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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 XV OF XVII**

Desa Ballard (S.C. Bar No. 498)
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com

James R. Gilreath (S.C. Bar #02133)
William M. Hogan (S.C. Bar #65272)
THE GILREATH LAW FIRM, PA
110 Lavinia Avenue (zip 29601)
P.O. Box 2147
Greenville, South Carolina 29602
Telephone: 864.242.4727
Facsimile: 864.232.4395
jim@gilreathlaw.com
bhogan@gilreathlaw.com

S. Alan Medlin (S.C. Bar No. 3924)
1713 Phelps Street
Columbia, South Carolina 29205
Telephone: 803.777.7465
Facsimile: 803.777.7465
amedlin@sc.rr.com

Charles B. Macloskie (S.C. Bar No. 3514)
MACLOSKIE LAW FIRM
P.O. Box 280
Beaufort, South Carolina 29901
Telephone: 843.524.0909
Fax: 843.521.1379
macloskielawfirm@hargray.com

Thomas W. Traxler (S.C. Bar No. 5624)
CARTER, SMITH, MERRIAM ROGERS &
TRAXLER, PA
900 East North Street (29601)
P.O. Box 10828 (29603)
Greenville, South Carolina
Telephone: 864.242.3566
Facsimile: 864.232.1558
tom.traxler@carterlawpa.com

ATTORNEYS FOR APPELLANT

OTHER COUNSEL OF RECORD:

Alice Paylor, Esquire
Bijan Ghom, Esquire
ROSEN, ROSEN & HAGOOD, LLC
P.O. Box 893
Charleston, South Carolina 29402
apaylor@rrhlawfirm.com
bghom@rosenhagood.com

Attorneys for Respondents, Merrill B. Light, 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

Charles B. Molster, III, Esquire
THE LAW OFFICES OF CHARLES B. MOLSTER, III PLLC
2141 Wisconsin Avenue, N.W., Suite M
Washington, D.C. 20007
cmolster@molsterlaw.com

Attorney admitted *pro hac vice* for Respondents, Merrill B. Light, 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

J. Ashley Twombly, Esquire
Kevin Johnson, Esquire
Lee Anne Walters, Esquire
TWENGE + TWOMBLY LAW FIRM
311 Carteret Street
Beaufort, South Carolina 29902
Twombly@twlawfirm.com
kjohnson@twlawfirm.com
lwalters@rosenhagood.com

Attorneys for Respondent Merrill U. Barringer, individually and Respondent Merrill U. Barringer, as Personal Representative of the Estate of Paul Brandon Barringer, II

Harley D. Ruff, Esquire
Denise Collins, Esquire
RUFF & RUFF, LLC
17 Professional Village Circle
Beaufort, South Carolina 29907
hruff@ruffllc.com
dcollins@ruffllc.com

Attorneys for Respondent Merrill U. Barringer, as Personal Representative of the Estate of Paul Barringer, II

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Certificate of Counsel

ROA 006201

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1 mention every asset for purposes of knowing
2 that if they died tomorrow, what are we
3 going to do, regardless of the state of
4 that particular asset.

5 And that's what they want to make
6 sure they got covered and covered properly.

7 BY MR. MEDLIN:

8 Q. So have you had clients who have a
9 particular concern about how their family business
10 will pass?

11 A. You can't do everything in one will that
12 they said they wanted. They -- they have, and I'm
13 sure afterwards have, even though I wasn't
14 representing them, they had a lot going on.

15 This addresses one issue that had to be
16 addressed and should be addressed in the way they
17 wanted it addressed, regardless of whether a lumber
18 company or this or that, or assets all over the place,
19 timber.

20 You don't change the will because of the
21 fact that there are other assets that are in play.
22 You've got to have something that's ready to go.
23 That's why you have a will. And even if you die, that
24 would be nice, but never know.

25 Q. Well, let's say you have a client who is

ROA 006202

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1 the sole proprietor of a business and he wants to
2 leave it to his daughter only and not to his other
3 children. Would you --

4 A. If that's where he -- yeah, if that's where
5 it was, he would have told me. That would have been
6 the -- that is not where he was on December 24 and the
7 time before, fully informed, along with his wife of
8 what the ramifications would be if both of them died.

9 And I -- in fact, in many of my
10 discussions, I probably had with them I said, You've
11 got to realize, this is what -- you die, this is
12 what's going to happen. And, you know, I make sure
13 that they understand that they're making a decision
14 which will impact directly and indirectly, you know,
15 virtually all of their assets.

16 Q. And so your clients' intent, is what you
17 manifest in the documents, correct?

18 A. That's correct.

19 Q. And --

20 A. Will and testament and revocable trust --
21 (Reporter asks for Clarification.)

22 MR. TYLER: Repeat what you just
23 said. Repeat --

24 THE WITNESS: I Can't even remember.

25 MR. TYLER: If I may, I think he said

ROA 006203

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1 and the will and the trust documents.

2 BY MR. MEDLIN:

3 Q. The estate planning documents I think we're
4 talking about, which would include the will and
5 irrevocable trust, correct?

6 A. Correct, yeah.

7 Q. Sorry, Mr. McBryde. So if a clients'
8 intent is set forth in the documents, that's the
9 intent that existed at that time, correct?

10 A. That's correct.

11 Q. And that would be based on the fact and
12 circumstances that existed at that time, correct?

13 A. And their decisions with respect to any
14 fact and circumstances that were germane as discussed
15 and concluded and memorialized by the execution of the
16 documents that went the way they wanted to go.

17 Q. But unless we represent psychics, they have
18 to base their intention on the way -- the way the
19 world exists at the time we prepared the documents,
20 correct?

21 MS. PAYLOR: Object to the form.

22 THE WITNESS: If you are saying I can
23 do a will only once and then I do it for my
24 wife, no. That's absurd.

25 BY MR. MEDLIN:

ROA 006204

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1 Q. Things change after documents are executed,
2 and we can't anticipate every change?

3 MS. PAYLOR: Object to the form.

4 THE WITNESS: Is that a question?

5 BY MR. MEDLIN:

6 Q. Question mark at the end.

7 MR. TYLER: We're going to -- we're
8 going to propose to break here when you
9 have a good moment, Alan, for -- for about
10 20 minutes for lunch, but you tell me when
11 you want to do that.

12 MR. MEDLIN: I want to do it when
13 Mr. McBryde wants to do it.

14 THE WITNESS: I'm all for eating.

15 MR. TYLER: We are going to do that
16 now then. Can you give me a sense of how
17 much longer you think you have, Alan?

18 MR. MEDLIN: It's going to be a
19 while. Again, I'm not good at estimating
20 how long I'm going to talk.

21 MR. TYLER: I'm not asking for -- I'm
22 not asking for a commitment. I'm asking
23 for an estimate.

24 THE VIDEOGRAPHER: The time on the
25 monitor is 12:54 we are off the record.

ROA 006205

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1 (Recess taken.)

2 THE VIDEOGRAPHER: The time on the
3 monitor is 12:55 p.m. We are back on the
4 record.

5 MR. TWOMBLEY: All right. This is
6 Ashley Twombley. We briefly went off the
7 record, at which time I think Mr. McBryde's
8 counsel asked how long -- how much longer
9 the plaintiff's counsel had for
10 questioning. And I think you said you
11 thought several hours, Alan, but you didn't
12 want to be held in a commitment, and I
13 understand that.

14 And then Mr. McBryde said that he
15 felt that you had spent about an hour on
16 asking the same question over and over
17 again, and then I asked for us to come back
18 on the record so we can have this
19 discussion. So I just want to have a
20 record of, you know, whatever we discuss so
21 that, you know, if it ever needs to be
22 looked at, there would be a record of it,
23 so --

24 MR. MEDLIN: Ashley, I object
25 stringently to your letting us go off the

ROA 006206

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1 record, having a conversation, then try to
2 put on the record what that off-the-record
3 conversation was. So unless you've got
4 certification as a court reporter and we
5 were on the record, I just object to what
6 you just did and what you just said.

7 MR. TWOMBLEY: Well, let me ask
8 Scott.

9 Did I misrepresent anything in your
10 opinion about what was said off the record?

11 MR. TYLER: I don't think you did
12 but --

13 MR. TWOMBLEY: Wait a minute. Wait a
14 minute. Since that assertion has been
15 made, I just want to ask, does anybody on
16 this call, other than plaintiff's counsel
17 including Mr. McBryde, contend that I
18 misrepresented what was said during the,
19 you know, 40-second break? If anyone does,
20 please let me know, because I obviously did
21 not intend to misrepresent anything that
22 was said. I was trying to simply get a
23 summary of what was said so that this
24 conversation would have context.

25 MR. MEDLIN: And your point is --

ROA 006207

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1 MS. PAYLOR: I think you were right,
2 and I think Mr. McBryde should go ahead and
3 tell Mr. Medlin what he was saying that he
4 thought about the first hour of the
5 deposition, so that it's on the record and
6 not just your --

7 MR. MEDLIN: Why don't you ask him
8 that, Alice, when you get a chance to
9 question the witness. Why don't you ask
10 him that. This is my part of the
11 deposition, and I'm asking the questions.

12 And, Ashley, yes, I disagree with
13 exactly the way you stated what was said
14 when we went off the record. But more
15 problematically, I disagree with the fact
16 that we go off the record to have a
17 conversation among counsel, and then you
18 put that conversation or attempt to put
19 that conversation on the record. That is
20 the purpose of going off the record.

21 MR. TWOMBLEY: Well, you know, the
22 problem is, just respectfully, is that, you
23 know, I think you spent an incredible
24 amount of time with Mr. McBryde on some
25 totally irrelevant and immaterial issues.

ROA 006208

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1 And I am fearful, respectfully, that you
2 are going to spend hours and hours of more
3 additional time on what I think are totally
4 irrelevant and immaterial issues.

5 And, you know, I just wanted to
6 memorialized that Mr. McBryde said sua
7 sponte, on his own, that he also thought
8 that you had spent an hour asking the same
9 question or something to that effect.

10 But, look, I -- you know, again, I am
11 not trying to hold anybody to anything, but
12 I do want there to be a record of, you
13 know, what -- what was said. So --

14 MR. MEDLIN: All right. So next time
15 don't agree to go off the record, and we'll
16 create a record.

17 MR. TYLER: Well, this is Scott. I
18 am going to revisit this question,
19 repeatedly if we need to, so we will stay
20 on the record each time we do that. And
21 when I first talked with Bill about this
22 deposition six weeks ago and when the
23 plaintiff had subpoenaed Mr. McBryde, I was
24 told that your exam on the plaintiff's side
25 would be two to four hours. And, you know,

ROA 006209

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1 I'm not holding anyone to any exact time
2 frames either, but I think it's reasonable
3 to be asking and getting some sense as to
4 how long we are going to go. I mean, at
5 some point I'm going to tell you how much
6 longer you have, and I prefer not to get to
7 that spot.

8 So let's take our break, and we will
9 revisit this issue as we go forward.

10 THE VIDEOGRAPHER: All right. The
11 time on the monitor is 12:59 p.m. We are
12 off the record.

13 (Lunch recess taken.)

14 THE VIDEOGRAPHER: The time on the
15 monitor is 1:30 p.m., and we are back on
16 the record.

17 BY MR. MEDLIN:

18 Q. Mr. McBryde, I hope you enjoyed the short
19 lunch that we had. I want to pick back up with
20 something that I want to deal with before I get back
21 to the line of questioning that I was on when we
22 broke.

23 If you recall, or you can look at the
24 letter that we talked about on page 75 of our
25 documents, the ones I think you still have in front of

ROA 006210

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1 you?

2 A. Uh-huh (affirmative.)

3 Q. And if you flip to the end of that letter,
4 before you get to the attachments or inclusions.

5 It should be page 79.

6 A. Yeah.

7 Q. Is that signed?

8 A. No.

9 Q. Do we have a signed version in your file?

10 A. I feel certain we do. If that was -- that
11 went out December 2.

12 Q. Well, would you have sent out an unsigned
13 letter?

14 A. I don't think so. So I will have to just
15 go with, I didn't know that it was unsigned but...

16 Q. Do you know why a signed version, if one
17 exists, wasn't produced?

18 A. I don't know that it wasn't. I do not
19 know. It wasn't addressed. I just didn't pick that
20 up. But I'll -- I'll go see what we can do.

21 Q. And this was sent on December 2nd by
22 U.S. mail, correct?

23 MR. TWOMBLEY: I'm going to object to
24 the form of the question.

25 THE WITNESS: It doesn't look like

ROA 006211

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1 it's U.S. mail. I usually put that on top
2 if it is. I don't recall.

3 BY MR. MEDLIN:

4 Q. Don't you otherwise, in your file, show
5 when something was faxed with a fax receipt or UPS --

6 A. Have you --

7 Q. -- UPS receipt?

8 A. Have you looked on page 1 of 1 at the end
9 of that? UPS Next Day.

10 Q. What page are we looking at?

11 A. If you just keep on going.

12 Q. Well, you direct me to the page number you
13 are talking about.

14 A. I see that is for the 27th. Via UPS.

15 Q. That would be an earlier letter, wouldn't
16 it be?

17 A. Actually, that's the ending. That is the
18 ending letter. That's the 27th.

19 Q. That was one sent a couple of years later
20 when you transmitted the documents, correct?

21 A. Oh, okay. You are right. I just -- you
22 set these documents up. Let's see.

23 Q. Those documents are in the form we received
24 them, Mr. McBryde.

25 A. Yeah.

ROA 006212

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1 Q. And the order.

2 A. What is the question?

3 THE WITNESS: Well, I'm -- I'm --

4 MR. TYLER: Let him ask the question.

5 THE WITNESS: The question is, was
6 this sent because it's not signed.

7 BY MR. MEDLIN:

8 Q. And the question is, was it mailed?
9 Because I don't see a UPS or a fax receipt
10 accompanying that letter.

11 A. I feel certain it was mailed, but I will --
12 we'll confirm that.

13 Q. All right. So if it was mailed, it was
14 mailed on December the 2nd, wouldn't you think?

15 A. You know, it wouldn't have been mailed
16 unless it could get there. I can't tell you right
17 now.

18 Q. Well, the letter is dated December 2nd,
19 correct?

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

22 THE WITNESS: Yeah.

23 BY MR. MEDLIN:

24 Q. You would want have mailed it before it was
25 dated, correct?

ROA 006213

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1 A. I said you're going to have to let me just
2 check. I can't -- you say that 10 times. We'll check
3 and confirm.

4 Q. If it were mailed on December the 2nd --

5 A. I will check and confirm. I can't do
6 anything right here. Do you want to go look in the
7 files now, so --

8 Q. That is not my question, Mr. McBryde. I'm
9 sorry.

10 A. It is your question. But go ahead.

11 Q. No. If it were mailed on December the 2nd,
12 is my question now -- that is a different question,
13 that is assuming that it was mailed on December 2nd --
14 when do you think that letter might have arrived in
15 Hilton Head, South Carolina?

16 A. I'm not going to go on your assumption that
17 it was not sent and received in whatever format that
18 they would have gotten it because sent -- obviously,
19 we sent them information right after that by UPS or
20 whatever it was, and I wouldn't be surprised if this
21 was not sent at least in the same manner.

22 Q. But when you say "right after," that was
23 actually a couple of years later transmitting the
24 documents, correct?

25 A. Yeah.

ROA 006214

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1 Q. And --

2 A. Again, I can't do anything now but say
3 we'll look immediately and see if we have it.

4 Q. That is not my current question,
5 Mr. McBryde. I appreciate you --

6 A. But your hypothetical, that makes no sense.

7 Q. If you mailed the letter on December the
8 2nd, it would have arrived in Hilton Head after
9 December the 2nd, correct?

10 A. I don't know.

11 MS. PAYLOR: Object to the form.

12 THE WITNESS: I don't know.

13 BY MR. MEDLIN:

14 Q. U.S. mail can get the letter the same day
15 to the recipient?

16 A. I don't know.

17 Q. So if, in fact, it got there on say
18 December 3rd, let's say you sent it by FedEx --

19 A. Yeah.

20 Q. -- when did we execute the documents?

21 A. On the 4th.

22 Q. And where did we execute the documents?

23 A. I -- I can't recall. Obviously, somewhere
24 because we would have formed the docs.

25 Q. Let's assume that it was Charlotte since

ROA 006215

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1 the notary signed --

2 A. Yeah.

3 Q. -- in Mecklenburg County.

4 A. Yeah.

5 Q. So the Barringers have a letter sent to
6 them in Hilton Head. They are supposed to digest all
7 of this and get to Charlotte and execute the documents
8 within two days of the time the letter is dated; is
9 that correct?

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

12 THE WITNESS: It's a hypothetical.
13 On a hypothetical, yes. I have no idea,
14 and I suspect this hypothetical is garbage.
15 But just -- we'll see.

16 BY MR. MEDLIN:

17 Q. Mr. McBryde --

18 A. And in any event -- and in any event, they
19 did execute the documents in our presence when they
20 were executed.

21 Q. Yes. As you've testified and as those
22 signatures would seem to indicate.

23 A. Yeah.

24 Q. So let's get back to the questions that we
25 were looking at before we took a lunch break.

ROA 006216

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1 I was asking about how you treat a client
2 who wants to make a specific disposition of his or her
3 business. Do you just include that in the overall
4 estate planning dispositive provisions, or do you make
5 specific dispositive provisions about that?

6 A. At the time this will and trust were
7 executed, you take the documents and they make them
8 say that whatever assets are, this is what it's going
9 to be. If you have separately not yet finished on
10 some planning exercise with respect to an asset, you
11 are not going to wait a week or a month or a year. I
12 hope you've never told a client to, don't sign this
13 because we need to add some more stuff in there later
14 on. I'd say, fine, we will do it colossal as soon as
15 we get through. I mean, that -- that is what you are
16 saying.

17 Q. But we did no other estate planning
18 documents for the Barringers after December 4th, 1998,
19 correct?

20 A. That is their decision and/or their --
21 didn't want to do anything further at that point.

22 Q. So if I have a client who has a closely
23 held business, she owns all the stock, she wants to
24 leave all the stock to her daughter, but the rest of
25 her estate equally among her children, you would have

ROA 006217

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1 a specific provision as to that stock, correct?

2 A. If there were a change in decision, you'd
3 have to have a valid provision. That is not where she
4 was when she signed it at this point. So, I mean, you
5 are giving a hypothetical off a hypothetical.

6 Q. No, I'm not doing that, but I appreciate
7 your thought about that.

8 If a client comes to you, you've never done
9 an estate plan for the client before, and says, look,
10 I've got all these assets, generally I want them to go
11 to my children equally, but I want my closely held
12 business to go to my daughter who works for me. You
13 would have a specific provision in that set of
14 documents leaving the stock of that closely held
15 business to that daughter, correct?

16 MS. PAYLOR: Object to the form.

17 MR. TWOMBLEY: Object to the form.

18 MS. PAYLOR: You are asking for a
19 hypothetical.

20 MR. TWOMBLEY: And asked and
21 answered.

22 THE WITNESS: That is not a -- that
23 is not a hypothetical because at that point
24 in time we have a decision made by her that
25 clearly does not anticipate the

ROA 006218

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1 hypothetical.

2 BY MR. MEDLIN:

3 Q. And you would --

4 A. Because the hypothetical wasn't in place at
5 that point in time.

6 Q. Did you discuss specifically with Mr. and
7 Mrs. Barringer, that the power of appointment would
8 include Mr. Barringer's troubling interest in Coastal
9 Lumber?

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

12 THE WITNESS: I discussed, I am sure,
13 that it applies to all of the assets now
14 owned that they owned in their individual
15 names or interests therein, if they were
16 not otherwise disposed of.

17 BY MR. MEDLIN:

18 Q. Okay. So as he processes that, he is
19 thinking, here is what I own, and all of that is
20 subject to the power of appointment, correct?

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

23 THE WITNESS: No. I don't have no
24 idea that that's it. You can't -- you
25 can't say that, and you don't know that.

ROA 006219

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1 And I think that is wrong because he knows
2 what he has done and she knows what has
3 been done at the point of execution, and
4 therefore, there will be.

5 Obviously, if you start doing things
6 with other assets that become -- needed to
7 be addressed separately, they can do what
8 they have done in the past, I'm sure, is
9 that additional estate planning documents
10 such as consoles or amendments to trust.

11 BY MR. MEDLIN:

12 Q. But we are focusing on your documents and
13 your discussions with Mr. --

14 A. At that point in time, not -- yeah.

15 Q. Yes. So at that time, he would have
16 understood based on his discussions with you that
17 whatever he owned at that time would be subject to a
18 power of appointment?

19 MR. TWOMBLEY: Object to the form of
20 the question.

21 THE WITNESS: Yes. Absolutely.

22 BY MR. MEDLIN:

23 Q. And if he did not have a controlling
24 interest in the company at that time, he wouldn't have
25 thought that a controlling interest would be subject

ROA 006220

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1 to that, correct?

2 MR. TWOMBLEY: Object to the form of
3 the question.

4 THE WITNESS: Say it again. I don't
5 understand that.

6 BY MR. MEDLIN:

7 Q. If he didn't own the Brooklyn Bridge at the
8 time he executed those documents, he would not have
9 thought that he would -- might be conveying the
10 Brooklyn Bridge under a power of appointment. It
11 would --

12 A. Of course, he would. He knows what he
13 owns, and he knows what he owned at that moment. The
14 fact that he may not own it five days later or 10 days
15 later or three years later or seven years later, he
16 knows that I've got to make an amendment to the will
17 if that's -- or a trust as applicable.

18 Q. Right. He knows he would have to make an
19 amendment, correct?

20 A. On your hypothetical. I don't accept the
21 fact that he'd do any of that, but I'm -- you used a
22 hypothetical.

23 Q. Right. So Mr. Barringer, if he did not
24 have controlling interest in Coastal Lumber at the
25 time you created these documents, would not have

ROA 006221

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1 thought that he was conveying a controlling interest
2 under a power of appointment, he didn't own it?

3 MR. TWOMBLEY: Object to the form of
4 the question.

5 THE WITNESS: No, I don't -- I mean,
6 I just don't understand what you are
7 saying.

8 BY MR. MEDLIN:

9 Q. Do you know whether Mr. Barringer had
10 controlling interest in --

11 A. It --

12 Q. -- Coastal Lumber when you represented --

13 A. It doesn't matter. He was -- executed the
14 will. If he died that day, the moment -- before he
15 had a will, he wouldn't have gotten the result that he
16 wanted based on whatever assets happened to be still
17 in his name.

18 So a will is almost -- that is why we keep
19 them coming back as often as we can. We want to take
20 into account any change in circumstances, and when
21 they occur -- and we knew there were going to be
22 change in circumstances, look at all the planning
23 between all this and December 4. There was going to
24 be a lot more planning. And they have to be updated
25 as the clients are willing and want to pay lawyers to

ROA 006222

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1 do it. And that is -- your premise is, well, unless
2 everything is squared away, whether it be a closely
3 held business or whatever, you got to wait, you got to
4 wait, you got to wait. Huh-uh. That is -- if you did
5 that in your practice, you'd go bankrupt. But any
6 rate, so that is -- that is the point and that the
7 answer to your question.

8 Q. Yeah. That is not exactly my question, but
9 I will accept your answer as your answer to my
10 question.

11 If Mr. Barringer thought that he might be
12 hit by a Mack truck the day after he executed the
13 will, then he would be thinking that whatever I had is
14 going to pass into the revocable trust and at my
15 wife's death she has the power to appoint?

16 A. That is correct.

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

19 BY MR. MEDLIN:

20 Q. So if he did not have a controlling
21 interest in the company on the day he executed the
22 documents, he wouldn't be thinking that if a Mack
23 truck hit him the next day, somehow magically a
24 controlling interest in the company would pass to his
25 wife.

ROA 006223

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1 MR. TWOMBLEY: Object to the form of
2 the question.

3 THE WITNESS: I can't accept that
4 premise that he knows what he has. And he
5 had a lot of different assets, and he was
6 going to have to straighten them out. And
7 he did -- and he consciously and regularly
8 sort of went through these assets.

9 So on your premise, you can never --
10 this is the second time you have done this.
11 You are sort of saying, you can't do a will
12 if you've got some more things to do or
13 it's not going to be perfect. He wanted
14 the will. He said, I want it by
15 December -- actually, he said he wanted it
16 by November, but we got it in December.
17 That is pretty good. And you saw that in
18 the language. And that was it. He wanted
19 to get that will up to date on that --
20 which included the issue that we are
21 talking about.

22 BY MR. MEDLIN:

23 Q. Right. And so his asset ownership changed
24 after that, you would think he would make an amendment
25 to his will?

ROA 006224

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1 MR. TWOMBLEY: Object to the form of
2 the question. That is assuming he wanted
3 to make a change.

4 THE WITNESS: Absolutely. I would --
5 I would -- with that -- in hearing that,
6 when he wanted to make a change, he can
7 make a change. And if he decided -- you
8 don't know, you're not in his mind. You
9 don't know what really is going to happen.
10 And if he died the next day, he would be in
11 worse shape if he hadn't changed everything
12 in the sense that they wouldn't have been
13 able to implement the very -- one of the
14 key things that was changed to the trust --
15 to the will in the first place in the
16 trust.

17 MR. TWOMBLEY: And, Alan, I
18 apologize. I thought I was on mute when I
19 said that, and I just realized I wasn't.
20 So I apologize.

21 MR. MEDLIN: Well, only because I
22 don't have a mute button, Ashley, are you
23 able to speak now. I'm trying to figure
24 out how to do that.

25 I am kidding, and I accept your

ROA 006225

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1 apology, of course. You don't ever need to
2 apologize to me, but appreciate you doing
3 that.

4 BY MR. MEDLIN:

5 Q. Whatever Mr. Barringer owned in company
6 stock in 1998 when you executed these documents, even
7 if he meant to give it to Mrs. Barringer to distribute
8 at her death under the power of appointment, could
9 they have agreed that she would not do so?

10 A. All I can say is that through the date of
11 execution, that had not come up in any sense that they
12 both agreed that they would have that provision in
13 there to have that approach and provision. Now, could
14 they change their mind a month later, a year later, a
15 decade later? Sure.

16 Q. Could they have agreed without telling you?

17 A. I guess if they wanted to, but that is just
18 such rank speculation. They didn't tell me. And I
19 gave them every opportunity, and they didn't seem to
20 have any issue. They did what they -- that is the
21 whole point. You missed it. They did what they gave
22 professional advice of counsel to make sure that this
23 is what they wanted and how they wanted to go. This
24 is what they wanted to do, and they wanted to
25 memorialize it in the will in November -- or December

ROA 006226

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1 we finally got it done.

2 Q. And again, that is based not on your
3 recollection but on your practice?

4 MR. TWOMBLEY: Object to the form of
5 the question.

6 THE WITNESS: Yeah. If you can
7 say -- maybe you used to do this. I don't
8 know now. You go in and -- and say, sign
9 this. We don't do that. You may have.
10 You may have had a practice with somebody
11 that does that. We don't do that. I've
12 never done that. I am going to force them
13 as much as they dislike it and probably
14 if -- if it's been a long exercise, I'm not
15 even going to bill them all for it. But
16 that is -- that is -- that is what you do.

17 Again, you are saying, oh, can't sign
18 anything, and even if you tell them fully
19 disclosed, get every feedback, unless
20 they've done X, Y and Z looking back. You
21 just -- that is not the way a good lawyer
22 works.

23 BY MR. MEDLIN:

24 Q. If the Barringers had such an agreement,
25 would they have to tell you for it to be valid?

ROA 006227

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1 MR. TWOMBLEY: Object to the form of
2 the question. It calls for a legal
3 conclusion.

4 THE WITNESS: I -- I have not
5 researched that issue or anything. I have
6 no idea.

7 BY MR. MEDLIN:

8 Q. Well, you talked about --

9 A. I know that -- I know their will is going
10 to be valid whether or not they had concluded
11 something behind the scenes or off the record. If
12 they died the next day, or one of them does or he
13 does, it will be as -- as is -- where the property and
14 where the assets are because that is what he wanted it
15 to be at that point in time.

16 Q. But you talk about such an agreement in our
17 affidavit, right? You volunteered the discussion
18 about this, correct?

19 A. Yeah.

20 MR. TWOMBLEY: Objection to form --

21 THE WITNESS: His agreement -- do you
22 mean on the issue itself?

23 BY MR. MEDLIN:

24 Q. Yes, sir.

25 A. He wanted to allow the second spouse. She

ROA 006228

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1 wanted to allow -- allow the second spouse as the
2 documents state in terms of what they executed right
3 then and there. And to the extent there was cleanup
4 that you assert hypothetically and anything -- that is
5 going to be true, they were saying, this is where we
6 are now. If one of us died right now, this is the way
7 we want to go. We got plenty of time, probably they
8 were saying themselves, if you in fact correct --
9 which I don't concede one way or the other -- that
10 there is some more cleanup that is going to be done or
11 needs to be done based on a lot of other planning
12 suggestions that we had put in place from August until
13 December. They had a lot of time to think about all
14 of that. A lot of time to make change if they wanted
15 to before they executed the documents. But they
16 wanted to go ahead and get the documents updated on
17 that point.

18 Q. Well, when you say "they," you mean he,
19 because we don't have any evidence that you ever had
20 any discussion with Mrs. Barringer before
21 December 4th, correct?

22 MS. PAYLOR: Object to the form.

23 THE WITNESS: I'm saying "they,"
24 because before they executed it, they heard
25 and would have received and did receive the

ROA 006229

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1 information about what the big change or
2 how it's working out in terms of what would
3 happen if one of them died in terms of how
4 it went to the children.

5 BY MR. MEDLIN:

6 Q. Yeah. I was simply referring, Mr. McBryde,
7 to your comment that this was a lengthy process from
8 August to December and they had been discussing that.

9 We don't really know it was they, is my
10 point, during that period of time, from August --

11 A. We've spent 10 minutes on this, literally
12 10 minutes.

13 MR. TYLER: Yeah, don't --

14 THE WITNESS: You asked the same
15 question.

16 MR. TYLER: Just stop. Stop. He is
17 going to move on. He is not going to
18 answer that again. He's already answered
19 it multiple times.

20 MR. MEDLIN: On what grounds -- on
21 what grounds are you instructing him not to
22 answer?

23 MR. TYLER: Because he has already
24 answered it 10 times. And I'm in control
25 of this deposition, and he's going to move

ROA 006230

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1 on. So ask your next question.

2 MR. MEDLIN: And -- well, we'll talk
3 about who's in control of the deposition
4 later. Mr. Twombly might have an issue
5 with that as well.

6 BY MR. MEDLIN:

7 Q. So could she have promised him that she
8 would not exercise that power of appointment?

9 A. At the moment she executed, if she is, it's
10 totally -- they gave no indication, and indeed, if she
11 promised him, he is smart enough to know, well, gosh,
12 if it's so important that he has got her to promise
13 him, that they would have told me and we would have
14 added that in there.

15 Q. And that promise could have occurred later,
16 too, correct? Again, not saying it happened, but if
17 you wouldn't --

18 MS. PAYLOR: Alan, we can't hear you
19 anymore.

20 MR. TYLER: Yeah, we can't hear you.

21 THE WITNESS: We can't hear you.

22 (Off the record.)

23 BY MR. MEDLIN:

24 Q. Okay. They would have entered into an
25 agreement afterwards, correct?

ROA 006231

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1 A. They could have entered into agreement
2 before, but they didn't. And they could do it
3 afterwards.

4 Q. And you wouldn't know about the afterwards,
5 correct?

6 MS. PAYLOR: Objection to form.

7 BY MR. MEDLIN:

8 Q. You said they -- you said they didn't
9 afterwards. How do you know they did not enter into
10 an agreement after December of 1998?

11 A. Well --

12 Q. How do you know that?

13 A. -- I'm just saying if they -- you can
14 always change a will and a trust, if they're --
15 basically the will, and you die, and the trust if it's
16 revocable. Therefore, to the extent they wanted to
17 make changes after December 6th, they could make
18 changes. Certainly. They could --

19 Q. And they --

20 A. They could --

21 Q. Sorry. I keep interrupting you. Sorry.

22 A. No. They can make it. But that is not
23 where they were. And the very fact that it was never
24 changed to me is you are really making the concrete
25 case, if they knew about all of this and wanted it

ROA 006232

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1 done, that they really didn't want to do it as you
2 seem to assert.

3 Q. How do you know that they did not want to
4 enter into an agreement or that she made a promise
5 after they last saw you?

6 MR. TWOMBLEY: Object to the form of
7 the question.

8 THE WITNESS: I'm just saying, if
9 they didn't make the change, the
10 presumption has got to be since they knew
11 what they were doing, they got -- knew
12 specifically what they were doing, that
13 they didn't want to change.

14 BY MR. MEDLIN:

15 Q. If they knew, if I heard you correctly, if
16 they knew.

17 MR. TWOMBLEY: Object to the form of
18 it the question.

19 BY MR. MEDLIN:

20 Q. Is that what you answered?

21 A. No. I'm saying they knew. You are saying
22 if they knew. They knew. I know they knew. That
23 is -- and your clients, if you were in the will
24 execution process, you would do what I did. And I
25 hope you would. You -- you are a great lawyer. And

ROA 006233

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1 you -- and maybe wouldn't do quite as well as I have.
2 But I fully -- fully explained. And we did. And that
3 is what they wanted to do at that point in time.

4 Q. Let's look at page 45 of those notes.

5 A. Okay.

6 Q. All right. Just to make sure we have the
7 right page, that will be also --

8 A. 17.

9 Q. -- 45.

10 A. Yeah, page 45. But it's -- 17 is circled
11 at the top.

12 Q. Yes. And at the bottom, Mr. McBryde, just
13 to be sure, it shows me McBryde documents page 42.

14 A. That is correct.

15 Q. All right. Now, this is the document that
16 Mr. Twombly showed you earlier, correct?

17 A. Yes.

18 Q. And he highlighted five words: "LPA in" --
19 well, excuse me -- six words -- "LPA in favor of
20 descendants only," correct?

21 A. Yeah.

22 Q. Do you recall that?

23 A. I think that is near the bottom.

24 Q. Yes, sir. On the left towards the bottom.

25 A. Yeah.

ROA 006234

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1 Q. All right. What is -- what is to the left
2 of that language?

3 A. Well, it's possible, as long as possible --
4 GST as long as possible, two marks LPA -- in the
5 PowerPoint -- in favor of descendants only. And that
6 is -- that is reflective of their conclusion that we
7 discussed and which is incorporated in the documents.

8 Q. Based on your practice, correct?

9 MR. TWOMBLEY: Object to the form of
10 the question.

11 MS. PAYLOR: Object to the form.

12 BY MR. MEDLIN:

13 Q. So, Mr. McBryde, what is a generation
14 skipping transfer trust tax -- transfer trust in five
15 words or less? I'm kidding.

16 But generally, what is a GST? What does
17 that mean?

18 A. That would be if you skip a generation.

19 Q. Okay. So what is -- what is typically the
20 purpose --

21 A. It's a tax thing that you're -- you're --
22 go ahead.

23 Q. You are anticipating my question, so please
24 keep answering, sir.

25 A. Well, that is a generation skipping trust,

ROA 006235

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1 which means you could potentially skip a generation.

2 Q. And certain states maybe longer?

3 A. I don't know if we've got rule against
4 perpetuities or stuff like that. But generally, I'm
5 referring to the run-of-the-mill generation skipping
6 trust arrangements.

7 Q. Right.

8 A. And if you look in my will books, I've done
9 three of them, or your document forms.

10 Q. And don't about half the states now, not
11 have any rule against perpetuities?

12 A. Bottom note, that is correct.

13 Q. Yeah. And that sort of creates a Delaware
14 tax trap opportunity --

15 A. Yeah.

16 Q. -- in those states, right, to sometimes get
17 tax advantages?

18 A. Uh-huh (affirmative.)

19 Q. So if I understand your answer correctly,
20 we have a parent who creates the trust and benefits
21 the children, but ultimately, benefits grandchildren;
22 is that the basic premise of a GST?

23 A. Yeah. But it could -- you could put some
24 more provisions in the GST trust for the -- wherever
25 you want to put it. But, yeah, it's GST, generation

ROA 006236

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1 skipping, but that is all.

2 Q. Right. And for tax reasons, we have to
3 limit the ownership of the children in that trust
4 property, right?

5 A. That is correct.

6 Q. And how do we typically do that?

7 A. How would you do it? I mean, basically,
8 you can have a separate generation skipping trust.
9 That has nothing to do with what we have. It could be
10 through an exercise of power of appointment, I
11 suppose, but I don't think even that actually plays
12 out as a generation skipping trust.

13 Q. If you give a child a limited power of
14 appointment in a generation skipping trust, then that
15 property is not captured as the child's estate,
16 correct?

17 A. That is correct.

18 Q. And so the tax purpose of a generation
19 skipping trust is to try not to get taxed at every
20 generation, right?

21 A. That is correct.

22 Q. And there are exemptions to rules where
23 Congress tries to prevent estate planners from playing
24 games like that, right?

25 A. Yeah. I don't know which one you are

ROA 006237

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1 referring to, I mean.

2 Q. Just generally --

3 A. Yeah.

4 Q. -- I think you will agree.

5 A. Yeah.

6 Q. Is there a generation skipping trust in Mr.
7 Barringer's revocable trust?

8 A. In the current?

9 Q. In the '98, yes, sir.

10 A. In the '98 trust. I think there could be.
11 And I just have to go back because that is not one I
12 have been focusing on. But you could exercise that
13 power of appointment and skip a generation.

14 Q. Well, if you didn't exercise -- if you
15 didn't exercise the power of appointment, it would
16 skip a generation, too, correct?

17 A. Because it's going to a generation skipping
18 trust. If you --

19 Q. Right.

20 A. Yeah. But --

21 Q. But my -- my question is a little
22 preliminary to all that answer there, Mr. McBryde.
23 The 1998 trusts that you created, the revocable trust
24 that you created for Mr. and Mrs. Barringer, have
25 generation skipping trusts in them, correct?

ROA 006238

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1 MR. TWOMBLEY: Object to the form.

2 THE WITNESS: Well, if the -- at
3 death of one of the spouses, it keeps on
4 going, the GST trust, but that surviving
5 spouse can revisit how the property is to
6 be distributed, not only to, how, when,
7 where, or eliminate it.

8 BY MR. MEDLIN:

9 Q. Your plan and your diagrams show generation
10 skipping exempt trusts and not exempt trusts?

11 A. Oh, yeah. You've got a GST exempt and
12 non-exempt, because you only have so many exemption.
13 Yeah.

14 Q. Right. And in fact, even though your
15 affidavit talks about Trust A and Trust B and the
16 trust under Item 5, there really can be another trust
17 which is a 90 percent trust, right?

18 A. That is correct.

19 Q. So if we have a GST trust and we want to
20 make sure that the assets don't get captured in the
21 child's estate, the most we can give that child is a
22 limited power of appointment, right?

23 A. Okay.

24 Q. You agree?

25 A. Play it out and tell me -- tell me why you

ROA 006239

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1 think that is the case but --

2 Q. Well, if the child -- if the child has a
3 general power of appointment, that property is going
4 to be captured in the child's estate, right?

5 A. Sure.

6 Q. Okay.

7 MR. TWOMBLEY: Object to the form of
8 the question.

9 BY MR. MEDLIN:

10 Q. So the way to avoid that capture at the
11 child's level is to give only a limited power of
12 appointment to a child, right?

13 MR. TWOMBLEY: Object to the form of
14 the question. It misstates --

15 THE WITNESS: I --

16 (Reporter asks for clarification.)

17 MR. TWOMBLEY: This is Mr. Twombley.
18 I objected to the form of the question on
19 the grounds that it misstates the trust
20 document and the power of appointment that
21 we are talking about.

22 MR. MEDLIN: I'm not even talking
23 about the trust document with that
24 question.

25 THE WITNESS: Well, then, why are we

ROA 006240

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1 talking about it?

2 MR. TWOMBLEY: That is part of the
3 problem. That is the point I'm trying to
4 make.

5 MS. PARLOR: Yeah. Alan, why don't
6 we talk about something that is relevant to
7 this case. All of these hypotheticals
8 about things that didn't happen --

9 MR. MEDLIN: Why don't you do that
10 when you get a chance to ask questions, and
11 I'm going to continue to ask relevant
12 questions, which maybe you don't.

13 THE WITNESS: Well, and I'm going to
14 continue to answer. Here is the answer.

15 BY MR. MEDLIN:

16 Q. Right.

17 A. When they sign those documents, and if they
18 are going to be effective, the surviving spouse is
19 going to have a final say as to who and how and what
20 manner, either under the existing tax laws at that
21 point in time or in the current tax laws if they
22 haven't changed, to or among the descendants, the
23 iteration -- any generational level, which means you
24 go to a grandchild, you go to a child, you go to an
25 adopted child for all I care, depends on what the

ROA 006241

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1 will -- I forget what the will otherwise said and the
2 trust otherwise said.

3 So they are -- the channel point is, they
4 are not precluding the exercise of power of
5 appointment by the surviving spouse over those trusts
6 from being any kind of trust as long as the
7 beneficiaries are one or more of the children, under
8 whatever form they want to put it. They can have it
9 generation skipping, non-generation skipping,
10 outright. They can do it any way they want.

11 Q. But once the estate plan, as you designed
12 it, in fact, has a generation skipping trust --

13 A. Right.

14 Q. -- which your documents anticipate,
15 correct?

16 A. Right. Anticipate.

17 Q. And --

18 A. Because it can be outright.

19 (Reporter asks for Clarification.)

20 THE WITNESS: It can be outright.

21 BY MR. MEDLIN:

22 Q. I think you said -- correct me, Neill -- it
23 could be outright; is that --

24 A. Yes.

25 Q. -- what you said? Yeah.

ROA 006242

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1 A. Yeah.

2 Q. All right. So once that GST trust comes
3 into effect, then the children have an interest in
4 that trust, correct?

5 MR. TWOMBLEY: Object to the form of
6 the question.

7 THE WITNESS: They have no interest
8 in the trust to the extent that the
9 direction given and allowed to -- to move
10 property out of that trust is not changed
11 or affected at all.

12 Obviously, if mom -- if dad's dead,
13 mom dies, she's done nothing, now we've got
14 the scenario you're talking about. But the
15 point is --

16 BY MR. MEDLIN:

17 Q. Thank you. And that is -- that is the
18 scenario I'm trying to get to.

19 MR. TWOMBLEY: Let him he finish his
20 answer.

21 THE WITNESS: And that's not -- that
22 is something for the planning for
23 Mrs. Barringer, frankly. That is her
24 planning.

25 BY MR. MEDLIN:

ROA 006243

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1 Q. The documents -- I'm sorry --

2 MR. TWOMBLEY: Let him -- let him
3 finish his answer.

4 MR. MEDLIN: I apologize.

5 THE WITNESS: Well, I mean, that's
6 the -- she has the ultimate power to
7 restructure how the assets in the various
8 trusts are going to be distributed at her
9 death, period.

10 BY MR. MEDLIN:

11 Q. Your documents anticipate, as you point
12 out, options. One option is she doesn't exercise her
13 power.

14 Where does the property go?

15 A. Well, it goes into the two trusts.

16 Q. And those trusts have generation skipping
17 aspects to them?

18 A. One does.

19 Q. One does.

20 A. One does.

21 Q. Okay. Yes. That would -- all right. We
22 won't get into any more detail than that.

23 So she could also, according to you,
24 appoint the property to any descendants outright, and
25 then if she appointed all the property, there would

ROA 006244

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1 not be a trust, a GST trust, correct?

2 A. At her death. Now, she could have received
3 all of the distributions, so that could happen anyway,
4 under the distribution scheme that is allowed to make
5 a distribution.

6 So, yes, you can't -- she is in charge, and
7 that is -- and she is in charge, but in a way that is
8 tax efficient, unless you have cataphoretic illness,
9 you have family issues, you have any one of the dozens
10 of things that can happen that would make her want to
11 exercise that power.

12 And that's the whole purpose of it, and
13 that is to give the last spouse the last say based on
14 the end circumstances. She may live to be 110 and all
15 of this is sort of moot. So that is -- that is the
16 whole point of that arrangement. And therefore, if
17 you have bad marriages, extraordinary deaths, you have
18 any kind of issues that would dictate not keeping it
19 on a per stirpes basis to the beneficiaries as -- and
20 from the two separate trusts, I'm saying that sort of
21 general there, that is -- that is what you want to do.

22 Guess who has a trust like that? And I'm
23 an estate planner.

24 Q. Mr. McBryde --

25 A. And I wouldn't have it any other way. I

ROA 006245

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1 want Peggy -- we only got two children, but I want
2 Peggy to be able to say what the heck how it goes to
3 descendants.

4 Q. Mr. McBryde --

5 A. Don't you have it in your will?

6 Q. Your documents anticipate that -- you know,
7 I'm happy to talk with you any time you want to talk,
8 but in this setting --

9 A. Go ahead.

10 Q. -- I'm the one who has to ask questions.

11 A. Go ahead.

12 Q. So in your documents, we have an
13 anticipation that if she does not exercise her power
14 of appointment, we could create a generation skipping
15 transfer trust unless all of the distributions from
16 the trust had been made before she died, correct?

17 MR. TWOMBLEY: Object to the form.

18 THE WITNESS: Yes. That is correct.

19 BY MR. MEDLIN:

20 Q. Okay.

21 A. And she could create trusts separately that
22 depending on the state of the law, the tax -- the tax
23 environment, she could rearrange it any which way as
24 long as the final arrangement ends up going to
25 descendants after her death.

ROA 006246

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1 Q. Yeah.

2 A. And she pick up -- she can use a
3 great-grandchild to get it all.

4 Q. If the generation skipping transfer trust
5 is created, the children in your documents have only a
6 limited power of appointment; is that correct?

7 A. Right.

8 MR. TWOMBLEY: Object to the form of
9 the question.

10 THE WITNESS: No.

11 BY MR. MEDLIN:

12 Q. I'm sorry --

13 A. I'm saying she could -- she could get that
14 same result by creating or directing it to go into a
15 GST trust.

16 Q. If under your documents we get assets into
17 the GST trust, however that happens, the children then
18 have a limited power of appointment over those
19 assets --

20 A. Uh-huh (affirmative.)

21 Q. -- is that correct?

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

24 THE WITNESS: Go ahead. What is your
25 next question? Yeah.

ROA 006247

Page 184

1 BY MR. MEDLIN:

2 Q. The answer is yes.

3 A. Because I'm not sure I'm on the same
4 wavelength with you because I'm not -- she is -- the
5 documents have been executed. We've got the real
6 documents. Right?

7 Q. Right. Let's -- let's look at the
8 revocable trust, paragraph 5F.

9 MS. PAYLOR: What page is it on?

10 THE WITNESS: Where is it at? There
11 it is, revocable trust.

12 BY MR. MEDLIN:

13 Q. The revocable trust starts --

14 A. What page?

15 Q. -- on page 112?

16 A. Okay.

17 Q. And then we want to go to paragraph 5F.

18 A. 112, yeah.

19 I don't think 112. What page do you want
20 to go to?

21 Q. Well, that is not right. Looking at the
22 wrong -- bear with me, Mr. McBryde.

23 Let's look at page 125.

24 A. 125? Because that --

25 Q. Paragraph G. Yes, sir. Paragraph G.

ROA 006248

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1 A. Okay.

2 Q. What does paragraph G do?

3 A. Right.

4 Q. What -- what does it do?

5 A. It says she has the power upon death to
6 appoint any part or all property of the trust to and
7 among my descendants in such manner and trust or
8 otherwise being such will provide, except that such
9 child shall have no power and any circumstances to
10 appoint any such property to herself to her estate or
11 creditors of her estate.

12 Q. When you read that, you said "she." But it
13 says upon the death of the primary beneficiary,
14 correct?

15 A. My primary desire is my wife (inaudible) --
16 my wife's lifetime. And then the D was upon her
17 death. I thought that's what you were looking at.

18 Q. Yeah. Paragraph G --

19 A. So C and E are different. They're not the
20 same.

21 Q. I'm sorry, Mr. McBryde. Paragraph G, the
22 paragraph that starts at the bottom of the page.

23 A. E now.

24 Q. G.

25 MR. TWOMBLEY: I think you -- he is

ROA 006249

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1 on the wrong page.

2 THE WITNESS: I'm 124.

3 BY MR. MEDLIN:

4 Q. 125, Neill. I'm sorry. It's 125.

5 A. Okay. You said 124.

6 MR. TWOMBLEY: He is skipping over
7 that provision, going to another one.

8 THE WITNESS: Okay. I'm at 125.

9 BY MR. MEDLIN:

10 Q. Yes. Paragraph G, what does that paragraph
11 do?

12 A. On the death of primary beneficiary, this
13 is G, okay.

14 Power --

15 MR. TYLER: Read it to yourself or
16 out loud, one or the other.

17 THE WITNESS: Okay.

18 Okay. Well, this is after both
19 deaths, after mom's death now.

20 BY MR. MEDLIN:

21 Q. And it took me forever to get there. I
22 apologize. But that is the question --

23 A. Oh.

24 Q. -- I have been trying to ask for 15
25 minutes.

ROA 006250

Page 187

1 A. Okay. And by then, you are at a -- upon
2 the death of the survivor, you've got each child share
3 or set aside, each descendants --

4 THE REPORTER: I can't understand
5 you. I can't understand you.

6 MR. TYLER: Read it to yourself.

7 BY MR. MEDLIN:

8 Q. Mr. McBryde, either out loud or silently
9 for the court reporter, please.

10 A. Got it.

11 Q. I would do the same thing, so I understand.

12 A. Well, the paragraph just keep the -- the
13 trust assets intact at each generational level and
14 give powers of appointment at that level.

15 Q. If the child is alive at that stage, that
16 child has a limited power of appointment?

17 A. Yes.

18 MR. TWOMBLEY: Object to the form of
19 the question.

20 BY MR. MEDLIN:

21 Q. Now, let's go back and look at page 45,
22 which are your notes that we were just looking at.

23 A. I've got page 145. What we are you looking
24 at?

25 Q. No, I'm sorry. It's page 45.

ROA 006251

Page 188

1 A. Okay. Okay.

2 Q. All right. So we are back looking at that
3 same language that we just talked about, GST, double
4 arrow, as long as possible, two backslash, LPA in
5 favor of descendants only.

6 Are we looking at the same language,
7 Mr. McBryde?

8 A. Yeah.

9 Q. All right. So what does "as long as
10 possible" mean?

11 A. Until the trust as under current law in
12 these documents would allow it to continue to stay in
13 trust --

14 Q. So --

15 A. -- (inaudible) tax benefits.

16 Q. -- as you kept explaining to me, mostly
17 because I apparently unartfully asked the question,
18 which just got answered, Mrs. Barringer could avoid
19 the creation of a GST trust as you explain it,
20 correct?

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

23 THE WITNESS: I don't understand what
24 you are saying.

25 BY MR. MEDLIN:

ROA 006252

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1 Q. Mrs. Barringer could have exercised --
2 could exercise her power of appointment --

3 A. Right.

4 Q. -- so that it goes to any descendants
5 outright and we would not create a GST trust for that
6 property, correct?

7 A. That is correct.

8 Q. All right. Is that consistent with as long
9 as possible?

10 A. I'm sorry. Say it again. I couldn't hear
11 it.

12 Q. Mrs. Barringer avoid the creation of the
13 GST trust, is that consistent with the words "as long
14 as possible"?

15 A. She has got to make the decision. That is
16 the point. She gets to make the decision. This is --
17 she will need the help from lawyers if she decides
18 that she's going to do A, B or C, all of which involve
19 her exercise of her power under both sets of trust.

20 Q. Right.

21 A. She can give everything to one person.
22 He's going to be -- he or she should be subject to
23 maybe estate tax at the next day's death if that
24 person died the next day. Sure. She can keep it
25 going on. She can keep the family line only on one

ROA 006253

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1 family by keeping it in trust arrangements. She can
2 give little bits to two of the children and a lot to
3 another. I mean, she has total control as to how
4 ultimately it plays out.

5 Q. So when you have these notes, the language
6 that we are looking at, who are we talking about --

7 A. I told you --

8 Q. -- at this point --

9 A. I told you --

10 Q. -- are we talking about her or are we
11 talking about him?

12 A. I wasn't talking to anybody. I was just
13 making notes as we went along. You don't see -- you
14 know, you meet with somebody for an hour or so. I
15 don't take an hour of notes. I'll just take jagged
16 little notes. I know what they said they wanted. It
17 is incorporated in the documents. It was explained to
18 them, and they understood it. And it gave maximum
19 power ultimately, to the surviving spouse to say to
20 whom and in what manner they were going to get the
21 benefit of the property, provided that it was for one
22 or more children or grandchildren or
23 great-grandchildren.

24 Q. Generation skipping transfer trusts
25 typically look down generations, at least to the

ROA 006254

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1 grandchild generation, right?

2 A. Right.

3 Q. So if we want to keep property in trust for
4 as long as possible, we want to create that GST trust,
5 right?

6 MR. TWOMBLEY: Object to the form of
7 the question.

8 THE WITNESS: Well, but -- but that
9 is up to her. She can give it all outright
10 right now to one of the -- the three.

11 BY MR. MEDLIN:

12 Q. And so there's no way that --

13 A. Absolutely.

14 Q. There's no way that your note might be
15 referring to the limited power of appointment --

16 A. We went through this for 10 minutes this
17 morning --

18 Q. No --

19 A. -- that exact question you just said, and
20 now you are coming back repeating.

21 MR. TYLER: It sounds like harassment
22 to me.

23 THE WITNESS: Yeah.

24 She has full authority. That was the
25 intention. And she can cut out everybody

ROA 006255

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1 but a great-grandchild and give it to that
2 great-grandchild.

3 BY MR. MEDLIN:

4 Q. Mr. McBryde, with all due respect, I
5 haven't asked you this question before. So if you
6 would, let me --

7 A. You did ask that actual -- that exact
8 question earlier. And I said the answer is she is
9 given absolute authority as he would have had --
10 that's irrelevant there, obviously. But she is given
11 absolute authority to say how it goes to or among the
12 descendants, period. There is nothing said, oh, but
13 by the way, you've got to get a tax reduction because
14 it's got to be GST if it's coming out of GST trust,
15 blah, blah, blah.

16 Q. Yeah.

17 A. That is not what it says.

18 Q. Okay. I'm going to ask you this question.

19 A. Yeah.

20 Q. And I haven't asked you this question
21 before because I am now focusing for the first time on
22 those very words.

23 A. Uh-huh (affirmative.)

24 Q. We didn't do that this morning. All right.

25 A. Uh-huh (affirmative.)

ROA 006256

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1 Q. So look at those words. You're absolutely
2 certain that your note doesn't refer to the children's
3 limited power in the GST trust, you are certain of
4 that?

5 MR. TWOMBLEY: Objection --

6 THE WITNESS: Absolutely certain.

7 Absolutely certain.

8 BY MR. MEDLIN:

9 Q. And we know that -- that note, that one
10 particular note, refers to her overall power that you
11 talked about, how?

