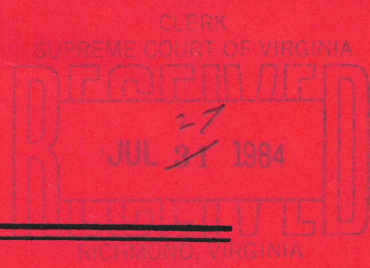


232 Va. 310



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 831694

DONALD S. ELMORE, et al,

Appellants,

v.

VIRGINIA NATIONAL BANK, et al,

Appellees.

APPENDIX

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and O'BRYAN
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BILL OF COMPLAINT

The complainant alleges as hereinafter set forth.

1. Virginia National Bank (formerly Virginia Trust Company, the "Bank") is Trustee under an agreement dated February 23, 1957 (the "Agreement") between Gwendolyn Agnes Elmore (later known as Gwendolyn E. Overbey, the "Grantor") and Ralph A. Elmore, Trustee ("Elmore"). The Bank succeeded Elmore as trustee upon his death. A copy of the Agreement is attached as Exhibit A.

2. Under the Agreement, the Grantor created a trust for her own benefit during her lifetime. She conveyed certain property to the trust under the Agreement and further provided in Paragraph I(c) that any other real or personal property delivered by her to the Trustee to be held, managed and disposed of in accordance with the provisions of the Agreement would become part of the trust estate.

3. Paragraph IV of the Agreement provided that upon the death of the Grantor, the remaining trust estate should pass to her lawful issue who survived her. Paragraph IV(5) provided that if the Grantor died without lawful issue surviving her, the remaining trust estate should pass to the "nearest living paternal kindred" of the Grantor.

4. By a Deed and Agreement dated May 3, 1975 (the "1975 Agreement") between the Grantor, Elmore, and Robert Winston Overbey ("Overbey"), the Grantor attempted to convey additional real property to the trust and also attempted to amend a number

of provisions of the Agreement. A copy of the 1975 Agreement is attached as Exhibit B.

5. One of the "amended" provisions of the Agreement was Paragraph IV(5) referred to above. The 1975 Agreement provided that if the Grantor died without leaving issue surviving her, the trust should continue for the benefit of Elmore during his lifetime and upon Elmore's death (or the death of the Grantor, if Elmore did not survive her), the trust should be divided into three parts for the benefit of Overbey, Jean S. Warren and Joan S. Pusey. Jean S. Warren and Joan S. Pusey are paternal cousins of the Grantor. The 1975 Agreement provided for the administration and disposition of these parts in a manner that would result in the ultimate recipients of the trust estate being either issue of Jean S. Warren and Joan S. Pusey or other paternal kindred of the Grantor.

6. The Grantor survived Elmore and died without issue on October 27, 1981.

7. The Grantor was survived by Overbey and by a number of paternal relatives. All of these persons are named as defendants herein. A family tree as of the date of the Grantor's death is attached as Exhibit C.

8. The complainant is uncertain whether the 1975 Agreement is effective insofar as it attempts to modify the provisions of the Agreement concerning distribution of the trust estate upon the Grantor's death.

9. If the 1975 Agreement is ineffective insofar as it attempts to modify the provisions of the Agreement concerning

distribution, the complainant is uncertain whether the conveyance of additional property to the trust by the Grantor under the 1975 Agreement is effective.

10. If the 1975 Agreement is ineffective insofar as it attempts to modify the provisions of the Agreement concerning distribution, the trust estate should be distributed to the "nearest living paternal kindred" of the Grantor as of the date of her death. The complainant is uncertain, however, about the meaning of the phrase "nearest living paternal kindred".

WHEREFORE, the complainant prays (i) the advice and guidance of the Court whether the 1975 Agreement is effective insofar as it attempts to modify the provisions of the Agreement concerning distribution of the trust estate upon the Grantor's death; (ii) the advice and guidance of the Court whether the property conveyed to the trust by the Grantor by the 1975 Agreement is part of the trust estate; (iii) the advice and guidance of the Court concerning the meaning of the phrase "nearest living paternal kindred"; (iv) the advice and guidance of the Court respecting such other matters relating to the distribution of the trust estate as may be brought to the attention of the Court in this cause; and (v) that it be authorized to pay out of the principal of the trust estate in its hands the expenses incident to this suit, including a reasonable fee to the complainant's counsel for services in this regard.

By: Jane R. Whitt
Of Counsel

Wellford L. Sanders, Jr.
Jane R. Whitt
McGuire, Woods & Battle
1400 Ross Building
Richmond, Virginia 23219

**ANSWER OF RALPH A. ELMORE, III
AND DONALD S. ELMORE**

Defendants Ralph A. Elmore, III, and Donald S. Elmore, by counsel, state as follows for their answer:

1. Defendants admit the allegations of paragraphs 1, 2, 3, 4, 5, 6, and 7 of the Bill of Complaint, except that defendants deny that Gwendolyn E. Overbey was Grantor under the trust agreement.

