

33. Mr. Heyward had no control over giving money away. (Tr. p. 67, lines 23 – 25). When she talked to him about it, Mr. Heyward seemed intoxicated or confused. Mr. Heyward was not coherent enough to be in control of such a large amount of money. (Tr. p. 68, lines 1 – 4). He did not understand what Ms. Smith-Irvin was saying when she was talking to him. (Tr. p. 68, lines 5 – 7). He was erratic in the way he was acting. (Tr. p. 68, lines 7 – 10). Ms. Smith-Irvin sensed that there may have been some type of dementia. (Tr. p. 68, lines 11 – 12).

34. Ms. Smith-Irvin described the allegations of Mr. Heyward “throwing money away” as “founded.” (Tr. p. 69, lines 14 – 25). She noted the situation in her file as follows: (Tr. p. 70, lines 2 – 9).

Mr. Heyward is seemingly being exploited by every person that calls himself his friend. Mr. Heyward has lent over a million dollars out to so called friends who have not paid him back. The friends seem to think it is acceptable that they don't pay Mr. Heyward back. In one instance an individual borrowed five hundred thousand (\$500,000) dollars. He stated he was to repay the loan but he can't, another over one hundred thousand (\$100,000), and another four hundred thousand (\$400,000).

35. Ms. Smith-Irvin had concerns about Mr. Heyward's abilities to make decisions regarding giving money away. (Tr. p. 78, lines 14 – 18). She felt that DSS needed to obtain a court order to get a psychological evaluation of Mr. Heyward, but the DSS attorneys said that the case did not meet the necessary criteria to obtain an order from the Probate Court. (Tr. p. 70, lines 13 – 23).

36. Ms. Smith-Irvin testified that because a DSS client with dementia is not the best source of information, DSS focuses on collateral sources of information, such as family and doctors. (Tr. p. 71, lines 11 – 18).

37. Based on Ms. Smith-Irvin's interaction with Mr. Heyward, he was in the early stages dementia. (Tr. p. 72, lines 10 – 16).

38. During Ms. Smith-Irvin's interview with Mr. Heyward, he was able to answer questions but seemed a little distant at times. (Tr. p. 79, line 24 – p. 80, line 13). She detected that at the time of the interview that Mr. Heyward had been drinking, but she did not note alcohol use in her report. (Tr. p. 80, line 14 – p. 81, line 8). Although Ms. Smith-Irvin did not record it in her notes, at the time of the interview, Mr. Heyward was confused and incoherent. (Tr. p. 81, lines 13 – 24).

39. Mr. Heyward told Ms. Smith-Irvin that he purchased thirty to forty cars per year. (Tr. p. 82, lines 6 – 9).

40. Ms. Smith-Irvin received a letter from Mr. Heyward's treating physician, Dr. Harmon Patrick, dated August 25, 1999, stating:

I have not seen Mr. Heyward since January 1999 and have no real knowledge about his current medical state. But given his personality and social habits, I certainly would not be surprised if he has become less than rational as far as the decisions he might be making. Mr. Heyward might also just be doing what he feels is appropriate, and even though this might not be reasonable to the majority of people, I certainly could not say that he was not making rational decisions from his standpoint.

I would think if there is a significant concern about how Mr. Heyward is handling his money that a competency hearing would be in order.

(Tr. p. 84, lines 2 – 10; p. 97, lines 13 - 16).

41. Ms. Smith-Irvin testified that at the time of her visit, Mr. Heyward had a housekeeper, Ginger Kern, and that the living areas in the house were clean and fairly well organized but the back rooms were cluttered and the sheets on the bed were not clean. (Tr. p. 86, lines 10 – 14). She testified that when she visited Mr. Heyward, Ms. Kern pulled Ms. Smith-Irvin aside to

discuss Mr. Heyward's situation. Ms. Smith-Irvin read the allegations submitted to DSS because she wanted Ms. Kern to be aware of the potential criminal penalties for exploiting someone. (Tr. p. 95, lines 13 – 18).

42. Ms. Smith-Irvin talked to attorney John McLeod who said that he would attempt to prove that Mr. Heyward was competent if there was a competency hearing. (Tr. p. 87, lines 13 – 17). She talked to Mr. Heyward's sister-in-law, Florida Heyward, who said that she had spoken to Mr. Heyward the week before and that he "seemed fine." (Tr. p. 87, line 25 – p. 88, line 3).
43. The first DSS investigation, in 1999, conducted by Ms. Smith-Irvin, was "substantiated" for exploitation. The second DSS investigation, in 2001, conducted by Mr. Desmond Rice, was "substantiated" for possible self-neglect but "unsubstantiated" for exploitation because, according to Ms. Smith-Irvin, Mr. Rice could not get all of the information he needed. (Tr. p. 88, line 24 – p. 90, line 5).
44. In the 1999 investigation, Ms. Smith-Irvin's largest concern was that Mr. Heyward was not always rational and that, "A millionaire could go broke spending money the way he did." (Tr. p. 93, lines 2 – 5). She was concerned that Mr. Heyward would not have funds to provide for his own care. (Tr. p. 93, lines 2 – 8).
45. In the 2001 investigation, Ms. Smith-Irvin testified that she had concerns about Mr. Heyward, that Mr. Rice would do what he could to bring it to the surface, but, without the needed support from DSS, there was only so much that could be done. (Tr. p. 93, lines 18 – 22).

Former Richland County Sheriff's Department Investigator, Howard Foy

46. Mr. Howard Foy was unavailable for trial, and his testimony was presented by deposition. (Tr. p. 99, lines 5 - 12). Plaintiff's counsel represented that Mr. Foy lived in Arkansas was unable to obtain connecting flights due to a snow storm. ESB's counsel stated that for purposes of the record, the representation that Mr. Foy was unavailable for trial was accepted. (Tr. p. 99, lines 5 – 11).
47. In 2001, Mr. Foy conducted an investigation as a criminal investigator involving Mr. Heyward for the Richland County, South Carolina, Sheriff's Department. (Tr. p. 102, line 24 – p. 104, line 2). On September 19, 2001, Mr. Foy visited Mr. Heyward's home with a uniformed deputy. (Tr. p. 105, lines 20 – 25).
48. At the time of the investigation, Mr. Foy had worked for the Richland County Sheriff's Department for three years. (Tr. p. 103, lines 2 – 6). Previously he served for twelve years in the Army in its Criminal Investigation Division and six years as a police officer in Arkansas. (Tr. p. 103, lines 7 - 11).
49. The following portion of Mr. Foy's investigation report regarding his September 19, 2001, visit to Mr. George Heyward's home was published in the record: (Tr. p. 100, line 3 – p. 102, line 16); Exhibit 34, starting at p. 100).

Investigating officer and Deputy Southern and Lieutenant Byrd with Sizemore Security, Spring Valley Patrol, went to George's home. Upon arrival I noticed a lady coming out of the front door. I asked her if she was a relative, and she stated, no, that here name was Beth Dyer, the wife of Dick Dyer, the owners of Dick Dyer Toyota. Investigating officer advised her that we were there concerned about George's welfare. She stated that George was ill and had mental deterioration problems. The investigating officer asked if theirs was primarily a business relationship. She answered in the affirmative. She answered that her

68. From the outside, the house was gorgeous. (Tr. p. 126, line 21). It was a big house. (Tr. p. 126, line 22). It had a canal, or a creek, that ran around the house. (Tr. p. 126, line 23). There were beer cans floating in the creek, and trash was all over the house. (Tr. p. 126, lines 23 – 25). Mr. Lewis testified, “When you walked in the house, the house had a pretty distinct nasty smell to it of poop, because the bathrooms were - - the bathrooms were disgusting. There was poop stopped up in the toilets, water was overflowing out of the toilets, tissue, trash, beer cans was just laying around the house. People would smoke cigarettes and throw it on the floor. It was just a nasty environment.” (Tr. p. 126, line 25 – p. 127, line 6). This was generally the condition of the house each time Mr. Lewis was there. (Tr. p. 127, lines 7 – 9). Cigarette burns were on the furniture, and trash and dirty clothes were on top of the furniture. (Tr. p. 129, lines 17 – 20).
69. Mr. Lewis saw condoms out of the package floating in the toilet, on the bathroom floor, and the wrappers were lying around the house. (Tr. p. 127, lines 17 – 21).
70. There was mostly beer and liquor in the refrigerator but no food. (Tr. p. 128, lines 3 – 8).
71. When Mr. Heyward was in Mr. Lewis’ presence, he would walk very slowly with his head down. He would walk in circles and mumble to himself, and then he would go back to his room for the rest of the night. (Tr. p. 128, line 23 – p. 128, line 1). Mr. Lewis heard him grunt, make noise, and mumble. (Tr. p. 129, lines 2 – 3).

Attorney, John D. McLeod

72. At the time of trial, John D. McLeod was an attorney admitted to the South Carolina Bar and engaged in the private practice of law.² (Tr. p. 132, lines 2 – 6). Mr. McLeod had known Mr. Heyward since the late 1980s or early 1990s. (Tr. p. 132, lines 9 – 11).
73. Mr. McLeod had a meeting with Mr. Heyward in the Winter of 2001. At that time, Mr. Heyward was disheveled, his hair was long and matted, he had a growth of beard, and his clothes were dirty. He had a detectable odor from across Mr. McLeod’s desk. Mr. McLeod testified, “He was just filthy really.” (Tr. p. 132, lines 15 – 19).
74. Mr. McLeod could not remember the purpose of his meeting with Mr. Heyward on that occasion. He did remember that Mr. Heyward had just gotten out of jail for a driving offense. As best he could recall, it was sometime shortly after November 1, 2001, during cold weather but before Mr. Heyward entered Baptist Hospital. (Tr. p. 134, lines 8 – 18). Mr. McLeod had concerns about Mr. Heyward’s ability to talk about business. Mr. McLeod felt, “He had deeply gone downhill from the last time previous I had seen him. And I said to myself that it won’t be long before George will have to be put up somewhere.” (Tr. p. 133, lines 9 – 13). Later Mr. McLeod heard in 2002 that Mr. Heyward was in the psychiatric unit at Baptist Medical Center. (Tr. p. 133, lines 14 – 18). During the meeting, Mr. McLeod was concerned about Mr. Heyward’s mental situation. (Tr. p. 134, lines 19 – 24).
75. Mr. Heyward had come to Mr. McLeod’s office for a specific purpose, but Mr. McLeod could not recall the purpose. Mr. Heyward would stop into his office from time to time on sometimes trivial matters. (Tr. p. 132, lines 21 – 25). He testified that Mr. Heyward was eccentric and that he drove a lot of different cars. (Tr. p. 137, lines 3 – 6).

² Shortly after the trial, Mr. McLeod was elected to serve as an Administrative Law Judge.

76. At the time of the meeting, Mr. Heyward had just gotten out of jail for a driving offense for charges levied against him on November 1, 2001. (Tr. p. 134, lines 2 – 11). Trooper Dennis Reeder testified earlier in the trial that these charges included Driving Under Suspension Third, and that Mr. Heyward no longer had a driver's license. (Tr. p. 56, lines 10 – 21). Nonetheless, Mr. McLeod testified that Mr. Heyward probably drove himself back to Columbia, South Carolina, after the meeting in Winnsboro, South Carolina, or at least was driving when he left Mr. McLeod's office. (Tr. p. 136, line 18 – 25).

House Visitor, Avery Russell

77. Avery Russell attended three or four parties at Mr. Heyward's house in August and September of 2001. (Tr. p. 139, lines 7 – 16). Most of the time, he attended the parties with Chris Lewis and Ian Desportes. (Tr. p. 139, lines 12 – 13). The parties started in the evening around 10:30 or 11:00. (Tr. p. 139, lines 17 – 19). Mr. Russell left the parties at 2:30 or 3:00 in the morning, but they were still going on. (Tr. p. 139, line 20 – p. 140, line 1).