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

14 THE WITNESS: Yeah. It does. That
15 is what it -- and remember, these -- I'm
16 notorious. I take notes to get points that
17 I got to go back to and make sure we get it
18 done right. But those notes in no way
19 override or indicate anything other than
20 exactly where we came out and as discussed
21 with them and with the clear language
22 discussed with them, both in my attached
23 explanation and in the letter itself, which
24 are not inconsistent and which are
25 absolutely straightforward.

ROA 006257

Page 194

1 BY MR. MEDLIN:

2 Q. How many powers of appointment are in the
3 '98 trust that Mr. Barringer created, the irrevocable
4 trust?

5 A. I think, what, three maybe. You know, I --
6 I have to go back.

7 Q. We've got some in Mrs. Barringer, correct?

8 A. Right.

9 Q. We've got some in the kids', correct? We
10 just looked at that language in the document,
11 paragraph 18, right?

12 A. Right.

13 Q. Is there anywhere else in your notes where
14 it talks about a limited power of appointment or, for
15 that matter, a power of appointment?

16 A. It uses the broadest language possible.
17 And if you think you can construe it some other way,
18 you are going to lose in court if you try to -- if you
19 try and change it.

20 Q. I'm asking if there is anywhere else in
21 your notes that refer to any kind of power of
22 appointment other than the language we just looked at?

23 MR. TWOMBLEY: I object to the form.

24 I think this has been asked and answered
25 about 10 times.

ROA 006258

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1 MR. MEDLIN: It hasn't been answered
2 yet.

3 THE WITNESS: My notes are not -- I
4 put some notes all the time, things that
5 don't ever end up in the trust because it's
6 not -- or in the document, whether it be a
7 will or trust, GST or not.

8 What -- the decision that was made
9 was there would be no limitation, and it's
10 very clearly set out in the trust, both
11 trusts, that it's to or among such
12 descendants, in trust or otherwise, and
13 basically that is the power she has,
14 period.

15 BY MR. MEDLIN:

16 Q. We're talking --

17 A. And it's just unequivocal --

18 Q. -- about (crosstalk) --

19 A. My notes, if you relied on my notes, you'd
20 never even be able to put the -- put the will or trust
21 together because you couldn't figure out what that
22 heck I was saying.

23 Q. So correct me, I want to construe your
24 answer just there to mean that that is the only place
25 in your document where your notes refer to a power of

ROA 006259

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1 appointment?

2 MR. TWOMBLEY: Objection --

3 THE WITNESS: It may be. And so
4 what? I know what I -- we ended up with.
5 I know why we ended up with it. I reviewed
6 it with them. They knew, absolutely. And
7 I'd be surprised if you got any other
8 answer from anybody who was involved that
9 that was going to be a -- and, again, this
10 is not uncommon. I'll -- I'll challenge
11 you. I bet in all of your estate planning
12 work you have had ample use of giving a
13 surviving spouse the power to decide how it
14 goes to children and descendants. I know I
15 have. And if you haven't, you haven't come
16 to that their choice.

17 BY MR. MEDLIN:

18 Q. How --

19 MR. TYLER: We're at another hour --
20 oh, sorry. I'll let you finish your
21 question, but we're at another hour. So
22 let's plan on taking a break when you are
23 ready.

24 MR. MEDLIN: Yeah. Mr. Tyler, I'm
25 sorry, you broke up. Do you want to take a

ROA 006260

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1 break now?

2 MR. TYLER: I said I'd like to take a
3 break when -- as soon as you're ready.
4 It's been another hour, so, you know, we
5 can do it now --

6 MR. MEDLIN: Again, again, I'm happy
7 when Mr. McBryde wants a break.

8 MR. TYLER: All right. Let's break
9 for five.

10 THE WITNESS: Okay.

11 THE VIDEOGRAPHER: The time on the
12 monitor is 2:32 p.m. We are off the
13 record.

14 (Recess taken.)

15 THE VIDEOGRAPHER: The time on the
16 monitor is 2:39 p.m. We are back on the
17 record.

18 MR. TYLER: Alan, Alan, before --
19 Alan, before you get started, this is Scott
20 Tyler. I just wanted to -- I want to keep
21 us on the record, of course, for this, but
22 I wanted to ask what you anticipated for
23 additional time.

24 MR. MEDLIN: Well, again, please
25 don't hold me to that. It's still going to

ROA 006261

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1 be a while. I've got a lot the questions I
2 need to get through.

3 MR. TYLER: Well, can you give me a
4 sense as to what that means?

5 MR. MEDLIN: It may be, you know,
6 more than several hours. I just -- I just
7 don't know. You know, Neill gives --

8 MR. TYLER: Well --

9 MR. MEDLIN: Neill gives very
10 thorough --

11 MR. TYLER: It can't be more than
12 several hours. I'm just going to tell you
13 that now. It's already 2:40. So I'm just
14 going to tell you it can't be more than
15 several hours, so please act accordingly.

16 MR. MEDLIN: Neill gives -- well, we
17 don't agree based on the history of this
18 case, and we are not aware that South
19 Carolina or North Carolina puts a limit on
20 the time of depositions.

21 MR. TYLER: I'm just telling you,
22 he's got a -- he is not going to be here
23 all night, and he is not coming back
24 without a court order. So you've got a
25 limited amount time.

ROA 006262

Page 199

1 MR. MEDLIN: Well, again, you do what
2 you need to do for your client. I'm just
3 saying we are unlikely to agree when you
4 try to shut it down, and we'll have to deal
5 with it in court. But I appreciate your
6 warning.

7 MR. TYLER: Okay.

8 MR. MEDLIN: And, again, part of it
9 is Neill gives very thorough answers, and
10 so it's hard for me to sort of judge when I
11 think I'm asking a yes or no question --

12 THE WITNESS: I'm going to give short
13 answers.

14 MR. MEDLIN: -- (inaudible) answer.
15 But he gets to answer however he wants to
16 answer. I get that.

17 All right. So, Scott, are you ready
18 to proceed?

19 MR. TYLER: Yes.

20 MR. MEDLIN: Okay.

21 BY MR. MEDLIN:

22 Q. So, Mr. McBryde, one last time I hope with
23 those words that we have been looking at on page 45,
24 GST, double arrows, as long as possible, etc.

25 There is nothing in that note about any

ROA 006263

Page 200

1 stock, is there?

2 MR. TWOMBLEY: Object to the form of
3 the question.

4 THE WITNESS: Is that a question?

5 BY MR. MEDLIN:

6 Q. Yes. Mr. McBryde, is there anything in
7 that seven words talking -- that includes the word
8 "stock"?

9 A. S-T-O-C-K?

10 Q. Yes, sir.

11 A. No.

12 Q. All right. Now, you may remember off the
13 top of my head, or you may want to just look, but we
14 also have a Paul Barringer family trust that you
15 created in 1998 and a Paul and Merrill Barringer
16 irrevocable trust.

17 Do you recall those?

18 A. I recall those, but I have not looked at
19 them at all or had any reason to do so.

20 Q. Okay. Do you recall if they might
21 contain -- they might qualify generation skipping
22 transfer trusts?

23 A. I don't have that information. I don't
24 know.

25 Q. If those trusts provide that property could

ROA 006264

Page 201

1 go to the children generation, and then to the
2 grandchildren generation, could that be considered a
3 generation skipping transfer trust?

4 A. Well, not having the trust in front of me,
5 I really don't want to answer.

6 MR. TWOMBLEY: Object to the form of
7 the question.

8 BY MR. MEDLIN:

9 Q. I'm trying to -- I'm trying to be as
10 collegial with your counsel as I can and not make you
11 take the time to look through those documents that you
12 don't recall. But, again --

13 A. I don't recall if that is --

14 Q. But if those documents have property that
15 passed to the child generation was held in trust and
16 then moved to the grandchildren generation, those
17 could be generation skipping transfer trusts, again --

18 A. Yeah.

19 Q. -- if that's in there?

20 A. Based on what you said, I suppose it could.
21 But I have not looked at the trust.

22 Q. Good. I understand. Thank you.

23 Do you recall why Mrs. Barringer wasn't
24 part of the discussions from August to the time of
25 execution?

ROA 006265

Page 202

1 MS. PAYLOR: Object to the form.

2 MR. TWOMBLEY: Form and misstates his
3 testimony.

4 THE WITNESS: I didn't arrange the
5 issue one way or the other. We did talk
6 about -- as you can see, there was a much
7 more grand planning scheme the first in
8 August, a little bit September, and then by
9 November, it had begun to focus entirely on
10 the others. So that's the main reason that
11 she didn't get -- I assume that she went
12 and bought, because we really weren't
13 hitting on the big issue that was deemed to
14 be the one that needed to get done by now,
15 which is what we discussed in all the
16 details.

17 BY MR. MEDLIN:

18 Q. Well, you answered my next question, so
19 thank you.

20 Do you know if Mrs. Barringer ever had
21 anything to do with the company as it existed when you
22 represented them?

23 A. I don't recall.

24 Q. Was she an officer?

25 A. I don't recall.

ROA 006266

Page 203

1 Q. Was she a shareholder?

2 MS. PARLOR: Object to the form.

3 THE WITNESS: I don't recall.

4 BY MR. MEDLIN:

5 Q. Was she a director?

6 A. I don't recall.

7 Q. Was Mrs. Barringer the trustee of the
8 trust, the revocable trust that you created for
9 Mr. Barringer, in 1998?

10 A. Say that again. I'm sorry, I just didn't
11 hear it.

12 Q. Yeah. I'm sorry. And I had my papers
13 covering up my microphone, Neill, so I apologize.

14 Was Mrs. Barringer the trustee under Paul's
15 1998 revocable trust?

16 A. On his revocable trust, you've got a copy
17 of it. I've got a copy of it right here.

18 Q. Yes, sir. Do you have it handy, or do you
19 want me to give you the page number?

20 A. Well, give me the page number.

21 Q. Okay. It's 112.

22 A. Okay.

23 Q. Page 112.

24 A. Okay.

25 Q. Okay.

ROA 006267

Page 204

1 A. Okay. What was the question?

2 MR. TWOMBLEY: If you'll tell us
3 which page 112. I think Mr. McBryde might
4 be looking at my page 112 and you -- of
5 course, there is -- the bottom right-hand
6 conner there is a 112 and then in the top
7 red --

8 THE WITNESS: I'm looking there.
9 It's 112 in the red, right, McBryde --

10 MR. MEDLIN: No. I'm sorry. And
11 thank you, Ashley.

12 BY MR. MEDLIN:

13 Q. We are not -- we are not going to refer to
14 Mr. Twombley's documents except perhaps in an
15 emergency. These are the documents we gave you, and
16 at the top it would say NMcBryde W0112, and at the
17 bottom right it would be your documents page 109, if
18 that helps you find it.

19 A. Okay. Let's see here.

20 Okay. Page 109 McBryde?

21 Q. Yes. And actually, to save time, I think,
22 Mr. McBryde, if you skip to page 132 in the top right
23 corner number.

24 A. In which, the same thing, 132?

25 Q. Yes, sir. Page 132. And it would be

ROA 006268

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1 item 11 of the trust.

2 A. Okay. Okay. Got it.

3 Q. All right. So hopefully that will make
4 more efficient to answer questions.

5 Is Mrs. Barringer a trustee out of the
6 trust?

7 A. I need to see, what is the first page of
8 the trust?

9 Q. Well, the documents I think you're in now
10 it would be on 112.

11 A. Okay.

12 Q. Would be the top right-hand corner.

13 A. Yes. Okay.

14 Q. And we're going to go Item 11 on page 132,
15 top right-hand corner, and look at paragraph 10.

16 A. Paragraph 10?

17 Q. Item 11. Item 11.

18 A. Okay. Okay. Trustee.

19 Okay. I'm reading it. I've read it.

20 Yeah. Okay. Are you talking about --

21 Q. Do you recall --

22 A. Huh?

23 Q. Well, let's answer it this way.

24 Mr. Barringer is the trustee until he dies or is
25 incapacitated.

ROA 006269

Page 206

1 A. Right.

2 Q. And then we have successor trustees kick
3 in, and Mrs. Barringer is not one of the successor
4 trustees, correct?

5 A. Yes. That is correct.

6 Q. All right. Do you remember why
7 Mr. Barringer didn't want her to be trustee?

8 A. Never discussed.

9 MR. TWOMBLEY: Object to the form.

10 THE WITNESS: That I'm aware of. It
11 could have been dis- -- I was a little bit
12 cavalier. I'd have to go back and look
13 through the notes to see if I have any
14 reference to that. But it was not
15 discussed, or it was not an issue that I'm
16 aware of.

17 BY MR. MEDLIN:

18 Q. Now, trustees under this trust have a lot
19 of power, do they not?

20 A. All trustees have power.

21 Q. Yes, sir.

22 They can make distributions of principal to
23 Mrs. Barringer?

24 A. Who are the trustees?

25 Q. Yeah.

ROA 006270

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1 A. I said who.

2 Q. Can a trustee, after Mr. Barringer's death,
3 make distributions of principal to Mrs. Barringer?

4 A. Uh-huh (affirmative.)

5 Q. Is that correct?

6 A. Which exact page now are you on?

7 Q. Well, let's look at item 4, this would be
8 page 118.

9 A. Okay. That is a lot helpful -- lot more
10 helpful if you give me that than just leave me out
11 there looking.

12 Q. Yeah. And this will be paragraph F.

13 A. Ah. There we go.

14 Okay. So 113. Okay.

15 Q. No. 118.

16 A. 118. Okay. Okay.

17 Q. Paragraph F.

18 A. Right. Trustee shall authorize -- yeah. I
19 see that.

20 Q. Okay. Over on page 120- --

21 A. Are you doing the one at the bottom or the
22 top, 113?

23 Q. The one at the top, and it's -- again, it's
24 118.

25 A. 118. Where do you see the trustee -- the

ROA 006271

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1 trustee shall be authorized, blah, blah, blah; is that
2 what you asked me to look at?

3 Q. Yes, sir.

4 A. Okay.

5 Q. Yeah.

6 A. Okay. I got it. Okay. Now, 18?

7 Q. All right. Well -- well, let's just ask a
8 question there.

9 Is it possible for the trustee to
10 distribute any type of principal to Mrs. Barringer?
11 When it says convey principal, there is an
12 ascertainable standard, right, but --

13 A. Second to the ascertainable standard.

14 Q. Yeah --

15 A. Taking into con- -- more than that, taking
16 into consideration any other means of support she may
17 have to the knowledge of the trustee.

18 Q. Right. But as far as the type of
19 principal, there is no restriction on that, correct?

20 A. The type of principal?

21 Q. Yeah.

22 A. Well, it's got to be a property of the
23 trust. Or actually income, most likely it would be
24 income.

25 Q. Yeah. But it could be principal?

ROA 006272

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1 A. Yeah. Yeah.

2 Q. And over on page 123.

3 A. Uh-huh (affirmative.)

4 Q. Paragraph B.

5 MR. TYLER: Again, Alan, is this the
6 Neill McBryde depo page 123?

7 THE WITNESS: I'm assuming you are
8 sticking to the same pages, so --

9 BY MR. MEDLIN:

10 Q. Yeah. All right. Similar --

11 A. All right. I do have it.

12 Q. Okay. And if we look at page 122.

13 A. Okay.

14 Q. No. I'm wrong. I'm sorry, Neill. 125.
15 Sorry to misguide you.

16 A. Okay.

17 Q. Paragraph F.

18 A. Uh-huh (affirmative.)

19 Q. And the last sentence of that paragraph,
20 that allows the trustee to distribute principal to the
21 children, correct?

22 A. The primary beneficiary and his or her
23 descendants, at such time as the time of trustee's
24 discretion to determine. Okay.

25 Q. All right. So again, the trustee could

ROA 006273

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1 distribute principal to the children?

2 A. Under that document, if the trust is in
3 place, that is what the estimate says.

4 Q. So I think you may have been referring to
5 this earlier, Mr. McBryde, but if in fact the assets
6 are distributed either to Mrs. Barringer or the
7 children, there may be nothing in the trust at the
8 time of Mr. Barringer's -- Mrs. Barringer's death,
9 correct?

10 A. Yes. It's an ascertainable standard, isn't
11 it?

12 Q. So -- and, again, as you pointed out a
13 minute ago, the trust considers the wife and the
14 children very important in making distribution
15 decisions, right?

16 A. In this trust, under the end circumstances
17 of the execution, that would be true.

18 Q. So the trustee could give stock to
19 Mrs. Barringer under that power of distribution of
20 principal, correct?

21 A. Meet -- if it meets the standards and all
22 the fiduciary decisions that have to be made on any
23 distribution to a beneficiary of the trust.

24 Q. Yes, sir. And under those same standards
25 and fiduciary duties, could make distributions of

ROA 006274

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1 stock to the children?

2 A. Yes.

3 Q. So Mr. Barringer is willing to let trustees
4 give controlling interest in the stock before
5 Mrs. Barringer died to someone?

6 MR. TWOMBLEY: Object to the form of
7 the question.

8 THE WITNESS: Is this a question?

9 BY MR. MEDLIN:

10 Q. Yes. Did you discuss the possibility that
11 a trustee might decide to distribute stock to a child?

12 A. Why should I?

13 Q. I'll take that as a no.

14 A. I -- I -- I -- as to the trusts in
15 question, it's clear what they wanted to do with the
16 assets that might immediately or at any point come
17 into that trust.

18 Q. Right. But this would happen before the
19 assets --

20 MS. PAYLOR: Let him finish his
21 answer, please.

22 BY MR. MEDLIN:

23 Q. Were you finished with your answer?

24 A. And I'm not quite sure what you are saying
25 because this is not the other two trusts. Or am I

ROA 006275

Page 212

1 missing something?

2 Q. Mr. Barringer gave trustees the power to
3 distribute stock if stock happened to be in the trust,
4 correct?

5 A. Totally separate trust than the one we are
6 talking about.

7 Q. Really?

8 A. Yes. Is this --

9 Q. Doesn't this trust take care of Mrs.
10 Barringer while she's alive before she gets her power
11 of appointment to exercise?

12 MR. TWOMBLEY: Object to the form.

13 THE WITNESS: Oh. Yeah. I mean, I
14 think they feel comfortable with respect to
15 the conditions now existing. But remember
16 what the other trust does at a descendant's
17 death.

18 BY MR. MEDLIN:

19 Q. While Mrs. Barringer is still alive, the
20 trustee can make distributions of principal to
21 Mrs. Barringer; is that correct?

22 A. With the only -- okay. Again, I'm not
23 going to -- I want to make sure you haven't switched
24 trusts on me.

25 MS. PARLOR: Which trust are you in?

ROA 006276

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1 MR. MEDLIN: The one that we've been
2 in, Alice. Starts at page 112.

3 MS. PAYLOR: Thank you.

4 THE WITNESS: This is the -- okay.
5 Paul Barringer II Revocable Trust. And --
6 and it's basically his revocable trust,
7 right?

8 BY MR. MEDLIN:

9 Q. Yes, sir.

10 A. Yeah. Because -- and then you have
11 Mrs. Barringer. So, okay.

12 So where -- this is the Paul Barringer II
13 Revocable Trust. And we have been talking about for
14 purposes of the provision in the documents, that --
15 the other two trusts. Is this -- I'm just trying
16 to -- you got so many trusts, I got two sets of them.
17 Is this the same one we've been talking about.

18 Q. Yes, sir. I'm focusing only on the
19 revocable trust now.

20 A. Okay. I'm not sure what you are saying.
21 We -- we know what is in the -- in the other documents
22 that you all are concerned about. But what is the
23 juxtaposition here? I'm just trying to -- the wife
24 hadn't died.

25 Q. My question is --

ROA 006277

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1 A. And he hasn't died. Right?

2 Q. Well --

3 A. That is what you are talking about.

4 Q. No. I'm talking about after he died,
5 Mrs. Barringer is still alive.

6 A. Right.

7 Q. She can make distributions of principal to
8 her, correct?

9 A. Yes.

10 Q. A trustee can make distribution of
11 principal to the children, correct?

12 A. Who is the trustee?

13 Q. I thought we just went through that on
14 page 132, item 11A.

15 A. I'm trying to see -- you are moving to a
16 question, but I'm not sure you're connecting them the
17 way that I think you are trying to that -- as to serve
18 as trustee of this trust should determine where --
19 this is -- this is. Yeah. Okay. Hold on.

20 You didn't give me a question yet. What is
21 your question? What -- what you are trying to say, I
22 mean, that is what I'm trying to figure out.

23 Q. Yeah. What I'm trying to say is, under
24 this revocable trust, this 1998 revocable trust of
25 Mr. Barringer --

ROA 006278

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1 A. Uh-huh (affirmative.) Uh-huh
2 (affirmative.)

3 Q. -- the trustee has the power to distribute
4 principal to Mrs. Barringer --

5 A. Okay.

6 Q. -- is that correct?

7 A. Again, I haven't it (inaudible comment)
8 Mr. Barringer if that is what this says.

9 Q. Right. And the document also says that the
10 trustees had the power to distribute principal to the
11 children; is that correct?

12 A. That is true.

13 Q. And so principal is any tangible asset.
14 Like stock could be principal if stock is in the
15 trust, correct?

16 A. Yeah. But you've got to use your fiduciary
17 discretion as to whether any of that stock should be
18 distributed, and if so, to whom, and under what
19 circumstances. The mere power to receive something
20 under the trust does not mean the proper exercise
21 fiduciary discretion in making said distributions.

22 Q. But also, subject to the ascertainable
23 standard, I believe you mentioned earlier too --

24 A. Right.

25 Q. -- just to round that out, correct,

ROA 006279

Page 216

1 Mr. McBryde?

2 A. Right. Right.

3 Q. All right. So the trustee also has the
4 power to sell under the trust; is that correct?

5 A. That is correct.

6 Q. So the trustee could sell the stock. There
7 is no restriction in the trust that you recall that
8 restricts the trustee from selling the stock?

9 A. As long as it's the prudent exercise of
10 fiduciary discretion, taking into account all the
11 circumstances and the intention of the grantor of the
12 trust as reflected in any other provisions of the
13 trust.

14 Q. Okay.

15 A. And the actual fiduciary obligations to
16 best reserve the property, even if it could be
17 distributed.

18 Q. All right. Well, I think you already --

19 A. (Crosstalk.)

20 Q. -- answered this --

21 A. Yeah.

22 Q. Sorry. I interrupted -- keep interrupting
23 you, Neill. I am so sorry.

24 A. No. That is fine. That is fine. I don't
25 need to add more at the moment.

ROA 006280

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1 Q. Okay. So Mr. Barringer gave his trustee,
2 according to your documents, the power to give stock
3 to Mrs. Barringer, the power to give stock to the
4 children, or for that matter the power to sell stock
5 to a third party?

6 A. Right.

7 Q. Do you think he understood that he was
8 giving that power to his trustees, including BB&T?

9 A. Well, he would assume maybe that they
10 actually -- having worked with banks, and you have
11 to -- unless you file -- I think you've got to have a
12 successor corporate trustee, don't you? I can't
13 remember exactly. You've got a safety feature there
14 that they are going to have to sign off on it,
15 effectively.

16 Q. He did not want Mrs. Barringer to have
17 control over the company stock if it was in the
18 trust --

19 MS. PAYLOR: Object to the form.

20 BY MR. MEDLIN:

21 Q. -- according to the language -- let me
22 finish and then you object. I'll try to restate it a
23 little better, in fact.

24 According to your document, 1998 revocable
25 trust, Mrs. Barringer would not have any stock to

ROA 006281

Page 218

1 appoint if any stock was distributed or sold by the
2 trustee and it was gone from the trust; is that
3 correct?

4 MR. TWOMBLEY: Objection to the form
5 of the question.

6 MS. PAYLOR: Object to the form.

7 THE WITNESS: You know, you just -- a
8 hypothetical, if the trust provisions in
9 their entirety and the fiduciary discretion
10 that would be required to sell closely held
11 stock, it has always a separate look, that
12 at least it -- unless you missed something
13 and didn't tell me, it seems that there
14 could be that possibility if all the
15 circumstances met the fiduciary
16 requirements.

17 BY MR. MEDLIN:

18 Q. Okay. Thanks, sir.

19 Mrs. Barringer, on the other hand, did not
20 have such a power while he was alive; is that correct?

21 MR. TWOMBLEY: Object to the form.

22 MS. PAYLOR: Object to the form.

23 THE WITNESS: Again, that is a --
24 that -- he is dead.

25 BY MR. MEDLIN:

ROA 006282

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1 Q. He is dead, and Mrs. Barringer is still
2 alive. She does not while she is alive have any power
3 over the stock if stock is in the trust; is that
4 correct?

5 A. He's got the power to say where it goes.

6 Q. But that happens when, Mr. McBryde?

7 A. When she dies.

8 Q. Okay. Now, when she dies, she can appoint
9 to descendants, according to you; is that correct?

10 A. Not according to me --

11 MS. PAYLOR: Object to the form.

12 THE WITNESS: -- according to the
13 documents.

14 BY MR. MEDLIN:

15 Q. Okay. Well, thank you.

16 And descendants would include what
17 relatives?

18 A. Descendants, children, grandchildren,
19 great-grandchildren, great-great-grandchildren.

20 Q. Okay. Was that anywhere in your notes?

21 MS. PAYLOR: Object to the form.

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

24 THE WITNESS: I'm -- I'm not even
25 going to honor that question as being even

ROA 006283

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1 worth it. You know exactly what I said.
2 They knew that she was given that power.
3 They knew everything about that trust. And
4 you are simply just making up my
5 hypotheticals. If you've got somebody that
6 said she was deaf and dumb or he was deaf
7 and dumb, maybe you'd have something to
8 say. But this is just -- this is just --
9 just --

10 BY MR. MEDLIN:

11 Q. What I am doing --

12 A. -- repetitive.

13 Obviously, everything is subject to proper
14 execution with full knowledge of all material facts.
15 And that is what they had. That is what they did.
16 The fact that they could have done something else,
17 while both him and she were living or by -- when he
18 was living alone, that is in the equation.

19 There was -- this was a directed change
20 that they wanted to make and were fully informed. The
21 fact that it's not tight as a tick was not there while
22 she is living, is not -- not even material because
23 this is for long-term taking care of -- of how the
24 property ought to go after both their deaths.

25 Q. Did you explain to Mr. Barringer that his

ROA 006284

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1 trustees could either distribute or sell company stock
2 while Mrs. Barringer was still alive?

3 A. No. But, you know, he knew what leverage
4 he had and relationship he had and what could be done.
5 And so I -- you -- you can't solve all the problems,
6 if there is a problem, and say, well, why did he do
7 that?

8 Well, we know why he did -- at least we
9 understand that he understood why he wanted to allow
10 for the children's interest after both of their deaths
11 to go to one or more of the descendants in some form,
12 in trust or otherwise. And that is what was included.

13 Q. As an estate planner, you strive to explain
14 to your clients what their documents do; is that
15 correct?

16 A. Yeah. And I have no question but that he
17 knew that or I might -- I mean, we moved very fast,
18 but on the other hand, he was -- at this point, they
19 were directed on this issue, and they took care of
20 that issue.

21 Now, if I had been -- come back to them a
22 year from now or six months or -- from then and we
23 visit it again, maybe there would be more changes.
24 But they were the changes that they made at that point
25 in time to solve that problem. They did not say,

ROA 006285

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1 let's scrap all of our planning and start over. They
2 just -- that is not what that was about.

3 Q. Nor was that my question, Mr. McBryde, but
4 I appreciate it.

5 A. I think it answers it.

6 Q. Well...

7 If -- well, let me ask you this: Are you
8 aware of any voting agreement that Mr. Barringer had
9 entered into with his children before December 4th,
10 1998?

11 A. I tend to think that I -- we were involved
12 a little bit on that. I can't tell you -- that is not
13 in my field of inquiry because that is not germane to
14 what we did and were asked to do and told them we were
15 doing, so -- but I can't say that I was -- I knew
16 there were issues about the voting. And, in fact, may
17 have gotten involved in it at some point, in some way,
18 but it was not material for this purpose.

19 Q. Were you aware that -- were you aware how
20 the stock in Coastal Lumber was owned among the family
21 in December 1998?

22 A. I would have known to the extent I needed
23 to know because, again, I was involved enough to have
24 been involved with that issue, but not in a manner
25 that would -- that would say that would override

ROA 006286

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1 taking care of what they wanted to do now in
2 conjunction with this trust.

3 Q. Were you aware that his three children
4 owned equal amounts of stock in December of 1998?

5 A. I -- I may have. Again, that is not the
6 factual issues that we have been dealing with. And if
7 I did, I would, again, put it in the same category as
8 that is -- we had plenty of time to take care of all
9 the other things that were on his plate, and this was
10 the plate that they wanted to get completed now and
11 get it done by December.

12 Q. Were you aware that his stock ownership in
13 Coastal Lumber was significantly less than any of his
14 individual children in December of 1998?

15 A. I would not be surprised if I had that
16 information.

17 Again, that's not been germane to the
18 question at hand in this particular trust inquiry. So
19 the same ground rules apply there, that if you waited
20 to have a perfect environment, every -- every little
21 issue resolved before you made a decision to change
22 the method or to change the dispositive scheme on a
23 portion of your estate, you'd be in constant gridlock
24 with yourself.

25 Q. So once, say a -- well, let's just say,

ROA 006287

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1 each of the three children at that time, I'll
2 represent to you, according to that voting agreement,
3 said that they owned 59,521 shares of that stock each.

4 If that stock had been gifted to them
5 earlier, which I believe your notes refer to, could
6 Mr. Barringer just take them back?

7 A. I have no opinion on that. I have not
8 looked at that. I was not asked to research that or
9 address that.

10 Q. Well, generally, once somebody makes an
11 irrevocable gift, they cannot get the property back;
12 is that correct?

13 A. I don't know the circumstances. I haven't
14 seen the documents. I don't know of any -- there
15 could be side agreements, I mean, you know maybe, but
16 I don't.

17 Q. Well --

18 A. You are moving the focus away from the
19 trust that they did and that they could make decisions
20 on and that as between the two of them, they --

21 Q. I think my focus is -- I think my focus is
22 exactly on the trust because we are trying to
23 determine what he owned when he executed the trust and
24 he might have understood was going to be subject to
25 his wife's power of appointment. Don't you think that

ROA 006288

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1 is relevant?

2 MR. TWOMBLEY: Object to the form.

3 THE WITNESS: No. I think it's
4 relevant that he knew that with respect to
5 the passage of whatever is left, if he got
6 run over by a truck or died of cancer or
7 whatever he -- you know, whatever his
8 situation was, that this issue had to be
9 addressed and was addressed.

10 I -- I was with him long enough to
11 know that there are going to be lots of
12 issues coming up for and have been fertile
13 ground for maybe more lawyer work, but that
14 is not what we were asked to do. We did
15 what we were asked to do and did what...

16 BY MR. MEDLIN:

17 Q. Do you know why the Barringers did not
18 return to your firm to take care of those subsequent
19 issues?

20 A. I have -- I have no idea.

21 MR. TWOMBLEY: Object to the form --

22 THE WITNESS: We did work afterwards,
23 by the way.

24 BY MR. MEDLIN:

25 Q. Yes. I understand. The answer certainly,

ROA 006289

Page 226

1 Mr. McBryde.

2 When a client makes a valuable gift, do you
3 make sure a gift tax return is filed?

4 A. They have accountants. They have -- they
5 know exactly what to do, and the accountants, I assume
6 either should have done it if there was a transaction
7 where that happened. And I have no idea what you are
8 talking about for the purposes of this.

9 Q. Well, let's say part -- let's say part of
10 your planning is for your client to give away
11 \$100 million hotel.

12 Would you advise that client, if you
13 participated in the gifting process, that a gift tax
14 return ought to be filed?

15 MR. TWOMBLEY: Object to the form.

16 THE WITNESS: I was not ever called
17 upon to do any gift tax return work that I
18 remember.

19 BY MR. MEDLIN:

20 Q. Yeah. Would you ever tell a client that
21 the client needed to go see a different tax lawyer or
22 a CPA to get a gift tax return done?

23 MS. PAYLOR: Object to the form.

24 THE WITNESS: That was not even
25 within the scope of my employment as their

ROA 006290

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1 attorney for the purposes of this matter.

2 BY MR. MEDLIN:

3 Q. Yeah.

4 A. And they were -- they're big boys. I mean,
5 we are talking about substantial wealth that they had
6 managed somehow to be without lawyers and doing most
7 of it. And I know they did have CPA's, and I assume
8 they were all over it, or should have been.

9 Q. And, again, Neill, I am in no way implying
10 that there was some responsibility of yours in this
11 estate plan to advise them to give -- to have a gift
12 tax return done.

13 MS. PAYLOR: Objection to the form.

14 BY MR. MEDLIN:

15 Q. I'm sorry if you got that inference.

16 I'm just asking as a general question, as a
17 practitioner who was --

18 A. We did not have the ability to and we are
19 not asked to be engaged in that respect.

20 Q. I understand. But as a lawyer when you're
21 participating in a plan --

22 MS. PAYLOR: I object to this line of
23 questioning, Alan. This has --

24 MR. MEDLIN: Well, you can after I
25 finish.

ROA 006291

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1 MS. PAYLOR: -- nothing to do with
2 the case. It's not relevant --

3 MR. MEDLIN: It has a lot to do with
4 the case, so let me finish --

5 MS. PAYLOR: Mr. Tyler has already
6 told you that he wants to finish this up.
7 And why you are going off on red
8 herrings --

9 MR. TYLER: Yeah, you --

10 MS. PAYLOR: -- and fishing
11 expeditions, I have no earthly idea. Let's
12 get back to relevant questions.

13 MR. TYLER: You said earlier -- or
14 you suggested it was because Neill was
15 giving, you know, lengthy responses. He's
16 actually tightened up a lot of the
17 responses. Now it's just that you are
18 asking these irrelevant and somewhat
19 bizarre lines of questions over and over
20 again. So let's --

21 MR. MEDLIN: Yeah. This is a very
22 relevant question. This is a very relevant
23 question to the case. Ms. Paylor knows
24 that. But I'm going to move on.

25 MS. PAYLOR: It's not. Not -- his

ROA 006292

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1 opinion is not.

2 MR. MEDLIN: I'm moving on.

3 MS. PAYLOR: Thank you.

4 MR. TYLER: Good. Thank you.

5 BY MR. MEDLIN:

6 Q. In your affidavit, you talk about
7 Mr. Barringer's trust and the power of appointment he
8 gave Mrs. Barringer; is that correct? Or your
9 affidavits I should say more correctly.

10 MR. TYLER: All right. Where is
11 that? Oh, there it is, right there.

12 THE WITNESS: What page? You got it?

13 MR. MEDLIN: I'm talking about --
14 your affidavits, don't you? You've got the
15 power of appointment and Mr. Barringer's
16 revocable trust?

17 MS. PAYLOR: What page are you on?
18 Where is the document?

19 MR. MEDLIN: I am on page -- starting
20 on page 288 of our documents, affidavit,
21 top right-hand corner, Mr. McBryde.

22 MR. TYLER: What page in the
23 affidavit?

24 THE WITNESS: 288.

25 MR. MEDLIN: Well, I'm saying it's

ROA 006293

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1 throughout the affidavit that he recently
2 prepared.

3 THE WITNESS: Oh, you are talking
4 about the affidavit itself.

5 MR. MEDLIN: Yes, sir.

6 THE WITNESS: Okay. Okay. Which
7 number? Okay.

8 MR. MEDLIN: All right. So...

9 MR. TYLER: What is the pending
10 question, Alan?

11 BY MR. MEDLIN:

12 Q. The question is, his affidavit refers to
13 the power of appointment that he says the documents of
14 Mr. Barringer gave to Mrs. Barringer.

15 A. Yes.

16 Q. Is that correct?

17 A. Yep.

18 Q. Is there anywhere in your affidavit where
19 you talk about Mrs. Barringer's revocable trust that
20 gave similar powers of appointment to Mr. Barringer
21 according to your understanding of the documents?

22 A. I'm not sure what you are saying. It
23 speaks for itself, what this one says. And that was
24 what we were addressing because Mr. Barringer died
25 first.

ROA 006294

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1 Q. Well, this is simply a yes or no question,
2 I think, Mr. McBryde. If I understand it, you don't
3 refer to her trust and the power of appointment she
4 gives him under her trust; is that correct?

5 A. That is right. Because he's dead, and I'm
6 working with the real life of how they got to where
7 they got with respect to the trust as the result of
8 his death.

9 Q. I understand. And, in fact, you are filing
10 affidavits in a lawsuit that's current now. So I
11 understand that.

12 When did you explain to Mrs. Barringer that
13 she was giving him a power of appointment?

14 A. That would have been at the execution of
15 the documents. And also, I won't preclude, because I
16 had no reason to address it, that she didn't see the
17 document I earlier sent or at least the -- the -- the
18 version that was sent regarding the letter and the
19 attachment to the letter explaining exactly what we
20 have done before we met and I went over it with them.

21 Q. Normally, if you want somebody to read a
22 letter, you put their name on there as an addressee,
23 correct?

24 A. Well --

25 MS. PAYLOR: Object to form.

ROA 006295

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1 MR. TWOMBLEY: Object to the form of
2 the question.

3 BY MR. MEDLIN:

4 Q. So you did not --

5 A. It all depends on the circumstances. If I
6 know I got to be the one to tell them, I -- I
7 rightfully was trying to get it done fast and -- by
8 December. And so we moved fast, but she -- you know,
9 there were no secrets about that, so there is nothing
10 to talk about other than she knew exactly where things
11 were at this point in time.

12 Q. How much time did you spend explaining
13 those documents to Mr. and Mrs. Barringer on
14 December 4th, 1998?

15 A. I have no idea.

16 Q. Have you got some billing words we can look
17 at?

18 A. I might. When was it? A long time ago. I
19 doubt if we have billing records now.

20 Q. Okay. If you do, subject to discussion
21 with your counsel and Mr. Twombley, can we get those?

22 MS. PAYLOR: Object to the form.

23 THE WITNESS: I'll have to check. I
24 might say, don't count on them being
25 accurate. I'm such a high billing rate

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1 lawyer, I have to cut them off. So,
2 anyway.

3 BY MR. MEDLIN:

4 Q. Do you charge by the hour, Mr. McBryde?

5 A. I do indeed. Well, for the most part, yes.

6 Q. The number of hours --

7 A. Huh?

8 Q. So the number of hours you spend discussing
9 estate plans with clients would be shown as an hourly
10 amount on your bills?

11 A. When it's all said and done. It's just
12 maybe less than what I would like to charge because it
13 took more time with the clients than you would like.

14 Q. Right. You may cut your bill, but you know
15 how many hours you spent on that plan and how much
16 time you spent doing the various aspects of estate
17 planning, correct?

18 A. Yes.

19 MR. TWOMBLEY: Object to the form --

20 MS. PAYLOR: Object to the form.

21 MR. TWOMBLEY: -- of the question.

22 Misstates his direct testimony.

23 MR. MEDLIN: He just answered "yes."

24 BY MR. MEDLIN:

25 Q. Did you explain to Mr. Barringer that he

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1 had a power of appointment under Mrs. Barringer's
2 trust?

3 A. Oh, yes. That was -- that is in the
4 document. That is in the -- what they both signed.

5 Q. I didn't ask what was in the document,
6 Mr. McBryde. I asked if you explained that.

7 MR. TYLER: He said, "Oh, yeah." I
8 heard him say, "Oh, yeah." He answered the
9 question.

10 THE WITNESS: Yes.

11 MR. TYLER: Let's take another break.
12 It's been another hour.

13 And let's stay on the record as you
14 tell me, how much longer do you have?

15 MR. MEDLIN: I'm still going to go
16 through a lot of questions, and we are
17 making good progress, though, for now.

18 MR. TYLER: That is good. Because
19 you are absolutely running out of time.

20 THE WITNESS: Yeah.

21 MR. MEDLIN: Well --

22 MR. TYLER: Five minutes.

23 MR. MEDLIN: We may disagree with
24 that, but let's take a five-minute break
25 for Mr. McBryde.

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1 THE VIDEOGRAPHER: The time on the
2 monitor is 3:28 p.m. We are off the
3 record.

4 (Recess taken.)

5 THE VIDEOGRAPHER: The time on the
6 monitor is 3:35 p.m. We are back on the
7 record.

8 MR. TYLER: Listen, before we get
9 started, this is Scott Tyler. I've talked
10 to Mr. McBryde about his schedule, and
11 given this some thought and considered the
12 nature of the questioning that we have been
13 subjected to, which -- and we can agree to
14 disagree, but in my view is repetitive,
15 irrelevant, mostly hypothetical.

16 When I -- again, when I talked to
17 Bill Hogan about how long this deposition
18 was going to be, he said two to four hours.
19 You are already over four hours.

20 So at this point, again, considering
21 Mr. McBryde's schedule, say, Alan, you
22 know, we'll give you some additional time,
23 let's say about an hour. But,
24 respectfully, I guess I'd suggest that, you
25 know, you look at your outline and consider

ROA 006299

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1 that you may not get another chance to
2 question Mr. McBryde.

3 And, again, you may disagree, but
4 certainly you may not get another chance.
5 So you might want to consider what are the
6 important questions and what are the
7 particularly relevant questions and ask
8 those now, and then perhaps we can conclude
9 this thing in a reasonable amount of time.

10 MR. MEDLIN: Well, thank you for the
11 notice, Scott. And I'm going to try to
12 move as quickly and efficiently as I can.

13 MR. TYLER: Okay. Thank you. But I
14 just want to let you know.

15 MR. MEDLIN: I appreciate it.

16 BY MR. MEDLIN:

17 Q. Mr. McBryde, are you ready to get back?

18 A. Yes.

19 Q. Okay. Thank you.

20 Would you look at your NMcBryde documents
21 page 86, 0086?

22 A. Which one?

23 MS. PAYLOR: Is this in your
24 notebook?

25 THE WITNESS: Oh, yeah. Yeah, yeah,

ROA 006300

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1 yeah. Last Will and Testament of Paul
2 Barringer?

3 BY MR. MEDLIN:

4 Q. Yes. Yes, sir.

5 A. Okay. At least I got that.

6 Q. All right. If you look at Item 3 in the
7 bottom.

8 Would you read Item 3 out loud, please,
9 Mr. McBryde?

10 A. All of the residue and remainder of my
11 property of every kind --

12 (Reporter asks for Clarification.)

13 BY MR. MEDLIN:

14 Q. Neill, read that out loud a little more
15 slowly for the court reporter, please.

16 A. All of the residue -- rest, residue and
17 remainder of my property of every kind and description
18 and wherever located, including any lapse avoid
19 devise, but not including any property over which I
20 may have a power of appointment, I devise to the
21 acting trustee or trustees of Paul B. Barringer II
22 Revocable Trust executed by me immediately prior to my
23 execution of this will on the 4th day of December
24 1998, as the same may from time to time be amended or
25 prior to my death to be held, managed and distributed

ROA 006301

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1 in accordance with the terms and provisions of such
2 agreement as the date of my death.

3 Q. Okay. So, thank you.

4 Now, beginning with the last line on
5 page 86, there is a parenthetical. It starts,
6 parenthesis, "but not including."

7 Are you with me on that?

8 A. But not including any property over which I
9 may have a power of appointment.

10 Q. Yeah. What does that mean?

11 A. Just what it says. There can be powers of
12 appointment granted any time, any place, after the
13 will is executed.

14 Q. And as of that day, Mr. Barringer,
15 according to you, knew he had a power of appointment
16 under Mrs. Barringer's revocable trust?

17 A. Right.

18 Q. And he declined to exercise it on that very
19 day, correct?

20 A. (Reading document to self.)

21 Yeah. This is -- this is his current --
22 this is his then current last will and testament. And
23 I have no idea what has been executed since then
24 and -- but that is exactly -- it would -- it would
25 apply, I think.

ROA 006302

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1 Q. Yeah. So according to your testimony, he
2 knew he had a power of appointment on that day because
3 she gave him one under her revocable trust, and on
4 that very day he declined to exercise it in his will;
5 is that correct?

6 MS. PAYLOR: Object to the form.

7 MR. TWOMBLEY: The same objection.

8 THE WITNESS: Yeah. Or at least at
9 that point without separate addressing it,
10 that was not done.

11 BY MR. MEDLIN:

12 Q. Sure. And do you think Mrs. Barringer knew
13 that his will declined to exercise the power of
14 appointment her revocable trust supposedly gave her?

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

17 MS. PAYLOR: Object to the form.

18 THE WITNESS: I -- I can't answer
19 that question.

20 MR. MEDLIN: If you --

21 MR. TWOMBLEY: Let him finish,
22 please.

23 THE WITNESS: Because this is --
24 we -- you know, we went over generally, the
25 powers of, and so I would think -- I can't

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1 remember specifically addressing this, but
2 we didn't -- you know, when you go over
3 these trusts, you go over them and state
4 what they said and you assume that they
5 take it in at that point.

6 BY MR. MEDLIN:

7 Q. You explained to Mr. Barringer that he was
8 declining to exercise the power of appointment that
9 Mrs. Barringer was giving him that same day?

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

12 MS. PAYLOR: Object to the form.

13 THE WITNESS: Say -- say that again
14 in another way.

15 BY MR. MEDLIN:

16 Q. Did you explain to Mr. Barringer that his
17 will declined to exercise the power of appointment
18 that Mrs. Barringer's revocable trust gave him?

19 MS. PAYLOR: Object to the form.

20 THE WITNESS: I would think he
21 would -- he would remember. Yes.

22 BY MR. MEDLIN:

23 Q. Well, I asked you if you explained it to
24 him.

25 A. It's material. I want to go over every

ROA 006304

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1 piece of this document normally. I mean, powers to
2 get. Never do that.

3 But all the dispositive provisions, we
4 would have noted it. And that is -- it's actually
5 pretty -- yeah. It's not a -- not a particularly long
6 trust, and you don't take into account (inaudible.)

7 So I would think we touched on it and --
8 but I would think we did. And I start out and say,
9 okay, Item 1, do you want to be buried? You know,
10 this is typical.

11 And of course, we had -- you know, we had
12 to have a session with them, so I think he probably
13 would have known. But I'd have to ask him. But not
14 now, it's a little late but...

15 Q. And hopefully, Mr. McBryde, it will be a
16 very long time before you or I get the opportunity to
17 ask him.

18 A. Yep. I hope for that. I'm older than you
19 are.

20 Q. I hope for that, too.

21 A. I'm even more hopeful.

22 Q. I'm hoping that for both of us.

23 A. Yeah. So I have -- I have no reason to
24 believe he didn't read that and know that and for
25 whatever reason we weren't going to -- look, we were

ROA 006305

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1 so glad to get done what we could get done on the
2 issues that counted.

3 Q. So real quickly, you just mentioned Item 1.
4 And I think you said you read to your clients. Do you
5 put burial provisions in the will? Is that a common
6 practice?

7 A. Yeah.

8 Q. What if the will doesn't get probated until
9 after somebody is buried?

10 A. It at least tells the family what you
11 wanted to do.

12 Q. What if they don't see the will until --

13 A. Now, will they still cremate you? Yeah,
14 when they see what the fees are.

15 MS. PAYLOR: I mean, this is --

16 BY MR. MEDLIN:

17 Q. Look at page 99.

18 MR. TWOMBLEY: Alan, is this -- I --
19 you know, you can use your time however
20 you'd like, but, I mean, is this really
21 what you want to spend your last hour on
22 with Mr. McBryde?

23 MR. MEDLIN: Yes, it is actually.

24 Yes, it is. Thank you.

25 MR. TWOMBLEY: Please proceed.

ROA 006306

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1 Please proceed.

2 BY MR. MEDLIN:

3 Q. Page 99, Mr. McBryde.

4 A. I've got 99.

5 Q. All right. Is there similar language in
6 Mrs. Barringer's will, that she declined to exercise
7 the power of appointment that Mr. Barringer gave her
8 that same day?

9 MR. TWOMBLEY: Object to the form of
10 the question.

11 THE WITNESS: No. I don't think.

12 BY MR. MEDLIN:

13 Q. All right. Let's look at the last line of
14 page 99. And let's look at the same sort of
15 parenthetical language.

16 A. Page 99.

17 Q. Yes, sir.

18 MR. TYLER: Again, I think you need
19 to reference the Neill -- or the NMcBryde
20 depo page 99. I think you're --

21 THE WITNESS: Yeah. I got it. Okay.

22 Are you No. 2 or 3?

23 BY MR. MEDLIN:

24 Q. Item 3.

25 A. Okay.

ROA 006307

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1 Q. Parenthetical.

2 A. All of the rest, residue and remainder of
3 my property of every kind and description and wherever
4 located, including any (reading to self.)

5 (Reporter asks for clarification)

6 MS. PAYLOR: She can't take you down,
7 Mr. McBryde.

8 MR. TYLER: Either say it out loud or
9 say it quiet.

10 THE WITNESS: All right. All of the
11 rest, residue and remainder of my property
12 of every kind and description and wherever
13 located, including any elapse or forward
14 devised, but not including any property
15 over which I may have a power of
16 appointment I devise to then acting trustee
17 or trustees of the Merrill Barringer
18 Revocable Trust executed by me immediately
19 prior to my execution of this will on 4 --
20 4 day of December 1998, is the same may
21 from time to time being amended prior to my
22 death, be held, managed and distributed
23 according to the terms and provisions of
24 such trust agreement.

25 BY MR. MEDLIN:

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1 Q. All right, sir. Thank you.

2 And let's go back to the parenthetical that
3 starts on the very last line of the page that you just
4 started reading from, page 99 of Neill McBryde dep.

5 A. Okay.

6 Q. What does that parenthetical mean?

7 A. Which paragraph?

8 Q. But not including any property over which I
9 may have a power of appointment.

10 A. Right.

11 Q. Because she did expressly decline to
12 exercise the power.

13 MS. PAYLOR: Object to the form.

14 MR. TWOMBLEY: Object to the form of
15 the question.

16 THE WITNESS: Okay.

17 BY MR. MEDLIN:

18 Q. Do you agree?

19 A. That is what it says.

20 Q. Okay. So Mr. and Mrs. Barringer were
21 together with you when these documents were being
22 executed?

23 A. Right.

24 Q. And you discussed all these important
25 provisions with them so that they could understand

ROA 006309

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1 them?

2 A. Yeah. I mean, this is the stock exchange
3 except for also in the attachment to the letter and to
4 the letter transmitting the documents.

5 Q. They understood that the other spouse was
6 declining to exercise his or her power of appointment
7 in those wills then, correct?

8 A. At that point in time, yes.

9 Q. Okay. So they would know that?

10 A. I would think that was -- that is -- that
11 is where they were.

12 Q. All right.

13 A. That didn't mean -- I don't know what you
14 are getting at. It means that they still -- well, he
15 is dead. But now the surviving spouse still has
16 rights.

17 Q. I'm simply asking the question that I asked
18 you, Mr. McBryde.

19 A. Okay.

20 Q. All right, sir. Is an estate planning
21 document always reflective of the testator's intent?

22 A. I am not sure what you are saying.

23 Q. Is it possible for the document to get
24 intent wrong?

25 MR. TWOMBLEY: Object to the form of

ROA 006310

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1 the question.

2 THE WITNESS: It all depends on what
3 the then intent was. Can the intent
4 change? Yes. You need to get documents
5 redone? Yes. And that is what keeps us in
6 business.

7 BY MR. MEDLIN:

8 Q. At the time --

9 A. (Crosstalk.)

10 Q. I'm sorry, again, Mr. McBryde. I
11 apologize. I stepped on you once again. I'm sorry.
12 Are you finished?

13 A. Yeah.

14 Q. Okay. Thank you.

15 So at the time of execution, does that
16 document always reflect the present intent of a
17 client? Can the document have mistakes in it?

18 MR. TWOMBLEY: Object to the form.

19 MS. PAYLOR: Object to the form.

20 THE WITNESS: Yes. It can have
21 mistakes. It can have mistakes because the
22 articulation requested by the -- by the
23 client was not what they intended or their
24 minds change just before or just after and
25 they don't make any changes as required or

ROA 006311

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1 wanted.

2 BY MR. MEDLIN:

3 Q. Mr. McBryde, we're all human, so I know we
4 all make mistakes. But I'm assuming on occasion, your
5 document might not accurately reflect the intent of a
6 client?

7 MR. TWOMBLEY: Object to the form of
8 the question.

9 MS. PAYLOR: Object to the form.

10 THE WITNESS: Probably, unlike you,
11 every now and then you have provisions and
12 you correct them as you go along if you
13 think they are material.

14 BY MR. MEDLIN:

15 Q. I'm not sure if you were saying I don't
16 correct my mistakes when I find them or if I think I
17 don't make mistakes but --

18 A. Well, that is better. Better still.

19 Q. I make plenty of mistakes, Mr. McBryde.

20 Earlier this morning when you were
21 answering Mr. Twombley's question, if I heard you
22 correctly, you said among the communications you had
23 with Mr. Barringer, there was correspondence back and
24 forth. I don't see any correspondence from
25 Mr. Barringer in your file.

ROA 006312

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1 Are we missing something there?

2 A. I said -- I think I was referring to before
3 and afterwards in the sense that we had other things
4 that we were asked to address here and there, and that
5 would not be included or representative of something
6 that had to be referenced to or included in the will
7 and trust.

8 Q. But you are not aware of any -- I'm sorry
9 again. Please -- please finish.

10 A. No. All I'm saying is I -- I did not go
11 back and attempt to look at all of the other
12 correspondence that we might have had before and
13 afterwards if it were not directly germane to the
14 trust. And -- but nothing -- but nothing that our
15 communications and sitting with them and looking at
16 what we had saw -- I didn't pick up anything like
17 that. But we could have missed it, in which case I --
18 you know, tell me what it is and I'll see if we can
19 take care of it. But I'm not aware of -- of any
20 issues that you talk about that's outside that would
21 have impacted the trust and will.

22 Q. Yeah. We're not aware of anything either,
23 Mr. McBryde. I was just following up on what I heard
24 you say.

25 A. Yeah. Yeah. There are a few other things,

ROA 006313

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1 but they just weren't germane.

2 Q. Okay. Thank you, sir.

3 A. Just looking at it.

4 Q. Now, you referred earlier to Mr. Twombly's
5 question about the --

6 A. Excuse me.

7 Q. Mr. McBryde, do you need to deal with that?
8 We can take a break.

9 A. No. No. She is expecting me within the
10 time frame we mentioned.

11 Q. Okay.

12 A. Okay. Go ahead. I was -- I'm sorry. Just
13 repeat.

14 Q. Yes, sir. You were talking about the
15 pour-over will, pouring over probate assets into the
16 revocable trust, and you talked about, of course, that
17 would be in addition to what was already in the
18 revocable trust; is that correct?