2. Regarding paragraph 8, defendants deny that the 1975 Agreement was an effective modification of the provisions of the Agreement concerning distribution upon Gwendolyn E. Overbey's death. Defendants contend that the Agreement could not be amended without the consent of all the beneficiaries of the trust, including your defendants.

3. Regarding paragraph 9, defendants state that the conveyance of additional property to the trust under the 1975 Agreement was effective.

4. Regarding paragraph 10, defendants state that the 1975 Agreement was ineffective in so far as it attempted to modify the provisions of the Agreement concerning distribution and, therefore, the trust estate should be distributed to the nearest living paternal kindred of Gwendolyn E. Overbey as of the date of her death, which kindred would include your defendants.

5. If the court determines that Gwendolyn E. Overbey had the legal right or power to amend the Agreement without first obtaining consent of all beneficiaries, the attempt at amendment was ineffective because Gwendolyn E. Overbey did not have the requisite mental capacity to make and execute the 1975 Agreement.

6. Defendants affirmatively state that the term "nearest living paternal kindred" means those who would take under the Virginia Statute of Descent, which is

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D. Clerk:
Hea C. [Signature]

the present case, would mean that the trust should be divided, per stirpes, among the five first cousins of Gwendolyn E. Overbey, or to the lawful issue of any deceased first cousin, which distribution would result in defendants Ralph A. Elmore, III and Donald S. Elmore each receiving ten per cent (10%) of the Trust.

7. Defendants affirmatively state that Gwendolyn E. Overbey was not the Grantor of the trust agreement, but rather that Ralph A. Elmore was the de facto Grantor.

8. Defendants reserve the right to amend or modify their Answer as they may be advised.

WHEREFORE, your defendants pray that the court determine that:

(i) The 1975 Agreement was ineffective in so far as it attempted to modify the provisions of the Agreement concerning distribution of the trust estate upon Gwendolyn E. Overbey's death.

(ii) The property "conveyed" to the trust by Gwendolyn E. Overbey in the 1975 Agreement is part of the trust estate.

(iii) The trust estate should be distributed to the nearest living paternal kindred of Gwendolyn E. Overbey as of the date of her death, which kindred would include your defendants.

(iv) Ralph A. Elmore, III and Donald S. Elmore should each receive ten per cent (10%) of the trust estate.

(v) Defendants' attorneys fees and costs be paid out of the principle of the trust estate.

RALPH A. ELMORE, III AND DONALD S. ELMORE

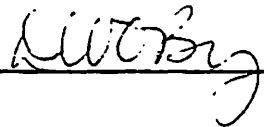
by

L. A. Overbey
Their Attorney

D. Wayne O'Bryan
CABELL, PARIS, LOWENSTEIN AND BAREFORD
523 East Main Street
Richmond, Virginia 23219
643-9066

CERTIFICATE OF SERVICE

I hereby certify that on this 26 day of April, 1982, a true copy of the foregoing Answer of Ralph A. Elmore, III and Donald S. Elmore was mailed to Susan R. Robertson, Esquire, 5243 Sheridan Lane, Richmond, Virginia 23225; William S. Smithers, Jr., Esquire, 5911 West Broad Street, Richmond, Virginia 23230; Julious P. Smith, Jr., Esquire, Post Office Box 1320, Richmond, Virginia 23210; and Jane R. Whitt, Esquire, 1400 Ross Building, Richmond, Virginia 23219, all counsel of record.



Virginia:

In the Circuit Court of the City of Richmond, Division 1,

THE 19th DAY OF July 19 83

VIRGINIA NATIONAL BANK,
as Trustee under Agreement
with Gwendolyn E. Overbey,

COMPLAINANT

v.

B-7413-1

ROBERT W. OVERBEY, et al

DEFENDANTS

D E C R E E

THIS CAUSE for advice and guidance, brought by the Complainant, as Trustee, came again on today's date upon the record made.

Upon Due Consideration thereof, it is DECREED, ORDERED and DECLARED that:

(1) The Deed and Agreement, dated May 30, 1975, between Ralph A. Elmore as grantor and Robert Winston Overbey, is ineffective insofar as it attempted to modify or amend the provisions of the Agreement, dated February 23, 1957, between Gwendolyn Agnes Elmore (later known as Gwendolyn E. Overbey ("the Grantor")) and Ralph A. Elmore, Trustee, ("the 1957 Agreement"), concerning the distribution of the trust estate upon the Grantor's death because the Grantor did not in the 1957 Agreement retain the power to modify, revoke or amend the trust created in the Agreement, and she did not obtain the consent of all potential beneficiaries under the trust so created to the attempted amendment.