78. Mr. Russell described the house as trashed with beer cans everywhere, garbage overflowing, people all over smoking cigarettes, and not in good condition. (Tr. p. 140, lines 2 – 5). Mr. Russell observed marijuana, cocaine, and alcohol use. (Tr. p. 140, lines 6 – 11). There were approximately fifteen to twenty people at the parties. (Tr. p. 140, lines 12 – 13). The age group was generally from seventeen to twenty-three. (Tr. p. 140, lines 14 – 16). There was no one else in Mr. Heyward's age group attending the parties. (Tr. p. 140, lines 17 – 19).

79. Mr. Russell spoke to Mr. Heyward, but what Mr. Heyward said to Mr. Russell was "kind of incoherent." (Tr. p. 140, lines 23 – 25). Mr. Heyward was walking around slowly. One time he was wearing a robe. He had his head down, and "looked like somebody – like he had some problems." (Tr. p. 141, lines 2 – 5). Mr. Heyward never attempted to assert his authority over the house. (Tr. p. 141, lines 11 – 13). Mr. Russell saw Mr. Heyward for a matter of minutes at the most. He assumed that the rest of the time he was in his bedroom. (Tr. p. 141, lines 16 – 22).

80. Mr. Russell testified that there might have been a pack of baloney or some eggs in the refrigerator, but mostly there was alcohol. (Tr. p. 142, lines 4 – 11). He did not specifically remember seeing any food. (Tr. p. 142, lines 12 – 13). The furniture was dirty with cigarette ashes and burns in it. (Tr. p. 142, lines 14 – 16). The bathrooms were very disgusting with toilets overflowing, water everywhere, "really nasty." (Tr. p. 142, lines 20 – 22).

81. Mr. Heyward did not appear oriented and was not very alert at all. (Tr. p. 142, line 23 – p. 143, line 1).

82. There were approximately an equal number of males and females at the parties. (Tr. p. 143, lines 2 – 7). Mr. Russell saw used condoms in the toilet. (Tr. p. 143, lines 14 – 17).

83. Mr. Heyward never took any action to take care of the property. (Tr. p. 143, line 23 – p. 144, line 1). The house had a distinct smell of garbage and smoke that had accumulated over time. (Tr. p. 144, lines 4 – 5). Mr. Russell saw dirty dishes in the sink which had been there so long that mold had started to accumulate on them. (Tr. p. 145, lines 14 – 20).

Neuropsychologist L. Randolph Waid, Ph.D.

84. L. Randolph Waid, Ph.D. testified that he was a licensed in clinical psychology. He served as an expert for Mr. Heyward's Conservator. He was certified by the American Board of Forensic Examiners (Tr. p. 148, lines 1 – 6) and had received a bachelor of arts in psychology magna cum laude from Temple University and an M.A. in general psychology from the University of Richmond. (Tr. p. 148, lines 1 – 12). Dr. Waid did an internship in clinical psychology at the V.A. Medical Center and the University of South Carolina and obtained a Ph.D. in clinical psychology from the University of North Texas State. (Tr. p. 148, lines 13 – 18).
85. At the time of trial, Dr. Waid was clinical associate professor in the Departments of Psychiatry and Neurology at the Medical University of South Carolina and an adjunct professor at the Citadel. (Tr. p. 149, lines 8 – 16). He was also in an independent practice in clinical, forensic, and neuropsychological services. (Tr. p. 149, line 14 – 17). Dr. Waid was a neuropsychology consultant at Strand Regional Specialty Associates in Myrtle Beach, South Carolina, and with the Charleston Pain and Rehabilitation Center in Charleston, South Carolina. (Tr. p. 149, lines 20 – 25).
86. Dr. Waid was a member of the American Psychological Association's divisions of Clinical Psychology, Clinical Neuropsychology, American Psychology Law Society, and Addictive Behavior. (Tr. p. 151, lines 5 – 16). He was also a member of the Southeastern Psychological Association, Research Society on Alcoholism, National Academy of Neuropsychology, and the International Neuropsychology Society. (Tr. p. 151, line 17 – p. 152, line 1). He served on the Geriatric Improvement Team at the Institute of Psychiatry, Medical University of South Carolina. (Tr. p. 152, lines 20 – 23).
87. Dr. Waid served as a neuropsychologist. Neuropsychology is a subset of clinical psychology. He had expertise in research, assessment, and treatment of individuals suffering from neuropathology across a life span. He had experience working with Alzheimer's, Vascular Dementias, Huntington's, Multiple Sclerosis, head injury, and attention deficit disorder. Dr. Waid had been supervising and teaching in this area for about twenty years. (Tr. p. 153, lines 1 – 9).
88. ESB stipulated that Dr. Waid was an expert in neuropsychology. (Tr. p. 153, line 25 – p. 154, line 3).
89. Dr. Waid did a report of a neuropsychological evaluation and consultation which he conducted on Mr. Heyward. It involved evaluating Mr. Heyward and reviewing records. (Tr. p. 154, lines 10 – 17). Dr. Waid reviewed the records of Dr. Hamon Patrick, the Department of Social Services, Dr. Patrick Butterfield, Palmetto Baptist Hospital, Dr. John Taylor, and Dr. Kevin Krebs. (Tr. p. 154, line 18 – p. 155, line 8). He also conducted an in-person evaluation of Mr. Heyward. (Tr. p. 155, lines 9 – 12).
90. The records raised concerns for Dr. Waid as to whether Mr. Heyward was acting in a rational and competent way with regard to financial transactions. There were records dating back to 1998 in terms of concerns about Mr. Heyward's rationality and competence to make the financial transactions. (Tr. p. 155, lines 16 – 24). Transactions that Mr. Heyward was making were potentially profitable to other people. (Tr. p. 156, lines 1 – 3).
91. There was recitation in the records of vocal tics. This type of behavior can be part of Tourette's, but it can also manifest during a dementing illness, so dating the history of that behavior is important to knowing its causal factor. (Tr. p. 156, lines 14 – 18).

92. There were concerns in the records by the Department of Social Services about Mr. Heyward's ability to reason and think logically, his judgment, his alcohol consumption, and his behavior in buying cars and giving them to people. (Tr. p. 156, line 21 -- p. 157, line 6).
93. There was a letter from Mr. Heyward's accountant, Mr. Scheffield, who had handled Mr. Heyward's account since 1998, expressing concern about Mr. Heyward's confusion and cognitive impairment. (Tr. p. 157, lines 9 -- 16).
94. Baptist Medical Center did multiple evaluations during in-patient stays. The initial one was May 9, 2002, because of bizarre behavior that family members were reporting. (Tr. p. 157, lines 19 -- 22). The initial workup at Baptist generated the idea that there was a probable dementia or loss of intellectual abilities. (Tr. p. 157, lines 22 -- 24). Mr. Heyward was released but returned to Baptist on May 27, 2002. At that time, he returned because he had been picked up by the Richland County Sheriff's Department for erratic driving. (Tr. p. 157, line 25 -- p. 158, line 4). That led to a rather extended stay at Baptist Hospital where Mr. Heyward underwent very thorough evaluations, including an evaluation by Dr. Taylor from a neuropsychological point of view, resulting in a diagnosis of dementia, or loss of intellectual abilities. (Tr. p. 158, lines 4 -- 8).
95. Dr. Waid testified that Mr. Heyward's pattern of impairments was most consistent with diffuse, broad-based impairments. The physicians involved thought the pattern, presentation, and course of the dementia most consistent with an Alzheimer's type process. (Tr. p. 158, lines 10 -- 14).
96. Mr. Heyward's physicians tried to treat any reversible causes. They gave him antidepressants and gave him time to clear from the delirium. They ceased his substance usage. Continued evaluation, including neuropsychological testing, indicated that there was no reversal of the cognitive impairment. The impairments were broad-based and diffuse, including memory and other capacities. Therefore, other diagnoses were ruled out, with the final one being a senile dementia of the Alzheimer's type. (Tr. p. 158, lines 17 -- 25).
97. Mr. Heyward stayed at Baptist Medical Center during the Probate Court process appointing a *Guardian ad Litem*. Ultimately he was placed in an assisted living facility on September 26, 2002. (Tr. p. 159, lines 4 -- 16). When Mr. Heyward was discharged from Baptist Medical Center and entered assisted living, his medications were Wellbutrin, Seroquel, and Exelon. Wellbutrin and Seroquel are antidepressants, and Seroquel helps organize the thinking. Exelon is a drug provided to individuals with Alzheimer's in hopes of slowing the deteriorating process. (Tr. p. 159, lines 19 -- 24).
98. Dr. Waid conducted a neuropsychological evaluation of Mr. Heyward on March 15, 2004. Mr. Heyward had been adjudicated incompetent in September 2002. Mr. Heyward was transported to Dr. Waid's office by his sister-in-law, Floride Heyward, who was serving as his Guardian. (Tr. p. 160, lines 2 -- 11).
99. In the records relevant to the clinical course, there were concerns expressed in the late 1990s and continuing concerns about erratic behavior. Finally Mr. Heyward was picked up for erratic driving behavior. The subsequent workups came to the conclusion that this was a progressive dementing illness. (Tr. p. 160, lines 15 -- 22).
100. Dr. Waid testified that in 2002, but not before that, there was finally an evaluation that would be most sensitive to this diagnosis, the one conducted by Dr. Taylor. He testified that neuropsychological testing is often the most sensitive way to

detect intellectual decline and impairments. Often M.R.I.'s or radiographic studies are not forthcoming with much early in the dementing process. (Tr. p. 160, line 23 – p. 161, line 4).

101. In Alzheimer's, unlike other types of dementia, individuals have a total lack of awareness of their deficits; they do not think that there is anything wrong. They still think they can drive and can do everything. (Tr. p. 161, lines 10–16). This was Mr. Heyward's presentation. Basically, Mr. Heyward believed that there was nothing wrong with him. He was not aware of any loss whatsoever. He was not aware of what was going on in terms of the legal process or the evaluation process. (Tr. p. 161, lines 16–20). Mr. Heyward was not a good historian and could not give Dr. Waid details over the last five years. (Tr. p. 161, lines 21–23). Mr. Heyward was aware that his sister-in-law, Floride Heyward, was his *Guardian*; however, he did not have a great awareness of why he was in Dr. Waid's office or what had been going on for the past two years while he was in assisted living. (Tr. p. 162, lines 1–5).
102. Dr. Waid testified that Mr. Heyward had not reported any sleep difficulties, and the evaluation did not reveal any psychiatric symptomatology. (Tr. p. 162, lines 6–9).
103. Dr. Waid tested Mr. Heyward's memory, attention, and cognitive process. He then had an opportunity to compare those test scores to the ones obtained in 2002. (Tr. p. 162, lines 10–13).
104. Dr. Waid performed the CERAD neuropsychological battery, which is used with people Mr. Heyward's age with mild, moderate, and severe levels of impairments associated with senile dementia of the Alzheimer's type. Dr. Waid then gave Mr. Heyward more demanding tests of language, attention, concentration, memory, and high reasoning capacities. These were the Weschler Memory Scale- Revised and the Trail Making Test. (Tr. p. 162, line 15 – p. 163, line 2).
105. The Formal Mini-Mental Status Exam, the bedside examination, was incorporated into the CERAD battery of tests. That test starts out with orientation. Mr. Heyward made errors regarding the date, the day of the week, as well as the fact that, at the time of the test, he had been driven to Dr. Waid's office in Mount Pleasant, South Carolina. Mr. Heyward could not identify that he was outside of his normal location. (Tr. p. 163, lines 10–14).
106. Dr. Waid testified that during the evaluation, Mr. Heyward was alert, as would be expected with this type of dementia. He was able to repeat some information immediately to Dr. Waid. Nonetheless, when Dr. Waid asked Mr. Heyward to spell the word "world" in a backwards direction, he was unable to do that. Mr. Heyward was able to recall two of three objects after a brief delay. He recalled the third object after queuing, but he showed memory problems there. (Tr. p. 163, lines 15–22). Mr. Heyward attained a score of 17 out of 30, which Dr. Waid testified is very suggestive of significant impairment. (Tr. p. 163, lines 23–25). Dr. Waid testified that most people typically get 30 on this test, particularly in the early stages of a dementing illness. (Tr. p. 163, line 25 – p. 164, line 2). He stated that, generally, memory starts to deteriorate first and mental status is intact until well into the disease process. (Tr. p. 164, lines 5–9).
107. At the time of Dr. Waid's evaluation, Mr. Heyward was not aware of being cared for by Dr. Harmon Patrick in the 1990s. He was also unable to tell Dr. Waid what his current medications were. (Tr. p. 164, lines 12–16).
108. On the date of Dr. Waid's evaluation of Mr. Heyward, Dr. Waid also interviewed Floride Heyward, Mr. Heyward's *Guardian*. What Dr. Waid learned was confirmatory of the medical records. (Tr. p. 164, lines 17–23). Mr. Heyward was an

interesting man, often described as “eccentric” in terms of his behavior. (Tr. p. 164, lines 23 – 25). Ms. Heyward said that Mr. Heyward always associated with people from car dealerships. (Tr. p. 164, line 25 – p. 165, line 1). There was concern about Mr. Heyward’s giving his house away. (Tr. p. 165, lines 2 – 3). Ms. Heyward gave historical information about Mr. Heyward’s early enlistment in the military. (Tr. p. 165, line 3 – 6).

