 299:25 301:2,5 303:11 thinking 26:16 245:23 thinks 296:21 third 9:23 25:14 74:15,22 75:4,12 259:25 262:8,14 thirty 91:14,16 thomas 3:3 thought 17:2,4,5 30:16 63:12 80:20 102:22 180:15 181:9 184:22 187:18 189:3,22 190:14 216:11 246:4 254:2 255:9 291:18 296:10 300:2,24,25 thoughts 199:17 thousand 36:5 80:4 82:24 276:16 thread 267:6 three 13:8 18:1 34:10 40:20 44:2 66:13 77:21 78:2 92:17 109:17 170:11 210:16 217:20 229:3 287:5,7 290:1	thursday 151:22 time 1:19 7:11,15 12:11 16:19 17:14 17:19,22,24 18:1,2 18:4 20:11 22:4 22:12,22 24:4,18 25:19 26:5 27:8 27:17,21 29:10,15 30:4 31:7 35:18 36:4 37:11 41:8 43:1 44:5,21 46:2 46:3 47:22 51:10 51:10,11 52:17 54:7 55:6,10 57:6 57:9,10,24 58:9 60:8 62:15 63:2,4 65:18 66:2 72:7 73:12 80:20 83:1 90:13,16,18 91:14 92:2,13,18 93:5,23 96:14 100:16,22 100:24 101:2,4,6 101:11 105:2,23 107:20 109:20,23 111:4,5 115:2,11 117:11 118:2,7,13 118:18 121:1,9 125:3 127:22 128:7 130:20 131:24 132:14 134:19 136:12 147:24 148:12 151:19 152:6,9,17 158:13,19 160:7 161:21 162:3,11 162:12 163:6,7 164:15 165:20 168:6 170:9,11 178:24 186:18,25 187:8,9 189:7 190:20,23,24

[time - traxler]

ROA 006054

Page 46

191:4 193:13,15 194:11,22 195:8 199:3,10 200:24 201:2,4,10 202:12 204:10 205:8,22 205:25 206:24 210:17,21 211:24 212:12,22,23 213:3,7,22,24 215:25 217:21 221:18 222:15 223:1 225:15,18 226:6,8 228:4,14 229:4 230:4,10 238:21,24 239:2 240:4 244:10,20 245:13,16 246:15 249:2 251:3,8,9 252:19 255:22 256:1,3,11,16,18 256:21,23 257:13 258:17 260:9 267:19 268:7 269:13 271:15 274:6,15,22 275:6 275:9,13 276:10 279:5 280:10,14 280:22 285:13,16 285:18,25 286:7 286:13,14 290:16 290:19 291:16 292:2 293:12 294:7 295:2,7,15 295:18,22,24 296:14,16,19,21 298:2,4,8 299:12 299:13,18,21 301:7 302:16 303:14 306:19 timeframe 306:8	times 13:8 56:16 57:3,9 100:13 105:4 107:16 109:11,18 110:1 116:6 128:18 158:18 181:4,10 188:4,9 190:17 228:21 229:2 249:24 250:8,20 251:9 253:1,11 254:21 timing 13:24 57:23 58:1 title 61:16,22 titles 97:24 today 6:24 10:22 11:8 94:6 99:3,5 100:14 107:1,3,5 111:2,5 285:22 286:14 287:9 told 35:2,4 48:18 51:17 53:12 57:8 57:12,20 58:4,12 97:1 104:17 118:3 248:20 255:11 262:23 264:5 284:8 291:21 296:12 298:14,21 tom 5:21 21:7 28:6 30:22 32:13 33:4 44:11 45:23 50:14 52:18 59:23 61:18 66:4 67:17,19,24 68:20 71:21 78:19 80:8 85:12 89:19 91:7 92:19 108:6 108:15 116:25 117:1 122:18 126:19 127:25 138:8 144:12 146:18 149:11	151:17 154:11,14 154:22 163:4 164:3 170:14 171:16 173:7 200:21 207:3 223:19,23 224:24 226:2 238:2,21 244:7 245:22 248:1 264:2,19 271:6 274:10 280:15 282:19 288:16 294:10,21 294:22 296:21 302:18 tom.traxler 3:5 tomorrow 151:25 286:2 291:9,16 292:8 293:11,12 293:14,21 294:11 295:4,12 tonight 285:4 286:1,4 295:11 top 37:19 46:19 77:13 127:4 topics 96:12 97:5 tortious 87:3 total 109:19,21 totally 126:16,19 223:18 289:20 track 170:9,10 transact 64:14,19 transaction 65:15 transcript 4:25 93:2 101:25 102:7 102:8 303:21 304:5 306:6,20 308:5,8 transfer 11:4 37:9 48:20 55:21 56:5 56:14 57:5,7,16,17 57:17 58:1,7 59:7	59:9,15,16 60:2,6 60:9 62:15 64:21 65:1,8,19,20 66:11 66:15,19,25 67:8 70:5,6,21,22 71:3 71:8,13,14,18,24 72:4,9,11,15 73:7 98:20 transferred 29:18 37:10 59:17 69:6 70:7 transferring 59:12 transpired 272:17 trap 255:2 travel 27:13 traveled 27:15 travis 35:8,10,24 67:15 72:2 116:23 116:24 133:7,13 133:13,24 138:22 traxler 3:3,3 5:21 5:21 21:7,7 28:6,6 30:22,22 32:14 33:4,4,7 44:11,11 45:23,23 50:14,14 52:18,18 59:22,23 61:18,18 66:4,4 67:20 68:22 71:21 71:21 78:19,19 80:8,8 85:7,12,12 85:20 89:18,19 90:19,23 91:4,8,13 91:17,22 92:3,9 93:1,7,11,14,16 94:17 102:18 103:5 104:1,8,12 104:15,20,25 105:7,13,25 106:3 106:6,9,10,24 108:9,16,17 111:7 112:1 113:9,20,24

[traxler - trust]

ROA 006055

Page 47

113:25 114:5,6	166:14,20 167:2,8	215:23 216:8,14	268:13,21 269:12
115:6 119:2,10,12	167:12,14,19,22	216:23 217:5,13	269:23 270:2,4,8
120:3,11,21,23	168:2,4,10,12,22	218:19 219:8,13	270:14 271:2,8,13
121:17,21 122:16	168:23 169:6,8,13	219:18,24 220:3	273:22 274:11,14
122:21,23 123:4,8	169:19 170:5,15	220:10,14,18,20	275:23 276:8,19
123:18,23 124:1,6	170:19,23 171:11	220:22 221:1,5,12	277:11,18,24
124:17,20,21	171:19,23 172:1,5	221:15,16,23	278:16,20,23
125:1,9,14,16,22	172:6,15 173:3,8	222:8,9,11,13,19	279:1,7,18 280:7
126:8,20,23 127:4	173:10,16 174:5	222:24 223:9,13	281:23 282:7,14
127:7 128:1,2,13	174:11,19 175:5	223:20 224:2,15	282:20,23 283:11
128:16,23,24	175:13,20 176:8	225:1,10,19 226:3	283:20 284:23
129:8,14,19,20,24	176:20 177:4,13	226:12,15,18	285:7,11,21
130:1,8,15 131:10	177:21 178:3,9,17	228:1,10,13,20,22	286:11,21 287:6
131:19,22,23	179:1,11,20 180:1	229:1,18 230:4,6	287:11,16,20,24
132:6,8,22 133:18	180:6,13,22 181:6	231:1,11,19 232:3	288:10,17,24
133:22 134:2,10	181:25 182:1,5,14	232:11,16,18	289:24 291:4,8,15
134:17 135:2,8,9	182:21 183:7	233:2,5,8,19	291:20 292:2,7,18
135:12,15,20	184:5,12,23 185:3	234:11,13 235:4	292:20 293:3,10
136:4,5,10 137:4	185:8,17 186:4,15	235:11,14,18	293:15,19 294:1
137:21 138:2,4,10	186:23 187:7,16	236:10,20 237:6	294:16,18 299:20
138:13,21 139:3	187:25 188:8,13	237:12,23 238:11	301:8 302:2,19,25
139:14,23 140:8	188:17,21 189:12	238:17,22 239:3	303:4,9 305:6
140:21,24 141:10	189:14,20 190:3,5	239:16 240:11,21	treat 72:3 75:15
142:1,4,18 143:3,5	190:10 191:2,10	241:2,7,14 242:21	248:14 284:19
143:23 144:14,18	191:13,16,22	243:13,24 244:18	treated 59:17
144:20,22 145:4,6	192:3,23 193:7,23	244:22 245:5,11	198:10 276:10
145:10 146:3,10	194:13,23 195:9	245:23 246:1,4,7	treating 276:17
146:21 147:17,23	195:18,23 196:8	247:14,19 248:2,3	trial 8:5,9 95:2,5
148:5,8,10 149:6	196:17,21 197:1,2	248:16 249:14,21	95:13,23
149:21 150:1,9,15	198:1,8,19 199:1	249:23,25 250:5,7	tried 25:14
150:23 151:1,4,19	199:11 200:17	250:11 251:1,17	tries 238:18
151:24 152:2,3,10	201:13,24 202:5	252:4,10,16	trinkley 112:4,14
153:4,7,10,11,21	202:16,20,22,23	254:10,13 255:14	113:1,2,8,11
154:1,6,17,24	203:3,6,9,18,21	255:20 256:9,17	trouble 25:21 26:5
155:2,6,13,19,21	204:5,8 205:1,4,7	258:22 259:2,22	105:25
156:1,5,20,24	205:17,20 206:9	260:10,18,20	true 39:21,23
157:7,9,20 160:2	207:4,5,16,20,24	261:2,6,12,24	304:5 308:8
160:17 161:4,18	208:11,12 209:4,8	263:13,22 264:3,8	trust 1:10,12
162:22 163:2,11	209:13,19 210:3	264:13,20,24	11:25 15:5,8
163:16,21 164:6	210:12,22 211:15	265:4,8,13 266:15	19:18 20:22 21:3
164:12 165:3,16	212:8,20 214:17	267:1,10,22 268:6	31:20 33:21,25

[trust - twombley]

ROA 006056

Page 48

36:6 37:2,6,10,11 37:14,17 40:1,3,7 40:11,15,19,25 41:7,11,13 42:17 42:21,24 43:11,18 44:4,6,7 45:13,22 46:11,17 47:24 48:9,16 49:14,15 49:18 50:4,5,9,12 50:23 52:9 54:8 54:22 60:12,15,22 70:10 74:5,23 75:5,6,18,18,22 76:2,11,12 77:8 78:11 79:1 80:2 81:2,12 82:10,11 82:15,17 83:10,13 84:9 87:17,18 160:23 171:3,4,7 174:7,7 176:11,19 177:23,24 178:21 179:22 197:9 236:4 237:9 238:18 274:1 275:16 trustee 1:9,11 47:14 49:24 50:8 70:10 77:13 78:7 78:8 230:9 trusts 21:22 43:10 44:10 98:21,22 176:17 try 7:16 24:12 28:14 84:20 126:17 131:3 146:1 152:14 173:11 186:9,10 189:17 224:1,2 238:13 285:24 295:5	trying 58:18 95:12 127:2 149:11 194:2 231:16 236:25 238:2,9,16 255:1 277:2 294:10 296:5,16 turn 31:21 37:18 41:16 42:19 46:13 47:7 48:7 49:12 50:25 55:12 61:1 61:2 72:17 74:12 78:22 112:15 114:16 182:24 turned 190:6,13 turning 111:16 112:14 twenge 3:19 twenty 63:22 twice 107:19 301:15 twlawfirm.com 3:22 two 14:17 18:1 34:8 36:5 38:1 43:4 46:22 49:19 55:9 58:21 70:11 78:3 80:4 81:25 82:24 83:17,20,22 92:13 95:16,19 105:3 109:17 110:1 217:18 229:3 244:14 247:18 276:16 279:10 281:17 286:10 287:10 289:8 294:25 296:6 twombley 3:19,20 3:22 5:17,17 6:21 6:23 9:4,5 21:9 22:1 25:23 28:8	30:24 32:1,4,6,12 32:18 33:6,9,12 41:20 44:15 45:9 50:16 52:23 53:7 55:11 59:24 61:5 61:8,20 66:6 67:12,24 68:9,19 69:1 71:10 72:6 72:21 73:2 74:14 78:21 80:13 85:8 85:16,23 86:9,13 89:24 90:17,20 91:2,20 92:19 93:4,10,12 94:11 99:8 101:5,10,14 102:16,23 103:1,7 103:12,19 104:4 104:20,23 105:2,9 105:11 106:12 107:14 109:11,17 110:1,5,8,11,19,25 111:21 114:2 115:4,19 117:8 119:1,5 120:4,16 121:16,19 123:3 126:13,20,22,25 127:6 130:16 132:3 134:20 139:22 140:4,6 141:6 142:22 143:8,12 144:25 147:6 148:20 152:21 153:3,17 153:19,24 154:3 154:20,25 155:3 156:12 157:3,19 159:24 160:16,25 162:19,24 163:8 163:14 164:2,10 165:13 167:11,17 168:16,18 169:3	169:10,18 170:25 171:5 172:24 173:6 174:15,22 175:1,9,11 176:1,3 176:13,25 177:8 177:17 178:1 179:10,18 180:19 180:23 182:25 183:24 184:1,10 184:18 185:15,25 186:21 187:1,3,11 187:13 189:24 190:1,25 191:5,12 191:15,19 193:6 193:17 194:9,18 195:5,14 196:2,13 196:18 198:12,14 198:23 199:5 200:12 203:20 207:18 209:17 211:9,25 212:13 214:11 216:3,18 216:20 218:10 223:23 225:6 226:20 227:2 231:9 233:23,25 234:3,5,7,18 236:7 236:12 239:14 240:7,19,24 241:4 241:9 242:17 244:7,21,25 245:9 245:17,25 246:6 247:11,25 249:12 250:2,22 251:13 251:24 252:7,13 254:5,18 258:19 258:25 259:16 260:13 265:1,3 266:13 267:7 268:5,9,16,19 269:8 270:21

273:15 274:8 275:18 276:1,12 276:14 277:4,12 277:13,20 278:10 278:18,22,25 279:2,13,25 280:15 282:11,18 282:25 283:12,20 283:23 285:19 286:15 288:22 289:1,12,20 290:11 291:25 292:4,11,19 293:7 294:17,21,25 297:14,21 298:9 298:13 299:8,23 299:25 300:4,7,14 302:10,18,23 303:2,8,10 305:4 twombly's 94:10 105:18 234:16 283:18 type 11:19 16:23 16:23 89:3,16,25 125:23 127:2 171:13 214:15 223:24 284:6,17 290:13 298:1 typed 70:13 types 244:5 typical 41:10 typically 165:24 166:1	unable 217:22 unaware 20:24 72:14 87:13 unchanged 193:2 uncompensated 111:5 underlying 69:12 undersigned 38:14 understand 22:3 28:12 35:6,9 36:16,20 44:14 48:4 59:19 64:13 78:16 92:3,5 93:18,20 103:9 110:5 114:3 123:10 125:4,23 128:23 132:8 137:5 149:7 160:18 161:19 165:11 171:18 172:18,19 181:8 182:19 188:25 201:15 222:8 223:16 233:17 239:17 258:23 267:23,23 268:7 293:3 298:23 299:5 300:18 understanding 18:25 20:2,5,19 23:12 44:16 51:15 52:5 65:25 66:3,8 74:21 170:25 172:22 173:2 201:19 227:7 298:17 understood 17:6 28:3 59:21 62:17 62:20 94:3 104:16 110:7 123:24 240:17 249:11	283:14 296:12 undertake 118:12 undertook 153:12 155:7 underwood 86:2 undo 54:13,14 undue 23:9,12,13 23:18 31:3 38:23 87:3 181:16 186:17,17,24 187:8,17 188:22 190:7,19,22 191:3 191:24 192:9,13 244:1 unduly 23:11,25 27:25 30:17 39:17 47:25 80:6,11,18 187:18 188:10,20 189:3,6,15,15,19 189:23 190:14 unilaterally 299:15 unintelligible 93:24 unit 5:3 55:9 92:13 92:17 210:16,20 280:9,13 united 275:24 276:6 unpopular 170:17 unprofessional 289:21 unreasonable 237:18 unsigned 69:14,18 70:11 untrue 102:15,22 unusual 35:12,25 294:15 unwritten 297:17	upcoming 15:3 update 18:17 66:18,25 updating 19:16 upper 32:20 urgency 52:7,12 usc 3:13 use 67:25 70:25 90:8 156:23,24 157:1,2,16
			v
			v 41:17,22,24 49:19 81:23 306:4 307:1 308:1 va 4:14 vaccinated 249:25 vague 96:15 valid 171:4,14 172:9 173:13 validity 176:7 various 22:18 23:10 35:1 44:10 116:6 128:18 vendor 173:12 verify 301:16 306:9 veritext 5:11,13 303:16 306:14,23 veritext.com 306:15 versions 82:15 versus 74:16 86:24 146:13 vi 42:20 43:2 victor 76:10 81:19 81:20 82:18,18 116:11,12 118:4,5 249:5,8,15 victor's 76:11 video 5:3 303:15
u			
u 1:7 2:6 3:18 42:12 43:3 uh 15:8 300:12 ultimate 82:16 ultimately 14:16 34:12,13 40:12 69:5 83:3 273:20			

videoconference 1:16 videographer 4:22 5:1,12 6:15 55:5,8 90:12,15 92:12,16 152:5,8 196:19 210:15,19 225:14 225:17 238:23 239:1 245:12,15 280:8,12 290:15 290:18 303:13 videotaped 1:16 vii 43:8,11 44:19 45:11,14 viii 43:8,19,20 44:19 virginia 10:15 11:22 30:8 83:18 84:6 virus 95:3 visits 53:16 voiding 178:5 volume 105:24 voluntarily 94:20 94:24 voted 14:21 voting 48:20 49:3 49:3,5,5,20,23,25 51:22 52:9 54:25 55:22,25 56:1,2,15 60:24 65:8 72:15 146:5,5,12,13 147:4,4,18 148:11 149:8 150:2,12 151:5 160:22 vs 1:6 2:5	wait 77:25 166:9,9 202:14 218:12 226:24 230:23 260:4 302:24 waive 237:19 280:3,19 303:21 waived 217:19 222:7 waiver 8:22 149:16,18 154:15 166:13 216:9,12 221:25 226:13 238:4 waivers 152:19 222:4 waiving 8:3,12,16 8:20 9:2 214:15 245:21 247:13 281:3 walk 250:18 walking 113:19 walters 3:20 6:6,6 want 7:21 18:22 23:8 31:16,16 32:19,21 33:4 45:5,19 49:2 55:12 57:1 58:19 61:1 68:20 72:1 76:20 80:1 82:25 85:24 86:5,11 91:9,17,20 108:6 109:17 113:6,10 113:12,13,14,18 121:1 123:3,23 124:7,14 125:1 126:9,17 143:20 144:16 145:14 148:20 163:5 166:22 169:12,13 171:24 179:4 180:24,25 181:23	187:21 191:7,8,21 193:9 201:17 210:11 219:4 220:11 222:22 223:4,13,14 224:22,23,25 225:5 227:24 235:7 238:7 240:9 244:7,20 253:6,8 255:2 267:2 276:6 280:3,3 281:4,6 283:2 284:15,21 285:2,3 286:2 287:19,22 288:15 288:19,20 289:13 291:2,17 292:2 293:12,22,23 296:4 298:15 300:5,9,12,15,24 301:7,11 302:14 302:23 wanted 31:13 36:17 48:24 49:4 52:13 56:20,21,24 57:20 58:4,6,7 60:13 75:11,20 76:16,22 80:19 82:20 84:18 127:4 181:1 199:18 215:10 241:24 291:18 298:4,5 wants 44:10 225:11 288:6 warning 122:20 washington 4:8 watch 77:23 way 11:4,6 27:25 37:12 41:8 72:25 80:7 84:21 87:18 91:14 119:7 125:3 132:17 195:1	206:11,11 224:18 226:7 256:20 281:21 285:8 we've 105:4 132:17 148:2,3,7 151:17 195:19 225:3 285:8,15 287:12,16 289:5,5 wearing 231:14 wednesday 302:1 wee 288:5 week 65:18 weeks 56:12 296:7 296:9 welcome 124:14 126:5 went 35:1 40:16 83:1 215:22 216:25 223:18 243:22 279:5 whatsoever 270:19 282:15 284:17 whoa 104:3,3 218:12,12,13 wife 9:15,17 40:8 42:22,25 willing 104:25 149:20 191:20 219:5 286:1 willingly 38:16,16 wills 19:18 21:22 87:17,18 176:16 240:14 274:1 winston 170:17 wisconsin 4:7 wish 82:13 wished 48:18 56:14 229:20 wishes 11:5 188:6 188:24
w			
w 3:3 wade 75:22 76:13 76:22,23 77:1,1 82:2,15 83:4,6			