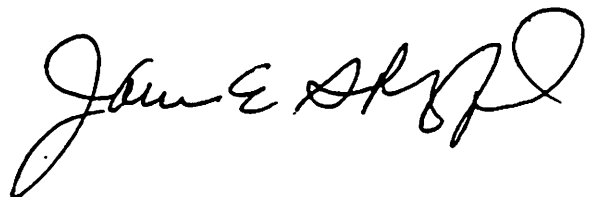
(2) The property conveyed to the trust by the 1975 Agreement is a part of the Trust Estate.

(3) The phrase "nearest living paternal kindred" as used in paragraph IV 5 of the 1957 Agreement, is not ambiguous, and the Court finds that by the use of the term, the Grantor meant the nearest of the of the testator's blood paternal kindred living at her death and does not mean those who would be beneficiaries under the statute of descent and distribution. Madeline E. Robison and Louis Elmore, Jr. are the nearest living paternal kindred of the Grantor, since they were her closest blood paternal relatives living on the date of her death.

(4) Extrinsic evidence is not necessary or admissible to interpret the unambiguous words selected by the Grantor. The evidence offered by the Donald Elmore Defendants is also inadmissible on the grounds of hearsay and relevancy. Moreover, such evidence must be rejected because it has no probative value.

It is further DECREED and ORDERED that the Complainant is authorized to pay out of the principal of the trust estate in its hands the expenses incident to this suit, including a reasonable fee to the Complainant's counsel for services rendered in this cause upon its submission of documentation and approval of same by this Court.

Lastly, it is DECREED and ORDERED that a certified copy of this Decree be mailed to all counsel of record.

A handwritten signature in black ink, appearing to read "John E. Skiff". The signature is written in a cursive, flowing style with a large, prominent loop at the end.

ASSIGNMENTS OF ERROR

Petitioners, Ralph A. Elmore, III, and Donald S. Elmore, assign as error the following:

1. The trial court erred in holding that "the phrase 'nearest living paternal kindred' as used in paragraph IV of the 1957 Agreement, is not ambiguous."
2. As a consequence of the trial court's first error, the trial court also erred in holding that extrinsic testimonial evidence was not admissible to aid in the interpretation of the phrase "nearest living paternal kindred."
3. The trial court erred in holding that extrinsic testimonial evidence profered by Appellants was inadmissible on the grounds of hearsay, relevancy and because it had no probative value.
4. The trial court erred in holding as a matter of law that the Grantor, by use of the phrase, "nearest living paternal kindred", "meant the nearest of the testator's blood paternal kindred living at her death and does not mean those who would be beneficiaries under the statute of descent and distribution."

ASSIGNMENTS OF CROSS-ERROR

1. THE PHRASE "NEAREST LIVING PATERNAL KINDRED" IS UNAMBIGUOUS. IT REFERS TO THE GRANTOR'S CLOSEST BLOOD PATERNAL KINDRED WHO SURVIVED HER AND NOT TO THOSE PATERNAL KINDRED WHO WOULD TAKE UNDER THE STATUTE OF DESCENT AND DISTRIBUTION.
2. THE INTENTION OF THE GRANTOR THAT HER NEAREST LIVING PATERNAL KINDRED NOT BE DETERMINED BY THE STATUTE OF DESCENT AND DISTRIBUTION IS REVEALED IN THE 1957 AGREEMENT BY HER MAKING REFERENCE TO THE STATUTE TO DEFINE A CLASS OF TAKERS BUT ONLY SIX LINES LATER SHE MAKES NO REFERENCE TO THE STATUTE TO DEFINE THE CLASS OF HER NEAREST LIVING PATERNAL KINDRED
3. EXTRINSIC EVIDENCE IS NOT ADMISSIBLE TO INTERPRET THE PHRASE "NEAREST LIVING PATERNAL KINDRED"

831694

1

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
DIVISION I

VIRGINIA NATIONAL BANK

PLAINTIFF

V.

G-7413-1

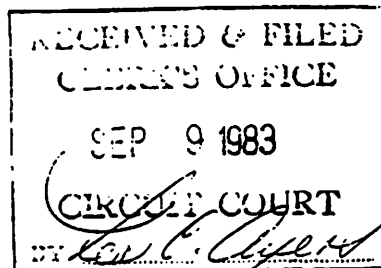
ROBERT OVERBEY

DEFENDANT

TRANSCRIPT OF PROCEEDINGS

March 15, 1983

BEFORE: The Honorable James E. Sheffield, Judge



1 adverse party, Your Honor.

2 THE COURT: Mr. Elmore, come forward and
3 be sworn.

4 MR. SMITHERS: We renew our objections to
5 taking any testimony. We think the documents have
6 been offered, they speak for themselves and not to
7 prejudge what Mr. O'Bryan is going to offer, but
8 there is no extrinsic evidence that has any
9 relevancy and we'd like to make that objection a
10 continuing objection on anything asked of this
11 witness or any other witness.