19 A. I think so. Yes.

20 Q. So --

21 A. I don't remember the particular elusion,
22 but, yes, on that premise, go forward.

23 Q. Yeah. Well, and again, I apologize. I'm
24 paraphrasing in sort of terminology I think you and I
25 use.

ROA 006314

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1 But are you aware at the time of the
2 execution of the documents that Mr. Barringer had
3 funded his revocable trust with any asset other than a
4 Xerox of a money?

5 A. I was not aware one way or the other.

6 Q. Yeah. And I'm showing my age, Mr. McBryde.
7 By "Xerox," I mean copy.

8 A. Yes, it said that in that.

9 Q. So how does one fund a revocable trust?

10 MR. TWOMBLEY: Object --

11 THE WITNESS: How does one fund it?

12 MR. TWOMBLEY: -- to the form of the
13 question. I mean, just...

14 THE WITNESS: You mean this revocable
15 trust?

16 BY MR. MEDLIN:

17 Q. Yeah. What did you tell, for example, the
18 Barringers to do if they wanted to put property into
19 the revocable trust?

20 A. You've got to make the proper transfer
21 document, have it executed and manage to accept it by
22 the trustee, and that -- and whatever is needed. It
23 could be a deed, it could be something else. And the
24 trust doesn't have to pay tax -- doesn't have to file
25 tax returns because it's going to flow through to the

ROA 006315

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1 creator of the revocable trust.

2 Q. But how would you explain to the Barringers
3 to add property to the revocable trust, say if they
4 wanted to put a house into the revocable trust? What
5 would you tell them to do?

6 A. I'd pull the documents out. I'd look to
7 see what was appropriate and should be done, whether
8 it impacts any of the other estate planning documents.
9 And then I'd tell them to transfer. I'm not sure if
10 transferring a home into a revocable trust is
11 something I see a whole lot of. But if there's good
12 reason, I suppose it's good reason, but I'd have to be
13 convinced of that.

14 Q. But if they wanted to do it after they left
15 your office, you wouldn't explain to them what to do
16 in the future?

17 A. If they are going to go do things and they
18 don't know what they are doing, then they got -- you
19 know, they are being lawyers, and they got a fool for
20 a client. So, no.

21 And that is why you have a -- we did not
22 have an in-depth, continuing relationship for whatever
23 reason after, which although we still did stuff for
24 them a little bit. That is not -- you know, I don't
25 -- I don't say that I'll take good care of you now for

ROA 006316

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1 the rest of your life even if you never talk to me
2 again if I see something -- something -- I don't take
3 on that obligation either.

4 Q. So --

5 A. I don't think you do either.

6 Q. Did you, by any chance, tell them how they
7 might transfer stock into the revocable trust later
8 on?

9 A. Well, that was not something I was asked to
10 do, and they didn't come back and ask me to do it at
11 any point, and therefore -- and they didn't -- you
12 know, basically we weren't really acting as a lawyer.
13 I will have to check, but I'm pretty sure the few
14 things we did had nothing to do with the estate
15 planning documents afterwards. They had to do with
16 some of the entities and so on.

17 So, no, we don't say, anything that
18 happens, by the way, you have to call us first. That
19 is crazy.

20 Second, they wouldn't do it, unless --
21 particularly if they are moving to other counsel. I
22 have no idea if and when they got other counsel, but
23 I'm sure they did.

24 Q. But you explained to them that they could
25 add property to the revocable trust after they left

ROA 006317

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1 your office?

2 A. Sure. I mean, yeah.

3 Q. And did you tell -- and did you tell them
4 how --

5 A. No.

6 Q. -- to do that?

7 A. No.

8 Q. All right. So --

9 A. It's nice if all your relationships are
10 such that you can just have a continuing, don't worry,
11 I'm going to remind you of everything you need to do,
12 even if you are not going to see me again, and haven't
13 even paid you yet for what you did. And he did end up
14 paying me. So I am not sure what you are saying. The
15 relationship continues on as long as there is a
16 relationship.

17 Q. How would you tell a client to transfer
18 stock into a revocable trust?

19 MS. PAYLOR: Object to the form. He
20 said he didn't do it. Let's move on.

21 THE WITNESS: Move on.

22 MR. TYLER: You've got 30 minutes.

23 BY MR. MEDLIN:

24 Q. Answer the question, please, Mr. McBryde.

25 A. How do you -- you can -- you can transfer

ROA 006318

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1 stock to a revocable trust, absolutely, trustee of the
2 revocable trust.

3 Q. Can I do it just by --

4 A. For tax purposes, it takes nothing because
5 it's ignored.

6 Q. Can I just handwrite on the schedule of
7 property and that does it?

8 MR. TWOMBLEY: Object --

9 THE WITNESS: Come on, man.

10 MR. TWOMBLEY: -- to the form of the
11 question.

12 THE WITNESS: If you've got stock,
13 you've got to transfer it on the
14 certificate. That's just a waste of time
15 to ask that question.

16 (Reporter asks for Clarification.)

17 BY MR. MEDLIN:

18 Q. Yeah. I asked the question, Mr. McBryde,
19 because Mr. Twombley produced to us earlier a page
20 with handwritten stock on it that wasn't produced from
21 your office.

22 All right. So let's move on.

23 MR. TWOMBLEY: Wait, what -- what --
24 what are you --

25 MR. MEDLIN: I'm trying to move on,

ROA 006319

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1 Ashley. So we'll talk about that --

2 MS. PAYLOR: What are you talking
3 about?

4 MR. MEDLIN: Nothing to do with you,
5 Scott.

6 BY MR. MEDLIN:

7 Q. So earlier when you were talking to
8 Mr. Twombly this morning, you were talking about the
9 reasons for a power of appointment, that circumstances
10 can change.

11 Is my recollection correct on that,
12 Mr. McBryde?

13 A. Absolutely.

14 Q. And one of those you mentioned was tax?

15 A. Sure. Down the road taxes or somebody
16 where you got a huge gain coming in and you want to be
17 aggressive and you want to get it to the person who is
18 going to pay no tax on it, with no understanding but
19 ability to get everybody even, for example. But, more
20 likely, it's going to be more obvious reasons,
21 divorce, litigation, IRS matters, illness, blah, blah,
22 blah, all those -- all those things. Or just bad
23 things happen to one or more family members, either
24 caused by them or otherwise, that make it imprudent
25 for them to be the appointee --

ROA 006320

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1 Q. Okay.

2 A. -- or the trust for their benefit.

3 Q. And if I recall correctly, and I believe
4 you were referring to Mr. Twombly's documents,
5 page 124, but you mentioned specifically that that
6 special power of appointment was for tax reasons, or
7 did I misunderstand you?

8 MS. PAYLOR: Object to the form.

9 MR. TWOMBLEY: Object to the form of
10 the question. It Completely misstates the
11 testimony and has been asked and answered.

12 BY MR. MEDLIN:

13 Q. You've got that handy, Mr. McBryde?

14 A. What's the page number, 124?

15 Q. 124, I believe, in Mr. Twombly's
16 documents.

17 MR. TWOMBLEY: The red numbers,
18 right?

19 THE WITNESS: Okay. There we go.

20 BY MR. MEDLIN:

21 Q. I tell you what, Mr. McBryde, to be
22 efficient, let's just move on. I apologize for
23 sending you on that chase.

24 Under Mrs. Barringer's special power of
25 appointment, could she create another power of

ROA 006321

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1 appointment?

2 A. Could she create another power of
3 appointment?

4 Q. Yes, sir. I mean --

5 A. It might have tax consequences, but I can't
6 think of why it would not be -- you could not exercise
7 a legitimate recognized power to create a trust that
8 had provisions that gave up special power of
9 appointment. Unless I'm missing something, unless
10 there is a rule against perpetuities issue, which I
11 don't think so.

12 Q. Right. Which, in fact, could sort of
13 create a Delaware tax trap opportunity?

14 A. Yeah. I mean, you know, you -- it's not
15 something you don't do without looking at your state
16 and what the state of the law is and blah, blah, blah.

17 Q. Thank you, sir.

18 Did you ever tell Mr. Barringer and
19 Mrs. Barringer that the powers of appointment that he
20 created would allow a change of control of his
21 company?

22 MS. PAYLOR: Object to the form.

23 MR. TWOMBLEY: Object to the form of
24 the question.

25 THE WITNESS: No.

ROA 006322

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1 BY MR. TWOMBLEY:

2 Q. Thank you.

3 I think you pointed out this morning that
4 other than that one paragraph dealing with specific
5 gifts to the wife's children, Mr. and Mrs. Barringer's
6 estate plan that you created were essentially
7 reciprocal, had the same provisions? Is that a fair
8 statement?

9 A. They were -- I'm not going to go beyond
10 that they in wording are reciprocal, but I think that
11 is a general term -- there was generally the same
12 provisions in each. Their circumstances were
13 different in terms of the assets that might be
14 involved, but in terms of the technique and what they
15 were doing.

16 Q. You're good at this, Mr. McBryde. You've
17 anticipated my next question.

18 She did not own any Coastal Lumber stock,
19 did she?

20 MR. TWOMBLEY: Object to the form --

21 MS. PAYLOR: Object to the form.

22 MR. TWOMBLEY: -- of the question.

23 THE WITNESS: Do I know who?

24 BY MR. MEDLIN:

25 Q. Mrs. Barringer --

ROA 006323

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1 A. (Crosstalk) but I'm sorry.

2 Q. I'm sorry. Can you hear me now?

3 A. Yes.

4 Q. At the time you were preparing their estate
5 plan back in 1998, Mrs. Barringer did not own any
6 Coastal Lumber stock.

7 A. Okay.

8 Q. That is one of the differences in the asset
9 ownership you were just referring to, correct?

10 A. Right.

11 MS. PAYLOR: Object to the form.

12 MR. MEDLIN: All right. Where are
13 you, Scott, on kicking me out?

14 MR. TYLER: About 24 minutes. 15
15 would be better.

16 MR. TWOMBLEY: Yeah, 15 would be
17 better based on --

18 MR. MEDLIN: Do you want to give me
19 an exact time?

20 MR. TYLER: 4:25.

21 MS. PAYLOR: 4:30.

22 MR. MEDLIN: I'm kidding. You said
23 24 minutes. I was trying to bring some
24 levity.

25 Well, I've got way more than that, so

ROA 006324

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1 here is what I am going to do based on your
2 recommendation. I'm going to start asking
3 him questions about his affidavit, and I
4 want to keep going on. But I understand
5 you are going to choose to take your client
6 away whenever you do that; is that correct,
7 Scott?

8 MR. TYLER: What did you ask me?

9 MR. MEDLIN: I said I've got a good
10 bit more than 24 minutes worth of questions
11 or, you know, 15.

12 MR. TYLER: Are they on the nature of
13 the questions that you've been asking over
14 the past 40 minutes?

15 MR. MEDLIN: They are of the nature
16 of the questions that we think are quite
17 relevant and are going to make a big
18 difference in this case.

19 MR. TYLER: I'm sure. All right.

20 So --

21 MR. MEDLIN: So --

22 THE WITNESS: Well, 4:30 is hard for
23 me as far as I'm concerned.

24 MR. TYLER: Yeah. So what is the
25 question? You have until 4:30.

ROA 006325

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1 MR. MEDLIN: Well, again, then we'll
2 agree to disagree. But if you want to take
3 Mr. McBryde at 4:30 and we want to ask more
4 questions, we'll just go to the court and
5 figure that out. Is that suitable?

6 MR. TYLER: I guess so.

7 MR. MEDLIN: Okay. All right. So
8 let's go to your affidavit again,
9 starting -- well, actually, I keep saying
10 affidavit, Mr. McBryde. I mean affidavits.

11 Starting over on page 288, this is in
12 the McBryde documents from this morning.

13 MR. TYLER: Can you just give us the
14 page in the affidavit?

15 MR. MEDLIN: Yeah, I just did. 288 I
16 think is the right page.

17 MR. TYLER: No, I'm sorry. We just
18 don't have the version with that page
19 number on it. The very page of the
20 affidavit, you know, 1 through 10 or
21 whatever it is.

22 MR. MEDLIN: I see. So you have an
23 affidavit without --

24 THE WITNESS: Yeah. I got depo -- my
25 material depo --

ROA 006326

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1 MR. TYLER: We are looking at
2 Ashley's version.

3 THE WITNESS: Yeah.

4 MR. MEDLIN: Okay. Well, what I'm
5 going to try to do then for Ashley and
6 Alice and Chip is, I'm trying to -- I'm
7 going to try to refer to both the page
8 number Bates stamp of our documents and the
9 actual page number that you had in the
10 affidavit, Mr. McBryde. Does that make
11 sense?

12 THE WITNESS: Okay.

13 BY MR. MEDLIN:

14 Q. Okay. So this would be on page 290 but on
15 page 3 of your affidavit.

16 A. Okay.

17 Q. All right. In paragraph 12, you say, if
18 relief was granted, then the '98 wills and trust would
19 be the operative wills and trust. And that's based on
20 your assertion in the prior paragraph that our client,
21 Ms. Luzak, has asked to set aside all wills subsequent
22 to the 1998 document; is that correct?

23 A. That is No. 11 where that's said.

24 Q. 11 and 12 together.

25 A. Yes.

ROA 006327

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1 Q. So who said that? Who told you that?

2 A. Well, I was looking at how that was put
3 together -- oh, you mean, in '11 or '12?

4 Q. Yeah. Who told you that Kathy Luzak was
5 trying to set aside all the wills and trusts of Paul
6 Barringer after your 1998 documents?

7 A. I assume that counsel for -- not our
8 counsel but other counsel have -- were made aware of
9 it.

10 Q. But you put it in the affidavit. You've
11 had to learn it from somewhere.

12 A. Yeah, I got -- I got comfort that that was
13 in fact correct.

14 Q. Okay. How did you get that comfort is what
15 I'm asking?

16 A. Well, that is what I'm saying, from counsel
17 for Mrs. Barringer.

18 Q. All right. Thank you.

19 Okay. So in paragraph 14, you talk about
20 having reviewed Judge Mullen's order and the
21 testamentary exception to attorney-client privilege.
22 That should be the bottom of page 3, right where you
23 were, Neill.

24 A. Right.

25 Q. Okay. What is your definition of

ROA 006328

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1 testamentary exception? What do you understand that's
2 privileged or not under the testamentary exception?

3 MR. TWOMBLEY: Object to the form of
4 the question.

5 MS. PAYLOR: Objection.

6 THE WITNESS: I think it speaks for
7 itself, doesn't it?

8 BY MR. MEDLIN:

9 Q. I'm asking you.

10 A. Well, it just means that there is no
11 attorney-client South Carolina recognize that the
12 testamentary exception to the attorney-client
13 privilege, and therefore, we can get that information.

14 Q. Okay. Let's look at paragraph 16.

15 A. Okay.

16 Q. You say in the affidavit, it is intended to
17 cover matters -- only to cover matters covered by
18 Judge Mullen's order and nothing more?

19 A. For purposes of this -- this information,
20 this affidavit, yes.

21 Q. Yeah. What does that mean?

22 A. I --

23 MS. PAYLOR: Object to the form.

24 THE WITNESS: It means that it only
25 covers matters by Judge Mullen's order, and

ROA 006329

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1 therefore, they were aware -- or counsel
2 for the other side is aware that -- of what
3 that is, and therefore, we know that that
4 is included in -- in what would be included
5 here, that it's okay.

6 BY MR. MEDLIN:

7 Q. Are you talking about what she would allow
8 you to do as you understand the testamentary
9 exception?

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

12 MR. TYLER: Yeah. And I'm going to
13 object to these as well as the witness'
14 attorney. I mean, the purpose of this is
15 to indicate that there is no intent or
16 implied waiver of the privilege. That
17 is -- that is what this was intended to
18 cover, and so there is no such --

19 BY MR. MEDLIN:

20 Q. Yeah. Well, do you agree with Scott's
21 answers, Mr. McBryde? Is that a --

22 A. I do.

23 Q. -- satisfactory answer for you? Okay.

24 Paragraph 17, you say there is no intended
25 or implied waiver of the attorney-client privilege; is

ROA 006330

Page 267

1 that correct?

2 A. That is correct.

3 Q. Okay. Whose privilege is that? Is that
4 your privilege?

5 MR. TWOMBLEY: Object to the form of
6 the question. Calls for a legal
7 conclusion.

8 MR. TYLER: Yeah. I'm going to
9 object to that as well. I mean, again, the
10 whole point here is there is no waiver of
11 the privilege, whomever it belongs to.

12 MR. MEDLIN: Well, I want to know who
13 Mr. McBryde thinks it belongs to.

14 THE WITNESS: Anybody where you would
15 say it doesn't.

16 MR. MEDLIN: You know, he's writing
17 things in the affidavit. I'm just trying
18 to figure out what he is trying to say,
19 which I think is fair.

20 MS. PAYLOR: I'll make my objection
21 that I have already made on the grounds of
22 relevance. All he was saying is what his
23 lawyer just said, and why you want to keep
24 going into it when it has nothing to do
25 with your case. I think, you know, you're

ROA 006331

Page 268

1 just prolonging the deposition.

2 MR. MEDLIN: I disagree.

3 BY MR. MEDLIN:

4 Q. Mr. McBryde, would you answer the question?

5 A. Well, I answered it.

6 MR. MEDLIN: I don't know that he
7 answered, Mr. Tyler. I thought you did.

8 MR. TYLER: Why don't you repeat the
9 question.

10 BY MR. MEDLIN:

11 Q. The question is: Do you, Mr. McBryde, have
12 the attorney-client privilege or is that
13 Mrs. Barringer's privilege as the personal
14 representative of the estate? Let me ask it that way?

15 MR. TWOMBLEY: Object to the form of
16 the question. Calls for a legal
17 conclusion.

18 MR. MEDLIN: I'm just trying to
19 figure out why he put what he said in
20 there.

21 THE WITNESS: We don't want to impair
22 any attorney-client privilege in a way
23 that's required.

24 MR. TWOMBLEY: And, Alan, I, you
25 know, just disagree that that is what you

ROA 006332

Page 269

1 are trying to do. It probably goes without
2 saying. But go ahead. I don't want to
3 interfere.

4 MR. MEDLIN: Well, I don't know that
5 you know what I'm trying to do, but you're
6 welcome to disagree with it anyway. I
7 appreciate that.

8 BY MR. MEDLIN:

9 Q. Let's look at paragraph 20. We talked
10 earlier, Mr. McBryde, that the pour-over of the will
11 and the revocable trust worked in this way: Probate
12 assets could be directed to the revocable trust at
13 Mr. Barringer's death; is that correct?

14 A. I think that is correct.

15 Q. Yeah. And, in fact, under the language of
16 his will, all of his residuary estate would pass into
17 the revocable trust; is that correct?

18 A. Yep.

19 Q. All right. So what can pass would be a
20 probate asset; would you agree?

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

23 THE WITNESS: It would -- it would
24 apply to probate assets, which could be
25 distributed and would be distributed under

ROA 006333

Page 270

1 this arrangement to the revocable trust.

2 BY MR. MEDLIN:

3 Q. So in your affidavit in paragraph 20, for
4 those assets to be poured over, other than the certain
5 personal property, which you do exclude, you say they
6 would have to be only assets in his individual name?

7 MR. TWOMBLEY: Object to the form of
8 the question. Misstates the affidavit and
9 the testimony.

10 BY MR. MEDLIN:

11 Q. Your affidavit, Mr. McBryde, says --

12 A. Sure. That's intended to state that
13 anything can be poured over --

14 MR. TYLER: Hold on.

15 MR. TWOMBLEY: Yeah, let's let him
16 finish the question.

17 THE WITNESS: Okay. Finish the
18 question.

19 BY MR. MEDLIN:

20 Q. I'm finished. You were answering it just
21 fine. Thank you.

22 MR. TYLER: I was trying to avoid you
23 talking over each other for the court
24 reporter's benefit but --

25 MR. MEDLIN: Thank you.

ROA 006334

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1 MR. TYLER: I'm going to have to ask
2 you to repeat it because I don't think he
3 knows what it was.

4 BY MR. MEDLIN:

5 Q. All right. So, Mr. McBryde, according to
6 your affidavit, the assets that are in Mr. McBryde's
7 (sic) individual name would pass to the revocable
8 trust?

9 MR. TWOMBLEY: Object to the form of
10 the question.

11 THE WITNESS: And you are getting
12 late because you called him Mr. McBryde.
13 He's still the descendants.

14 BY MR. MEDLIN:

15 Q. No, I'm asking you, Mr. McBryde. But I do
16 not want you to be a descendants any time soon.

17 MR. TYLER: Answer the best you can.

18 THE WITNESS: You have to repeat the
19 question now. It got interrupted twice.

20 BY MR. MEDLIN:

21 Q. Are you ready for the question I'm going to
22 ask --

23 MR. TWOMBLEY: He's ready. Yes.

24 BY MR. MEDLIN:

25 Q. According to your affidavit, the assets

ROA 006335

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1 that get poured over into the revocable trust of
2 Mr. Barringer, are those assets in his individual name
3 and only those assets in his individual name; is that
4 correct?

5 MR. TWOMBLEY: Object to the form of
6 the question.

7 THE WITNESS: In his individual name,
8 where is that -- where did you add "only"?
9 You said "and only." I don't see "and
10 only."

11 BY MR. MEDLIN:

12 Q. You're absolutely right. I apologize. I
13 misread that out of the corner of my eye.

14 Any assets in his individual name?

15 A. Excluding certain personal property.

16 Q. Yes, sir.

17 A. That is the typical. There may be some
18 exceptions, but that is basically the general rule.

19 Q. Okay. Can a will pour over assets that are
20 not in the testator's individual name?

21 A. Administration including any assets -- no.
22 We didn't say necessarily inclusive. We are saying as
23 to those assets for sure they're pouring --

24 Q. All right. Tell me -- give me some -- give
25 me an example of some assets that can pass under a

ROA 006336

Page 273

1 pour-over clause in a will that aren't in the
2 individual name of a testator?

3 A. Too late to get my mind working on that
4 one. But any asset coming into the probate estate and
5 not otherwise used to liquidate it -- and not real
6 estate, I don't think, because we are talking about
7 personal property -- is going to go into the revocable
8 trust when the estate is closed, by the time the
9 estate is closed. If not, otherwise you use for
10 estate administration.

11 Q. Right. So an asset gets into the probate
12 estate because it was owned individually by the
13 testator, correct?

14 A. Right.

15 Q. And are there other assets that can become
16 part of the probate estate other than maybe an
17 insurance beneficiary designation to the estate?

18 A. Well, IRS refunds. You have lots of
19 things. A wrongful death action that the estate
20 gets -- gets money from.

21 Q. Right. Wouldn't those be brought in the
22 name of the testator, not in somebody else's name?

23 A. It all depends, say what the action is.

24 Q. All right. So let's look at page 6, your
25 numbering page 293 of the -- of the Bates numbers.

ROA 006337

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1 You start explaining under Purpose of a
2 Power of Appointment, paragraphs 27 through 36, about
3 how powers of appointment work; is that correct?

4 A. Yeah. It goes on to 36. 33, isn't it --
5 yeah, I guess you can say. It depends on how far you
6 want to go. 36.

7 Q. Yeah. So you are basing that not on the
8 facts of the Barringer case, you are basing that on
9 your expertise, correct?

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

12 MS. PARLOR: Object to the form.

13 THE WITNESS: Some of the -- yeah,
14 some of what I say is just a general rule
15 or application. And then we get to 30, if
16 you have anything, the purpose of the power
17 of the appointment is to confer authority
18 from Mrs. Barringer to designate at the
19 time of her death who is receiving the
20 majority of the remaining assets of
21 Mr. Barringer's estate. I think that is
22 correct.

23 BY MR. MEDLIN:

24 Q. Okay. Paragraph 34, you say that one
25 reason that we may use powers of appointment is that

ROA 006338

Page 275

1 there may be subsequent economic and other life
2 changes.

3 A. Yeah. This goes right to the point of --
4 of power of appointment as was given, and
5 Mrs. Barringer is right on point, that she is going to
6 have the power to appoint the property.

7 Q. Yeah. And that would include the
8 development of serious financial needs, paragraph 35?

9 A. No. 35 is -- for example -- yeah, it says,
10 for example, individual and otherwise fiduciaries
11 might experience significant economic and other life
12 changes in between person that describes spousal death
13 -- yes.

14 Q. Okay. And so one of those --

15 A. That doesn't mean it is. That doesn't mean
16 it is. It may be that every one of them are rascals
17 and not going to receive anything. This is just
18 what's possible.

19 Q. Maybe you are in financial trouble and you
20 don't want to give them assets that will go to
21 creditors?

22 A. Nobody is going to jail for, you know,
23 marijuana or whatever. Or married a total terrible
24 person, or remarried, and you are not about to let
25 that slip out. You know, you can come up with a

ROA 006339

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1 thousand examples.

2 MR. MEDLIN: Scott, let me make a
3 proposal to you because I do not wish to
4 keep Mr. McBryde. I'm at appoint now where
5 if I move on to my next set of questions,
6 it's going to take a considerable period of
7 time. I understand you want him out of
8 there at 4:30. We don't agree. We'd like
9 to keep going. But if you are going to
10 take him out, we'll have to deal with the
11 judge, if you agree with that. And if we
12 decide we don't want to quit asking
13 questions -- but right now I don't want to
14 quit asking questions.

15 So is that acceptable to you?

16 MR. TYLER: I'm sorry. I'm not sure.
17 What's the proposal?

18 MR. MEDLIN: Well, the proposal is --
19 Neill wants to be out of there by 4:30.

20 THE WITNESS: Yeah, I do.

21 MR. MEDLIN: He has got something
22 that he needs to do. I've got lots more
23 questions to ask. You've told me you are
24 going to take him out of there at 4:30.

25 And so rather than having spent the

ROA 006340

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1 last five minutes getting started on a
2 bunch of questions that are going to take
3 much longer than five minutes, I think
4 you -- you're going to take him out, and we
5 disagree, we have more questions, and it
6 may well be we have to get the judge to
7 decide it; is that correct?

8 MR. TYLER: I guess that is a fair
9 assessment.

10 MR. MEDLIN: Yeah. In other words,
11 you are not going to let -- you are not
12 going to let Neill stay here if I tell you
13 I'm going to keep asking him questions for
14 a while because I have more questions.

15 MR. TYLER: No. We have been at this
16 since 9 a.m., and your questioning has been
17 at least five or six hours by itself --

18 MR. MEDLIN: Okay.

19 MR. TYLER: -- more than we were told
20 it was going to take. So, no, we are done.
21 Sorry, I can't accommodate more at this
22 time.

23 MR. MEDLIN: All right. And you do
24 not agree that Mr. Barringer (sic) would
25 return without having to go to the judge?

ROA 006341

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1 MR. TYLER: Mr. McBryde?

2 MR. MEDLIN: Excuse me. I've done
3 that twice now, Neill. Mr. McBryde.

4 MR. TYLER: It is not our intent to
5 voluntarily put him up for further
6 questioning.

7 MR. MEDLIN: All right. Okay. Well,
8 we are going to agree to disagree on the
9 record, and we may reach out to you outside
10 of this to see if you've had a change of
11 mind. But if not, we'll all deal with it
12 appropriately. Is that agreeable?

13 MR. TYLER: Please contact me any
14 time.

15 MR. MEDLIN: I will.

16 Neill, I'm sorry to keep you so late.
17 I hope you make your appointment.

18 THE VIDEOGRAPHER: This concludes the
19 videotape deposition of Neill McBryde. The
20 total number of media used is one. The
21 time on the monitor is 4:28 a.m. -- I mean,
22 p.m. And we are off the record.

23 MS. PAYLOR: Wait a minute. Before
24 we go off the record with the court
25 reporter, can we please straighten out the

ROA 006342

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1 exhibit issue?

2 MR. TWOMBLEY: Yeah, our notebook is
3 Exhibit 1 and you have notebook Exhibit 2,
4 right, Alan?

5 MR. MEDLIN: Actually, I'm not sure
6 which number our exhibits of our notebook
7 is.

8 MR. TWOMBLEY: Well, we disagree that
9 our notebook is an exhibit and yours is an
10 exhibit from the other depositions, right?

11 MR. MEDLIN: Sure. And in that case,
12 we will those two.

13 MR. TWOMBLEY: Just for the purpose
14 of clarifying the record in case that we
15 are ever have an appeal and this becomes
16 the a record on appeal to be very clear
17 that Exhibit 1 was the initial -- the
18 notebook that Mr. Twombley used in initial
19 examination, and that it was Bates labelled
20 across the top in red numbers 1 through
21 156, and that should be marked as Exhibit
22 1. And the second notebook which the
23 plaintiff provided would be marked as
24 Exhibit 2.

25 MR. TWOMBLEY: I think that is fair

ROA 006343

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1 and to be a little more specific Exhibit 1
2 would have the header centered at the top
3 McBryde depo with the Bates number, and
4 Exhibit 2 which would be our document would
5 have right-hand corner, N.McBryde death
6 with the Bates numbers.

7 (Reporter asks for clarification)

8 I think I got everybody's memorize I
9 so I would like to tell you what I think
10 the orders are if somebody can tell me if
11 they object. I Ashley Twombly, I would
12 like being a copy of the deposition and the
13 video, and plaintiff would also like the
14 transcript and a video. And there is no
15 other others other than that. She does not
16 order one. Just just me on behalf of
17 Merrill Barringer and you know.

18 MR. MEDLIN: Gilreath law firm on
19 behalf of the plaintiff we want the
20 transcript and the video.

21 THE VIDEOGRAPHER: Okay. Thank you.

22 MR. TYLER: This is Scott Tyler we
23 like a copy for Mr. McBryde to read and
24 sign.

25 (Deposition adjourned at 4:31 p.m.)

ROA 006344

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REPORTER'S CERTIFICATE

I, LESHANDA CASS-BYRD, CSR No. B-2291, RPR,
Registered Professional Reporter, certify that the
foregoing proceedings were taken before me at the time
and place therein set forth, at which time the witness
was put under oath by me;

That the testimony of the witness, the questions
propounded, and all objections and statements made at
the time of the examination were recorded
stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes to taken.

I further certify that I am not a relative or employee
of any attorney or the parties, nor financially
interested in the action.

I declare under penalty of perjury under the laws
of North Carolina that the foregoing is true and
correct.

Dated this April 2, 2021.



LESHAUNDA CASS-BYRD, CCR-B-2291, RPR

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1 c/o Scott Tyler Moore & Van Allen
2 scotttlyler@mvalaw.com

3 April 2, 2021

4 RE: Luzak, Hampton v. Light, Merrill B., Et Al.
5 3/26/2021, Neill McBryde (#4484047)

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
24
25

ROA 006346

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Luzak, Hampton v. Light, Merrill B., Et Al.

Neill McBryde (#4484047)

E R R A T A S H E E T

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REASON_____

Neill McBryde

Date

ROA 006347

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Luzak, Hampton v. Light, Merrill B., Et Al.

Neill McBryde (#4484047)

ACKNOWLEDGEMENT OF DEPONENT

I, Neill McBryde, 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.

Neill McBryde

Date

*If notary is required

SUBSCRIBED AND SWORN TO BEFORE ME THIS
_____ DAY OF _____, 20____.

NOTARY PUBLIC

[& - 2:40]

ROA 006348

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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

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that the reasons given for the refusal to sign
require rejection of the deposition in whole or in
part.

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ROA 006398

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Deposition of:
John Jolley , Esq.

April 21, 2021

In the Matter of:
Luzak, Hampton v. Light, Merrill

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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
(Continued)

DATE: April 21, 2021

TIME: 9:23 a.m.

LOCATION: Jolley Law Group
810 Bellawood Road
Columbia, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: KIMBERLY T. POWER, CR

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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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Page 3

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF

3 CARTER SMITH MERRIAM ROGERS & TRAXLER

4 BY: THOMAS W. TRAXLER, ESQUIRE

5 P.O. Box 10828

6 Greenville, SC 29603

7 tom.traxler@carterlawpa.com

8 (VIA ZOOM)

9 THE GILREATH LAW FIRM

10 BY: JAMES GILREATH, ESQUIRE

11 BILL HOGAN,

12 P.O. Box 2147

13 Greenville, SC 29602

14 jim@gilreathlaw.com

15 (VIA ZOOM)

16 MACLOSKIE LAW FIRM

17 BY: CHARLES MACLOSKIE, ESQUIRE

18 P.O. Box 280

19 Beaufort, SC 29901

20 macloskielawfirm@hargray.com

21 (VIA ZOOM)

22 USC SCHOOL OF LAW

23 BY: S. ALAN MEDLIN, ESQUIRE

24 1713 Phelps Street

25 Columbia, SC 29205

amedlin@sc.rr.com

(VIA ZOOM)

ATTORNEYS FOR THE DEFENDANT

MERRILL U. BARRINGER:

TWENG & TWOMBLEY LAW FIRM

BY: J. ASHLEY TWOMBLEY, ESQUIRE

LEE ANN WALTERS, ESQUIRE

311 Carteret Street

Beaufort, SC 29902

twombley@twlawfirm.com

(Appearances Continued on Page 2)

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Page 4

1 APPEARANCES:

2 ATTORNEYS FOR THE DEFENDANT
3 MERRILL B. LIGHT:

4 ROSEN HAGOOD, LLC
5 BY: ALICE PAYLOR, ESQUIRE
6 BIJAN GHOM, ESQUIRE
7 151 Meeting Street
8 Charleston, SC 29402

9 THE LAW OFFICES OF CHARLES MOLSTER, III
10 BY: CHARLES MOLSTER, III, ESQUIRE
11 2141 Wisconsin Avenue, NW
12 Washington, DC 20007
13 cmolster@molsterlaw.com
14 (VIA ZOOM)

15 ATTORNEYS FOR THE DEFENDANT
16 CFRC:

17 HUNTON, ANDREWS & KIRTH, LLP
18 BY: JOHNATHAN SCHRONCE, ESQUIRE
19 EDWARD FUHR, ESQUIRE
20 951 East Byrd Street
21 Richmond, VA 23219
22 jschronce@huntonak.com
23 efuhr@huntonak.com
24 (VIA ZOOM)

25 ATTORNEYS FOR THE WITNESS

JOLLEY LAW GROUP
BY: ARIAIL KIRK, ESQUIRE
810 Bellawood Road
Columbia, SC 29205
akirk@jolleylawgroup.com

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

(INDEX AT REAR OF TRANSCRIPT)

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1 THE VIDEOGRAPHER: Good morning. We
2 are going on record at 9:23 a.m., April 21, 2021.
3 This is media unit one recorded deposition of
4 John Jolley taken by counsel for the defendant in the
5 matter of Hampton Luzak vs. Merrill B. Light, et al.,
6 filed in the Court of Common Pleas, Case No.
7 2016-CP-07-1919.

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

14 Counsel will now state their
15 appearances and affiliations for the record.

16 MR. TRAXLER: This is Tom Traxler,
17 and I have with me Jim Gilreath and Bill Hogan and
18 Ellie Thomas. Mr. Gilreath, Mr. Hogan, and I
19 represent the plaintiff.

20 MR. MACLOSKIE: My name is Mike
21 MacLoskie. I'm in Beaufort, South Carolina, and I,
22 along with the previously announced lawyers,
23 represent the plaintiff.

24 MR. MEDLIN: My name is Alan Medlin.
25 I represent the plaintiff, and the plaintiff is also

ROA 006405

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1 on.

2 MS. PAYLOR: I'm Alice Paylor, and I
3 represent the defendant, Merrill Light, along with
4 Chip Molster and Bijan Ghom.

5 MR. TWOMBLEY: My name is Ashley
6 Twombley, and I represent Merrill Barringer along
7 with Lee Walters. And just so the record is clear,
8 this is a continuation of a deposition that was
9 previously held, and so this is the second day.

10 MS. KIRK: This is Ariail Kirk. I'm
11 here on behalf of the deponent, John Jolley.

12 MR. SCHRONCE: My name is John
13 Schronce. I'm with Hunton, Andrews & Kirth in
14 Richmond, and I also have with me my colleague,
15 Ed Fuhr. We're representing Coastal Forest Resources
16 Company.

17 THE VIDEOGRAPHER: Will the --

18 MR. TRAXLER: We ready to go?

19 THE VIDEOGRAPHER: Will the court
20 reporter please swear in the witness?

21 JOHN JOLLEY, ESQUIRE,
22 being duly sworn, testified as follows:

23 EXAMINATION

24 BY MR. TRAXLER:

25 Q. Okay. Mr. Jolley, thank you for coming

ROA 006406

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1 today. Let me reintroduce myself. I'm Tom Traxler,
2 and I'll be asking you questions today about -- about
3 this case.

4 MR. TRAXLER: First of all, let me
5 note for the record that we went on the record at
6 9:23. It was scheduled to start at 9:00. The delay
7 was technical issues. All of the lawyers and the
8 witness were here and ready to go at 9:00. So any
9 delay was the result of technical issues and those
10 have been resolved.

11 BY MR. TRAXLER:

12 Q. Mr. Jolley, again, if you have any
13 questions about what I'm asking you, I need you to
14 direct your questions to me. I'll be glad to repeat
15 or rephrase or whatever I need to do to help you
16 understand what I'm asking you. During your
17 deposition and any breaks, you're not allowed to talk
18 to anyone about the substance of your testimony. If
19 you have a question as to privilege, you can consult
20 the appropriate lawyers as to privilege. But other
21 than that, your questions are to be directed to me.
22 We in sync on that?

23 A. Yes, sir.

24 Q. Okay. Great. Thank you. Who's in the
25 room with you?

ROA 006407

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1 A. In the room with me is Mr. Twombley, the
2 videographer, Ariail Kirk, and the court reporter.

3 Q. And Mr. Twombley, who represents
4 Merrill Barringer, is there in the room with you; is
5 that correct?

6 A. That is correct.

7 Q. Okay. And since the last of your
8 deposition -- the first installment of your
9 deposition, have you done anything to prepare for
10 today?

11 A. I have not.

12 Q. Have you talked to anyone about your
13 deposition since we adjourned the last time?

14 A. I have not.

15 Q. Okay. And I'm including in that any
16 questions about procedure, how you're doing, as well
17 as the substance of your testimony.

18 A. The only conversation I've had about this
19 deposition is the date of its schedule, and I have
20 otherwise not communicated about this in any way.

21 Q. Okay. And if I ask you a broad question
22 such as have you discussed the facts of this case
23 with anybody, whether it be gone into it in this
24 deposition or not, your answer would be no; is that
25 correct?

ROA 006408

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1 A. That is correct.

2 Q. Okay. Thank you. Did you review any
3 additional documents for today?

4 A. I have not.

5 Q. All right. And did you review a
6 transcript or a summary of your deposition after your
7 first day?

8 A. I have not.

9 Q. Okay. So for all practical purposes, you
10 have -- you left the -- the last deposition and you
11 walked into this deposition today, about a month has
12 passed, and haven't done anything to prepare for
13 today's depo; is that correct?

14 A. That is correct.

15 Q. Great. Thank you. Okay. I'm not going
16 to replot what we went through on the first
17 installment. I might end up having to ask you a
18 couple of questions that you've already answered, but
19 simply to -- to set the stage. I want to go back and
20 talk about late 2011 and your meetings with Paul and
21 Merrill Barringer and/or also Robert Slane. And I
22 believe you did -- in December 2011, you had Paul and
23 Merrill Barringer execute a durable power of
24 attorney, health care power of attorney, and living
25 will; is that correct?

ROA 006409

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1 A. I believe --

2 MS. KIRK: Object to the form of the
3 question.

4 MS. PAYLOR: Object to the form.

5 MR. TWOMBLEY: Same objection.

6 MR. TRAXLER: Okay. Ms. Paylor, this
7 is Mr. Molster's witness, not yours. I can't have
8 y'all on a tag team. I'm sorry.

9 MR. MOLSTER: I don't think that's
10 right.

11 MR. TRAXLER: I think it is right.
12 You have been -- you were the one who was asserting
13 the privileges to the questions in the last
14 deposition. I can't have y'all on a tag team.

15 MR. MOLSTER: Well, for the record,
16 let's be clear, Tom, that your team, prior to your
17 involvement and since your involvement in this case,
18 have done that many times. So I don't think it's
19 really fair for you to now come in the case and try
20 to set a new rule that has -- when your team has
21 acted --

22 MR. TRAXLER: I believe it was
23 Mr. McBride's deposition where we were asking in the
24 beginning who was going to be handling the witness
25 for that very purpose. So I really need for one of

ROA 006410

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1 y'all to be the ones to handle the objections and
2 make comments.

3 MR. MOLSTER: Okay. I'd like to
4 finish, if I could, just to make my statement,
5 please.

6 MR. TRAXLER: Sure.

7 MR. MOLSTER: We've also had an
8 agreement, I think from pretty much the beginning
9 prior to your involvement in the case, that an
10 objection for one is an objection for all. That
11 doesn't always go that way. We try not to interfere
12 with your flow of the -- of the deposition, but -- so
13 I just want that on the record as well. So...

14 MR. TRAXLER: For the purposes of
15 this deposition, Chip, I don't have any problem with
16 an objection by one being an objection for all. I
17 can certainly respect that. But in terms of a tag
18 team of objections, I will double check with my side
19 during a break on this thing. But until then, I need
20 for one person to be handling the objections for
21 each -- for each party. Okay?

22 MR. TWOMBLEY: Just -- just for the
23 record, I also agree with Chip, you know. My --

24 MR. TRAXLER: Who's -- who's talking?

25 MR. TWOMBLEY: This is Ashley

ROA 006411

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1 Twombley.

2 MR. TRAXLER: Okay. I'm sorry.

3 MR. TWOMBLEY: You know, I -- my
4 memory is also, you know, prior to and since your
5 involvement there have been multiple attorneys for
6 the plaintiff who have objected, you know, during
7 depositions. And I also think it's not fair or
8 appropriate, you know, to set a new rule for that
9 procedure now. I know that was prior to you being
10 involved in the case, Tom. Of course, I welcome your
11 co-counsel to tell Chip and I that we're wrong and
12 our memory is incorrect, but that is my memory of how
13 things have worked in the past.

14 MR. TRAXLER: That's fine. Let's do
15 this: How about just one of y'all do the objections
16 right now. During the next -- first break, I will
17 consult with me co-counsel. And if I'm violating
18 some agreement y'all had, I'll back up and do it
19 right.

20 MR. MOLSTER: Alice, why don't you go
21 ahead and take the objections for us until we get to
22 a break. Tom, if I think there's a privilege
23 objection that needs to be made and Alice doesn't --
24 for some reason doesn't catch it, I'm probably going
25 to state it. And I apologize in advance for that,

ROA 006412

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1 but privilege, as you know, is pretty important.

2 MR. TRAXLER: That fine. I don't
3 want to be difficult about it, Chip. If you need to
4 chime in on something like that, that's fine. I just
5 don't want to be running a tag team of objections
6 going on.

7 MR. MOLSTER: I completely
8 understand, and I think that's fair. Thank you.

9 MR. TRAXLER: Okay. We'll revisit
10 this issue after the break.

11 BY MR. TRAXLER:

12 Q. All right. Mr. Jolley, as I understood
13 correctly, you did a power of attorney -- durable
14 power of attorney, health care power of attorney, and
15 living will for Paul Barringer in December of 2011;
16 is that correct?

17 A. That's my recollection.

18 Q. And did you also do similar documents for
19 Merrill Barringer at the same time?

20 A. That's my recollection. Yes.

21 Q. All right. Do you recall what prompted,
22 if you ever knew, Paul Barringer to come in to see
23 you for those instruments?

24 A. So, Mr. Traxler, when you refer to those
25 instruments, are you referring to the durable power

ROA 006413

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1 of attorney, the health care power of attorney, those
2 lifetime documents?

3 Q. Yes, sir.

4 A. That -- I mean, Mr. and Ms. Barringer
5 certainly contacted me in the fall about updating the
6 estate plan, but specifically what prompted them to
7 decide to do the update, I'm not aware.

8 Q. Did you have any conversations with
9 anybody other than Paul or Merrill Barringer about
10 doing their life care plans as you refer to those
11 documents?

12 MS. KIRK: Object to the form.

13 THE WITNESS: I -- my -- did I
14 communicate -- I'm sorry. Mr. Traxler, can you
15 repeat that question?

16 BY MR. TRAXLER:

17 Q. Yes, sir. Other than conversations with
18 Paul and Merrill Barringer, did you have
19 conversations with anyone else about doing life care
20 plans for Paul and Merrill Barringer?

21 MS. KIRK: Object to the form.

22 THE WITNESS: I don't believe so.

23 MR. TRAXLER: Can we have Zoom set up
24 where it highlights who is speaking? Because I can't
25 tell who is making the objections and who's speaking.

ROA 006414

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1 Who were those objections from?

2 MS. KIRK: This is Ariail Kirk. They
3 were from me.

4 MR. TRAXLER: Okay. You're not
5 lighting up. Sorry. I'm just trying to figure out
6 who is who. Bear with me. Okay.

7 BY MR. TRAXLER:

8 Q. I'm sorry. What was the answer to your
9 last question about conversations with other people,
10 Mr. Jolley?

11 A. I said I don't believe so. I don't recall
12 any other question -- any other conversations about
13 that.

14 Q. Okay. Prior to meeting with them leading
15 up to those life care instruments, were you ever made
16 aware of any questions about Paul Barringer's mental
17 capacity or physical health?

18 A. If you -- during the period of our doing
19 the planning in the fall of that year, I was not
20 aware of any -- any issues with respect to
21 Mr. Barringer's incapacity or capacity.

22 Q. Okay. And I believe you testified before,
23 if I'm not mistaken, correct me if I'm wrong, that
24 you were not aware or did not have any concerns of
25 your own in that time frame; is that correct?

ROA 006415

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1 MR. TWOMBLEY: Object to the form.

2 MS. KIRK: Object to the form.

3 MR. TWOMBLEY: Ashley Twombley.

4 MS. KIRK: Ariaail Kirk.

5 BY MR. TRAXLER:

6 Q. All right. Mr. Jolley, how about if you
7 would take the notebook of exhibits. I think you
8 have that in front of you.

9 A. Yes, sir.

10 Q. How about flip over in tab one, page 5 for
11 me. This is an e-mail -- some e-mails between Robert
12 Slane and Merrill Light or maybe Randy Light. I'm
13 not sure which. Are you with me?

14 A. This is -- I'm sorry. Behind tab --
15 tab -- this is the document that says J. Jolley Dep
16 0005.

17 Q. Yes, sir.

18 A. I see an e-mail from Robert Slane.

19 Q. All right. Do you recall seeing this
20 e-mail before?

21 A. I recall seeing this e-mail in preparing
22 for this deposition.

23 Q. Do you recall having received the e-mail
24 before preparation of the deposition?

25 A. I don't remember. No. I do not recall

ROA 006416

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1 that.

2 Q. All right. Do you know whether the e-mail
3 address with the domain aol.com belongs to Randy
4 Light or Merrill Light?

5 A. I'm sorry, Mr. Traxler. Can you ask that
6 question again?

7 Q. Sure. You see that the -- about halfway
8 down where it says original message from Robert Slane
9 to Merrill L-I-G. Do you see that?

10 A. I do see that.

11 Q. Do you know if that is the e-mail address
12 for Merrill Light or Randy Light?

13 A. I don't. I mean, it appears to be Merrill
14 Light's e-mail address, but I'm not certain whether
15 or not to what extent that is only Merrill's or if
16 Randy and Merrill use that e-mail together.

17 Q. All right. Right above it you see an
18 e-mail from Merrill sent November 11, 2011 at 8:48
19 a.m. to Robert Slane, correct?

20 A. I do see in the middle of this page it
21 looks like an e-mail from Merrill to Robert Slane,
22 yeah, dated November 11 at 8:48 a.m.

23 Q. All right. And it appears that Merrill
24 Light is writing to Robert Slane on November 11,
25 2011. It says, "If you would, please, how did your

ROA 006417

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1 meeting go yesterday with Mr. and Ms. B?" Do you see
2 that?

3 A. I do see that.

4 Q. All right. And right above it, Robert
5 Slane replies to Merrill at 8:51 a.m. on the same
6 date. "It went excellent. We got a lot done.
7 Little Merrill is going to be named successor party
8 with decision-making authority for, one, health care
9 power of attorney, two, financial power of attorney,
10 three, executor, four, trustee. John Jolley was
11 great. He managed to get from Paul different boxes
12 of records to start to go through and discard
13 unneeded or duplicate records." Do you see that?

14 A. I do see this.

15 Q. Did I read it correctly?

16 A. It appears like you've read it -- you read
17 it correctly.

18 Q. Okay. The second line of the e-mail is,
19 "Removal of corporate trustee." Do you see that?

20 A. I do.

21 Q. Do you remember conversations with Merrill
22 or Randy or with Robert Slane about removal of the
23 corporate trustee?

24 A. Do I remember? I -- I don't know that I
25 remember what this reference is to. I remember

ROA 006418

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1 having conversations about removing corporate
2 trustees, but I don't know what this subject is.

3 Q. Was this removal of corporate trustees
4 from Paul Barringer's irrevocable trust?

5 MR. TWOMBLEY: Object to the form of
6 the question.

7 MS. KIRK: Object to the --

8 MS. PAYLOR: Object to the form.

9 MS. KIRK: And Ariail Kirk also
10 objecting to the form of the question.

11 BY MR. TRAXLER:

12 Q. Go ahead. You can answer it.

13 A. Yeah. I'm not sure at this point that
14 that's -- that this -- that's what this reference is.

15 Q. What else could it reference?

16 MS. KIRK: Object to the form of the
17 question.

18 MR. TWOMBLEY: Same.

19 THE WITNESS: Mr. Traxler, I'm not
20 sure what else it could refer to. I'm not sure if
21 Mr. Barringer had named a corporate trustee or there
22 was a corporate trustee involved in some other way.

23 BY MR. TRAXLER:

24 Q. Was there ever -- were you ever involved
25 in discussions about removal of a corporate trustee

ROA 006419

Page 20

1 of a trust of Paul Barringer?

2 A. I believe so.

3 Q. And which trust was that?

4 A. There -- I believe it was the Paul B.
5 Barringer, II family trust.

6 Q. All right. Who was that corporate trustee
7 prior to any discussion of removal? Was it BB&T?

8 A. That -- it's hard for me to track with the
9 changes in banks and successor banks in the last 10
10 or 15 years who it was. I do remember dealing with
11 the bank that I believe was BB&T.

12 Q. All right. And was BB&T ultimately
13 removed as trustee of that trust?

14 A. I believe that we helped arrange for BB&T
15 to be replaced as trustee.

16 Q. And who was the replacement trustee?

17 A. I don't remember.

18 Q. Was Merrill Light a beneficiary of that
19 trust -- a beneficiary at the time?

20 A. My recollection is that each of the
21 children of Paul Barringer had a separate trust for
22 their benefit, and so Merrill Barringer -- Merrill
23 Barringer Light would have been a beneficiary of one
24 of those trusts.

25 Q. And how about her children -- Merrill

ROA 006420

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1 Light's children?

2 A. I believe -- my recollection is those
3 trusts are for -- are for -- have been -- were
4 created for the benefit of Paul and Ms. -- and
5 Merrill Barringer's children and grandchildren. So
6 Merrill Light's children would have at least been
7 remainder beneficiaries of those trusts.

8 Q. In 2011, did you have a conversation with
9 Randy Light or Merrill Light about making Merrill
10 Light a co-trustee of that trust?

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

13 MS. KIRK: Ariail Kirk. Same
14 objection.

15 THE WITNESS: I don't remember.

16 BY MR. TRAXLER:

17 Q. Well, this e-mail is talking about removal
18 of the corporate trustee, and I believe we've talked
19 what that was about. It looks like that you were
20 great, according to the e-mail. Tell me how you were
21 great in regard to the removal of the corporate
22 trustee.

23 MR. TWOMBLEY: Object to the form --

24 MS. PAYLOR: Object to the form.

25 MR. TWOMBLEY: -- of the question.

ROA 006421

Page 22

1 Mistakes his testimony.

2 MS. KIRK: Object to the form of the
3 question. This is Ariail Kirk. Misstates his
4 testimony and the document.

5 BY MR. TRAXLER:

6 Q. Okay. Go ahead, Mr. Jolley. What did you
7 do? What did you do?

8 A. I -- I believe this e-mail refers to our
9 going -- the process of our going through an estate
10 planning update with Mr. and Ms. Barringer.

11 Q. Were you aware that Randy Light and
12 Merrill Light in earlier 2011 were working to remove
13 from the trustee from Paul Barringer's trust to make
14 Merrill a co-trustee?

15 MR. TWOMBLEY: Object to the --

16 MS. PAYLOR: Object to the form.

17 MR. TWOMBLEY: -- form of the
18 question.

19 MS. KIRK: Ariail Kirk. Same
20 objection.

21 MR. TWOMBLEY: Ashley Twombley.

22 BY MR. TRAXLER:

23 Q. That was a bad question, Mr. Jolley. I'll
24 withdraw that one. I misstated it.

25 Are you aware in earlier 2011 that Randy

ROA 006422

Page 23

1 Light and Merrill Light were working to remove
2 corporate trustee and to make an individual trustee
3 at the law firm a trustee of that trust?

4 MR. TWOMBLEY: Same objection.

5 MS. PAYLOR: Object to the form.

6 MS. KIRK: Same objection. Ariail
7 Kirk.

8 THE WITNESS: Mr. Traxler, I don't
9 remember that.

10 BY MR. TRAXLER:

11 Q. Are you aware of an e-mail or are have you
12 seen an e-mail from Randy Light to Kevin Luzak that
13 BB&T was too difficult in distributing his trust
14 money and that he and Merrill Light were working on
15 moving Paul Barringer's irrevocable trust from
16 Merrill Light to an individual co-trustee at your law
17 firm?

18 MS. KIRK: Object to the form.

19 BY MR. TRAXLER:

20 Q. Are you aware of that e-mail?

21 MS. PAYLOR: Object to the form.

22 MR. TWOMBLEY: Same objection.

23 THE WITNESS: Mr. Traxler, I don't
24 remember that e-mail. I don't remember seeing that
25 e-mail.

ROA 006423

Page 24

1 BY MR. TRAXLER:

2 Q. Did anybody at your law firm ever become a
3 trustee for any trust that Paul Barringer set up
4 either primary or successor or co-trustee?

5 A. I believe so.

6 Q. Which ones?

7 A. So, I'm sorry, Mr. Traxler. Which ones?
8 Are you asking about which lawyer or are you talking
9 about which trust?

10 Q. Both.

11 A. William Rose, Rip Rose, was named as
12 trustee of -- I believe Mr. Rose was named as a
13 trustee or a successor trustee of a trust created by
14 Mr. Barringer.

15 Q. What else?

16 A. I'm sorry, Mr. Traxler.

17 Q. What else? What other trust and what
18 other lawyers in your firm?

19 A. Mr. Traxler, are you saying that since
20 2012? What time period are you talking about?

21 Q. 2011/2012 to right now.

22 A. I'm not sure about the timing, but my --
23 but my recollection is Mr. Rose was named a successor
24 trustee.

25 Q. Of which trust?

ROA 006424

Page 25

1 A. I believe the Paul B. Barringer, II family
2 trust, although I'm not certain without a reference
3 to those records.