109. The results of Dr. Waid’s evaluation were that Mr. Heyward was a seventy-two-year-old man who continued to be in assistive care. From the medical records, during the course of the last four to six years, he had shown a progressive decline in his intellectual and neurocognitive abilities. (Tr. p. 165, lines 11 – 16). One way that Dr. Waid was certain of Mr. Heyward’s decline was that he was able to compare the absolute scores to those of Dr. Taylor, and Mr. Heyward had declined since those scores two years before. (Tr. p. 165, lines 17 – 19).

110. Dr. Waid’s evaluation was consistent with a progressive decline occurring within the context of a structured facility where Mr. Heyward was receiving appropriate medication and was not drinking. (Tr. p. 165, lines 19 – 23). Mr. Heyward’s performance on the battery of tests was most consistent with the pattern and profile of impairments that are obtained on individuals his age who have senile dementia of the Alzheimer’s type. (Tr. p. 165, line 23 – p. 166, line 2). Dr. Waid’s opinion was that his evaluation was confirmatory of what was determined in 2002, that Mr. Heyward was not competent to manage his affairs because of cognitive impairments. (Tr. p. 166, lines 3 – 6).

111. Dr. Waid testified that Mr. Heyward’s eccentricity could have masked the onset of the progressive dementia. (Tr. p. 184, line 22 – p. 185, line 3).

112. Dr. Waid explained that other causal factors can lead to a dementing process. The most common is vascular dementias which have to do with microangiopathic changes and the occurrence of small strokes. Nonetheless, Dr. Waid testified that Mr. Heyward’s level of impairment both in 2002 and 2004 was more consistent with the more encompassing cordical dementias that Alzheimer’s involve, because there are more spared functions in sub-cordical dementias. Sometimes there are both pathologies, vascular breakup as well as the disease cordical Alzheimer’s. (Tr. p. 168, line 16 – p. 169, line 1).

113. Dr. Waid testified that he did not believe that appropriate evaluations were conducted in 1999 or 2001 by the Department of Social Services. (Tr. p. 169, lines 4 – 8). There was never an evaluation from a neurocognitive point of view, much less a psychiatric point of view. Dr. Waid was concerned that there has been a significant decline, but, as an expert, he had no real data to give him a certainty level for 2001. He believed that the decline existed before 2002, where there was already a thirty-point drop in intelligence as it relates to Mr. Heyward’s I.Q. score. Thus, Dr. Waid believed that there was a dementing process and disease before 2002, but he did not render an opinion about Mr. Heyward’s mental capacity in 2001. (Tr. p. 169, lines 4 – 18).

114. Dr. Waid had read Dr. Elin Berg’s report and her deposition in this case. (Tr. p. 171, lines 6 – 11). He disagreed with Dr. Berg’s report in that he did not conclude from the DSS evaluations conducted in 1999 and in 2001 that DSS was rendering an opinion that Mr. Heyward was competent. DSS did not do the standard care evaluation. Although there was interest in doing this evaluation, it did not take place. That what was needed was an accurate evaluation of Mr. Heyward’s psychiatric and cognitive functioning. (Tr. p. 171, lines 16 – 24). There was no way to get an accurate evaluation without

neuropsychological testing, which was warranted under the circumstances. (Tr. p. 171, line 25 – p. 172, line 3). Dr. Waid did not believe that a medical opinion could be rendered about Mr. Heyward's competency without an evaluation of brain function, which DSS did not do during the period in question. (Tr. p. 172, lines 4 – 10).

115. With regard to Dr. Berg's report, Dr. Waid also testified that the vocal tics Mr. Heyward had could either be caused by Tourette's disorder or could be exacerbated by cognitive decline. There are Tourette's type symptoms or vocal tics that manifest during the dementing process. (Tr. p. 172, lines 13 – 17). Vocal tics do not contraindicate dementia. Dementia is another disease process. People with Tourette's or people with vocal tics can get Alzheimer's. (Tr. p. 172, lines 13 – 24).
116. With regard to vascular based dementia, or "Lacunar" dementia, vascular changes could be evident on the M.R.I., but they were not evident on the initial ones viewed by the doctors in Baptist Hospital. (Tr. p. 173, lines 3 – 5). Generally, the doctors would have noted micro-angiopathic changes, but they did not in Mr. Heyward's case. Rather, the doctors at Baptist Hospital called it Alzheimer's. (Tr. p. 173, lines 3 – 8).
117. If micro-angiopathic changes are present, the quality of one's functioning is much better. (Tr. p. 173, line 8 – 9). The level of impairment associated with vascular dementia is not as severe and does not involve the gray matter. (Tr. p. 173, lines 9 – 11). Vascular disease attacks the white matter in the sub-cortical region. (Tr. p. 173, lines 11 – 13). With vascular dementia, there is slowing and executive difficulties with sequencing, but one's memory is much better. (Tr. p. 11 – 13). If people are quid to remember, they will. (Tr. p. 173, lines 14 – 16). Thus, the nature and severity of impairment is very different in vascular dementia. (Tr. p. 173, lines 17 – 18).
118. Also, in vascular dementia, people are aware of their cognitive losses and do not show the profound lack of awareness, termed "innocent noshia." (Tr. p. 173, lines 18 – 21). Both vascular dementia and Alzheimer's can exist in the brain. (Tr. p. 173, lines 21 – 24). Dr. Waid had not ruled out vascular dementia. Some of these diseases could not be ruled out until a biopsy is done after death. (Tr. p. 181, lines 22 – 25). Nonetheless, he testified, the clinical course from 2002 to 2004 was much more suggestive of Alzheimer's. (Tr. p. 173, lines 21 – 24).
119. Dr. Waid testified that the course of vascular dementia is also slower than Alzheimer's. Vascular dementia has step-wise changes. (Tr. p. 174, lines 10 - 12). Often there will be an abrupt change for a day or two. (Tr. p. 180, lines 5 – 7). This is called a transient ischemic attack, meaning that there has been the rupture of a little vessel. The person may even show some stroke-like symptoms like Palsey or weakness on one side. (Tr. p. 180, lines 7 – 14). The person is very confused, but then he clears. (Tr. p. 174, lines 12 – 16; Tr. p. 180, lines 7 - 14). There is a little drop in the person's overall cognitive abilities. (Tr. p. 180, lines 7 – 14). Generally this happens over a long period of time. If there is rapid vascular dementia, it looks like a stroke and the person would probably end up in the hospital because of such rapid deterioration. (Tr. p. 174, lines 16 – 20). Dr. Waid testified that he did not see the clinical course in Mr. Heyward's case as most consistent with vascular dementia. He saw them as most consistent with Alzhiemers, particularly since alcohol had been ruled out. (Tr. p. 174, lines 21 – 24).
120. Alzheimer's sufferers still have their physical capacities. They may still drive or be on the golf course; however, they get very confused. (Tr. p. 175, lines 5 – 7). On the golf course, they may hit the ball back to the tee. In Alzheimer's, people actually look better than they are cognitively. (Tr. p. 175, lines 7 – 12).

121. Dr. Waid testified that Dr. Berg had rendered an opinion that Mr. Heyward was competent to execute the two deeds in question. (Tr. p. 176, lines 12 – 17). He testified that his disagreement was that the appropriate measures and evaluations were not there to make an opinion, so he was not making an opinion either way. (Tr. p. 176, lines 18 – 24).
122. Mr. Heyward was admitted to Baptist Hospital on May 9, 2002, and then again on May 17, 2002 under the care of Dr. Kevin Krebs. (Tr. p. 177, lines 10 – 18). The diagnosis was Access 1 Dementia, N.O.S. Dementia is broad-based term that generally means a significant diffuse loss of intellectual abilities, memory, and other capacities. (Tr. p. 177, lines 21 – 24). The “N.O.S.” part of the diagnosis meant that there was a loss, but that the doctor was not yet ready to know the causal factors, or etiology. (Tr. p. 177, line 21 – p. 178, line 1). Dr. Waid testified that with Mr. Heyward’s alcohol use, one would be concerned about that and other possible causal factors. (Tr. p. 178, lines 1 – 4).
123. Dr. Waid testified that over the last two years while Mr. Heyward has been in assisted living, there has been no report of any abrupt changes, which would be expected in vascular dementia if that was the only cause for Mr. Heyward’s decline to continue. (Tr. p. 182, lines 2 – 6). Also, over the last two years, there has been no report of delirium. (Tr. p. 182, lines 2 – 8).
124. Dr. Waid testified that Mr. Heyward was suffering from Alzheimer’s dementia in 2001. He testified that in the early stages of Alzheimer’s, a person could still be competent, but since DSS did not get the data that would be necessary, Dr. Waid was unwilling to make an evaluation of competency. (Tr. p. 183, lines 1 – 4). By the time Mr. Heyward was evaluated, his loss was so significant that the question “had become moot.” (Tr. p. 183, lines 19 – 20). He testified that someone suffering from the early stages of Alzheimer’s type dementia is more susceptible to manipulation and are often taken advantage of. (Tr. p. 191, lines 9 – 14).
125. Dr. Waid’s belief was that Mr. Heyward was in the moderate stages of Alzheimer’s. (Tr. p. 166, lines 7 – 18). In the severe form, he testified, the sufferer starts to become neuro-vegetative. (Tr. p. 186, lines 15 – 17). For his age group, Mr. Heyward was scoring at the second percentile for being able to retain stories that were read to him. He was scoring in the first percentile for retaining and being able to draw visual information shown to him. Mr. Heyward was in the lower first and second percentile with regard to memory functioning. (Tr. p. 166, lines 7 – 18).
126. At the time of his evaluation of Mr. Heyward, Mr. Heyward’s memory impairment, relative to Dr. Taylor’s evaluation of Mr. Heyward in 2002, was worse. Even at the time Dr. Taylor saw Mr. Heyward, his IQ at that time was 71, which is at the cutoff score generally used for mental deficiency and mental retardation. (Tr. p. 168, lines 1 – 5). There was a broad base of loss of intellectual abilities. (Tr. p. 168, line 6).
127. Dr. Taylor gave Mr. Heyward the Mathis Dementia Rating Scale, which is similar to CERAD. Mr. Heyward had significant impairment when Dr. Taylor saw him in 2002. There was more downward impairment which seemed to be in a progressive course when Dr. Waid saw Mr. Heyward in 2004. (Tr. p. 168, lines 7 – 12).
128. Dr. Waid testified that the likely length of the dementing process was about five years (Tr. p. 168, lines 13 – 14) and that the severity and profile pattern suggested Alzheimer’s. (Tr. p. 168, lines 15 – 16).
129. The severity of Mr. Heyward’s memory disturbance, along with the other impairments, in Dr. Waid’s opinion, showed that Mr. Heyward was in the moderate stages of Alzheimer’s. In his opinion, Mr. Heyward had been in the disease process

husband and son, Steve Dyer, had sold George numerous vehicles. She stated that George likes to buy a new car every three to four weeks.