[withdraw - yeah]

ROA 006059

Page 51

withdraw 110:4 138:3 155:20 170:18 withdrawing 169:11,16 witness 4:17 6:16 7:23 8:1 9:3 38:20 44:13 45:25 46:24 46:24 47:1 51:4,6 51:7 52:20 68:24 71:23 77:17 78:5 78:10 80:10 85:14 85:21 86:11 89:20 92:8 96:2,6 104:7 113:25 119:10 120:7,21 122:15 122:22 123:4 125:21 127:25 128:22 129:7,23 131:16 133:16,21 134:15,16,24 135:10 136:2,3 137:16,25 138:19 138:25 139:9 141:7 142:15 143:3,17 144:20 145:6,21 146:18 147:12 148:19 149:1,24 150:7,19 150:23 151:15 155:4 156:3,14,18 159:19 161:2 163:10,15,20 164:11 165:2 166:18 167:1,7,13 167:21 168:3,11 168:21 169:25 171:6 172:13 173:1,8,14,25 174:9,18 175:2,18 176:5,15 177:3,10	177:19 178:2,8,15 178:22,25 179:3,7 179:19,24 180:5 180:12 182:1 183:3 184:3,20 185:3,16 186:1,8 186:22 187:15 188:1 189:11 192:2,11,21 193:19 194:10,20 195:6,16 196:4,16 198:5,16 199:7 200:14 201:12,22 202:2,19 203:2,8 205:13 206:6 207:15,20 208:11 211:12 212:4 216:5,11,21 217:3 220:2,13,21 228:9 228:19,24 230:3 231:23 232:10 233:5,16 234:1,6 234:12,21,23 235:16 238:2,6 242:19 243:12,23 245:8 247:15 248:11 252:3 254:7,20 255:18 256:6,15 259:19 260:8,16 261:4 263:19 264:5 265:10 266:21 267:17 268:11 269:9,21 270:4,24 273:18 274:13 275:21 276:5,15 279:15 282:6,13 285:2,13 286:8 287:12 289:15 294:4,4 296:10,17 300:11 302:3,6	303:19 304:9 306:8,10,12,19 witnessed 29:23 witnesses 38:12 46:22 51:2 83:17 84:7 296:11 word 156:23,24 157:1,16 words 171:21 work 7:24 8:3 10:11 11:13,13 17:11 29:24 105:3 118:8,21 119:16 119:21,24 120:2,6 120:13,14 121:2,4 121:5,10,12 124:22 127:19,22 128:6,18 136:23 161:13 166:1,22 167:4,9,15,23 168:5,25 169:22 170:1 193:2 197:4 202:11,24 203:4 203:14,17 204:10 211:23 212:5,11 213:11 235:21,23 238:3 250:13 275:4 277:22 worked 18:4 34:15 39:9 63:4 83:20 83:22 161:12 275:7 working 16:25 36:9 281:25 303:11 works 164:5 299:9 world 286:9 worried 52:21 238:12 worry 249:22	worth 18:1 wreck 60:18 writing 98:11 245:9 written 12:16 89:5 97:4,10,19 98:9,13 98:15 289:4 wrong 274:4 286:12 292:16 wrote 97:25 98:3,5 161:25 163:7 244:10,12
			x
			x 305:1,10 xviii 82:3
			y
			y'all 33:10 68:19 90:21 91:9,15,20 103:12 110:3,3 130:3 148:1 153:4 160:4 161:5 225:7 226:18 236:20 244:22 249:22 264:25 280:24 285:13,14,18,24 285:25 286:8,13 286:14 290:20 291:11,23,25 292:2 293:22,22 295:14,15,23 298:4 300:12,15 300:25 301:7 303:10 yeah 27:11 33:14 34:18 37:1,24 67:20 68:22 72:21 74:18 84:5 90:20 91:22 108:5 113:9 113:24 120:3 150:15 152:23

[yeah - zoom]

ROA 006060

Page 52

162:15 164:5	115:1,7
166:14 167:12	youngest 9:23
180:19 191:5	z
195:22 202:16	zoom 3:5,9,12,16
210:12 214:3	4:9,16,22 7:13
216:5 219:24	290:8,9
220:20 222:24	
232:16 234:3,6,11	
240:7 244:18	
245:5,24 248:2,22	
249:12 254:7	
258:14 261:2,17	
262:15 264:3,20	
265:1,8 266:19	
271:22 274:11	
275:24 276:9	
286:17 288:3	
290:5 291:6	
294:20 298:9,13	
298:14 299:23,24	
300:14 301:4	
302:2,5 303:1	
year 10:14 14:17	
95:6,6,15,19	
107:25 109:7	
124:3,7,23 125:2,6	
125:12,24 126:10	
135:22,24 136:7	
181:10 190:17	
203:15,16 204:12	
250:14 253:12	
years 9:22 10:15	
10:17,24 12:12	
13:5 14:15,17	
15:23 16:5 35:6	
38:21 63:22 95:8	
124:11 130:3,11	
136:23	
yesterday 100:16	
100:19,20 106:11	
109:23 110:21,22	

ROA 006061

South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

ROA 006062

that the reasons given for the refusal to sign
require rejection of the deposition in whole or in
part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE OF CLOSURE STATEMENT
ROA 006063

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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ROA 006064

Page 1

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF BEAUFORT No. 2016-CP-07-1919

IN THE MATTER OF ESTATE OF PAUL BRANDON
BARRINGER, II, HAMPTON BARRINGER LUZAK,
Plaintiff,

vs.

MERRILL B LIGHT, MERRILL U. BARRINGER,
AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF PAUL BRANDON BARRINGER, II,
J. RANDOLPH LIGHT JR., MERRILL B. LIGHT
AS PUTATIVE TRUSTEE OF THE PAUL B.
BARRINGER, II REVOCABLE TRUST DATED
DECEMBER 4, 1998, AND MERRILL B. LIGHT
AS TRUSTEE OF THE MERRILL BARRINGER
LIGHT REVOCABLE TRUST,
Defendants.

(CAPTION CONTINUED ON PAGE 2)

Virtual Videotape Deposition of
Neill G. McBryde
Friday, March 26, 2021
At 9:00 a.m.
Charlotte, North Carolina

ROA 006065

Page 2

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

COUNTY OF BEAUFORT No. 2019-CP-07-01253

No. 2019-CP-07-01294

IN THE MATTER OF ESTATE OF PAUL BRANDON

BARRINGER, II, HAMPTON BARRINGER LUZAK,

Plaintiff,

vs.

MERRILL U. BARRINGER,

Defendant

Reported by LeShaunda Cass-Byrd, CSR, RPR

ROA 006066

Page 3

1 All attorneys participating in this
2 deposition acknowledge that in compliance with public
3 health orders, I am not physically present in the
4 deposition room and that I will be reporting remotely,
5 with all individual participants at their own
6 independent, respective locations.

7 You further acknowledge that in lieu of an
8 oath administration in person, the witness will
9 verbally declare his testimony in this matter under
10 penalty of perjury.

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ROA 006067

Page 4

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ROA 006068

Page 5

1 On behalf of Defendant, Merrill U. Barringer,
Individually and as Personal Representative of the
2 Estate of Paul Brandon Barringer, II

3 J. ASHLEY TWOMBLEY, Esq.

Leeanne Walters

4 Twenge + Twombley Law Firm

311 Carteret Street

5 Beaufort, South Carolina 29902

6 Also Present:

7 Andrew Smith, Videographer.

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ROA 006069

Page 6

EXAMINATION OF NEILL G. MCBRYDE

By Mr. Twombly 10

By Mr. Medlin 67

DEPOSITION EXHIBITS

EXHIBIT	DESCRIPTION	PAGE

Def Exhibit 12	Notes from file from the October 1, 1998 meeting Bates 149-156 of Exhibit 1 (not marked separately)	62

Exhibit 1	Defendant's Exhibit Notebook to Deposition of Neill G. McBryde

Exhibit 2	Plaintiff's Exhibit Notebook to Deposition of Neill G. McBryde

ROA 006070

Page 7

1 THE VIDEOGRAPHER: Good morning. My
2 name is Andrew Smith, and I'm the legal
3 videographer in association with Veritext.

4 Due to -- due to the severity of
5 COVID-19 and the following practice of
6 social distancing, I will not be in the
7 same room with the witness. Instead, I
8 will record this videotape deposition
9 remotely.

10 Our court reporter, LeShaunda Byrd,
11 will also not in be the same room with the
12 witness and will swear in the witness
13 remotely.

14 Do all parties stipulate to the
15 validity of this video recording and the
16 remote swearing and that it will be
17 admissible in the courtroom as if it had
18 been taken following Rule 30 of the Federal
19 Rules of Civil Procedures and the states'
20 rule where this case is pending?

21 MR. TWOMBLEY: Yes.

22 ALL COUNSEL: Yes.

23 THE VIDEOGRAPHER: All right. We are
24 now going on the record at 9:13 a.m. on
25 March 26th, 2001. This is media Unit 1 in

ROA 006071

Page 8

1 the recorded deposition of Neill McBryde
2 taken by counsel for the defense, in the
3 matter of Hampton Luzak V. Merrill B.
4 Light, et al., filed in the Court of Common
5 Pleas, State of South Carolina, County of
6 Beaufort, Case Number 2016-CP-07-1919. And
7 this deposition is being recorded via Zoom.

8 My name is Andrew Smith from the firm
9 Veritext, and I'm the videographer. Our
10 court reporter is LeShaunda Byrd, also from
11 Veritext.

12 Counsel will all be stip- -
13 appearance of counsel will all be
14 stipulated on the transcript by our court
15 reporter. And so at this time, our court
16 reporter may go ahead and swear in the
17 witness.

18 NEILL MCBRYDE,
19 having been first duly sworn, was examined and
20 testified as follows:

21 MR. TWOMBLEY: Mr. McBryde, before we
22 get started, I want to put a couple of
23 things on the record that you do not need
24 to concern yourself with, but just so the
25 record is clear, I would just like to note

ROA 006072

Page 9

1 that -- that Merrill Barringer has
2 identified Mr. McBryde as a witness in this
3 action, based upon the plaintiff's claim
4 that Merrill Barringer and Paul Barringer
5 entered into a contract, or other agreement
6 regarding their estate plans.

7 In addition, we have identified
8 exhibits to this deposition, Merrill
9 Barringer's 1998 will and trust, and those
10 documents continue to remain under the
11 Court's order to be viewed by attorneys
12 only.

13 Of course, Mr. McBryde drafted those
14 documents with the attorney, so we take
15 position that he want to approach that and
16 can see them.

17 But we're not waiving any privilege
18 or other protection related to those
19 documents or any of the protections in --
20 in the Court's order.

21 And in general, we're not waiving any
22 privilege or other protections simply by
23 naming him as a witness and describing te
24 testimony from him specifically related to
25 the plaintiff's claim.

ROA 006073

Page 10

1 With that having been said, we can
2 get started.

3 EXAMINATION

4 BY MR. TWOMBLEY:

5 Q. Good morning, Mr. McBryde. We have met
6 before, but if you would, please, introduce yourself.

7 A. Neill McBryde. I live in Charlotte,
8 North Carolina. Married. Two grown children. Both
9 of them lawyers at least by education. And that's
10 about it.

11 Q. Okay. Where do you -- where do you --
12 where do you work, Mr. McBryde?

13 A. I work at Moore & Van Allen. I started off
14 at King & Spalding in 1971. I decided to come back to
15 the Tar Hill state in '76 with Russell Robinson, Stone
16 Robinson & Bradshaw, and then I moved to Smith Helms,
17 Helms Mullis, then Smith Helms Mullis & Moore until
18 1990, and then I have been at Moore & Van Allen since
19 then.

20 I have been practicing a little over 50
21 years, and that's about it.

22 Q. Can you tell us a little bit about the type
23 of law practice that you have?

24 A. I started out and have continued to cover
25 the spectrum of what I would call broad estate

ROA 006074

Page 11

1 planning lawyers, which would include anything
2 relating to estate -- yeah, anything relating to the
3 persons who created wealth and wanted to have it
4 protected and/or taxes avoided.

5 I believe I presided from then, there is
6 set forth somewhere in your resume -- my resume in
7 effect. I have been very active nationally. Very
8 active locally. I have been past present of the
9 ACTEC, American College of Trust and Estate Counsel,
10 here in a section in North Carolina. You name it.

11 But basically, I've been working with those
12 persons, corporations, entities with wealth, mainly
13 because of health, but I have been involved in some
14 public offerings as counsel.

15 So it's a broad spectrum of what you would
16 consider estate planning, trust, closely-held business
17 interests, sales and purchases, businesses, the full
18 gambit that comes to you once you start working that
19 kind of client base.

20 Q. Okay. And -- and you said you have been
21 practicing for 50 years. Have you been -- have you
22 been practicing in the field of estate planning for 50
23 years?

24 A. Yes.

25 Q. Okay. Can you tell us briefly, for folks

ROA 006075

Page 12

1 who may not know, can you tell us a little bit about
2 what ACTEC is?

3 A. American College of Trust and Estate
4 Counsel is the premiere world class organization that
5 has basically members all over the country, literally
6 every state, and indeed, even Canada.

7 And now we have a -- it was about five or
8 ten years ago, we moved in international folks from
9 overseas as fellows. We meet regularly, three times a
10 year except for this year, this past 12 months.

11 And we -- it's a very intense group that
12 has subgroups within that have study groups within
13 them so that you can go as deep as you want in the
14 guide into almost any area of tax and estate planning,
15 involving particularly estate planning for the wealthy
16 and that have lots of assets.

17 And we generally work with all of the
18 entities and assets to some of these -- that those
19 individuals own or had interest in.

20 Q. Okay. And have you ever served as an
21 officer for -- for that organization?

22 A. Yes. As I mentioned earlier, I'm
23 president, and I guess my -- my you know, lead up in
24 terms of three or four years before you act, and I
25 think it was -- 2001 was my annual meeting with Dan

ROA 006076

Page 13

1 Boggo, and these are attended by 800 to 1,000
2 attendees. About half -- about half of them are the
3 lawyers, and the other half are accompanies --
4 children and spouses.

5 It's -- it's the preeminent organization in
6 the country really.

7 Q. Okay. I also noted on your resume that --
8 that you have been included in the Best Lawyers in
9 America for trust and estate tax and litigation
10 controversy since 1983. What is the -- what is your
11 understanding of what Best Lawyers in America group
12 is?

13 A. It's a -- just a third-party -- independent
14 folks who also, I'm sure, make a few dollars, but they
15 have over the years, really gotten pretty intense --
16 an intensive process for getting peer comments,
17 recommendations, those that are deemed to be the best
18 by locale and by state, by region.

19 And it's -- it's -- you'd rather be in that
20 than not be in that, and I -- and I was -- I've been
21 in it for a long time.

22 Q. Okay. Great.

23 Mr. McBryde, I sent you a notebook of
24 documents that I want to ask you about today, and I
25 know you've been sent documents by the plaintiff. I

ROA 006077

Page 14

1 want to make sure you have mine in front of you, and
2 they are -- the notebook with 12 tabs, and I think
3 they red numbers at the top that says "McBryde depo 1,
4 McBryde depo 2." I -- I think you have them in that
5 black binder, if you'll turn to tab -- Tab 1.

6 A. I do.

7 Q. Okay. Do you see the red numbers "McBryde
8 depo 1, McBryde --"

9 A. Yes.

10 Q. Okay. Just for your reference and for
11 mine, I'm going to be referring to those page numbers,
12 the ones in red at the top, so if I direct you to
13 page 1 or page 100, that -- those are the numbers I'm
14 going to be referring to. Okay?

15 A. I understand.

16 Q. Okay. The first document that is labeled
17 McBryde 1 through McBryde 11, do you recognize this
18 document?

19 A. You mean the -- just the materials in
20 there?

21 Q. Well, correct. This -- this is the
22 affidavit that was signed by you --

23 A. Yep. Yes.

24 Q. -- on September 8th --

25 A. The first affidavit, yes.

ROA 006078

Page 15

1 Q. Okay. All right. And so what is -- this
2 document is the affidavit that you signed for this
3 case?

4 A. This is the document that I prepared and
5 signed for this case.

6 Q. Okay. All right. And was this -- was this
7 affidavit true and accurate, to the best of your
8 knowledge?

9 A. Yes, to the best of my knowledge, and I
10 understand obligations of -- of my oath.

11 Q. All right.

12 I'm going to start asking you a few
13 questions that related to page 3, McBryde
14 deposition 3.

15 Tell us, please, approximately, when you
16 recall first meeting and doing legal work for Paul
17 Barringer.

18 A. I first met him and was introduced to him
19 and he me somewhere in 1996, but the -- the subjective
20 and substantive work really picked up or was
21 culminated with respect to Mr. Barringer and his
22 estate planning in 1998 in that period, the second
23 half of that year.

24 Q. And it's my understanding that you prepared
25 some of the estate planning documents for

ROA 006079

Page 16

1 Mr. Barringer, signed on December the 4th, 1998.

2 Can you -- can you tell us what those were?

3 A. Yes. That is -- that was actually the
4 culmination of a number of meetings, beginning in
5 August with Mr. Barringer, and gradually moving
6 through all of his desired issues that should be
7 addressed with regard to his estate planning, some tax
8 planning and the like, and ultimately, focusing on
9 updating and having his estate planning documents
10 reviewed and completed, following lengthy discussions,
11 voluminous correspondence back and forth, to ensure
12 that it carried out his and Mrs. Barringer's wishes.

13 Q. Okay. I would like to ask you -- and for
14 my reference, I'm moving over to page 4. And I would
15 like to ask you about generally, Mr. Barringer's
16 estate planning.

17 A. His estate? Okay. Excuse me.

18 Q. First of all, I understand he executed a
19 will on December 4th of 1998. Can you just generally,
20 explain to us what Mr. Barringer's will --
21 December 4th, 1998, will provided?

22 A. The will provided in somewhat standard form
23 in the sense of those who want to have the best
24 planning incorporated in their wills and trust estate
25 planning documents was to provide for irrevocable

ROA 006080

Page 17

1 trust in place, which would receive the assets, if not
2 already funded in part with assets by him during his
3 lifetime that would dispose of the property through
4 distributions that end up in the revocable trust,
5 postmortem irrevocable, and that would address where
6 all of his property was to go in the standard form of
7 any dispositive scheme.

8 Q. Okay. So let me just try to simply that a
9 little bit to make sure I understand it for -- in the
10 non-lawyers non-estate planners.

11 I understood you to say that
12 Mr. Barringer's will essentially just says that the
13 assets he owns at the time of his death go into his
14 revocable trust?

15 A. That's correct.

16 Q. Okay. And so --

17 A. That is a pretty standard mechanism --

18 Q. Okay.

19 A. -- to have in place.

20 Q. Okay. So no specific person receives a
21 dispositive distribution from Mr. Barringer in his
22 will. They just pour over into his trust.