4 Q. All right. Let me go back to this e-mail
5 of Slane's that said Jolley page 5. I don't see Paul
6 Barringer copied on this. Do you know why he wasn't?
7 I mean, if you don't, that's fine.

8 MS. PAYLOR: Object to the form.

9 MS. KIRK: Object to the form.

10 Ariail Kirk.

11 THE WITNESS: I don't know why he
12 wasn't.

13 BY MR. TRAXLER:

14 Q. Well, what was Merrill Light's involvement
15 in her father's health care power of attorney,
16 financial power of attorney, being executor, being
17 trustee beyond being named in those? What was her
18 involvement --

19 MS. PAYLOR: Object to the form.

20 BY MR. TRAXLER:

21 Q. -- in relation of these documents?

22 MS. KIRK: Ariail Kirk. Same
23 objection.

24 THE WITNESS: I don't believe that
25 Merrill Light was involved in the preparation of the

ROA 006425

Page 26

1 documents.

2 BY MR. TRAXLER:

3 Q. Well, how about in terms of the general
4 estate planning that led to those documents? I mean,
5 we have an e-mail from Slane to her talking about
6 things went great. Here's what you're going to be.

7 A. Mr. --

8 MS. PAYLOR: Object to the form.

9 BY MR. TRAXLER:

10 Q. How involved was Merrill Light in the
11 estate planning with regard to the family care --
12 family care documents?

13 MS. KIRK: Object to the form.

14 Ariail Kirk.

15 MS. PAYLOR: Object to the form.

16 THE WITNESS: I believe that Mr. and
17 Ms. Barringer talked to or discussed what they were
18 doing with their daughter and son-in-law, but I don't
19 know why they -- I don't know why Mr. Barringer
20 wasn't copied on this e-mail.

21 BY MR. TRAXLER:

22 Q. Why should I not -- why should I not draw
23 a conclusion from this e-mail that Robert Slane and
24 you and Merrill Light were working in concert with
25 regard to Paul Barringer's estate?

ROA 006426

Page 27

1 MS. KIRK: Object to the form of the
2 question.

3 MS. PAYLOR: Object to the form.

4 MS. KIRK: Ariaail Kirk.

5 THE WITNESS: Mr. Traxler, I can't
6 tell you what conclusions to draw.

7 BY MR. TRAXLER:

8 Q. Well, can you tell me why that conclusion
9 would be wrong?

10 MS. PAYLOR: Object to the form.

11 MR. KIRBY: Object to form.

12 THE WITNESS: I think that conclusion
13 would be wrong because Mr. and Ms. Barringer were --
14 directed all of their estate planning choices.
15 That's why your conclusion would be wrong.

16 BY MR. TRAXLER:

17 Q. And at this point in time, you were not
18 aware of any diagnosis of dementia; is that correct?

19 A. That's my recollection.

20 Q. And you were not aware of any family
21 concerns about dementia or Mr. Barringer losing it;
22 is that right?

23 MR. KIRBY: Object to the form.

24 MS. PAYLOR: Object to the form.

25 THE WITNESS: Mr. Traxler, is this

ROA 006427

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1 still during 2011?

2 BY MR. TRAXLER:

3 Q. Yes, sir.

4 A. Then my answer is yes, I was unaware of
5 that.

6 Q. Were you aware that in February of 2011 --
7 earlier in 2011 Randy Light e-mailed Kevin Luzak? It
8 was evident to Merrill and him that Paul Barringer
9 was experiencing different health issues that
10 affected his judgment regarding everyday decisions
11 and business-wise?

12 MS. KIRK: Object to the form.

13 BY MR. TRAXLER:

14 Q. Are you aware --

15 MS. PAYLOR: Objection.

16 BY MR. TRAXLER:

17 Q. -- of that e-mail?

18 A. I certainly don't recall that e-mail or
19 don't recall seeing an e-mail as you described.

20 Q. Did Randy Light, Merrill Light, or anyone
21 else raise similar issues or concerns with you in
22 2011?

23 A. Not that --

24 MS. PAYLOR: Object to the form.

25 THE WITNESS: No, sir.

ROA 006428

Page 29

1 BY MR. TRAXLER:

2 Q. Merrill -- Randy Light also e-mailed Kevin
3 in that February 2011 e-mail that his and Merrill's
4 fear was that Paul is going to attempt some
5 irrational move that will harm the profitability of
6 the company simply to satisfy his desire to
7 underwrite Victor or keep the stockholders groveling.
8 Actually, he said groveling. Are you familiar with
9 that?

10 MS. KIRK: Object to the form.

11 MS. PAYLOR: Object to the form.

12 THE WITNESS: I'm not familiar with
13 that.

14 BY MR. TRAXLER:

15 Q. Did anybody ever express that thought or
16 that concern in 2011 to you?

17 A. Not that I recall.

18 Q. All right.

19 MR. KIRBY: Bill, you're a little
20 bit -- your volume is a good bit lower than everybody
21 else's. I don't know if you can, I don't know, get
22 closer to the microphone or if there's anything
23 blocking it. You're substantially less loud than
24 anybody else.

25 MR. TRAXLER: Okay. I'm sorry. Was

ROA 006429

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1 that to --

2 THE WITNESS: Tom.

3 MR. TRAXLER: -- me or to whom?

4 THE WITNESS: Tom.

5 MS. KIRK: To you. I'm sorry. It
6 says Bill Hogan. I'm sorry.

7 MR. TRAXLER: Now, I don't know. I'm
8 trying to figure out how to do the microphone, but at
9 the same time be able to use my notebook. Is that
10 Ariaail who is asking that?

11 MS. KIRK: It was.

12 MR. TRAXLER: Yeah. Let's see if we
13 can't do this a little bit better. I'll try to
14 keep -- keep that in mind, Ariaail. And if it gets to
15 be a problem, if you stay on video, raise your hand
16 or interrupt me or something. Okay?

17 MS. KIRK: Okay. Thank you.

18 MR. TRAXLER: Thank you.

19 BY MR. TRAXLER:

20 Q. Mr. Jolley, in 2011 when you were doing
21 the life care plans for Paul and Merrill Barringer,
22 were you aware that Tom Evans on September 9, 2011
23 e-mailed Kevin Luzak that he and Ed and Billy noticed
24 that Paul was very confused and not himself to the
25 point that they were concerned for him? Were you

ROA 006430

Page 31

1 aware of that e-mail?

2 MS. PAYLOR: Object to the form.

3 MS. KIRK: Object to the form.

4 Ariail Kirk.

5 THE WITNESS: I was not aware -- I am
6 not aware of that e-mail.

7 BY MR. TRAXLER:

8 Q. Did Tom Evans ever express any such
9 concerns to you about Paul Barringer in 2011?

10 A. Not that I recall.

11 Q. So Randy Light, Merrill Light, Tom Evans,
12 and Ed and Billy were all concerned in 2011 that Paul
13 didn't know what he was doing or was going to make
14 irrational decisions, you weren't aware of that?

15 MS. KIRK: Object to form.

16 MS. PAYLOR: Object to the form.

17 Misstates the evidence.

18 THE WITNESS: I'm unaware of that.

19 BY MR. TRAXLER:

20 Q. All right. Were you aware on December --
21 of November 23, 2011, Dr. Long had diagnosed him with
22 dementia?

23 MS. PAYLOR: Object to the form.

24 MS. KIRK: Object to the form.

25 THE WITNESS: I was unaware of that.

ROA 006431

Page 32

1 BY MR. TRAXLER:

2 Q. This was prior to you meeting with him --
3 or just after you meeting with him about his estate
4 planning, correct?

5 MS. KIRK: Object to the form of the
6 question.

7 BY MR. TRAXLER:

8 Q. November 23.

9 MS. PAYLOR: Object to the form.

10 THE WITNESS: That sounds like the
11 time period during which I was meeting with him.

12 BY MR. TRAXLER:

13 Q. And you didn't have any concerns yourself,
14 did you?

15 A. I had considerable interaction with
16 Mr. Barringer and, no, I did not have concerns.

17 Q. Did he tell you that he had problems?

18 MS. KIRK: Object to the form of the
19 question.

20 THE WITNESS: Mr. Barringer did not.

21 BY MR. TRAXLER:

22 Q. Did he tell you that on December 2, 2011
23 Atlanta Radiology diagnosed him with dementia?

24 MR. TWOMBLEY: Object to the form --

25 MS. KIRK: Object to the form.

ROA 006432

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1 MR. TWOMBLEY: -- of the question.

2 MS. PAYLOR: Object to the form.

3 MR. TWOMBLEY: Misstates the
4 evidence.

5 THE WITNESS: Mr. Barringer did not
6 tell me that.

7 BY MR. TRAXLER:

8 Q. At any time prior to the execution of the
9 February 28, 2012 documents, did Mr. Barringer ever
10 tell you that he had seen one or more doctors about
11 confusion or memory loss or dementia or Alzheimer's,
12 however you want to call it?

13 MS. KIRK: Object to the form.

14 THE WITNESS: I don't recall
15 Mr. Barringer ever saying anything like that.

16 BY MR. TRAXLER:

17 Q. And you don't recall anybody else saying
18 anything prior to February 28, 2012, correct?

19 A. That is correct.

20 Q. And what would you have done if somebody
21 had told you those things that I just recited to you?

22 MS. KIRK: Object to form.

23 MS. PAYLOR: Object to the form.

24 THE WITNESS: I interacted with
25 Mr. Barringer quite a bit, and I would say I spent

ROA 006433

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1 quite a bit of time with Mr. Barringer in the fall of
2 '11 up to the signing of those documents in
3 February -- I think February of 2012, and my
4 interactions with Mr. Barringer didn't, in fact,
5 reveal any kind of confusion that you described. So
6 if I was aware of a diagnosis of moderate or severe
7 dementia, I might have taken steps to do something
8 else.

9 BY MR. TRAXLER:

10 Q. What steps would those have been?

11 A. Well, if -- if -- they might include
12 having, what, a certificate of capacity executed.

13 Q. What else? Anything else?

14 A. I think that's probably what I would --
15 and, of course, I would have -- I did interview
16 Mr. Barringer, but communicate with Mr. Barringer
17 about the issue.

18 Q. Mr. Barringer first came to you whether
19 as -- earlier when you reviewed his 1998 estate
20 planning documents or in 2011, would he have
21 completed an intake form at your law firm?

22 MS. KIRK: Object to the form.

23 THE WITNESS: We -- Mr. Barringer
24 might have completed an intake form.

25 BY MR. TRAXLER:

ROA 006434

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1 Q. And would that intake form be preserved
2 normally by the law firm under its retention policy?

3 MR. TWOMBLEY: Object to the --

4 MS. KIRK: Object to the form.

5 MR. TWOMBLEY: -- form of the
6 question.

7 THE WITNESS: If Mr. Barringer had
8 completed an intake form, then I believe that intake
9 form would be preserved by the law firm.

10 BY MR. TRAXLER:

11 Q. And did that intake form ask for any sort
12 of medical or psychological or mental health
13 treatment or examination?

14 MS. KIRK: Object to the form.

15 MS. PAYLOR: Object to the form.

16 THE WITNESS: Mr. Traxler, I don't
17 recall Mr. Barringer completing an intake form. The
18 intake form that I use certainly has the question
19 about health.

20 BY MR. TRAXLER:

21 Q. All right. Now, in 2011 leading up to the
22 February 28, 2012 documents -- leading up to the
23 execution, how much time did you spend with
24 Paul Barringer reviewing what he wanted to do and the
25 documents themselves? So if we take the initial

ROA 006435

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1 conference, that time all the way up to execution,
2 what does that total time look like that you spent or
3 anyone at your law firm spent with him on the estate
4 plan and explaining documents?

5 A. Mr. Traxler, I don't recall how much time
6 we spent.

7 Q. And I realize it could be a guesstimate,
8 but can you give my your best guesstimate?

9 MS. KIRK: Object to the form.

10 MS. PAYLOR: Object to the form.

11 THE WITNESS: I suspect that we spent
12 between five and 15 hours, is what I would estimate.

13 BY MR. TRAXLER:

14 Q. All right. Did you send him any executive
15 summaries or some summaries or synopsis of what his
16 estate plan was other than forwarding to him diagrams
17 from Robert Slane?

18 MS. KIRK: Object to the form.

19 THE WITNESS: I don't recall sending
20 Mr. Barringer executive summaries.

21 BY MR. TRAXLER:

22 Q. All right. How about any other
23 explanation of the documents?

24 MS. KIRK: Object to the form.

25 THE WITNESS: I don't recall any

ROA 006436

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1 other documents explaining the documents.

2 BY MR. TRAXLER:

3 Q. Am I correct in understanding that all you
4 recall is, and I don't mean to trivialize this, would
5 be conversations with him?

6 A. My -- what I do recall is -- is meeting
7 with the Barringers, discussing their estate plan,
8 preparing diagrams. I think Mr. Slane prepared a
9 diagram and I prepared a diagram that was really
10 intended to be a most -- a summary review of what the
11 proposed planning -- proposed update would be, and
12 then I recall meeting with the Barringers after they
13 had the drafts to review them and then ultimately
14 reviewing and helping them execute the documents.

15 Q. Bear with me one minute while I find my
16 cheat sheet here. If you would look at tab nine of
17 the exhibit notebook, Mr. Jolley.

18 MS. PAYLOR: Can you give us the
19 page?

20 MR. TRAXLER: Let's start with 319.
21 That's in the top right-hand corner, J. Jolley Depo
22 319.

23 BY MR. TRAXLER:

24 Q. Are these your handwritten notes?

25 A. These certainly appear to be my

ROA 006437

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1 handwritten notes.

2 Q. Okay. And those are notes, I presume,
3 that you took from some conversation with them of
4 some sort on January 30, 2012; is that correct?

5 A. That certainly -- that appears to be
6 correct.

7 Q. Okay. And I think I can read all of it.
8 I assume the last line says trust protector; is that
9 correct?

10 A. I believe that is correct.

11 Q. Okay. And if I flip over to the next
12 page, 320, that appears to be notes that you took on
13 some sort of conversation on 2/23/12; is that
14 correct?

15 A. That appears to be correct.

16 Q. All right. And on 321 you have -- is that
17 your handwriting?

18 A. That -- that appears to be my handwriting.

19 Q. Okay. Do you know when that was taken or
20 written down and for what purpose?

21 MS. KIRK: Are y'all referring to
22 page 0321?

23 MR. TRAXLER: Yes.

24 THE WITNESS: Mr. Traxler, I can't
25 tell you a date that these notes were taken.

ROA 006438

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1 BY MR. TRAXLER:

2 Q. Okay. That's fine. Going over next to
3 322. These are notes from May 1, 2014; is that
4 correct?

5 A. Appears to be correct. Yes.

6 Q. That's your handwriting; is that correct?

7 A. That is my -- most of it is my
8 handwriting.

9 Q. What is not?

10 A. Well, I think that there -- it looks to me
11 that there are some notes from -- I think there are a
12 couple of notations here from Becky Bostic.

13 Q. Which ones are those?

14 A. I think if you look at the portion where
15 it's lined and it says "Shared to Hampton" and then
16 with the arrow "In trust for Wade." And then I think
17 that the income/discretionary SPOA wide arrow issue,
18 I think that is a note of Becky Bostic. And I
19 believe at the bottom of the page when you see MBL as
20 trustee, not Victor as trustee, if you see the arrow
21 below where it says "appoint successor," that arrow
22 and the appoint successor I believe are Ms. Bostic's
23 notes.

24 Q. Why would she come and add notes to your
25 notes?

ROA 006439

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1 A. I think that what would have happened is
2 that after I met with the Barringers or spoke with
3 Barringers, then I would be explaining to Becky how
4 we were going to prepare drafts and those -- her
5 notes would be what she reduced to writing my
6 explanation or my further details.

7 Q. All right. Other than the moment when the
8 February 28 documents were executed in 2012, did
9 anybody ever sit in on any of your meetings with Paul
10 and Merrill Barringer pertaining to -- well,
11 pertaining to anything?

12 A. Mr. Traxler, are you asking if anyone ever
13 sat in with an appointment with myself with Mr. and
14 Ms. Barringer?

15 Q. Let me -- let me put a time frame on that
16 and help narrow this down. From the fall of 2011
17 through the execution of the documents in
18 February 2012, when you met with the Barringers, was
19 there anyone else there other than the Barringers?

20 A. At least one of those meetings
21 Robert Slane attended. And certainly to the extent
22 we did any executions, my witnesses would have
23 attended. I'm not sure -- I'm not sure if, you know,
24 I had meetings with the Barringers alone in reviewing
25 and -- and assisting with the signing of documents,

ROA 006440

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1 but I -- so that's who I think was involved in those
2 appointments.

3 Q. Would Becky Bostic have been involved in
4 the conferences other than witnessing the execution?

5 A. I think Becky generally would have come in
6 at the time when we were -- her primary exposure to
7 the Barringers at that point would have been simply
8 in witnessing documents.

9 Q. Okay. So if I wanted to round up the sum
10 total of witnesses to your conversations with the
11 Barringers from the fall of 2011 through
12 February 2012 to hear what all was said in those
13 conversations, it would be you, and the Barringers,
14 and Mr. Slane?

15 MS. KIRK: Object to the form.

16 BY MR. TRAXLER:

17 Q. What's the universe of those witnesses?

18 A. Well, as I said -- wait. I'm sorry. I'm
19 not sure I understand the question of what's the
20 universe --

21 Q. Sure. I'll rephrase it. Starting in the
22 fall of 2011 through the execution of the
23 February 2012 documents, if I want to know the
24 universe of witnesses who heard your conversations
25 with the Barringers about their estate planning and

ROA 006441

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1 these documents, who would that universe of witnesses
2 be?

3 MS. KIRK: Object to the form.

4 THE WITNESS: So, Mr. Traxler, I'm
5 not trying to be obtuse, but I'm not sure I
6 understand what you mean the universe. Are you just
7 simply asking me who might have been present while I
8 spoke with the Barringers?

9 BY MR. TRAXLER:

10 Q. Yes. Or on a joint telephone call.
11 However it was done.

12 A. So I generally think what I just described
13 is -- is correct. That is myself, Mr. Slane, my
14 witnesses. I am not -- I am not sure if the
15 Barringers communicated with the Lights about these
16 matters or -- and I can't be certain that the Lights
17 weren't privy to the Barringers' conversations about
18 this.

19 Q. All right. So as far as you're concerned,
20 you have identified all of the witnesses to your
21 conversations with the Barringers in that time frame
22 that you can recall at this time; is that correct?

23 MS. KIRK: Object to the form.

24 MR. TWOMBLEY: Object to the form.

25 THE WITNESS: Mr. Traxler, I think

ROA 006442

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1 that's right.

2 BY MR. TRAXLER:

3 Q. Okay. Now, in February of 2012 estate
4 planning documents, what were those documents? Do
5 you recall what all they signed in February 2012?

6 A. Well, so the process of doing the estate
7 planning with the Barringers, the update included, of
8 course, the meetings with them in the fall through
9 the execution of those documents and we did, in fact,
10 execute the lifetime documents, the health care
11 power, the durable power in 2011. So in 2012, my
12 suspicion -- my recollection is that it would be
13 revocable trusts and pour-over wills.

14 Q. All right. And you did -- did you do a
15 revocable trust for both Paul and Merrill Barringer,
16 separate trusts for each one of them?

17 A. I believe so. Yes, sir.

18 Q. And a separate will for each one of them;
19 is that correct?

20 A. I believe so. Yes, sir.

21 Q. And were their revocable trust and their
22 wills mirrored images of each other?

23 A. I think --

24 MR. TWOMBLEY: Object to the form.

25 MS. KIRK: Object. We've been

ROA 006443

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1 through all this. I mean, we're literally just going
2 back through questions he's already asked and
3 answered back on the 16th of March.

4 MR. TRAXLER: Thank you.

5 BY MR. TRAXLER:

6 Q. At that point in time, did Merrill and
7 Paul Barringer express any negative opinion or
8 thoughts to you about his daughter, Hampton Luzak?

9 A. At the time the documents were executed in
10 February of 2012?

11 Q. Yes, sir.

12 A. I don't recall Mr. Barringer expressing
13 negative feelings about Ms. Luzak at that point.

14 Q. Did Merrill Barringer at any point --
15 point prior to February 2012 express any negative
16 opinions about Hampton Luzak?

17 MR. TWOMBLEY: I'm going to object to
18 the --

19 MS. PAYLOR: Object to the form.

20 MR. TWOMBLEY: -- question, and I'm
21 also going to instruct him not to answer unless you
22 want to talk about why you think that's relevant and
23 you're entitled to go into it during this deposition.

24 MR. TRAXLER: Okay. Well, we can
25 discuss that later. Are you instructing him not to

ROA 006444

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1 answer?

2 MR. TWOMBLEY: If you are not going
3 to talk with me about why you think it's relevant and
4 appropriate for you to ask the question during the
5 deposition, yes. I have no choice.

6 MR. TRAXLER: Well, I mean, they
7 certainly turned on Hampton later. I'm just trying
8 to figure out when it started.

9 MR. TWOMBLEY: Well, Ms. Barringer,
10 you know, the validity of her estate planning
11 documents is, in my opinion, not an issue in the
12 case. You know, she's -- there's no testamentary
13 exception to the attorney-client privilege and, you
14 know, if you -- again, if you think you're entitled
15 to get into her privileged discussions with her
16 lawyer when there's not an exception, again, I'm
17 happy to hear you out. But, otherwise, I'm
18 instructing him not to answer.

19 BY MR. TRAXLER:

20 Q. All right. Did -- up to and including the
21 time of the execution of the February 2012 documents,
22 Mr. Jolley, did you ever hear Paul Barringer express
23 any negative comments about Kevin Luzak?

24 A. Yes.

25 Q. What did you hear and when did you hear

ROA 006445

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1 it?

2 A. So, Mr. Traxler, this is a hard question
3 for me to answer, not only because of the question
4 about negative -- or the question about any negative
5 comments. Mr. Barringer did, what --

6 MS. KIRK: Can I -- one -- one quick
7 second. Mr. Traxler, I want to be sure you're asking
8 him in the limited context of as it relates to
9 meeting with Mr. Barringer about his estate planning
10 documents versus, you know, a meeting that could have
11 been held for a different entity.

12 MR. TRAXLER: My question is broader
13 than meetings. Up to and including the time of the
14 February -- execution of the February 2012 documents,
15 did Mr. Jolley ever hear Paul Barringer say anything
16 negative or critical of Kevin Luzak?

17 MS. KIRK: Okay. And I'll object to
18 that to the extent -- or I'll instruct him not to
19 answer to the extent you're asking about something
20 that's not communications related to the estate
21 planning preparation, execution, or amendment.

22 BY MR. TRAXLER:

23 Q. Okay. Can you answer that question,
24 Mr. Jolley?

25 MS. KIRK: I instructed it -- okay.

ROA 006446

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1 MR. TRAXLER: I'm sorry. Are you
2 instructing him not to answer it?

3 MS. KIRK: To the extent that it
4 exceeds the testamentary exception.

5 BY MR. TRAXLER:

6 Q. Okay. Go ahead, Mr. Jolley. Can you
7 answer that question?

8 MR. SCHRONCE: And, Tom, this is John
9 Schronce. Just to be clear, you're talking about up
10 to and including February of 2012?

11 MR. TRAXLER: Yes.

12 THE WITNESS: So I'm going to need to
13 consult with my lawyer to make sure I understand, I
14 mean, as described the testamentary exception. I
15 can't answer that. I don't have anything to add
16 unless I should talk --

17 BY MR. TRAXLER:

18 Q. Let me see if I can save us a little bit
19 of time. When you were doing the estate planning
20 work for Paul and Merrill Barringer that culminated
21 in February 2012 documents, during that process did
22 Paul Barringer ever express any negative or critical
23 comments to you about Kevin Luzak?

24 A. Yes.

25 Q. What did he say?

ROA 006447

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1 A. He said that Kevin was a New York Wall
2 Street guy, and he said that he thought Kevin's,
3 what, taste and spending were lavish.

4 Q. Do you recall anything else that you
5 consider to be negative about Kevin Luzak or critical
6 of him that Paul Barringer said to you during the
7 estate planning time period?

8 A. I only can remember what Mr. Barringer
9 deemed negative about Mr. Luzak in that he
10 communicated to me. I don't know of anything else.

11 Q. Prior to your estate planning work -- roll
12 the clock back. Prior to that time period, did you
13 ever hear him say anything negative to you about
14 Kevin Luzak?

15 MS. KIRK: Tom, I don't understand
16 what -- are you saying before John ever did work
17 for -- I don't understand what you're asking.

18 MR. TWOMBLEY: And this is Ashley. I
19 thought the question was prior to the time you
20 started doing estate planning work, which if that's
21 the question as framed, then that necessarily would
22 not involve anything subject to the testamentary
23 exception, in my opinion. But do you want to try to
24 rephrase the question, Tom?

25 MR. TRAXLER: I think the question

ROA 006448

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1 was pretty good. I asked him about what was going on
2 with -- during the estate planning period. Now I'm
3 rolling the clock back forward and asking Mr. Jolley
4 if prior to all of 2011, did he ever hear Paul
5 Barringer say anything negative about Kevin Luzak?

6 MR. TWOMBLEY: I will instruct him
7 not to answer that question because it involves a
8 time period when John was not doing estate planning
9 work for Mr. Barringer and, in my opinion, does not
10 fall within the testamentary exception to the
11 attorney-client privilege. I invited you to ask
12 another question, but you didn't do that. So I'm
13 compelled to object and instruct him not to answer.

14 MR. TRAXLER: And you're not lighting
15 up. Is this Ashley Twombley, the lawyer for Merrill
16 Barringer, instructing Mr. Jolley not to testify into
17 matters to Mr. Barringer; is that right? Is that
18 you, Ashley?

19 MR. TWOMBLEY: Yes. It's me. And
20 it's -- again, it's my understanding that you asked
21 him the question about prior to the time that he
22 started doing estate planning work for Mr. Barringer
23 and, you know, respectfully, it's my opinion that
24 that does not fall within the exception. But, you
25 know, if you want to talk about it, I'm happy to hear

ROA 006449

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1 you out so we can try to get it resolved today. But
2 if you don't want to do that --

3 MR. TRAXLER: I just -- excuse me.
4 I'm sorry. I just want to make sure I got the record
5 straight. You represent Merrill Barringer, but you
6 are asserting some sort of privilege on behalf of her
7 in instructing the witness not to answer a question
8 about Paul Barringer? Do I understand that
9 correctly?

10 MR. TWOMBLEY: Well, I'm not sure
11 exactly what you understand, but I am instructing him
12 to not answer that question and the record will
13 reflect that I invited you to rephrase it or ask it a
14 different way.

15 MR. TRAXLER: Okay. That's fine. I
16 just want to make sure we understood. Thank you.

17 BY MR. TRAXLER:

18 Q. During the estate planning process in the
19 fall of 2011 through February 2012, did you ever hear
20 Mr. Barringer express any negative or critical
21 comments about Randy Light?

22 A. No.

23 Q. Do you know whether Mr. Barringer was
24 aware of the financial bankruptcies and problems of
25 Randy Light at that time?

ROA 006450

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1 MR. TWOMBLEY: Object to the form of
2 the question.

3 MS. KIRK: Object to the form.

4 MS. PAYLOR: Object to the form.

5 MR. TWOMBLEY: Misstates the
6 evidence.

7 THE WITNESS: I'm -- I have no
8 information about that.

9 BY MR. TRAXLER:

10 Q. Now, when the February 2012 documents were
11 executed, Merrill Light was named as co-trustee of
12 Paul Barringer's revocable trust; is that correct?

13 A. That's my recollection.

14 Q. And her other co-trustee was Paul
15 Barringer; is that correct?

16 A. That is my recollection.

17 Q. And under that trust document, would she
18 as a co-trustee have the right to act independently
19 of the other co-trustee or did they have to act in
20 unison together?

21 A. My recollection is that either could act
22 alone.

23 Q. And did the trust -- revocable trust
24 agreement of Paul Barringer provide that Merrill
25 Light would appoint her successor co-trustee?

ROA 006451

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1 A. I'm not -- I don't remember, Mr. Traxler.

2 Q. Were there ever any discussions that --
3 about naming Hampton Luzak, the other daughter, as
4 some sort of trustee, either co-trustee at the offset
5 or successor trustee?

6 A. There were certainly conversations with --
7 the Barringers and I discussed who should serve as
8 trustees and we -- in that conversation we certainly
9 discussed each of the Barringer children as potential
10 trustees or successor trustees.

11 Q. And why was Hampton Luzak not included in
12 some sort of trustee position?

13 MS. PAYLOR: Object to the form.

14 MS. KIRK: Same objection. Ariail
15 Kirk.

16 THE WITNESS: Mr. Traxler, I'm not
17 sure that -- I mean, I don't recall that the
18 Barringers communicated to me their rationale for not
19 including Hampton in the succession of trustees.

20 BY MR. TRAXLER:

21 Q. And when you drew the revocable trust
22 agreement putting Merrill Light as a co-trustee, were
23 you also her lawyer at that time?

24 MS. KIRK: Object to the form of the
25 question.

ROA 006452

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1 THE WITNESS: I believe I separately
2 represented Ms. Light with respect to her estate
3 planning at that time.

4 BY MR. TRAXLER:

5 Q. So when the revocable trust was done in
6 February 2012, you represented Paul Barringer and
7 Merrill Barringer, correct?

8 A. Yes, sir.

9 Q. You also represented Merrill Light during
10 that time period, didn't you?

11 MS. KIRK: Object to the form.

12 MS. PAYLOR: Object to the form.

13 THE WITNESS: I believe -- I believe
14 so.

15 BY MR. TRAXLER:

16 Q. You also represented Randy Light during
17 that time period, right?

18 MS. KIRK: Object to the form.

19 THE WITNESS: I'm not sure about
20 whether I represented him specifically at that time,
21 but I certainly represented Randy with respect to
22 estate planning matters generally during this time.

23 BY MR. TRAXLER:

24 Q. And you did not represent, at any point in
25 time, Hampton, did you?

ROA 006453

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1 A. I did not represent Hampton Luzak.

2 Q. Did you represent Kevin Luzak?

3 A. I did not represent Kevin Luzak.

4 Q. All right. Why is Merrill Light your --
5 you also did legal work for her, named as co-trustee
6 to the exclusion of Hampton?

7 MR. TWOMBLEY: Object to the --

8 MS. PAYLOR: Object to the --

9 MR. TWOMBLEY: -- form of the
10 question. Asked and answered.

11 MS. KIRK: Ariail Kirk. Same
12 objection.

13 THE WITNESS: Mr. Barringer and
14 Ms. Barringer chose who they wished to serve as
15 trustees. Those documents that we executed reflect
16 their choices.

17 BY MR. TRAXLER:

18 Q. Did they discuss with you why?

19 MR. TWOMBLEY: Object to the form of
20 the question and asked and answered.

21 MS. KIRK: Same objection. Ariail
22 Kirk.

23 MR. TWOMBLEY: He just testified to
24 that.

25 MR. TRAXLER: Are you instructing him

ROA 006454

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1 not to answer?

2 MR. TWOMBLEY: No. Nobody instructed
3 him not to answer.

4 MS. KIRK: He's already answered it a
5 couple of times.

6 THE WITNESS: Yes, sir. Mr. Traxler,
7 it's the same answer, that is, I don't recall the
8 Barringers communicating, that is Paul and Merrill
9 Barringer, communicating to me why they chose to
10 have -- to not have Hampton as a trustee or in the
11 succession as a trustee.

12 BY MR. TRAXLER:

13 Q. Okay. And so it is the same Merrill Light
14 who was working in coordination with you and Robert
15 Slane as we saw in your deposition Exhibit No. 5,
16 correct?

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

19 MS. KIRK: Object to the form. And I
20 didn't even hear all of it.

21 MR. TRAXLER: I'm sorry. Somebody --
22 was that you speaking, April? I didn't follow you.
23 Ariail. Excuse me.

24 MS. KIRK: Yes. I didn't hear the
25 second half of the...

ROA 006455

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1 BY MR. TRAXLER:

2 Q. Okay. Go back, Mr. Jolley, to your page
3 No. 5 under tab one. This is the e-mail between
4 Robert Slane and Merrill Light. You with me?

5 A. I'm turning there. You said page 5?

6 Q. Yes, sir.

7 A. I see page -- page 5 is in front of me.

8 Q. All right. The Merrill Light that you put
9 as co-trustee is the same Merrill Light that these
10 e-mails were written to and from, correct?

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

13 MS. KIRK: Ariail Kirk. Same
14 objection.

15 BY MR. TRAXLER:

16 Q. Okay. You can answer, Mr. Jolley.

17 A. Mr. Traxler, I think there's only one
18 Merrill Light, and I do think she is the little
19 Merrill or Merrill referred to.

20 Q. Okay. Now, when you executed -- or prior
21 to the time or at the time of the execution of the
22 will and the trust agreements in February 2012, did
23 you discuss the powers of appointment in the trust
24 with Mr. Barringer?

25 A. Prior to the execution of the revocable

ROA 006456

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1 trust in 2012, the powers of appointment contained in
2 the trust are, in fact, something that I discussed
3 with both of the Barringers.

4 Q. Where -- where were you when you discussed
5 it?

6 A. We certainly discussed it at the time that
7 we, what, prepared the drafts and when we reviewed
8 the drafts together and certainly ultimately as we
9 reviewed and signed the documents.

10 Q. And how did you describe to them the power
11 of appointment and the trust?

12 A. Mr. Traxler, I -- I -- I don't recall the
13 details of how I described the power of appointment.
14 The dispositive provisions of the trust I described
15 and discussed with the Barringers. I generally
16 describe these powers of appointments as being a
17 power to redirect, that is, the person who is the
18 donee of the power or the -- the donee of the power
19 having the authority to redirect who takes under the
20 terms of the document.

21 Q. At the time you did the execution of the
22 revocable trust in February 2012, did you explain to
23 Mr. Barringer that Merrill Light would have the right
24 to act independently of him in disposing of assets
25 subject, of course, to her fiduciary duties?

ROA 006457

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1 MS. KIRK: Object to the form.

2 BY MR. TRAXLER:

3 Q. Did you explain any of that to him?

4 A. I certainly discussed with Mr. Barringer
5 the fact that each of the trustees would be able to
6 act independently.

7 Q. And when you did the February 2012
8 documents, it was his and Merrill Barringer's intent
9 to treat both daughters equally; is that correct?

10 MS. KIRK: Object to the form.

11 MS. PAYLOR: Object to the form.

12 MR. TWOMBLEY: Same objection.

13 THE WITNESS: Mr. Traxler, I believe
14 the 2012 documents do, in fact, represent the intent
15 of Mr. Barringer.

16 BY MR. TRAXLER:

17 Q. And Ms. Barringer, correct?

18 A. Well, I'm sorry. I believe that
19 Ms. Barringer's documents certainly reflected her
20 intent and --

21 MR. TWOMBLEY: I would instruct you
22 not to answer any questions about Ms. Barringer and
23 her estate planning documents. I'm happy to talk,
24 you know, now or at another time about, Tom, why you
25 think you're entitled to go into that in this case

ROA 006458

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1 when there is no testamentary exception if you would
2 like to do that. But, otherwise, I would instruct
3 him not to answer.

4 BY MR. TRAXLER:

5 Q. When you drew up the health -- the life
6 care documents, power of attorney, health care power
7 of attorney, and living will, was Merrill Light named
8 as the successor agent?

9 MS. KIRK: Object to the form.

10 THE WITNESS: Mr. Traxler, I'd have
11 to go back and look at the documents to confirm that,
12 but that is my recollection.

13 BY MR. TRAXLER:

14 Q. Okay. Thank you. Was any of this ever
15 discussed by you, the estate planning, with Hampton
16 Luzak at or around the time the estate planning was
17 one and the documents were executed?

18 MS. KIRK: Object to the form.

19 THE WITNESS: I don't believe so. I
20 don't -- I don't believe I had a conversation with
21 Ms. Luzak.

22 BY MR. TRAXLER:

23 Q. All right. Now, shortly after the
24 execution of the documents in late February 2012, I
25 believe you had Merrill Light sign the trust

ROA 006459

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1 instrument as co-trustee, correct?

2 A. I'd have to refer to the document, but,
3 yeah, that -- that is my recollection.

4 Q. Okay. Prior to her signing that document,
5 did you have any discussions with her about her
6 father's estate plan?

7 MS. KIRK: Object to the form of the
8 question.

9 THE WITNESS: I don't believe I had
10 any conversations with Ms. Light about the details of
11 Mr. Barringer's estate plan.

12 BY MR. TRAXLER:

13 Q. All right. Did you have any conversations
14 with her about his estate plan or the business or his
15 health or his condition prior to the February 28,
16 2012 documents?

17 A. I'm sorry, Mr. Traxler. I need you to
18 repeat that.

19 Q. Sure. Let's take the February 2012 --
20 when they signed the documents.

21 A. Yes, sir.

22 Q. Up to that point in time, had you ever had
23 any conversations with Merrill Light about her father
24 and his estate plan or his health or his mental
25 condition?

ROA 006460

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1 A. I don't -- I'm not certain about the
2 timing, but I have had -- I did have a
3 conversation -- at least a conversation with
4 Ms. Light about her father's plan, although I'm not
5 suggesting that she -- that I told her all the
6 details of that plan.

7 Q. But you did tell her what her role was
8 going to be under the documents and what that would
9 entail, correct?

10 A. I discussed that with her. I believe that
11 was what had already been discussed.

12 Q. All right. So let me ask you this
13 question. I think we can leave February 2012 alone
14 for a little while. At that point in time, was there
15 any reluctance on the part of Paul Barringer to treat
16 his daughter, Hampton Luzak, equally with his
17 daughter, Merrill Light?

18 MS. KIRK: Object to the form.

19 MR. TWOMBLEY: Same objection.

20 THE WITNESS: I think in February of
21 2012, I think that Mr. Barringer did treat his
22 daughters the same, and he -- and there was no
23 expression of his unwillingness to do that.

24 BY MR. TRAXLER:

25 Q. All right. And as far as you knew at that

ROA 006461

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1 point in time, did you have any reason to think he
2 loved one differently than the other?

3 MR. TWOMBLEY: Object to the form.

4 MS. KIRK: Object to the form.

5 MS. PAYLOR: Object to the form.

6 THE WITNESS: I'm sorry, Mr. Traxler.

7 I don't -- I don't have any --

8 BY MR. TRAXLER:

9 Q. If you don't remember, that's fine. If
10 you don't remember, that's fine. Just say so.

11 A. Well, I don't have any indication of
12 Mr. Barringer's love for one daughter versus the
13 other.

14 Q. Okay. That's fine. Thank you. Now,
15 you're aware that in June 28, 2012, there was a board
16 meeting where Kevin Luzak was removed as officer,
17 correct?

18 MS. KIRK: Object to the form.

19 THE WITNESS: I believe that is
20 correct.

21 BY MR. TRAXLER:

22 Q. All right. What happened between
23 February -- the execution of the February 2012
24 documents and June 28, 2012 to make Paul Barringer
25 turn on Kevin Luzak?

ROA 006462

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1 MS. PAYLOR: Object to the form.

2 MS. KIRK: Same objection.

3 BY MR. TRAXLER:

4 Q. You can answer.

5 A. So I am -- I certainly wasn't privy to all
6 of the interactions between Mr. Barringer and the
7 world, certainly not with Mr. Luzak. Mr. Barringer
8 believed that his son-in-law -- he expressed to me
9 that his son-in-law was, what, taking over the
10 company and not respecting Mr. Barringer and had
11 suggested that Mr. Barringer no longer was mentally
12 competent.

13 Q. All right. Is that the sum total of what
14 you would testify to as to what caused Paul Barringer
15 to turn on Kevin Luzak between February 2012 and the
16 board meeting on June 28, 2012?

17 MS. KIRK: Object to the form.

18 MR. TWOMBLEY: Same objection.

19 BY MR. TRAXLER:

20 Q. And I want to be fair to you, Mr. Jolley.
21 I really don't want to hear something else for the
22 first time in the court room. So I want to make sure
23 I've given you a fair chance to answer that question.

24 A. Yeah.

25 MR. TWOMBLEY: And I just want to

ROA 006463

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1 object to the form of the question.

2 MR. TRAXLER: That's fine.

3 MS. KIRK: Same objection.

4 BY MR. TRAXLER:

5 Q. Take me through that, if you would,
6 please, sir.

7 A. Mr. Traxler, take you through what?

8 Q. What happened between February 2012 to
9 June 28, 2012 to make Paul Barringer turn on Kevin
10 Luzak?

11 MS. KIRK: Object to the form.

12 MS. PAYLOR: Object to the form.

13 THE WITNESS: So, I'm sorry,
14 Mr. Traxler. I don't -- I don't think I can testify
15 to what happened between Mr. Barringer and Mr. Luzak.
16 I certainly would and will testify about what was
17 communicated to me and how Mr. Barringer interacted
18 with me and what -- and what he communicated to me.
19 But I, of course, was generally not privy to those --
20 to their interaction.

21 BY MR. TRAXLER:

22 Q. Well, what did you understand happened to
23 make Mr. Barringer sour on Kevin Luzak by the end of
24 June?

25 MS. KIRK: Object to the form.

ROA 006464

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1 MS. PAYLOR: Object to the form.

2 BY MR. TRAXLER:

3 Q. You can answer it.

4 A. So, Mr. Traxler, what I just described a
5 minute ago is what I understood. Mr. Barringer
6 described to me that his son-in-law was taking over
7 the company, that he was no longer -- and that he had
8 said that Mr. Barringer was no longer competent. So
9 what was expressed to me is that's why there was a
10 breakdown between Mr. Luzak and Mr. Barringer.

11 Q. Well, we've talked about some e-mails
12 where Randy Light talked about that there were
13 problems like that with Mr. Barringer. Did
14 Mr. Barringer turn on Randy Light?

15 MS. KIRK: Object to the form.

16 MR. TWOMBLEY: Same objection.

17 THE WITNESS: I'm unaware of
18 Mr. Barringer turning on Mr. Light.

19 BY MR. TRAXLER:

20 Q. Did you ever hear Mr. Barringer say
21 anything negative at all at any point in time about
22 Randy Light?

23 MS. KIRK: Object to form.

24 THE WITNESS: I don't recall
25 Mr. Barringer saying anything negative about Randy

ROA 006465

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1 Light.

2 BY MR. TRAXLER:

3 Q. Did he ever talk to you about his
4 bankruptcies?

5 MR. TWOMBLEY: Object to the form of
6 the question.

7 MS. KIRK: That's also asked and
8 answered.

9 MR. TWOMBLEY: Yeah. And misstates
10 the evidence.

11 BY MR. TRAXLER:

12 Q. No. The question before was limited to
13 that time frame. I'm asking now about any time ever
14 did Mr. Barringer discuss with you about Randy
15 Light's financial problems or bankruptcies?

16 MS. PAYLOR: Object to the form.

17 MS. KIRK: Object to form.

18 THE WITNESS: No.

19 BY MR. TRAXLER:

20 Q. Was Mr. Barringer aware of --

21 THE COURT REPORTER: Excuse me, Mr.
22 Traxler.

23 BY MR. TRAXLER:

24 Q. -- his financial problems or bankruptcies?

25 MS. PAYLOR: Object to the form.

ROA 006466

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1 MR. TWOMBLEY: Tom -- Tom, the court
2 reporter is asking you to stop for one second. She's
3 got -- she's got to attend to something.

4 MR. TRAXLER: Y'all want to take a
5 break?

6 MS. PAYLOR: Yeah.

7 MR. TRAXLER: Okay. We'll take a
8 quickie break. Mr. Jolley, be careful about talking
9 to people.

10 THE WITNESS: Thank you, Mr. Traxler.

11 THE VIDEOGRAPHER: We are off the
12 record at 10:32 a.m.

13 (Off the record.)

14 THE VIDEOGRAPHER: We are back on
15 record. It is 10:43 a.m.

16 BY MR. TRAXLER:

17 Q. Okay. Mr. Jolley, you didn't talk to
18 anybody during the break, did you?

19 A. I did not.

20 Q. All right. Mr. Jolley, I was asking you
21 questions about how things evolved between
22 February 28, 2012 documents and the board meeting on
23 June 28, 2012 when Kevin Luzak was ousted from the
24 company as an officer. During the break or at any
25 time, did you have any further thoughts on that, any

ROA 006467

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1 further answer as to what caused Mr. Barringer to go
2 sour on Kevin Luzak?

3 MS. KIRK: Object to the form, and
4 that's been asked and answered --

5 MS. PAYLOR: Object to the form.

6 MS. KIRK: -- quite a few times.

7 BY MR. TRAXLER:

8 Q. Go ahead. Any other information that's
9 come to you?

10 A. No, Mr. Traxler.

11 Q. Okay. Were you aware that during 2012
12 Mr. Barringer continued to see doctors for the
13 purposes of evaluation and/or treatment of dementia?

14 MS. KIRK: Object to the form.

15 MS. PAYLOR: Object to the form.

16 THE WITNESS: I was not aware of that
17 at the time.

18 BY MR. TRAXLER:

19 Q. When did you become aware of it?

20 A. I think the first time I became -- well, I
21 understood -- and I don't know who told me. But in
22 the summer of 2012, I understood that Mr. Barringer
23 had been sick. But in terms of seeing medical
24 records or have any information about that, the first
25 time I saw that was in the materials presented to me

ROA 006468

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1 as a part of this litigation.

2 Q. How was it you became -- you first became
3 aware of medical records pertaining to the issues of
4 his dementia?

5 MS. KIRK: Object to the form.

6 THE WITNESS: The first time I saw
7 medical records with respect to Mr. Barringer's
8 medical records are what was presented to me in the
9 binder in preparation for this deposition.

10 BY MR. TRAXLER:

11 Q. Okay. When was the first time you had
12 anyone comment to you about any concerns about
13 dementia with Mr. Barringer?

14 A. During the summer of --

15 Q. Excuse me. Go right ahead. I apologize.

16 MR. SCHRONCE: And, Tom, I'm going to
17 jump in here. This is John Schronce. To the extent
18 that you are calling for any communications that John
19 may have had as company counsel in connection with
20 providing legal advice to the company, I would object
21 him not to respond. To the extent he can do so
22 without getting into those communications, that's
23 fine.

24 MS. KIRK: And I just object to the
25 form.

ROA 006469

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1 BY MR. TRAXLER:

2 Q. Can you answer that question, Mr. Jolley?

3 A. Uh-huh. In the -- and I don't know the
4 specific date it was. But in the summer of 2012 when
5 I was contacted about the company and Mr. Barringer
6 as a shareholder of the company, then he -- that was
7 the first time I was aware that anyone had suggested
8 that he lacked capacity.

9 Q. Okay. Well, my question was broader than
10 capacity. When was the first time you had anyone
11 comment to you, however they did it, with questions
12 concerning his mental capacity whether it resulted in
13 incapacity or not?

14 A. I'm sorry.

15 MS. KIRK: Object to the form.

16 MR. SCHRONCE: And -- and, Tom, I'll
17 make my same objection, and I am fine if we can agree
18 to just have that as a standing objection and
19 qualification for this line of questioning.

20 MR. TRAXLER: Sure.

21 THE WITNESS: I'm sorry, Mr. Traxler.
22 I'm going to need you to ask me that again.

23 BY MR. TRAXLER:

24 Q. Okay. What I need to know, Mr. Jolley, is
25 when you first became aware that there were questions

ROA 006470

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1 concerning Mr. Barringer's dementia or medical
2 capacity?

3 MS. PAYLOR: Object to the form.

4 MS. KIRK: Object to form.

5 THE WITNESS: I was first aware of
6 that when I was contacted in the summer of 2012.

7 BY MR. TRAXLER:

8 Q. By whom?

9 A. I -- I think Mr. Barringer and Ms. Light.

10 Q. Why did they contact you? What was that
11 all about?

12 MR. MOLSTER: Objection. I'm sorry,
13 Tom. I think you're getting into a privileged area
14 here with Merrill Light, and so I think we're going
15 to instruct him not to answer questions with respect
16 to any conversations he had with Merrill Light.
17 Whether or not those conversations relate to the
18 testamentary exception is way beyond my pay grade.
19 I'll defer to Mr. Twombly on that.

20 MR. TRAXLER: Okay. Well, Chip, let
21 me -- let me explore the setting pertaining to these
22 communications a little bit.

23 BY MR. TRAXLER:

24 Q. Did they call you, Mr. Barringer and
25 Ms. Light?

ROA 006471

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1 MR. MOLSTER: Excuse me one second.
2 John, we're going to go slow here, question by
3 question. I'm going to have to -- Alice and I are
4 going to have to try to figure out -- I mean, it's
5 hard -- very hard to do by Zoom, and I appreciate
6 your tolerance of this, Tom. But we would normally
7 be sitting in a room with each other -- next to each
8 other and we could have these communications. Doing
9 it this way is difficult, but compelled by the COVID
10 situation. So if Tom will agree that us allowing you
11 to answer the question yes or no is not a waiver of
12 the attorney-client privilege, then we're going to
13 allow you to answer that question yes or no. Is that
14 okay with you, Tom?

15 MR. TRAXLER: Let me just ask him a
16 more general question.

17 BY MR. TRAXLER:

18 Q. Do you understand the questions pertaining
19 to privilege that Mr. Molster is raising?

20 MS. KIRK: Object to form.

21 BY MR. TRAXLER:

22 Q. What I really want to know is why did they
23 call you and in what capacity? Why did they call you
24 and what was the capacity which they were calling
25 you?

ROA 006472

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1 MR. MOLSTER: I'm instructing him not
2 to answer that.

3 MS. KIRK: And that's the issue.

4 BY MR. TRAXLER:

5 Q. Where was the conversation, Mr. Jolley?

6 MR. TWOMBLEY: And I'm going to --
7 before you go any further, I just want to caution the
8 witness that if these conversations that you had were
9 not related to the preparation, the execution, or
10 amendment of Mr. Barringer's estate planning
11 documents, then I'm instructing you not to answer
12 that question. So...

13 MR. TRAXLER: All right.

14 MR. MOLSTER: So -- so, Tom, let me
15 just clarify. If I let him answer the question when,
16 you agree that's not a waiver of the attorney-client
17 privilege?

18 MR. TRAXLER: As to that question,
19 yes.

20 MR. MOLSTER: Okay.

21 MR. TRAXLER: But I think Ashley --
22 Mr. Twombley has already instructed him not to
23 answer, so what difference does it make?

24 MR. MOLSTER: Okay.

25 MR. TWOMBLEY: Well, if your question

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1 is limited to when, I think he already testified it
2 was the summer of 2012. So if you've got another
3 question that you want to ask or if you want to talk
4 about it, I'm happy to do that.

5 BY MR. TRAXLER:

6 Q. All right. When in the summer of 2012 was
7 the conversation?

8 MR. MOLSTER: Same agreement, Tom?

9 MR. TRAXLER: Yeah.

10 MR. TWOMBLEY: Same for me as well.

11 MR. TRAXLER: Sure.

12 MR. TWOMBLEY: Just answer when in
13 the summer of '12, if you remember.

14 THE WITNESS: I'm sorry. I don't
15 remember the specific date.

16 BY MR. TRAXLER:

17 Q. Was it by telephone?

18 MR. MOLSTER: Same agreement?

19 MR. TRAXLER: Yeah.

20 THE WITNESS: The initial
21 conversation you are asking me about?

22 BY MR. TRAXLER:

23 Q. Yes, sir. The one you just testified to.

24 A. It was by telephone.

25 Q. All right. And who was on the telephone

ROA 006474

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1 call?

2 MR. MOLSTER: Same agreement?

3 MR. TRAXLER: Yeah.

4 MR. TWOMBLEY: Same for me?

5 MR. TRAXLER: Yeah.

6 MR. SCHRONCE: The same for the
7 company as well, Tom?

8 MR. TRAXLER: Sure.

9 THE WITNESS: Ms. Light.

10 BY MR. TRAXLER:

11 Q. Was she calling you about her father?

12 MR. MOLSTER: Objection. Instruct
13 him not to answer.

14 BY MR. TRAXLER:

15 Q. Was she calling you as your client?

16 MR. MOLSTER: Instruct him not to
17 answer.

18 BY MR. TRAXLER:

19 Q. What hat were you wearing? By that I mean
20 in this conversation, did you represent Paul
21 Barringer or did you represent Merrill Barringer or
22 did you represent Merrill Light or did you represent
23 Randy Light or did you represent their children or
24 did you represent the company?

25 MR. MOLSTER: Instruct him not to

ROA 006475

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1 answer. Sorry. Instruct him not to answer.

2 MS. KIRK: I object to the question.

3 MR. TWOMBLEY: Yeah. I object to the
4 form. And if it doesn't relate to the preparation,
5 execution, or amendment of an estate planning
6 document, I too instruct you not to answer.

7 MR. TRAXLER: And y'all are telling
8 him not to answer in which capacity as lawyer for
9 whom he was talking to her? He can answer that
10 question.

11 MR. TWOMBLEY: Yes. I just don't
12 think it's -- I just don't think it's --

13 MR. MOLSTER: It's inscriptively -- I
14 think it's too inscriptively intertwined with his
15 provision of legal services to clients -- my client.

16 MR. TRAXLER: Okay.

17 MR. TWOMBLEY: And also my -- and
18 also I don't think it's related to the preparation,
19 execution, or amendment of estate planning documents.
20 So, therefore, it would not fall within the
21 exceptions outlined by the court.

22 BY MR. TRAXLER:

23 Q. Well, was this conversation, Mr. Jolley,
24 before or after the July 2012 documents were
25 executed?

ROA 006476

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1 MS. KIRK: Object --

2 MR. MOLSTER: Do we have the same
3 agreement that if he answers that question, it's not
4 a waiver?

5 MR. TRAXLER: Yes.

6 MS. KIRK: I object to the question
7 because he's already answered that.

8 MR. TRAXLER: What was the answer?

9 MR. TWOMBLEY: I think he said he
10 didn't remember the date.

11 MR. TRAXLER: I'm asking him if this
12 conversation with Merrill Light was before or after
13 the execution of the June 2012 documents.

14 MR. MOLSTER: So that's a one-word
15 answer for you, John, from my perspective. I can't
16 speak for Ashley and the company.

17 MR. TWOMBLEY: My position is if it
18 doesn't relate to the preparation, execution, or
19 amendment of Mr. Barringer's estate planning
20 documents, I mean, respectfully, Tom, I mean, I
21 just -- I just don't think you're entitled to go into
22 it as far as when it was, who was on the call, what
23 they talked about, you know. I just, again,
24 respectfully, I just think those are privileged
25 matters that you're not entitled to go into it with.