As she left she stated that the investigating officer should speak to her son, Steve, about this, that he used to take care of George. The investigating officer then met George at the front door of his \$400,000 home. George appeared very sickly and disoriented. He walked very slowly and made grunting noises. He was dirty and had a strong odor about his person. He appeared not to have had a shower or bath in several weeks. His hair is long, shoulder-length, unkempt, greasy, and matted. He has month-long growth of beard with dried saliva on his face and chin. His teeth are yellow and dirty. His socks were white but looked yellow and brown from not being washed in a long time. His fingernails were very long and dirty.

Investigating officer asked him about his physical state and appearance, and he advised investigating officer that it was none of my business. Investigating officer advised George that his car had not been stolen but that Ian had told Chris to take his friend home. George called the investigating officer a liar and stated that the investigating officer was an idiot. Investigating officer then asked George if we could look around and see if any of the kids were there, or if there were any illicit drugs in the house. He stated that it was none of our business but that we could look anywhere we wanted.

Investigating officer went to the southwest bedroom where George stated that Ian stayed. Investigating officer discovered a very dusty and dirty bedroom and bathroom where there were used condoms on the sink, in the toilet, and on the bed. The toilet was stopped up with condoms, paper, and plastic wrappers. There were approximately 10 empty beer bottles all over the bedroom and bathroom, and vomit on the bed sheets and bathroom sink. Investigating officer also discovered marijuana paraphernalia like blunts and rolling paper. Numerous bags of cigar tobacco that had been taken out of cigars was discovered in the bedroom.

Investigating officer then went into the kitchen and found about three cases full of beer, and 10 to 14 bottles that were empty, along with five bottles of empty liquor. Investigating officer looked in the refrigerator and cabinets and found no food whatsoever. Investigating officer then asked George what was going on. He stated that investigating officer had no business in his house. Investigating officer reminded him that he had given him permission. He stated that investigating officer was a horse's ass and that investigating officer needed to leave his house. As investigating officer was leaving, he stated that if he wanted to party with these boys he could, and that if he wanted to drink with them he could, and that it was none of our business. Note: Investigating officer discovered a prescription bottle, possibly valium, prescribed to Steve Dyer in the medicine cabinet when he searched the bedroom.

50. In his deposition, Mr. Foy characterized Mr. Heyward's overall appearance as, "Howard Hughes - - long fingernails, long toenails to the point where some of the nails were curling; real yellow fingers, like an old person who smoked filterless cigarettes all their lives would have. Yellowish, long fingernails - - I mean yellow, something like if he was in public that would be the first thing probably that caught your eye." (Tr. p. 106, lines 11 - 17).
51. Mr. Heyward had a lot of unkempt facial hair, a massive beard that had not been trimmed or cut for a long period of time with yellow stain on his white beard. (Tr. p. 106, lines 19 - 21). The whole time Mr. Foy was talking to Mr. Heyward, Mr. Heyward was drooling. (Tr. p. 106, lines 21 - 22). Mr. Heyward's teeth were really yellow, black, and dirty. He had drink, drool, or dried food particles around his mouth. (Tr. p. 106, lines 22 - 24). Mr. Heyward had long nose hairs and two or three inch hair on his eyebrows that was curled and uncut. (Tr. p. 106, line 24 - p. 107, line 2). His hair was shoulder-length. His shirt was buttoned crookedly. In other words, one of the shirt tails was longer than the other because it was buttoned improperly. (Tr. p. 107, lines 2 - 6). There were stains all over Mr. Heyward's shirt, and it smelled badly. (Tr. p. 107, lines 6 - 11). Mr. Heyward's pants did not fit him. They were "high-water" pants. (Tr. p. 107, lines 20 - 22). He was rather slim and

boney and appeared undernourished and sickly. (Tr. p. 107, line 23 – p. 108, line 1). Mr. Heyward spoke slowly, with a drawl, and cussed a lot. (Tr. p. 108, lines 1 – 2).

52. Mr. Heyward started to get nasty when Mr. Foy asked him where the condoms came from and why there was no food in the house. (Tr. p. 108, lines 7 – 10).

53. Mr. Foy did not remember any food at all in the house but a lot of alcohol. He testified that he had searched many houses in his work, and that there are some houses where there are at least a few cans, "But this was nothing, not a bottle of ketchup, no can of tuna they stuck back in the cabinet. I mean, there was just no food whatsoever, just alcohol and these other things." (Tr. p. 109, lines 8 – 12).

54. Mr. Foy testified that there were empty beer bottles and liquor bottles in the bedroom, bathroom, and kitchen. (Tr. p. 108, lines 14 – 16; p. 109, lines 4 – 6).

55. There was marijuana paraphernalia in the house, like blunts and rolling papers. (Tr. p. 108, lines 15 – 17). Mr. Foy found a lot of cigar tobacco where the tobacco had been taken out of cigars. (Tr. p. 108, line 16 – p. 109, line 3). He testified that a current trend was to take the tobacco out of the cigars, to put marijuana in them, and to call them "blunts." (Tr. p. 108, lines 19 – 22).

56. Mr. Heyward mumbled a lot. When Mr. Heyward called Mr. Foy a "horse's ass," it was not like Mr. Foy pronounced "horse's ass" in his deposition; everything was mumbled. (Tr. p. 109, line 25 – p. 110, line 3).

57. Mr. Foy testified that there was a Cadillac dealership in Columbia that sold Mr. Heyward a lot of cars and that it was not just the Dyers who were taking advantage of him. (Tr. p. 110, lines 13 – 24).

58. Mr. Foy was concerned that Mr. Heyward was contributing to the delinquency of minors. (Tr. p. 112, lines 1 – 5). He called the South Carolina Law Enforcement Division and was referred to a lady who investigates abuse. (Tr. p. 112, lines 1 – 12). He also called the Department of Social Services. (Tr. p. 112, lines 12 – 13).

59. Based on what Mr. Foy saw in the house and his discussions with Mr. Heyward, there was no doubt in Mr. Foy's mind that Mr. Heyward was not able to take care of his financial affairs. Mr. Foy was unable to determine whether this was from mental incapacitation or laziness, but said that Mr. Heyward definitely had a mental problem. (Tr. p. 113, lines 2 – 5).

60. Mr. Foy testified at one point that Mr. Heyward, "talked very sensible. Not like a mental person." (Tr. p. 114, lines 19 – 25). He also appeared to understand that he was giving Mr. Foy permission to look around the house. (Tr. p. 115, lines 2 – 9). Mr. Foy could understand what Mr. Heyward was saying, although it was a "slurry mumble." (Tr. p. 115, lines 10 – 16). He testified:

He always made these really weird noises out of his mouth. But when it came down to making sentences, like when I first got there, "You need to talk to Jan," I understood that. But he [did] do a lot of mumbling throughout. In other words, I did not pick up everything he was saying just because I think that they were just not noise (sic) that he was making. I don't think he was trying to make a sentence. I could be wrong. Grunting, maybe that's a good way to describe it, a lot of grunting, and he shuffled when he walked. He didn't take normal steps like we do.

(Tr. p. 116, lines 5 – 15).

61. Mr. Foy testified that as much as he thought Mr. Heyward was crazy, he also thought that he knew what he was doing and was exchanging some sexual favors for some of these items. (Tr. p. 117, lines 21 – 24).
62. All of the bathrooms in the house were a total mess. There were no towels on the rack, and there was no toothbrush or toothpaste. There were just beer bottles, condoms, and sexual magazines open in front of the toilet. There were clothes everywhere. (Tr. p. 113, lines 15 – 23). Inside one toilet, there was vomit, and inside another there were cigar tobacco and cigarette butts. (Tr. p. 113, line 25 – p. 114, lines 3). All four bathrooms were trashed. (Tr. p. 119, lines 21 – 22). The bathroom near the master bedroom was the same as the others in that it had clothes and blankets thrown everywhere. (Tr. p. 120, lines 3 – 7). Mr. Foy believed that that was the bathroom in which he found vomit, but he did not believe that he found beer bottles in that bathroom. (Tr. p. 120, lines 7 – 9).

House Visitor, Chris Lewis

63. In August and September of 2001, Chris Lewis, who was age twenty at the time, went to Mr. Heyward's house in the Spring Valley subdivision of Columbia, South Carolina, three or four times for the purpose of partying. He saw Mr. Heyward on these occasions and talked to him on one occasion. (Tr. p. 122, lines 1 – 2). Mr. Lewis went to these parties with Ian Deportes and Avery Russell. (Tr. p. 122, lines 16 – 19). Ian Deportes had invited him. (Tr. p. 124, lines 2 – 4). There were always about fifteen to twenty people there. (Tr. p. 122, lines 19 – 20). The general age of the people partying at the house was from seventeen to twenty-two. (Tr. p. 123, lines 2 – 4). There were males and females. (Tr. p. 127, lines 10 – 12). There was a lot of drinking going on, marijuana use, and cocaine use. (Tr. p. 123, lines 8 – 13). Mr. Lewis saw beer and hard liquor at the parties. (Tr. p. 123, lines 15 – 20). He did not see Mr. Heyward drink any alcohol. (Tr. p. 123, lines 21 – 24). The parties would start about ten or eleven o'clock in the evening and go until about four or five in the morning. (Tr. p. 124, lines 5 – 10).
64. Of the four or five hours Mr. Lewis was at a given party, he would probably see Mr. Heyward about ten minutes. (Tr. p. 124, lines 20 – 24). Mr. Lewis believed that the rest of the time Mr. Heyward was in his room. (Tr. p. 124, line 25 – p. 125, line 1).
65. Mr. Lewis observed in regard to Mr. Heyward, "He was lost, he didn't know what was going on. He couldn't function well. He would just walk around in a daze and mumble to himself." (Tr. p. 125, lines 4 – 6).
66. Mr. Lewis never saw Mr. Heyward talking to anyone. (Tr. p. 125, lines 7 – 8). He had a dirty appearance, had a long, scraggly beard, and did not have good hygiene. (Tr. p. 125, lines 14 – 18). He wore dirty clothes with holes. (Tr. p. 125, lines 20 – 21).
67. Mr. Lewis saw marijuana use in the house and on the porches, but not when Mr. Heyward was present. (Tr. p. 125, line 24 – p. 126, line 7). There was drinking when Mr. Heyward was present. (Tr. p. 126, lines 8 – 10). There was cocaine use in the house, but not around Mr. Heyward. (Tr. p. 126, lines 11 – 14). Mr. Heyward never asked anyone to leave and never attempted to assert authority over the party. (Tr. p. 126, lines 15 – 19).

since the late 1990s. (Tr. p. 166, lines 22 – 23). As a rough estimate, Dr. Waid believed that, at the time of his evaluation, Mr. Heyward was about five years into the disease process. (Tr. p. 167, lines 1 – 3).