23 A. I think -- and it's noted here, there are
24 some personal property effects, I think, for, you
25 know, just -- you know, I have to go back and look at

ROA 006081

Page 18

1 it, but I would think that there would be tangible
2 property that would be off the top provided to his
3 surviving spouse or otherwise.

4 Q. Okay. Aside from the tangible personal
5 property and effect --

6 A. Yeah, yeah.

7 Q. -- as far as any significant valuable
8 assets, they just simply go over to the revocable
9 trust; is that right?

10 A. That's correct. That's correct.

11 Q. All right. So if we want to determine who
12 is going to receive Mr. Barringer's assets at the time
13 of his death, where -- where would we have to look?

14 A. Well, you'd have to move his interested in
15 his -- as indicated in the deposition, you'd look at
16 the remaining provisions of the trust, which create --
17 goes to the will. It goes to the revocable trust, but
18 first, it goes to the tangible personal property off
19 the top.

20 And then Item 5, it goes to a QTIP trust
21 for the benefit of Mrs. Barringer, and it goes on to
22 provide for the residue. In fact, a QTIP trust,
23 depending on the value of the estate, would
24 potentially be to trust.

25 And then it would go to, the remaining

ROA 006082

Page 19

1 assets with -- to the extent -- would go basically to
2 the -- under the provisions of the revocable trust,
3 which are to trust for the remainder when -- after
4 Mrs. Barringer's death, subject to her exercising or
5 not exercising the power given to her to ultimately
6 see how the -- she wanted the property to go to the
7 family or whomever at the time of her death. It's not
8 limited.

9 Q. Okay. I'm going to -- we're going to look
10 at the trust and the specific provisions in the trust.
11 For now, I just wanted to confirm that the will
12 provides that Mr. Barringer's assets are poured over
13 to the trust; is that right?

14 A. Yes. That's correct.

15 Q. All right. And if you would turn to Tab 3
16 in this -- can you tell me what Tab 3 is?

17 MR. MEDLIN: Ashley, can you give us
18 the Bates number, please?

19 MR. TWOMBLEY: It starts with McBryde
20 depo 16 and goes to McBryde 28.

21 MR. MEDLIN: Thank you, sir.

22 THE WITNESS: This is -- yeah, this
23 is the -- the will, the last will and
24 testament.

25 BY MR. TWOMBLEY:

ROA 006083

Page 20

1 Q. Okay.

2 A. -- that we -- I'm jumping ahead of you, but
3 that's just what I was referring to.

4 Q. If you would turn to page 28, the last page
5 of the will.

6 A. What page? I'm sorry.

7 Q. Page 28. And again, I'm referring to the
8 red numbers at the top.

9 A. Oh, okay. Okay. Okay. I will go back.
10 Okay.

11 Q. McBryde depo --

12 A. Got it. That's the execution aspect of the
13 revocable trust.

14 Q. Okay. All right. Just so tell us
15 generally, what this is and whose names and signatures
16 appear on page 28.

17 A. Mr. Barringer signed it after filling in
18 the date, 4th day of December. And then I signed it,
19 and Robert Slain, who was a separate advisor, my legal
20 advisor, who was a second witness, and then on our doc
21 -- our signing of that document, that is Robert Slain
22 and myself saying that we witnessed it was imposed at
23 the bottom in front of a notary.

24 Q. And who -- who is the notary. It says
25 David R. Vines. Who is David R. Vines?

ROA 006084

Page 21

1 A. And David Vines is another lawyer in my
2 firm that was -- was involved in working with me for a
3 number of years.

4 Q. Okay. Well, that was my next question is,
5 was Mr. Vines working with you in the preparation and
6 execution of Ms. Barringer's 1998 December 4th will?

7 A. Yes.

8 Q. Okay.

9 A. One -- one of several, but I was obviously
10 leading the charge.

11 Q. All right. Now -- I'd now ask you to
12 please turn to Tab 4, which is, for -- for others, I
13 believe this is Mr. Barringer's December 4th, 1998
14 revocable trust, and it begins on McBryde page 29, and
15 it ends on McBryde page 77.

16 A. Okay.

17 Q. If we could just start, Mr. McBryde, can
18 you identify this document that starts at page 29?

19 A. Yes. This is the revocable trust in which
20 we made allusion a bit ago, and it sets out all of the
21 dispositive provisions that will prevail when the
22 estate is forwarded to the trust.

23 Assets are put into the trust, and it would
24 basically state what happens to the property, and
25 that -- which is controlled by the terms of the trust,

ROA 006085

Page 22

1 which at that point would be irrevocable.

2 Q. Okay. All right. Now, when you say
3 "dispositive provisions," I just want to make sure
4 everybody understands what we're talking about, the
5 dispositive provisions are actually who gets what; is
6 that correct?

7 A. That's correct.

8 MR. MEDLIN: Object to the form.

9 Object to the form.

10 BY MR. TWOMBLEY:

11 Q. What is a dispositive provision,
12 Mr. McBryde?

13 A. What are they?

14 Q. Yes. Since there has been an objection,
15 I'm going to rephrase the question.

16 What is a -- what do you mean by a
17 dispositive provision?

18 A. It is basically, as a term we all use is
19 that you have to dispose of your property when you
20 die, and you do it by -- you can do a will alone. You
21 can do a will and a revocable trust, but it is an
22 entity that either is existence or broader existence.
23 But in this case, it was already existing, and that's
24 why it's executed by him as a irrevocable trust. So
25 it is the vehicle to receive the assets, if assets are

ROA 006086

Page 23

1 otherwise to be provided to it from the will or other
2 sources.

3 You can have direct transfers of property
4 at death, depending on how you use the beneficiary
5 that it mentions.

6 Q. So the dispositive provisions in the trust
7 then -- what does the dispositive provisions in the
8 trust in -- in general, what does a dispositive
9 provision in a trust provide?

10 A. Well, when you -- you say -- for example,
11 if you look on page 1- -- I guess page 111, McBryde
12 depo 131, you go right to the "following my death."
13 It gives complete instructions as to what to do with
14 all of the property that comes into the revocable
15 trust.

16 It's very standard. This is -- this is --
17 and then it proceeds to set all of the ground rules,
18 if you will, for the disposition of the property over
19 time to or from the benefit of family members as
20 directed and provided for in the terms of the trust.

21 Q. Okay. And if you could, I'd just ask you
22 that please, use the page numbers at the top --

23 A. Okay.

24 Q. -- when you're referring to these it
25 different numbers.

ROA 006087

Page 24

1 Let's look at -- well, before we look at
2 the specific terms of Mr. Barringer's trust, I would
3 like to look at the execution page at that -- at page
4 76. Can you please turn to page 76?

5 A. Yes. I've got 76.

6 Q. Okay. Can you, again, just tell us what
7 page 76 is and who's --

8 A. This is the part of the total document --
9 the last page except for making sure that you have
10 consideration because a dollar bill, like -- I can't
11 (inaudible comment) so much it out the next page.

12 This is the execution process where
13 Mr. Barringer executed his grantor. I was a witness.
14 Robert Slain was a witness, and David Vines was the
15 notary, again, to complete the process of validating
16 the validity of this being his document.

17 Q. Okay. And did you -- did you see
18 Mr. Barringer sign his December 4th, 1998 revocable
19 trust?

20 A. Oh, absolutely.

21 Q. And -- and the same for the document we
22 previously identified as the December 4th, 1998 will.
23 Did you witness --

24 A. Yes.

25 Q. Okay. All right. Where would the

ROA 006088

Page 25

1 execution of these documents have taken place?

2 A. I go up to.

3 Q. Where would the execution of the 1998 will
4 and trust have taken place? Do you remember where?

5 A. You know, I don't. I don't remember
6 exactly whether he came to us or we went to him. But
7 we were there in person. I just really haven't gone
8 back and looked at the --

9 Q. I -- I understand. But either way, you
10 would have been physically present with him?

11 A. Oh, absolutely.

12 Q. Would Mr. -- the other lawyer who was
13 assisting you, Mr. Vines, would he have been
14 physically present?

15 A. Yes.

16 Q. And how about Mr. Slain, would he have been
17 he physically present?

18 A. Yeah. He -- he was there, too.

19 Q. Okay. All right. Okay.

20 Now, I want to talk now about the
21 dispositive provisions in Mr. Barringer's trust. And
22 you -- you were a little in front of me?

23 A. I'll slow down.

24 Q. That's okay. That's okay.

25 I believe the first dispositive provision

ROA 006089

Page 26

1 is found on McBryde depo 32, under item Roman
2 numeral IV in the trust. Are you on that page?

3 A. Yes.

4 Q. Okay. All right. Is -- is -- this is the
5 page that you identified earlier correct?

6 A. That's correct.

7 Q. All right. And if you turn to page 33 at
8 the bottom, it says that, The trustee shall provide
9 well, actually, how -- will you just read Section D at
10 the bottom of page 33? Just read that into the record
11 for us, please.

12 A. Sure. "The trustee shall provide the
13 amount determined to paragraph -- pursuant to
14 paragraph A of this item into two separate trusts,
15 which shall be designated as A Trust and B Trust
16 respectively as follows..."

17 Q. Okay. All right. Now, if you would,
18 please turn to page 36, the -- the Section G. And
19 would you please read Section G into the record?

20 A. "Upon the death of my said wife and after
21 satisfaction of making provision for the satisfaction
22 of any distribution required pursuant to paragraph
23 little i below, the property remaining in the A Trust
24 and the B Trust will be distributed by the trustee,
25 free of the trust, to or among my descendants, and

ROA 006090

Page 27

1 such manner and trust or otherwise as my said wife may
2 appoint in such wife's last will and testament or
3 codicil thereto, making express reference to this
4 power, except as such wife shall have no power to
5 appoint such property to such wife -- to such wife's
6 estate or to such wife's creditors or to the creditors
7 of such wife's estate."

8 Q. Okay. Now, tell me in layman's terms what
9 Section G means?

10 A. First, it means that -- that Mrs. Barringer
11 is going to -- oh, we were looking at G now. Did you
12 say G?

13 Q. G, yes, sir, the one you just read.

14 A. Yes, yeah. This is how you place where the
15 property goes. And you place it in Trust A for
16 marital reduction purposes and, Trust B for marital
17 reduction purposes. That means that they are the two
18 trusts that will hold all of the property -- virtually
19 all of the net property coming in.

20 And then upon her death, she has the power
21 to appoint that part of the trust to -- and maybe I'm
22 jumping ahead -- to or among her descendants, and she
23 also has no power to point the property to -- to her
24 estate or the creditors of her estate, because without
25 that last provision, you could lose the ability of the

ROA 006091

Page 28

1 trust to be directed in that manner of her death.

2 Q. Okay. I want to talk specifically about
3 the language that says that she has the power to
4 "appoint to or among my descendants and in such manner
5 in trust or otherwise..."

6 What does that give Mrs. Barringer the
7 right to do?

8 A. It really means exactly what it says. It's
9 a provision very commonly used when the couple decides
10 that the last spouse to die -- because it's generally
11 in both wills, and irrevocable trust and of the effect
12 of it -- and that it is to take in -- and to allow the
13 spouse to take into account changes in circumstances,
14 which would be personal, change with respect to any or
15 all of the children or more remote descendants.

16 It could be -- take into consideration
17 issues of all sorts, and it has been commonly used
18 since long before. You just took more importance here
19 because of the -- the marital reduction had been
20 changed. But it allows, in effect, her to rewrite the
21 dispositive scheme in such manner as she sees fit.

22 And this is one that you spend a good bit
23 of time with, and I have over about 50 years, but more
24 importantly, in the last 20 years, because we had more
25 and more situations where there -- there are large

ROA 006092

Page 29

1 families, and you want to take into consideration how
2 circumstances can change, personal, tax, legal and so
3 on.

4 Q. Okay. Now, in -- in one -- I want to try
5 to use language that I think every -- or at least I
6 understand, since I'm not an estate planning. But you
7 said that it gives it a right to rewrite dispositive
8 provisions.

9 Does that -- does that effectively mean
10 that it gives Mrs. Barringer the right to decide who
11 gets what whenever she dies?

12 A. Yes.

13 MR. MEDLIN: Object to the form.

14 BY MR. TWOMBLEY:

15 Q. Can you please repeat your answer so it's
16 clear on the record, Mr. McBryde?

17 A. Basically, yes. It gives her the power to
18 determine where the property is going to go among the
19 descendants and how.

20 Q. Now, is there any limitation on -- on what
21 Mrs. Barringer can consider when she's deciding who
22 among her descendants benefit from the power of
23 appointment?

24 A. There's no limitations and intended no
25 limitation, and again, this is a very common provision

ROA 006093

Page 30

1 to allow for any kind of change in circumstances, a
2 few of which I mentioned just a second ago.

3 And it is basically, generally considered
4 when you're putting together documents like this as
5 something that you would be remiss and probably
6 malpractice if you didn't tell the clients that that
7 was the possibility, to let the last spouse take into
8 account the situation, the change in circumstances,
9 condition of the family at that moment, if you will.

10 Q. Okay. Now, it appears to me, and you
11 correct me if I'm wrong -- but it appears that this
12 right to decide who among the descendants get what
13 applies for Trust A and for Trust B; is that correct?

14 A. That's correct.

15 MR. MEDLIN: Object to the form.

16 BY MR. TWOMBLEY:

17 Q. Okay. I would now like to turn to McBryde
18 Depo 39 and talk about the other sub-trust, and I
19 believe that's the item 5 or what I refer to as the
20 residuary trust. Are you there on page 39?

21 A. Okay. I'm on page 39. Are you looking at
22 J?

23 Q. Below J.

24 A. Okay.

25 Q. Do you see that?

ROA 006094

Page 31

1 A. Yes. That's correct.

2 Q. And if you would, just read the first four
3 lines into the record, please.

4 A. "After my death and upon satisfaction or
5 after making provision for satisfaction for such
6 distribution required by Item 4 and after making any
7 payment required under Item 3 --" they being the two
8 marital trusts, and the other being tangible personal
9 property, I believe we went back and looked at it, the
10 remainder of the trust property -- the trust issue and
11 all the rest -- the remainder of the trust property
12 and separate trust upon the use of the trust
13 hereinafter set out and deciding provided. If my wife
14 does not survive me or does not presume to survive me,
15 only fractional shares such residue of the trust shall
16 be held in any trust created in item -- should be held
17 and the trust created and decided.

18 Q. Okay. And --

19 A. And then it goes on to the fractional
20 share, and what it means for remaining skipping tax
21 possibilities at that point.

22 Q. Okay. I guess the rest of that provision
23 is what applies if Mrs. Barringer were to predecease
24 Mr. Barringer, correct?

25 A. Right. Right.

ROA 006095

Page 32

1 Q. So I want to focus on -- on the part before
2 that --

3 A. Okay.

4 Q. -- because Mrs. Barringer did not
5 predecease Mr. Barringer. Tell me -- explain what
6 happened to the residue of Mr. Barringer's trust, the
7 part that is not used for marital reduction or
8 administration expenses retained for personal
9 property. What happens to the remainder?

10 A. At Mrs. Barringer's death.

11 Q. At Mr. Barringer's death?

12 A. At Mr. Barringer's death. It's held in
13 trust for the benefit of Mrs. Barringer, and
14 therefore, she has the benefit of the trust during her
15 lifetime.

16 Q. Okay. And if you would please now turn to
17 McBryde depo page 41, and if you would please read
18 into the record paragraph D.

19 A. Did you say --

20 Q. D. D as in dog.

21 A. Oh, B, okay. "The death of --"

22 Q. No, no, I'm sorry. I said -- I apologize.
23 It's D as in dog on page 51.

24 A. Okay. "My wife shall have the power upon
25 her death at her last will and testament and codicil,

ROA 006096

Page 33

1 thereto, making express reference to this power to
2 appoint any part or all of the property in this trust
3 among my descendants in such manner and trust of -- or
4 otherwise, as she may such will provide, except that
5 she's going to have no power in any circumstances to
6 appoint any and such property to herself, to her
7 estate, to her creditors, or to the creditors of her
8 estate."

9 Q. Okay. And is this the dispositive
10 provision for the Item 5 residuary trust?

11 A. Yes. Yes.

12 MR. MEDLIN: Object to the form.

13 BY MR. TWOMBLEY:

14 Q. And again, I know you've already told us
15 what this lines mean, but can you again explain what
16 Section D gives Mrs. Barringer the right to do?

17 A. Well, she can do -- she can appoint any
18 part or all of the property to or among my
19 descendants, and in such manner and trust as she may
20 such will provide.

21 I mean, it's very obvious what it says, is
22 that she has that power, except -- because you don't
23 want that property to have been included in her
24 estate. She cannot have the power to appoint the
25 property to herself, to her estate, to her creditors

ROA 006097

Page 34

1 of the creditors of her estate.

2 So it's going to have to go to or among
3 whatever amount she provides the descendants.

4 Q. Okay. Well, let's talk about that
5 language, the -- the "to or among" and then "the
6 manner in which she decides." What does that mean?

7 A. It means that she has sole responsibility,
8 authority and discretion to decide if and when and how
9 the children or descendants -- not limited to
10 children -- will take the property as -- and provide
11 whatever provision she seems -- she deems appropriate
12 in that process because it says "in trust or
13 otherwise," which means that it could be another trust
14 of some consequence and duration. Maybe one of the
15 children, grandchildren, great grandchildren or one
16 child or whatever it could be.

17 Q. Okay. Is -- is -- is there anything in the
18 language that requires the children to be treated
19 equally?

20 A. The -- the whole purpose of this
21 provision -- and this -- you know, this is such a
22 standard estate planning technique in my -- I can -- I
23 couldn't tell you how many trusts I have had in that
24 regard. It doesn't say at all, other than it has to
25 go to descendant or descendants. There is no child

ROA 006098

Page 35

1 designate, no child designated.

2 So she has full authority to slice and dice
3 and distribute and cause a trust to be created as long
4 as she sets it forth as required in her will or
5 codicil, making express reference to this document.

6 Q. Now, let's talk for a minute about making
7 express reference in her will or codicil, thereto.

8 How would -- generally speaking, how would
9 someone exercise a power of appointment like we have
10 just reviewed in Mr. Barringer's trust?

11 A. It would be in her will that she would
12 exercise because it's power. It's a personal power.
13 And she would say, adding to the will, I'm given the
14 power, and she would recite that. And that's the way
15 it's commonly done. And I wish to distribute the
16 property in this manner and direct that it be done,
17 pursuant to the provisions of this trust.

18 I would right a title in that, but that's
19 the gist of it.

20 Q. I understand.

21 Now, does Mrs. Barringer have the ability
22 to -- to change her mind in the future as to how she
23 may or may not want to exercise the power of
24 appointment?

25 MR. MEDLIN: Object to the form.

ROA 006099

Page 36

1 THE WITNESS: Oh, yes. I mean,
2 basically, she can write a will every day.
3 I mean, amend a will any time she wants and
4 can change it back and forth and over time,
5 you know, it's not just -- it's not just a
6 provision that relates to the issues that
7 there are with -- in her view, and she has
8 sole authority to the children, her
9 grandchildren, her great grandchildren.

10 It also could be issues relating to
11 total change in the tax laws, or -- that
12 would cause a confiscation if she gave to
13 some -- or creditor problems or any kind of
14 issues that we all know can happen to any
15 generation of level individual who are
16 descendants.

17 BY MR. TWOMBLEY:

18 Q. What if she just gets upset at -- at one of
19 the descendants?

20 A. This is a -- this is the sole -- I mean,
21 that's one of the things you take -- take into
22 consideration when you draft these documents, and
23 it's -- it was discussed. I -- we will get into that
24 later. But I know it has been discussed here. It's
25 her primary -- it's her direct right in this case to

ROA 006100

Page 37

1 decide. And -- and she does have to appoint it to --
2 at least the way I read it, to a -- a descendant.