12 THE COURT: All right, sir. I thought we
13 covered that. Your objection is well noted and the
14 fact you can cross examine any of these witnesses
15 over what they said will not be deemed to waive your
16 objection. You have a continuing objection. All
17 right, Mr. O'Bryan.

18

19

20 LOUIS ELMORE, being duly sworn,
21 deposed and said as follows:

22

23 DIRECT EXAMINATION

24 BY MR. O'Bryan:

1 Q Please state your full name and address.

2 A Louis J. Elmore.

3 Q Are you Louis J. Elmore, Junior?

4 A I was a Junior but I dropped it since my
5 daddy died.

6 Q And you are the son of Louis Elmore as
7 shown on this chart? Can you see the chart?

8 THE COURT: Well, he is Louis Elmore
9 whether he is on the chart or not.

10 BY MR. O'BRYAN:

11 Q Is this your position down here?

12 A Yes.

13 Q I'd like for you to go through the
14 parties at the top left of this chart, if you would,
15 and tell us who they are and when they died, if you
16 would.

17 THE COURT: Just a minute. Maybe we can
18 short circuit it. Is there any question or issue as
19 to who the heirs are? We have issue as to whether
20 they are the nearest, but is there any dispute in
21 the family tree?

22 MR. SMITHERS: We will stipulate it.

23 BY MR. O'BRYAN:

24 Q Is this an accurate family tree showing

1 the relationship between the parties?

2 THE COURT: Is it accurate, Mr. O'Bryan?

3 MR. O'BRYAN: Yes, it is.

4 THE COURT: Then we'll make that -- what
5 document do you want to put on it? Who is your
6 client?

7 MR. O'BRYAN: The defendant Ralph Elmore,
8 III.

9 THE COURT: Ralph Elmore, III Number 1.

10 MR. O'BRYAN: Your Honor, I'd like the
11 witness to go through and tell us when each of these
12 parties died if he would.

13 THE COURT: Do we need that since there
14 is no dispute about it?

15 MR. O'BRYAN: We could stipulate it and
16 put it into evidence.

17 THE COURT: Write up the stipulation and
18 put it into evidence.

19 MR. DOBBINS: May I ask a question of Mr.
20 O'Bryan? Your chart with the designation
21 "deceased," does that mean they were deceased at the
22 time Gwendolyn Overbey died?

23 MR. O'BRYAN: I believe all of these
24 parties were deceased at the time of Gwendolyn's

1 death, were they not?

2 THE WITNESS: That's correct.

3 THE COURT: All right. That's Elmore III
4 Number 1.

5 BY MR. O'BRYAN:

6 Q And you are the nephew of Ralph Elmore?

7 A Correct.

8 Q And a first cousin of Gwendolyn Elmore
9 Overbey?

10 A Yes.

11 Q And you were born in Richmond, Virginia,
12 on December 5, 1912?

13 A Yes, sir.

14 Q And your brother, Ralph, was one year
15 younger than you, is that correct?

16 A Yes.

17 Q What was your family name before it was
18 changed to Elmore?

19 A Elmo.

20 Q An Italian family?

21 A Yes.

22 Q And you were in business with your uncle
23 Ralph from 1933 until his death in 1975 and you were
24 constantly in contact with him during that time?

1 A Yes.

2 Q And Gwendolyn was his only daughter?

3 A Yes.

4 Q And Gwendolyn's mother died in 1918 when
5 Gwendolyn was approximately five years old?

6 A Yes.

7 Q And during Gwendolyn's earlier years your
8 uncle Ralph's sister took care of Gwendolyn, did she
9 not?

10 A Yes.

11 Q And that would have been Mrs. Cassatta?

12 A Yes.

13 Q And your uncle Ralph remarried in
14 approximately 1942 after Gwendolyn was grown, is
15 that correct?

16 A Yes.

17 Q And his second wife died after
18 approximately ten months of marriage?

19 A Right.

20 Q And your uncle Ralph never remarried
21 thereafter?

22 A No.

23 Q And your uncle Ralph raised Joan Warren
24 and Joan Pusey from the time they were youngsters

1 until they were grown, is that correct?

2 A Yes.

3 Q What date did they live with your uncle
4 Ralph approximately?

5 A Sometime in the '40's, late '40's.

6 Q And they left him in the '50's, is that
7 correct?

8 A When they were old enough to get married.

9 Q They lived with him approximately ten
10 years?

11 A I guess that would be a correct
12 assumption.

13 Q Now during the time that you knew your
14 uncle Ralph, he watched and protected over
15 Gwendolyn, did he not?

16 A Right.

17 Q And tried to guide her in her activities,
18 financial and otherwise?

19 A Right.

20 Q And that was even after she became an
21 adult?

22 A Right.

23 Q And your uncle Ralph, as long as he was
24 living, made all the decisions on financial matters

1 for Gwendolyn, did he not?