Deed Recipient Stephen R. Kern

130. Stephen R. Kern appeared as a witness. He met Mr. Heyward in 1992 through friends at the Lake Murray Marina. He was not related to Mr. Heyward in any way. (Tr. p. 201, lines 1 – 3). Mr. Kern got to know Mr. Heyward fairly well since 1995 and socialized with him on holidays, on Mr. Heyward's boat, and at various meals. (Tr. p. 194, lines 19 – 25; p. 199, lines 20 – 25; p. 201, lines 4 – 8; p. 516, lines 10 – 21). Mr. Kern's relationship to Mr. Heyward got closer in late 1997 when he took the duty of driving Mr. Heyward on his boat, a 40-foot Sea Ray named the WELL PLEASED, once or twice a week. (Tr. p. 201, lines 15 – 22; p. 218, lines 8 – 10; p. 518, lines 7- 14; p. 201, lines 11 - 14). Mr. Heyward was unable to manage the boat. (Tr. p. 239, lines 8 – 11).
131. Mr. Kern's former wife, Ginger Kern, eventually became a caretaker for Mr. Heyward in approximately 1998. (Tr. p. 200, lines 1 – 5). In 1999, she reported Mr. Heyward to the Department of Social Services. (Tr. p. 200, lines 9 – 14). She continued to provide care for Mr. Heyward a few months after the DSS involvement. (Tr. p. 200, lines 9 – 11). Steve Kern's assistance with Mr. Heyward progressed to "full care" in 1999 (Tr. p. 232, lines 8 – 16), including helping with buying his clothes, doing his laundry, changing his bed sheets, paying his house bills, including gas and utility bills, and driving Mr. Heyward to court and to the Alcohol and Drug Safety Action Program ("ADSAP"). (Tr. p. 219, lines 7 – 22; p. 220, lines 18 – 24). Prior to that, Ginger Kern was doing the same types of things in 1998. (Tr. p. 232, lines 18 – 22). Mr. Kern testified that in 2001, he was still taking care of Mr. Heyward until he moved to Florida. (Tr. p. 533, lines 1 – 6).
132. On July 20, 2001, Mr. Heyward gave Mr. Kern a Quitclaim Deed to his house at 14 Glenlake Road in the Spring Valley Subdivision of Columbia, South Carolina. The deed recited consideration of five dollars. (Tr. p. 195, lines 13 – 20; Exhibit 39).
133. On the same day, July 20, 2001, Mr. Heyward gave a bill of sale transferring his yacht, the WELL PLEASED, to Mr. Kern. (Tr. p. 196, lines 3 – 17; p. 202, lines 20 - 22). The Bill of Sale for the WELL PLEASED showed a sale price of one dollar. (Exhibit 38).
134. Mr. Kern attempted to place a mortgage on 14 Glenlake Road house. He testified that it was necessary to get a General Warranty Deed to the property, because Nick Atria, the closing attorney, requested it through the mortgage broker, Nealie Cook. (Tr. p. 198, lines 7 – 11; p. 207, lines 16 – 17; p. 265, lines 19 – 21; p. 529, line 21 – p. 530, line 3).
135. On December 13, 2001, Mr. Heyward gave Mr. Kern a General Warranty Deed to 14 Glenlake Road. The deed again recited consideration of five dollars. (Tr. p. 197, lines 2 – p. 198, line 8). Mr. Kern did not explain to Mr. Heyward that it was another deed. (Tr. p. 265, lines 22 – 25).
136. Mr. Kern returned to Florida in January 2002. (Tr. p. 218, lines 16 – 25).
137. Mr. Heyward's signature on the July 20, 2001, Quitclaim Deed as well as his signature on the December 13, 2001, General Warranty Deed were purportedly notarized by Jerry Verdino. (Tr. p. 196, line 25 – p. 197, line 1; p. 197, lines 14 –

- 15). Nonetheless, Mr. Kern testified that Mr. Heyward signed the Quitclaim Deed at Mr. Heyward's house and that Mr. Verdino notarized it at Mr. Verdino's jet ski business in Chapin, South Carolina, but Mr. Heyward was not present at that time. (Tr. p. 204, lines 1 – 10). Mr. Kern testified that Mr. Heyward signed the General Warranty deed at his house, but Mr. Verdino was not present. (Tr. p. 206, lines 10 – 13).
138. Both the Quitclaim deed and the General Warranty Deed were purportedly witnessed by Larry Williams and Jerry Verdino. (Tr. p. 196, line 18 – p. 197, line 1; p. 197, line 16 – p. 198, line 4). Mr. Kern testified that Mr. Williams was present when Mr. Heyward signed the Quitclaim Deed, but Mr. Verdino was not present. (Tr. p. 204, lines 11 – 16; p. 204, lines 1 – 10). He testified that Mr. Heyward signed the General Warranty deed at Mr. Heyward's house, but neither Mr. Verdino nor Mr. Williams was present (Tr. p. 206, lines 1 – 9), and Mr. Heyward signed in Mr. Kern's presence only. (Tr. p. 206, lines 10 – 13).
139. Mr. Kern could not recall whether he actually paid Mr. Heyward the five dollars for the Quitclaim Deed. (Tr. p. 195, lines 21 – 24). He could not remember whether he actually gave the five dollars to Mr. Heyward for the General Warranty Deed. (Tr. p. 198, lines 16 – 18).
140. After a legal action was initiated, Mr. Kern deeded the yacht back to Mr. Heyward. (Tr. p. 202, line 24 – p. 203, line 1; p. 276, lines 11 – 19). Likewise, after the present action was initiated by Mr. Heyward's Conservator, Mr. Kern deeded the house back to Mr. Heyward. (Tr. p. 203, lines 2 – 10).
141. Prior to trial, Mr. Heyward submitted an affidavit stating:
- Personally appeared Stephen R. Kern, who, first being duly sworn deposes and says as follows: I agree that at the time George M. Heyward deeded his 14 Glenlake Road, Columbia, South Carolina, house by Quitclaim Deed in July, 2001, and again by General Warranty Deed in December, 2001, and, in addition, prior to that time, I had notice that he was not mentally competent to make such transactions. (Tr. p. 198, line 19 – p. 199, line 3).
142. At trial, Mr. Kern testified, "I don't think [Mr. Heyward] was mentally competent to handle anything of any kind of legal affairs, or any kind of business decision, anything that required some responsible thought." (Tr. p. 199, lines 11 – 13).
143. In 2001, Mr. Heyward was not capable of making financial decisions, was not capable of managing his financial affairs, was not capable of understanding simple utility bills, was not capable of understanding more complicated transactions, did not know how much money he had, did not realize that making the various gifts was depleting his money, and did not understand the concept that he could give it all away and be left with nothing. (Tr. p. 232, line 23 – p. 233, line 19).
144. The Conservator's counsel drafted the affidavit he signed stating that Mr. Heyward was not mentally competent at the time he deeded 14 Glenlake Road to him. (Tr. p. 268, lines 1 – 6). Mr. Kern called ESB's counsel and said that he had questions about the affidavit. (Tr. p. 268, lines 7 – 15). He agreed to sign the affidavit based on the fact that Mr. Heyward had never had the capacity or mental stability to sign anything. Mr. Kern agreed to sign the affidavit reflecting that. (Tr. p. 543, lines 11 – 16).
145. Mr. Heyward was not ever able to handle his affairs back to 1999. (Tr. p. 268, line 24 – p. 269, line 3).

146. Mr. Kern also testified that Mr. Heyward was not capable of handling his own affairs as far back as 1991 or 1992, but did not know about the time period before that. (Tr. p. 269, lines 4–7). Nonetheless, Mr. Kern testified that he did not know Mr. Heyward as far back as 1991 or 1992. (Tr. p. 269, lines 8–10).
147. Mr. Kern testified that Mr. Heyward's incapacity started when Ginger Kern started to serve as his caretaker. (Tr. p. 279, lines 9–13). He believed that Ms. Kern started working for Mr. Heyward in 1998. (Tr. p. 279, lines 9–17). She was still there when DSS came in 1999. (Tr. p. 279, lines 18–19).
148. Mr. Kern testified that there came a time when Mr. Heyward knew that he did not have anymore money, but did not understand why. (Tr. p. 236, lines 21–23). Mr. Heyward did not understand the various transfers such as the depletion of his stock. (Tr. p. 236, line 24–p. 237, line 1). Mr. Heyward would get very upset that he did not have anymore money and not understand why. (Tr. p. 237, lines 3–4). Mr. Heyward needed someone to manage his money from the time Ginger Kern started taking care of him from 1998 on. (Tr. p. 237, lines 5–9).
149. Mr. Kern observed that Mr. Heyward appeared wealthy, spent money recklessly (Tr. p. 517, lines 1–5), and his mannerisms were nonconforming. (Tr. p. 517, lines 8–12). He liked to yell a lot. (Tr. p. 517, lines 10–12). If something startled him, for instance, he would blurt out obscenities. (Tr. p. 517, lines 13–15).
150. Mr. Kern testified that he could not remember whether he talked to Mr. Heyward about the Quitclaim deed. (Tr. p. 262, lines 18–p. 263, line 2). He then testified that he was sure that he had to talk to him about it (Tr. p. 263, lines 3–5), but that Mr. Heyward did not appear to know what he was doing (Tr. p. 263, lines 6–8). Mr. Kern then testified that Mr. Heyward did appear to know what he was doing when he signed the Quitclaim Deed. (Tr. p. 264, lines 4–8).
151. Mr. Heyward was a steady but not a heavy drinker. (Tr. p. 247, lines 13–14). He drank every day, but he did not drink heavily every day. (Tr. p. 247, lines 16–19). Mr. Kern testified that Mr. Heyward had been drinking when he signed the Quitclaim Deed on July 20, 2001, but not more than usual and that he was coherent. (Tr. p. 527, line 16–p. 528, line 1).
152. Mr. Kern testified that Mr. Heyward was selling him the property so that he could put a mortgage on it. (Tr. p. 531, lines 1–17). Nonetheless, Mr. Kern also testified that when Mr. Heyward signed the second deed, "he just knew it was another form he needed to sign to get the money" (Tr. p. 530, lines 15–22). He testified that Mr. Heyward was "somewhat" aware of what was going on in that "he was aware it was taking a long time to get some money." (Tr. p. 530, lines 20–25). He testified that at the time Mr. Heyward signed the General Warranty deed, there was no discussion about whether Mr. Heyward intended to give Mr. Kern the house. Mr. Kern testified, "It was just a formality, 'Sign this to get the paperwork in order.'" (Tr. p. 206, lines 14–17).
153. Mr. Kern testified that he was not qualified to answer whether Mr. Heyward knew what he was doing during the time Mr. Kern was taking care of Mr. Heyward's property. (Tr. p. 542, lines 11–16). Mr. Heyward wanted money, and that, at that point, any way he could get money would do. (Tr. p. 542, lines 17–25). Earlier in this litigation, in response to the allegation in Mr. Heyward's Complaint, "On information and belief, on or before July, 2001, Heyward's mental condition was declining," Mr. Kern responded, "Unknown." (Tr. p. 271, lines 16–19).

154. During the period 1999 to 2001, there were times Mr. Heyward was confused. (Tr. p. 235, lines 1 – 3). Mr. Kern remembered an instance in which he went over to Mr. Heyward's house. The house was in disarray. Mr. Heyward did not have any cars out front. Mr. Heyward accused Mr. Kern of taking his car. Mr. Kern told Mr. Heyward, "I just go here. My car is out front. I don't know where your car is." Mr. Kern asked Mr. Heyward what he had done the night before, but Mr. Heyward could not remember. (Tr. p. 235, lines 6 – 13). Someone called while Mr. Kern was there, and Mr. Heyward began yelling at the caller wanting to know where his car was. (Tr. p. 235, lines 13 – 16).
155. Mr. Kern testified that Mr. Heyward had the belief that everyone should have the same things he had. If Mr. Heyward had a Mercedes-Benz, then he did not understand why a friend of his, whoever it may be, did not have a Mercedes-Benz. (Tr. p. 535, lines 9 – 13). Mr. Heyward did not understand, if someone owned a house, why they would have a mortgage payment on it and not own it. (Tr. p. 535, lines 13 – 15). Mr. Kern testified that Mr. Heyward had these beliefs six or seven years ago and that "from there I think it deteriorated." (Tr. p. 535, lines 9 – 16).
156. Mr. Kern testified that Mr. Heyward liked to socialize and drink. (Tr. p. 240, line 23 – p. 241, line 4).
157. Mr. Kern's wife at the time, Ginger Kern, worked for Mr. Heyward during 1998 and 1999. (Tr. p. 221, lines 2 – 3). She would go to Mr. Heyward's house in the morning, clean and feed Mr. Heyward, make sure the bills were paid, and make sure that everything was alright. (Tr. p. 221, lines 5 - 7). She typically stayed until early afternoon. Sometimes they would shop. (Tr. p. 221, lines 12 – 14).
158. Mr. Kern would buy Mr. Heyward clothes, take Mr. Heyward's clothes to the cleaners, and rotate his clothes. Mr. Heyward basically had two sets of clothing that he would wear. He had a couple of pairs of pants, three to five shirts, socks, and underwear. (Tr. p. 221, lines 18 – 23). Mr. Kern would take those to the cleaners and rotate them so that Mr. Heyward had "some type of clean clothing." (Tr. p. 221, lines 23 – 25). Typically Mr. Kern would see Mr. Heyward at least two times a week (Tr. p. 222, lines 3 – 10) and spent a half-day each time with Mr. Heyward (Tr. p. 222, lines 10 – 13).
159. Mr. Kern had to make sure that Mr. Heyward's bills were paid. (Tr. p. 222, line 21). Mr. Heyward would not pay his utility bills; he would forget. (Tr. p. 222, lines 21 – 22). There were a couple of times when Mr. Heyward's electricity was turned off due to failure to pay. (Tr. p. 222, lines 23 – 25). Mr. Kern was not sure that Mr. Heyward understood that he would lose his services if the bills were not paid. (Tr. p. 223, lines 1 – 3).
160. Mr. Kern testified that Mr. Heyward did not understand bills. (Tr. p. 252, line 21). Mr. Heyward hated insurance, hated taxes, did not keep up with his finances (Tr. p. 245, lines 5 – 7), and he did not understand bills in general. (Tr. p. 233, line 24 – 25; p. 244, lines 12 – 20).
161. Nonetheless, Mr. Heyward would write his own checks. Mr. Kern would open the mail. Mr. Heyward was not able to open a bill and understand what it was about. He could possibly understand that it was, for example, for electricity, but he would not be able to decipher the amount of the bill and write a check for the proper amount. (Tr. p. 223, lines 14 – 19). Mr. Kern would help Mr. Heyward by telling him what the bill was about and the amount for which to make the check. (Tr. p. 223, lines 20 - 21). There might be a balance due from the previous month, because Mr. Heyward was typically late in