3 Q. Sure. I understand. Okay.

4 A. In trust or otherwise, which I'm reading in
5 the rest of the language.

6 Q. Sure. Now, you -- you did reference or
7 mention that this is a common provision. Is this type
8 of provision in every couples' trust, or do some of
9 the couples choose not to have this type of provision?

10 A. It -- normally in a process, you would have
11 to tell them -- and we did here, too, for sure -- is,
12 Here are the options. This is one option. Another
13 option would be per stirpes. Another option would be
14 at the start, rearrange to get to the maybe one spouse
15 -- one child is not or it just to a grandchild. Or
16 basically, not exercise the power, which means it then
17 goes in accordance to the term.

18 So -- but yes. You know, it's discussed,
19 and this was discussed in this case.

20 Again, I -- I professionally would never
21 allow a document like this be executed if I had not
22 discussed it and made clear to -- just to the issue
23 you're stating, and besides it's clear in its right
24 actually.

25 Q. So -- so you mentioned that there were

ROA 006101

Page 38

1 different options for including a power of appointment
2 or not including a power of appointment. How did you
3 decide which one to put in Paul Barringer's trust?

4 A. I don't -- I don't decide that. It's done
5 by consultation with, in this case Paul. And again,
6 this was in 1998, and I got a fairly good memory, and
7 I know what my process is. I have been through this
8 literally dozens of times.

9 And basically, you have to walk through the
10 very questions you've asked, does it apply here, does
11 it apply there, and they have to make a decision, and
12 you hope that it's the best decision. It's one that
13 they will be well informed with, and of course, these
14 documents can be amended and restated if necessary
15 over time.

16 But this was clearly where they came out
17 where Paul came out at the time of the execution.

18 Q. And so this -- this power of appointment
19 language would apply for the A Trust, the B Trust and
20 the residuary trust?

21 A. Correct.

22 MR. MEDLIN: Object to the form.

23 BY MR. TWOMBLEY:

24 Q. Now, Mr. McBryde, are you able to see my --
25 I guess you are able to see me on my screen. I'm

ROA 006102

Page 39

1 going to try to share my screen with you, and I want
2 to show you a document --

3 A. Okay.

4 Q. -- 19 in the notebook. But it's one that's
5 a matter of public record. And let me make sure I got
6 it right here.

7 Okay. Are you able to see my screen now?

8 A. Yes. It's on -- yeah, separate screen.

9 Q. Okay. And what I want to show you -- and
10 this is page 58 of the lawsuit that Hampton Luzak has.

11 A. Can you blow it up a little bit more.

12 Q. Yes, sir.

13 A. Yes. Yes, that's -- that's good. You need
14 to move it. Yeah, there you go. Yeah, there you go.
15 Thank you. Okay.

16 Q. All right. I'm -- I'm just going to read
17 this to you starting in paragraph 142, and it says:
18 "Upon information and belief, descendants Paul
19 Barringer and Mrs. Barringer entered into a binding
20 contract not to revoke their estate plan. Upon..."

21 Well, let's just take that first sentence,
22 okay? Are you aware of any contracts or other
23 agreement between Mr. and Mrs. Barringer, where they
24 agreed not to revoke their estate planning?

25 A. No. Did I -- did I -- I continued to do

ROA 006103

Page 40

1 work for them, but never did that issue ever even
2 arise or thought arise from my being counsel, and with
3 at least Paul on several matters after this was done.

4 Q. Okay. What, if any -- and I'm -- that is
5 all I want to ask you about at this moment.

6 But what, if any, discussions did you have
7 with Mr. or Mrs. Barringer about their desire to
8 ensure or otherwise guarantee that the kids were
9 treated equally in the future no matter what?

10 A. Don't -- I can't answer that question
11 because we got in in August. Because of the way you
12 stated it is, we would and I'm sure did -- again, it's
13 a long time ago, but I have a certain methodology that
14 I find -- follow with virtually every client because I
15 know what you need to do and what you don't need to
16 do.

17 We make sure that both spouses clearly
18 understand, agree and approve. And I feel very
19 comfortable because I was intentionally involved in
20 this, you can see from my hours, too little rate, but
21 nevertheless, the -- that at the time of execution on
22 December 4, this is what they wanted to do, and there
23 was no -- no concern that -- I mean, just never heard
24 a thing about that.

25 And I would say I'm sure I went over the

ROA 006104

Page 41

1 document at the time of execution, and obviously,
2 there is just nothing in the file and nothing that
3 would tell me that they had any different direction in
4 mind.

5 Q. If you -- if you would, Mr. McBryde, I know
6 would like to look at -- behind Tab 7 at McBryde
7 Depo 80.

8 A. Yes.
9 (Reporter Clarification.)

10 Q. 80?

11 BY MR. TWOMBLEY:

12 Q. Do you have this diagram in front of you,
13 Mr. McBryde?

14 A. I do.

15 Q. And it says at the top "if his wife,
16 Merrill Barringer, survives him."

17 What is -- what is this document?

18 A. This is a diagram that we provide to
19 clients almost uniformly for a long time, but always
20 hopefully, getting better and better each year, which
21 lays out what will happen under the docs if you want
22 to read the 50 pages, or however many it was -- if you
23 get to the short version here, which is, of course,
24 laid out, and we've just gone through the detail of
25 the actual document.

ROA 006105

Page 42

1 Q. Okay. Well, let's first talk about the
2 A Trust and B Trust that we went over first in the
3 document. Do you see where it says "The wife's GST
4 exempt Trust A"?

5 A. Right.

6 Q. Okay. And then you see where it says
7 wife's GST nonexempt Trust B?

8 A. Yes.

9 Q. And at the bottom of Trust A it says: "At
10 Merrill's death, unless she provides otherwise in her
11 will, the trust property goes into trust for the
12 children."

13 What does the "unless she provides
14 otherwise in her will" mean?

15 A. That's exactly the shorthand of what I
16 would have pointed out, and I'm sure I did, because
17 it's an important provision that's in the document
18 itself. We just been through the longer language
19 within -- in the trust itself.

20 Q. Okay. So those -- that is a reference to
21 the power of appointment?

22 A. That power of appointment, and so unless
23 the trust property goes to children, GST nonexempt.

24 Q. And so it's my understanding that the trust
25 or the property going into the trust to the children

ROA 006106

Page 43

1 only applies if Mrs. Barringer doesn't exercise the
2 power of appointment; is that correct?

3 MR. MEDLIN: Object to the form of
4 the question.

5 MR. TWOMBLEY: Yeah.

6 THE WITNESS: That's correct.

7 This -- this mirrors, just in shorthand
8 form, because if you're going to do
9 longhand, I'd write it all out again like I
10 did in the cover letter and explanation.

11 BY MR. TWOMBLEY:

12 Q. Okay. And now --

13 A. So you see it -- you kind of -- basically,
14 it -- it indicates that that's where they are, that
15 there is the power to -- in their discretion. There's
16 no limitations. But if it's not exercised, then this
17 is where it goes --

18 Q. Okay.

19 A. -- which is what the will says and the
20 trust says.

21 Q. Did -- now under -- under the Trust B, I
22 see the same language, "at Merrill's death, unless she
23 provides otherwise in her will, the trust property
24 goes to the children."

25 I know we are getting repetitive here. But

ROA 006107

Page 44

1 can -- can you tell me just again what that
2 historically is for?

3 A. Well, again, that's the exact parallel
4 to -- that's the shorthand way. Mainly, they've
5 already seen the longhand, and we discussed it before
6 we even got the longhand document in front of them.

7 So they would have been beat in the head
8 about the importance of that provision.

9 Q. Okay. Now, let's now go over to the -- to
10 the family trust, which I -- I previously referred to
11 that as the residuary trust and the Item 5 trust.

12 A. Where is this? I'm sorry.

13 Q. On the same page we were just looking at,
14 which is page 80.

15 A. Okay.

16 Q. I'm at the red numbers at the top.

17 A. Yeah, I get it. I just flip through.

18 Okay. The -- I got it -- 80 again, I'm sorry.

19 Q. I should have mentioned that I was staying
20 on the same page. But on the same page, just to the
21 left on the diagram where we discussed Trust A and B,
22 to the left it says "family trust."

23 Do you see that?

24 A. Yes.

25 Q. Okay. And I think that's what we

ROA 006108

Page 45

1 previously referred to as the Item 5 trust or the
2 residuary trust?

3 A. That's correct.

4 MR. MEDLIN: Object to the form.

5 THE WITNESS. Again, it's got the
6 same language "unless she provides
7 otherwise."

8 BY MR. TWOMBLEY:

9 Q. So what is that reference to again for --

10 A. The reference is, again, she has the power
11 to set forth in the actual document itself and in the
12 explanatory information that they otherwise received,
13 that she -- she can rewrite it.

14 And she would be limited because it's not
15 the -- it has to be -- because she is limited to
16 keeping it to a descendant. But other than that,
17 that's -- that's -- the reference to the same language
18 in the -- in the trust.

19 Q. Okay. Now, Mr. McBryde, what, if any tax
20 issue was involved in Mr. Barringer giving
21 Mrs. Barringer a power of appointment to or among her
22 descendants at the time of her death?

23 A. There was no extra tax imposed as a result
24 of this provision because they had been back in, I
25 guess, the early '80s or no -- maybe, whatever.

ROA 006109

Page 46

1 But in this case, in their situation,
2 there's no -- that's -- that's really not an issue.
3 You've got the A and B Trust and residual trust, and
4 they all have the same provision.

5 Q. Okay. Now, Mr. McBryde, if you would now
6 turn to -- actually, what I would like to do now,
7 we've been going about one hour. I would like to take
8 a five-minute restroom break. If you need to use the
9 restroom or step aside for a minute --

10 A. Okay.

11 Q. -- this is a good stopping point for me,
12 and we are at 10:12, so if everybody will stand down
13 for five minutes, and then we'll -- we'll come back.

14 THE VIDEOGRAPHER: The time is 10:12
15 a.m. we are off the record.

16 (Recess taken.)

17 THE VIDEOGRAPHER: The time on the
18 monitor is 10:21 a.m. We are back on the
19 record.

20 BY MR. TWOMBLEY:

21 Q. Mr. McBryde?

22 MR. MEDLIN: Actually, can you give
23 us the Bates numbers please, circumstance
24 sir.

25 MR. TWOMBLEY: Sure.

ROA 006110

Page 47

1 BY MR. TWOMBLEY:

2 Q. If you will now turn to Tab 8 which is
3 McBryde Depo 81 through McBryde Depo 93. Can you tell
4 us what this document is?

5 A. I believe one is the last will and
6 testament that was executed before me and the others,
7 along with Paul. And then -- then you got -- I guess
8 you rollover to the revocable trust -- irrevocable
9 trust, which was executed the same time.

10 Q. Okay. So let's just start with Tab 8,
11 which is 81 through 93. Whose will and trust is found
12 at page 81?

13 A. Merrill Barringer's last will and
14 testament.

15 Q. Okay. And let's -- if you turn to page 93,
16 tell us what page 93 is.

17 A. Page 93 is the -- it's the same thing.
18 It's the -- it's the signature page for her last will
19 and testament.

20 Q. Okay. And tell me who -- who witnessed
21 Mrs. Barringer signing this will?

22 A. And Robert Slain and myself executed this
23 one, too.

24 Q. Okay.

25 A. It's notarized by David Vines, which is, of

ROA 006111

Page 48

1 course, the three people that were there for
2 Mr. Barringer.

3 Q. Okay. All right. And let's now turn to
4 tab 9, which starts at page 94. And tell me what --
5 what -- what we're looking at here at -- at page 94?

6 A. Well, this is Mrs. Barringer's revocable
7 trust, since we've now already covered his will and
8 revocable trust. This is her will as we just
9 mentioned, and this is her revocable trust.

10 Q. Okay. And briefly, can you -- can you
11 describe why this tab -- at one point, I saw you wrote
12 that these wills and trusts are virtually identical.
13 But can you describe for me essentially, what -- what
14 Mrs. Barringer's will provides?

15 A. I think it's -- I go back and look at it
16 again. There was a special provision, I think, that
17 was not in his will, with respect to James Randolph
18 Light, but I can't -- and -- Kemp Light. I don't --
19 let me make sure.

20 Q. I think you might have looked. I --

21 A. I'm just -- I'm -- I'm sorry, it'll just
22 take me a second.

23 Q. I think it's page 97.

24 A. Yeah. And there's -- this sentence, "The
25 trustee shall distribute the sum of the \$10,000 each

ROA 006112

Page 49

1 to James Randolph Light and Miranda Kemp Light, and to
2 each of my nieces and nephews."

3 I don't think that was -- if I recall, that
4 was not something he put into his trust. And if I'm
5 wrong about that, then let's find it.

6 Q. Okay. Well, I'm just asking you about
7 Mrs. Barringer's will, not --

8 A. Okay.

9 Q. -- not her trust yet.

10 A. Okay.

11 Q. Just in general, what did her will provide?

12 A. All right. Give me the number again. I'm
13 sorry.

14 Q. It's Tab 8. It starts at page 81.

15 A. Okay. There we go. It's -- she's creating
16 her own revocable trust and has signed it prior to
17 execution of the will. And then -- and then
18 everything goes -- pours over. It's basically a
19 pour-over will.

20 Q. Okay. And is that virtually identical to
21 what Mr. Barringer did?

22 A. Yes.

23 Q. Okay.

24 A. Yes. After -- I thought I told you that
25 same basically -- yes.

ROA 006113

Page 50

1 Q. Okay. Now, I want to look at the revocable
2 trust, which is Tab 9, and it starts at page 94.

3 And you -- you told me previously, that
4 there was a, one provision in this trust that was
5 different from Mr. Barringer's, but what I want to ask
6 you about are the overall dispositive provisions in
7 the trust.

8 A. Right. Okay. Go ahead.

9 Q. All right. Tell me what are the --

10 A. It's basically identical to his trust.

11 Q. Okay. All right.

12 A. Because it's the same dispositive. I mean,
13 you know, each of them can have an estate, and they
14 wanted to have it the same way.

15 Q. Okay. Did Mrs. -- Mrs. Barringer's trust,
16 does it give Mr. Barringer power of appointment?

17 MR. MEDLIN: Object to the form.

18 (Reporter asks for Clarification.)

19 MR. MEDLIN: Object to the form.

20 THE WITNESS: I'm just trying to look
21 for those.

22 BY MR. TWOMBLEY:

23 Q. We can go page by page, but let's start,
24 Mr. McBryde --

25 A. Since I saw that one difference, I want to

ROA 006114

Page 51

1 make sure we don't have another difference.

2 Yeah, it's going to --

3 Q. Take as much time as you need.

4 A. Okay.

5 Q. Mr. McBryde, let me ask you a different
6 question.

7 A. Sure. I'm looking.

8 Q. If you would, please, turn to page 101,
9 McBryde Depo 101, Tab 9, and if you would review
10 Section G on page 101.

11 A. Yes. That's -- there was a difference,
12 yes.

13 Q. Tell -- what does Section G say about Mrs.
14 Barringer's Trust A and B?

15 A. Okay. A and B Trust, the same kind of
16 trust we had under his documents, okay. And then you
17 have A Trust (reading document to self), husband gets
18 the income and principal. Trustee distribute all
19 amount of principal --

20 (Reporter asks for clarification.)

21 BY MR. TWOMBLEY:

22 Q. Mr. McBryde, please turn to 101 at Section
23 G, and how about read that into the record.

24 A. Yeah. "Upon the death of my said husband,
25 after satisfying or making satisfaction, property

ROA 006115

Page 52

1 remains to be distributed trust free of trust, to and
2 among my descendants, making express reference to this
3 power and such manner is..." (reading document to
4 self.)

5 Q. All right.

6 A. "Should have no power to appoint such
7 property."

8 Q. Mr. McBryde, you have to hold on a minute.
9 Because the court reporter --

10 A. Okay. I will slow down. I'm sorry.

11 Q. What the court reporter has said is you
12 either have to read it to yourself completely silently
13 --

14 A. Okay.

15 Q. -- or you can read it -- read it aloud.

16 So why don't we start, and just -- I want
17 you to just read Section G to yourself silently.

18 A. Okay. Yes. On page -- okay.

19 This is the one that says "Upon his death,
20 property remaining in Trust A and Trust B, shall be
21 distributed by the trustee, free of the trust, through
22 and amongst descendants and in such manner, in trust
23 or otherwise as my said husband may appoint in such
24 husband's last will and testament, codicil thereto,
25 making express reference to this power, but he can't

ROA 006116

Page 53

1 appoint the property to his estate or preface his
2 estate.

3 Q. Is this the same language that we found in
4 Mr. Barringer's revocable trust?

5 A. I believe that is the same language.

6 Q. Okay. Now, I would like you to please
7 turn -- hold on one minute and let me find it.

8 Please turn to 105, McBryde Depo 105, which
9 deals with the Item 5 trust or --

10 A. Yes. There we go.

11 Q. Okay. All right. And if you would please
12 turn now to page 107, at the top it's Section D, as in
13 dog. And would you please read Section D silently to
14 yourself?

15 A. Sure.

16 Q. Are you on page 107, Mr. McBryde?

17 A. Yes. Paul was given the power under 1 of
18 -- under D, on page 14 of the document --

19 Q. With the red number at the top?

20 A. Or D under McBryde 107, to appoint all of
21 the property of the trust to or among my descendants
22 in such matter and trust or otherwise, which will
23 provide and such where -- expect that she would have
24 no power to appoint."

25 This is where this -- I caught this -- this

ROA 006117

Page 54

1 is what I picked up. I think we've got the husband
2 and wife -- there would be no question about
3 interpretation, but I think we've got the gender or
4 the denomination of husband and wife -- it's just not
5 sitting correctly.

6 It -- you can only interpret it one way.
7 But it -- but it --

8 Q. I -- I upon --

9 A. Shall have the power upon her death? No,
10 upon his death.

11 Q. Sure.

12 A. That's what I was trying to figure out, and
13 I just picked that up.

14 Q. Okay. My question, to you, though, is, is
15 this the same provision that we found in -- in
16 Mr. Barringer's trust as far as this dispositive
17 provision?

18 A. I -- I don't believe --

19 Q. Let me just ask you a more specific
20 question.

21 A. Sure.

22 Q. Did Mr. Barringer, if he survives Mrs.
23 Barringer, does he have the same exact type of power
24 appointment that his wife had under his documents?

25 MR. MEDLIN: Object to the form.

ROA 006118

Page 55

1 THE WITNESS: No, he does not, I
2 don't think.

3 BY MR. TWOMBLEY:

4 Q. Okay. Why -- why not?

5 A. Unless -- I can't -- that's what I was
6 trying to look at.

7 Q. Doesn't he have the exact same power of
8 appointment, just like she had to appoint --

9 A. Oh, yeah.

10 Q. -- to or among -- (Crosstalk)

11 A. To or among --

12 MR. MEDLIN: Object to the form.

13 THE WITNESS: Yes.

14 BY MR. TWOMBLEY:

15 Q. Can -- okay.

16 Tell me what the dispositive provision is
17 under Section D for the residuary trust that we just
18 discussed?

19 A. Yeah. My husband shall have the power upon
20 his death by his last will and testament --
21 unfortunately, they say "her" there -- making express
22 reference to power any part or all of the property of
23 the trust to and among my descendants and trust in
24 such a manner, trust or otherwise as, she -- as she
25 will provide, except that she shall have no power to

ROA 006119

Page 56

1 appoint."

2 Again, I've got a feeling my scrivener on
3 that one didn't quite clean up that, so it's intended
4 to be identical with the right reference to gender to
5 appoint such property here to herself, to her estate,
6 to her creditors, to the creditors to her estate, and
7 that should be his and him.

8 Q. Okay. So, Mr. McBryde, if you'll -- if you
9 will -- I understand that there is a pronoun
10 discrepancy there, and I want --

11 A. Yeah.

12 Q. -- and I want you to forget about that for
13 a moment.

14 A. Okay.

15 Q. I understand that. I think we all
16 understand. Maybe plaintiff's counsel will try to say
17 they don't understand.