2 MR. JOHNSON: Objection, Your Honor.

3 There is nothing to establish the witness's
4 knowledge of that fact.

5 THE COURT: I will sustain the objection.

6 BY MR. O'BRYAN:

7 Q Are you aware of your uncle Ralph's
8 relationship with Gwendolyn concerning financial
9 matters?

10 A Not completely.

11 Q What were you aware of?

12 A I know he looked over her assets and so
13 forth, but to the fullest extent I can't answer
14 that.

15 Q Prior to Gwendolyn's marriage, your uncle
16 Ralph paid all of Gwendolyn's bills, didn't he?

17 MR. JOHNSON: Objection, Your Honor. Same
18 reason.

19 THE COURT: I will sustain it also.

20 MR. O'BRYAN: Your Honor, we called him
21 as an adverse party.

22 THE COURT: I will sustain it on that
23 basis.

24 BY MR. O'BRYAN:

1 Q Are you aware of your own personal
2 knowledge of your uncle Ralph supporting Gwendolyn?

3 A Yes.

4 Q He did support her, did he not?

5 A Yes.

6 Q And he gave her real property and stocks
7 and things of that nature?

8 A I'm not completely aware of all the facts
9 you are asking about now.

10 Q He did give her property, did he not?

11 A I'm sure he did.

12 Q And Gwendolyn was married in 1957, was
13 she not?

14 A Yes.

15 Q And whatever property was in Gwendolyn's
16 name your uncle Ralph made the decisions concerning
17 the selling and buying of any assets?

18 MR. JOHNSON: Same objection, Your Honor.

19 THE COURT: I think he says he doesn't
20 know, is that right?

21 THE WITNESS: That's right.

22 BY MR. O'BRYAN:

23 Q Your uncle Ralph's lawyer was Robert
24 Barton, was he not?

1 A Yes.

2 Q And that relationship began around World
3 War II, did it not?

4 A I believe so.

5 Q And he was your uncle's lawyer in 1957?

6 A Yes.

7 Q And during the time you knew him your
8 uncle Ralph was a good businessman, was he not?

9 A Yes.

10 Q Very knowledgeable in business?

11 A Yes.

12 Q And during the time you knew him in his
13 business operations your uncle Ralph was very
14 secretive, was he not?

15 A Yes.

16 Q He kept business information from other
17 employees, did he not?

18 A Yes.

19 Q Including you?

20 A Yes.

21 Q And you were employed with him for some
22 forty years?

23 A Yes.

24 Q During the time you knew him on a

1 personal basis with the family your uncle Ralph was
2 a generous man, was he not?

3 A I would say so.

4 Q And he was willing to help out if any
5 other family member was in financial difficulty?

6 A Yes.

7 Q And during this time your uncle Ralph
8 would help the family if they got into financial
9 difficulties, would he not?

10 A Yes.

11 Q During the time you knew him your uncle
12 Ralph gave advice to Joan and Jean and Gwendolyn on
13 family matters, did he not?

14 MR. DOBBONS: Objection, it's irrelevant.

15 THE COURT: Sustained.

16 BY MR. O'BRYAN:

17 Q Did your uncle Ralph have a special
18 relationship with Joan and Jean?

19 A No more a relationship than with the
20 other members of the family.

21 Q The fact he raised them did not increase
22 his affection for them?

23 A That I can't answer.

24 Q During the time you knew him you and

1 other members of the family, you would gather at
2 uncle Ralph's at Christmastime?

3 A Yes.

4 Q And you would have all the Christmas
5 activites including food and that kind of thing?

6 A Yes.

7 Q And exchange of presents and so forth?

8 A Yes.

9 Q And your uncle Ralph would give all the
10 children savings bonds, would he not?

11 A Yes.

12 Q During the time you knew her, Gwendolyn
13 also had a harmonious relationship with other
14 members of the family?

15 MR. SMITHERS: Your Honor, I'd like to --
16 It seems to me the testimony is out of order. They
17 have made the statement in their opening that Mr.
18 Elmore was I think the term they used was de facto
19 grantor, but until they have offered evidence to
20 establish that it seems to me all these inquiries
21 about Ralph Elmore's relationship with the other
22 members of the family are irrelevant. The person
23 whose document this is, even giving the benefit of
24 the doubt on the extrinsic question, is Gwendolyn.

1 And until they have offered evidence to show this
2 alleged relationship or overriding intent that Ralph
3 had over her, I would submit that none of this has
4 any relevance and this inquiry should be stopped.