paying the bills (Tr. p. 223, lines 22 – 23), so Mr. Heyward would not understand why the bill was so high, when, in fact, the bill might be, for example, for two months of electricity. (Tr. p. 223, lines 23 – 25).

162. Sometimes the bills were in the house. Other times the mailbox was full, so Mr. Kern would take the mail inside. Many times the bills would be sitting on the table, so Mr. Kern knew that “other people were seeing George.” (Tr. p. 223, lines 6 – 10). Mr. Kern testified that he handled all of Mr. Heyward’s bills. (Tr. p. 258, lines 10 – 15). Generally, Mr. Heyward did not keep up with his tax filings, fines, or paying estimated income tax. (Tr. p. 259, lines 8 – 18).
163. Mr. Heyward came over to Mr. Kern’s house many times. (Tr. p. 220, lines 6 – 7). Mr. Kern had an “open-door policy” with Mr. Heyward. (Tr. p. 8 – 13; p. 520, lines 14 – 17). Mr. Kern traveled out of town frequently. Sometimes when he returned and pulled in the driveway, Mr. Heyward’s car would be at Mr. Kern’s house, and Mr. Heyward would be there in Mr. Kern’s house watching television. (Tr. p. 220, lines 11 – 15; p. 520, lines 23 – 24).
164. Once, Mr. Kern went over to Mr. Heyward’s house and saw one of Mr. Heyward’s driving tickets. It alerted him because it was a serious infraction, Driving Under Suspension. (Tr. p. 226, lines 18 – 21). There was a [court] date on the ticket, and that date had already passed. (Tr. p. 226, lines 21 – 23). Mr. Kern called the courthouse number on the back of the ticket to find out the status of the ticket. (Tr. p. 226, lines 23 – p. 227, line 2). The Clerk’s office told Mr. Kern that there was a bench warrant out for Mr. Heyward and that Mr. Kern would need to bring Mr. Heyward to the courthouse immediately so that the matter could be handled, which Mr. Kern did. (Tr. p. 227, lines 2 – 8).
165. Mr. Heyward had a DUI and had to attend ADSAP. (Tr. p. 224, line 20). There were several instances in which Mr. Heyward drove after he got his DUI and after his license was suspended. (Tr. p. 224, lines 21 – 22). There was a bench warrant issued for Mr. Heyward’s arrest. (Tr. p. 224, lines 23 – 25). Nonetheless, Mr. Heyward did not know that he had any legal issues. (Tr. p. 226, line 12). Mr. Heyward would either forget about the charges or dismiss the thought of them. (Tr. p. 226, lines 13 – 15). Many times the police would feel sorry for Mr. Heyward and let him go. (Tr. p. 226, lines 15 – 17).
166. Mr. Heyward’s not paying attention to his finances was apparent by the time Ginger Kern started taking care of him in 1997 or 1998. (Tr. p. 245, line 11 – p. 246, line 2).
167. In 2000 or 2001, Mr. Kern observed the house being a mess with stopped up toilets. (Tr. p. 248, lines 5 – 10). He testified that he cleaned up the mess. (Tr. p. 11 – 14).
168. Mr. Kern had prepared a two-page handwritten list summarizing his knowledge of various gifts that Mr. Heyward made. (Tr. p. 212, lines 3 – 8). The first item on the list was a 38’ Fountain boat to Larry Williams in 1991 or 1992 valued at \$141,000 (Tr. p. 212, lines 12 – 13; p. 521, lines 20 – 23). The next transfer was money to purchase three Party Zone liquor stores from 1993 to 1995 to Larry Williams. (Tr. p. 212, line 19 – p. 213, line 7; p. 522, lines 8 – 13). The next transfer was \$225,000 for a sixty-one-foot houseboat Mr. Heyward gave to Steve Dyer. (Tr. p. 213, lines 8 – 13). In 1996, Mr. Heyward gave a \$300,000 Provost Motor Home to Vance Sharpe. (Tr. p. 213, lines 14 – 15; p. 523, lines 4 – 6). Mr. Heyward gave a 560 SEL Mercedes valued at \$80,000 to Mr. Sharpe in 1996. (Tr. p. 213, line 16 – p. 214, line 13). In 1998, Mr. Heyward gave a twenty-four-foot Regal boat valued at \$45,000 to Bill Senn, who met Mr. Heyward mowing his grass. (Tr. p. 215, lines 15 – 20; p. 525, lines 11 – 15). Mr. Heyward gave a house and land valued at \$300,000 to Bill Senn in 1999. (Tr. p. 215, lines

13 – 14; p. 523, lines 21 - 22). He also gave Mr. Senn a Cadillac Seville in 1999 (Tr. p. 523, lines 23 – 24). The same year, 1999, Mr. Heyward gave a \$35,000 Saab to friends in Charleston, South Carolina. (Tr. p. 215, lines 23 – 24; p. 523, line 24). Also in 1999, he gave a twenty-four-foot Sea Ray to friends in Charleston (Tr. p. 519, lines 14 – 17). In 2000, Mr. Heyward gave a 310 Sea Ray to Mr. Sharpe valued at \$130,000. (Tr. p. 214, lines 19 – 21). Mr. Kern's understanding was that Mr. Heyward gave away \$1 million in cash disbursements and stock from 1992 to 2000. (Tr. p. 216, lines 4 – 8). Mr. Kern said that Mr. Heyward told him that he gave Larry Williams about \$1 million over a period of five or six years from approximately 1993 to 1999. (Tr. p. 524, line 25 – p. 525, line 5).

169. Mr. Kern testified that it did not surprise him that Mr. Heyward gave Randy Harbeson \$400,000, because "this is part of a grand sum of money that estimates could be three to six million." (Tr. p. 254, lines 15 – 20; p. 538, lines 23 – 24). He testified that there was a certain control that Mr. Heyward had when he gave things to people, and he liked that. (Tr. p. 535, lines 21 – 24). Mr. Heyward would not loan out a car, even if there were ten in his driveway (Tr. p. 241, lines 22 – 24), but he would give them away (Tr. p. 242, lines 1 – 5).

170. Mr. Kern was not surprised to learn from ESB's counsel that Mr. Heyward spent a total of \$2.9 million over a three-year period purchasing cars. (Tr. p. 253, lines 5 – 9, lines 17 – 20; p. 280, lines 4 – 10). He sometimes traded those vehicles in and sometimes gave them away. (Tr. p. 253, lines 12 – 16). Mr. Kern testified that it appeared that Mr. Heyward was buying cars and selling them back to the dealers untitled. These cars were put back into inventory and sold again. (Tr. p. 216, lines 14 – 18; p. 280, lines 11 - 18).

171. Mr. Heyward had a habit of giving things away and then forgetting that he gave them away or deciding that he wanted to give them to someone else. (Tr. p. 202, lines 8 – 9; p. 251, lines 20 – 23; p. 520, lines 4 – 6). He would make promises regarding items that he was going to give someone. Sometimes he followed through. Other times he did not. Mr. Heyward did not have a good understanding of what he still had and what he was giving away. (Tr. p. 234, lines 16 – 25).

172. For example, Mr. Heyward gave an Acura automobile to Ginger Kern. (Tr. p. 523, line 25). He then came to the house with a new owner and took the car back. (Tr. p. 202, lines 10 – 19; p. 217, lines 7 – 14; p. 251, lines 24 – 25; p. 542, lines 2 – 4). This occurred either in 1999 or 2000.

173. Likewise, Mr. Heyward gave a thirty-one-foot Sea Ray boat to Mr. Kern, and then he took it back. (Tr. p. 217, lines 19 – 20). He also gave a Saab to Karen Ray then took it back. (Tr. p. 217, lines 20 – 22). Mr. Kern testified that, looking back on it, Mr. Heyward did not realize what he was doing. (Tr. p. 217, line 23 – 218, line 2).

174. With regard to the Sea Ray, Mr. Kern testified that Mr. Heyward was supposed to give him a 310 Sea Ray Express Cruiser but changed his mind and gave it to his friends in Charleston. He then changed his mind and gave it to Vance Sharpe. Mr. Sharpe then sold that boat to Mr. Mulleck. (Tr. p. 230, lines 8 – 12).

175. With regard to the WELL PLEASED, Mr. Kern testified that Mr. Heyward gave him a bill of sale to that boat in July 2001. (Tr. p. 235, lines 19 – 21). Mr. Kern then took the WELL PLEASED to Florida. (Tr. p. 235, lines 22 – 24). Subsequently Mr. Kern learned that Mr. Heyward attempted to give the same boat to someone else. (Tr. p. 235, line 25 – p. 236, line 7).