18 But just assume for a moment that we all
19 understand the issue with the pronouns. What my
20 question is about the substance of the provision, is
21 the substance of the provision the same as is --
22 that's found in Mr. Barringer's trust?

23 MR. MEDLIN: Object to the form.

24 THE WITNESS: Yes. The substantive
25 provision is, it's got to go to

ROA 006120

Page 57

1 descendants, but to or among the
2 descendants as you shall appoint. And
3 therefore, it's the exact analog, but take
4 away the her and put him.

5 Yes. It's exactly the same in
6 substance. It's going to have to go to a
7 descendant, but it can be for any reason,
8 and that is a very -- again, standard
9 provision in many documents in this
10 context. Sorry, I got --

11 BY MR. TWOMBLEY:

12 Q. Yeah, no problem.

13 A. But, yes, it's the same thing.

14 Q. No problem. If you would, please, turn to
15 Tab 10, which is McBryde depo page 143.

16 A. Yes.

17 Q. At the top here it says "Disposition of the
18 Estate of Merrill Barringer if her husband, Paul
19 Barringer, survives her."

20 Do you see that?

21 A. Yes. Yes.

22 Q. And is this a chart that explains the
23 overall distribution scheme for -- for Mr. Barringer's
24 estate if he survives Mrs. Barringer?

25 A. Correct. It's a --

ROA 006121

Page 58

1 MR. MEDLIN: Object to the form.

2 THE WITNESS: It's an exact analog.

3 BY MR. TWOMBLEY:

4 Q. Okay. And let's -- on that same page,
5 let's just stay on that same page 143, in the middle
6 where it says "husband GST exempt Trust A."

7 Where on this chart do you describe the
8 power of appointment?

9 A. Unless he provides otherwise in his will --

10 Q. Okay.

11 A. -- which is the exact language.

12 Q. Okay.

13 A. Again, it's exact for those gender problems
14 back -- a few pages back.

15 Q. I understand. How about if you just go on
16 the same page, page 143, to the right of Trust A where
17 you see Trust B. Where do you describe the power of
18 appointment here?

19 A. Unless a -- again, he says, "Unless he
20 provides otherwise in his will."

21 Q. All right. And then now go to the left,
22 and again, on this same page, page 143, up under
23 Family Trust, where -- where is the power of
24 appointment described here?

25 A. Well, it's the same thing, "Unless he

ROA 006122

Page 59

1 provides otherwise in his will."

2 Q. Okay.

3 A. So...

4 Q. Okay. All right.

5 And if you would, please, Mr. McBryde, now
6 I would like to turn to Tab 11, which is McBryde depo
7 144?

8 Do you see that?

9 A. Yes, I got it.

10 Q. And this -- I'll represent to you that this
11 was a letter produced from your file that was sent to
12 the Barringers on December 2nd, 1988, or at least the
13 date December 2nd, 1988.

14 MR. MEDLIN: Object to the form.

15 BY MR. TWOMBLEY:

16 Q. What is this -- what is document number 11
17 found at McBryde 144 to 148?

18 A. This is a description, again, of the letter
19 itself of what they have in detail in the actual
20 documents that were executed.

21 Q. Okay.

22 A. Therefore, it's an explanation of exactly
23 what the document itself shows, but in narrative form,
24 for purposes of easier consumption --

25 Q. Okay.

ROA 006123

Page 60

1 A. -- for reinforcement.

2 Q. I want to share my screen with you for a
3 moment, and I want to -- I'm going to be asking you
4 about page 146, if you'd like to turn to there.

5 A. Okay.

6 Q. And let me see if I can share my screen
7 with you just for a moment. Are you able to see my
8 screen now?

9 A. Yeah, and I've got it here, too.

10 Q. Okay. All right.

11 A. Page 3.

12 Q. Yes. So let's first talk about if
13 you'll -- if you can view my screen, let's talk about
14 the family trust. Do you see where I'm referencing
15 here in the letter, the reference to the family trust,
16 which is in the second full paragraph?

17 A. Oh, yeah, under the terms of the family
18 trust.

19 Q. Right. Okay. If you go down five or six
20 lines, there's a sentence that starts "Upon the death
21 of the surviving spouse."

22 A. Right.

23 Q. Okay. Can you read that sentence into the
24 record, please?

25 A. Yeah. "Upon the death of the surviving

ROA 006124

Page 61

1 spouse, he or she will have the power to appoint any
2 property remaining in trust or among your
3 descendants."

4 Q. Okay. All right. And let's go down to the
5 bottom of this page where it talks about A Trust and
6 the B Trust.

7 A. Right.

8 Q. Or what you refer to as the Item 5 -- or
9 I'm sorry, Item 4, A Trust and B Trust. Do you see
10 that?

11 A. Right. Right.

12 Q. And if you turn to page 4 at the top, do
13 you see the sentence that starts "Upon the surviving
14 spouse's death" which I've highlighted on my screen?

15 A. Yes.

16 Q. Okay. Can you read that sentence?

17 A. "Upon the surviving spouse's death, he or
18 she will have the power to appoint any property
19 remaining in Trust A to your descendants."

20 Again, your current wills do not grant the
21 surviving spouse the power of appointment.

22 Q. And then down a few sentences, what does it
23 say about Trust B?

24 A. Oh, okay.

25 "Any property remaining in Trust B as to

ROA 006125

Page 62

1 which surviving spouse does not exercise effectively
2 his or her power of appointment will be added to the
3 children's GST nonexempt trust, be held, managed, and
4 distributed pursuant to the terms of such trust."

5 Which, again, is a -- I think almost an
6 exact analog about what we said about his.

7 (Defendant's Exhibit 12 was marked for
8 identification.)

9 BY MR. TWOMBLEY:

10 Q. All right. If you would, Mr. McBryde, I'd
11 now like to ask you about Exhibit 12, which are some
12 notes that were in your file that appear to be from
13 the October 1, 1998 meeting, and I want to have it on
14 my screen as well, if that will help you.

15 A. You say 12?

16 Q. Yes, McBryde 149.

17 A. Yes. Okay. Got it. Okay.

18 Q. Do you see these notes?

19 A. Yes. I'd rather -- 149. I'd rather --
20 close back.

21 Okay. Okay. I got it. Okay.

22 Q. Okay. What -- what are we looking at here
23 Tab 11, page 1 -- 149?

24 A. You're looking at part of the overall
25 continuing to try to hit all of the issues that Paul

ROA 006126

Page 63

1 wanted to address, and that planning and otherwise,
2 and it began -- I think you -- the documents have been
3 presented already, show that again, in terms of
4 actually written beginnings back in August with work
5 all along the way, and that this is, you know -- the
6 early on meeting with him and Robert Slain and myself.

7 Q. Okay. I would like to ask you about page
8 152.

9 A. Okay.

10 Q. And I think -- if you'll, just for a
11 moment, look at my screen and let me show you what I
12 want to ask you about, and you're welcome to look at
13 yourself.

14 There's a provision right here at the
15 bottom of the page that I am highlighting, and it
16 looks like to me it starts off "LPA" at the bottom.

17 MR. MEDLIN: Can you enlarge it?

18 THE WITNESS: Just enlarge it, yeah,
19 just a little bit.

20 BY MR. TWOMBLEY:

21 Q. And let me just read what I -- the way I
22 read it, but I want to you ask the way you read it.

23 A. Yes. Yes.

24 Q. What I read is it says "LPA in favor of
25 descendants only."

ROA 006127

Page 64

1 Do you see that?

2 MR. MEDLIN: Object to the form.

3 THE WITNESS: Yes. And that was the
4 beginning or the continuation of the
5 conversation about what powers of
6 appointment, because, you know, we really
7 are beginning to get into it at that point.

8 BY MR. TWOMBLEY:

9 Q. Okay.

10 A. And --

11 Q. Well, just hold on one moment, since
12 there's been an objection to the question.

13 Can you please read to me what you see on
14 the -- that's highlighted on page 152 on the screen?

15 A. Right. Recognizing that this is my notes,
16 and therefore, I -- I don't type or -- it says "LPA in
17 favor of descendants only." That is, to the extent he
18 exercises the power, it had to be for descendants
19 only.

20 Q. What -- what does the -- does the LPA mean
21 limited power of appointment?

22 A. Yes --

23 MR. MEDLIN: Object to the form.

24 THE WITNESS: -- which is what we
25 have in all of the documents.

ROA 006128

Page 65

1 BY MR. TWOMBLEY:

2 Q. Since there's been an objection, let me ask
3 the question a different way.

4 What does the LPA mean?

5 A. Limited power of appointment. That's just
6 a shorthand for me when I am scratching along trying
7 to keep up with the conversation.

8 Q. Okay. Got you. Okay.

9 Mr. McBryde, now, I understand that these
10 wills and trusts were executed by Mr. and Mrs
11 Barringer at the same time at the same place.

12 Is there -- is there any significance --
13 well, let me ask a different question.

14 Can Mr. Barringer or Mrs. Barringer change
15 their will after December 4th, 1998?

16 A. Sure. I mean, if they go to another lawyer
17 and want to change it or come to me and say, This is
18 what we have to do, then we could do it. But...

19 Q. Okay. Can -- can one of them change --
20 decide to change their will and the other one decide
21 that they don't want to change it?

22 A. I suppose they could. I mean, I'm not
23 going to be sitting on the doorstep and saying, Don't
24 you think you ought to, you know, you can...

25 Q. Right.

ROA 006129

Page 66

1 A. If they -- their modification -- you know,
2 they can both be modified, the wills and the trust.

3 Q. Well, that was my next question. Both of
4 these trust say they're revocable trusts. What is --
5 what does it mean that a trust is revocable?

6 A. It means that it can be totally rewritten,
7 scrapped and take the money -- take whatever the
8 assets back and not even have a trust, because it's
9 revocable until death.

10 Q. Okay. Again, I think I asked you this
11 previously, but just to make sure that we have it
12 clear on the record: What if any discussion do you
13 recall there ever being between Mr. Barringer and Mrs.
14 Barringer and yourself or any of the advisors about an
15 agreement between the Barringers that they would never
16 change the wills that they were executing with you on
17 December 4th, 1998?

18 A. Never was there any information, indication
19 that they wanted to do other than exactly what we put
20 out, which gives each surviving spouse the authority
21 to effectively determine how it's to go to
22 descendants.

23 And I certainly wouldn't have -- if I'd
24 heard something different like that, I would not have
25 allowed them to even execute the documents without

ROA 006130

Page 67

1 talking through with them whether that's -- that was
2 the appropriate or would require other action.

3 Q. Okay. I think I may be done, if you will
4 just hold one moment, and let me consult with my
5 cocounsel and I may -- I may turn you over.

6 A. Okay.

7 MR. TWOMBLEY: That's all -- that's
8 all of the questions that I have for now.
9 Thank you -- thank you very much for your
10 time.

11 THE WITNESS: Sure.

12 THE VIDEOGRAPHER: Are there any
13 other questions?

14 MR. MEDLIN: I guess I'm going to go
15 next.

16 EXAMINATION

17 BY MR. MEDLIN:

18 Q. This is Alan Medlin on behalf of the
19 plaintiff. And again, just for the record, to respond
20 to Mr. Twombley's comments at the beginning of the
21 deposition, we want to argue at some point there is no
22 privilege to any response to the questions I may ask
23 for a number of reasons generally.

24 Under the rubric of waiver, Mr. McBryde has
25 voluntarily produced affidavits. He's provided his

ROA 006131

Page 68

1 notes. He's provided his file, or at least some part
2 of it, we will get into that.

3 He's providing an estate plan, and he's
4 including Mrs. Barringer's estate plan. He's opened
5 the door through Mrs. Barringer's counsel, and of
6 course, we've got the general test memory exception
7 issue as well.

8 And I just want to put that on the record,
9 and hopefully we'll deal with all of that at some
10 appropriate time.

11 BY MR. MEDLIN:

12 Q. Mr. McBryde -- and I'm sure I'm going to
13 slip and call you Neill from time to time, and I know
14 this --

15 A. That's fine.

16 Q. I'm going to trying to keep calling you
17 Mr. McBryde, but if I don't, I apologize.

18 Just as part of the deposition, and I'm
19 comfortable you know this, but I want to say it
20 anyway, if you have a question about my being unclear
21 or you not being able to understand my accent from a
22 different state from you, if you need some
23 clarification or definitions or whatever, will you ask
24 me about that.

25 This is not an attempt to trick witnesses

ROA 006132

Page 69

1 in depositions, as I think you know. We're just
2 trying to get some information, and I want to make
3 sure that you're comfortable that you understand the
4 question before you answer them. You cannot ask your
5 counsel or any other counsel. You just ask me for
6 clarification, please. And I will try to get that
7 done.

8 This is not an endurance contest, although
9 I think I do have a number of questions for you. And
10 so if at any time you want to take a break, will you
11 please let me know? And I'm going to let you know if
12 at any time I want to take a break, so we'll try to be
13 fair about that as well.

14 When we take a break -- and in fact, until
15 this deposition concludes, whenever that is, I think
16 you know that you are not supposed to discuss anything
17 about this case with anyone else until your deposition
18 is concluded.

19 And I know, but just for the record, you
20 are represented by Scott Tyler for purposes of this
21 deposition; is that correct?

22 A. Yes.

23 Q. Thank you. All right. Mr. McBryde, are
24 you testifying today with the estate's permission?

25 A. Yes.

ROA 006133

Page 70

1 Q. Did you provide affidavits in this case
2 with the estate's permission?

3 A. Let me ask if that -- if you -- I don't
4 know whether -- I trust you implicitly. But I'd like
5 to just make sure my counsel -- I'll have to discuss
6 with counsel here. I -- I -- because I don't know the
7 impact of what you're saying, and so I will have to
8 pull off, and if you're --

9 MR. TYLER: I need a moment to
10 discuss privilege questions with the
11 witness.

12 THE VIDEOGRAPHER: Would you like to
13 go off the record?

14 MR. TYLER: Yes, please.

15 THE VIDEOGRAPHER: The time on the
16 monitor is 10:58 a.m. We're off the
17 record.

18 (Recess taken.)

19 THE VIDEOGRAPHER: The time on the
20 monitor is 10:59 a.m. We are back on the
21 record.

22 BY MR. MEDLIN:

23 Q. Did you provide affidavits with the
24 estate's permission?

25 A. Yes. And you will see that in 15 of my

ROA 006134

Page 71

1 affidavit.

2 Q. Did you produce --

3 A. Item 15.

4 Q. Did you produce your files with the
5 estate's permission?

6 A. Yes.

7 MR. TWOMBLEY: Object to the form of
8 the question.

9 BY MR. MEDLIN:

10 Q. Did you get that permission from the
11 personal representative directly or from her counsel?

12 A. I assume. I have no idea.

13 Q. When you -- (Crosstalk)

14 A. By counsel in this case for that purpose
15 would seem to be on this call.

16 Q. Have you spoken with Mrs. Barringer
17 directly?

18 A. Have I spoken to Mrs. Barringer directly?

19 No.

20 Q. About this case?

21 A. Okay.

22 Q. And have you spoken to Mr. Twombley about
23 your files, your affidavits and your testimony today?

24 A. Yes.

25 Q. And you understand that he gave you

ROA 006135

Page 72

1 permission on behalf of the estate to testify, to
2 produce affidavits and to produce the file?

3 A. Correct.

4 Q. Thank you. If you would look at our
5 notebook, which is --

6 A. Okay.

7 Q. -- which is Mr. McBryde -- do you have that
8 handy and available?

9 A. This is yours? All right.

10 Q. Yes. And it should say in the top in the
11 McBryde depo and a page number, just to make sure you
12 have the right documents.

13 (Audio interruption)

14 MR. TWOMBLEY: We have something
15 going on with the audio. I'm not sure if
16 there's some interference here. Did
17 something change?

18 (Reporter asks for Clarification.)

19 THE VIDEOGRAPHER: The time is 11:02
20 a.m. We are off the record.

21 (Recess taken.)

22 THE VIDEOGRAPHER: The time on the
23 monitor is 11:17 a.m. We are back on the
24 record.

25 BY MR. MEDLIN:

ROA 006136

Page 73

1 Q. Mr. McBryde, I asked you to look at our --
2 plaintiffs' documents that we sent ahead of time. Did
3 you get a chance to look at these documents that we
4 sent?

5 A. Very generally, but just -- yes, very
6 general, but not in detail. But I think I can pick it
7 up, most of it -- I've seen most of it.

8 Q. Well, the question I want to ask
9 preliminarily is: Is this the order of your file as
10 you produced it to Mr. Twombley?

11 MR. TWOMBLEY: Object to the form.

12 THE WITNESS: Mr. Twombley may have
13 to tell you that because this is coming
14 from his -- his -- because he had
15 everything to start with, and we gave it to
16 him, and therefore, Mr. Twombley, you'll
17 have to say.

18 BY MR. MEDLIN:

19 Q. What did you give Mr. Twombley?

20 MR. TWOMBLEY: Object to the form.

21 THE WITNESS: He's not around.

22 MR. TYLER: You can answer his
23 question.

24 THE WITNESS: What did -- say your
25 question again.

ROA 006137

Page 74

1 BY MR. MEDLIN:

2 Q. Did you give your entire estate planning
3 file of the Barringer to Mr. Twombly?

4 A. I gave to him -- I don't think we gave him
5 the entire estate planning file. I can't tell you.
6 We gave him the information that he requested, so what
7 he got was -- I mean, I think we gave him anything
8 relevant or pertinent.

9 We -- I mean, as far as I know we did. We
10 haven't held anything back, let's put it that way. I
11 don't know what we'd be holding back.

12 Q. Is there anything in your estate planning
13 file for the Barringers that would not be included in
14 pages 4 through 209 of the documents that you're
15 looking at right now?

16 MR. TWOMBLEY: Object to the form of
17 the question.

18 THE WITNESS: It looks like it was
19 inclusive of all of the stuff that we gave
20 him. I mean, there's nothing that we held
21 back that he wouldn't have.

22 BY MR. MEDLIN:

23 Q. Are you aware of anything that you gave him
24 that would not be in the documents numbered 4 through
25 209?

ROA 006138

Page 75

1 A. No.

2 Q. How did you decide what documents from your
3 file to give to Mr. Twombly?

4 A. I gave him the pertinent documents for the
5 period that we talked about, from August where our
6 documents pick up through -- yeah, before this
7 litigated -- before this litigation.

8 Q. It --

9 A. I mean, just recent. I mean -- I mean, you
10 know, for purposes of you're wanting -- I need to ask
11 that. Give me a second.

12 I don't know. You'll have to find out,
13 because I really don't know we sent anything -- we
14 sent most anything pertinent, because they asked for
15 it.

16 Q. Do you recall how Mr. Twombly asked for
17 the documents; in other words, what documents did he
18 ask you for?

19 A. He asked me for -- I assume he asked me for
20 pertinent documents. And, you know, I run a big
21 operation, and, you know, give him whatever was
22 pertinent. You know, you've gotten a ton of stuff.

23 And I think that's all that's relevant for
24 that period, because all we're talking about is from
25 August through December, and I'm not sure we have

ROA 006139

Page 76

1 anything much at all after that. That's it.

2 Q. Well you -- (Crosstalk.)

3 A. I'm saying we -- we would have given to him
4 our files for that period.

5 Q. Did he --

6 A. And most -- I bet you virtually all of the
7 documents that we have in our file you have.

8 Q. Do you think there are documents after
9 December that are in your file that we don't have?

10 MR. TWOMBLEY: Object to the form.

11 Asked and answered.

12 THE WITNESS: Have -- if they are,
13 they have nothing to do with this and have
14 everything to do with just Merrill, because
15 we did not prepare any more documents for
16 him or for them after that time. We -- I
17 mean, they asked us to do some things, but
18 not related to this at all.