ROA 006477

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1 Now, if it's a conversation with just Ms. Light,
2 then, you know, of course, I can't instruct him not
3 to answer that. But if -- but, you know, if it goes
4 any further, then I just respectfully take the
5 position that it's not within the exception and
6 you're not entitled to go into it.

7 BY MR. TRAXLER:

8 Q. Mr. Jolley, were you involved in the
9 restatement of Mr. Barringer's revocable trust on or
10 about July 20, 2012?

11 A. I was involved in the restatement of
12 Mr. Barringer's trust. The date, I can refer to it
13 in the documents, but that's -- and those dates sound
14 right. But, yes, I was involved in that.

15 Q. Was this conversation with Merrill Light
16 on the telephone before or after that execution of
17 that document?

18 MR. MOLSTER: Same agreement?

19 MR. TRAXLER: Yeah.

20 THE WITNESS: So I --

21 MR. MOLSTER: Go ahead and answer,
22 John, please.

23 THE WITNESS: Yes.

24 MS. PAYLOR: That was a good answer.

25 MR. TRAXLER: That was a very good

ROA 006478

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1 answer and very nice timing.

2 BY MR. TRAXLER:

3 Q. The question was: Was the conversation
4 before or after July 20, 2012 of the restatement of
5 the revocable trust?

6 A. Before.

7 Q. Okay. Was it before or after the June 28,
8 2012 board meeting?

9 MR. MOLSTER: Same agreement?

10 MR. TRAXLER: Yeah.

11 MS. KIRK: Hold on. I just want to
12 make sure of something.

13 THE WITNESS: And so I'm sorry,
14 Mr. Traxler, what was the last question?

15 BY MR. TRAXLER:

16 Q. Okay. Do you remember the board meeting
17 on June 28, 2012? Do you remember hearing about
18 that?

19 A. Yes.

20 Q. This was where Kevin Luzak was ousted as
21 an officer, correct?

22 MS. KIRK: Object to the form.

23 MR. TWOMBLEY: Object to the form.

24 THE WITNESS: That sounds right.

25 That's my recollection.

ROA 006479

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1 BY MR. TRAXLER:

2 Q. Okay. Was the conversation with
3 Merrill Light that we've been talking about before or
4 after that meeting on June 28th?

5 A. One-word -- one-word answer, before.

6 Q. Okay. Did Mr. Slane ever have any
7 conversations with you about Mr. Barringer's mental
8 status?

9 MS. KIRK: Object to the form.

10 THE WITNESS: Yes.

11 BY MR. TRAXLER:

12 Q. When?

13 A. Not -- I'm not sure when. I know that it
14 wasn't until after -- it was after July of 2012.

15 Q. Let me get you -- I'm sorry. Did I cut
16 you off?

17 A. July of 2012. It wasn't...

18 Q. All right. Let me get you to go to in
19 your exhibit notebook to tab one, page 28. Are you
20 copied in any fashion on this e-mail?

21 A. I'm sorry, Mr. Traxler. I'm looking at J.
22 Jolley Dep 0028, and what was the question?

23 Q. Yes, sir. Yes, sir. Were you copied on
24 that e-mail -- those e-mails?

25 A. I -- I don't see that I was copied on this

ROA 006480

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1 e-mail.

2 Q. Do you recall seeing it prior to your
3 deposition -- preparation for your deposition?

4 A. I don't recall.

5 Q. All right. Do you see the e-mail in the
6 middle from Randy to Robert Slane dated January 3,
7 2012 at 4:24 p.m.?

8 A. I do see this.

9 Q. Okay. And you see the paragraph -- the
10 second paragraph that says, "Robert, comma." Do you
11 see that?

12 A. I do.

13 Q. Would you read that out loud, please?

14 A. "Robert, Merrill was asking me if
15 Barringers are considering her with power of attorney
16 for them in the near future. She is concerned that
17 PBB is starting to show more irrational behavior on
18 certain family issues, which is disturbing to all
19 siblings. A close friend of hers had a similar
20 situation with her older parents and before power of
21 attorney could be transferred, they were declared
22 unsound and the state took control, which was
23 devastating."

24 Q. This concerns Merrill (inaudible) --

25 THE COURT REPORTER: I need him to

ROA 006481

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1 repeat that.

2 MS. KIRK: We lost you completely.

3 MR. MOLSTER: Objection. Instruct
4 him not to answer with respect to -- I think it's
5 fair game with respect to Slane. I don't think it's
6 fair game with respect of Merrill or Randy or anybody
7 else.

8 MS. KIRK: Tom, this is Ariail Kirk.
9 I don't think the court reporter or the witness or I
10 could hear that. So I don't have any idea what you
11 just asked.

12 MR. TRAXLER: I'm sorry, Ariail. I
13 couldn't hear what you were saying.

14 MS. KIRK: We -- I don't think
15 anybody here in Columbia could hear that question.
16 So I don't -- I don't even know what you asked. I
17 don't think it's going to be reflected on the record
18 either because I don't think the court reporter could
19 hear it.

20 MR. TRAXLER: All right. My question
21 was: Did Merrill or Robert Slane or anybody else
22 address those concerns that Mr. Jolley just read out
23 loud to Mr. Jolley?

24 MR. MOLSTER: Okay. And I instruct
25 him not to answer with respect to anybody other than

ROA 006482

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1 Mr. Slane. Well, certainly with respect to Merrill
2 or Randy Light.

3 BY MR. TRAXLER:

4 Q. Go ahead, Mr. Jolley.

5 MR. MOLSTER: Do you understand the
6 instruction, John?

7 THE WITNESS: No. I don't understand
8 the question or the instruction. I'm really not
9 trying to be difficult.

10 BY MR. TRAXLER:

11 Q. Okay. Let's back up. We'll take it one
12 at a time. Did Mr. Slane ever pass on those
13 sentiments or thoughts to you?

14 A. I -- as I just said a minute ago, I
15 didn't -- I don't recall anything from Robert Slane
16 with respect to these issues prior to at least July
17 of 2012.

18 Q. All right. Did you ever have any
19 conversations with Merrill Light other than as her
20 lawyer about this issue with respect to her father?

21 MR. MOLSTER: All right. So I think
22 that I need to talk to him. I'm going to instruct
23 him not to answer unless you want me to talk to him
24 offline.

25 BY MR. TRAXLER:

ROA 006483

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1 Q. Well, no. Very simply, Mr. Jolley, did
2 you ever have any conversation with Merrill Light
3 along the lines of this e-mail other than in an
4 attorney-client relationship with her?

5 MR. MOLSTER: So I need to talk to
6 him about whether or not he had an attorney -- make
7 sure he's clear on whether or not he had an
8 attorney-client relationship with her before I'm
9 going to just willy-nilly let him answer that
10 question.

11 BY MR. TRAXLER:

12 Q. Do you understand the question,
13 Mr. Jolley?

14 MR. MOLSTER: I instruct you not
15 to -- John, I instruct you not to answer unless and
16 until Tom and I can come to some conclusion on this.

17 THE WITNESS: Okay.

18 MR. TRAXLER: So you are not going to
19 answer, and you're instructing him not to answer?

20 MR. MOLSTER: Correct. I'm willing
21 to work it out with you, but I can't just willy-nilly
22 let -- let him answer the question.

23 MR. TRAXLER: All right. Let's --
24 why don't you go talk to him briefly and let's see if
25 we -- Chip, we'll take a break and go off the record

ROA 006484

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1 while you talk to him briefly, come back and tell me
2 whether he's going to testify. While you're
3 talking -- if he's going to assert the privilege, I
4 would want to know the circumstances of the
5 conversation and why it was in an attorney-client
6 relationship.

7 MR. MOLSTER: It's going to take me a
8 minute. I've got to go -- Ashley -- well, how -- how
9 are we going to communicate with -- I guess maybe,
10 John, let me give you my -- or Ariail, let me give
11 you my cell phone. My cell phone doesn't work where
12 I am right here. So I have to go up to the top of
13 the hill so I can get a signal, but my cell phone
14 number is 703 --

15 MR. TRAXLER: Chip, I love a muse. I
16 mean, you're somewhere where you've got to go the top
17 of a hill during the deposition?

18 MR. MOLSTER: And stand on one foot.

19 THE VIDEOGRAPHER: We are off the
20 record. It is 11:03 a.m.

21 (Off the record.)

22 THE VIDEOGRAPHER: We are back on
23 record. It is 11:10 a.m.

24 MR. TRAXLER: All right.

25 Mr. Molster, are you going to instruct him not to

ROA 006485

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1 answer the question?

2 MR. MOLSTER: Could you just repeat
3 it one more time?

4 MR. TRAXLER: Well, Madam Court
5 Reporter, could you read the question back?

6 THE COURT REPORTER: It's a lot of
7 colloquy. Give me just a moment.

8 MR. MOLSTER: Well, let me just cut
9 through -- cut through it. Yes. I mean, it was a
10 privilege communication after my consultation with
11 Mr. Jolley. So I will instruct him not to answer
12 that.

13 BY MR. TRAXLER:

14 Q. All right. Mr. Jolley, after that
15 conversation, what did you do?

16 MS. KIRK: I object to the form of
17 the question.

18 BY MR. TRAXLER:

19 Q. Let me rephrase it. As a result of that
20 conversation, did you do anything?

21 MS. KIRK: I object to the form of
22 that question. Are you asking him what he did based
23 upon a privileged conversation for a client?

24 THE WITNESS: Yep. Yep.

25 MR. MOLSTER: And I'm just going to

ROA 006486

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1 instruct him -- John, I just instruct you not to
2 provide any information to Mr. Traxler that would be
3 protected by your attorney-client relationship with
4 Merrill Light or Randy Light. Does that make sense
5 to you?

6 THE WITNESS: I think so. After that
7 conversation, what did I do?

8 MS. KIRK: To the extent that you did
9 something that is privileged or was work product for
10 your client, I would instruct not to discuss it with
11 Mr. Traxler.

12 THE WITNESS: So okay. I'm not
13 exactly sure how I can answer this.

14 MR. TWOMBLEY: Well, under the rules,
15 I think you're entitled to talk with your lawyer
16 about -- you know, I mean, she'll have to tell you.
17 But I think when a witness is not clear how to
18 respond or whether the response would reveal a
19 privilege, that's the very purpose of the rule to
20 allow you to talk with your lawyer about it. So I
21 don't know if Tom disagrees, but maybe you would
22 agree he could talk to Ariail about what his answer
23 might be and she can help counsel him on whether or
24 not he should disclose the answer. But I, you
25 know -- that's just --

ROA 006487

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1 MR. MOLSTER: And then from my
2 perspective, I just want to be clear that we're not
3 waiving any attorney-client privilege with respect to
4 Randy or Merrill Light, and I'm asking you not to
5 disclose any information that would be protected by
6 the attorney-client privilege between those --
7 yourself and those folks. And if you need to consult
8 with me in connection with your consultations with
9 your lawyer, I am available to do so. Maybe the
10 better thing to do rather than going back up to the
11 top of the hill is that they give us -- we can
12 continue on the Zoom without anybody else not
13 hearing. I don't know how -- I'm trying to figure
14 out a better way to do it. I'm not sure you need me
15 for this one. But, you know, going forward,
16 obviously we'll going question by question.

17 MR. TRAXLER: Somebody tell me what
18 he's going to do. Is he going to answer the question
19 or not?

20 MR. MOLSTER: I think he's going to
21 talk to Ariail.

22 MS. KIRK: Right. So are you ready
23 to go off?

24 MR. TRAXLER: If he wants to consult
25 about whether that answer involves privileged

ROA 006488

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1 communications, that's right.

2 MS. KIRK: Okay.

3 MR. MOLSTER: We are asserting the
4 privilege to the maximum --

5 THE VIDEOGRAPHER: We are now off
6 record. It is 11:14 a.m.

7 (Off the record.)

8 THE WITNESS: We are back on record.
9 It is 11:18 a.m.

10 MS. KIRK: I'm going to instruct the
11 witness not to answer based on privilege.

12 MR. TRAXLER: Did Mr. Twombly
13 participate in that conference just now?

14 MS. KIRK: Are you asking the
15 question or are you asking me?

16 MR. TRAXLER: Asking you, Ariail.

17 MS. KIRK: No, sir.

18 MR. TRAXLER: Was Mr. Twombly in on
19 that privileged conference?

20 MS. KIRK: No, sir.

21 MR. TRAXLER: Okay. Was anybody else
22 other than you and Mr. Jolley?

23 MS. KIRK: No, sir.

24 MR. TRAXLER: Okay. Thank you.

25 BY MR. TRAXLER:

ROA 006489

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1 Q. Mr. Jolley, going back to that telephone
2 conversation that we've been talking about with
3 Merrill Light in the summer of 2012, did you discuss
4 that conversation with anyone else?

5 MS. KIRK: I object to that question
6 as well and instruct him not to answer to the extent
7 that it involves attorney work product or privileged
8 communications.

9 MR. MOLSTER: And same for me on
10 behalf of Merrill Light, John.

11 MR. TRAXLER: The question very
12 simply is: Did he discuss it with anyone else?

13 MS. KIRK: I understand the question.
14 I think that that --

15 MR. TRAXLER: I don't know how that
16 could possibly be privileged.

17 MR. MOLSTER: Sure. If he talked to
18 Betsy -- Becky Bostic about it or somebody else in
19 his office.

20 MR. TRAXLER: Well, I haven't asked
21 him who yet. I haven't asked him who. All I did was
22 ask him if he talked to anybody. How can that
23 possibly be privileged?

24 MR. MOLSTER: That could be
25 attorney-client and work product to the extent you're

ROA 006490

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1 getting into the substance of it. So my instruction
2 to John is please do not reveal any attorney-client
3 privileged information. And if you have concerns
4 about what those parameters are, I'm happy to discuss
5 it, and Ariail is obviously right there and she can
6 discuss it with you as well.

7 MR. TRAXLER: Ariail, are you
8 instructing him not to answer that question?

9 MS. KIRK: Yes, sir.

10 MR. TRAXLER: Okay. And I think I've
11 asked you this question -- and I assume you're
12 instructing him, Ariail, not to answer that question
13 on the grounds of privilege; is that correct?

14 MS. KIRK: Yes.

15 MR. TRAXLER: And are y'all going to
16 instruct him not to answer any of my questions about
17 who he talked to, the setting, the purpose of the
18 like so we can determine whether or not it's truly
19 privileged or not; is that -- is that correct? Or do
20 you want me to plow through every one of those
21 questions or is this a special record in y'all's
22 opinion?

23 MS. KIRK: I didn't hear you. I'm
24 sorry. What was the last thing you said?

25 MR. TRAXLER: Is this a sufficient

ROA 006491

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1 record that y'all are going to instruct him not to
2 answer any questions about his capacity in that
3 conversation with Merrill Light, who he talked to,
4 the setting so that I can explore whether it's really
5 privileged or not or do I need to ask him each one
6 those questions and y'all independently assert a
7 privilege as to them?

8 MR. MOLSTER: I think it's question
9 by question myself. I mean --

10 MR. TRAXLER: Okay. Some of this is
11 going to be repetitive.

12 MR. MOLSTER: Tom, I'm not trying to
13 be hard to get along with. I just don't know any
14 other way to do it.

15 MR. TRAXLER: Well, I understand
16 that, Chip, but I have an absolute right to know the
17 setting and the contact. The judge has the right to
18 know why it's privileged, who he talked to, and the
19 setting. He is wearing multiple hats, representing
20 multiple people in multiple capacities, and it's not
21 a privilege of one. It's a privilege of all. So I
22 have the right to know what's going on, how he -- who
23 he talked to, in what capacity. I have the right to
24 know whether he disclosed those contents to anybody
25 where it's not privileged. But y'all are telling him

ROA 006492

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1 not to answer any of those questions?

2 MS. KIRK: That's not the question
3 you asked him, Tom. You didn't ask him did you, you
4 know, have non-privileged actions or conversations
5 following.

6 MR. TRAXLER: No, Ariail. I --

7 MS. KIRK: You asked him generally
8 everybody he talked to.

9 MR. TRAXLER: Y'all instructed him
10 not to answer. I didn't get to ask that next
11 question.

12 MR. MOLSTER: Well, I think try that
13 next question and let's see how we do.

14 MR. TRAXLER: Well, are y'all now
15 allowing him to answer the question as to whether he
16 talked to anybody about the substance of that
17 conversation?

18 MS. KIRK: I am not allowing him to
19 answer that question as it relates to every person in
20 the world, including his staff.

21 MR. TRAXLER: Well, it very simply is
22 did he talk to anybody about the conversation, and
23 y'all have told him not to answer.

24 MS. KIRK: Correct.

25 MR. TRAXLER: Are you now allowing

ROA 006493

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1 him to answer the question? It's not --

2 MS. KIRK: No.

3 MR. TRAXLER: -- that hard.

4 MR. MOLSTER: So to be clear, I don't
5 think I have an objection or instruction if you ask
6 him whether he had -- whether he disclosed the
7 information that he got from Merrill Light to anybody
8 who in his judgment was not covered by the
9 attorney-client privilege. That's what you're trying
10 to get to whether there's a waiver issue.

11 MR. TRAXLER: Ultimately, we get
12 there. I just right now want to ask him the
13 question: Did he talk to anybody about the
14 conversation?

15 MR. MOLSTER: Well, Ariail has
16 instructed him not to answer that.

17 BY MR. TRAXLER:

18 Q. Okay. When you had -- did you have
19 follow-up conversations with Merrill Light pertaining
20 to the same substance, whatever it was?

21 MR. MOLSTER: If I let him answer
22 that yes or no, do you agree it's not a waiver --
23 waiver of attorney-client?

24 MR. TRAXLER: I'll agree to that.
25 Sure.

ROA 006494

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1 THE WITNESS: Yes.

2 BY MR. TRAXLER:

3 Q. How many times?

4 MR. MOLSTER: Same agreement?

5 MR. TRAXLER: Yes. I will agree,
6 Chip, that to the extent he testifies to these
7 answers, I will be construe that to be a waiver.

8 MR. MOLSTER: Thank you.

9 THE WITNESS: I'm not certain how
10 many times.

11 BY MR. TRAXLER:

12 Q. Okay. Give me your best guess, if you
13 would.

14 MR. MOLSTER: Object to form.

15 MS. KIRK: Object to form.

16 THE WITNESS: Five to ten times.

17 BY MR. TRAXLER:

18 Q. All right. And when was the last
19 conversation pertaining to that substance?

20 A. I -- I -- I'm not certain.

21 Q. Was the last conversation with you that
22 you had with her about that substance before or after
23 the purported stock transfer on September 11, 2012?

24 A. Before.

25 Q. Okay. But you can't otherwise give me a

ROA 006495

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1 more narrow time frame; is that correct?

2 MR. MOLSTER: Object to the form.

3 THE WITNESS: I generally can't say
4 more specifically than that.

5 BY MR. TRAXLER:

6 Q. All right. Were you speaking to her as an
7 officer or director of the corporation or as an
8 individual client?

9 MS. KIRK: Object to the form.

10 MR. MOLSTER: So I don't know whether
11 we need to consult on this. And, Johnathan, I don't
12 know whether you need to do anything on behalf of the
13 corporation.

14 MS. KIRK: Do we -- is there a time
15 period you're asking about?

16 MR. TRAXLER: I'm sorry. I didn't
17 hear the question.

18 MS. KIRK: Is there a specific time
19 period you're asking about?

20 MR. TRAXLER: The time period that
21 we've been testifying -- that he's been testifying to
22 about these conversations with Merrill Light that
23 y'all are basing a privilege on. And my question
24 very simply is: Is that privilege based upon
25 attorney-client privilege with her individually or is

ROA 006496

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1 it a privilege pertaining to the corporation?

2 MR. MOLSTER: Well, so I'm
3 instructing John not to answer -- to provide any
4 information that's going to be protected by
5 attorney-client privilege. If we need to consult on
6 this question, we can do so or you can talk to Ariail
7 and I don't know whether John Schronce needs to weigh
8 in or not.

9 MR. TRAXLER: All right. So y'all
10 are instructing him not to answer the question?

11 MR. MOLSTER: That's not what I said.

12 BY MR. TRAXLER:

13 Q. Okay. You can answer the question, then
14 Mr. Jolley, unless somebody tells you not to.

15 MR. SCHRONCE: And, again, to the
16 extent this involves his role as corporate counsel
17 and implicates privileged communication, I instruct
18 him not to answer. But, again, Ariail, if that's
19 something that you want us to talk over, we can do
20 that.

21 MR. TRAXLER: I just want to know who
22 gets to assert the privilege? Whose privilege is it?
23 That's all I want to know right now.

24 MR. MOLSTER: You know what? I'm not
25 sure it's fair to ask a lawyer that question. It's

ROA 006497

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1 really a legal -- it's really a legal question.

2 MR. TRAXLER: No. No, it's not.

3 Either he was talking to her as his client or he was
4 talking to her as a director of the company. There's
5 a big difference. When he wears multiple hats, he --
6 he creates this issue. It's a very fair question as
7 to who the privilege belongs to.

8 MR. MOLSTER: Well, to the extent it
9 belongs to Merrill Light, I instruct you not to
10 answer.

11 MR. TRAXLER: All right. That's not
12 the question, Chip. My question was: When he was
13 talking to her, was he talking to her as his
14 individual client or was he talking to her as a
15 director of the company?

16 THE WITNESS: If you were talking to
17 her as your individual client, I instruct you not to
18 answer the question.

19 MR. TWOMBLEY: And didn't Schronce
20 say object if he was talking in the capacity of
21 officer? So it seems to me they got both bases
22 covered.

23 MR. TRAXLER: I'm sorry, Ashley. I
24 couldn't hear you.

25 MR. TWOMBLEY: Well, I mean, I was

ROA 006498

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1 just commenting it seems like Ariail -- I mean, Chip
2 has objected on behalf of her individually and then
3 the corporation has objected. So either way -- I
4 mean, I'm just trying --

5 MR. SCHRONCE: (Inaudible.)

6 MR. TWOMBLEY: -- I'm just trying to
7 move us along from this.

8 MR. SCHRONCE: -- and sort this out.

9 MR. TRAXLER: I understand that. But
10 I think Judge Price is entitled to know, as we are,
11 as to whether or not he is refusing to answer the
12 question on the basis of attorney-client privilege of
13 her individually or the corporate privilege. I have
14 a right to know that.

15 MR. MOLSTER: I respectfully
16 disagree. I just don't think it's a fair position to
17 put him in. So with respect to Merrill Light's
18 portion of it, I instruct him --

19 MR. TRAXLER: All right.

20 MR. MOLSTER: I just don't think I
21 have a choice.

22 BY MR. TRAXLER:

23 Q. All right. So you're going to refuse to
24 answer the question; is that correct, Mr. Jolley?

25 MS. KIRK: He's not refusing to

ROA 006499

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1 answer. He's been instructed not to. Those are
2 substantively different things.

3 MR. TRAXLER: I'm sorry. I just want
4 to make sure that we're -- the way we are leaving
5 this is that he is being instructed not to answer.
6 If that's the case, I will honor that and move on.

7 MS. KIRK: I believe that's clear.

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

9 BY MR. TRAXLER:

10 Q. Mr. Jolley, let me get you to go to tab
11 one, page 61, please. I'll give you a minute to read
12 that. When you've had a chance to read it, if you'll
13 just let me know.

14 A. I have -- this is J. Jolley Dep page 0061,
15 the e-mail from Anne Surrentt to myself.

16 Q. Yes.

17 A. I've read it.

18 Q. All right. Do you remember this e-mail?

19 A. I remember being -- I remember the folks
20 at Wells Fargo reaching out to me.

21 Q. And do you recall what the discussion was
22 regarding an amendment he would like to initiate as
23 it relates to his late mother's trust?

24 A. I don't. I mean, I -- no. I don't
25 remember.

ROA 006500

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1 Q. Did you do or were you involved in any
2 amendments to his late mother's trust?

3 A. I don't believe that I was involved in any
4 amendment of his late mother's trust.

5 Q. Okay. Let me get you to go to page 63, an
6 e-mail from Robert Slane to Paul Barringer and copied
7 to you.

8 MR. TWOMBLEY: Did you say 63, Tom?

9 THE WITNESS: Tom, did you say --
10 Mr. Traxler, did you say page 63?

11 BY MR. TRAXLER:

12 Q. Yes.

13 A. I have the e-mail in front of me.

14 Q. Have you read it?

15 A. I have now read it.

16 Q. Okay. It says in the middle of that
17 e-mail that the two of us would like to come by and
18 visit you -- with you regarding some specific
19 recommendations on how to title certain assets to
20 minimize the probate cost of your and Merrill's
21 estate. Do you recall that?

22 A. Do I recall the meeting or do I -- I mean,
23 I see this e-mail and I don't really recall the
24 substance of -- I see the e-mail and -- and I don't
25 recall.

ROA 006501

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1 Q. Do you recall any follow-up action on
2 that, a meeting with Mr. Barringer?

3 A. I certainly met -- I recall meeting with
4 Mr. Barringer talking about funding his trust.

5 Q. Which trust?

6 A. So I'm sorry. I recall meeting with the
7 Barringers discussing funding -- Mr. Barringer
8 discussing funding his revocable trust.

9 Q. And how -- when were those conversations?
10 MR. TWOMBLEY: Are you just asking
11 for the date?

12 MR. TRAXLER: Yes.

13 MR. TWOMBLEY: If you remember.

14 THE WITNESS: I don't remember.

15 BY MR. TRAXLER:

16 Q. Was it shortly after this e-mail?

17 A. I would -- I believe it was shortly after
18 this e-mail.

19 Q. Okay. And the meeting did, in fact,
20 occur, correct?

21 A. As I said, I certainly -- I remember
22 meeting with Mr. Barringer and discussing my
23 recommendations -- our recommendations to fund his
24 revocable trust.

25 Q. And where did you meet with him?

ROA 006502

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1 A. I -- I don't remember if it was at
2 Mr. Barringer's house or at my office.

3 Q. Who was present?

4 A. I believe that Mr. Slane was present at
5 that meeting.

6 Q. And what was discussed?

7 MR. TWOMBLEY: I'm going to instruct
8 you not to answer the question unless it deals with
9 the preparation, execution, or amendment of
10 Mr. Barringer's estate planning documents. If it
11 does not, then I'm instructing you not to answer
12 because it does not fall within the testamentary
13 exception of the attorney-client privilege.

14 BY MR. TRAXLER:

15 Q. All right. You heard that. To the extent
16 it related to what Mr. Twombley said, he tells you
17 not to answer it, can you answer the question?

18 A. I have nothing to add.

19 Q. Did it result in any changes to the estate
20 plan of Mr. Barringer?

21 MR. TWOMBLEY: No. Just so the
22 witness is clear, the question is did it result in
23 any changes to his estate plan, which I interpret to
24 mean, Tom, you can clarify, did any documents -- any
25 dispositive documents get changed. Is that right?

ROA 006503

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1 MR. TRAXLER: Mr. Twombly, I really
2 would prefer that you not coach him.

3 MR. TWOMBLEY: Okay. Well, then I
4 just instruct him not to answer the question. I just
5 instruct him not to answer the question. I'm trying
6 to help get to the bottom of it so you can get the
7 information you need, but also protect the privilege
8 at the same time. But if you don't want me to do
9 that, then I have no choice but to instruct him not
10 to answer. So I instruct you not to answer,
11 Mr. Jolley, and we can move on.

12 MR. TRAXLER: All right. He is not
13 allowed to answer the question as to whether those
14 conversations resulted in the estate plan; is that
15 correct?

16 MR. TWOMBLEY: In light of the fact
17 that you have, you know, suggested that I'm coaching
18 him by trying to talk about it, yes, I'm not allowing
19 him to answer. Again, I'm happy to talk about it,
20 but, you know, you don't want to do that. So that's
21 fine. That leaves me no choice. I instruct you not
22 to answer.

23 MR. TRAXLER: Why don't you just let
24 him answer yes or no as to whether it resulted in
25 changes?

ROA 006504

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1 MR. TWOMBLEY: Maybe I was going to
2 do that. But in the discussion, you suggested I was
3 coaching him and I should, you know, not proceed with
4 discussion. So you can't have it both ways, Tom. If
5 you want to talk about it, I'm happy to talk about
6 it.

7 MR. TRAXLER: That's all right. If
8 he's going to -- you're instructing him not to
9 answer, that is fine. Is that on the basis of
10 privilege?

11 MR. TWOMBLEY: Yes. And work -- and
12 work product.

13 BY MR. TRAXLER:

14 Q. All right. Mr. Jolley, was there any
15 litigation that you anticipated at that time?

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

18 MS. KIRK: Same objection.

19 BY MR. TRAXLER:

20 Q. Were you anticipating any litigation at
21 that time, Mr. Jolley, subject to their objections?

22 MR. TWOMBLEY: What time?

23 MR. TRAXLER: April 2012.

24 THE WITNESS: No.

25

ROA 006505

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1 BY MR. TRAXLER:

2 Q. All right. Let me refer you to page No.
3 65 of your documents.

4 MS. KIRK: What page was that, Tom?

5 MR. TRAXLER: 65.

6 BY MR. TRAXLER:

7 Q. When you've had a chance to read that,
8 Mr. Jolley, just let me know, please.

9 A. I have had a chance to read page 65.

10 Q. Okay. And who is Anne Surret?

11 A. Ms. Surret is the -- a relationship
12 manager at Wells Fargo. She's the e-mail that you
13 asked me about just a minute ago.

14 Q. All right. And was this -- this e-mail
15 says, "Anne, I sat down with Mr. Barringer, et
16 cetera." Was this the meeting referenced back on
17 page 63 in the April 2 e-mail from Robert Slane to
18 Paul Barringer? Flip back a couple pages and see if
19 I made the connection correctly.

20 A. I'm not sure, but it appears to be.

21 Q. Okay. When you say I sat down with
22 Mr. Barringer, his financial advisor, who is the
23 financial advisor?

24 A. I believe this reference is to
25 Robert Slane.

ROA 006506

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1 Q. All right. And also present was daughter,
2 Merrill Light, as co-trustee, correct?

3 A. Yes.

4 Q. All right. And y'all discussed various
5 funding items, right?

6 A. That's what this e-mail says. Yes.

7 Q. What were those funding items?

8 MR. TWOMBLEY: I object and instruct
9 you not to answer unless it relates to the
10 preparation, execution, or amendment of
11 Mr. Barringer's estate planning documents.

12 MR. TRAXLER: Okay. This is an
13 e-mail to a third-party. Are you telling me I can't
14 go into the substance of those communications?

15 MR. TWOMBLEY: Well, that wasn't your
16 question. I thought your question was what was
17 discussed at the meeting.

18 MR. TRAXLER: It was. We got the
19 meeting that was discussed with Anne Surrett and
20 Robert Slane -- and Robert Slane were there both.
21 Are you telling me that that is a privileged
22 conversation?

23 MR. TWOMBLEY: Yes. I believe it
24 was. I mean, these are agents of Mr. Barringer or
25 people are acting in his direction. I mean, why --

ROA 006507

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1 why wouldn't it be?

2 MR. TRAXLER: Okay. So are you
3 instructing Mr. Jolley not to answer the question as
4 to what the various funding items were that he
5 referred to in this e-mail?

6 MR. TWOMBLEY: Correct.

7 BY MR. TRAXLER:

8 Q. All right. It also says, "One of the
9 items we discussed was the progress that had been
10 made in transferring Barringer's BB&T accounts
11 (three) to Wells Fargo." Do you recall that issue?

12 A. Do I -- I don't recall the specifics of
13 those three accounts, but I recall Mr. Barringer's,
14 what, transferring assets from BB&T to Wells Fargo.

15 Q. And were those individual accounts that
16 Mr. Barringer had or trust accounts?

17 A. I -- I don't recall that.

18 Q. And why was the transfer from BB&T to
19 Wells Fargo?

20 MR. TWOMBLEY: I'm going to object to
21 the form and -- well, let me just think about it a
22 minute. Are you asking John if he knows why?

23 MR. TRAXLER: Yep.

24 MR. TWOMBLEY: I mean, I don't know
25 what his answer is going to be. So, I mean, I would

ROA 006508

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1 have to talk to him about what his answer is going to
2 be before I can allow him to answer it, if you would
3 like me to do that.

4 MR. TRAXLER: I don't think the
5 substance of his answer is based -- reflects on
6 privilege. His answer is going to be what it is. It
7 has nothing to do with privilege.

8 MR. TWOMBLEY: Well, I mean, that's
9 totally not correct, Tom. I just respectfully
10 disagree with you. What if his testimony is, well, I
11 had a privileged discussion with Mr. Barringer
12 wherein he asked me for legal advice about X and I
13 advised him based on my opinion that the right thing
14 to do was Y. I mean, that would totally and
15 completely be privilege and you wouldn't be entitled
16 to go into it, in my opinion. So I don't know what
17 his answer is, and I don't know what else to do other
18 than talk to him about it.

19 If you -- you know, I -- these are
20 some interesting law school questions, in my opinion.
21 But it's an interesting way to spend the rest of the
22 time you have on the deposition, but, you know, I
23 either have to talk with him or if you want to
24 withdraw the question, that's fine. If you don't,
25 then I'm instructing you not to answer, but I will

ROA 006509

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1 talk with him privately to determine what he knows
2 and whether or not his response would reveal any
3 privileged information.

4 MR. TRAXLER: I will follow your
5 instructions to him not to answer the question and
6 let that stand.

7 BY MR. TRAXLER:

8 Q. All right. Mr. --

9 MR. TWOMBLEY: Well, and I just want
10 to make sure I don't know what his answer is. His
11 answer may not be privileged, but I don't know. And
12 so I can't just hope that it's not and allow him to
13 answer it.

14 BY MR. TRAXLER:

15 Q. Okay. Mr. Jolley, it says, the last
16 sentence, "Ultimately I suspect we will want two of
17 the accounts to be titled in the name of Paul's
18 revocable trust and one to be titled in the name of
19 Merrill Barringer's revocable trust." Do you recall
20 that conversation?

21 A. I don't recall that conversation.

22 Q. Do you recall what the reason would be to
23 have two accounts titled in his revocable trust and
24 one in Merrill Barringer's revocable trust?

25 MR. TWOMBLEY: You know, I'm either

ROA 006510

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1 going to, A, talk with John about that and find out
2 what his answer is to determine whether or not I need
3 to instruct him not to answer or you can withdraw the
4 question.

5 MR. TRAXLER: I'm not going to
6 withdraw the question. I'll just honor your
7 instruction not to answer and move on.

8 MR. TWOMBLEY: Well, just so I'm not
9 improperly accused of, you know, instructing him not
10 to answer a question that's not privileged, then I
11 will take this opportunity to talk with John about
12 what his answer is and whether or not it is, in fact,
13 privileged. So we'll take a break.

14 MR. TRAXLER: No. We don't need to
15 take a break. I'll stand with what you said, and
16 I'll let you talk to him during the regular break and
17 then we can revisit the issue.

18 BY MR. TRAXLER:

19 Q. Mr. Jolley, I need you to turn to page 67,
20 if you would, please, sir. This is an e-mail from
21 Robert Slane to Travis Bryant with you copied on it.
22 I'll give you a minute to read that.

23 A. I've read the e-mail.

24 Q. Okay. Do you recall receiving this
25 e-mail?

ROA 006511

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1 A. Not beyond reading it here. I don't
2 recall that. No.

3 Q. All right. Mr. Slane says to Travis
4 Bryant with a copy to you, "Per our conversation last
5 week, we want to do the following: Retitle Paul's
6 CFRC stock to his revocable trust." Do you see that?

7 A. I do.

8 Q. Was that part of the earlier discussions
9 with Paul Barringer to retitle his stock to his
10 revocable trust?

11 A. Was -- you're asking me if -- if -- if
12 this recommendation to retitle the stock was a part
13 of an earlier conversation?

14 Q. Yes.

15 A. I think that e-mail -- this e-mail
16 reflects that.

17 Q. Yeah. And we talked about earlier e-mails
18 about retitling assets. Would that include -- would
19 that be included in this retitle of the CFRC stock?

20 MS. KIRK: Object to form.

21 THE WITNESS: Well, the CFRC stock
22 was certainly one of Mr. Barringer's assets and it's
23 titling would be a subject of conversation. Yes.

24 BY MR. TRAXLER:

25 Q. And that was ultimately accomplished, was

ROA 006512

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1 it not?

2 A. I believe so. Yes.

3 Q. All right. This is kind of a lead up to
4 that, correct?

5 MS. KIRK: Object to form.

6 THE WITNESS: I'm not sure. A lead
7 up to the transfer of the stock -- I mean, as it
8 says, it would -- it would be that the goal as
9 described here would be to transfer those shares to
10 Paul's revocable trust.

11 BY MR. TRAXLER:

12 Q. That was ultimately done in May, was it
13 not?

14 A. I believe so. Yes, sir.

15 Q. Okay. So this is all a lead up to him
16 retitling the stock and putting it in his revocable
17 trust, correct?

18 MR. TWOMBLEY: Object to the form.

19 MS. KIRK: Object to form.

20 THE WITNESS: I mean, I think this
21 was -- these are events that preceded the transfer of
22 the stock. Yes.

23 BY MR. TRAXLER:

24 Q. All right. And this was all part of that
25 process or are you telling me that these April

ROA 006513

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1 e-mails are totally disconnected to the May transfer
2 of the stock?

3 MR. TWOMBLEY: Object to the form of
4 the question.

5 MS. KIRK: Same objection.

6 THE WITNESS: I'm not telling you
7 that, and I'm not trying to be coy.

8 BY MR. TRAXLER:

9 Q. Okay. So when we looked at the earlier
10 e-mails, whether or not it led to a change of his
11 estate planning, it did, didn't it?

12 MR. TWOMBLEY: Object to the form --

13 MS. KIRK: Object to the form.

14 MR. TWOMBLEY: -- of the question.

15 THE WITNESS: If you -- if when you
16 describe a change to his estate planning being
17 something other than a change to the documents, his
18 -- the documents that he executed as a part of his
19 estate plan, then this would not be a part of that.
20 I think this is outside of the fact a change to his
21 documents.

22 BY MR. TRAXLER:

23 Q. But this is an estate -- a change to what
24 he wanted in terms of the disposition of his assets,
25 correct?

ROA 006514

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1 MS. KIRK: Object to the form.

2 MR. TWOMBLEY: Object to the form of
3 the question.

4 THE WITNESS: No.

5 BY MR. TRAXLER:

6 Q. Okay. Why not? Let me back up and
7 rephrase. I withdraw that question.

8 Did he move -- did he move the stock from
9 his name individually to his revocable trust in May
10 2012?

11 A. That's my recollection.

12 Q. Okay. So he took it from his name to a
13 revocable trust where he and his daughter, Merrill
14 Light, were trustees, correct?

15 A. That is correct.

16 Q. And Merrill Light had the right to
17 unilaterally handle the assets of that trust,
18 correct?

19 MS. KIRK: Object to the form.

20 THE WITNESS: Merrill Light was a
21 trustee of that trust and could act independently.
22 That is correct.

23 BY MR. TRAXLER:

24 Q. And Merrill Light -- (inaudible.)

25 A. I'm sorry, Mr. Traxler. That didn't come

ROA 006515

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1 through. Can you repeat the question?

2 Q. Merrill Light was your client during this
3 time period as well, correct?

4 MS. KIRK: Object to the form.
5 That's been asked and answered a ton of times. I
6 feel like we're getting a lot of the same questions
7 over and over again.

8 THE WITNESS: Mr. Traxler, in
9 April -- April of 2012, and then I do believe that
10 Ms. Light was an estate planning client of mine.

11 BY MR. TRAXLER:

12 Q. Right. And you and Mr. Slane and
13 Ms. Light were working together to accomplish this;
14 is that correct?

15 MR. TWOMBLEY: Object to the form.

16 MS. KIRK: Object to the form. And,
17 Tom, I mean, I feel like we're going over the same
18 stuff over and over again and you're just asking it a
19 different way. And I told y'all before that we
20 weren't going to just -- I think it's abusive and,
21 you know, really takes advantage of the deposition
22 and violates our rules to just continue to have a
23 non-party lay witness ask the same questions over and
24 over again and have such a complete disregard for his
25 time. How much longer do you plan on doing this?

ROA 006516

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1 MR. TRAXLER: First of all, we are --
2 as to what we talked about before. We're going to
3 take this systematically and chronologically. He has
4 not answered this question before. He's not answered
5 this particular question before. It's not in the
6 April, May, June 2012 time frame.

7 Right now -- let's see. Last time, I
8 believe if I add it up, the amount of time I got to
9 ask him questions was about two hours and 53 minutes.
10 I believe y'all spent more time with the witness last
11 time talking to him on direct and in conference than
12 I did. And we started here at about 9:30, so I think
13 I'm well under five hours of questioning for somebody
14 who is y'all's main witness -- or one of y'all's main
15 witnesses. Excuse me. So forgive me. I'm trying
16 not to duplicate things, but there are some questions
17 that will have to be asked at various time periods
18 that are going to sound like the same question that I
19 asked for an earlier time period. I'm sorry.

20 MS. KIRK: Yeah. I've got you
21 questioning him for over four hours on the 16th of
22 March and you've been going all day today so far.

23 MR. TRAXLER: No, no. If you add up
24 the time last time when I got to ask him questions, I
25 was at two hours and 53 minutes, I believe, and y'all

ROA 006517

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1 were right around two and a half hours of asking him
2 questions. The other time in the afternoon was spent
3 with y'all taking him off the record and conferring
4 with him. If you think that a judge is going to be
5 impressed that y'all sat him down with me having
6 little time to ask questions -- y'all do what you've
7 got to do, but I'm asking these questions very
8 efficiently. It's just he's a major witness, and I'm
9 going to ask these questions as we move through the
10 chronology.

11 MR. TWOMBLEY: I thought Ariail told
12 us last time that she would give us a half a day. Do
13 you have any sense on how much more time that you
14 have?

15 MR. TRAXLER: I should be finished
16 today. I suspect to be finished today. Our
17 expressed agreement on the record, we've all got the
18 transcript, was at the end we had no limit on the
19 time.

20 MS. KIRK: I'm sorry. We what?

21 MR. TRAXLER: We had no agreement on
22 how long today would last.

23 MR. TWOMBLEY: I -- I understand
24 that, but I thought that Ariail told us what -- what
25 her position was on time.

ROA 006518

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1 MR. TRAXLER: All right. Y'all go
2 ahead. Precious time now. The very question -- the
3 very simple question to him was during this time
4 frame in April and May of 2012, when this was going
5 on about retiling the stock to the revocable trust,
6 was he not still then representing Merrill Light?

7 MR. TWOMBLEY: And he's answered
8 that.

9 MR. TRAXLER: Y'all had questions for
10 him back in --

11 MS. KIRK: I think he's answered that
12 countless times, but regardless.

13 BY MR. TRAXLER:

14 Q. All right. Go ahead, Mr. Jolley.

15 A. And the question was at this point was I
16 representing Ms. Light with respect to estate
17 planning, and the answer is yes.

18 Q. During this time period, Mr. Jolley,
19 leading up to June 28, 2012, you were not aware of
20 any treatment by the doctors of Mr. Barringer; is
21 that correct?

22 A. That's my recollection.

23 MR. TWOMBLEY: Object to the form.

24 MS. KIRK: I object to the form, and
25 that's been answered and answered.

ROA 006519

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1 MR. TRAXLER: Yeah. You're probably
2 right on that one.

3 BY MR. TRAXLER:

4 Q. All right. Mr. Jolley, do you remember a
5 board meeting of CFRC at your law firm on April 25,
6 2012?

7 A. I was unaware of a board meeting at my law
8 firm in April of 2012, that is, at the time in April
9 of 2012.

10 Q. Okay. Was anybody from your law firm
11 involved in that meeting?

12 A. I have no idea.

13 Q. Do you know how it came about that it was
14 at your office?

15 A. My -- my belief is that Kevin Luzak
16 arranged that.

17 Q. All right. So you weren't present at all,
18 correct?

19 A. That is correct.

20 Q. Do you know who was present at that board
21 meeting?

22 A. No, sir.

23 MS. PAYLOR: Object to the form.

24 BY MR. TRAXLER:

25 Q. Did you ever hear any allegations against

ROA 006520

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1 Kevin Luzak or actions he did at that meeting
2 allegedly such as throwing Paul Barringer or Merrill
3 Light out of the meeting?

4 MS. KIRK: I object to the form of
5 the question, and I think this is another, you know,
6 dicey sort of privilege issue.

7 MR. SCHRONCE: Yeah. And -- and,
8 Tom, I'll jump in here. This is John Schronce. To
9 the extent that this involves communications that he
10 had later, information he was provided at later as
11 company counsel in connection with providing legal
12 advice in that capacity, I instruct him not to answer
13 that. To the extent he can answer without getting
14 into that, I think that's fine.

15 MR. TRAXLER: All right.

16 MR. MOLSTER: The same instruction on
17 behalf of Merrill Light. If you can answer the
18 question without regard to any communications that
19 you had with Merrill Light as her lawyer.

20 BY MR. TRAXLER:

21 Q. Let me rephrase the question so we can
22 step through this carefully and make a record. Did
23 you ever hear of an allegation made against Kevin
24 Luzak that he threw either Paul Barringer or Merrill
25 Light out of that board meeting? Did you ever hear

ROA 006521

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1 of an allegation?

2 MR. MOLSTER: And same instruction
3 for Merrill Light. If you got that communication
4 from Merrill Light or any of her agents, please do
5 not provide the information. I instruct you not to
6 answer.

7 MR. SCHRONCE: And -- and same
8 instruction from the company.

9 MR. TWOMBLEY: And unless it relates
10 to the execution or preparation or amendment of
11 estate planning documents, same for Mr. Barringer.
12 BY :

13 Q. All right. Can you answer the question,
14 Mr. Jolley?

15 A. I cannot.

16 Q. Okay. And because of which privilege? Is
17 it because it is an attorney-client privilege with
18 Paul Barringer or an attorney-client privilege with
19 Merrill Barringer or attorney-client privilege with
20 Merrill Light or with Randy Light or with the
21 company?

22 MR. MOLSTER: I'll give you that same
23 instruction with respect to Merrill Light and Randy
24 Light. If it's -- if it's because of those
25 privileges, I instruct not to answer.

ROA 006522

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1 BY MR. TRAXLER:

2 Q. My question very simply is: Which
3 privilege are you asserting?

4 MS. KIRK: And I'm going to instruct
5 him not to answer that. It's attorney-client
6 privilege. I mean, we've told you that.

7 MR. SCHRONCE: And does it make
8 sense, Ariail, maybe we should confer on this issue.

9 MS. KIRK: Sure. That's fine.

10 MR. MOLSTER: Why don't we do it the
11 next break?

12 MS. KIRK: Okay.

13 MR. MOLSTER: Make sense, Tom?

14 MR. TRAXLER: Yeah. That's fine.

15 BY MR. TRAXLER:

16 Q. Same question with regard to allegations
17 of Kevin Luzak throwing books or papers at anybody,
18 my question specifically is: Were you ever made
19 aware of an allegation that Kevin Luzak had thrown
20 books or papers at somebody at that board meeting?

21 MR. MOLSTER: Same instruction.

22 MS. KIRK: Tom, did you say throw
23 papers?

24 MR. TRAXLER: I'm sorry. What?

25 MS. KIRK: I'm sorry. I didn't hear

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1 you. Did you say throw papers?

2 MR. TRAXLER: Yeah. Throw books or
3 papers.

4 MS. KIRK: Okay.

5 THE WITNESS: Based on those
6 instructions, I can't answer that question.

7 BY MR. TRAXLER:

8 Q. And if I asked you based on what
9 privilege, you would also be instructed not to answer
10 that question?

11 MR. TRAXLER: Is that correct, Chip?

12 MS. KIRK: I believe that's something
13 that we would have to talk about too.

14 MR. MOLSTER: Yeah. We'll talk about
15 that.

16 MR. TRAXLER: Okay.

17 BY MR. TRAXLER:

18 Q. Mr. Jolley, did at any point in time, did
19 Paul Barringer talk to you about his reaction to that
20 meeting of what happened?

21 MR. SCHRONCE: And, again, this is --
22 this is John Schronce. I would have the same
23 instruction. Mr. Barringer is a director of the
24 company. To the extent that you are calling for
25 communications that Mr. Jolley may have had with him

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1 in that capacity when he was serving as corporate
2 counsel, I believe that would call for privileged
3 information.

4 MR. TRAXLER: Are you instructing
5 him, John, not to answer the question?

6 MR. SCHRONCE: To the extent that
7 your question calls for him to divulge those
8 privileged communications, yes. If he can answer
9 without getting into that, that's fine.

10 BY MR. TRAXLER:

11 Q. All right. Can you answer that,
12 Mr. Jolley?

13 MS. KIRK: And also you said just --
14 your question just related to Mr. Barringer; is that
15 correct?

16 THE WITNESS: Yes.

17 MS. KIRK: Okay. So I would instruct
18 him unless it relates to the communications,
19 preparations, and execution or amendment of estate
20 plannings document, that he cannot answer it.

21 BY MR. TRAXLER:

22 Q. Mr. Jolley, in April of 2012, you weren't
23 corporate counsel, were you?

24 A. In April 2012, I was not corporate
25 counsel.

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1 MR. SCHRONCE: And, Tom, just for the
2 record -- just for the record, what we're talking
3 about here is there may well be communications later
4 in time when he was serving as corporate counsel. If
5 you are asking him about communications that he may
6 have had during the time that he is serving as
7 corporate counsel about events that may have preceded
8 that, he is still being asked for his -- for his
9 legal advice. So that's what we're -- that's what
10 we're getting at here.

11 MR. MOLSTER: Same instruction --
12 same instruction with respect to Merrill Light.

13 BY MR. TRAXLER:

14 Q. Did you have any conversations with
15 Paul Barringer about that board meeting prior to
16 becoming corporate counsel?

17 MR. MOLSTER: Same instruction with
18 respect to Merrill Light.

19 MS. KIRK: Same objection here.
20 BY MR. TRAXLER:

21 Q. Okay. My question is: Did you have any
22 conversations with Paul Barringer about that meeting
23 prior to Mr. Jolley becoming corporate counsel?

24 MR. TWOMBLEY: And I would --

25 MR. MOLSTER: Same instruction with

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1 respect to Merrill Light.

2 MR. TWOMBLEY: Yeah. And if any of
3 those discussions related to the communications about
4 the preparation, execution, or an amendment of an
5 estate planning document, you can answer. If they
6 dealt with any other matter, then I instruct you not
7 to answer.

8 THE WITNESS: Based on those
9 instructions, I cannot answer.

10 BY MR. TRAXLER:

11 Q. So any communications with Mr. Barringer
12 would have been in some sort of attorney-client
13 capacity; is that correct?

14 A. That --

15 MR. TWOMBLEY: Answer yes or no.

16 THE WITNESS: Yes.

17 BY MR. TRAXLER:

18 Q. Okay. Thank you. Let's talk about the
19 May transfer of Mr. Barringer's stock that we talked
20 about earlier, Mr. Jolley. Okay?

21 A. Okay.

22 Q. Were you involved in that?

23 A. I believe we were involved in asking that
24 the -- helping Mr. -- I think we were involved in
25 getting Brad Herring to transfer the shares.

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1 Q. Tell me your role in that.

2 MR. MOLSTER: To the extent that any
3 of this involves privileged communications with
4 Merrill Light or Randy Light, John, I instruct you
5 not to answer.

6 THE WITNESS: I think my only
7 involvement was in assisting Mr. Barringer in
8 communicating or conveying the documents to Mr. --
9 communicating to Travis Bryant and/or Brad Herring.

10 BY MR. TRAXLER:

11 Q. Robert Slane?

12 A. I'm sorry?

13 Q. Robert Slane?

14 MR. MOLSTER: Same instruction.

15 THE WITNESS: I don't believe that I
16 communicated with Robert Slane about the transfer of
17 the shares to the revocable trust.

18 BY MR. TRAXLER:

19 Q. Okay. And what was the purpose of
20 Mr. Barringer transferring his voting shares to the
21 trust?

22 MR. TWOMBLEY: I'm going to instruct
23 you not to answer. I'd like to talk with the witness
24 about whether or not the answer to that question
25 raises -- warrants an instruction not to answer or

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1 not. So I would ask you to either let me talk to him
2 or withdraw it, one or the other.

3 MR. TRAXLER: No. I won't withdraw
4 it. I'll let you talk to him.

5 MS. KIRK: Are we going to do it now
6 or roll it in with the others?

7 MR. TRAXLER: You want to roll it on
8 into lunch or go on break now and go ahead and talk
9 to him? What's y'all's -- what's y'all's pleasure?

10 MS. KIRK: I wasn't planning on
11 taking lunch since we were just doing a half day.

12 MR. TRAXLER: I wasn't planning on a
13 half day. Let's take a lunch break if you want to.
14 And, Ashley, why don't you -- whoever it is that
15 needs to talk to Mr. Jolley about that question and
16 the other privileged matters, but nothing else.
17 Let's go ahead and do that and take a lunch break.

18 MS. KIRK: Well, Tom, can we talk for
19 a minute about how much more privileged stuff you're
20 going to try to get into? Because I don't see any
21 point in carrying this deposition forward any longer
22 if every question is going to end up with a privilege
23 and we're going to have to go to court one way or
24 another anyway. I just think this has complete
25 disregard for John's time and away from his business.

ROA 006529

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1 MR. TRAXLER: I have got to make a
2 record so that Judge Price can see what they were
3 answering and not answering, and y'all don't think
4 I'm entitled to go into the setting of each
5 communication to establish whether it was privileged
6 or not. I don't know how else to do it.

7 MS. KIRK: I also don't think you're
8 entitled to tie up a person away from his job for
9 multiple days, you know. I mean, I don't think
10 that's reasonable for a non-party, and he's, you
11 know -- he's not being compensated as an expert or
12 anything. He's a lay -- you know, a lay witness in
13 the case.

14 MR. TRAXLER: Well, first of all --

15 MS. KIRK: Or a fact witness.

16 MR. TRAXLER: Except for the
17 privilege issues, we might be through by now.
18 Secondly, y'all noticed the -- the other side of the
19 deposition. We didn't start until 10:00.

20 MS. KIRK: We started at 9:00 both
21 days.

22 MR. TRAXLER: Y'all spent more time
23 talking to him than I am.

24 MR. TWOMBLEY: Well, I mean, Tom, I
25 think the reason is because you're asking all these

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1 questions that go into these privileged issues about
2 discussions with --

3 MR. TRAXLER: I understand that.

4 MR. TWOMBLEY: -- people other than
5 Mr. Barringer --

6 MR. TRAXLER: I understand --

7 MR. TWOMBLEY: Wait a minute. Will
8 you please -- will you please let me finish what I
9 was saying?

10 MR. TRAXLER: Yeah. I'm sorry. I
11 apologize.

12 MR. TWOMBLEY: You interrupted Ariail
13 and now you're interrupting me. And I'm just saying,
14 respectfully, I mean, you're taking the deposition of
15 a lawyer about work he did for -- for clients and,
16 you know -- I mean, we agree and we've allowed him to
17 testify about things that fall within the exception
18 to the attorney-client privilege, but it's not our
19 fault that you're, you know -- and I'm not trying to
20 be rude, but, I mean, you're just repeatedly going
21 into all these sensitive issues that are on the line
22 of whether or not he's required to answer them or not
23 and, you know, I just -- again, you know, is it
24 possible the judge is going to make him answer some
25 of these questions after a thorough analysis of

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1 privilege? Maybe. But, I mean, is that -- you know,
2 as Ariail said, we've already been here one full day
3 and now it's, you know, 12:00 on the second day and,
4 you know, it -- it just seems problematic for -- for
5 me, but, you know, that's up to Ariail what she wants
6 to do.