176. Mr. Kern testified that he had no knowledge of Well Pleased Charters, LLC, but that he agreed to give the boat to it, "because it was what George wanted." Mr. Heyward's taking back a gift was common place for him, nothing out of the ordinary, and had happened many times before. (Tr. p. 541, lines 7 – 20). Mr. Kern testified that he did not have any qualms about giving the boat back, because he had not spent any money for it. (Tr. p. 541, lines 16 – 18).
177. Mr. Kern testified that when Mr. Heyward gave away a car, it would be an assumption that he knew he was giving it away. (Tr. p. 266, lines 14 – 17).
178. Mr. Kern testified that the purpose of Mr. Heyward's deeding his house to Mr. Kern was to generate some funds to pay Mr. Heyward's federal tax liens and his real estate taxes (Tr. p. 249, lines 10 – 14; p. 258, lines 16 – 22; p. 274, lines 11 – 16; p. 528, lines 3 – 11; p. 274, lines 2 - 4, lines 11 - 16; p. 275, lines 16 - p. 276, line 4), to obtain funds for Mr. Williams (Tr. p. 249, lines 14 – 15), and to give Mr. Kern some funds (Tr. p. 249, lines 16 – 18; p. 274, lines 2 - 4). Mr. Kern testified that he paid Larry Williams out of the funds Mr. Heyward gave him (Tr. p. 250, lines 21 – 24), and that the balance of the funds were for use on the boat that Mr. Heyward had given Mr. Kern. (Tr. p. 250, line 25 – p. 251, line 3). Mr. Kern testified that he did not wrongly obtain title to Mr. Heyward's house (Tr. p. 275, lines 16 – 18), since Mr. Heyward received the benefit of having his tax liens, real estate liens, and debts to Mr. Kern paid. (Tr. p. 274, line 24 – p. 275, line 4, line 16 – p. 276, line 4).
179. Mr. Kern testified that Mr. Heyward told Mr. Kern before that he owed him some money (Tr. p. 249, lines 19 – 21) for his taking care of Mr. Heyward and seeing to his bills (Tr. p. 249, line 24 – p. 249, line 6; p. 250, lines 7 - 10). Mr. Kern testified that the money was "more or less a gift," but that Mr. Heyward owed him money. He testified that there was never an amount discussed, but that Mr. Heyward owed him money for taking care of him from about 1998 to 2000. (Tr. p. 532, lines 13 – 25).
180. There was a federal tax lien that had been filed against the 14 Glenlake Road property. (Tr. p. 258, lines 23 – 25; p. 270, lines 16 - 22). Mr. Heyward had received several registered letters that his house would be sold for taxes. (Tr. p. 228, lines 19 – 20). There was a sticker put on the front door of the house. (Tr. p. 228, line 20 – 21; p. 246, lines 12 - 19). Notice of an auction of Mr. Heyward's house was to be published in the newspaper. (Tr. p. 228, lines 21 – 23).
181. Mr. Kern testified that part of the reason to convey the property was to satisfy that federal tax lien. (Tr. p. 259, lines 1 – 3). Mr. Kern testified when asked whether Mr. Heyward knew what a tax sale was, "He did, but he didn't." (Tr. p. 529, lines 4 – 5). He also testified that the conveyance was made, "because George needed money for taxes and money to live on, because this time, he did not have any money." (Tr. p. 526, line 22 – p. 527, line 4). Mr. Kern testified that Mr. Heyward understood the gravity of the situation, "but not that anything could actually happen per se. I don't think he grasped that." (Tr. p. 529, lines 15 – 18).
182. Mr. Kern testified that the reason Mr. Heyward could not go get any money to pay the tax lien was because he had bought hundreds of thousands of dollars worth of cars, several of which were repossessed for bad checks, "frankly, just monetary things that George did that made no sense at all." (Tr. p. 528, lines 21 – 25).

183. Mr. Kern testified that he told Mr. Heyward that he could "take over the house in my name, get the money, pay off the debt, and move on." (Tr. p. 229, lines 14 – 16). Mr. Kern testified that this plan was his idea. (Tr. p. 229, lines 18 – 24). Mr. Heyward did not have any other way he knew of to pay the taxes. (Tr. p. 230, lines 5 – 7).
184. Mr. Kern did not discuss with Mr. Heyward whether Mr. Heyward would continue to live in the house (Tr. p. 278, lines 22 – 24), but Mr. Heyward did continue to live there until he entered Baptist Hospital (Tr. p. 278, line 25 – p. 280, line 1).
185. Mr. Kern testified that Mr. Heyward wanted Mr. Kern to have the funds generated by the conveyance of the property and that he understood what he was doing at the time (Tr. p. 277, lines 2 – 7), but he then testified that he did not know whether Mr. Heyward knew that he no longer owned the house after he signed the Quitclaim Deed. (Tr. p. 277, lines 17 – 19).
186. After Mr. Kern obtained the Quitclaim Deed and the General Warranty Deed, he recorded them in the R.M.C. Office for Richland County, South Carolina. (Tr. p. 206, lines 18 – 23). He obtained two separate mortgages on the house. (Tr. p. 206, line 24 – p. 207, line 2).
187. For the first mortgage, Mr. Kern used Luthi Mortgage Company. (Tr. p. 207, lines 20 – 22). He borrowed approximately \$135,000. (Tr. p. 207, line 23 – p. 208, line 4). Mr. Kern moved to Florida in late January 2002, taking the boat WELL PLEASED with him. (Tr. p. 208, lines 11 – 17). The Luthi Mortgage transaction closed on February 4, 2002. (Tr. p. 208, lines 5 – 10).
188. Mr. Kern testified that a letter dated June 12, 2002, which stated that Mr. Heyward deeded his property at 14 Glenlake Road for tax reasons and others was required by the closing attorney (Tr. p. 536, lines 22 – 25), but he did not know who typed the document and was not present when Mr. Heyward signed it. (Tr. p. 537, lines 1 – 5). Mr. Kern testified that he was not present when a document was signed by Mr. Heyward and sent to Mr. Atria, the closing attorney, stating that Mr. Heyward was not the same George Heyward against whom there was a certain judgment (Tr. p. 257, lines 3 – 16), nor was he present when Mr. Heyward signed a statement that Mr. Kern handled all of Mr. Heyward's financial business. (Tr. p. 257, line 17 – p. 258, line 13).
189. From the first mortgage, Mr. Kern paid \$4,000 and some odd dollars for the 2001 real estate taxes, and he paid \$10,878.35 in regard to the I.R.S. tax lien. (Tr. p. 260, lines 11 – 16).
190. Another \$19,561.21 was paid to Paramount Communications from the first mortgage, but Mr. Kern testified that he could not remember whether that bill was in his name or Mr. Heyward's name. (Tr. p. 260, lines 17 – 25).
191. After property taxes were paid for the house and various expenses were paid through the mortgage, there was approximately \$89,000 left. (Tr. p. 228, lines 6 – 10). Of the money Mr. Kern obtained from the Luthi Mortgage, approximately \$40,000 went to Mr. Kern, \$20,000 went to Larry Williams, and \$20,000 Mr. Kern spent on the boat. (Tr. p. 208, lines 18 – 24; p. 532, lines 2 – 6; p. 533, line 12 – p. 534, line 3). Mr. Kern testified that he gave Larry Williams some money to continue taking care of Mr. Heyward, some to pay on the note, "and I used the rest of it for my personal use." (Tr. p. 536, lines 4 – 6).
192. Later Mr. Kern applied for a second mortgage on the house of \$187,000 with Eastern Savings Bank. (Tr. p. 208, line 25 – p. 209, line 10). The mortgage broker involved again was Nealie Cook. (Tr. p. 209, lines 7 – 15).

193. There were some problems with ESB's processing of the mortgage. ESB was trying to write the mortgage as a primary residence mortgage although Mr. Kern did not live at the house. (Tr. p. 210, lines 14–21). Mr. Kern's credit rating was also a problem. (Tr. p. 210, line 22–p. 211, line 1). ESB was concerned about Mr. Kern's previous bankruptcy. (Tr. p. 211, lines 6–9).
194. In taking the second mortgage with ESB, the first mortgage with Luthi Mortgage was satisfied. (Tr. p. 210, lines 4–8).
195. Mr. Kern testified that the purpose of refinancing was to pay off the existing loan and to keep the balance current. (Tr. p. 209, lines 16–18). The proceeds of that mortgage were approximately \$21,000. Mr. Kern gave Larry Williams approximately seven thousand dollars and kept the rest. (Tr. p. 209, line 23–p. 210, line 3).
196. In the second mortgage transaction, Mr. Kern testified that Mr. Heyward was unaware of the amounts he was disbursing. (Tr. p. 261, line 23–p. 262, line 1). Mr. Heyward was not involved in the mortgage transaction. (Tr. p. 262, lines 2–7).
197. Mr. Kern testified that he did not know Ian Desportes (Tr. p. 248, lines 18–25) and never observed a roofer working on Mr. Heyward's house. (Tr. p. 249, lines 3–5). He testified that Mr. Heyward never sent a roofer to talk to him as the house owner. (Tr. p. 278, lines 4–6). To Mr. Kern's knowledge, Mr. Heyward never told anyone that Mr. Kern owned the house. (Tr. p. 278, lines 16–18).

Notary Public, Jerry Verdino

198. Gerald A. Verdino, Jr. was a notary public for South Carolina. (Tr. p. 283, line 7–12).
199. He testified that he notarized the July 20, 2001, Quitclaim Deed, Plaintiff's Exhibit 39, believing that it was going to be the sale of a boat between Larry Williams and Steve Kern. (Tr. p. 284, lines 8–9).
200. Messrs. Williams and Kern approached Mr. Verdino at a jet ski business he owned, Lexington Personal Water Craft, on July 20, 2001, and asked him to notarize a piece of paper between them. (Tr. p. 284, lines 12–15). Nothing on the paper mentioned George Heyward (Tr. p. 284, lines 12–15) and Mr. Kern told Mr. Verdino that Mr. Williams was buying a boat from Mr. Kern for a dollar. (Tr. p. 284, lines 15–17). They had bought and sold boats at the Marina over the years many times. (Tr. p. 284, lines 17–18). At the time Mr. Verdino notarized the Deed, Mr. Heyward's signature did not appear on it. (Tr. p. 285, line 22–p. 286, line 1). The printed name "George Heyward" was not on the documents. (Tr. p. 286, lines 2–4). George Heyward was not present. (Tr. p. 286, lines 7–8).
201. Mr. Verdino knew Messrs. Williams and Kern as slip renters at the Lake Murray Marina. (Tr. p. 285, lines 1–5). He had been the general manager at the Lake Murray Marina. (Tr. p. 284, lines 23–25). He had known them since about 1994. (Tr. p. 285, lines 8–9).
202. Mr. Verdino notarized the July 20, 2001 Quitclaim Deed and signed as a witness. (Tr. p. 286, line 23–p. 287, line 2). He was never shown the first page of the Quitclaim Deed. (Tr. p. 290, lines 21–23). Neither Mr. Kern nor Mr. Williams ever represented that Mr. Heyward was deeding his house to Mr. Kern. (Tr. p. 290, line 24–p. 291, line 1).

testified that Mr. Heyward showed up with one Form 1099 for a very small amount and said, "Do my taxes based on this." (Tr. p. 299, lines 22 – 23). It was very incomplete information. (Tr. p. 299, lines 23 – 24).

210. Mr. Scheffield asked Mr. Heyward for any additional tax documents. (Tr. p. 299, line 25 – p. 300, line 2). Mr. Heyward remarked, "I have not sold anything, and I have not bought anything." (Tr. p. 300, lines 2 – 5).
211. For the previous tax year, 1998, just to get a return filed, Mr. Scheffield had looked at what stock Mr. Heyward owned, and, using standard published documents from the S & P 500, determined what dividends were paid on those securities and input the dividends Mr. Heyward should have been reporting. (Tr. p. 300, lines 5 – 11). Mr. Scheffield also made certain other estimates, like Mr. Heyward's social security, just to get a tax return filed. (Tr. p. 300, lines 10 – 13).
212. Mr. Heyward never picked up the 1999 tax return from Mr. Sheffield's office. (Tr. p. 300, lines 18 – 19). Mr. Scheffield had obtained an extension for filing and the time was elapsing. (Tr. p. 300, lines 18 – 20). Sometime in October 2000, Mr. Scheffield went to Mr. Heyward's house and put the tax return in Mr. Heyward's mailbox. (Tr. p. 300, lines 20 – 21). Mr. Scheffield had called Mr. Heyward several times to pick up the return, and Mr. Heyward was not able to come by Mr. Scheffield's office to do so. (Tr. p. 300, lines 21 – 23). This went on from approximately May of 2000 to September of 2000. (Tr. p. 302, lines 3 – 4). Mr. Scheffield was concerned that Mr. Heyward would become delinquent on his tax return, so Mr. Scheffield delivered it to the mailbox. (Tr. p. 300, lines 23 – 25). Mr. Scheffield did not know whether that tax return was ever actually filed. (Tr. p. 302, lines 13 - 15).
213. Mr. Scheffield was not aware of any tax returns before 1999 that were not filed. (Tr. p. 302, lines 18 – 21).
214. Mr. Scheffield testified that on at least two occasions, Mr. Heyward has bounced checks to the I.R.S. (Tr. p. 302, line 22 – p. 303, line 7). He believed those checks were in connection with tax years 1996 or 1997. (Tr. p. 303, lines 3 – 9).
215. In Mr. Scheffield's letter to Mr. Foy of September 21, 2001, he indicated concerns about Mr. Heyward's lack of detail to financial matters. (Tr. p. 303, lines 10 – 13). For one, Mr. Heyward had not come to see Mr. Scheffield or sent him any information about preparing his year 2000 tax return. (Tr. p. 303, lines 13 – 16). For the 1998 and 1998 returns, the information Mr. Heyward had provided was very lacking. (Tr. p. 303, lines 15 – 17). Mr. Scheffield was concerned that Mr. Heyward was not keeping track of his records promptly or properly. (Tr. p. 303, lines 18 – 19).
216. Mr. Scheffield testified that a gentleman from Smith-Barney called him and said that he went to see Mr. Heyward anticipating getting a large account but left fairly promptly, concerned about the appearance of the house. (Tr. p. 304, lines 4 – 11).
217. Mr. Scheffield testified that he also had concerns after talking to Mr. Heyward's sister-in-law, Flo Heyward, about Mr. Heyward's condition. (Tr. p. 304, lines 22 – 24).
218. Mr. Scheffield testified he had not had contact with Mr. Heyward since April of 2000; however, Mr. Heyward did appear at Mr. Scheffield's office sometime, he believed, in 2003. Either Mr. Scheffield was unavailable or not in his office. Mr. Heyward arrived unannounced, accompanied by someone, asking for David Scheffield, his "stock broker." Mr. Scheffield testified that he is not in the stock brokerage business. (Tr. p. 305, 11 – 19).