19 BY MR. MEDLIN:

20 Q. Were those -- any of those things related
21 to estate planning?

22 A. I don't think they -- I'd have to go back,
23 and my guess is no. I can look, but I -- that's what
24 we would have given to -- have to begin with.

25 Q. Did Mr. Twombley have access to your entire

ROA 006140

Page 77

1 file to determine what he thought was relevant that
2 you should produce?

3 A. I think -- I think if you read through what
4 we sent, and you have a copy of it, that's what we
5 have, and it's been disclosed.

6 Again, you sound very curious the way you
7 ask me this. I -- we sent only documents that were
8 relevant to something related to this, and it was very
9 indicative but intense because there was a lot done.

10 But I -- I can't -- I don't know. I don't
11 know what you're trying to infer about. I mean, I
12 don't know, but I know that we sent everything that we
13 thought was relevant, and -- and have not -- any
14 reason to believe that you don't have it.

15 Q. Well, Mr. McBryde, I'm not accusing anybody
16 of not producing documents, believe me. What I'm
17 trying to make sure is, is that we have all of the
18 relevant documents in this case, so that when we go to
19 trial, some other documents don't show up that we
20 haven't had an opportunity to see.

21 So my questioning is that?

22 A. We -- we did a few more things --

23 MR. TWOMBLEY: Object to the form of
24 the question.

25 THE WITNESS: -- totally unrelated to

ROA 006141

Page 78

1 this and estate planning afterwards, my,
2 but didn't get -- but it wasn't related at
3 all to this matter. We did not pick up the
4 ball after this period with respect to
5 their estate planning.

6 BY MR. MEDLIN:

7 Q. So this would be all of your estate
8 planning notes related to the Barringer's estate
9 planning and all of the documents?

10 MR. TWOMBLEY: Object to the form of
11 the question.

12 THE WITNESS: I mean, I haven't
13 pulled the file up. I know what I -- I
14 mean, I pulled the file and had people get
15 it out and make copies and send it.
16 That's -- that's what you do.

17 BY MR. MEDLIN:

18 Q. Is there some way that you your office can
19 ascertain that for us?

20 MR. TWOMBLEY: Object to the form of
21 the question.

22 THE WITNESS: We'll -- we'll -- we'll
23 look at this if there's anything else. I'm
24 just telling you, I doubt there is. I'm
25 not going to do it right now, because, you

ROA 006142

Page 79

1 know, as far as I know, the file is in
2 storage.

3 BY MR. MEDLIN:

4 Q. I understand, and I appreciate that,
5 Mr. McBryde.

6 But if you get the opportunity in the near
7 future just to make sure we have all of the estate
8 planning documents in your file that are set forth in
9 pages 4 through 209 of the documents in front of you
10 today.

11 A. Okay.

12 MR. TWOMBLEY: Alan, just for the
13 record, if you think you're missing
14 something, you know -- you know how to get
15 ahold of us and Mr. McBryde and so...

16 THE WITNESS: I mean, yeah. We're
17 not holding back nothing -- anything. But
18 I can't tell you, period. So...

19 BY MR. MEDLIN:

20 Q. All right. Thanks. Let's move on.

21 Mr. McBryde, what did you review before you
22 filed your affidavits?

23 A. I reviewed all of the information in the
24 file for that period of which you received copies.

25 Q. So essentially, you reviewed pages 4

ROA 006143

Page 80

1 through 209 of the documents in front of you?

2 A. Yeah. I'm assuming 4 through 209, if
3 you're talking about not your -- yeah. Yeah.

4 Q. All right. So who -- who created the
5 affidavit?

6 A. We -- we did in terms of putting together
7 what was thought to be appropriate in terms of getting
8 affidavits on record.

9 Q. And, Mr. McBryde, by "we," you mean whom?

10 A. Well, with counsel. I mean, I'm not going
11 to send to you something when you have counsel.

12 Q. But did you communicate with Mr. Twombly
13 and coordinate with Mr. Twombly about the contents of
14 the affidavit?

15 A. Yes.

16 Q. And were there other drafts of the
17 affidavit?

18 A. I don't know. I'm sure that -- I'm sure
19 there had to be another draft. But go ahead. I don't
20 know. But I'm sure -- if you say you need to see
21 other drafts, my counsel will have to tell me whether
22 that's appropriate. I don't know.

23 Q. Well, certainly, Mr. McBryde, I'm not going
24 to ask you something -- ask you to do something that
25 your counsel is going to advise you not to do. We'll

ROA 006144

Page 81

1 deal with that obviously, in a separate way.

2 A. Okay.

3 Q. Did -- do you recall, did Mr. Twombly make
4 edits or changes to the version that you -- the
5 versions of those two affidavits that you create?

6 A. I suspect not, but he could have. We
7 pretty much did that inhouse because we knew what the
8 affidavits should include.

9 Q. So how did you know what the affidavit
10 should include?

11 A. I assume we discussed with it, and -- and
12 we -- but we had to prepare the affidavits, and I'm
13 sure along the way, there were changes. I doubt
14 you've ever put anything in final form without drafts.
15 Have you? Even you.

16 Q. Did Mr. Twombly tell you what he wanted
17 the affidavits to say?

18 A. He -- he told us the areas that the
19 affidavit should address, and we addressed them. And
20 there are affidavits, but we can take input as to what
21 to report. I mean, I can give you 10,000 affidavits.
22 I don't know if that makes sense.

23 Q. If you have copies of other versions of
24 those affidavits, can we see those?

25 A. I have to ask counsel whether that's

ROA 006145

Page 82

1 appropriate.

2 Q. But if counsel determines that that's
3 appropriate, you don't have any problem producing
4 those for us?

5 MR. TWOMBLEY: Object to the form of
6 the question. I will -- I will instruct
7 the -- well, I'm just going to say that
8 Mr. McBryde was our -- Mr. Barringer's and
9 Mrs. Barringer's attorney.

10 Whether or not he's required or you
11 are entitled to see any other documents is
12 a separate issue that we can take up. You
13 know how to get ahold of us, and you
14 sure -- y'all know how to ask for
15 additional stuff, and we will take that up
16 offline.

17 MR. MEDLIN: Actually, we understand
18 that you are going to want to review
19 whatever Mr. McBryde's counsel might allow
20 him to produce along the normal way that
21 we've been doing that, so we understand
22 that.

23 BY MR. MEDLIN:

24 Q. Why did you produce the affidavit --

25 MR. TYLER: This is Scott Tyler. We

ROA 006146

Page 83

1 will discuss that, and if there's anything
2 to be produced, we will discuss whether it
3 can be produced. But we don't even know if
4 it exists. So -- but we will discuss it.

5 MR. MEDLIN: Thank you Scott, and I
6 appreciate that.

7 BY MR. MEDLIN:

8 Q. Why did you create the affidavit,
9 Mr. McBryde?

10 A. We discussed -- the same answer Scott just
11 said.

12 MR. TWOMBLEY: You can answer that
13 question.

14 THE WITNESS: Yes. To memorialize,
15 since it looked like I was going to be
16 involved in this, what really happened.

17 BY MR. MEDLIN:

18 Q. But did someone ask you to produce the
19 affidavit, or did you do it sua sponte?

20 A. I think it was -- it was a decision that
21 information needed to be provided because -- whatever.
22 I mean, we're going to go back to the same path we
23 just talked about a minute ago.

24 Counsel can tell you -- we'll talk to
25 counsel and see what -- what the answer is.

ROA 006147

Page 84

1 Q. Well, Mr. McBryde, in a deposition, if your
2 counsel want to instruct you not to answer typically
3 for privilege, he'll do that, and we'll give him an
4 opportunity to do that of course.

5 MR. TYLER: Answer his question.

6 When he asks a question, answer his
7 question.

8 THE WITNESS: He is asking multiple
9 questions. It's mixing up like spaghetti.

10 Go ahead. What's the question now?

11 BY MR. MEDLIN:

12 Q. Why did you decide to produce an affidavit?

13 A. To give some information since we were the
14 preparers of the documents and had the work product,
15 which was fully shared, you have, and therefore, it
16 highlighted the points that we thought were important
17 as you looked at the product.

18 Q. Did you volunteer to produce an affidavit,
19 or were you asked to produce an affidavit?

20 A. I -- I don't even recall -- I mean, that's
21 the 5th time or 6th time or 8th time that you've asked
22 that, and I'm not going to say any more about it.

23 Why should I? I mean, I don't -- no, you
24 asked, and counsel even talked to you, so...

25 MR. TWOMBLEY: I mean, our -- your

ROA 006148

Page 85

1 question, I guess -- Mr. McBryde politely
2 described it as curious, but it sounds like
3 you're accusing Mr. McBryde or me of some
4 type of impropriety related to the bare
5 routine effort to provide an affidavit in a
6 case.

7 I mean, if there is some suggestion
8 that's something been done inappropriate, I
9 hope you have the courtesy to let me and
10 Mr. McBryde know -- know directly.

11 (Reporter asks for Clarification.)

12 MR. TWOMBLEY: That was Ashley
13 Twombley.

14 MR. MEDLIN: And, Ashley, I would
15 certainly have the courtesy to let you or
16 Mr. McBryde if I was accusing anyone of
17 doing anything improper. I'm simply trying
18 to determine the prominence of this, and to
19 determine what may or may not have been
20 included in the affidavit and why.

21 I think I'm entitled to find that
22 out, and to the extent that you're
23 inferring some accusation about
24 impropriety, please do not do that because
25 that is not implied at all.

ROA 006149

Page 86

1 MR. TWOMBLEY: Well, go ahead. Go
2 ahead and ask your questions.

3 MR. MEDLIN: I've asked the question.

4 BY MR. MEDLIN:

5 Q. Mr. McBryde, I think you told me you
6 haven't spoken with Mrs. Barringer about this cases;
7 is that correct?

8 A. That's correct.

9 Q. And in the affidavit, which we will look at
10 in more detail later, it seems to me that you're
11 expressing your opinion about her intent?

12 MR. TWOMBLEY: Object to the form of
13 the question.

14 THE WITNESS: I am not doing anything
15 but stating the fact that in the process
16 between August and her execution and his
17 execution of the documents of December 4th,
18 they were fully informed and discussed with
19 respect to all of the matters.

20 BY MR. MEDLIN:

21 Q. But does some of your affidavit contain
22 your assertion about her intent in these documents?

23 MR. TWOMBLEY: Objection to the form

24 MS. PAYLOR: Object to the form.

25 MR. TWOMBLEY: Calls for a legal

ROA 006150

Page 87

1 conclusion.

2 THE WITNESS: I will say once again,
3 and I am a lawyer who makes sure the
4 clients know what they are getting, have
5 discussed the same and get the product that
6 they wanted, and that was all done with me.

7 And therefore, the documents were
8 prepared and executed and explained in
9 detail with them at the time and before,
10 period.

11 BY MR. TWOMBLEY:

12 Q. But you did not speak with Mrs. Barringer
13 to confirm your understanding of her intent for
14 purposes of this case?

15 MR. TWOMBLEY: Object to the form.

16 MS. PAYLOR: Object to the form.

17 MR. TWOMBLEY: Asked and answered.

18 BY MR. MEDLIN:

19 Q. Answer the question.

20 MR. TYLER: I'm going to object to
21 that one. He's -- he's answered that
22 already. You can move on. He's not going
23 to answer that question.

24 MR. MEDLIN: Are you instructing him
25 not to answer?

ROA 006151

Page 88

1 MR. TYLER: Yep, he's answered it
2 already.

3 MR. MEDLIN: Are you instructing him
4 not going to answer on the grounds of
5 privilege, or just because he's --.

6 MR. TYLER: He's answered it already.
7 Move on.

8 BY MR. MEDLIN:

9 Q. Did you try to speak to Mrs. Barringer?

10 MR. TWOMBLEY: Object to the form of
11 the question

12 MS. PAYLOR: Object to the form.

13 THE WITNESS: No.

14 BY MR. MEDLIN:

15 Q. With whom did you speak about your
16 affidavit other than your own counsel -- and I don't
17 want to know what your counsel and you had to say
18 about that -- and other than Mr. Twombley?

19 A. When we pulled all of the files, I would
20 have talked to other lawyers in our firm who work with
21 me.

22 Q. And don't tell me about that.

23 A. Huh?

24 MR. TYLER: Don't --

25 BY MR. MEDLIN:

ROA 006152

Page 89

1 Q. Don't tell me about conversation with them,
2 Mr. McBryde.

3 A. So what was the question, then?

4 Q. Other than your own counsel and
5 Mr. Twombly, did you speak with anyone else about
6 these affidavits?

7 A. Except I can't --

8 MR. TYLER: Anyone else, other than
9 us.

10 THE WITNESS: No.

11 BY MR. MEDLIN:

12 Q. With whom did you speak about this
13 deposition? And again, Mr. McBryde, don't tell me
14 what you discussed with your counsel to the extent
15 that's privileged.

16 A. Okay.

17 Q. But with whom did you speak about this
18 deposition?

19 A. Internal lawyers and counsel.

20 Q. Have you spoken with anyone else?

21 A. Not that I'm aware of.

22 Q. You have not spoken to Mr. Twombly?

23 A. Oh, excuse me. Yes, obviously

24 Mr. Twombly.

25 Q. And when did you speak with Mr. Twombly?

ROA 006153

Page 90

1 A. Several occasions.

2 Q. When were those occasions?

3 A. I don't have them on my -- per se. I can
4 get you that information if that -- if that's
5 appropriate, and I will have to ask my counsel if it's
6 appropriate.

7 MR. TYLER: When did you speak with
8 him? You can answer that question.

9 THE WITNESS: Yeah. I think -- I
10 don't have my calendar with me, and I don't
11 keep a calendar with me and I don't keep a
12 calendar very well at any rate, but I can
13 get that information to you but I don't
14 have it -- I can't give it to you now.

15 BY MR. MEDLIN:

16 Q. And again, Mr. McBryde, just for moving
17 forward, if we ask for things, we have an
18 understanding, I hope, that you're not going to
19 produce something that your counsel tells you not to
20 produce.

21 A. Okay.

22 Q. As Mr. Twombly pointed out we have other
23 ways of dealing with that?

24 A. All right. So I can just respond that way.
25 If counsel says okay and answer yes, we did.

ROA 006154

Page 91

1 Q. Unless your counsel --

2 A. That will save us a lot of time.

3 (Crosstalk.)

4 Q. Well, hopefully so. I know your time is
5 valuable.

6 So in these conversations with
7 Mr. Twombly, what did you discuss?

8 A. The same issue we just mentioned. I'll --

9 Q. And tell me about what he said. Tell me
10 about what you said.

11 A. If I can do that, I will get back to you,
12 too. If he tells me -- if my counsel tells me --

13 MR. TYLER: If you remember any
14 details, you can...

15 THE WITNESS: He -- he asked me about
16 the documents as you would.

17 BY MR. MEDLIN:

18 Q. And what did he ask you about the
19 documents?

20 A. Just asked me general questions. I don't
21 know. I -- I -- I haven't spent a whole lot of time
22 with Mr. Twombly. I got other things to do.

23 But, I mean, I can't give you a detailed
24 conversation because we discussed things, and we
25 discussed the information that is appropriate to share

ROA 006155

Page 92

1 with them, and counsel for us says, That's fine.

2 Q. Mr. McBryde, what else did he ask you
3 about, and what else did you respond?

4 MR. TWOMBLEY: Object to the form of
5 the question, asked and answered.

6 MR. MEDLIN: Not answered.

7 BY MR. MEDLIN:

8 Q. But go ahead.

9 MR. TWOMBLEY: Well, I'm disagreeing.

10 THE WITNESS: I answered.

11 MR. TWOMBLEY: He said he can't
12 remember the details of it.

13 THE WITNESS: I mean, I -- I, you
14 know, I'd got other things to do than take
15 down, Oh, I talked to so and so for five
16 minutes and here it is.

17 I -- maybe you are a good lawyer that
18 way, but I wasn't.

19 BY MR. MEDLIN:

20 Q. And -- and when did you first meet with
21 Mr. Twombley, approximately?

22 MS. PAYLOR: Object to the form.

23 THE WITNESS: I gave you the date. I
24 don't remember now.

25 BY MR. TWOMBLEY:

ROA 006156

Page 93

1 Q. Was it a year ago, six months ago?

2 A. I don't -- I don't -- I -- all I can say is
3 I give you a date -- but I don't recall off the top.

4 Q. Yeah. But you don't keep a calendar, I
5 think I heard you say.

6 A. Not well. But I can find out, that's for
7 sure.

8 Q. All right. But it would have been since
9 this case started?

10 A. Yes.

11 MS. PAYLOR: Object to the form.

12 THE WITNESS: How would I know that?

13 BY MR. TWOMBLEY:

14 Q. And so from the time this case started
15 until more recently, you're not sure exactly when the
16 time met with Mr. Twombley or even approximately?

17 A. No. But I can get that to you. I can get
18 that to you quickly.

19 Q. Thank you.

20 A. A lot more quickly than the time we're
21 spending on this call.

22 Q. Did you meet with anyone else about this
23 deposition?

24 A. Did I meet with anyone else? Yes.
25 Counsel. And -- and my fellow lawyers who -- in my

ROA 006157

Page 94

1 firm.

2 Q. Well, when you say counsel -- I'm sorry. I
3 interrupted you.

4 A. Yeah. I said counsel.

5 Q. Your counsel, Mr. Twombly. Anyone else?

6 A. I don't think so.

7 Q. Okay. Thank you.

8 Have you spoken to Ms. Paylor about this
9 deposition?

10 A. No.

11 Q. Have you spoken to Ms. Paylor about this
12 case?

13 A. No.

14 Q. Have you spoken to Mr. Molster about this
15 deposition?

16 A. No.

17 Q. Have you spoken to Mr. Molster about this
18 case?

19 A. No.

20 Q. Have you spoken to Randy Light about this
21 case?

22 A. No.

23 Q. Have you spoken to Merrill Light about this
24 deposition?

25 A. No.

ROA 006158

Page 95

1 Q. Have you spoken to Merrill Light about this
2 case?

3 A. No.

4 Q. Have you spoken to anyone at CFRC about
5 this case?

6 A. What is CFRC?

7 Q. It's Mr. Barringer's company, and your
8 affidavit refers to his stock CFRC.

9 A. No.

10 MR. TWOMBLEY: Object to the form of
11 the question.

12 BY MR. MEDLIN:

13 Q. Have you ever represented Randy Light?

14 A. No.

15 Q. Have you ever represented Merrill Light?

16 A. Well, we have in the past and through the
17 execution of these documents. Whether we had any -- I
18 don't think we had any representation after that
19 December 24 or --

20 MR. TWOMBLEY: Merrill Light?

21 THE WITNESS: Huh?

22 MR. TWOMBLEY: Merrill Light.

23 BY MR. MEDLIN:

24 Q. I'm sorry, Mr. McBryde. Merrill Light, not
25 Merrill Barringer.

ROA 006159

Page 96

1 A. Okay. Yeah.

2 Q. Sorry. Did you ever represent Coastal
3 Lumber Company?

4 A. Did we -- along the way, we may have done
5 work, but nothing of the consequence. And I don't
6 even remember it, but I just know that -- that the
7 company, we did something with them along the way
8 years and years ago.

9 Q. And I presume you've never represented the
10 company CFRC?

11 A. No.

12 Q. Okay. Thank you.

13 You are --

14 A. What is CFRC?

15 Q. Coastal --

16 A. Huh?

17 Q. It's -- it's a company that Mr. Barringer
18 own stock in when he died that your affidavit refers
19 to.

20 All right. So you are testifying today --

21 MR. TWOMBLEY: Object to the form of
22 the question.

23 THE WITNESS: I -- you broke up right
24 there.

25 BY MR. MEDLIN:

ROA 006160

Page 97

1 Q. Yeah. You are -- as a fact witness?

2 A. Yes. Fact witness.

3 Q. Do you intend to testify as a fact witness
4 at trial?

5 A. I don't have any intention on anything.
6 I'm just here because you subpoenaed me to testify.

7 Q. Yeah. I did not subpoena you to testify
8 Mr. McBryde. Mr. Twombly did.

9 A. Well, Mr. Twombly. But you all did
10 initially. Thank you.

11 MR. TWOMBLY: Yeah, object to the
12 form of the question. Misstates the record
13 and misstates what has happened in the
14 case.