7 MR. TRAXLER: Can I talk now?

8 MR. TWOMBLEY: Sure.

9 MR. TRAXLER: Can I talk now?

10 MR. TWOMBLEY: Sure.

11 MR. TRAXLER: Okay. Well, first of
12 all, like I said, I mean this politely, y'all have
13 really done more talking than I have. I understand
14 y'all got the privilege issue to look after. We're
15 all candid. I acknowledge that Mr. Jolley wears
16 multiple counsel hats complicates the situation
17 dramatically. But y'all tell me how to do this more
18 expeditiously? But on all of these questions and all
19 of these areas, we are going to have to have the
20 judge decide it. Now, the judge is going to want to
21 know, as I'm going to explore, in what setting did
22 Mr. Jolley have these communications. Who did he
23 talk to, who did he maybe talk to further about it,
24 and the like. In order for Judge Price to resolve
25 the privilege issues, he's going to have to know the

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1 setting of each communication, and he is going to
2 have to know which hat or privilege Mr. Jolley is
3 asserting. And y'all tell me how on each one of
4 these areas I can accomplish that in a very
5 expeditious way so that y'all don't say in front the
6 judge, Traxler didn't make a record. Y'all tell me.
7 I'm wide open to suggestions on how to expedite this,
8 but this is almost like somebody always leaves the
9 realm. You've got to go into it and make him assert
10 it. Y'all tell me how to do it.

11 MS. KIRK: I think answering -- or
12 asking questions once would help speed things up
13 immensely.

14 MR. TRAXLER: Well, I understand
15 that, but there are -- I don't repeat very many
16 questions at all. There are nuance differences in
17 the questions, and I simply want to -- all I want to
18 do is make the record. If he asserts a privilege,
19 okay, whose privilege is it and tell me why he is
20 asserting it. I want to know who all was involved to
21 see if the privilege is waived or really exists.

22 MR. TWOMBLEY: Well, that's the
23 thing. I mean, Mr. Jolley may not even know that.
24 It's not his privilege. I mean, it's the various
25 clients' privilege.

ROA 006533

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1 MR. TRAXLER: I understand that.
2 That's why I keep asking y'all what's the privilege,
3 whose privilege is being asserted, and why.

4 MR. TWOMBLEY: Well, no.
5 Respectfully, you're not asking us. You're -- you're
6 asking him, and I think you've spent a lot of time
7 asking him what his opinion is about whose privilege
8 it was and I -- you know.

9 MR. TRAXLER: Before we take a lunch
10 break -- y'all can talk about this over the lunch
11 break. Y'all tell me how I can protect the record
12 because Judge Price is going to have to make a
13 decision on all of these assertions, each and every
14 one of them. You tell me how I can make the record
15 to prove or not prove a waiver or if the privilege
16 does exist. I have been trying to ask y'all what's
17 the privilege. I did finally ask him who all was
18 involved, who did he talk to, and y'all won't even
19 let him answer those. You tell me --

20 MS. KIRK: He's telling you it's
21 attorney-client privilege. You're just -- I guess
22 don't believe it.

23 MR. TRAXLER: No, I don't. I have a
24 right to explore it. If Mr. Jolley says I talked to
25 Paul Barringer about this topic or I talked with him

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1 in his capacity as director of the company, nobody
2 else was involved, yada, yada, dah, okay, that's very
3 routine up. Then we talk about whether there's a
4 waiver or not. Heck fire. I can't even find out the
5 basis for the privilege. I really, really don't
6 think, guys, that Judge Price is going to react well
7 if y'all won't tell me the basis for the privilege
8 other than if it pertains to so and so, I assert the
9 privilege and tell him to answer.

10 MR. TWOMBLEY: Well, you know, I
11 don't -- I don't know what Judge Price will do, but I
12 think he's not going to react very well to how much
13 time has been spent on these, you know, law school
14 type privileged questions that don't deal with, you
15 know, the meat of the case and whether or not
16 Mr. Barringer had capacity and whether or not he was
17 being unduly influenced at various times. And, I
18 mean, those --

19 MR. TRAXLER: (Inaudible.)

20 MR. TWOMBLEY: -- are the issues in
21 the case.

22 MR. TRAXLER: Ashley, somebody please
23 tell me how they think I can best make a record.

24 MS. KIRK: I think if you just ask
25 him what the court has, you know, already indicated

ROA 006535

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1 would be allowed. Communications related to the
2 preparation, execution, or amendment to estate
3 planning documents. The cast is allotted a fishing
4 net for, you know, what did you ever do for anybody
5 else at any period of time without a time frame is
6 very difficult to --

7 MR. TRAXLER: No, it's not. If he
8 has a privileged conversation as corporate counsel,
9 but there are participants in that conversation who
10 are not associated with the corporation, that's not
11 privileged. So I need -- that's why I have to ask
12 all these questions. This is the problem with
13 Mr. Jolley wearing so many different hats at the same
14 time. So if he has a conversation and -- a
15 conversation with Merrill Light about Merrill Light's
16 estate plan or something personal with Merrill Light,
17 but Travis Bryant is involved, that's --

18 MS. PAYLOR: Can we take this off
19 record? I mean, why are we having this conversation
20 in front of the witness?

21 MR. MACLOSKIE: No.

22 MS. PAYLOR: In front of the witness,
23 I think --

24 MR. MOLSTER: It shouldn't be in
25 front of the witness.

ROA 006536

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1 MR. TRAXLER: Take the witness off.
2 Mr. Jolley, go to lunch. But, Alice, I'm afraid I
3 learned in the McBride thing -- deposition not to go
4 off the record like this.

5 MR. MOLSTER: This shouldn't be in
6 front of the witness.

7 MR. TRAXLER: That's fine. I agree
8 with you. That's fair. We can send Mr. Jolley to
9 lunch to come back at 1:00. Does that work?

10 MS. KIRK: You can -- you can send
11 Mr. Jolley to lunch if you want to, but I don't know
12 that we'll be back at 1:00.

13 MR. TRAXLER: I think Chip makes a
14 fair point that Mr. Jolley doesn't need to hear this
15 conversation.

16 MR. TWOMBLEY: Well, that doesn't
17 mean we're going off the record.

18 MR. MOLSTER: I was just echoing
19 Alice, who is brilliant.

20 MS. KIRK: Mr. Jolley is stepping out
21 of the room.

22 MR. MOLSTER: Can y'all stipulate to
23 that?

24 MS. PAYLOR: Who said that?

25 THE VIDEOGRAPHER: Counsel, I have

ROA 006537

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1 about ten minutes left before a media switch.

2 MR. TRAXLER: So in all seriousness,
3 guys, I don't really have a problem that if
4 Mr. Jolley has a conversation that's privileged
5 because it's a corporate communication, he's
6 corporate counsel, I can understand that. But when
7 he has Randy Light involved in that conversation,
8 theoretically, that privilege does not exist. That's
9 exactly the problem that he has wearing so many hats,
10 and that's why I have to delve into each scenario,
11 and that's why I'm trying to figure out -- y'all
12 won't even tell me whose privilege is being asserted
13 and why. And it is very laborious. But if y'all
14 could tell me how to make the record before Judge
15 Price and expedite this, God knows I'm all for it.

16 MR. FUHR: Tom, this is Ed. I mean,
17 one of the challenges -- I mean, just think of it. I
18 mean, you're right about the multiple hats, but the
19 multiple hats don't just belong to Jolley. Right?
20 It also belongs to these individuals.

21 MR. TRAXLER: Right. Who's talking?

22 MR. FUHR: The rules are officers and
23 directors of the company, some are involved in
24 fixation of the estate, and I think the question as
25 to whose privilege it is, I mean, look, I think that

ROA 006538

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1 ultimately is a valid inquiry and the judge is going
2 to look into it. The challenge that I suspect the
3 various lawyers have here on call is that without
4 having a ping-pong session with the witness to find
5 out what the answer to the question is, that would
6 allow then the lawyers to say, okay, yeah, this isn't
7 a company privilege here because there's nothing
8 here. It's only, at most, maybe Paul's privilege or
9 Merrill's privilege. So we could do it that way, but
10 it's going to require a lot of ping-ponging.

11 MR. TRAXLER: Sure.

12 MR. FUHR: You know, go back and
13 forth. So that would be the way to do it and get the
14 information that ultimately I'm afraid the court, you
15 know, could -- you know, could want to have, but
16 there's no efficient way to do it short of having
17 these conversations. Maybe the thing to do is every
18 20, 30 -- every 30 minutes, all right, now it's going
19 to be a sidebar where folks talk to Jolley and find
20 out questions one, then, 15 and 18 and then let you
21 go circle back. I don't know. This is a challenging
22 process for sure.

23 MR. TRAXLER: It really is. And it
24 gets back to people fussing at me because it takes so
25 long, but this is why, you know. The way to do it is

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1 every time there's a question for privilege, go off
2 the record and confer, but that means for a God awful
3 long deposition. I swear -- and I don't know how
4 else to do it. I hate -- you know, if we say, okay,
5 we're going to take a break every 30 minutes and then
6 come back, then I say, okay, let me go ask these
7 questions and I get a course of asked and answered,
8 you know, I don't know how -- I don't know how to
9 solve this. It is by its very nature of -- because
10 of his multiple hats and it intensely is a tedious
11 deposition. God knows I don't like it. I would
12 rather be outside playing with my new granddaughter.

13 MS. KIRK: Well, we're not holding
14 you here, Mr. Traxler.

15 MR. MOLSTER: Congratulations on your
16 granddaughter.

17 MR. TRAXLER: Thank you. I've
18 forgotten what handling a newborn was like.

19 MR. TWOMBLEY: Tom, would you
20 agree --

21 MR. TRAXLER: I called the college
22 fund granddaddy.

23 MR. TWOMBLEY: Tom, would you agree
24 to put your questions in writing?

25 MR. TRAXLER: No. I can't do that.

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1 MR. TWOMBLEY: Well, I mean, you
2 know --

3 MR. TRAXLER: We've got an awful --

4 MR. GILREATH: Let's go eat.

5 MR. TRAXLER: We've got an awful lot
6 to wade through that happened in the summertime and
7 the like. We've got the September transfer and all
8 that that involved. We've got the subsequent
9 instruments. We are in something hot and heavy that
10 will involve questions of corporate privilege in the
11 mid-2012 time period. I understand that. I just
12 can't afford to go in front- of Judge Price and say,
13 Mr. Traxler, prove to me that there is a waiver or
14 whatever. I can't -- I can't even get him to tell me
15 who the parties in the conversation were and in what
16 capacity.

17 MR. FUHR: Tom, I think one -- at
18 least a couple of instances when the question is
19 phrased in a way that includes a litany of people and
20 the company, then the easy answer -- or the answer it
21 sounds like from the witness many times is, okay, I
22 can't answer because it involves one of them. But I
23 wonder, rather, if you sliced it more narrowly by
24 each individual, you would be able to have did you --
25 were you wearing a hat as Merrill's counsel in that

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1 conversation with Travis? Answer: No. Okay. So
2 you know now it's not Merrill's privilege, and Jolley
3 would be able to say no, I know it wasn't that.

4 MR. TRAXLER: Ed, can I interrupt
5 you?

6 MR. FUHR: Yeah. Absolutely.

7 MR. TRAXLER: I've tried that on who
8 the conversation was with, where the privilege is,
9 you know. An example, I think, was the conversation
10 with -- Jolley had with Merrill Light in the summer
11 of 2012. I tried to slice that to find out who was
12 involved in that, what the nature of the privilege
13 was like. And all I did was get to narrow it down to
14 it was before or after this date. So I'm not able to
15 slice and dice like you are thinking because that's
16 exactly what I'm going to do.

17 And, you know, again, if John told me
18 he had a conversation with Merrill Light in her
19 capacity as corporate director, then we've got a
20 corporate privilege issue to deal with. If it is in
21 her capacity as his individual client, then that's
22 different. I certainly have the right to know who
23 all was involved in that conversation, who all had
24 conversations and was discussed with to see if there
25 is, in fact, a privilege or if it has been waived.

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1 But I'm shut down at the threshold of the question of
2 what privilege. And I really, really, really want to
3 do this the best way we can, guys. I have no desire
4 to camp out asking all these tedious questions, and
5 I'm really asking for help from you guys as to how to
6 do it.

7 MR. TWOMBLEY: Well --

8 MS. KIRK: I do think putting the
9 questions in writing so they could be grouped
10 together would be helpful and that would reduce the
11 need to --

12 MR. TRAXLER: Why would y'all
13 defer -- why can you not say -- let him zero in --
14 you know, I'll let you know when I'm asking a
15 substantive question. You will know it, but why
16 can't y'all let me ask who else was in on the
17 conversation, who did he discuss it with?

18 MS. KIRK: Why can't you ask was
19 there anyone -- I don't know.

20 MR. TRAXLER: Okay. You muted on me,
21 Ariail, I think, or somebody did. Who was speaking?

22 MS. KIRK: No. I just feel like
23 he's -- when he's told you it's an attorney-client
24 conversation, he's already answered that.

25 MR. TRAXLER: Okay. Who's the

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1 client?

2 MR. TWOMBLEY: The problem is, Tom,
3 the answer to a lot of these questions, we don't know
4 what the answer is. And back to the point Ed was
5 trying to make, you know, we -- we would need to, in
6 my opinion, stop, talk to Mr. Jolley. Okay. Do you
7 remember this conversation? Who else was there?
8 What was the nature of it? Were you providing legal
9 advice to whom? Then we would have to make it our
10 assessment. Well, we think that's privilege or we
11 think it's not privilege. Or if it was privilege,
12 then it was waived. But, I mean, unless we talk to
13 him about that, you know, we -- we may not know the
14 answer.

15 MR. TRAXLER: (Inaudible.)

16 MR. TWOMBLEY: I'm sorry?

17 MR. TRAXLER: I'm not fussing at all.
18 This is the reality of this type of deposition. Last
19 time we started -- I started asking questions at
20 1:45. We quit a little after 6:00, I believe it was.

21 MS. PAYLOR: 7:30.

22 MS. KIRK: Yeah. It was after 7:00.

23 MS. PAYLOR: It was after 7:00.

24 MR. TWOMBLEY: My only -- my only
25 issue, though, is Tom --

ROA 006544

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1 MR. TRAXLER: Here's my point. From
2 1:45 to whenever we shut down, I was actually asking
3 questions for two hours and 53 minutes, as I recall.

4 MR. TWOMBLEY: Well, Tom, I --

5 MR. TRAXLER: The rest of the time
6 was spent y'all conferring. Tell me how -- tell me
7 how to expedite that process.

8 MR. TWOMBLEY: I understand that.
9 The problem is, in my opinion, that about 90 percent
10 of the questions, or probably even more, 95 percent
11 of the questions that are relevant to the substantive
12 matter of the legitimate issues in the case, there's
13 no privilege at all. And, in my opinion, instead of
14 spending 95 percent of the time on the things that
15 are perfectly relevant and not privileged and that
16 Mr. Jolley would have information to, we're spending
17 95 percent of the time on the 5 percent of the
18 questions that there may or may not be a privilege
19 to. And so, you know, it's in my opinion, you know,
20 are there legitimate privilege issues? Yes. But are
21 there 1,000 other questions that you might want to
22 ask Mr. Jolley that are relevant to the claims and
23 defenses in this lawsuit that we've not spent, you
24 know -- that you've not spent much time on at all.

25 And so, in my opinion, it's more of a

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1 time allocation and a resource allocation. And, you
2 know, I'm sure you could come up with three more days
3 of questions that, you know, the legal scholars could
4 debate whether or not the answer may or may not be
5 privileged. But, you know, it's costing an
6 incredible amount of time and effort to -- to -- to
7 do that and, you know, it's just not, in my opinion,
8 respectfully, it's just not that important. It's
9 just not that relevant. It's just -- it's far less
10 relevant than the other issues in the case.

11 And so, you know, I agree there are
12 serious questions that, you know, have to be
13 answered. But, you know, I don't agree we should be
14 spending, you know, any time doing that or if we
15 spend time on it, a lot less.

16 MR. TRAXLER: Okay. Well, I'm sorry
17 that I have to disagree. We have allegations of what
18 my case --

19 MS. KIRK: Let me ask you this,
20 Mr. Traxler: Do you have any questions left related
21 to --

22 MR. TRAXLER: -- to what we think are
23 the proper territory. Sorry. I can't let those
24 conversations go unprobed. And if there's a
25 privilege in my way, that's fine. Narrow it down to

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1 the privilege and see if there's a waiver and move
2 on.

3 MS. KIRK: Mr. Traxler, do you have
4 any questioning left related to Mr. Barringer's
5 estate planning documents, their communications
6 related to them, their preparation, their execution,
7 or their amendment?

8 MR. TRAXLER: Yeah.

9 MS. KIRK: Can we get through those
10 first quickly?

11 MR. TRAXLER: No. Tell me how you
12 envision that happening here. I don't see it, but
13 tell me how you envision that happening?

14 MR. TWOMBLEY: You had just asked --

15 MS. KIRK: You had asked those
16 questions. I don't know what's difficult.

17 MR. TRAXLER: How do I get back to
18 the communications I need to know about?

19 MR. TWOMBLEY: Well, I guess the
20 judge can then decide whether or not you really need
21 to know about them.

22 MR. TRAXLER: I appreciate y'all's
23 input, but I -- I believe I need to make that
24 assessment.

25 MR. TWOMBLEY: Well, that's your --

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1 MR. TRAXLER: I'm willing -- I'm open
2 to ideas. Tell me how you envision it going by
3 asserting the privileges to the various agreements
4 and the like, how do I circle back and examine him
5 about these communications?

6 MS. KIRK: I'm not sure I understand
7 what you're asking.

8 MR. FUHR: My suggestion here, guys,
9 is let's go ahead and take that break and let, you
10 know, the lawyers can do some pow wow during that
11 time and, you know, maybe right before we reconvene,
12 see if anybody has any great new insights that alter
13 this or whether we just plow on. I'm not sure right
14 now, so maybe some sidebar will help. I don't know.

15 MR. TRAXLER: Yeah. That will be
16 fine. Let's probably come back at 1:00. We'll
17 resume at 1:00. Does that suit y'all? Does it give
18 you enough time? Somebody said that's not enough
19 time?

20 MS. KIRK: No. 1:00 is fine.

21 MR. TRAXLER: Okay.

22 THE VIDEOGRAPHER: We are off the
23 record. It is 12:25 p.m.

24 (Off the record.)

25 THE VIDEOGRAPHER: We are back on

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1 record. It is 1:06 p.m.

2 BY MR. TRAXLER:

3 Q. Mr. Jolley, you didn't talk to anybody
4 about the substance of your deposition over lunch,
5 did you?

6 A. I did not.

7 Q. Okay. Thank you.

8 MR. TRAXLER: I don't want to belabor
9 this conversation, but did anybody have any brilliant
10 insight or suggestion as to how to expedite this
11 deposition in light of all the privilege issues that
12 we discussed before the break?

13 MS. KIRK: Mr. Traxler, my only
14 thought is for you to, you know, get whatever
15 questions you've got that are actually related to
16 the, you know, execution of the documents and
17 Mr. Barringer's capacity or any allegations you've
18 got about undue influence. Go ahead and ask those so
19 that you've got those done. And whatever we need to
20 go to the judge with, we'll do that. I don't -- you
21 know, we're not going to stay here forever, you know.
22 If you want to take another hour or so, but I would,
23 you know, propose to get to the actual issues first.

24 MR. TRAXLER: Okay. Well, obviously
25 I can get through what you consider to be the actual

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1 issues and your time frame, but I'm going to see what
2 I can do to expedite this. Anybody else have any
3 suggestion --

4 MS. KIRK: Thank you.

5 MR. TRAXLER: -- on how to facilitate
6 this deposition in light of all the privilege issues?

7 MR. TWOMBLEY: Well, my idea was for
8 you to put your questions in writing and y'all
9 rejected that. So...

10 MR. TRAXLER: Right. Okay. Let's go
11 on -- let's go on forward.

12 BY MR. TRAXLER:

13 Q. Mr. Jolley, at any time between 2011 and
14 and the commencement of this lawsuit in 2016, did you
15 represent Merrill Light as a co-trustee or as a
16 fiduciary of any sort to Paul Barringer?

17 MR. MOLSTER: Hold on for a second.
18 I'm going to have to talk to him before I allow him
19 to answer that question. You want me to do that?

20 MR. TRAXLER: I don't know. Help me
21 understand, Chip, how that requires a conversation?
22 I don't know --

23 MR. MOLSTER: You know, his
24 representation of them, they will be privileged, Tom.
25 It's clear you don't agree with our views on

ROA 006550

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1 privilege, but, again, I'm not going to waive it.
2 I'm not going to let him answer. Talk to him at a
3 break, if you want.

4 MR. TRAXLER: Yeah. We'll come back
5 and revisit that issue. And earlier, Mr. Twombly, I
6 had asked him the question about allegations of
7 kicking Paul Barringer or Merrill Light out of the
8 April board meeting, and I was going to ask him which
9 privilege he was asserting and y'all were going talk
10 to him during a break. Did you have that
11 conversation?

12 MR. TWOMBLY: I did not talk to him.

13 MR. MOLSTER: Yeah. We didn't do
14 that.

15 MR. TRAXLER: All right.

16 MR. MOLSTER: So can we roll that one
17 to the next break? Sorry. We were trying to figure
18 out the broader question.

19 MR. TRAXLER: Yeah. That will be
20 fine.

21 MR. TWOMBLY: Yeah. I'm sorry, Tom.
22 We -- we spent the time kind of talking more globally
23 about a way to deal with, you know, privilege, in
24 general. So I apologize that we didn't get to that.
25

ROA 006551

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1 BY MR. TRAXLER:

2 Q. All right. Mr. Jolley, we discussed
3 earlier about Paul Barringer trading -- or, excuse
4 me, transferring his voting shares into a trust in
5 May 2012, correct? Do you remember that?

6 A. I remember talking about the transfer to
7 his revocable trust. Yes.

8 Q. Okay. And I think you answered this
9 question, but briefly can you tell me your
10 involvement in that again, just what role you had?

11 MR. MOLSTER: Please don't divulge
12 any attorney-client privilege information regarding
13 Merrill Light or Randy Light.

14 MR. TWOMBLEY: And I object based on
15 asked and answered.

16 MS. KIRK: Same objection.

17 BY MR. TRAXLER:

18 Q. Can you answer that, Mr. Jolley?

19 A. I think my only involvement was in
20 facilitating communication from Mr. Barringer to
21 Mr. Bryant and Mr. Herring.

22 Q. And do you know who prepared the stock
23 certificate to title it in the name of his trust?

24 A. I believe Mr. Herring.

25 Q. Okay. And the -- his voting shares were

ROA 006552

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1 initially transferred into his irrevocable trust
2 instead of his revocable trust, were they not?

3 MR. TWOMBLEY: Object to the form of
4 the question.

5 MS. KIRK: Object to the form.

6 THE WITNESS: I don't -- I don't
7 think that's correct.

8 BY MR. TRAXLER:

9 Q. Okay. Tell me -- tell me what you
10 understand happened. Was it just a straight transfer
11 to his revocable trust?

12 MS. KIRK: Object to the form.

13 THE WITNESS: My recollection was
14 that the initial -- what Mr. Herring -- the initial
15 certificate that was prepared referred to an
16 irrevocable trust and that that was an error. I
17 believe the only transfer that occurred was from
18 Mr. Barringer individually to the trustee of his
19 revocable trust.

20 BY MR. TRAXLER:

21 Q. Okay. And the certificate that was
22 initially done to the irrevocable trust was
23 certificate No. 13; do you know?

24 A. I don't know.

25 Q. Okay. Do you know if that stock

ROA 006553

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1 certificate in the name of irrevocable trust ever
2 left the corporation?

3 A. I don't --

4 Q. I'm sorry. What was your answer, Mr.
5 Jolley?

6 MR. TWOMBLEY: I objected to the form
7 of the last question.

8 MR. TRAXLER: Okay. I'm sorry. It
9 got -- it got garbled just a little bit, Ashley.

10 BY MR. TRAXLER:

11 Q. Go ahead, John. Mr. Jolley.

12 A. I don't know.

13 Q. Okay. Was the stock then ultimately
14 issued to his revocable trust?

15 A. That's my recollection.

16 Q. Okay. Tell me what you understand as to
17 what happened and why with regard to the initial
18 certificate to the irrevocable trust, then the
19 transfer to the revocable trust?

20 MS. KIRK: Object to the form.

21 THE WITNESS: Mr. Traxler, my
22 impression certainly was that --

23 MR. TWOMBLEY: No. I'm going to
24 instruct the witness if he -- I don't know what he
25 knows about that. I don't know what his answer might

ROA 006554

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1 be. I don't know when and in what capacity he may
2 have gained information related to the transfer and
3 what happened with respect to that. And, most
4 importantly, I mean, I don't think it falls within
5 the testamentary exception to the attorney-client
6 privilege. I mean, it's possible that he could say,
7 well, I gave Paul Barringer some advice about all of
8 that, you know, three weeks later and that would
9 clearly be privileged, in my opinion. So, I mean, I
10 don't know what his answer is, and so I either have
11 to talk to him about it or instruct him not to
12 answer.

13 BY MR. TRAXLER:

14 Q. Mr. Jolley, did you have conversations
15 with Paul Barringer about that transfer?

16 MR. TWOMBLEY: Answer yes or no,
17 please.

18 THE WITNESS: So I'm sorry. The
19 question is whether or not I had a conversation about
20 the transfer of his stock to the trust?

21 BY MR. TRAXLER:

22 Q. Yes.

23 A. And the revocable trust?

24 Q. Either one.

25 A. I did speak to Mr. Barringer about the

ROA 006555

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1 transfer of his stock of CFRC to his revocable trust.

2 MS. KIRK: Is there somebody trying

3 to get in? I think --

4 THE WITNESS: Do I need to do

5 something here?

6 MS. KIRK: We'll just let the court

7 reporter --

8 THE COURT REPORTER: Admit all.

9 Thank you.

10 MS. KIRK: Okay. Sorry.

11 BY MR. TRAXLER:

12 Q. When did you have that conversation with
13 Mr. Barringer about the transfer of his voting shares
14 to the trust?

15 MR. TWOMBLEY: I thought -- I thought
16 he said yes, and now the question is when.

17 MR. TRAXLER: Yeah.

18 MR. TWOMBLEY: Is that right?

19 MR. TRAXLER: He answered the
20 question yes, and then I asked him when.

21 MR. TWOMBLEY: Okay. I'm sorry. I
22 may have misheard you. So if you know when, you can
23 state the date.

24 THE WITNESS: I don't remember when.

25

ROA 006556

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1 BY MR. TRAXLER:

2 Q. Was it before or after the transfer?

3 A. It was before the transfer.

4 Q. All right. What were those conversations?

5 MR. TWOMBLEY: I instruct you not to
6 answer that question. Privilege.

7 BY MR. TRAXLER:

8 Q. Did you have those questions one-on-one
9 with Mr. Barringer or were others involved?

10 MR. TWOMBLEY: You can answer.

11 THE WITNESS: Others were involved.

12 BY MR. TRAXLER:

13 Q. Mr. Robert Slane?

14 A. I believe Mr. Slane -- that a conversation
15 about the transfer of those shares to Mr. Barringer's
16 revocable trust, I do believe that Mr. Slane was --
17 was a part of that conversation.

18 Q. Okay. And were these conversations
19 separate from the conversation that we saw in the
20 e-mails that we looked at just before lunch?

21 A. I don't --

22 MS. KIRK: Object to the form.

23 THE WITNESS: I don't believe so.

24 BY MR. TRAXLER:

25 Q. Okay. So when you talk about

ROA 006557

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1 conversations with Mr. Barringer about the transfer
2 where others were involved, do you think it's those
3 same conversations in the April e-mail that we looked
4 at before lunch?

5 MS. KIRK: Object to the form.

6 THE WITNESS: I believe so.

7 BY MR. TRAXLER:

8 Q. Okay. Did you ever have a conversation
9 with Mr. Barringer just the two of y'all about the
10 transfer of his voting shares to the trust?

11 A. I don't recall.

12 Q. All right. So the conversations where
13 others were involved, what did Mr. Barringer tell
14 you?

15 MR. TWOMBLEY: I'm sorry. What --
16 what did Mr. Barringer tell you?

17 MR. TRAXLER: Yes.

18 MR. TWOMBLEY: Yeah. I instruct him
19 not to answer.

20 MR. MOLSTER: Sorry. And if the
21 other person is Merrill Light, I instruct you not to
22 answer.

23 BY MR. TRAXLER:

24 Q. Was Merrill Light involved in the
25 conversation?

ROA 006558

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1 MR. MOLSTER: Yes or no. If I let
2 him answer yes or no, you won't claim it's a
3 privileged waiver?

4 MR. TRAXLER: That's correct.

5 MR. MOLSTER: You can answer yes or
6 no, John --

7 THE WITNESS: No.

8 MR. MOLSTER: -- with respect to
9 Merrill Light.

10 BY MR. TRAXLER:

11 Q. She was not?

12 A. Not that I recall.

13 Q. Who was in on -- who was in on the
14 conversation?

15 MR. TWOMBLEY: Just a name.

16 THE WITNESS: I -- my -- what I
17 remember is that I spoke with Mr. Barringer.
18 Mr. Slane was involved in that conversation and,
19 perhaps, Ms. Barringer. In fact, I would suspect
20 Ms. Barringer.

21 BY MR. TRAXLER:

22 Q. And if the initial certificate in the name
23 of the irrevocable trust was prepared on or about May
24 7, 2012, when do you think the conversation with
25 Mr. Barringer and Mr. Slane occurred?

ROA 006559

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1 MR. TWOMBLEY: Just the date, if you
2 know it.

3 THE WITNESS: I don't know.

4 MR. TRAXLER: Did I hear somebody --
5 did I hear somebody say something?

6 MR. TWOMBLEY: I said just the date,
7 if you know it, cautioning the witness not to reveal
8 any privileged information in response to the
9 question.

10 BY MR. TRAXLER:

11 Q. Okay. Do you recall?

12 A. I don't recall the specific date.

13 Q. Do you recall about how many days it was
14 before? Are we talking weeks, months, days, hours?
15 Give me some reference, if you can.

16 A. I don't -- I don't recall when.

17 Q. Okay. Were you aware that on April 30,
18 2012, Dr. Long called Dr. Garrett, the doctor for
19 Mr. Barringer, commented that Paul Barringer had had
20 a dramatic sign in memory in less of a week? Were
21 you aware of that at the time of this stock transfer?

22 MS. KIRK: Object to the form. He's
23 answered that as well.

24 THE WITNESS: I was -- I was not
25 aware.

ROA 006560

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1 BY MR. TRAXLER:

2 Q. Were you aware that he had -- was
3 hospitalized before the preceding of the transfer?

4 A. Are you asking about if was I aware at the
5 time?

6 Q. Were you aware at the time of transfer of
7 the stock on or about May 7, 2012, were you aware
8 that he had just been hospitalized days prior to
9 that?

10 A. I don't believe I was aware of that. I
11 certainly don't recall that.

12 Q. Were you aware of Randy Light e-mailing
13 Kevin Luzak on May 13, 2012 that Paul was
14 progressively worse as to where he is and what's
15 going on?

16 MS. KIRK: Object to the form.

17 BY MR. TRAXLER:

18 Q. Were you aware of that?

19 MS. PAYLOR: Object to the form.

20 THE WITNESS: No.

21 BY MR. TRAXLER:

22 Q. Were you aware of that concern that Randy
23 Light or Paul, whether he knew about that e-mail or
24 not?

25 MS. KIRK: Object to the form.

ROA 006561

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1 THE WITNESS: I'm sorry, Mr. Traxler.
2 You're going to have to ask that one again.

3 BY MR. TRAXLER:

4 Q. Were you aware of that concern of Randy
5 Light about Paul Barringer, whether you had gotten
6 that e-mail or not?

7 A. I don't --

8 MS. PAYLOR: Object to the form.

9 THE WITNESS: I don't recall. I
10 don't think so.

11 BY MR. TRAXLER:

12 Q. And when the stock certificate was issued
13 in the name of the irrevocable trust, whose confusion
14 was that?

15 MS. KIRK: Object to the form.

16 MS. PAYLOR: Object to the form.

17 THE WITNESS: I believe that was Mr.
18 Herring.

19 MR. TRAXLER: I need you and Mr.
20 Molster to decide which one of y'all are going
21 object. I really don't want a tag team. I checked
22 with my side.

23 MR. MOLSTER: I think we're --

24 MR. TRAXLER: We're not aware of any
25 agreement that counsel can tag team on objections.

ROA 006562

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1 MR. TWOMBLEY: And just so the record
2 is clear, I don't think anyone ever said there was an
3 agreement. I think what we said was that the past
4 practice at depositions is --

5 MR. TRAXLER: Okay. Okay. Well, one
6 person for each client needs to be the one to object.

7 MR. MOLSTER: Well, what we've tried
8 to do -- because we're doing this because of COVID,
9 Tom.

10 MR. TRAXLER: Sure.

11 MR. MOLSTER: Otherwise we'd be in
12 the room together. We're not in the room together.
13 So I think we're entitled to have a little latitude
14 on -- I've been to handling the privilege
15 instructions and objections, and she's been handling
16 the form objections. You know, if that's a big
17 problem, you know -- you know, I don't think it's
18 intrusive. I don't think we're tag teaming. I
19 haven't made any form objections. I've limited my
20 objections to privilege. You want to make a big deal
21 about it, you know, we can do it. But I would prefer
22 to continue the way we're doing it, and I don't think
23 it's at all disruptive to you taking the deposition
24 respectfully submitted.

25

ROA 006563

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1 BY MR. TRAXLER:

2 Q. All right. So my question back to you,
3 Mr. Jolley, was whose confusion caused the stock
4 certificate to be issued in the name of the
5 irrevocable trust?

6 MS. KIRK: Object to form.

7 MS. PAYLOR: Object to the form.

8 THE WITNESS: I believe

9 Mr. Herring's.

10 BY MR. TRAXLER:

11 Q. And do you know who Mr. Herring got his
12 instructions from?

13 A. I --

14 MS. PAYLOR: Object to the form.

15 THE WITNESS: I don't recall.

16 BY MR. TRAXLER:

17 Q. Do you think Paul Barringer in May of 2012
18 knew the difference between his irrevocable and his
19 revocable trust?

20 MS. PAYLOR: Object to the form.

21 MS. KIRK: I object to the form as
22 well.

23 THE WITNESS: In all of my
24 interactions with Mr. Barringer, he would certainly
25 have known the difference between an irrevocable and

ROA 006564

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1 a revocable trust.

2 BY MR. TRAXLER:

3 Q. All right. Do you know whether the stock
4 certificate issued in the name of the irrevocable
5 trust was issued in his name as trustee or Merrill
6 Light as trustee or the name of the trust or were
7 they both named trustees; do you know?

8 A. I don't remember.

9 Q. If Merrill Light was not shown as a
10 co-trustee on the stock certificate, do you know why?

11 MS. KIRK: Object to the form.

12 MS. PAYLOR: Object to the form.

13 THE WITNESS: I don't recall.

14 BY MR. TRAXLER:

15 Q. Did anybody ever have any discussions with
16 Hampton that you know of, Hampton Luzak, about her
17 sister -- excuse me, about Paul Barringer
18 transferring his voting shares to the revocable
19 trust?

20 A. I don't know of any communications with
21 Ms. Luzak.

22 Q. And if Ms. Luzak says that she was not
23 aware of Merrill Light -- of the transfer, you got
24 any reason to disagree with that?

25 MS. KIRK: Object to the form.

ROA 006565

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1 MR. TWOMBLEY: Tom, I don't think
2 anything disagrees with that. I don't know why we
3 have to spend time asking Mr. Jolley about that.

4 MR. TRAXLER: Okay. Thank you.

5 BY MR. TRAXLER:

6 Q. How about it, Mr. Jolley?

7 A. I have no reason to doubt Ms. Luzak about
8 that.

9 Q. All right. At the end of the deposition
10 on the first day, I had asked you about why the
11 durable power of attorney executed by Mr. Barringer
12 back in December of 2011 was not recorded until May
13 of 2012, and I believe your testimony was you did not
14 know. As we sit here now, do you know why it was not
15 recorded until May of 2012?

16 MS. KIRK: Object to the form.

17 THE WITNESS: Mr. Traxler, you're
18 asking me why it wasn't recorded when it was
19 executed?

20 BY MR. TRAXLER:

21 Q. Okay. We can start with that one.

22 A. Because we didn't see the -- we frequently
23 don't record powers of attorney when executed.

24 Q. All right. Do you know why it was
25 recorded in May of 2012?

ROA 006566

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1 A. I do not.

2 Q. Did you play any role in that?

3 A. Well, I suspect my office recorded the
4 power of attorney.

5 Q. And did anybody have any conversations
6 with you about the need to record it so that
7 third-parties could rely upon Ms. Barringer's agency
8 under that conduct?

9 MS. KIRK: Object to form.

10 MR. MOLSTER: I instruct him not to
11 answer with respect to Merrill Light.

12 THE WITNESS: I don't recall.

13 BY MR. TRAXLER:

14 Q. You don't recall anybody telling you
15 anything about circumstances of it being recorded?

16 A. Mr. Traxler, I think I've been consistent
17 in saying that I don't recall the circumstances in
18 recording the power of attorney in the spring of
19 2012.

20 Q. Did -- do you recall if you had a
21 conversation with Merrill Light about recording it?

22 MR. MOLSTER: Hold on for a second.
23 Tom, you agree no waiver if I let him answer yes or
24 no?

25 MR. TRAXLER: Yeah, I'll agree.

ROA 006567

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1 MR. MOLSTER: Go ahead, John. Yes or
2 no.

3 THE WITNESS: And the question was do
4 I recall? The answer is no.

5 BY MR. TRAXLER:

6 Q. And you don't recall any conversations
7 with anybody that would have prompted you to record
8 it, correct?

9 MR. TWOMBLEY: Third time now.

10 MS. KIRK: Yeah. Object to the
11 repetitive questioning.

12 THE WITNESS: I don't -- I don't
13 recall anyone with regard to the filing of --
14 recording the power of attorney.

15 BY MR. TRAXLER:

16 Q. Are you aware of Merrill Light giving Paul
17 Barringer a PowerPoint presentation and other
18 material in June of 2012 about Kevin Luzak's plan for
19 diversification of the company?

20 MR. MOLSTER: Objection.

21 MS. PAYLOR: Object to the form.

22 MS. KIRK: Object to the form.

23 MR. MOLSTER: Instruct him not to --
24 instruct him not to answer.

25 MR. TWOMBLEY: I don't know if it's

ROA 006568

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1 got anything to do with any discussions with
2 Mr. Barringer, I would too unless it relates to the,
3 you know, preparation, execution --

4 MR. TRAXLER: Ashley, you're breaking
5 up on me. I can't hear you. I'm sorry.

6 MR. TWOMBLEY: You can go ahead.

7 MR. TRAXLER: Ashley, I'm sorry. I
8 couldn't hear you -- what your comments were or your
9 objection.

10 MR. TWOMBLEY: I just said to the
11 extent it involves communications with Mr. Barringer
12 that aren't related to the preparation, execution, or
13 amendment of his estate planning documents, then I
14 would instruct him not to answer.

15 BY MR. TRAXLER:

16 Q. All right. You're not going to answer,
17 Mr. Jolley? Are you going to follow those
18 instructions?

19 A. Based on the instructions I've received,
20 I'm not going to answer.

21 Q. All right. Now, let's talk about the
22 June 28th board meeting of CFRC. Where were you when
23 that -- do you remember that board meeting?

24 A. At this point, I can't -- I'd have to look
25 at documents. I would have to have my recollection

ROA 006569

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1 refreshed here. I don't remember specifically the
2 June 28th board meeting.

3 Q. Do you -- if I told you that this was the
4 meeting where Kevin Luzak was removed as officer of
5 the corporation, would that refresh your
6 recollection?

7 A. I certainly remember during the summer --
8 that sounds -- that all sounds correct to me. Yes.

9 Q. Okay. Was there a board of directors
10 meeting on or about June 28, 2012 at your office with
11 Paul Barringer and Merrill Light being present?

12 A. I believe there was -- I believe there
13 was. Yes.

14 Q. All right. And you were there at that
15 meeting; is that correct?

16 A. I don't independently remember to what
17 extent I was at that meeting.

18 Q. Well, were you there in the room with Paul
19 Barringer while the meeting was occurring?

20 A. I believe I was in the meeting at -- I
21 was. I'm sorry. Mr. Traxler, I don't remember
22 specifically that meeting and whether or not I was in
23 the room with him.

24 Q. Have you heard a recording of that board
25 meeting?

ROA 006570

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1 A. I have not heard a recording of that board
2 meeting.

3 Q. Have you heard about a recording of that
4 board meeting?

5 A. I think --

6 MS. KIRK: Object to the form.

7 THE WITNESS: I think I've heard
8 about a transcript of a recording.

9 BY MR. TRAXLER:

10 Q. All right. Have you read the transcript?

11 A. I feel like I've certainly had -- I
12 certainly know a little bit about -- I think I've
13 read a portion of the transcript.

14 Q. Do you, as you sit here today, have
15 independent recollection of being at that board
16 meeting?

17 A. I mean, if this is the board meeting -- I
18 don't -- I don't think I was present at the --
19 throughout that meeting. I think I was called in at
20 the end of that meeting.

21 Q. All right. And that was a telephone board
22 meeting, was it not?

23 A. Mr. Traxler, I think that there were
24 some -- I think that at least several of the
25 directors were present in our office, and I think

ROA 006571

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1 some people otherwise attended by phone.

2 Q. All right. And who all was present in
3 your office during that meeting?

4 A. I think Ms. -- Mr. Barringer, Ms. Light,
5 and I believe Travis Bryant, but I'm not sure whether
6 Travis attended via telephone.

7 Q. Was Merrill Barringer there?

8 A. I don't recall. I don't believe -- I
9 don't believe -- I don't believe Ms. Barringer ever
10 attended a board meeting.

11 Q. All right. And what part of the board
12 meeting were you in? Give me some idea. You said
13 you were there for part of it or that was my
14 impression. Help me understand that.

15 A. Yes. So I --

16 MS. KIRK: Object to the form.

17 MS. PAYLOR: Object to the form.

18 BY MR. TRAXLER:

19 Q. Go ahead.

20 A. I think all of my involvement was
21 involved -- was -- in the board meeting was walking
22 in at the end of the meeting and talk -- and really
23 helping them turn off the telephone for the -- those
24 attending via telephone.

25 Q. Was Rick Rose there?

ROA 006572

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1 A. No. No, sir.

2 Q. All right. Was Randy Light there?

3 A. I don't believe that Randy Light was
4 there. As I said, I think it was only Mr. Barringer,
5 Ms. Light, and I -- like I said, I think Travis
6 Bryant attended in person. Otherwise, I think the
7 people attended telephonically.

8 Q. Did you see people coaching Mr. Barringer
9 on what to say and what to do?

10 A. I have never seen people coaching
11 Mr. Barringer on what to say or what to do.

12 Q. Mr. Jolley, did you ever hear anybody say
13 something to the effect of, all right, let's keep him
14 focused?

15 MS. KIRK: Object to the form.

16 THE WITNESS: I don't think so.

17 BY MR. TRAXLER:

18 Q. All right. I want you to do me -- you got
19 a pencil and paper in front of you?

20 A. I don't.

21 Q. All right. I want you to do me a favor.
22 I'm going to hold up something and I want you to read
23 it aloud to me, please, if you would. I'm not asking
24 you to testify to. I just want you to read it aloud.
25 Can you read that?

ROA 006573

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1 A. I can see this.

2 Q. Yes, sir. Would you read it aloud for me,
3 please?

4 A. The piece of paper you're holding up says,
5 "All right. Let's get him to stay focused."

6 Q. Okay. Thank you very much. Did you ever
7 have any conversations with others later about what
8 happened at that board meeting?

9 MS. KIRK: Object --

10 MR. MOLSTER: Instruct you not to
11 answer with respect to Merrill Light.

12 MR. TWOMBLEY: Same with respect to
13 Paul Barringer.

14 MR. SCHRONCE: This is John Schronce.
15 I object to the extent you're getting into
16 communications he may have had later when he became
17 corporate counsel. To the extent that you can answer
18 without getting into that, then that's fair game.

19 BY MR. TRAXLER:

20 Q. And, Mr. Jolley, were you -- were you in
21 part of that board meeting, who were you representing
22 at that board meeting?

23 MS. KIRK: Object to the form. And
24 you're mischaracterizing what he's already testified
25 to greatly.

ROA 006574

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1 MR. TRAXLER: I'm sorry, Ariail. I
2 couldn't understand you.

3 MS. KIRK: I objected to the form of
4 your question because it mischaracterizes everything
5 he's testified to up until now.

6 BY MR. TRAXLER:

7 Q. You were -- you were a part of that board
8 meeting, were you not?

9 MR. MOLSTER: Sorry. What was the
10 question?

11 MS. KIRK: I mean, you've already
12 asked him that and he's answered it.

13 BY MR. TRAXLER:

14 Q. Okay. Who were you representing when you
15 were in there?

16 MR. MOLSTER: Objection. Instruct
17 him not to answer with respect to Merrill Light.

18 MS. KIRK: Do you want the court
19 reporter to read back his involvement -- the
20 involvement he had at that board meeting?

21 MR. TWOMBLEY: I mean, didn't he just
22 say he showed up and turned the phone off?

23 BY MR. TRAXLER:

24 Q. Let me ask -- I'll -- I'll withdraw the
25 question. Were you representing anybody when you

ROA 006575

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1 were in that board meeting?

2 MR. MOLSTER: Same objection and
3 instruction --

4 MS. KIRK: Object to the form.

5 MR. MOLSTER: -- with respect to
6 Merrill Light.

7 BY MR. TRAXLER:

8 Q. Okay. Are you going to answer or not
9 answer the question, Mr. Jolley?

10 A. Based on the instructions I've received
11 and what I understand the answer, I can't answer that
12 question.

13 Q. Because of a privilege; is that correct?

14 MR. TWOMBLEY: I object to the form
15 of the question. I don't think it's the witness' job
16 to follow the instructions and not articulate the
17 basis for it.

18 MS. KIRK: I would agree.

19 MR. TRAXLER: All right. So who all
20 is asserting the privilege to that question and
21 instructing him not to answer?

22 MR. TWOMBLEY: Well --

23 MR. TRAXLER: Mr. Molster, I
24 understand you did. How about you, John Schronce --
25 Schronce?

ROA 006576

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1 MR. SCHRONCE: Yeah. I believe my
2 objection was to the prior question just because
3 there was no time limitation when you asked for
4 conversations regarding the June 28 meeting. So your
5 question would have enveloped potentially
6 conversations he had about that meeting subsequently
7 when he was corporate counsel. You were asking him
8 now who he is representing. I am not asserting an
9 objection to that question.

10 MR. TRAXLER: But, Mr. Molster, you
11 are, correct?

12 MR. MOLSTER: Correct.

13 MR. TRAXLER: And how about you --
14 the rest of all? Mr. Twombley?

15 MR. TWOMBLEY: Well, my -- my answer
16 is I don't know what his -- his answer would be and
17 whether or not it would be privileged. And based
18 upon prior questions in this deposition, I've got to
19 instruct him not to answer.

20 MR. TRAXLER: Okay. And Ms. Kirk,
21 are you instructing him not to answer?

22 MS. KIRK: Yes. I'm instructing him
23 to follow the instructions he's already received.

24 MR. TRAXLER: Okay. And what
25 privilege are you instructing him not to answer

ROA 006577

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1 because of -- let me rephrase that. What's the
2 privilege you're asserting?

3 MS. KIRK: Excuse me? I'm asking him
4 to honor the instructions that he has received from
5 people asserting privileges.

6 MR. TRAXLER: Okay. I just want to
7 make sure.

8 BY MR. TRAXLER:

9 Q. Mr. Jolley, did you know Mike Haigler or
10 Haigler?

11 A. Did I know him?

12 Q. Yes, sir.

13 A. My only knowledge of Mr. Haigler was --
14 the answer is yes.

15 Q. How do you pronounce his last name?

16 A. I believe it's Haigler, but...

17 Q. Okay. Did you ever tell Mr. Haigler that
18 sometimes Paul Barringer was, quote/unquote, there
19 and sometimes, quote/unquote, not?

20 A. No.

21 Q. How much during this time period were you
22 in communication with Victor Barringer?

23 MS. KIRK: Object to the form.

24 THE WITNESS: I don't believe I had
25 -- I have had very little communication with Victor

ROA 006578

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1 Barringer, and I don't believe I had any conversation
2 with -- or communication with Mr. Victor Barringer.

3 BY MR. TRAXLER:

4 Q. What was the reason for the removal of
5 Kevin Luzak as an officer of CFRC?

6 MS. KIRK: Object to the form.

7 MR. TWOMBLEY: I object to the form
8 and instruct him not to answer the question unless I
9 can talk to him about it. I mean, I don't know
10 what -- if he knows what the answer is. I don't know
11 if he would have gained that knowledge through a
12 privileged conversation with, you know,
13 Mr. Barringer. I just don't know what the answer is.

14 MR. TRAXLER: All right. You want to
15 go confer with him, that's fine.

16 MR. TWOMBLEY: Okay.

17 MS. KIRK: Are you doing it now or
18 are we deferring?

19 MR. TWOMBLEY: No. Let's do it now.

20 THE VIDEOGRAPHER: We are going off
21 record. It is 1:39 p.m.

22 (Off the record.)

23 THE VIDEOGRAPHER: We are back on
24 record. It is 1:41 p.m.

25 MR. TWOMBLEY: All right. So we went

ROA 006579

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1 off the record for about 90 seconds, and I did talk
2 with Mr. Jolley and he does not have any
3 non-privileged information to share. So I am
4 instructing him not to answer based on the grounds of
5 attorney-client privilege and work product.

6 MR. TRAXLER: And which client is
7 that?

8 MR. TWOMBLEY: That's on behalf of
9 the estate of Paul Barringer through Merrill
10 Barringer as personal representative.

11 MR. TRAXLER: Okay. Does anybody
12 else assert the privilege -- attorney-client
13 privilege?

14 MR. TWOMBLEY: Well, I --

15 MS. PAYLOR: Merrill Light. Merrill
16 Light does.

17 MR. MOLSTER: I'm sorry. I was on
18 mute. Merrill Light does.

19 MR. TRAXLER: Okay. And that's based
20 on attorney-client relationship between Mr. Jolley
21 and Merrill Light as a client; is that correct?

22 MR. MOLSTER: Can I get the question
23 again? I apologize. I had an interruption.

24 MR. TRAXLER: Yeah. Why was Kevin
25 Luzak removed?

ROA 006580

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1 MR. MOLSTER: Yeah. To the extent
2 that he's got -- had discussions with Merrill Light
3 about that, yes.

4 BY MR. TRAXLER:

5 Q. Okay. Mr. Jolley, when did you learn that
6 Kevin Luzak was going to be removed, if you knew
7 ahead of time?

8 MR. TWOMBLEY: I would instruct you
9 not to answer that question if it's based on a
10 privileged conversation that you had with
11 Mr. Barringer.

12 MR. MOLSTER: Ditto for Ms. Light.

13 BY MR. TRAXLER:

14 Q. Okay. Can you answer the question?

15 A. As I've been instructed, I cannot.

16 Q. All right. Did you ever have any
17 discussions after that June 28, 2012 board meeting
18 with anyone as to why Kevin Luzak was fired?

19 MR. TWOMBLEY: You can --

20 MR. MOLSTER: Same instruction with
21 respect to Merrill Light.

22 MR. TWOMBLEY: Well, I was going to
23 let him answer yes or no, Chip. Is that all right
24 with you?

25 MR. MOLSTER: Yeah. He can say yes

ROA 006581

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1 or no, if -- if Tom will agree it's not a waiver.

2 MR. TWOMBLEY: Yeah.

3 MR. TRAXLER: I do. Go ahead.

4 MR. SCHRONCE: And same agreement and
5 instruction, Tom, for the hundred company because now
6 we're talking about after the -- after the meeting.

7 MR. TRAXLER: After the board
8 meeting.

9 MR. SCHRONCE: Okay. Yes or no is
10 fine, John.

11 THE WITNESS: Yes or no to the
12 question of -- what was the question, Mr. Traxler?
13 BY MR. TRAXLER:

14 Q. Did you ever have any conversations with
15 anyone after the June 28, 2012 board meeting as to
16 why Kevin Luzak was fired?

17 A. Yes.

18 Q. Who were those conversations with?

19 THE WITNESS: So I instruct him not
20 to answer with respect to Merrill Light or Randy
21 Light.

22 MR. TWOMBLEY: Well, Chip, I -- I
23 will let him answer. If there was a conversation
24 with Mr. Barringer, you can say Mr. Barringer, but
25 nothing else and then we'll take the next question.

ROA 006582

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1 BY MR. TRAXLER:

2 Q. Did you have a conversation with
3 Mr. Barringer after the June 28, 2012 board meeting
4 as to why Kevin Luzak was fired?

5 MR. TWOMBLEY: Yes or no.

6 THE WITNESS: Yes.

7 BY MR. TRAXLER:

8 Q. Okay. How many conversations?

9 MR. TWOMBLEY: This -- this is the
10 last one I'm letting him answer. Assuming you still
11 agree it's not a waiver of privilege, I'll let him
12 answer how many, if he remembers.

13 THE WITNESS: Mr. Traxler, can -- can
14 you tell me what time period you're referring to? I
15 know you've said that we start on June 28th.

16 MR. TWOMBLEY: John, I'm just going
17 to instruct you to answer the question that was
18 asked.

19 THE WITNESS: Okay.

20 MR. TWOMBLEY: And, Tom, correct me
21 if I'm wrong, but I think the pending question is do
22 you know how many times you would have talked with
23 Mr. Barringer about why Kevin was fired. Is that
24 right, Tom?

25 MR. TRAXLER: Yes.

ROA 006583

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1 MR. TWOMBLEY: Okay.

2 MR. TRAXLER: After the board

3 meeting.