5 MR. O'BRYAN: We are just following the
6 direction of the Court because basically these
7 documents will establish that very fact. The Court
8 had directed us to proceed on with the evidence and
9 the witnesses.

10 THE COURT: I am going to let you proceed
11 on the documents. The documents will help you tie
12 it in. Go ahead.

13 BY MR. O'BRYAN:

14 Q And during the time you knew her
15 Gwendolyn had equal affection for other members of
16 the family, did she not?

17 A Yes.

18 MR. O'BRYAN: That's all I have.

19 THE COURT: Any cross examination of this
20 witness or do you wish to call another witness?

21 MR. DOBBINS: No cross examination, Your
22 Honor.

23 THE COURT: You may step down.

24 ~~MR. O'BRYAN: Robert Winston Overbey,~~

1 please.

2 THE COURT: I'm not sure the fact he is
3 adverse allows you to lead him.

4 MR. DOBBINS: He is taking him as his own
5 witness.

6 MR. O'BRYAN: He is an adverse party.

7 MR. CHANDLER: It's a different rule
8 between a witness and a party.

9

10

11 ROBERT WINSTON OVERBEY, being duly sworn,
12 deposed and said as follows:

13

14 DIRECT EXAMINATION

15 BY MR. O'BRYAN:

16 Q Please state your full name and address,
17 sir?

18 A Robert Winston Overbey, 3436 Ellwood
19 Avenue, Richmond, Virginia.

20 Q You were married to Gwendolyn Elmore on
21 March 1st, 1957?

22 A Yes.

23 Q And you first met her in 1951?

24 A Yes.

1 Q And you also met Ralph Elmore in 1951?

2 A Yes.

3 Q And you saw Gwendolyn and her father on a
4 regular basis between 1951 and the time you got
5 married in 1957?

6 A Yes.

7 Q And you knew Mr. Elmore and Gwendolyn
8 from 1951 until their respective deaths, is that
9 correct?

10 A Yes.

11 Q During the time you knew him Mr. Elmore
12 more or less lived for his daughter, did he not?

13 MR. DOBBINS: Your Honor, he is leading.

14 MR. JOHNSON: Objection also.

15 THE COURT: I'll sustain.

16 BY MR. O'BRYAN:

17 Q Describe the relationship between your
18 wife and her father?

19 A Well, the relationship was they were a
20 very, very close relationship is about all I can say
21 as father and daughter.

22 Q Mr. Elmore was possessive toward
23 Gwendolyn, was he not?

24 MR. DOBBINS: Object, leading.

1 THE COURT: That calls for a conclusion,
2 I will sustain the objection.

3 BY MR. O'BRYAN:

4 Q Tell us about Mr. Elmore's relationship
5 to Gwendolyn in regard to her finances?

6 A Well, in regard to her finances the only
7 thing I can say is that Mr. Elmore did not -- The
8 statement today has been made Mr. Elmore did carry
9 Gwendolyn financially, but it took my entire salary
10 the entire time I was married to my wife who is
11 deceased, I had to pay certain bills and things Mr.
12 Elmore refused to pay. In other words it took
13 everything I was making living-wise for me to exist
14 with my wife even with the help of Mr. Elmore. Put
15 it in that respect. He did not cover all her
16 financial needs.

17 Q Did he cover some of it?

18 A Some of it but not all, not in its
19 entirety.

20 Q Did he continue to contribute?

21 A Continued to contribute, but I supported
22 her from the day I was married to the day she was
23 put in the ground, correct.

24 Q Now did Mr. Elmore tell her what to do as

1 far as property is concerned?

2 A I don't know about the property part of
3 it because Gwendolyn had a mind of her own. As to
4 what he told her she may not have paid a lot of
5 attention to it. She did what she wanted to do, so
6 to speak.

7 Q Didn't her father tell her what to do
8 with her stock and when to sell?

9 A He tried to but she balked against him on
10 many occasions and I know he didn't like it always
11 because she didn't go along with his decisions in
12 every case.

13 Q All her property came from her father,
14 did it not?

15 A That is more or less correct, yes.

16 MR. JOHNSON: Object, Your Honor. I
17 don't believe the witness --

18 MR. O'BRYAN: Are you aware of your own
19 knowledge?

20 THE WITNESS: Yes.

21 MR. JOHNSON: I think Mr. O'Bryan
22 recognizes my objection. It hasn't been established
23 the witness has knowledge to answer the question.

24 BY MR. O'BRYAN:

1 Q You are aware, are you not, of the
2 relationship between Gwendolyn and her father
3 concerning her property?

4 A I'm aware of it, yes.

5 Q And Mr. Elmore made the decisions
6 concerning this property, did he not?

7 A Only to a certain extent. I would say
8 not completely, no.

9 Q He told her what to buy and sell?

10 A No, no, sometimes I was confronted as to
11 what move was to be made in Gwendolyn's behalf. He
12 did take my judgment during the later years of the
13 marriage. He consulted with me on many occasions,
14 right.