15 MR. MEDLIN: Not correct, but let's
16 move forward.

17 BY MR. MEDLIN:

18 Q. Have you discussed the possibility that you
19 will testify at trial with anyone as a fact witness?

20 A. I think I assume that I might have to, but
21 I haven't talk to anybody it.

22 Q. Are you testifying today as an expert
23 witness?

24 MR. TWOMBLY: Object to the form of
25 the question.

ROA 006161

Page 98

1 THE WITNESS: No.

2 BY MR. MEDLIN:

3 Q. Do you expect to testify at trial as an
4 expert witness?

5 MS. PAYLOR: Object to the form.

6 Asked and answered.

7 MR. TWOMBLEY: Same objection.

8 BY MR. MEDLIN:

9 Q. First time it's asked. Go 1ahead and
10 complete, Mr. McBryde.

11 MS. PAYLOR: He has 1already answered
12 it.

13 THE WITNESS: I don't know.

14 BY MR. MEDLIN:

15 Q. Have you discussed the possibility that you
16 would testify as an expert at the trial, Mr. McBryde?

17 A. No. (Inaudible comment)

18 Q. Are you being paid to testify today,
19 Mr. McBryde?

20 MR. TWOMBLEY: Object to the form of
21 the question.

22 THE WITNESS: I would like somebody
23 to pay me.

24 BY MR. MEDLIN:

25 Q. Are you licensed -- are you licensed to

ROA 006162

Page 99

1 practice law in South Carolina?

2 A. No.

3 Q. You are licensed in North Carolina and
4 Georgia, I believe; is that correct?

5 A. That's correct.

6 Q. And have you ever been licensed to practice
7 in South Carolina?

8 A. No.

9 Q. What is Moore & Van Allen's policy about
10 lawyers who are not licensed in South Carolina
11 representing South Carolina citizens for estate plan?

12 MS. PAYLOR: Object to the form.

13 MR. TWOMBLEY: Object to the form.

14 THE WITNESS: We always associate
15 indeed with, as you probably know, we have
16 an office that opened up in 1996 in
17 Charleston, and we before then used --
18 whenever we had a matters in South Carolina
19 in this context, we will get them to, in
20 some way, sign off.

21 So we -- just like we do for Florida
22 residents or Georgia residents -- well,
23 Georgia's not a problem, and so we always
24 make sure that somebody has seen the docs.

25 BY MR. MEDLIN:

ROA 006163

Page 100

1 Q. Who -- who would that have been -- who
2 would that have been in the case of the Barringers?

3 MR. TWOMBLEY: Object to the form of
4 the question.

5 THE WITNESS: There were several
6 people. Excuse me. There were several
7 people in the Charleston office that had
8 some contact with this firm.

9 BY MR. MEDLIN:

10 Q. Okay. Do you recall their names?

11 A. No. Well, I guess whoever was there. I
12 mean, that was a different office then. But -- and
13 they would have -- it would have been a very -- I
14 don't think I was even required to do it with the
15 testamentary. I don't know what the answer is.

16 All I know is that we -- I never just go
17 down to a state and say, Here, sign these documents.
18 I always run them by -- which is what you're required
19 to do in North Carolina. I don't know what you do in
20 South Carolina. Maybe you do them everywhere.

21 Q. Do you hold yourself out to be an expert in
22 South Carolina law?

23 MR. TWOMBLEY: Object to the form of
24 the question.

25 THE WITNESS: I'm an expert in

ROA 006164

Page 101

1 federal law, and that's what we're talking
2 about here.

3 BY MR. MEDLIN:

4 Q. Federal law governs dispositive provisions
5 in estate planning?

6 MS. PARLOR: Object to the form. He
7 is not listed as an expert.

8 THE WITNESS: And -- and that's --
9 but I'm saying, that's why I give South
10 Carolina counsel to look at it.

11 BY MR. MEDLIN:

12 Q. So let's look at page 75 of the documents
13 in front of you.

14 A. Okay. Is this Moore & Van Allen
15 letterhead?

16 Q. Yes.

17 A. Okay.

18 Q. Now, let's look in the first paragraph
19 under "wills."

20 A. Okay.

21 Q. And let's look on the third line, please,
22 sir.

23 MR. TWOMBLEY: Alan, are you --

24 THE WITNESS: I'm not --

25 MR. TWOMBLEY: Yeah. I'm not

ROA 006165

Page 102

1 following what page? 75. Is this 75 of
2 206 or what -- what is it?

3 MR. MEDLIN: Yeah, it's should be --

4 THE WITNESS: There's -- it says
5 0075.

6 BY MR. MEDLIN:

7 Q. Yeah. Actually, it should be -- at the
8 bottom it will say McBryde documents, page 72 of 206.

9 A. Okay. There you go.

10 Q. Are you with me?

11 A. Yes.

12 Q. Okay. So starting in the third line, you
13 have a sentence that says, "For wills also provide
14 that you leave a writing that although not binding
15 upon your executor expresses your wishes --"

16 MS. PAYLOR: What page are you on,
17 Alan? What page are you on? You're not on
18 the page that you told us to get on.

19 MR. MEDLIN: I think we're on page
20 75. But in any event, it's page -- if you
21 look in the bottom right-hand corner,
22 Alice, it's page 72 of the McBryde
23 documents.

24 MS. PAYLOR: Well, you said the third
25 line, and that would be number 1, last will

ROA 006166

Page 103

1 and testament. So I don't know where you
2 are.

3 MR. MEDLIN: No. What I said was,
4 under the paragraph wills. Under wills.

5 MS. PAYLOR: Okay. Okay.

6 MR. MEDLIN: Okay.

7 MS. PAYLOR: Thank you.

8 MR. MEDLIN: Are you with me now?

9 MS. PAYLOR: I got it.

10 MR. MEDLIN: Good.

11 BY MR. MEDLIN:

12 Q. All right. So I'm going to start over with
13 that, Mr. McBryde.

14 "Your will also provide that you may leave
15 a writing that all of, not binding upon your executor
16 expresses your wishes regarding the disposition of
17 your tangible personal property."

18 Do you see that?

19 A. I do.

20 Q. And the Barringers were South Carolina
21 residents at the time they executed this will?

22 MR. TWOMBLEY: Object to the form of
23 the question. Calls for a legal
24 conclusion.

25 THE WITNESS: You know, I'm not sure.

ROA 006167

Page 104

1 Tell me. You asked the question.

2 BY MR. MEDLIN:

3 Q. Well, your documents -- headings talk about
4 State of South Carolina, County of Beaufort.

5 A. I asked -- I asked a question where -- you
6 know as a matter of law in fact whether they were
7 residents of South Carolina, sure.

8 Q. Mr. McBryde, I get to ask the questions,
9 and so my question --

10 A. Give me context to answer it --

11 Q. Right.

12 A. -- because you are the one that knows.

13 Q. If you --

14 A. I -- I know these are good in North
15 Carolina, and I know that we got this looked at in
16 South Carolina. What can I say?

17 Q. Yeah. So would you have prepared documents
18 with the caption State of South Carolina, County of
19 Beaufort, if you didn't think your clients were
20 residents of South Carolina?

21 MS. PAYLOR: Object to the form.

22 THE WITNESS: I -- I think that's a
23 hypothetical question. I can't answer it
24 because that was 1998, and maybe you
25 understand that happened in 1998. But

ROA 006168

Page 105

1 maybe I don't, so I can't answer that
2 question.

3 BY MR. MEDLIN:

4 Q. Look at page 86 --

5 A. All right.

6 Q. -- just by example.

7 A. Okay.

8 Q. And you see the caption in the top hand
9 corner, Mr. McBryde, State of South Carolina, County
10 of Beaufort?

11 A. All --

12 MR. TWOMBLEY: Hold on one minute.
13 Hold on one minute.

14 Alan, I don't know -- when you say
15 page 86 -- I mean, I'm looking at 86 and
16 206. Is that what you're referring to?

17 MR. MEDLIN: Well, we have two
18 different numbering systems actually, and
19 these are our documents, not yours, right?

20 So in the top right-hand corner -- in
21 the top right-hand corner we've got 0086,
22 but the document as you produced them are
23 shown in the bottom right-hand corner is
24 page 83 of 206. Does that help?

25 MR. TWOMBLEY: So you're referring to

ROA 006169

Page 106

1 the top right-hand corner number; is that
2 correct?

3 MR. MEDLIN: For this one, yes.

4 MR. TWOMBLEY: Okay. If you'll
5 just -- I'm not trying to be difficult. I
6 honestly was looking at a different 82, and
7 so if you'd let us know which one you're
8 referring to.

9 MR. MEDLIN: Well, I meant -- I meant
10 to say 86.

11 MR. TWOMBLEY: Okay. I'm there.

12 Thank you.

13 (Reporter asks for Clarification.)

14 BY MR. MEDLIN:

15 Q. All right. So, Mr. McBryde, this is --

16 A. We were treating them as residents of South
17 Carolina for this purpose.

18 Q. Okay. Thank you. All right. So back to
19 page 75.

20 A. Okay.

21 Q. Do you know whether in 1998 South Carolina
22 law allowed a testator to direct the disposition of
23 certain tangible property?

24 MR. TWOMBLEY: Object to the form of
25 the question

ROA 006170

Page 107

1 MS. PAYLOR: Objection.

2 THE WITNESS: Say it again. I'm not
3 understanding what you're saying.

4 BY MR. MEDLIN:

5 Q. Do you know whether in 1998, South Carolina
6 law allowed a testator to direct the disposition of
7 the tangible personal property.

8 MR. TWOMBLEY: Object to the form of
9 the question

10 MS. PAYLOR: Object to the form.

11 THE WITNESS: No.

12 MR. TWOMBLEY: That was a waste of
13 time.

14 THE WITNESS: You bet.

15 MR. TYLER: This is Scott Tyler.
16 We've been going almost three hours. Let
17 us know when is a good time for a break as
18 well.

19 MR. MEDLIN: Whenever you want,
20 Scott.

21 MR. TYLER: Do you want to break now?

22 THE WITNESS: Probably.

23 THE VIDEOGRAPHER: Do you want to go
24 off first?

25 MR. TYLER: Sure.

ROA 006171

Page 108

1 THE VIDEOGRAPHER: The time on the
2 Monday to 11:57 a.m., and we are off the
3 record.

4 (Recess taken.)

5 THE VIDEOGRAPHER: The time on the
6 monitor is 12:09 p.m. and we are back on
7 the record.

8 BY MR. MEDLIN:

9 Q. Mr. McBryde, looking at page 75 in the
10 sentence that we read before you took a break, and
11 you -- you were giving legal advice to the Barringers
12 about what went into their documents, right?

13 A. I'm giving advice, yes.

14 Q. And you were giving legal advice when you
15 were discussing their estate plans with them, right?

16 A. Yes.

17 Q. Okay. So when you sent this letter, was it
18 your understanding that South Carolina law did not
19 allow a direction to dispose of tangible personal
20 property in a separate writing?

21 MS. PAYLOR: Object to the form.

22 THE WITNESS: I did not run that by
23 counsel, but they did not tell me -- South
24 Carolina counsel that was a problem, but
25 it's irrelevant.

ROA 006172

Page 109

1 BY MR. MEDLIN:

2 Q. Why do you say it's irrelevant?

3 A. Just because that was not a material factor
4 in their documents.

5 Q. You don't think tangible personal property
6 and the disposition of it is important to clients?

7 MR. TWOMBLEY: Object to the form

8 MS. PAYLOR: Object to the form.

9 THE WITNESS: It is what it is.

10 MR. TWOMBLEY: Object. Just confirm
11 an objection for one defendant is an
12 objection for all, so we don't have to --

13 MR. MEDLIN: That works for me if it
14 works for you all.

15 MR. TWOMBLEY: Okay.

16 BY MR. MEDLIN:

17 Q. Answer the question, Mr. McBryde, please.

18 A. I did not know. Again, this was run by
19 Florida counsel. They didn't pick it up. So I didn't
20 pick it up.

21 Q. Why did you run it by Florida counsel?

22 A. Florida. South Carolina. Excuse me.

23 Q. My question was: In response to your
24 answer that it's irrelevant, and I asked if the
25 clients considered the disposition of their tangible

ROA 006173

Page 110

1 personal property to be irrelevant in your experience?

2 MS. PAYLOR: Object to the form.

3 THE WITNESS: Just back up. It
4 certainly can be rev- -- relevant. This is
5 -- I think it says your will may be in
6 writing, but not binding upon your
7 executives, especially with regard to
8 disposition of tangible personal property.

9 Tell me, you're saying that although
10 I'm saying it may not be binding, that
11 that's not appropriate.

12 BY MR. TWOMBLEY:

13 Q. I'm asking you if you understand that South
14 Carolina law allowed a tangible personal property
15 memorandum to bind the executor.

16 MS. PAYLOR: Object to the form.

17 THE WITNESS: They may be irrelevant
18 to another state at some point in time. I
19 mean, it's just -- where they're going to
20 be living, this will could be done while
21 they lived in Florida, I mean, being the
22 operative document.

23 All I'm saying is -- we're saying
24 don't count on the -- South Carolina could
25 change their laws. Who knows. But at any

ROA 006174

Page 111

1 rate...

2 BY MR. MEDLIN:

3 Q. So --

4 A. I think I answered your question.

5 Q. -- when you prepare a will for a client,
6 you assume that will is going to be valid in every
7 state, mean the same thing in every state?

8 A. I said I ran it by South Carolina counsel
9 who did not pick it up.

10 Q. But if -- if one only requested that
11 beneficiary abide by a memorandum as opposed to
12 directing a beneficiary to abide by it, that would be
13 a difference, wouldn't it?

14 MS. PAYLOR: Object to the form.

15 THE WITNESS: Well, you tell me since
16 I don't know.

17 BY MR. MEDLIN:

18 Q. I believe you said that -- just to confirm,
19 briefly, Mr. McBryde, you haven't discussed the
20 Barringer's estate planning with them since 1998 --
21 since December-ish of 1998?

22 A. I do not think so in that -- there were
23 some work done, but it was if I recall -- looking at
24 the file, it was not material, and I don't believe it
25 had anything to do with anything that we're talking

ROA 006175

Page 112

1 about.

2 Q. Yes, sir.

3 And do you recall approximately, the last
4 time you saw either of them?

5 A. Years ago. Many years ago. No, I do not.

6 Q. Thank you.

7 How many estate planning clients would you
8 estimate you've had over your career?

9 A. Hundreds.

10 Q. How many would you estimate you had in
11 1998?

12 A. A lot.

13 Q. Maybe since 1998?

14 A. A lot.

15 Q. Do you typically take careful notes?

16 A. I take notes on conversations and meetings,
17 but they are not careful notes. They are notes
18 that sometimes I will even just make appoint that on
19 its face may not look like it's even addressing the
20 issue when I'm just really reminding me to look at it
21 for purposes of further consideration.

22 Q. So why do you take notes?

23 A. Why do I take notes?

24 Q. Yes.

25 A. Because they may be helpful.

ROA 006176

Page 113

1 Q. Do you use them in preparing the estate
2 planning?

3 A. I gave you all of the notes.

4 Q. I'm sorry, Mr. McBryde. I think you
5 misunderstood the question.

6 A. I'm sorry. Yes, what is the question? I'm
7 sorry.

8 Q. I'm sorry.
9 Do you use notes in preparing your clients'
10 estate plans?

11 MS. PAYLOR: Object to the form.

12 THE WITNESS: It depends -- it
13 depends on what the notes say: Do they
14 apply to the estate planning per se; do
15 they -- as I say, sometimes I'll even have
16 just a note to look at something when we're
17 not going to use it.

18 I mean, you know, my notes are
19 personal to me and to get me thinking about
20 something that may need to be addressed
21 later or was addressed. But it...

22 BY MR. MEDLIN:

23 Q. Okay. Thank you.

24 Is it fair to say that you take notes at
25 least in part to help recall your discussions with

ROA 006177

Page 114

1 clients?

2 A. Yes, but sometimes not to follow, but to
3 actually raise questions about other notes we've got
4 to look at. I mean, I don't take careful notes of
5 everything that's said.

6 I take notes that are important for me
7 and -- and looking back at the matter after I -- after
8 me, and I do it all the time.

9 Q. And your notes would also include your
10 thoughts about the estate planning that you're
11 preparing?

12 A. Could and could not. I say sometimes I'll
13 mention -- I'll say something that at the moment I
14 know is not correct, but I want to just go back and
15 look at it so that to be true.

16 Q. Thank you.

17 Do you remember every detail of every
18 conversation you have ever had with every client?

19 A. Absolutely not.

20 Q. Do your notes indicate the important parts
21 of the discussions that you had with your clients?

22 A. They can, and they cannot be.

23 Q. The notes that you produced, Mr. McBryde,
24 which are -- if you want to look, although I'll leave
25 that up to you, but pages 3 through 7, 42 through 49,

ROA 006178

Page 115

1 59 through 63, and 70 to --

2 A. Okay.

3 Q. -- 70. Do you want to look at all of
4 those?

5 MS. PAYLOR: Object to the form.

6 THE WITNESS: What are you asking me
7 to do?

8 BY MR. MEDLIN:

9 Q. Well, what I'm going to ask you is, do you
10 recall if these were realtime notes, or do you add
11 thoughts later to your notes as you review them?

12 A. Both of them.

13 Q. Okay. Thank you.

14 In your notes -- and let's look, for
15 example, at pages 4 through 7 -- actually, beginning
16 on page 5.

17 A. Okay.

18 Q. And this -- this is your handwriting.
19 These are your notes, correct?

20 A. That's correct.

21 Q. So you have a lot of numbers, 1, 2, 3, 4,
22 etc. How does that fit in with what you're doing with
23 note taking?

24 A. When I just take notes, I take notes. I
25 scribble scrabble. That's all. Everything important

ROA 006179

Page 116

1 to me at the time to recall thoughts, comments, but
2 that's all. They're not directive or determinative of
3 what was actually said or how to move forward.

4 For me it works. It's worked for 50 years.

5 Q. Understood. So, Mr. McBryde, if you would
6 flip over to page 72.

7 A. Okay.

8 Q. Is that your handwriting also?

9 A. No.

10 Q. Whose handwriting is that?

11 A. I don't know.

12 Q. Who else would be in a meeting with you?

13 A. Yeah.

14 (Reporter asks for Clarification.)

15 THE WITNESS: Telephone conversation
16 with -- oh, it's a telephone conversation.

17 It wasn't a meeting I was on. Do you not
18 -- did you not see that at the top?

19 BY MR. MEDLIN:

20 Q. Are those -- those notes in your
21 handwriting?

22 A. No.

23 Q. Whose handwriting would that be, do you
24 know?

25 A. It's got to be probably an associate that

ROA 006180

Page 117

1 was sitting in -- or I don't know. I don't whose
2 handwriting that is.

3 Q. Okay.

4 A. I have had a lot of associates.

5 Q. So it's possible that there were other
6 people in the room in meetings or during telephone
7 conferences who aren't shown as being there in your
8 notes?

9 A. They -- they could -- yeah. It's obviously
10 done by someone who I probably grabbed for that
11 telephone conversation.

12 If -- I would suspect it could be -- it's
13 got to be somebody in our firm, I mean, somebody who's
14 -- got on the call.