4 MR. TWOMBLEY: If you -- if you
5 remember the times, you can say.

6 THE WITNESS: I do not. No.

7 BY MR. TRAXLER:

8 Q. Do you have any sense of how many times?

9 A. I do not.

10 Q. Was anyone present in those conversations
11 other than Mr. Barringer?

12 A. Yes.

13 Q. Who?

14 A. I'm not sure that I can answer that
15 without revealing attorney-client privilege.

16 MR. TWOMBLEY: All right. We're
17 going to take a break at the witness' request.

18 MR. TRAXLER: I'll withdraw that --
19 I'll withdraw that question. Hold on a second.

20 BY MR. TRAXLER:

21 Q. Was anybody in on the conversations
22 between you and Mr. Barringer after the board meeting
23 other than Merrill Light?

24 A. Yes.

25 Q. Okay. Did you ever have any such

ROA 006584

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1 conversations with Mr. Barringer after that board
2 meeting with others present other than Travis Bryant
3 and Merrill Light?

4 A. Yes.

5 Q. All right. Who?

6 MR. MOLSTER: Objection. Instruct
7 not to answer with respect Merrill or Randy Light.

8 MR. TWOMBLEY: Well, I want to -- I
9 want to talk to him about what his answer is. I
10 don't know. I think I know, but -- and I don't think
11 it's privileged. But, you know, unless you let me
12 talk to him and confirm what I think I know, I can't
13 let him answer, which I'm happy to do. I don't think
14 it will take but about 30 seconds.

15 MR. TRAXLER: Okay. Go ahead and ask
16 him.

17 THE VIDEOGRAPHER: We are off the
18 record. It is 1:47 p.m.

19 (Off the record.)

20 THE VIDEOGRAPHER: We are back on
21 record. It is 1:50 p.m.

22 MR. TWOMBLEY: So I discussed with
23 Jolley what his answer was to that question, and I
24 think he's got a limited non-privilege response.

25 THE WITNESS: My conversations were

ROA 006585

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1 limited to lawyers at my firm and other lawyers with
2 whom we consulted.

3 BY MR. TRAXLER:

4 Q. Did you hear my question, Mr. Jolley?

5 A. I'm sorry. I thought I answered. I
6 didn't hear -- the last question I heard, I answered.

7 Q. Okay. We had some disconnect. I asked --
8 I think the question pending to Mr. Jolley is what
9 other -- who were those other lawyers that he just
10 referred to representing?

11 MR. TWOMBLEY: I'm instructing him
12 not to answer who the other lawyers were.

13 BY MR. TRAXLER:

14 Q. I was asking him who they were
15 representing. You're telling him not to answer that
16 question?

17 MR. TWOMBLEY: Oh, I'm sorry. I
18 didn't know you were asking who they were
19 representing. I thought -- well, why don't you ask
20 him if they were representing anybody other than
21 Merrill -- Merrill Light and Paul Barringer?

22 MR. MOLSTER: Or the company.

23 BY MR. TRAXLER:

24 Q. The question I want is: Who were those
25 other lawyers that you were talking to representing

ROA 006586

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1 when you talked to them?

2 MR. TWOMBLEY: I'm going to instruct
3 you not to answer. But if they want to ask you were
4 the other lawyers representing anybody other than
5 Paul Barringer, Merrill Light, or the company, I
6 would agree to allow you to answer.

7 MR. MOLSTER: Same position. Thank
8 you.

9 BY MR. TRAXLER:

10 Q. What were the names of the other lawyers
11 that you were talking to, Mr. Jolley?

12 MR. TWOMBLEY: I am instructing him
13 not to answer that question.

14 BY MR. TRAXLER:

15 Q. When did you have -- when did you have
16 those discussions, Mr. Jolley?

17 A. I don't recall the specific dates of those
18 conversations.

19 Q. Okay. Were they before or after you
20 became corporate counsel to the company?

21 A. Before.

22 Q. Did you talk -- did you call Mike Haigler
23 two days or so before the June 28, 2012 board
24 meeting?

25 A. I don't believe that I spoke with

ROA 006587

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1 Mr. Haigler.

2 Q. All right. Let me get you to go to the
3 tab one, document page No. 75 of the written
4 notebook, please. Are you familiar with this e-mail?

5 A. I remember this e-mail now that I've
6 looked at it.

7 Q. All right. And the bottom -- the original
8 message was from Victor Barringer to you and others
9 on July 1, 2012 at 9:25 a.m., right?

10 A. I see that e-mail. Yes, sir.

11 Q. Okay. And it says in the second
12 paragraph, "I think we need to put the following in
13 front of him prior to a next meeting with Merrill or
14 my father," and he is referring to Mike Haigler
15 referenced in the subject line, does he not?

16 MS. KIRK: Object to form.

17 THE WITNESS: I think he is referring
18 to Mr. Haigler.

19 BY MR. TRAXLER:

20 Q. All right. Mr. Barringer was not an
21 officer or director of CFRC, was he?

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

24 MS. KIRK: Same objection.

25 THE WITNESS: I don't believe

ROA 006588

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1 Mr. Barringer was --

2 BY MR. TRAXLER:

3 Q. I'm sorry. Let me rephrase the question.
4 He pointed out to me that I screwed it up. At the
5 time of the July 1, 2012 e-mail from Victor Barringer
6 to you, he was not an officer or director of CFRC,
7 was he?

8 A. I don't --

9 MR. TWOMBLEY: Object to the form.

10 THE WITNESS: I don't believe so.

11 BY MR. TRAXLER:

12 Q. All right. What was the purpose of this
13 e-mail?

14 MS. KIRK: Object to the form.

15 MR. TWOMBLEY: What's the question
16 again? Can you repeat the question, please?

17 BY MR. TRAXLER:

18 Q. Yeah. I'll rephrase it and make it a
19 little bit better. What did you perceive the purpose
20 of this e-mail to be when you got it?

21 A. I thought this was Victor's perspective on
22 what should happen.

23 Q. Okay. Did you have conversations with
24 Victor Barringer about Kevin Luzak?

25 A. I -- I've had very, very limited

ROA 006589

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1 conversations with Victor. I know this e-mail -- I
2 remember receiving this e-mail. I may have had a
3 very brief conversation on the phone with
4 Mr. Barringer, that is, Mr. Victor Barringer.

5 Q. Did you ever discuss with Victor Barringer
6 why Kevin Luzak was fired from the company?

7 MS. KIRK: Object to form.

8 THE WITNESS: I would never -- I did
9 not -- I didn't give any information to Victor
10 Barringer about Kevin Luzak.

11 BY MR. TRAXLER:

12 Q. All right. Did you ever discuss Mike
13 Haigler with Victor Barringer?

14 MS. KIRK: Object to form.

15 THE WITNESS: My recollection is that
16 this e-mail was not something that I solicited or had
17 any -- it came as a surprise to me when it came to
18 me, and then I think the only conversation I had with
19 Victor is one in which he generally said these same
20 things.

21 BY MR. TRAXLER:

22 Q. You were not corporate counsel for CFRC at
23 this date, were you?

24 A. I do not believe so. No, sir.

25 Q. Okay. So what did you understand the

ROA 006590

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1 reason to be for Victor Barringer e-mailing you
2 directly about things that needed to be put in front
3 of Haigler at the next meeting with Merrill or my
4 father in that -- that bullet point? What did you --

5 MR. MOLSTER: Excuse me. Are you
6 done?

7 MR. TRAXLER: Yeah.

8 MR. MOLSTER: I'll repeat my
9 instruction with respect to Merrill Light or Randy
10 Light not to answer with respect to any
11 communications to the extent that's responsive.

12 MS. KIRK: And I just object to form.

13 MR. TWOMBLEY: I mean, I think you're
14 asking for his thoughts and impressions about his
15 representation of a client. I'm happy to talk about
16 it with you, but I don't --

17 MR. TRAXLER: Are y'all instructing
18 him not to answer?

19 MR. TWOMBLEY: Yes.

20 BY MR. TRAXLER:

21 Q. All right. The first bullet point
22 paragraph number in the e-mail to you on July 1, 2012
23 talks about putting it in front of Haigler prior to
24 the next meeting with Merrill and her father, any and
25 all documents reflecting related party transaction

ROA 006591

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1 between Kevin, CFRC, and any other profit or
2 non-profit that Kevin is associated with and Mike or
3 his law firm. Did I read that correctly?

4 A. That appears to be correct.

5 Q. All right. What did you understand him to
6 be wanting you to do?

7 MR. MOLSTER: Same instructions.

8 MS. KIRK: Object to form.

9 THE WITNESS: I mean, Mr. Traxler, I
10 think this e-mail speaks for itself for what
11 Mr. Barringer thought should happen.

12 MR. TWOMBLEY: Will you clarify which
13 Mr. Barringer?

14 BY MR. TRAXLER:

15 Q. Were you aware of or questioned about
16 related party transactions between Kevin, CFRC, and
17 any other profit or non-profit entity?

18 MR. MOLSTER: Same instructions.

19 THE WITNESS: I am not aware.

20 BY MR. TRAXLER:

21 Q. Did you pick up the phone and call Victor
22 Barringer and ask him what in the world he was
23 talking about with regard to that first paragraph?

24 MS. KIRK: Object to the form.

25 THE WITNESS: I did not pick up the

ROA 006592

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1 phone and call Mr. Victor Barringer.

2 BY MR. TRAXLER:

3 Q. Did you e-mail him or have any
4 communication with him about that?

5 A. I think I just testified that Mr. Victor
6 Barringer had called me and said basically the same
7 kind of things he said here and that I listened to
8 him, but otherwise didn't communicate with him.

9 Q. How did you leave it? Did you tell him
10 yes, you were going to do or no, you weren't going to
11 do it or you were going to look into it or what?

12 A. I believe the only thing I said was that I
13 would -- you know, thanks for giving me the
14 information.

15 Q. Did you ask him if he had any information
16 about any related parties -- related party
17 transactions that he was referring to?

18 A. I don't recall that as being a part of the
19 conversation.

20 Q. Was he having any duty to any of the
21 shareholders, your clients, to investigate what he
22 was talking about?

23 MS. KIRK: Object to the form of the
24 question. That completely misstates the earlier
25 testimony.

ROA 006593

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1 MR. TWOMBLEY: Sounds like it called
2 for a privilege --

3 MR. MOLSTER: And I give the
4 instruction with respect to Merril Light and Randy
5 Light.

6 BY MR. TRAXLER:

7 Q. You can answer it?

8 MR. TRAXLER: Unless you're telling
9 him not to.

10 MS. KIRK: He can't answer it to the
11 extent that --

12 MR. TWOMBLEY: What was the question
13 again? Can you repeat it? This poor court reporter
14 over here, she deserves some type of medal.

15 MR. MOLSTER: We all do.

16 MR. TRAXLER: How did you -- how did
17 you leave it with Mr. Barringer as to what you were
18 going to do and not do in --

19 MR. TWOMBLEY: Tom -- Tom, hold on --
20 hold on one second, please. The court reporter was
21 reading the question and then you started talking.

22 MR. TRAXLER: Oh, I'm sorry.

23 (The record was read as requested.)

24 MR. TWOMBLEY: Yeah. I don't have
25 any objection to the question that -- did he have

ROA 006594

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1 any -- you know, what did you say to Victor
2 Barringer, basically is what it's saying again, but
3 go ahead.

4 THE WITNESS: I don't recall the
5 specifics of this very short conversation -- the very
6 short conversation with Victor Barringer. I
7 generally put Mr. Victor Barringer off and didn't
8 communicate with him about these things.

9 BY MR. TRAXLER:

10 Q. Did you discuss paragraph No. 2 with
11 Victor Barringer?

12 A. That's -- that's my same answer,
13 Mr. Traxler.

14 Q. And how about paragraph No. 3?

15 A. Same answer.

16 Q. All right. The e-mail above it from
17 Victor Barringer to Lewis McHenry copied to PBB --
18 and I believe that's Paul Barringer, is it not?

19 MR. MOLSTER: So can we just -- I'm
20 sorry, Tom, to interrupt. To correct the record, I
21 think the e-mail above it is actually from Victor to
22 his father and then there's the one to Lewis.

23 MR. TRAXLER: Okay. Okay. You're
24 right. I did not see that one in between. Thank
25 you, Chip.

ROA 006595

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1 BY MR. TRAXLER:

2 Q. The very top one, Mr. Jolley, from Victor
3 Barringer to Lewis McHenry copied to Paul Barringer,
4 correct, and also Merrill Light or some Light person?

5 A. It -- I'm sorry?

6 Q. Did you see the very top --

7 A. I see --

8 Q. -- that e-mail to Lewis McHenry?

9 A. I see the very top and it does appear to
10 be an e-mail from Victor Barringer to the people you
11 described.

12 Q. Okay. And who is Lewis McHenry?

13 A. I have no idea.

14 Q. Is he one of the lawyers that you talked
15 to about the reason why Kevin Luzak was fired at the
16 June 28, 2012 meeting?

17 MR. TWOMBLEY: If I agree to let him
18 answer that yes or no, will you agree that it's not a
19 waiver as to the prior questions on this topic?

20 MR. TRAXLER: Yeah.

21 THE WITNESS: No.

22 BY MR. TRAXLER:

23 Q. Okay. Did you receive this e-mail, the
24 one from Victor to Lewis McHenry?

25 MS. KIRK: Object to the form.

ROA 006596

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1 THE WITNESS: I don't -- I don't
2 believe so.

3 BY MR. TRAXLER:

4 Q. Did Victor Barringer ever express any
5 sentiments to you similar to "crush him to where only
6 the charred bones remain"?

7 A. My -- I've already described all of my
8 conversations with Victor Barringer and all of my
9 communications with Victor Barringer.

10 Q. Are you aware of any efforts by anyone
11 associated with CFRC or any of the shareholders to
12 crush Mike Haigler to only where charred bones
13 remained?

14 MS. KIRK: Object to the form.

15 MR. MOLSTER: Instruct not to answer
16 with respect to Randy --

17 MS. PAYLOR: Object to the form.

18 BY MR. TRAXLER:

19 Q. Did you have conversations with Merrill
20 Light about crushing Mike Haigler to where only the
21 charred bones remained?

22 MR. MOLSTER: Of course not.
23 Instruct you not to answer.

24 MR. TRAXLER: You're instructing him
25 not to go into that, Chip; is that correct?

ROA 006597

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1 MR. TWOMBLEY: Chip, why don't you
2 let him answer pursuant to an agreement --

3 MR. MOLSTER: -- he had with his
4 client. Of course, I know.

5 MR. TWOMBLEY: Chip, would you
6 consider allowing him to answer it with an agreement
7 that it doesn't waive any privilege? Because I think
8 we all know what the answer is.

9 MR. TRAXLER: Well, that's okay.
10 I'll let it go.

11 MR. MOLSTER: Tom, will you agree
12 that I'll let him answer if you don't -- it's not a
13 waiver of privilege?

14 MR. TRAXLER: All right.

15 MS. KIRK: Or, Tom, can you just ask
16 him if he's ever heard that?

17 MR. TRAXLER: Well, I've asked him
18 what I want to ask him. Thank you, though.

19 MR. TWOMBLEY: Well, let the record
20 reflect --

21 MR. MOLSTER: So are you declining my
22 offer to let him answer the question if you --

23 MR. TRAXLER: Yes, I am.

24 BY MR. TRAXLER:

25 Q. Did you ever have any (inaudible) with

ROA 006598

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1 Mr. Barringer about his opinion about Kevin Luzak
2 after the June 28, 2012 board meeting?

3 MS. KIRK: Tom, that was real garbled
4 and didn't come through.

5 BY MR. TRAXLER:

6 Q. Okay. After the June 28, 2012 board
7 meeting, did you ever have any conversations with
8 Paul Barringer about his attitude or opinion of Kevin
9 Luzak?

10 MR. TWOMBLEY: I --

11 MR. MOLSTER: Instruct him not to
12 answer with respect to Merrill Light and Randy Light.

13 MR. SCHRONCE: And, Tom, is that
14 including the time in which Mr. Jolley served as
15 corporate counsel?

16 MR. TRAXLER: Yes.

17 MR. SCHRONCE: Okay. I think we need
18 to at least confer with him. Or, John, if you can
19 answer without getting into conversations you may
20 have had with Mr. Barringer in your capacity as
21 corporate counsel and his capacity as director,
22 that's fine. But to the extent that the question
23 calls for that, I instruct you not to answer.

24 MR. TRAXLER: Okay. John, let me
25 back up and come at it a different way and see if we

ROA 006599

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1 can --

2 MR. SCHRONCE: The time period, Tom,
3 just to be clear, I think if you can clarify that a
4 bit, it might help the cause here.

5 MR. TRAXLER: Sure.

6 BY MR. TRAXLER:

7 Q. After the board meeting, but before you
8 becoming corporate counsel, did you have any
9 conversations with Paul Barringer about his opinion
10 of Kevin Luzak?

11 MR. MOLSTER: Same instruction for
12 Randy and Merrill.

13 MR. TWOMBLEY: Okay. The question is
14 did he have any conversation with Paul Barringer, and
15 I would instruct you, unless you had some
16 non-privileged conversation with him outside of your
17 role as his lawyer or related to the preparation,
18 execution of estate planning documents, I would
19 instruct you not to answer.

20 BY MR. TRAXLER:

21 Q. Did you have a conversation?

22 A. Based on that --

23 MR. TRAXLER: Are you still
24 instructing him not to answer?

25 MR. TWOMBLEY: Yeah. I put my

ROA 006600

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1 instruction on the record.

2 BY MR. TRAXLER:

3 Q. Okay. After you became corporate counsel,
4 did you have any discussions with Paul Barringer
5 about his opinion of Kevin Luzak?

6 MR. MOLSTER: Same instructions.

7 MR. TWOMBLEY: John, did you hear
8 that question?

9 MR. SCHRONCE: And -- and, Tom, I can
10 agree to a yes or no if you will agree that is not a
11 waiver.

12 MR. TRAXLER: Sure. I agree.

13 THE WITNESS: Yes.

14 BY MR. TRAXLER:

15 Q. How many conversations did you have, tell
16 me about when they were, and who all was present?

17 MR. SCHRONCE: Same agreement, Tom?

18 MR. TRAXLER: Yeah.

19 MR. MOLSTER: Same agreement for
20 Merrill as well?

21 MR. TRAXLER: Sure.

22 MR. MOLSTER: Thank you.

23 MR. TWOMBLEY: And I guess same
24 agreement for Mr. Barringer --

25 MR. TRAXLER: Yeah.

ROA 006601

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1 MR. TWOMBLEY: -- individually.

2 THE WITNESS: I'd estimate five

3 times.

4 BY MR. TRAXLER:

5 Q. All right. Was there ever anyone present
6 in those conversations other than you and Paul
7 Barringer?

8 MR. TWOMBLEY: Yes or no.

9 MR. SCHRONCE: Same agreement, Tom?

10 MR. TRAXLER: Yeah. I'll have the
11 same agreement with each one of you on these
12 questions.

13 THE WITNESS: Yes.

14 BY MR. TRAXLER:

15 Q. Okay. Who else was in attendance during
16 those conversations with Paul Barringer, subject to
17 the same agreement?

18 MR. MOLSTER: Just names, John.

19 THE WITNESS: Merrill Light, Travis
20 Bryant, Randy Light, Tom Evans maybe. I'm not sure
21 about that. I think that's -- and let's see. This
22 is during the period. And then I think other lawyers
23 in my firm.

24 BY MR. TRAXLER:

25 Q. And were each of those individuals you

ROA 006602

Page 203

1 named in all of the conversations you had with Paul
2 Barringer about Kevin Luzak as I just asked you?

3 MR. SCHRONCE: Same agreement?

4 MR. TRAXLER: Yeah, same agreement
5 everybody.

6 THE WITNESS: Mr. Traxler, can you
7 repeat that question for me?

8 BY MR. TRAXLER:

9 Q. I had a hard time the first time. Let me
10 see if I can do it better.

11 MS. KIRK: It's an audio issue, Tom.

12 MR. SCHRONCE: You're breaking up a
13 little bit. Your audio is not as clear as it was.

14 MS. PAYLOR: You might need to get
15 closer to the microphone.

16 MR. TRAXLER: Okay. The problem is
17 my notebook keeps banging around. All right. Can
18 you hear me a little bit better now?

19 THE WITNESS: Yes.

20 MR. TWOMBLEY: Much better.

21 BY MR. TRAXLER:

22 Q. Okay. Mr. Jolley, I believe you indicated
23 that a number of conversations that you had with Paul
24 Barringer after you became corporate counsel, those
25 conversations were about Kevin Luzak. And I had

ROA 006603

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1 asked you about how many and, if I recall correctly,
2 you said about five, as best you could recall. The
3 exact number is not important to me. Now I've asked
4 you who was present in the conversation, and you
5 named those names for me. My question now is: Were
6 those individuals who you just named in on each of
7 those conversations with Paul Barringer that you --
8 that you can recall?

9 A. No.

10 Q. Okay. Give me some idea -- well, how many
11 of the conversations were just with Paul Barringer?

12 A. I would say --

13 Q. Exact number is not -- the exact number is
14 not important to me, Mr. Jolley. I'm just trying to
15 get a sense of the setting of each one of these
16 conversations.

17 MS. KIRK: And this is the continuing
18 agreement, correct?

19 MR. TRAXLER: That's correct. Yes.

20 THE WITNESS: Several. One or two or
21 maybe even three.

22 BY MR. TRAXLER:

23 Q. Were these conversations where Randy Light
24 was involved --

25 MR. MOLSTER: Same agreement?

ROA 006604

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1 Q. -- before or after he became -- came onto
2 the board of directors?

3 MR. TRAXLER: Yeah, same agreement.

4 THE WITNESS: Yeah. My recollection
5 is only after.

6 BY MR. TRAXLER:

7 Q. All right. Are you aware of anybody
8 within the corporation conducting any investigation
9 of Kevin Luzak as he requested?

10 MS. KIRK: Object to the form.

11 MR. SCHRONCE: Yeah. I'm going to
12 object and, again, I think a yes or no and -- and do
13 not go beyond that, John.

14 THE WITNESS: No.

15 BY MR. TRAXLER:

16 Q. Do you recall if the topic was ever
17 discussed by the corporation about whether to do an
18 investigation of Kevin Luzak?

19 MR. SCHRONCE: And I'm going to
20 object and -- and I guess a yes or no. I will first
21 object to the form of the question. And beyond that,
22 a yes or no is okay, John, but don't go beyond that.

23 THE WITNESS: Yes.

24 BY MR. TRAXLER:

25 Q. After the board of directors meeting on

ROA 006605

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1 June 28, 2012, did you ever have any discussions with
2 Paul Barringer about his opinion of Hampton Luzak?

3 MR. SCHRONCE: And, Tom, I'll ask you
4 just for clarification here, are you talking June 28
5 and thereafter or are you limiting that to before he
6 became corporate counsel?

7 BY MR. TRAXLER:

8 Q. That's fair. Between the June 28 board
9 meeting and you becoming corporate counsel, did you
10 have any conversations with Paul Barringer --

11 A. Mr. Traxler, I think we lost your audio
12 there for a second.

13 Q. Okay. Between the board meeting on
14 June 28, 2012 and you becoming corporate counsel, did
15 you have any conversation with Paul Barringer about
16 his opinion or feelings toward Hampton Luzak?

17 MR. TWOMBLEY: Yeah. I'm going to
18 object and instruct him not to answer unless it
19 related to the preparation and execution of estate
20 planning document.

21 BY MR. TRAXLER:

22 Q. Can you answer?

23 A. As -- as instructed, I cannot answer.

24 MR. TRAXLER: Okay. Ashley, would
25 you let him answer the question with simply a yes or

ROA 006606

Page 207

1 no, that's all the question was, subject to an
2 agreement that it doesn't constitute a waiver?

3 MR. TWOMBLEY: Did he have any
4 discussions with Mr. Barringer about Mr. Barringer's
5 feelings toward Ms. Luzak?

6 MR. TRAXLER: Yes. Between the time
7 of the board meeting and becoming corporate counsel?

8 MR. TWOMBLEY: No. I will not let
9 him answer that.

10 MR. TRAXLER: Okay. Let me --

11 MR. TWOMBLEY: For the record, unless
12 it relates to the preparation or execution of an
13 estate planning document.

14 BY MR. TRAXLER:

15 Q. At any time after you -- after the board
16 meeting, did you ever have any conversations with
17 Paul Barringer about his feelings toward Hampton
18 Luzak? And I'm broadening it from the board meeting
19 on to the present time.

20 MS. KIRK: Object to the form.

21 MR. SCHRONCE: John, you can answer
22 yes or no on that.

23 THE WITNESS: So, Mr. Traxler, I'm
24 still having a hard time hearing that. Can you
25 repeat it, please?

ROA 006607

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1 BY MR. TRAXLER:

2 Q. Yeah. After the June 28, 2012 board
3 meeting, did you have any conversations with Paul
4 Barringer where he expressed feelings of sentiments
5 toward Hampton Luzak?

6 MR. TWOMBLEY: I want to -- I want to
7 talk to Mr. Jolley about what his answer is before I
8 allow him to answer that question. So I'm going to
9 go off the record.

10 MR. TRAXLER: Ashley, let me ask you
11 this to facilitate things. If he says no, okay. If
12 he says yes, then why don't you let me ask the
13 questions about when and the circumstances and have
14 it narrowed down a little bit more. I'm just trying
15 to save time.

16 MR. TWOMBLEY: Well, I was trying to
17 save time too. So I was just thinking my way was
18 going to save more time than your way was, but I
19 don't know who is right about that. But I think I --
20 well, it's your -- it's your call, but I was trying
21 to save time too.

22 MR. TRAXLER: Sure. How about just
23 let him answer yes or no, and that doesn't constitute
24 a waiver.

25 MR. TWOMBLEY: Okay.

ROA 006608

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1 BY MR. TRAXLER:

2 Q. Did you have conversations after the June
3 board meeting with Paul Barringer about his feelings
4 about Hampton Luzak?

5 A. Yes.

6 Q. All right. Ballpark time when?

7 A. I would -- I would say multiple times.

8 MR. TWOMBLEY: All right. That's it.

9 BY MR. TRAXLER:

10 Q. Was it in connection with any preparation
11 of estate planning documents for Mr. Barringer?

12 A. Yes.

13 Q. Okay. Which estate planning documents?

14 A. Those documents that Mr. Barringer
15 executed after July of 2012.

16 Q. All right. Did you have such
17 conversations with him in connection with the
18 reported transfer of voting stock to his revocable --
19 from his revocable trust to Ms. Light's revocable
20 trust in September of 2012? Were any of those
21 conversations in connection with that transfer?

22 MS. KIRK: Object to form.

23 MR. MOLSTER: Yes or no. No waiver
24 -- no waiver agreement?

25 MR. TRAXLER: I agree.

ROA 006609

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1 MR. MOLSTER: Yes or no, John.

2 THE WITNESS: I think the answer is

3 no.

4 BY MR. TRAXLER:

5 Q. All right. So when is the first time in
6 connection with any estate planning documents did you
7 have a conversation with Mr. Barringer about his
8 feelings towards Hampton after the June board
9 meeting?

10 A. I -- I -- I can't tell you the specific
11 times of that. I had -- there you go.

12 Q. Well, what did he tell you?

13 MS. KIRK: Object to the form.

14 MR. TWOMBLEY: Is this -- I want to
15 talk with Mr. Jolley about his answer and whether or
16 not we need to raise a privilege, and I think the
17 best, quickest way to do it is just give me 30
18 seconds with him and we'll...

19 MR. TRAXLER: Okay. Go talk to him.

20 THE VIDEOGRAPHER: We are off the
21 record. It is 2:18 p.m.

22 (Off the record.)

23 THE VIDEOGRAPHER: We are back on
24 record. It is 2:28 p.m.

25 MR. TWOMBLEY: All right. I don't

ROA 006610

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1 know if -- is Mr. Molster back?

2 MR. MOLSTER: I'm back.

3 MR. TWOMBLEY: I think we're waiting
4 just one second for Mr. Molster to get back on. So
5 I -- I feel comfortable telling you what the, I
6 guess, results are of the conference on all of these
7 issues. So with respect to the first issue that I
8 wrote down, and I'm sorry if this is not the first
9 one you wrote down, but it was --

10 MR. TRAXLER: Ashley, can you hold on
11 just a minute until we get Chip back on?

12 MR. TWOMBLEY: Sure.

13 MS. PAYLOR: I'm on.

14 MR. TRAXLER: Okay. Alice, do you
15 want us to wait for Chip?

16 MS. PAYLOR: Not for -- not for
17 Ashley to tell you what he's found.

18 MR. TRAXLER: Okay. Go ahead,
19 Ashley.

20 MR. TWOMBLEY: I -- I feel
21 comfortable subject to being killed by Chip. But in
22 any event, the first issue of Kevin Luzak allegedly
23 kicking Mr. Barringer and Merrill Light out of the --
24 out of the room, you asked -- I instructed John not
25 to answer and so did Chip, and you asked which

ROA 006611

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1 privilege applied. And the privilege is Paul
2 Barringer's individual attorney-client privilege, and
3 also Merrill Light's individual attorney-client
4 privilege.

5 MR. TRAXLER: All right.

6 MR. TWOMBLEY: Okay. The second
7 question about Mr. Barringer's feelings about Hampton
8 Luzak after June 28th, it's my understanding from
9 Mr. Jolley that those communications did come with
10 respect to the change in Mr. Barringer's estate
11 planning documents. So we're not going to raise
12 privilege on those and allow him to answer it.

13 And then the third issue of did he
14 ever represent Merrill Light as co-trustee, his --
15 well, he's going -- subject to -- I think Chip is
16 going to say subject to you agreeing there's no
17 waiver, he's going to allow John to answer that
18 question.

19 MR. MOLSTER: Hey. I'm back. So I
20 missed a little bit of that, but yeah. I got the
21 part about the question as to whether or not he
22 represented her as co-trustee or in a fiduciary
23 capacity.

24 MR. TWOMBLEY: Yeah. And then No. 2,
25 the feelings about Mr. Barringer, that's not your

ROA 006612

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1 issue. And then the first one, which privilege is
2 applied related to the discussions about Kevin Luzak
3 allegedly kicking Paul Barringer and Merrill out of a
4 meeting. I told him I'm raising Mr. Barringer's
5 individual privilege on behalf of the estate and
6 you're raising an individual privilege for Merrill
7 Light.

8 MR. TRAXLER: Let me ask this to that
9 point about the -- what he had heard about the
10 allegation that Kevin Luzak had kicked Paul Barringer
11 and/or Merrill Light out of the board meeting. And
12 Merrill Light is asserting her attorney-client
13 privilege, as well as Paul Barringer is asserting
14 attorney-client privilege; is that correct?

15 MR. TWOMBLEY: Correct.

16 MR. MOLSTER: Yeah. We're back --
17 I'm sorry. Are we back on the record?

18 MR. TRAXLER: Yeah. Aren't we?

19 MR. TWOMBLEY: I think so. Yeah.

20 MS. PAYLOR: I think we went on
21 already.

22 MR. MOLSTER: Okay. Sorry.

23 BY MR. TRAXLER:

24 Q. Mr. Jolley, in connection with that
25 allegation about Kevin Luzak kicking Paul Barringer

ROA 006613

Page 214

1 and/or Merrill Light out of the board meeting, was
2 that a conversation that you had with Merrill Light
3 and Paul Barringer at the same time or were they
4 separate conversations?

5 MR. MOLSTER: You agree it's a
6 non-waiver?

7 MR. TRAXLER: Yeah.

8 MR. MOLSTER: -- if we let him
9 answer?

10 MR. TRAXLER: Yeah.

11 MR. MOLSTER: Ashley, are you okay
12 with letting him answer?

13 MR. TWOMBLEY: Yeah. Subject to
14 agreement non-waiver.

15 THE WITNESS: Together.

16 BY MR. TRAXLER:

17 Q. Okay. So you were having this
18 conversation in your capacity as Paul Barringer's
19 lawyer with Merrill Light present, and you were
20 having your conversation with her in your
21 attorney-client relationship with him present,
22 correct?

23 MS. KIRK: I object to the form.

24 MR. TRAXLER: Okay.

25 MR. MOLSTER: Yeah. Object to the

ROA 006614

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1 form.

2 MR. TRAXLER: Is that correct?

3 MR. MOLSTER: And I want -- you want
4 the agreement? I mean, I'm not going to let him
5 answer without the agreement.

6 MR. TRAXLER: Yeah. That's fine.

7 MR. MOLSTER: And I also think it's a
8 legal conclusion.

9 MR. TWOMBLEY: Tom, I don't really
10 want to -- I mean, I want to ask him -- I don't have
11 any -- the foggiest idea what John Jolley may say in
12 response to that question, and I don't know if it
13 might reveal some privileged information or not. I
14 mean, I'm sorry, but I just -- I mean...

15 MR. TRAXLER: Okay. Are you
16 instructing him not to answer? I'll move on.

17 MR. TWOMBLEY: Well, I mean, I want
18 to ask him what his answer is and I -- you know.

19 MR. TRAXLER: Y'all were just out
20 there.

21 MR. TWOMBLEY: Whether or not the
22 answer would reveal a privileged communication or
23 his --

24 MR. MOLSTER: You didn't ask that
25 question, Tom.

ROA 006615

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1 MR. TRAXLER: I'm going to ask -- I'm
2 going to ask another question.

3 THE WITNESS: Because we didn't have
4 that question.

5 MR. TWOMBLEY: Okay. Well, try
6 again.

7 MR. TRAXLER: You instructed it.
8 I'll move on to another question.

9 MR. TWOMBLEY: Well, I'm not
10 instructing him.

11 BY MR. TRAXLER:

12 Q. Mr. Jolley, did you ever represent Merrill
13 Light as co-trustee?

14 MR. MOLSTER: Okay. So we have the
15 agreement?

16 MR. TRAXLER: That's fine. Yeah.

17 MR. MOLSTER: Okay. Go ahead, John.
18 Yes or no or whatever your answer is.

19 THE WITNESS: Mr. Traxler, you asked
20 me -- I need you to repeat the question.

21 BY MR. TRAXLER:

22 Q. Did you ever represent Merrill Light as
23 co-trustee?

24 A. As co-trustee of Paul Barringer's trust?

25 Q. Yes.

ROA 006616

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1 A. I did not.

2 Q. Did you ever represent Merrill Barringer
3 when she served as any fiduciary for Paul Barringer?

4 MR. MOLSTER: You mean Merrill Light?
5 Do you mean Merrill Light?

6 MR. TRAXLER: I'm sorry. I screwed
7 up. You're right. Thank you, Chip.

8 MR. MOLSTER: Same agreement?

9 MR. TRAXLER: Yeah.

10 BY MR. TRAXLER:

11 Q. Mr. Jolley, did you ever represent Merrill
12 Light in any fiduciary capacity for Paul Barringer --
13 where she served in a fiduciary capacity for Paul
14 Barringer?

15 A. I don't believe so.

16 Q. Okay. Tell me -- going back to the
17 question before we broke, Mr. Jolley, tell me what
18 conversations you had with Paul Barringer about his
19 feelings about Hampton Luzak after the June 28, 2012
20 board meeting where he expressed his feelings about
21 her?

22 A. Mr. Barringer, in multiple meetings,
23 described to me his attitude and feelings about
24 Ms. Luzak.

25 Q. What did he say?

ROA 006617

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1 A. I would -- Mr. Barringer at the -- near
2 the time of this, that is, in the summer of 2012,
3 this is after the board meeting, I think,
4 Mr. Barringer said he was disappointed and -- with
5 Ms. Luzak and he hoped for a reconciliation with
6 Ms. Luzak.

7 Q. I think you told me when, but I did not
8 pick up on it. When did that conversation happen?

9 A. That would have been after the board
10 meeting in which Mr. Luzak was removed.

11 Q. Okay. Was it in 2012?

12 A. I have had -- that -- the first meeting
13 about -- the first conversation we had about that was
14 in 2012. Yes.

15 Q. Okay. Give me the circumstances of that.
16 When it was, where it was, and what was said?

17 A. I had several meetings with Mr. Barringer,
18 whether in person or on the telephone, in which he
19 described, what, his hope for reconciliation with
20 Hampton Luzak and that was in the context -- and then
21 over time we had additional conversations in years
22 after 2012 in which he described, what, the progress
23 or lack thereof in a reconciliation with Ms. Luzak.

24 Q. Okay. But right now I want to focus on
25 2012. Did he indicate to you why he was disappointed

ROA 006618

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1 or had such feelings about Hampton Luzak in 2012?

2 A. He generally expressed to me that he was
3 disappointed that Ms. Luzak had sided, in his mind,
4 with her husband, Kevin Luzak.

5 Q. Did he have -- did he express to you any
6 other reason for having or bad feelings toward
7 Hampton Luzak other than what you just said?

8 MS. KIRK: Object to the form.

9 THE WITNESS: And -- and we're still
10 talking about in 2012?

11 BY MR. TRAXLER:

12 Q. Yes, sir.

13 A. No. Generally he was disappointed -- he
14 said he was disappointed in Hampton, what, supporting
15 the allegations of her husband.

16 Q. And what were the allegations of her
17 husband as you understood it?

18 A. Mr. Barringer was, what, particularly
19 aggrieved at the -- one, the perception that he
20 lacked capacity and, two, that Mr. Luzak was running
21 the company in a way that was inconsistent with
22 the -- with the company's vision.

23 Q. All right. What did you understand from
24 Mr. Barringer, Hampton Luzak had done with regard to
25 his capacity?

ROA 006619

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1 MS. KIRK: Object to the form.

2 THE WITNESS: Well, Mr. -- I mean,
3 what did he -- he tried to -- I mean, Paul believed
4 that -- expressed to me anyway that he believed Kevin
5 had tried to take over the company and keep Paul from
6 being involved.

7 BY MR. TRAXLER:

8 Q. But how does that relate --

9 MS. KIRK: You totally went out, Tom.

10 BY MR. TRAXLER:

11 Q. I'm sorry. What does that have to do with
12 Paul Barringer's negative feelings toward Kevin with
13 regard to his capacity? I understand that you said
14 that he felt all -- or Kevin was maybe trying to take
15 the company or something or not going in the proper
16 direction, but your first comment was that he was
17 upset with Kevin about Kevin's allegations or
18 whatever pertaining to his competency or capacity.
19 I'm trying to understand that better or did I
20 misunderstand you?

21 MS. KIRK: Object to the form.

22 THE WITNESS: I'm not sure you
23 misunderstood me. I think Mr. Barringer was -- you
24 asked me about Ms. Luzak, and he told me that he was
25 disappointed that she was supporting her husband in

ROA 006620

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1 what Paul, I think, perceived to be an unfounded
2 allegation about his capacity and the direction of
3 the company.

4 BY MR. TRAXLER:

5 Q. Did he cite any particulars of what he
6 thought Kevin had done with regard to his capacity?

7 A. I don't -- I'm not -- in this context, I
8 don't -- I'm not sure that he did cite any
9 particulars.

10 Q. Did he have similar feelings about Randy
11 Light in light of all the e-mails that Randy Light
12 had written about his capacity?

13 MS. KIRK: Object to the form.

14 MR. MOLSTER: Wait a second. I
15 instruct you not to answer with respect to
16 conversations -- any attorney-client communications
17 you had with Randy or Merrill or any joint
18 representation.

19 BY MR. TRAXLER:

20 Q. Okay. But my question is: In a
21 conversation with Paul Barringer about his feelings
22 toward Hampton, did he ever express any negative
23 feelings about Randy Light, especially when we
24 consider the e-mails that Randy Light was writing
25 about Paul's mental problems?

ROA 006621

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1 MS. KIRK: Object to the form.

2 MR. MOLSTER: I don't think -- yeah.
3 I think that's too close to attorney-client
4 privilege.

5 MR. TRAXLER: That's your not client.

6 MR. MOLSTER: You're asking a
7 question about my client. Randy Light is my client.

8 MR. TRAXLER: Was it your position,
9 Chip, is that if your client is the subject of
10 somebody else's discussion that that discussion
11 somehow is privilege?

12 MR. MOLSTER: I think you're asking a
13 a question about a conversation between Paul
14 Barringer and his lawyer, right, about something that
15 is not covered by the testamentary exception. Right?
16 My understanding -- and I've got to defer to Ashley
17 on that, but you're asking -- that -- that -- that --

18 MR. TWOMBLEY: I think what you ought
19 to ask, subject to an agreement, is whether or not
20 there were any such discussions about Randy Light and
21 the e-mails he sent, and I would let him answer yes
22 or no and then we'll go from there.

23 MR. TRAXLER: I kind of like my
24 question the way I asked it. All I need to know
25 is -- I want to make sure I understand Chip Molster's

ROA 006622

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1 objection, and he is objecting because his client,
2 Randy Light, was the subject of conversations between
3 two other people.

4 MR. TWOMBLEY: I think -- I think
5 Chip clarified that's not what he was doing.

6 MR. MOLSTER: One of them is a
7 lawyer. Right? And the other one is his client. Go
8 ahead, Ashley.

9 MR. TWOMBLEY: Well, I don't think
10 that's what Chip was doing. I think Chip corrected
11 himself and responded to your question that just
12 because Randy was the subject of a conversation that
13 wouldn't lead to a privilege. But what I'm saying --

14 MR. TRAXLER: All I want to do, guys,
15 is make sure we've got a clean record on this thing.
16 Is there a privilege being asserted to him in
17 instruction to Mr. Jolley not to answer the question?
18 And if so, who's making it and on what basis?

19 MR. TWOMBLEY: Okay. This is Ashley
20 Twombley, and I am instructing him not to answer that
21 question based on the attorney-client privilege. I
22 don't think it has anything to do with -- if there
23 was any such conversation, I don't think it had
24 anything to do with the preparation or execution of
25 an estate planning document. What I'm -- what I'm

ROA 006623

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1 offering as a suggestion and alternative way where
2 you may be able to get the information which you
3 maybe be entitled to is whether or not there ever was
4 any conversation, yes or no, about the prior e-mails
5 that Randy Light had sent where, as you say, they
6 question Mr. Barringer's capacity. We object to the
7 form and that characterization of the e-mails. But,
8 you know, y'all are always very reluctant to take any
9 of my suggestions since -- you may not start now, but
10 that's just my offer. I mean, I do have a good one
11 every now and then, Tom. So, I mean, once in a while
12 it might be worth giving it a consideration.

13 MR. TRAXLER: Oh, certainly. I truly
14 do give everybody's opinion a consideration. Trust
15 me. Mr. Molster, I'm going to make sure I got your
16 objection correct. Are you asserting a privilege?

17 MR. MOLSTER: No. I think I
18 articulated it correctly.

19 BY MR. TRAXLER:

20 Q. Okay. And, Mr. Jolley, you're not going
21 to answer that question based on Mr. Twombly's
22 instruction; is that correct?

23 A. That is correct.

24 Q. Okay. Now, I think you answered it, but I
25 want to make sure. Paul Barringer, in these

ROA 006624

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1 conversations in 2012, did not provide you any
2 further details as to what Kevin Luzak was doing with
3 regard to challenging his capacity; is that correct?

4 MR. TWOMBLEY: Object to the form of
5 the question. Misstates his testimony.

6 MS. KIRK: Same objection.

7 BY MR. TRAXLER:

8 Q. Okay. If I misstated it, let's go back.
9 Give me all the details that Paul Barringer cited
10 that Kevin Luzak had done to challenge his capacity
11 in 2012 and before?

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

14 MS. KIRK: Object to the form.

15 THE WITNESS: So, Tom -- I'm sorry.
16 Mr. Traxler, you're asking me for any -- to recit any
17 time in which Mr. Barringer, what, suggested there
18 was some evidence of Kevin Luzak -- you're going to
19 have to repeat that question. I'm not sure I
20 followed that, Tom.

21 BY MR. TRAXLER:

22 Q. Yeah. Sure, sure. Let me back it up and
23 make sure we're -- we're in sync. You earlier to --
24 say that Mr. Barringer expressed disappointment in
25 2012 with respect to Kevin Luzak as Kevin challenging

ROA 006625

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1 his competency or capacity. Did I understand that
2 correctly?

3 A. I think I testified that he was
4 disappointed, yes, but in Ms. -- his daughter,
5 Ms. Luzak, and that was -- and, yes, that was based
6 on his -- Kevin's challenge of Mr. Barringer's
7 capacity.

8 Q. Okay. Did Mr. Barringer, in this
9 conversation, give you any details as to what Kevin
10 had done with regard to the challenges with his
11 capacity?

12 A. And -- and when you asked me this question
13 before, you were saying after the board meeting; is
14 that right?

15 Q. No, sir. Well, we can start that. After
16 the board meeting in 2012, did he give you any
17 details about Kevin's challenges to his capacity?

18 A. I don't -- I don't believe so.

19 Q. Prior to the board meeting in 2012, did he
20 give you any details into Kevin's challenges to his
21 capacity?

22 MR. TWOMBLEY: And, John, I'm going
23 to -- you know, since the net has gotten wider here
24 I -- I would just caution you to limit your testimony
25 just to conversations that would have related to the,

ROA 006626

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1 you know, preparation, execution, or amendment of his
2 estate planning documents. Otherwise, I would raise
3 privilege and instruct you not to answer.

4 THE WITNESS: So my answer to that
5 question is going to be barred by privilege.

6 BY MR. TRAXLER:

7 Q. So other than what you have told me, you
8 are not going to give me any further details as to
9 exactly what Kevin Luzak supposedly did with regard
10 to challenging Paul Barringer's capacity in 2012; is
11 that correct?

12 MR. TWOMBLEY: Object to the form --

13 MS. KIRK: Object to the form.

14 MR. TWOMBLEY: -- of the question.

15 THE WITNESS: Mr. Traxler, beyond
16 Mr. Barringer's statements about what happened, he
17 didn't give me -- I'm not sure what specific answers
18 or what support Mr. Barringer would have provided.

19 BY MR. TRAXLER:

20 Q. Great. Thank you. That's all I wanted to
21 know. Thank you very much. Now, with respect to
22 Mr. Barringer's attitude toward Hampton Luzak in
23 2012, his disappointment, you cited Kevin's -- Mr.
24 Barringer's disappointment in Kevin and how he wanted
25 to run the company or where to take the company. Did

ROA 006627

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1 I understand that correct or did have I misstated
2 that?

3 MS. KIRK: Object to form.

4 BY MR. TRAXLER:

5 Q. Because I want you to give me the details
6 of that as best you can.

7 A. Yeah. I mean, the details are that
8 Mr. Barringer really told me that he was disappointed
9 about Hampton and beyond -- and Hampton taking the
10 position adverse to Paul Barringer and in taking the
11 position of Kevin Luzak.

12 Q. And what was his problem with Kevin Luzak
13 beyond those challenges of his capacity?

14 A. I'm not sure. I'm not sure what
15 Mr. Barringer -- I don't know what else his --
16 Mr. Barringer's problems with Mr. Luzak were.

17 Q. Did Mr. Barringer, during these
18 conversations, ever complain about Kevin Luzak and
19 how he was running CFRC?

20 MR. TWOMBLEY: Object to the form of
21 the question. Misstates his testimony.

22 MS. KIRK: Same objection.

23 MR. TWOMBLEY: I mean, diametrically
24 opposed to what he said.

25 MR. TRAXLER: I don't believe I said

ROA 006628

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1 that's what his testimony was. It was a simple
2 straight up question.

3 THE WITNESS: I'm sorry, Mr. Traxler.
4 Can you repeat the question a little louder for me?

5 BY MR. TRAXLER:

6 Q. Sure. During these conversations with
7 Paul Barringer in 2012, did he ever express to you
8 disappointment in Kevin Luzak and how he was running
9 the company or the direction he might have taken the
10 company?

11 MR. TWOMBLEY: And I'm respectfully,
12 Tom -- I mean, now these questions are encompassing
13 an entire year of 2012. And so I have to limit John
14 to only respond if there were discussions related to
15 the preparation and execution and amendment of estate
16 planning documents about Mr. Luzak. Otherwise, I
17 would instruct you not to answer.

18 MR. TRAXLER: Mr. Twombley, is it
19 your opinion that those conversations are allowed
20 only if they directly related to preparation of
21 estate planning documents or are they allowed if they
22 affect the estate planning intentions of
23 Mr. Barringer?

24 MR. TWOMBLEY: I don't know what that
25 means.

ROA 006629

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1 MR. TRAXLER: Okay. So what are you
2 telling this witness to do or not do with regard to
3 the pending question?

4 MR. TWOMBLEY: Well, what I'm
5 instructing the witness to do is what I think is
6 consistent with the court's ruling, which is that if
7 there were communications with Paul Barringer related
8 to the -- his -- changing his estate plan and they
9 involved Kevin Luzak, then I think the plaintiff is
10 entitled to discover that information and you're
11 allowed to answer. But if there were other unrelated
12 conversations about Mr. Luzak --

13 MR. TRAXLER: Let me -- let me see if
14 I can allay your concerns a little bit, Mr. Twombley.

15 MS. KIRK: Mr. Traxler, can you get
16 closer? We're having trouble hearing you again.

17 MR. TRAXLER: Yeah. Thank you for
18 reminding me.

19 BY MR. TRAXLER:

20 Q. Mr. Jolley, you relayed conversations with
21 Paul Barringer and his disappointment or negative
22 feelings for Hampton because of her situation with
23 Kevin. Did that attitude affect his estate planning
24 into the future?

25 A. Yes.

ROA 006630

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1 Q. All right. Tell me what he told you that
2 Kevin had done or not done that he found to be
3 unacceptable?

4 MS. KIRK: Object to the form.

5 BY MR. TRAXLER:

6 Q. What had Kevin done? What had Kevin done?

7 A. I think that what I said before is still
8 my answer, that is he, what, related to me that Kevin
9 had challenged his competency and of -- and wanted to
10 take the company and run the company without Paul.

11 Q. Okay. Did he provide you any more detail
12 or information about Kevin wanting to run the company
13 without Paul?

14 A. Not in the context of his estate planning.

15 Q. Did you perceive his perception -- did you
16 understand his perception of what Kevin wanted to do
17 about running the company without Paul to be true?

18 MS. KIRK: Object to the form.

19 MR. TWOMBLEY: I would -- I would
20 instruct you not to answer. I think that goes to
21 Mr. Jolley's thoughts and mental impressions. I
22 don't think it goes to communications with
23 Mr. Barringer, and I instruct you not to answer.

24 BY MR. TRAXLER:

25 Q. Mr. Jolley, I assume that if a client

ROA 006631

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1 comes into you and wants testamentary instruments and
2 you proceeded to them to have some wrong ideas about
3 some material issues, you've got to deal with that,
4 don't you?

5 MS. KIRK: I object to the form. I'm
6 not even sure what you asked.

7 MR. TRAXLER: Well, he testified in
8 the last deposition that material -- a mistake of
9 material fact is a basis for voiding the will, isn't
10 it?

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

13 MS. KIRK: I also object to that
14 question.

15 MR. TWOMBLEY: Calls for a legal
16 conclusion.

17 BY MR. TRAXLER:

18 Q. So what do you do if a client comes in and
19 you see the person is making a significant mistake
20 about a material fact, what do you do?

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

23 MS. KIRK: Same objection.

24 THE WITNESS: Mr. Traxler, I think,
25 one, I satisfy myself that the client has sufficient

ROA 006632

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1 understanding and, two, I try to help effectuate my
2 client's intent.

3 BY MR. TRAXLER:

4 Q. Okay. So what did you do in this
5 particular occasion when he made that statement about
6 Kevin?

7 MS. KIRK: Object to the form.

8 THE WITNESS: At that time,
9 Mr. Barringer was generally treating his daughters
10 the same. So other than satisfying myself of
11 Mr. Barringer's competency, my impression was his
12 competency was certainly -- I didn't take any action
13 with respect to Mr. Luzak.

14 BY MR. TRAXLER:

15 Q. You had already changed Paul's revocable
16 trust by July 20th of 2012, hadn't you?

17 MS. KIRK: Object to the form.

18 MR. TWOMBLEY: Object to the form of
19 the question.

20 BY MR. TRAXLER:

21 Q. Didn't you?

22 A. I assisted Mr. Barringer in updating his
23 revocable trust in July of 2012. That is correct.

24 Q. That's right. And that was to give the
25 CFRC stock directly to Merrill Light upon the death

ROA 006633

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1 of him -- the latter of him and his wife, right?

2 MS. KIRK: Object to the form.

3 THE WITNESS: I don't remember
4 whether that transfer in that document was at --
5 would have been at his death or at the death of the
6 surviving spouse, but that amendment does, in fact,
7 provide for the shares to go to Merrill Light.

8 BY MR. TRAXLER:

9 Q. To the exclusion of Hampton Luzak,
10 correct?

11 MS. KIRK: Object to the form.

12 THE WITNESS: That is correct.

13 BY MR. TRAXLER:

14 Q. Okay. And this occurred, what, about
15 three weeks right after the board of directors
16 meeting on June 28, 2012; is that correct?

17 MS. KIRK: Object to the form.

18 THE WITNESS: You can -- I mean, that
19 does sound -- the dates sound correct. Yes.

20 BY MR. TRAXLER:

21 Q. All right. These conversations that you
22 were having with Paul Barringer when he was
23 explaining his feelings about Hampton, did they
24 precede the second amendment and restatement of the
25 trust agreement on July 20, 2012?

ROA 006634

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1 MS. KIRK: Object to the form.

2 THE WITNESS: Mr. Barringer certainly
3 expressed his disappointment before the execution of
4 that amendment.

5 BY MR. TRAXLER:

6 Q. That's what led to that amendment, isn't
7 it?

8 A. It's part of what led to that amendment.
9 Yes.

10 Q. What else led to the amendment?

11 A. Mr. Barringer's desire to ensure the
12 company wasn't run by Mr. Luzak.

13 Q. And he did that by keeping it away from
14 Hampton, correct?

15 MS. KIRK: Object to the form.

16 THE WITNESS: I think that -- he
17 wanted Merrill Light to be -- have control.

18 BY MR. TRAXLER:

19 Q. To the exclusion of Hampton Luzak,
20 correct?

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

23 MS. KIRK: Object to form.

24 MS. PAYLOR: Object to form.

25 MR. TWOMBLEY: Misstates the

ROA 006635

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1 evidence.

2 BY MR. TRAXLER:

3 Q. You can answer it.

4 A. The transfer was only to Merrill --
5 Merrill Light and not to Hampton Luzak. That is
6 correct.

7 Q. And prior to that, Hampton Luzak was to
8 share equally, correct --

9 MR. TWOMBLEY: Object --

10 Q. -- under the power of appointment, right?

11 MR. TWOMBLEY: I'm sorry.

12 MS. PAYLOR: Object to the form.

13 MR. TWOMBLEY: I apologize, Tom. I
14 objected before you finished the question. I
15 apologize. Can you repeat it?

16 BY MR. TRAXLER:

17 Q. Sure. The -- prior to the June -- second
18 amendment and reinstatement on July 20, 2012, Hampton
19 Luzak and Merrill Light were treated equally,
20 correct?