15 Q I'm talking about 1957.

16 A In 1957, of course, I don't know. I
17 suppose I would say no in this case, I reckon.

18 Q And all the property mentioned in the
19 1957 trust agreement was given to her by your
20 father-in-law, too, was it not?

21 MR. DOBBINS: Object, it's a leading
22 question.

23 THE COURT: I'll sustain it.

24 MR. DOBBINS: Just ask him the question

1 without leading him.

2 MR. O'BRYAN: Your Honor, I thought the
3 Court ruled I had the right to lead the witness.
4 I'm basing all the questions on information he gave
5 in his deposition.

6 THE COURT: When you make an adverse
7 witness your witness, that witness is your witness
8 except for those things he contradicts, and you
9 can't lead your witness.

10 MR. O'BRYAN: He is an adverse party,
11 that is the basis which I was leading him on.

12 THE COURT: I will sustain the objection.
13 Note your exception to the Court's ruling.

14 BY MR. O'BRYAN:

15 Q Do you know the purpose of the 1957 trust
16 agreement? Was it ever expressed to you?

17 A I know the purpose, yes, sir.

18 Q Would you tell us what that was?

19 A The purpose of it was -- in other words
20 to protect my wife during her lifetime and so forth.

21 Q Protect her against what?

22 A Protect her financially, I guess you
23 could say. In other words when adverse times came
24 she would have something to fall back on, as the

1 saying goes. We had some source to draw from, so to
2 speak, financially.

3 Q You and Mr. Elmore in fact had a heated
4 argument concerning the agreement, did you not?

5 A No, I wouldn't say heated argument. We
6 had words sometimes. We had petty arguments from
7 time to time during the entire marriage of 24 years
8 or something of that nature.

9 Q In fact, wasn't the purpose of the
10 agreement to keep your side of the family from
11 taking any of Gwendolyn's property?

12 A I can't answer that.

13 MR. DOBBINS: Object, Your Honor, that
14 calls for a legal conclusion.

15 THE WITNESS: I say no.

16 THE COURT: Just a minute, sir. You
17 don't have to answer until the Court rules. I'll
18 sustain, it's leading.

19 BY MR. O'BRYAN:

20 Q You signed a prenuptial agreement in
21 1957, did you not?

22 A Yes.

23 Q That was against your will, was it not?

24 A Correct.

1 Q That was presented to you by Mr. Elmore?

2 A No. It was not presented by Mr. Elmore,

3 no. It was not presented by Mr. Elmore to me.

4 Q By his secretary?

5 A Right.

6 Q And Mr. Elmore told you to sign here?

7 A Told her to tell me to sign it. He

8 didn't tell me anything. He told his secretary to

9 have me sign the agreement and to return it back to

10 the law office as soon as possible.

11 Q And you did not read that document?

12 A No, because he just said sign it and I

13 signed it.

14 MR. DOBBINS: I'm going to object to this

15 line of testimony and ask it be expunged from the

16 record. It has no relevancy in the record.

17 THE COURT: What's the relevancy?

18 MR. O'BRYAN: The circumstances

19 surrounding the execution of the 1957 trust

20 agreement and the relationship between the parties.

21 THE WITNESS: No, I don't think it has.

22 THE COURT: Your witness says it is not

23 relevant and I will agree with him and sustain the

24 objection.

1 BY MR. O'BRYAN:

2 Q During the time you knew him Mr. Elmore
3 had a relationship with his family, did he not?

4 A Yes.

5 Q Including his nieces and nephews?

6 A Yes.

7 Q And during the time you knew him Mr.
8 Elmore guided his family's nieces and nephews in
9 financial matters if they asked him, did he not?

10 MR. DOBBINS: I hate to keep jumping up,
11 but if Mr. O'Bryan would not lead the witness I
12 wouldn't have to do it.

13 THE COURT: I will sustain the objection.

14 BY MR. O'BRYAN:

15 Q What was Mr. Elmore's relationship with
16 his nieces and nephews concerning financial matters?

17 A I do not know what his relationship was
18 aside from my own immediate family. I have no idea
19 as far as the rest of the family is concerned.

20 Q Would you state if Mr. Elmore was a
21 family man?

22 A Yes, Mr. Elmore was a family man.

23 Q Would you say he was interested in family
24 affairs of his family?

1 A I'm sure he was, but I think anybody
2 flesh and blood would be interested in affairs, put
3 it that way, if there is flesh and blood involved.

4 Q Would it be fair to characterize Mr.
5 Elmore as the head of the greater family? Was he
6 not the eldest living member?