219. When Mr. Heyward arrived at Mr. Scheffield's office in April of 2000 concerning his 1999 tax return, his personal hygiene condition was "very poor." (Tr. p. 307, lines 6–9). Mr. Scheffield testified that Mr. Heyward had not shaved or had a haircut in awhile. There was some body odor. Some of the ladies in Mr. Scheffield's office had some comments about Mr. Heyward's body odor. (Tr. p. 307, lines 9–14).
220. When Mr. Scheffield met with Mr. Heyward in 1999, Mr. Heyward's personal hygiene was also "kind of rough." (Tr. p. 307, line 20). Mr. Heyward was "a little bit shaggy" regarding his haircut and beard. He looked as though he had not bathed in a couple of days. His fingernails were very long. (Tr. p. 307, lines 20–24).
221. Mr. Scheffield testified that for the year 2000, the I.R.S. has proposed an income tax assessment against Mr. Heyward based on information reported to it from various sources totaling \$2,297,808.00. (Tr. p. 306, lines 3–16).
222. Mr. Scheffield testified that the I.R.S. assessment of Mr. Heyward for the year 2000 for approximately \$2.3 million was for income from various stock sales, which, after some investigation, Mr. Scheffield believes was all Wachovia stock sales made during that year. (Tr. p. 308, lines 14–16).
223. Mr. Scheffield testified that Mr. Heyward would not be considered a model J.W. Hunt client. (Tr. p. 310, lines 7–11).
224. Mr. Scheffield testified that there had been an I.R.S. levy against Mr. Heyward's property with regard to his filings for 1995 and 1996. (Tr. p. 314, lines 6–16).
225. Mr. Heyward received a notice for 1997 from the I.R.S. reminding him of overdue tax. (Tr. p. 314, lines 18–22).
226. Mr. Scheffield testified that when Mr. Heyward came to see him in 1999, that was the first time Mr. Heyward met with Mr. Scheffield. (Tr. p. 315, lines 13–16). Mr. Scheffield described Mr. Heyward's appearance as "kind of rough." (Tr. p. 315, lines 13–19). Mr. Heyward asked Mr. Scheffield what the date was. When Mr. Scheffield told him, Mr. Heyward "was astonished" and said, "I'm sorry. Normally I give you fifteen days." (Tr. p. 315, line 24–p. 316, line 2). Mr. Heyward also said that if Mr. Scheffield had any questions, he could call Mr. Heyward; however, Mr. Heyward did not know his phone number. (Tr. p. 316, lines 2–5).
227. While the I.R.S. assessed Mr. Heyward with income for the year 2000 of approximately \$2.3 million from selling his Wachovia stock, Mr. Heyward never told Mr. Scheffield that that he had sold that much stock. (Tr. p. 317, line 5–p. 318, line 13).
228. Mr. Scheffield testified that, since the I.R.S. had some assessment, it was likely that Mr. Heyward filed a tax return for the year 1995. (Tr. p. 319, lines 5–21). The I.R.S. assessments for certain years were \$2,000; \$16,000, and \$1,000. (Tr. p. 319, lines 22–24).
229. In Mr. Scheffield's business as a C.P.A., he normally asks clients to provide information on sales and gifts. (Tr. p. 321, lines 15–19).
230. The sale of a house would be a taxable transaction. (Tr. p. 321, lines 20–22). Gifts of large sums of money could have tax implications. (Tr. p. 321, lines 23–25). One of the specific questions that the J.W. Hunt questionnaire asks of clients is, "Have you given any individuals more than \$10,000 during the tax year?" (Tr. p. 321, line 25–p. 322, line 3). Nonetheless, Mr. Heyward never told Mr. Scheffield about any large gifts. (Tr. p. 322, lines 4–5).

Guardian Floride B. Heyward

231. Floride "Flo" B. Heyward was George Heyward's sister-in-law. She was married to Mr. Heyward's brother, the late Tabb Heyward. (Tr. p. 323, lines 16 – 17). Ms. Heyward married Tabb Heyward in 1958. He died in 1995. (Tr. p. 323, lines 15 – 17).
232. Flo Heyward had known George Heyward since the 1940s and had known him well since 1958. (Tr. p. 323, lines 18 – 22). She had also known Mr. Heyward, although not well, as a child. (Tr. p. 323, lines 20 – 21).
233. Flo Heyward's grandfather was the doctor for George Heyward's grandparents. Her parents were good friends with George Heyward's parents and socialized with them over a period of years. (Tr. p. 323, line 24 – p. 324, line 1).
234. Ms. Heyward testified that she knew Ian Desportes (Tr. p. 348, lines 14 – 15), and Mr. Desportes' grandfather was friends with Ms. Heyward's husband. Ms. Heyward knew Mr. Desportes' grandfather and great grandparents. (Tr. p. 348, lines 14 – 17).
235. When Flo Heyward first married to Tabb Heyward, George Heyward was running the family business for his father in Charlotte, North Carolina. (Tr. p. 324, lines 6 – 7). The family owned a granite quarry. The business took granite and sold monuments from it. (Tr. p. 324, lines 6 – 9).
236. When George Heyward's father died in 1976, he came back to Rion, South Carolina, and ran Winnsboro Granite Corporation, the quarry in Rion, and Heyward Granite Company, a quarry in Missouri. (Tr. p. 324, lines 14 – 17). Mr. Heyward was the President and possibly also the Treasurer of those corporations. (Tr. p. 324, lines 18 – 20).
237. Mr. Heyward served in some directorships during the course of his career (Tr. p. 351, lines 2 – 4), but Ms. Heyward did not know what duties Mr. Heyward performed at the meetings. (Tr. p. 351, lines 8 – 10). The Blue Grass Quarry in Fairfield County ceased doing business December 31, 1986. The quarry in Missouri was sold sometime between 1976 and 1986. (Tr. p. 351, lines 17 – 18).
238. George Heyward was also the director of the Bank of Fairfield in Winnsboro, which subsequently became part of Wachovia Bank. (Tr. p. 325, lines 5 – 6). Mr. Heyward was director of a group now called Associate Supply Companies. This group included Columbia Supply in Columbia, South Carolina; a steel company in Florence, South Carolina; Charleston Supply in Charleston, South Carolina; Matthew Morris in Charlotte, North Carolina; and another company in Wilmington, North Carolina. (Tr. p. 325, lines 5 – 11).
239. During the time Ms. Heyward knew Mr. Heyward, he was not prone to give gifts to people. (Tr. p. 325, lines 17 – 20).
240. Flo Heyward learned that Mr. Heyward had made substantial gifts to people for the first time in 2002. She was at Mr. Heyward's house and saw mail addressed to Steve Kern about insurance on 14 Glenlake Road, a mortgage application, and related documents. (Tr. p. 326, lines 16 – 20). Before that time, she had no idea that Mr. Heyward was making gifts. (Tr. p. 326, lines 21 – 23).
241. Flo Heyward was appointed as Guardian for Mr. Heyward in September of 2002. (Tr. p. 326, line 24 – p. 327, line 3). Since that time, she has had occasion to investigate the gifts Mr. Heyward previously made. (Tr. p. 327, lines 4 – 6). She

assisted William L. Pope, Esquire, who was appointed as Mr. Heyward's conservator and reviewed canceled checks and other evidence. (Tr. p. 372, lines 7–9).

242. Ms. Heyward testified that neither Mr. Pope nor Ms. Heyward are being compensated for their respective services as Conservator and Guardian. (Tr. p. 327, lines 14–15).
243. Flo Heyward made arrangements for Mr. Heyward to be placed at Raipha Residential Care. (Tr. p. 327, line 25 – p. 328, line 4). He has been there substantially since he was discharged from Baptist Medical Center. (Tr. p. 328, lines 9–13). Mr. Heyward takes Wellburtin, Seroquel, Exelon, blood pressure medication, cholesterol medication, and aspirin. (Tr. p. 328, lines 17–20).
244. After Ms. Heyward's husband died, between 1995 and 2002, she saw George Heyward maybe ten times. (Tr. p. 344, lines 22–24). She usually did not go to Mr. Heyward's house, but instead invited him to her house or to other places. (Tr. p. 344, lines 22–25). Ms. Heyward said that she tried to see Mr. Heyward on his birthday and on holidays. (Tr. p. 345, lines 3–11).
245. During the 1995 to 2001 time period, Mr. Heyward also came to Ms. Heyward's house for meals and came to the beach in 1998 when her daughter married. (Tr. p. 350, lines 2–4). Also, a couple of times, they met at the attorney's office concerning some environmental issues with the rock quarry. (Tr. p. 350, line 8–25).
246. When Ms. Heyward met with Mr. Heyward for meals from 1995 to 2001, he knew who she was and seemed coherent, but only talked about cars and had superficial conversations. (Tr. p. 348, line 21 – p. 349, line 6). In the context of the superficial conversations, Mr. Heyward's responses were appropriate. (Tr. p. 349, lines 7–10). He recognized Ms. Heyward and would drive himself to the restaurant and back. (Tr. p. 349, lines 13–23). Mr. Heyward talked about cars and boats. (Tr. p. 352, lines 3–6).
247. Ms. Heyward recalled a telephone call from a DSS case worker. (Tr. p. 347, lines 9–12). Ms. Heyward told the D.S.S. case worker that she had talked to Mr. Heyward the previous week and that he was "fine." (Tr. p. 347, lines 16–25).
248. Ms. Heyward testified that Mr. Heyward never told her that he gave away his house and property in Fairfield County, South Carolina. (Tr. p. 345, lines 18–21). Rather, he said that he had sold it, had a mortgage on it and that the money was paid through attorney John McLeod. (Tr. p. 345, line 22 – p. 346, line 2).
249. In 2002, Flo Heyward went to Mr. Heyward's house about a letter from the Court stating that Mr. Heyward needed to appear for court because he had ignored a proceeding for one of his traffic violations and that he needed to come and be prepared to go to jail. (Tr. p. 328, line 24 – p. 329, line 3). Ms. Heyward retained Hugh Roberts, Esquire, who resolved the matter. (Tr. p. 329, lines 19–24).
250. When, in approximately February 2002, Flo Heyward saw the mail addressed to Mr. Kern about a mortgage or insurance on 14 Glenlake Road, Ms. Heyward checked with the Richland County RMC office and asked for a copy of the deed to the house. She found both the Quitclaim Deed and the General Warranty Deed. (Tr. p. 330, lines 16–20). Before that time, Ms. Heyward had no idea that Mr. Heyward had signed the deeds to his house. (Tr. p. 330, line 24 – p. 331, line 1).