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

23 MS. KIRK: Same objection.

24 MR. TWOMBLEY: Misstates the
25 evidence.

ROA 006636

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1 MS. PAYLOR: Object to the form.

2 BY MR. TRAXLER:

3 Q. Were they treated equally prior to that?

4 A. I think under the February 28 document,
5 the -- subject to power of appointment, the
6 daughters, that is, Hampton Luzak and Merrill Light,
7 were treated the same.

8 Q. All right. Let me get you to -- well, let
9 me ask you this. No. Let's go ahead and go to it
10 now. I need for you to go to the tab 16, page 443.

11 A. I'm at J. Jolley Dep 0443.

12 Q. All right. This is the second amendment
13 and restatement of trust agreement that had --

14 A. I'm sorry, Mr. Traxler. You broke up
15 there.

16 Q. Sure. This is the second amendment and
17 trust agreement dated July 20, 2012; is that correct?

18 A. This is the second amendment and
19 restatement dated July 20, 2012.

20 Q. All right. You prepared this document,
21 correct?

22 A. That is correct.

23 Q. Tell me about the subject of
24 Paul Barringer leading up to this document. How did
25 the conversation relate to this document? And walk

ROA 006637

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1 me through the progression of this conversation.

2 MS. KIRK: Tom, I didn't hear any of
3 that.

4 MR. TRAXLER: I asked him to take me
5 through the progression of Paul Barringer that led to
6 the drafting and execution of this document.

7 MR. TWOMBLEY: This is Ashley
8 Twombley. I would object to the form. I think we
9 spent almost 30 or more minutes during the first day
10 of deposition about this document, the circumstances
11 that led to it, why Ms. Barringer -- Mr. Barringer
12 wanted to do it. I think it's repetitive.

13 MS. KIRK: Yeah. And we're really,
14 you know, coming up on two full days of deposition
15 testimony, Tom. Are you getting ready to wrap it up?

16 MR. TRAXLER: I'll -- I'll withdraw
17 that question and ask something a little bit more
18 particular on that.

19 BY MR. TRAXLER:

20 Q. Go to page 470. It was executed -- excuse
21 me, page 469. It was executed by Paul Barringer as
22 settlor and as individual trustee, correct?

23 A. That is certainly what 469 reflects. Yes,
24 sir.

25 Q. Yeah. And 470 showed that it was executed

ROA 006638

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1 before a notary of Alabama on July 20, 2012; is that
2 correct?

3 A. That is what page 470 reflects.

4 Q. All right. And I believe the next page,
5 471, reflects that it was signed by Merrill Light in
6 Beaufort County on that same day, correct?

7 MS. KIRK: Object to the form. I
8 mean, we've gone through all of this ad nauseam, Tom.
9 I mean, I don't -- I think it's abusive to sit here
10 and rehash questions that we've already spent so much
11 time on. I mean --

12 MR. TRAXLER: That's fine. This is
13 going to be very limited.

14 BY MR. TRAXLER:

15 Q. Am I correct in that statement,
16 Mr. Jolley?

17 MR. MOLSTER: I'm sorry. Can I hear
18 the question again?

19 BY MR. TRAXLER:

20 Q. Yeah. The second amendment restatement,
21 page 471, shows that it was executed by Merrill Light
22 on July 20, 2012.

23 MR. MOLSTER: Thank you.

24 BY MR. TRAXLER:

25 Q. Am I looking at that correctly?

ROA 006639

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1 A. I'm sorry.

2 MR. TWOMBLEY: Object to the form of
3 the question.

4 MS. KIRK: You just want him review
5 page -- you're on page 471?

6 MR. TRAXLER: Yeah.

7 BY MR. TRAXLER:

8 Q. 471, does it not reflect that Merrill
9 Light signed it on July 20, 2012?

10 A. 471 reflects this acknowledgment of the
11 notary acknowledging Merrill Barringer Light's
12 execution of this document on July 20, 2012.

13 Q. Okay. And that's the Becky Bostic's
14 notary?

15 A. That's Becky Bostic's signature.

16 Q. Okay. You may have told me this before,
17 but how was it executed the same day in South
18 Carolina as it is in Alabama?

19 MS. PAYLOR: Asked and answered.

20 MS. KIRK: Yeah. I mean, really,
21 Tom, like, there's no point in us continuing to do
22 this. I mean --

23 MR. TRAXLER: Okay. Are you going to
24 tell him not to answer?

25 MR. TWOMBLEY: Well, Tom, I think

ROA 006640

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1 we -- I thought we spent a significant amount of time
2 on this exact same issue at the first deposition.

3 MR. TRAXLER: We might have. That's
4 all I want to ask him about. If he testified before,
5 I apologize.

6 MS. KIRK: Tom, I don't know what's
7 happened in the past, like, five or ten minutes, but
8 we only get about every, like, third or fourth word
9 of yours doesn't come through.

10 MR. TRAXLER: Okay. It may be me
11 flipping pages, Ariail. I'll try to stop that.

12 MS. KIRK: Okay.

13 BY MR. TRAXLER:

14 Q. All I want to know about this particular
15 document right now is: Do you have an understanding
16 as to how it was executed in South Carolina and in
17 Alabama on the same day?

18 MS. KIRK: I object to the form.

19 BY MR. TRAXLER:

20 Q. If you know, tell me. If you don't know,
21 tell me that.

22 A. I -- I suspect it was in counterpart --
23 executed in counterpart, but I don't know.

24 Q. Okay. Now, we got sidetracked on that.
25 We were talking about conversations with Paul

ROA 006641

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1 Barringer in 2012 where he expressed negative
2 feelings about Hampton. I want to come back to that.
3 Did those feelings affect his decision to transfer
4 voting stock from his revocable trust to her
5 revocable trust in September 20, 2012 -- 2012?
6 Excuse me. I kind of screwed that up. You want me
7 to say that again?

8 MS. KIRK: Yes.

9 THE WITNESS: Please.

10 BY MR. TRAXLER:

11 Q. Okay. We talked about Paul Barringer's
12 feelings toward Hampton. You've answered that
13 question for me. Those feelings that you testified
14 to, did they pertain to or affect his decision to
15 transfer the stock from his revocable trust to
16 Merrill Light's revocable trust in September 2012?

17 A. I think so.

18 Q. How? Tell me what you know about that and
19 why you -- why you think so.

20 A. As I -- I think as I mentioned before,
21 Mr. Barringer wanted to make sure that Ms. Light
22 had -- would have control of the company and not
23 Ms. Luzak and certainly Mr. Luzak by and through
24 Hampton Luzak.

25 Q. Tell me how he was -- (inaudible) --

ROA 006642

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1 revocable trust with Paul and Merrill Light as
2 co-trustees? Why was it necessary to transfer it to
3 Merrill Light's trust?

4 MS. KIRK: Tom, we still didn't get
5 all that.

6 MS. PAYLOR: Object to the form.

7 MR. TRAXLER: I'm sorry. What did
8 you say?

9 MS. KIRK: This is Ariail speaking.
10 We're still not getting every word you're saying.
11 It's like every third or fourth word just goes out.

12 MR. TRAXLER: I'm not sure what I can
13 do because I quit flipping pages and I'm about to
14 swallow this microphone.

15 MR. MOLSTER: Don't swallow the
16 microphone.

17 MR. TRAXLER: If y'all want to see my
18 tonsils, I guess I could stick that thing down my
19 throat and see if y'all can hear me a little bit
20 better. Raise your hand, Ariail, if there's a
21 problem and I'll stop mid-sentence and go back.
22 Okay?

23 MS. KIRK: Okay.

24 MR. TRAXLER: All right. Thank you.

25

ROA 006643

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1 BY MR. TRAXLER:

2 Q. Now, my question to you, Mr. Jolley, was
3 if the stock was already in the revocable trust where
4 he was a co-trustee along with Merrill Light and it
5 was protected from Hampton, why was there a need to
6 then transfer it to the trust?

7 MS. PAYLOR: Object to --

8 MS. KIRK: I object to the form too.

9 MR. TRAXLER: You couldn't hear me,
10 Ariail?

11 THE COURT REPORTER: We -- you went
12 out after you said, "Why was there a need to then
13 transfer it to," and then we could not hear.

14 MR. TRAXLER: Can -- can -- can you
15 hear me now?

16 BY MR. TRAXLER:

17 Q. The question to you, Mr. Jolley, is if the
18 voting stock that Paul Barringer had was already in
19 his revocable trust along with Merrill Light being
20 co-trustee, why was there a need to transfer it over
21 to Merrill Light in her revocable trust?

22 A. Mr. Barringer directed me --

23 MR. TWOMBLEY: Object to the form.

24 MS. KIRK: Object to the form.

25 THE WITNESS: I'm not sure the answer

ROA 006644

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1 to that beyond what Mr. Barringer directed me to do.
2 Mr. Barringer wanted to make the transfer.

3 BY MR. TRAXLER:

4 Q. I thought you just said he wanted to make
5 sure that it was protected so that Kevin wasn't
6 running it, right?

7 A. That is correct.

8 Q. All right. So help me understand how, if
9 it was already tied up in his trust with Merrill
10 Light as co-trustee and Paul Barringer as co-trustee
11 and Hampton was not to get any of it, how Hampton or
12 Kevin could then end up running the company?

13 MS. KIRK: Object to the form.

14 MS. PAYLOR: Object to the form.

15 THE WITNESS: Mr. Traxler, the only
16 thing I can say is that I believe Mr. Barringer
17 believed that the most predictable and certain answer
18 to that was to transfer the stock to Ms. Light at
19 that time.

20 BY MR. TRAXLER:

21 Q. Did you have -- how long did you talk to
22 him about this?

23 A. How long did I talk to Mr. Barringer about
24 this trust agreement or the transfer?

25 Q. About transferring -- about transferring

ROA 006645

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1 the stock to Merrill Light's revocable trust in
2 September of 2012?

3 A. I had several conversations with
4 Mr. Barringer about this. Mr. Barringer was
5 emphatic. And what's the total duration of those
6 conversations specifically about that, perhaps 40
7 minutes, an hour. I'm not -- that's very hard for me
8 to estimate.

9 Q. All right. Did you have Merrill Light or
10 someone secure a certificate about his competency
11 from a doctor prior to the stock transfer?

12 MS. KIRK: I mean, Tom, you went all
13 over this in March. I mean, this is just getting --
14 it's very just wasteful of time and resources.

15 MR. TRAXLER: Okay.

16 MR. MOLSTER: I'm going to object and
17 instruct him not to answer to the extent that it
18 would disclose any attorney-client privileged
19 communications with Merrill Light.

20 BY MR. TRAXLER:

21 Q. Did you communicate with Merrill Light
22 about having to verify the competency or capacity of
23 her father to do the stock of transfer?

24 MS. KIRK: Object to the form.

25 MR. MOLSTER: Will you -- can we have

ROA 006646

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1 an agreement on non-waiver if I let him answer yes or
2 no?

3 MR. TRAXLER: Yes.

4 MS. PAYLOR: I think he answered it.

5 THE WITNESS: Yeah. I certainly feel
6 like I've answered this. I mean, we prepared a
7 certificate of competency and we may have given it
8 to -- it may have -- I don't know. I don't know the
9 answer to that. I don't remember the answer to that
10 other than -- well, I don't remember the answer to
11 that.

12 Q. Do you recall what prompted the concern to
13 get that certificate?

14 MR. MOLSTER: Same agreement?

15 MR. TRAXLER: Yeah.

16 THE WITNESS: I think the concern was
17 the allegation by -- that had been communicated to me
18 that there had been an assertion that Paul lacked
19 capacity.

20 BY MR. TRAXLER:

21 Q. Who expressed that concern to you?

22 MS. KIRK: Object to the form.

23 MR. MOLSTER: Same agreement?

24 MR. TRAXLER: Yes.

25 THE WITNESS: Mr. Barringer certainly

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1 talked to me about that.

2 BY MR. TRAXLER:

3 Q. Did he express concern about his own
4 capacity?

5 MS. KIRK: Object to the form. You
6 can answer.

7 BY MR. TRAXLER:

8 Q. Maybe I misunderstood your last answer.

9 A. I spoke with Mr. Barringer about the
10 allegations of his incapacity.

11 Q. Okay. Did you discuss the allegation of
12 his incapacity with anybody else?

13 A. Yes.

14 Q. Who?

15 MR. MOLSTER: Same instructions with
16 respect to Merrill Light or Randy Light.

17 MR. TWOMBLEY: I don't know what his
18 answer is. I don't know if it's privileged. So I
19 either have to talk to him about this or instruct him
20 not to answer. I would like to talk to him about it
21 and get to the bottom of it.

22 BY MR. TRAXLER:

23 Q. Did this relate to his decision to
24 transfer his voting stock to Merrill Light?

25 MR. MOLSTER: Same instruction.

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1 MS. KIRK: What?

2 THE WITNESS: I didn't follow the
3 question, Mr. Traxler.

4 BY MR. TRAXLER:

5 Q. I'll withdraw it. When -- tell me what
6 your involvement was with regard to the transfer of
7 the stock presumably around September 11, 2012?

8 MR. MOLSTER: Same instruction with
9 respect to communications with Randy or Merrill
10 Light.

11 MS. KIRK: And, Tom, can you
12 articulate how this isn't exactly what we went over
13 with on March 16th? I mean, I feel like we're just
14 going back to the same transcript from that
15 afternoon.

16 MR. TWOMBLEY: I think we also talked
17 about it today as well.

18 MR. TRAXLER: I'm sorry. Say that
19 again, Ariail.

20 MS. KIRK: I mean, can you explain to
21 me, you know, are we not just going down the exact
22 same line of questioning you've already been down a
23 couple of times. This seems very familiar to what
24 I've read in the transcript from the afternoon of
25 March 16th and what I recall from it.

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1 BY MR. TRAXLER:

2 Q. Okay. Tell me what your involvement --

3 MS. KIRK: I don't think you get to
4 ask questions --

5 Q. -- was, Mr. Jolley --

6 MS. KIRK: -- four or five times.

7 Q. -- in the transfer?

8 MR. MOLSTER: Same instruction, John,
9 with respect to Randy and Merrill Light and
10 attorney-client communications that you may have had
11 with them.

12 BY MR. TRAXLER:

13 Q. Okay. Go ahead and answer.

14 THE COURT REPORTER: Mr. Traxler, we
15 were unable to hear your question because Ms. Kirk
16 was objecting.

17 MR. TWOMBLEY: And also just --
18 just -- just for the record -- now we've got an
19 ambulance going by. So I'm recommending that we take
20 a five-minute break and maybe do some consolidation
21 and come back in five minutes. Is that okay, Tom?

22 MR. TRAXLER: Yeah, that's fine.

23 THE VIDEOGRAPHER: We are off the
24 record. It is 3:14 p.m.

25 (Off the record.)

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1 THE VIDEOGRAPHER: We are back on
2 record. It is 3:34 p.m.

3 MS. KIRK: Mr. Traxler, this is
4 Ariail Kirk. I'm willing to give you until about
5 4:00 and then we're going to -- you know, if you're
6 not done, we're going to move for a protective order
7 because I think this is just getting out of control
8 and duplicative and kind of abuse of the discovery
9 process. But if you've got some questions you want
10 to fit in, you know, we're here.

11 MR. TRAXLER: I want you to
12 understand that all of your earlier comments that I
13 had plowed this ground before was wrong. You are
14 misremembering. That was direct examination where
15 you said we had got into the 20 -- July 20 document
16 before, went into 9/11 before. So all of that that
17 you put onto me, I think if you check the transcript
18 you will see that it was direct examination by
19 Mr. Twombly and not by me. So I am not replowing
20 new ground as you suggested. The only reason I tell
21 you that is if that changes your mind about the dep
22 time, that's entirely up to you. But you're
23 absolutely incorrect to say that I am replowing
24 ground that I went through last time.

25 MS. KIRK: Well, I'll -- I'll check

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1 on that, but are you suggesting that you should be
2 able to re-ask all the questions that Mr. Twombly
3 already asked?

4 MR. GILREATH: Absolutely.

5 MR. TRAXLER: Yes, ma'am.

6 MS. KIRK: I mean, I don't know that
7 I understand why it matters to us whether you asked
8 the question or whether Mr. Twombly asked it or
9 whether Alice Paylor asked it. I don't understand --
10 I don't understand the significance of that.

11 MR. TRAXLER: I don't think I've ever
12 seen the judge rule that I can't go into matters
13 raised by the other side before. But if you want to
14 try it, that's fine. But I understand your -- let's
15 move on.

16 MR. GILREATH: Go ahead and try that.

17 MR. TRAXLER: No. Be quiet, Billy.

18 BY MR. TRAXLER:

19 Q. All right. Let's talk about the July --
20 excuse me, September 11, 2012 transfer of voting
21 shares. I think I had asked you the question, and
22 I'm not sure I got an answer from you, about your
23 involvement in that transfer. Would you walk me
24 through that, please, Mr. Jolley?

25 MR. SCHRONE: And, Tom, this is John

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1 Schronce. You know, we're now in a period of time
2 where Mr. Jolley is serving as corporate counsel. So
3 I think probably what makes sense to do here, if it's
4 okay with you, is to proceed question by question if
5 we have your agreement that there is not a subject
6 matter waiver when we allow him to answer a question.

7 MR. TRAXLER: That's fine.

8 MR. MOLSTER: And, John -- Tom, can I
9 just clarify? Are you talking about September 11 --

10 MR. TRAXLER: Yes.

11 MR. MOLSTER: -- 2012. I think you
12 may have said July. Go it.

13 MR. TRAXLER: Okay. Whenever I said,
14 I'm talking about stock transfer on September 11,
15 2012.

16 MR. MOLSTER: I'm familiar with it.

17 MR. TRAXLER: We all are.

18 BY MR. TRAXLER:

19 Q. Mr. Jolley, what was your involvement in
20 that?

21 A. Pursuant to Mr. Barringer's -- Paul
22 Barringer's request, we prepared the transfer
23 documents for Mr. Barringer's signature.

24 Q. All right. And I believe -- if I could
25 get you to go to tab 18, page 616.

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1 MR. TRAXLER: Ariail, can you hear
2 me?

3 MS. KIRK: I think so. What's tab?

4 MR. TWOMBLEY: 18, 616.

5 THE WITNESS: 616.

6 MR. MOLSTER: What's the number? 6
7 what?

8 MS. KIRK: 616.

9 MR. MOLSTER: Thank you.

10 BY MR. TRAXLER:

11 Q. And I believe this is the stock power that
12 you prepared. And if you look at the next page, 669
13 and 670, you also prepared those; is that correct?

14 A. I'm sorry, Mr. Traxler. Hang on one
15 second. Okay. So J. Jolley Dep 668. Yes. I think
16 we -- we prepared this stock power for Mr. Barringer.

17 Q. All right. And along with the assignment
18 of shares that follows starting on page 669; is that
19 correct?

20 A. That is correct.

21 Q. All right. Why did Mr. -- strike that.
22 Who did you represent with regard to this
23 transfer?

24 A. I think --

25 MR. MOLSTER: Now, if I let him

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1 answer that question with respect to Merrill Light
2 and/or Randy Light, you'll agree it's not a subject
3 matter waiver?

4 MR. TRAXLER: Yeah. I'll agree to
5 that to all -- all of you.

6 BY MR. TRAXLER:

7 Q. Who did you represent, Mr. Jolley?

8 A. I represented Paul B. Barringer with
9 respect to this.

10 Q. Did you represent anyone else?

11 A. I don't believe I represented anybody
12 else -- well, with respect to the preparation of the
13 stock power or with respect to the assignment of
14 shares.

15 Q. Did you discuss this transfer with Merrill
16 Light before September 11, 2012?

17 MR. MOLSTER: Same agreement?

18 MR. TRAXLER: Yeah.

19 THE WITNESS: I discussed this --

20 MR. MOLSTER: Let me -- let me be
21 careful here, John.

22 THE WITNESS: Yeah. Sure.

23 MR. MOLSTER: So I understood -- I
24 understand your answer with respect to the stock
25 power and the assignment of shares. But if you had a

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1 conversation with Merrill in your capacity as her
2 lawyer either for as her estate planning lawyer or
3 any other capacity if you had an attorney-client
4 relationship, then I instruct you not to answer. If
5 you had a -- if you had a conversation with her
6 solely in your -- in your role as counsel for Paul
7 Barringer, then I think subject to the agreement with
8 Tom, I'm inclined to let you answer that question. I
9 defer to Ashley a little bit on that as well. But do
10 you understand my instruction and are you able to
11 make that -- that discernment, if you will? It's
12 probably a conversation I shouldn't be having in
13 front of Mr. Traxler, but I'm going to do it anyway
14 in the interest of expediency unless we need to take
15 a break.

16 MR. TRAXLER: I've only got till 4:00
17 according to Ms. Kirk.

18 THE WITNESS: Yeah. I mean, I think
19 I can -- I think I can answer that, Chip. I think I
20 understand that -- I think I understand that
21 instruction.

22 MR. MOLSTER: Thank you.

23 THE WITNESS: And so --

24 BY MR. TRAXLER:

25 Q. Go ahead and answer it.

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1 A. Mr. Traxler, if you would repeat the
2 question, I'll try to.

3 Q. Did you discuss this stock transfer with
4 Merrill Light prior to September 11, 2012?

5 A. The answer is yes.

6 Q. And what did you tell her?

7 MR. MOLSTER: Continued agreement?

8 MR. TRAXLER: Yeah.

9 THE WITNESS: I think my interaction
10 or my communication with Ms. Light with respect to
11 this transfer was limited to communicating to her
12 what her father's wishes were and that he was
13 proceeding with the transfer.

14 BY MR. TRAXLER:

15 Q. What did she say to you?

16 A. I mean, beyond -- I believe Ms. Light said
17 that, of course, it was up to her dad.

18 Q. Did you have any other conversations with
19 her?

20 A. Not that I can recall.

21 Q. All right. Did you have any conversations
22 with Hampton Luzak about it?

23 A. I didn't. I did not.

24 Q. All right. And I know you've been into
25 this somewhat before in other instances, but the

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1 document says it was for good and valuable
2 consideration by looking at the assignment of shares
3 on page 669, correct?

4 A. The assignment of shares does, in fact,
5 quote, "Now, therefore, for good and valuable
6 consideration."

7 Q. And there was not any good or valuable
8 consideration; is that correct?

9 MS. KIRK: Object to the form.

10 THE WITNESS: I don't believe that
11 Ms. Light provided -- no. I mean, I guess I don't --
12 I don't think she provided any -- I mean, she didn't
13 pay anything for the shares, if that's what you're
14 asking.

15 BY MR. TRAXLER:

16 Q. All right. Do you know of anything she
17 gave up or anything she gave up in exchange for the
18 shares?

19 MS. KIRK: Object to the form.

20 BY MR. TRAXLER:

21 Q. The bottom line, Mr. Jolley, this was a
22 gift, wasn't it?

23 A. This was a gift.

24 Q. Okay. And so a gift means that there was
25 nothing given in exchange for it, right?

ROA 006658

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1 A. Yes, Mr. Traxler.

2 Q. Okay. And nobody -- you never discussed
3 this or anybody discuss it with Hampton, correct?

4 MS. KIRK: Object to the form.

5 THE WITNESS: It is correct that I
6 didn't discuss this gift with Ms. Luzak.

7 BY MR. TRAXLER:

8 Q. Was the assignment of shares and the stock
9 power form executed on September 11, 2012 as shown?

10 A. That's certainly my recollection.

11 Q. All right. And after -- was Merrill Light
12 there when it was signed?

13 A. I am not sure who was present when
14 Mr. Barringer signed this document -- these
15 documents.

16 Q. And were you still doing legal work for
17 Merrill Light at the time?

18 A. At the time, I represented Ms. Light in
19 her estate planning.

20 Q. Got it. And also Randy Light?

21 A. I'm not sure if I represented Randy Light
22 with respect to estate planning at that time.

23 Q. All right. After the stock power and the
24 assignment of shares were executed by Mr. Barringer
25 and the assignment of shares by Merrill Light as

ROA 006659

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1 trustee, what did you do with them?

2 A. What did I do with these two documents,
3 that is, the stock power and the assignment of
4 shares?

5 Q. Yes.

6 A. I believe they were in the file that I
7 maintained for CFRC.

8 Q. Did you consider them to have been
9 delivered to Merrill Light by doing that?

10 MR. TWOMBLEY: Object to the form of
11 the question. It calls for a legal conclusion.

12 MS. KIRK: Same objection.

13 THE WITNESS: I believe that the --
14 Ms. Light signing as assignee certainly constituted
15 delivery.

16 BY MR. TRAXLER:

17 Q. Okay. And after these documents were
18 signed by Mr. Barringer and Ms. Light on
19 September 11, 2012, who owned that stock?

20 MR. TWOMBLEY: Object to the form.
21 Calls for a legal conclusion.

22 MS. KIRK: Same objection.

23 THE WITNESS: I believe that
24 Mr. Barringer signed all the documents necessary to
25 effectuate the transfer.

ROA 006660

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1 BY MR. TRAXLER:

2 Q. So was Merrill Light the owner of that
3 stock after the documents were executed on
4 September 11?

5 A. At the time, I believe --

6 Q. Go ahead.

7 A. At the time, I believe that we had to --
8 that the document -- the corporate records would have
9 to be reflected. But, yes, the transfer had occurred
10 to Ms. Light.

11 Q. All right. This was done the fiscal year
12 of CFRC is September 30, is it not?

13 A. I don't remember that, Mr. Traxler.

14 Q. Was the date or the timing of this
15 transfer in any way related to the end of the fiscal
16 year of CFRC?

17 A. I don't believe so.

18 Q. All right. So when did, in your opinion,
19 did Merrill Light become the owner of this stock?

20 MR. TWOMBLEY: Object to the form of
21 the question. Calls for a legal conclusion.

22 MS. KIRK: Same objection.

23 MS. PAYLOR: Object to the form.

24 THE WITNESS: I think Mr. Barringer
25 completed his part of the transaction when he signed

ROA 006661

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1 this -- these documents.

2 BY MR. TRAXLER:

3 Q. All right. And if a shareholder's meeting
4 had been held the next day, who would have had the
5 right the next day to vote those shares?

6 MS. PAYLOR: Object to the form.

7 MS. KIRK: Object to the form of the
8 question.

9 THE WITNESS: I think the stock
10 record book would -- would be determinative for that.

11 BY MR. TRAXLER:

12 Q. All right. Do you consider a transfer of
13 stock to be effective upon assignment and delivery or
14 upon recording on the corporate books or at some
15 other time?

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

18 MS. PAYLOR: Object to form.

19 MS. KIRK: Same objection.

20 THE WITNESS: I -- your question is
21 do I believe that the transfer was effective as of
22 the recording of the books or the signing of the
23 transfer documents? Is that what the question is?

24 BY MR. TRAXLER:

25 Q. Or if you are of the opinion it was some

ROA 006662

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1 other date, whatever date you think.

2 A. I believe Mr. Barringer certainly
3 completed his -- his part of the transfer when he
4 signed those documents, and I think it has to be
5 perfected by being recorded on the record -- in the
6 stock record.

7 Q. Well, that didn't occur until 2013,
8 correct?

9 MS. KIRK: Object to form.

10 THE WITNESS: I think the record was
11 updated to reflect 12/31, but the share certificates
12 reflected the January '13 as you indicate.

13 BY MR. TRAXLER:

14 Q. Well, Mr. Barringer also represented to
15 the IRS that it happened on December 31, 2012, didn't
16 he?

17 MS. KIRK: Object to the form.

18 MS. PAYLOR: Object to the form.

19 THE WITNESS: In the -- I'm sorry.

20 BY MR. TRAXLER:

21 Q. (Inaudible) tax returns.

22 A. I would expect that Mr. Barringer did, in
23 fact, on his gift tax return that the transfer was
24 reflected as of 12/31/2012.

25 Q. Okay. Again, your -- is it your -- I want

ROA 006663

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1 to make sure I'm right about this. When do you think
2 that Merrill Light became the owner of those shares
3 of voting stock?

4 MR. TWOMBLEY: Object to the form.

5 MS. KIRK: Same objection.

6 MS. PAYLOR: Object to the form.

7 THE WITNESS: I believe that Merrill
8 Light became the owner once those shares were
9 registered in the stock record.

10 BY MR. TRAXLER:

11 Q. Okay. Up until that point in time, is it
12 your opinion that Mr. Paul Barringer was the owner of
13 those shares?

14 MS. KIRK: Object to the form.

15 MS. PAYLOR: Object to the form.

16 THE WITNESS: I think Mr. Barringer
17 had given up his -- didn't have the ability to take
18 the shares back at the signing -- signed those
19 transfer documents.

20 BY MR. TRAXLER:

21 Q. My question was: Do you think that he was
22 the owner of those shares until they were recorded on
23 the corporate books?

24 MS. KIRK: Object to the form.

25 THE WITNESS: I think with respect to

ROA 006664

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1 the company, he was treated as the owner until it was
2 registered on the books.

3 BY MR. TRAXLER:

4 Q. Okay. But you do -- you do corporate work
5 some, don't you?

6 A. I do corporate work --

7 MS. KIRK: Object to the form.

8 THE WITNESS: I do corporate work
9 some.

10 BY MR. TRAXLER:

11 Q. I'm not asking you what the corporation
12 thought. I am asking you, in your opinion, did the
13 stock transfer to Merrill Light upon the execution of
14 these documents or upon reporting on the corporate
15 records?

16 MS. KIRK: Object to the form.

17 MS. PAYLOR: Object to the form.

18 THE WITNESS: I really viewed this as
19 a completed gift with respect to Mr. Barringer at the
20 time he signed the transfer documents subject to
21 recording on the books.

22 BY MR. TRAXLER:

23 Q. All right. And if Merrill Light had paid
24 him money for the stock on September 11th and had
25 taken the assignment on September 11th, would your

ROA 006665

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1 answer still be the same?

2 MS. KIRK: Object to the form.

3 MS. PAYLOR: Object to the form.

4 MR. TWOMBLEY: Same objection. And I
5 would also note there's already been a whole entire
6 lawsuit about this issue. Not only a deposition, but
7 an entire lawsuit.

8 BY MR. TRAXLER:

9 Q. Okay. What's the answer, Mr. Jolley?

10 A. So Mr. -- you're going to have to repeat
11 the question, Mr. Traxler.

12 Q. Sure. If Merrill Light had paid money to
13 Paul Barringer on September 11, 2012 for that stock
14 as opposed to it being a gift, would that change your
15 answer as to her becoming the owner of the stock upon
16 recording on the corporate records?

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

19 MS. KIRK: Same objection.

20 MS. PAYLOR: Object to form.

21 THE WITNESS: I think --

22 MR. TWOMBLEY: Hypothetical.

23 THE WITNESS: I think to the extent
24 that Ms. Barringer had purchased the shares --

25 MR. TWOMBLEY: Ms. Light.

ROA 006666

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1 THE WITNESS: Sorry. I do -- I think
2 to the extent that Ms. Light had purchased the shares
3 versus having the shares gifted to her, then I think
4 that the transfer would still have been made at the
5 time of the exchange subject to the company's books
6 being updated to reflect the transfer.

7 MR. TRAXLER:

8 Q. Okay. Well, Ms. Kirk has said that you
9 are leaving in about ten minutes, so there's
10 something I really just kind of wanted to ask you out
11 of sequence and then we'll come back. How about go
12 back to tab one, page 109.

13 A. I see J. Jolley Dep 109.

14 Q. Yes, sir. You want to read those e-mails
15 and I have a couple of questions for you.

16 A. I'm sorry. You want me to read this --
17 the -- the e-mail?

18 Q. Yes. The two e-mails that are on there,
19 if you would read them to yourself. Then I'll ask
20 you questions about them.

21 A. Okay.

22 MR. MOLSTER: So, Tom, we previously
23 asserted privilege objections to these e-mails. We
24 understand that Judge Noland didn't agree with us,
25 but we would have a standing objection to questions

ROA 006667

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1 regarding these e-mails. Can we -- may we just
2 continue to have a standing objection as opposed to
3 having to make it every time you ask a question?

4 MR. TRAXLER: Sure. That's fine.

5 MR. SCHRONCE: If we can agree to
6 make that objection standing for everybody.

7 MR. TRAXLER: Yeah. I'll agree to
8 that.

9 BY MR. TRAXLER:

10 Q. All right. Mr. Jolley, have you had a
11 chance to read them?

12 A. I have.

13 Q. Do you remember these e-mails or this
14 e-mail -- e-mails?

15 A. Yeah, yeah. I'm sorry, I do.

16 Q. In the bottom e-mail, the original one
17 that Randy Light asked if PBB, Paul Barringer, could
18 give away \$5 million this year, if he has not
19 already, how about PBB writing a check to Merrill as
20 a gift and CFRC paying PP -- PBB equivalent taking
21 into consideration any taxes or, quote -- excuse me,
22 any taxes, quote, for services over the last,
23 question mark, couple of years, close quote. Read
24 out loud what your response was.

25 A. I said, "Sorry, Randy. I now see what PBB

ROA 006668

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1 would be writing the check for. I expect Travis and
2 I will be on the telephone today or tomorrow and we
3 can discuss. Safe travel to you and MBL."

4 Q. Is what Randy Light is asking legal?

5 MR. MOLSTER: Tom, I'm just --

6 MS. PAYLOR: Object to the form.

7 MR. MOLSTER: I'm going to interpose
8 an objection. You are incomplete on reading Randy's
9 e-mail. You left out the last paragraph about
10 whether or not it makes sense and it was an early
11 morning idea, which I think, in fairness, ought to be
12 included.

13 MR. TRAXLER: How about if you want
14 to state an objection, that's fine.

15 MR. MOLSTER: I'm stating an
16 objection.

17 MR. TRAXLER: That's fine.

18 BY MR. TRAXLER:

19 Q. Okay. Read the last -- read the last
20 paragraph of Randy's e-mail, if you want to.

21 A. The third paragraph of Randy's e-mail
22 says, "Does this make any sense? Had the idea early
23 this morning, so do not hold this against me if it is
24 off the charts."

25 Q. All right. Was it off the chart?

ROA 006669

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1 A. I think it was a silly e-mail, and I
2 think -- so, yes, in that sense, off the charts.
3 Yes.

4 Q. Okay. And as of September 20, 2012, did
5 Paul Barringer still own stock in CFRC?

6 MS. KIRK: Object to the form.

7 THE WITNESS: If I remember
8 correctly, Mr. Barringer had a single share of stock
9 at this point.

10 BY MR. TRAXLER:

11 Q. That's right. Did you understand this to
12 be a distribution on stock or compensation to him?

13 MS. PAYLOR: Object to the form.

14 MS. KIRK: Object to the form.

15 MR. TWOMBLEY: Same objection.

16 THE WITNESS: Mr. Traxler, I -- I
17 don't believe that either myself or Travis Bryant
18 gave this e-mail very much consideration. Both of us
19 dismissed it out of hand.

20 BY MR. TRAXLER:

21 Q. All right. Did you discuss it with
22 Merrill Light?

23 A. No. I don't recall discussing it with
24 Merrill Light.

25 Q. And how was it that Paul Barringer gave

ROA 006670

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1 away \$5 million this is year?

2 MS. KIRK: Object to form.

3 MS. PAYLOR: Object to the form.

4 THE WITNESS: I believe Randy's
5 e-mail refers to the fact that in this year, the
6 exemption against gift and state taxes was \$5
7 million.

8 BY MR. TRAXLER:

9 Q. All right. And when he says how about PPB
10 writing a check to Merrill as a gift, did you
11 understand that to be Merrill Light?

12 A. As I said, we dismissed -- I dismissed
13 this, but, yes, I would have expected that to be the
14 Merrill referred to as being Merrill Light.

15 Q. That's right. Because if it had gone to
16 Merrill Barringer, then it would have been subject to
17 a marital deduction and we wouldn't have to worry
18 about exemption, would we?

19 MS. KIRK: Object to the form.

20 THE WITNESS: It's certainly true
21 that a gift to the wife would be subject to marital
22 deduction.

23 MR. FUHR: I was trying to place an
24 order on line. I can't get it, so I just thought I'd
25 call you.

ROA 006671

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1 MR. TWOMBLEY: I think you're off
2 mute.

3 MR. FUHR: (Inaudible.)

4 MS. PAYLOR: Ed, you need to mute
5 yourself.

6 MR. MOLSTER: Ed, you're checking --
7 BY MR. TRAXLER:

8 Q. At the time this -- Randy wrote this
9 e-mail to you on September 20, 2012, he was on the
10 board of directors, was he not?

11 A. I believe so at that point.

12 Q. All right. Thank you very much. Y'all
13 hold on one second. We've got a blower outside.
14 We're getting somebody to turn it off.

15 MR. MOLSTER: Yeah. We're paying
16 that guy.

17 MR. TWOMBLEY: Add him to the list.

18 MR. TRAXLER: There was a concrete
19 truck out there earlier today. Now we have the
20 landscapers, apparently.

21 MR. TWOMBLEY: You wait until the
22 roofers show up for the next deposition.

23 MR. MOLSTER: I'm trying to help the
24 Greenville economy.

25 THE VIDEOGRAPHER: Can we go off

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1 record real quick?

2 BY MR. TRAXLER:

3 Q. Mr. Jolley, let's go back and pick up
4 where we were. And I'm talking about the
5 September 11 transfer of voting stock of Paul
6 Barringer's revocable trust to Merrill Light's
7 revocable trust. Did you not state in your affidavit
8 given in the -- this litigation that the stock
9 transfer occurred on September 11 as opposed --

10 A. Mr. Traxler, you broke up again.

11 Q. Okay. I'm sorry. Let me get you to go to
12 tab six, page 286.

13 A. I'm sorry. I'm on page 286.

14 Q. Okay. Read -- this is your affidavit that
15 you signed on July 16, 2018, correct?

16 A. It is my affidavit, and I did sign it on
17 July 16, 2018.

18 Q. Okay. Did you not state in paragraph 11
19 that the stock transfer occurred to Merrill Light on
20 September 11, 2012?

21 A. No. 11 does in fact say that the
22 September 20, 2012 e-mail did not relate to the
23 September 11, 2012 transfer of the stock from Paul
24 Barringer to Merrill Light which had occurred on
25 September 11, 2012.

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1 Q. The expected transfer was September 11,
2 2012, not when it was recorded on the corporate
3 books, correct?

4 A. That is correct.

5 MS. KIRK: Object to the form.

6 BY MR. TRAXLER:

7 Q. What was your involvement with respect to
8 gift tax return? Did you advise Mr. Barringer he
9 needed to do one?

10 MS. PAYLOR: Object to the form.

11 MS. KIRK: Object to the form. And,
12 Tom -- Tom, are you close to wrapping up or are we
13 going to be breaking -- or ending it anyway?

14 MR. TRAXLER: I've got -- I've got
15 several more hours, Ariail.

16 MS. KIRK: Okay.

17 BY MR. TRAXLER:

18 Q. So y'all didn't need to advise
19 Mr. Barringer that he needed to file a gift tax
20 return?

21 A. I don't recall whether I specifically
22 advised Mr. Barringer whether he had to file a gift
23 tax return. Those...

24 MS. KIRK: All right. Mr. Traxler, I
25 think we're going to go ahead and stop the

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1 deposition. He's been, you know, working for y'all
2 essentially since, I don't know, 5:30 or 6:00 a.m.
3 this morning and this is two complete days.

4 MR. TRAXLER: Well, we disagree with
5 that. But if you're going to have him leave, we'll
6 just have to take it with the court, I reckon.

7 MS. KIRK: What part of that do you
8 disagree with?

9 MR. TRAXLER: Be quiet. Be quiet.
10 All right. You leaving?

11 MS. KIRK: Can you tell us --

12 MR. MOLSTER: And just to -- Tom,
13 just --

14 MS. KIRK: -- what part you disagree
15 with?

16 MR. MOLSTER: -- clarify we reserve
17 all of our rights with respect to redirect of
18 Mr. Jolley, not waiving any of my rights.

19 MR. TRAXLER: Well, I understand
20 that. I'm going to consider this deposition to be
21 over. And I assume when I get through, you will have
22 your side. And then when you get through, I'll see
23 if I have any more.

24 MS. KIRK: I mean, in all
25 seriousness, Bill -- I mean, not Bill, Tom, I mean,

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1 do you -- do you think you need, like, another day?

2 MR. TRAXLER: I don't think I'll need
3 another day.

4 MS. KIRK: Well, you said that last
5 time and that clearly wasn't the case.

6 MR. TRAXLER: I would like to think
7 that I could get it done in half a day. But, again,
8 we did a whole lot better on privilege this
9 afternoon. Y'all let me zero in on things that were
10 finely tuned. Your privilege objections, I
11 understand that. It was a lot better this afternoon.
12 My best guess here -- I hate to do this because
13 everybody seems to hold you to it as if there's a
14 covenant with God, I think probably a half day is
15 sufficient.

16 MR. TWOMBLEY: Another half a day?

17 MR. TRAXLER: Yeah.

18 MR. TWOMBLEY: I mean, I just think,
19 you know -- I mean, it's Ariail's call. I mean,
20 that -- that...

21 MS. KIRK: Let me ask you a question,
22 Tom. What is your position on -- I know before we
23 had agreed. Do you want me to move for a protective
24 order on privilege or just on the, you know,
25 deposition exceeding the reasonable amount of time

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1 and effort I think it should take?

2 MR. TRAXLER: I'm not sure, Ariail, I
3 understood your question. Would you mind repeating
4 it?

5 MR. TWOMBLEY: I think the question
6 is, and I have the same question, is do you want us
7 to go ahead and immediately file a motion for a
8 protective order in accordance with the rules on the
9 instructions not to answer. Or, in the alternative,
10 what we've done in the past is that Bill Hogan agreed
11 to hold that deadline in abeyance, review the
12 transcript, and then we would try to see, you know --
13 he could let us know question on page, you know, 6,
14 7, 9, and 10, we want answers to those. You've got
15 to go ahead and file the motion. So --

16 MS. KIRK: I just want to be clear I
17 know what we need to file with regard to.

18 MR. TRAXLER: Yeah. Let me talk to
19 my side.

20 MR. TWOMBLEY: That's fine. We don't
21 have any problem with that. We just -- I don't want
22 to be caught in a five-day rule. I mean,
23 otherwise --

24 MR. TRAXLER: No, no, no, no. I'm
25 not going to -- get y'all to do something like that.

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1 MS. KIRK: Can we take a break so
2 that we can get that on the record so we know exactly
3 what we need to do?

4 MR. TRAXLER: Yeah. I've got -- I'm
5 trying to determine whether we ought to go ahead and
6 take that up before the judge and then come back and
7 wrap it all up under the rulings or how we handle
8 that. I just want to consult with my side on the
9 most efficient way to do that.

10 MS. KIRK: Yeah. So I was just
11 saying can we take a break, go off the record, and
12 then come back and you can tell us what you want.

13 MR. TRAXLER: I can tell you right
14 now that until I tell you otherwise, and I don't
15 think time and five days or whatever it is, does not
16 start to run until I let you know one way or the
17 other. Does that make sense?

18 MS. KIRK: That's fine.

19 MR. TWOMBLEY: That's fine with me.

20 MR. TRAXLER: I don't want anybody to
21 be caught short or -- spite what y'all might think of
22 me, I don't use the rules of civil procedure as
23 swords.

24 MR. MOLSTER: We don't think you do
25 that, Tom.

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1 MR. TWOMBLEY: We're not worried
2 about you.

3 MR. TRAXLER: Hey, you've already
4 told me -- you already heard -- I can't listen to
5 everybody at one time.

6 MS. KIRK: Tom, if you have another
7 proposal for how to work this out, I don't know. I
8 just -- I just don't think it's fair or reasonable or
9 in the spirit of the rules to keep, you know, an
10 attorney in the case that can only testify to limited
11 things, you know, three days in -- not in a row, but
12 three days of deposition or even more.

13 MR. TRAXLER: What I will do is add
14 up again the time that I spent literally being able
15 to ask questions.

16 MS. KIRK: Tom, I get that, but he
17 still has to sit here no matter whether y'all are
18 bickering or if you're asking a question. I mean,
19 that doesn't change the amount of --

20 MR. TRAXLER: I was pleading with you
21 at lunchtime to help me find a solution around y'all
22 having to confer with him on every question.

23 MR. GILREATH: But you're sitting in
24 here complaining about something that we went into
25 that Ashley went into and apparently under the

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1 impression that's binding on us. That's just --

2 MS. KIRK: I don't think it's
3 binding. But I do think if he's been asked the
4 question, he's answered it. I don't know why it
5 matters who asked it.

6 MR. GILREATH: It makes a lot of
7 difference to us, ma'am.

8 MR. TRAXLER: Let's -- let's -- let
9 me talk outside --

10 MS. KIRK: I will completely concede
11 that I don't remember exactly, you know, word for
12 word. I couldn't recite the transcript to you
13 sitting here. I mean, I fully admit that.

14 MR. TRAXLER: In all fairness, I'm
15 trying to be objective about it, Ashley went into it
16 a lot on direct examination talking about how the
17 documents came to light. I didn't go in -- if I did,
18 it was not but a question or two. So I was not
19 reploting old ground. Just admit, Ariail, go back
20 and look at the transcript.

21 MS. KIRK: I'll be happy to.

22 MR. TRAXLER: I understand what the
23 confusion is, but right now we've got to figure out
24 the best way forward. Let me talk to my side and I
25 will let you know by tomorrow what I think is the

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1 best way to proceed.

2 MR. MACLOSKIE: Tom, let's talk right
3 now.

4 MR. TRAXLER: You want to do it right
5 now?

6 MR. MACLOSKIE: Yeah. Let's talk
7 right now. Don't -- don't -- nothing about tomorrow.
8 Let's talk right now.

9 MR. TRAXLER: Okay. All right.
10 We'll go off. I'll be back in a few minutes.

11 MS. KIRK: Okay.

12 THE VIDEOGRAPHER: We are off the
13 record. It is 4:07 p.m.

14 (Off the record)

15 THE VIDEOGRAPHER: We are back on
16 record. It is 4:17 p.m.

17 MR. TRAXLER: Chip, are we back on
18 the record?

19 MR. MOLSTER: Yes, sir.

20 MR. TRAXLER: Hold on a second. I've
21 got my sound cut off again. My -- my bad. Hold on.
22 Okay. Now I can hear you. Thank y'all for bearing
23 with me on that. I'm trying to figure out going
24 forward. Chip, without holding you to it, do you
25 have any estimate as to how much time of redirect you

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1 would need, you and Ashley and whoever else?

2 MR. MOLSTER: Alice really runs this
3 show, Tom. I just carry her bag. But I think we
4 would be at least an hour. We'd probably be an hour.

5 MS. PAYLOR: An hour. Yeah. An hour
6 or less.

7 MR. TRAXLER: How about you, Ashley?
8 You got any sense of it?

9 MR. TWOMBLEY: I mean, I was thinking
10 my time would be combined with Alice's.

11 MR. TRAXLER: Okay.

12 MR. MOLSTER: So maybe we need two
13 hours.

14 MR. TWOMBLEY: I don't think we need
15 two hours. My position is we would jointly need an
16 hour, but --

17 MR. TRAXLER: Okay.

18 MR. TWOMBLEY: I mean, like you say,
19 I'm not signing it in stone, I mean, particularly
20 with direct haven't -- or the cross hasn't ended.

21 MR. TRAXLER: And like I said this
22 afternoon, I thought it went better with privileged
23 being a little bit better defined. Ariail, my
24 thought is that I would like to go ahead and set it
25 -- I would think that I could get it done in a half a

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1 day.

2 MS. WALTERS: Huh-uh. No.

3 MR. TRAXLER: No? No?

4 MS. WALTERS: No.

5 MR. TRAXLER: Okay.

6 MS. WALTERS: No.

7 MR. TRAXLER: Who is that talking?

8 MR. GILREATH: Who is talking?

9 MS. KIRK: I think that -- I don't
10 know who was talking. But, I mean --

11 MR. TRAXLER: That was Lee.

12 MS. KIRK: Okay.

13 MS. WALTERS: Sorry. My bad. I was
14 redirecting the dog.

15 MR. MOLSTER: You were talking to the
16 other dogs?

17 MR. TRAXLER: You got Gilreath lying
18 on the floor. Can he get up now?

19 MS. PAYLOR: My dog is asleep over
20 here. I don't have to redirect him.

21 MR. TRAXLER: Ariail, my thought is
22 to reconvene, and I promise you I will do everything
23 I can to get it in a half a day, and I think that's
24 realistic, I let them do their redirect or whatever
25 they've got to do. I would like to go ahead and do

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1 that. And your time to move for a protective order
2 on the privileged issues would not start until the
3 deposition is over with and then only when -- once
4 you get the transcript.

5 MR. TWOMBLEY: Well, I think we're
6 going to -- the time to file the motion will be for
7 the -- for us and --

8 MR. TRAXLER: Yeah, yeah.

9 MS. KIRK: Well, one thing to me --

10 MR. TRAXLER: But Ariail --

11 MS. KIRK: It makes sense to have
12 everything heard at the same -- I didn't -- I just
13 thought that maybe from a, you know, kind of judicial
14 economy standpoint, it makes sense to have everything
15 heard at the same time.

16 MR. TRAXLER: Yeah. My thought is
17 whenever we come back after his ruling on the
18 privilege issues, I can't imagine we don't get to ask
19 some of the questions. It seems kind of endless. I
20 was just trying to consolidate it.

21 MS. KIRK: Yeah. That's my concern,
22 that it sounds endless. That's why I just didn't
23 know if it would be better to have both issues before
24 the judge in a single hearing. Obviously from our
25 perspective, a single hearing is preferable to

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1 multiple.

2 MR. TRAXLER: Well, can you go ahead
3 and let me have about another half a day and then let
4 Ashley and Alice and Chip know -- do whatever they
5 need to do? Let's hold off on raising the privilege
6 issue before the judge until that is done.

7 MS. KIRK: I don't know how to do
8 that, I mean, to protect my client. I think that we
9 need the guidance from the court, and I also think
10 that, you know, the amount of time he has had away
11 from his job and everything is just getting
12 completely excessive. And I think your point that
13 things just seem endless is exactly how I feel. I
14 would 100 percent agree with you on that.

15 MR. TWOMBLEY: This is Ashley. I
16 mean, I would like to review the transcript and, I
17 mean, I think y'all might benefit from doing that as
18 well. But --

19 MS. KIRK: And that's probably true
20 of me as well if I'm having trouble remembering who
21 asked what.

22 MR. TWOMBLEY: And it's 4:30 and, you
23 know -- anyway. I just think that's -- that's what
24 we ought to do and, I mean, I think Ariail's position
25 was she was going to give you -- give us a half day

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1 today.

2 MS. KIRK: Last time. I've already
3 gone over what I said.

4 MR. TWOMBLEY: We started at 9:00 or
5 9:15 or whatever the time says and, you know, now the
6 time is 4:22. And I know you've got all these, so...

7 MS. KIRK: I just feel like the
8 efficient thing to do is to go ahead and get some
9 guidance.

10 MR. TRAXLER: Well, what I would like
11 to do is get back together. If you're telling me no,
12 then file your motion.

13 MS. KIRK: Okay. I'll do that.

14 MR. TRAXLER: I will agree that the
15 time period for filing for a protective order with
16 regard to the privilege starts to run when the
17 transcript is received.

18 MS. KIRK: Okay.

19 MR. TRAXLER: It's really not fair to
20 put everybody in a deadline today. Let's wait until
21 the transcript comes in. If you're telling me no
22 more time, then we'll just take it up with the court.

23 MS. KIRK: Okay.

24 MR. TRAXLER: We're ready to go. If
25 he says no, then that's it, I guess.

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1 MS. KIRK: Okay. Thank you. We
2 will -- we will go to the court.

3 MR. TRAXLER: Hold on a second. I've
4 got people chirping at me in here. I'll be right
5 back.

6 MR. MOLSTER: I want to chirp at you
7 too before we get off the record.

8 MR. TRAXLER: All right. Ariail, I
9 guess I need -- what I need from you is a definitive
10 statement that you're shutting this deposition down
11 and not bringing him back. And if so, the basis for
12 that.

13 MS. KIRK: What? I'm sorry. I can't
14 hear you.

15 MR. TRAXLER: Okay. Are you shutting
16 the deposition down and refusing to allow us to come
17 back and ask him questions? And if so, the basis for
18 that?

19 MS. KIRK: Yes. I'm going to move
20 under Rule 30(D) to terminate the examination because
21 we've done it for two complete days. I feel like
22 that it's, you know, become unreasonable and
23 oppressive to the deponent, and I will be moving for
24 a protective order regarding the same.

25 MR. TRAXLER: Okay. Fine. Thank

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1 you. Thank you very much. I guess we have no
2 witness to ask questions of, so --

3 MR. MOLSTER: May I ask one question,
4 which is right now the judge wanted to know if we
5 could meet for motions on April 28th or 29th, and
6 we've got conflicts on the 29th.

7 MR. TRAXLER: Hey, let's go -- let's
8 go off the record.

9 MS. PAYLOR: They -- they sent --
10 they sent an e-mail while we were in here, Chip.

11 MR. TWOMBLEY: Guys, I'm going to get
12 the court reporter to go off. Alice?

13 MS. KIRK: Hang on one second, y'all.

14 MR. TWOMBLEY: The court reporter is
15 going to go off the record --

16 MR. MOLSTER: That's fine.

17 MR. TWOMBLEY: -- and shutting down
18 all the equipment.

19 MR. MOLSTER: I didn't need that
20 conversation on the record. I was just trying to
21 sort out my --

22 THE VIDEOGRAPHER: This ends today's
23 deposition of John Jolley. The time is 4:25 p.m. We
24 are now off the record.

25 (The witness, after having been

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1 advised of his right to read and sign this
2 transcript, does not waive that right.)
3 (The deposition concluded at 4:25 p.m.)
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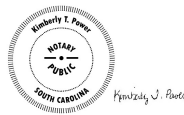
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CERTIFICATE OF REPORTER

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 26th day of April,
2021, at Lexington, Lexington County, South Carolina.



Kimberly T. Power, Court Reporter
My Commission Expires: 4/24/2025

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I N D E X

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JOHN JOLLEY, ESQUIRE	6	21
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REQUESTED INFORMATION INDEX
(No information requested.)

E X H I B I T S
(No exhibits.)

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1 Ariail B. Kirk c/o John Jolley

2 akirk@jolleylawgroup.com

3 5/3/2021

4 RE: Luzak, Hampton v. Light, Merrill B., Et Al.

5 4/21/2021, John Jolley , Esq. (#4506758)

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

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Luzak, Hampton v. Light, Merrill B., Et Al.

John Jolley , Esq. (#4506758)

E R R A T A S H E E T

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John Jolley , Esq. Date

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Luzak, Hampton v. Light, Merrill B., Et Al.

John Jolley , Esq. (#4506758)

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

SUBSCRIBED AND SWORN TO BEFORE ME THIS
____ DAY OF _____, 20____.

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[28 - advice]

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