15 Q. So --

16 A. These are internal notes, not -- not notes
17 for action.

18 Q. Sure.

19 So, Mr. McBryde, if you'll flip back -- I'm
20 sorry to keep doing this to you, but if you flip back
21 to page 11.

22 A. All right.

23 Q. And this is a document -- this document is
24 from Robert Slain, right?

25 A. Right. Hold on a second. Page 11?

ROA 006181

Page 118

1 Q. Yes.

2 A. Okay. I got it. I got it.

3 Q. And then following, you'll see an executive
4 summary from Robert Slain and some diagrams --

5 A. Correct.

6 Q. -- which is on pages --

7 How did you get those documents?

8 A. I assume he took them to the meeting we
9 had, which I think was outlined in the information
10 that you got.

11 Q. And would you recall if these are all of
12 the documents that you had with Mr. Slain?

13 A. They were all documents with Mr. Slain
14 relating to this matter at all, yeah.

15 Q. Okay. Thank you.

16 There are a lot of proposals in Mr. Slain's
17 documents for the Barringer estate plan. Would you
18 agree?

19 A. This was the -- let me see. That was the
20 August meeting, or is it the note?

21 Q. Yes, sir. This would be particularly set
22 out in the letter that you just referred -- the
23 executive summary that you just referred to.

24 A. All right. What -- what date is that? It
25 should be dated.

ROA 006182

Page 119

1 It would have been in the August to
2 October -- again, let me -- what was the page again?

3 Q. Well, starting -- the number page, Neill --
4 Mr. McBryde is on page 11.

5 A. Okay.

6 Q. And then the executive summary file.

7 A. Yeah. This would have been something that
8 was brought or introduced at the August, which was the
9 first time we met Mr. Barringer.

10 Q. Did Mr. Slain bring Mr. Barringer to you as
11 a client, do you recall?

12 A. Maybe way back. But I started -- he
13 certainly -- he certainly might have been one of the
14 people. It could have been him. That's a long time
15 ago. A lot of people send me clients over the years.

16 Q. Understandably.

17 Mr. McBryde, was Mr. Slain your agent?

18 A. No. He was -- he was -- he had a separate
19 relationship and that -- I mean, he -- he used
20 Mr. Barringer, and if they were looking for counsel,
21 he could well have recommended me for a good reason.

22 Q. For a good reason you said, Mr. McBryde?

23 A. Yeah. Because it's my area.

24 Q. Yes.

25 A. And they -- they were considering a lot of

ROA 006183

Page 120

1 complex matters that take a lot of horsepower in terms
2 of additional lawyers to help.

3 Q. Yeah.

4 A. So within the --

5 Q. No argument here.

6 So, there were any number of proposals that
7 were discussed with the Barringers about estate
8 planning devices, a lot of tax savings devices; is
9 that correct?

10 A. That's correct.

11 Q. And they didn't agree to all of them; is
12 that correct?

13 A. I don't know whether they have ultimately
14 implemented them or not, because again, we did not
15 have a whole lot of interaction after '98.

16 Q. Thank you.

17 One of the suggestions was that
18 Mr. Barringer give half of his stock to Mrs. Barringer
19 so that she could create her own draft.

20 A. There was -- when I went back to the style,
21 I saw just what you saw, and obviously, there were a
22 lot of things talked about, but what we ended up
23 focusing on after discovering a whole lot of things
24 was getting the wills and trust in order, and as --
25 basic estate planning which we did by December 4.

ROA 006184

Page 121

1 Q. I'm sorry for interrupting you.

2 So one of the proposals was that

3 Mrs. Barringer creat a GRAT?

4 A. Right. I can -- I can see that, and I --
5 personally I never got -- you read what I read because
6 I don't know where we're at in the sense, that's not
7 where we ended up with my -- with my work.

8 (Reporter asks for Clarification.)

9 MS. PAYLOR: Alan, you are breaking up.

10 MR. MEDLIN: I'm breaking up again?

11 THE REPORTER: You have to repeat
12 your question.

13 MR. MEDLIN: Well, I was apologizing
14 to Mr. McBryde about continually
15 interrupting him. I think he's finished
16 and moved on, and he's not.

17 THE WITNESS: Okay.

18 BY MR. MEDLIN:

19 Q. The GRAT proposal involved Mr. Barringer
20 giving Mrs. Barringer half of his Coastal Lumber stock
21 so she could create GRAT?

22 A. I see what you see, and that was obviously
23 considered.

24 Q. But to your knowledge, he's never done it?

25 A. To my knowledge. Now, I didn't go back to

ROA 006185

Page 122

1 post not working with the file, so I could have --
2 there could have been something in there because I
3 still had some contact and mended relationship, but
4 nothing material.

5 Q. So is the power of appointment an important
6 part of estate planning?

7 A. You certainly need to know what you're
8 giving a power of appointment to. Now, they -- in
9 their particular plan what they wanted to do, power of
10 appointment was very important.

11 Q. And what were your discussions with them
12 about that?

13 A. First, I would need to listen to them what
14 they want to do with their property and when; and
15 secondly, did they want -- we've already been over
16 this morning a good bit all of the powers of
17 appointment that were, in fact, in place, and that --
18 in this context they're very important.

19 We've got a lot of property, and you've got
20 property that could go to descendants or whomever else
21 your primary beneficiaries are, and they thought very
22 clearly about that.

23 And you see -- I think we discussed the
24 documents you saw earlier this morning, that that's --
25 that's something that became very important to them,

ROA 006186

Page 123

1 and by December 4th, they were very glad to have
2 submitted that change, so that the last of them to die
3 could make the final decisions as to how and who
4 within the descendants framework were to receive the
5 property, passing onto the will and the revocable
6 trust.

7 Q. So tell me as much as you recall about the
8 specific discussions with them regarding powers of
9 appointment?

10 A. All I can say is, I can absolutely state
11 that I would have spent considerable time going over
12 that because -- and -- and considerable time over the
13 documents generally because these, you know -- any
14 time you're dealing with a new set of documents, you
15 want to make darn sure they -- it's exactly what they
16 want and that they understand all of the implications.

17 And I would have said upon their desire to
18 keep the flexibility of dealing with descendants on
19 the second death as a very customary framework for
20 clients with multiple siblings and the like.

21 So that's -- that's -- that's the whole
22 point of why we started in August is to end up with
23 the planning they wanted to implement, look at other
24 things that they could implement, that Robert Slain
25 and other third parties had pushed in front of them,

ROA 006187

Page 124

1 and -- and but what was most importantly, get those
2 documents signed.

3 I think you may have noted, you didn't
4 mention it -- that -- that they wanted to get it done
5 by December, and we got it done by December.

6 And they were fully informed. I can't tell
7 you exactly what I said, but I know what I've done for
8 over 50 years, and I think you -- and I'm very
9 thorough and very good and make sure they know what
10 they're -- they're doing and that that's what they
11 want to do.

12 Q. So this is based on not your recollection
13 specifically, but based on your practice?

14 A. Yes.

15 MR. TWOMBLEY: Object to the form.

16 THE WITNESS: I'm not going to put
17 the documents in front of them and say,
18 sign them. And I don't prepare them unless
19 I've had -- in this context because we were
20 and are talking about substantial wealth,
21 it was very important that they understand
22 the implications of what they were doing.

23 So I have no question but that I
24 spent ample time as -- as I think you can
25 sort of see the process. But it moved

ROA 006188

Page 125

1 forward fast because it was sort of --
2 everyone wanted to get it done right before
3 Christmas, which is not always my favorite
4 time to have to do that.

5 BY MR. MEDLIN:

6 Q. Understood.

7 So you wouldn't have put the powers of
8 appointment in the documents without already having
9 discussed it with them, correct?

10 A. No, we discussed it along the way. That
11 didn't just pick up. That was discussed along the
12 way.

13 Q. Yeah. Again, based on your practice?

14 A. Yes.

15 Q. So when did you -- when would you have --
16 when would you have discussed that with
17 Mrs. Barringer?

18 A. Either indirectly through Paul, or
19 certainly the day of the execution, and probably
20 before then.

21 Again, that's a pretty important decision
22 and one that spouses are interested in on both sides.
23 So it was a -- I know that there was absolutely just
24 because of the feeling afterwards that, you know, we'd
25 done a great job for them, and they were very

ROA 006189

Page 126

1 appreciative, and that -- that that was where they
2 came out, and we agreed that that made sense for all
3 of the reasons that had been rendered how to pull
4 forward.

5 Q. Did you meet with Mrs. Barringer before the
6 execution?

7 A. I can't tell you. I don't know that I did.
8 But I know that she would not have signed or been
9 asked to sign anything that I haven't been completely
10 discussed with her, and if it was at the meeting,
11 fine.

12 And I have -- there was -- that's just the
13 way it works. I don't have spouses just sign
14 documents that their spouse -- their other spouse puts
15 in front of them or their lawyer's counsel. That's
16 something that --

17 Q. If I understood your earlier answer,
18 Mr. McBryde, you would not even have prepared the
19 document for Mrs. Barringer dealing with powers of
20 appointment without having discussed it with her
21 first?

22 MR. TWOMBLEY: Objection.

23 THE WITNESS: I suspect that's
24 exactly the case, that's correct. How I
25 discussed it in with a telephone or any

ROA 006190

Page 127

1 other way, I -- I know that she would know,
2 and more importantly, it would be
3 reinforced and determined that she -- she
4 was quite capable of makings decisions
5 herself.

6 BY MR. MEDLIN:

7 Q. So to make a decision, she has to have a
8 discussion, correct?

9 A. Yes.

10 MS. PAYLOR: Objection to the form.

11 THE WITNESS: And there is no
12 question that we would have had and had a
13 material, substantive discussion to the
14 extent there was any discussions about that
15 because it's not only clear on its face,
16 but it does have implications which I know
17 they were cognitive of and wanted to have
18 that flexibility.

19 BY MR. MEDLIN:

20 Q. To have a discussion, she'd have to either
21 be present --

22 A. Correct.

23 Q. -- with you or have --

24 A. Or telephone or --

25 MR. TYLER: Let him -- let him --

ROA 006191

Page 128

1 Neill, let him finish his question.

2 THE WITNESS: Yeah. Go ahead.

3 BY MR. MEDLIN:

4 Q. Go ahead, Mr. McBryde.

5 A. No, go ahead.

6 Q. I was going to say a conversation by
7 telephone back in 1998?

8 A. I don't know what you were saying.

9 MR. TWOMBLEY: Can you restate the
10 question?

11 BY MR. MEDLIN:

12 Q. To have a discussion with her, you would
13 have had to have met with her in person or have had a
14 telephone call with her; is that correct?

15 A. Or -- yes, or -- or she would have gotten a
16 copy of the documents after I mailed them out on
17 December 2. They didn't execute them until
18 December 4.

19 Q. But that means that -- go ahead, I'm sorry.

20 A. No. I'm saying they did have all of the
21 basic answer in those documents.

22 Q. But she wouldn't have participated in
23 discussions before the preparation of the documents if
24 you did not have a conversation with her; is that
25 correct?

ROA 006192

Page 129

1 A. Probably not. I would have had a
2 conversation with her. But I can't separately recall
3 it, but I can absolutely state -- and I have never had
4 a client have a problem saying that they weren't
5 informed -- is that no one and neither of them would
6 have begun to execute those documents without a direct
7 discussion with me of the importance or lack of
8 importance, depending on how they come out, that --
9 that that's where they were going to go and give them
10 the power to make the final decision as to how the
11 property goes to descendants.

12 And that has been discussed, as you know,
13 along the way -- I think as you know from all of the
14 documents that you were presented, that that was an
15 important point.

16 So all I can say is I'm the best of the
17 best, and I -- I give them all the information they
18 need. I make sure they understand it and approve of
19 it and want to execute it.

20 And I had every sense of satisfaction that
21 process was properly implemented at the appropriate
22 time in the appropriate circumstances, so both of them
23 knew exactly the changes that were being made in that
24 regard.

25 Q. So if your notes don't show a meeting with

ROA 006193

Page 130

1 Mrs. Barringer, can we --

2 A. The notes show the meeting where her I know
3 on the 4th.

4 Q. If your notes don't show a meeting with
5 Mrs. Barringer before the execution of the documents,
6 can we rely on the notes?

7 MR. TWOMBLEY: Object to the form
8 asked and answered. We've covered all of
9 this.

10 THE WITNESS: Can you rely on the
11 notes. I don't know what you're saying.

12 BY MR. MEDLIN:

13 Q. Can we believe the notes if they show the
14 participants in discussions did not include
15 Mrs. Barringer before December 4th?

16 A. And I can't give you the definitive answer,
17 but I have said because I can't -- I would say it's
18 very -- would be very unlikely to not have gotten the
19 information to know that she got it.

20 But had -- had that not been the case, I
21 can flat guarantee you that I would not have her sign
22 this unless we had discussed it in full, if not
23 earlier, and if earlier, still at the time of
24 execution of the documents.

25 These were important documents. They both

ROA 006194

Page 131

1 knew they had a very substantial family structure in
2 terms of folks who were siblings, and they also knew
3 the magnitude of the wealth that might be coming, and
4 they were -- they -- and they were determined to go
5 ahead and get it done, and we got it done.

6 Q. Would there be a letter to Mrs. Barringer
7 that wasn't included in your file?

8 A. Not that I know of.

9 Q. So if the first letter to Mrs. Barringer
10 was dated December 2nd, you would not have written her
11 before then?

12 A. I don't know for sure. But I don't think
13 you get the point. And the point is, she would not
14 have done that -- signed that document with that
15 change in it unless she had had material substantial
16 discussions over time or any time and certainly at the
17 time of the meeting that gave me complete satisfaction
18 that she knew that -- when she signed the document,
19 that she knew or read it and sign it and did sign it.

20 Q. Would there be notes of that discussion and
21 explanation on December 4th, the date of execution?

22 A. There would need to be done -- none to be
23 done. I mean, I appreciate you're trying to make
24 something out of nothing, but the truth of the matter
25 is my professional career has been based on the

ROA 006195

Page 132

1 credibility of what I do and how well I do it.

2 And in particular -- not particularly, but
3 in the context of this magnitude, it is going to be
4 absolutely something that would have been discussed
5 and addressed and highlighted. So I feel very
6 comfortable in knowing that I did that.

7 Q. Do you recall what was said during the
8 discussion on December 4th?

9 A. No. You know, out of the 250 -- actually
10 probably 500 estate planning arrangements in my 50
11 years, I know what I do when I do something, and
12 that's not the way I operate. It's --

13 Q. Mr. McBryde, other than what Mr. Twombly
14 highlighted earlier, those few words, is there
15 anywhere else in your notes discussing or talking
16 about a power of appointment that you recall?

17 A. I -- I can't -- I'm not sure, but that came
18 up, and it was an issue, and I remember that orally
19 for sure, and so it had to be addressed.

20 And obviously, to have gotten the documents
21 in the form they got them, that was a big issue
22 because it was a big change.

23 And therefore, I'm sure along the way -- I
24 suspect for sure with Paul, but with Mrs. Barringer,
25 too, that was focused on and decided upon.

ROA 006196

Page 133

1 Q. Do any of your letters to Mrs. Barringer
2 prior to December 4th mention a power of appointment?

3 A. Not at least what our file shows.

4 Q. Do any of the diagrams that Mr. Slain
5 presented at that meeting show anything about power of
6 appointment?

7 A. They were not -- remember they started out
8 on all of these other things that they wanted to do,
9 but they ended up wanting to get their wills updated
10 and the power of appointment issue included in that as
11 the first priority and have it done quickly.

12 Q. Would you be surprised to know that
13 Mr. Jolly, who took over their estate planning in
14 2012, also produced diagrams along with Mr. Slain?

15 MR. TWOMBLEY: Object to the form of
16 the question.

17 THE WITNESS: I don't know what
18 you're saying, what happened.

19 BY MR. MEDLIN:

20 Q. Let's put it this way, are diagrams an
21 important part of the estate planners explaining
22 estate planning to clients?

23 A. They are helpful for sure. Yeah. I mean,
24 good gosh. If they can't read, you can't talk, and
25 it's hard to deal with clients.

ROA 006197

Page 134

1 Q. But that's why estate planners use the
2 diagrams, for exactly that reason, correct?

3 A. Well, no. It's just one of the -- it's
4 redundant. It's in the letter. It's in the diagrams,
5 and it's in the final documents that's prepared. And
6 I've been around -- I've been around with a lot of
7 clients. I've never had a problem, and I'm convinced
8 that they -- I mean, there is not even an issue that
9 they were fully informed when those documents were
10 signed.

11 Q. So is a power of appointment a intuitive
12 matter to non-lawyers in your experience?

13 A. In my experience, you will go through all
14 of the parameters when you've got multiple siblings,
15 and particularly, in this day in time, it's even worse
16 that you want to make sure that you never are fixed in
17 to the point -- if you have one of the adult parents
18 who were responsible for getting -- protecting the
19 children at the same time I guess, that they
20 considered that.

21 Do some accept it, or do some not want to
22 do that? Certainly. But it's -- it's something
23 that's actually done quite -- quite frequently.

24 Q. But do clients understand that before you
25 explain it to them in your experience?

ROA 006198

Page 135

1 A. Of course they do. I mean, the wording is
2 straight forward, and particularly when it's
3 reinforced orally and by written word and by modeling
4 with your exhibits.

5 Q. Yeah. I don't think that's my question,
6 Mr. McBryde. If I asked it poorly, I apologize.

7 When a client comes to you, do you think
8 they already understand about powers of appointment,
9 or do you explain that to them?

10 MR. TWOMBLEY: Object to the form.

11 THE WITNESS: Of course I explain it
12 to them.

13 BY MR. MEDLIN:

14 Q. You explain it to them because a non-lawyer
15 may well not understand that concept before they --

16 A. I suspect you may have lawyers that don't
17 know.

18 (Reporter asks for Clarification.)

19 BY MR. MEDLIN:

20 Q. So in your letter on page 75, you tell the
21 Barringers that this is the first time that they have
22 had a power of appointment; is that correct?

23 A. To my knowledge.

24 Q. All right. So I assume, based on your
25 previous questions and answers, you've never discussed

ROA 006199

Page 136

1 CFRC with Mr. Barringer because, if you'll let me
2 represent to you, it didn't exist at the time that you
3 did their estate planning.

4 So you did not discuss CFRC with them; is
5 that correct?

6 A. No.

7 Q. You did discuss Coastal Lumber, it looks
8 like, several places in your notes; is that correct?

9 A. Yes. But it never became a separate issue.
10 I think we worked with Coastal Lumber maybe earlier in
11 some context, but it was not front and center --

12 Q. So --

13 A. -- in planning prep -- in this planning
14 exercise, it ended up in the execution of the estate
15 planning documents.

16 Q. Do you recall if Coastal Lumber was
17 important to Mr. Barringer?

18 A. Yes. I remember the name. I remembered,
19 again, I spent a good bit of time and effort working
20 with them on a number of matters, but I don't have any
21 separate recall. This is 1998 or earlier. And,
22 therefore, I knew a lot about it, but that's not
23 germane to why we're here today.

24 Q. So you never discussed Coastal Lumber with
25 respect to his estate planning?

ROA 006200

Page 137

1 A. I'm sure we did. But this is -- I -- in
2 terms of -- he's got an estate, and he's going to pass
3 some interest in it, depending on whether or not he's
4 taken care of it during lifetime or otherwise, and
5 therefore, it's an asset of his estate.

6 But for purposes of preparing the will,
7 that doesn't come front and center because that was
8 being separately and had been separately worked on,
9 and that didn't specifically need to be addressed in
10 the context at that time in the will.

11 Q. Do you mean that the transfer of any
12 interest he had in Coastal Lumber was going to pass
13 outside of his estate planning?

14 MS. PAYLOR: Objection to form.

15 THE WITNESS: What I'm saying is it's
16 not material for purposes of deciding what
17 they wanted to do with whatever property
18 they had. If they had a Christmas tree
19 farm or whatever, you've got to get --
20 you've got to dispose of whatever is left.

21 And if there's separate planning
22 going on, which he had a whole lot of over
23 a number years, different kinds of planning
24 or interest property he owned or dealt
25 with, that doesn't mean that you have to