7 A Yes.

8 Q And did he not occupy that position?

9 A Yes, I think so.

10 Q Did your wife have a special relationship
11 with any members of the family?

12 A Yes.

13 Q What members would that be?

14 A Well, I'd say certainly her aunt or her
15 own cousin Madeline and her cousin Louis were the
16 ones she had the closest relationship with because I
17 think during the period of my marriage they perhaps
18 were closer, in other words were in touch with her
19 more. She also had a closeness with two cousins
20 raised in her home, Joan and Jean. The rest of the
21 family, I'd say there wasn't too much relations
22 because we didn't see or hear or particularly deal
23 with the balance of the family so to speak. I can't
24 say what the closeness was because we didn't see.

1 them to be close to them.

2 MR. O'BRYAN: That's all we have.

3 THE COURT: Anything else of this
4 witness?

5 MR. DOBBINS: We would reserve that
6 right, sir.

7 THE COURT: Any other evidence, Mr.
8 O'Bryan?

9 MR. O'BRYAN: That's all we have, Your
10 Honor.

11 THE COURT: Then you may turn to your
12 documents if you like.

13 MR. CHANDLER: I would suggest we
14 identify the document, read it and move it into
15 evidence if that's all right.

16 THE COURT: All right, sir.

17 MR. DOBBINS: I'm not sure I understand
18 the procedure of counsel. Maybe if they would tell
19 us?

20 THE COURT: Mr. Johnson will read them
21 and move them into evidence.

22 MR. DOBBINS: I have seen them popping up
23 like I don't know what, talking about other
24 objections. There have been five or six objections

1957

J.E:fw
4cc
/19/57

THIS AGREEMENT made this 23rd day of February, 1957, by and between
 GWENDOLINE AGNES ELMORE (hereinafter called Grantor) and RALPH A. ELMORE, Trustee
R.A.E.
 as hereinafter defined and empowered, (hereinafter called Trustees), both of the
 City of Richmond, Virginia,

W I T N E S S E T H :

I. In consideration of the sum of One Dollar and other valuable consideration including the services which the Trustee hereunder agrees to perform, the Grantor hereby grants, conveys, bargains, sells, transfers and assigns to the Trustee to be held and possessed by him upon condition that the corpus thereof and income therefrom, or either of them, shall be applied by the Trustee to the support and maintenance of the Grantor without being subject to her liabilities or to alienation by her, the following real and personal property hereinafter called, together with the income therefrom, the Trust Estate:

A. Real Estate:

Parcel 1.

All that certain lot, piece or parcel of land together with all improvements thereon and appurtenances thereto belonging, lying and being in the City of Richmond, Virginia, known and designated as Nos. 703-705 West Marshall Street and bounded and described as follows:

Beginning at a point in the south line of Marshall Street 25 feet west of Munford Street, thence running westwardly along and fronting on the said south line of Marshall Street 51 feet, thence running back southwardly from said front between parallel or nearly parallel lines 145.51 feet on the east line and 145.88 feet on the west line to an alley in the rear about 17.95 feet wide on which said property abuts 51 feet as will more fully appear by reference to a plat of said property dated February 24, 1948, made by Charles H. Fleet, Certified Civil Engineer.

Being the same property conveyed to Gwendolyn A. Elmore, by deed from William Thomas Epps and Cora Gordon Epps, his wife, dated January 16, 1950, and recorded January 16, 1950, in the Clerk's Office, of the Chancery Court of the City of Richmond, Virginia in Deed Book 520-D, page 302.

Parcel 2.

All that certain lot, piece or parcel of land, with the improvements thereon designated as Nos. 602 and 604 North Eighth Street in the City of Richmond, Virginia, designated on the Plan of the "MILLS GARDEN" property known as Lot No. 9 fronting THIRTY-TWO (32) FEET on the West line of said Eighth Street, and running back between parallel lines ONE HUNDRED AND TWENTY FEET (120) to an alley TWENTY FEET (20) wide, bounded on the South by an alley TWENTY FEET (20) wide, which said alley is about ONE HUNDRED AND SEVENTY (170) FEET North of Leigh Street.

Being the same property conveyed to Gwendolyn A. Elmore by deed from J. Thomas Hawn, Sr., Special Commissioner, dated December 22, 1954 and recorded December 22, 1954, Clerk's Office, Chancery Court of the City of Richmond, Virginia in Deed Book 561-A, page 244.

Parcel 3.

That certain lot or parcel of land lying and being in the City of Richmond, Virginia, together with all improvements thereon and appurtenances thereto belonging known as No. 710 E. Leigh Street and more particularly described as follows:

Beginning at a point on the northern line of Leigh Street, 58 feet, 5 3/4 inches west of 8th Street, and from said point of beginning running westwardly along and fronting on the said northern line of Leigh Street 22 feet, 1 inch, and from said front extending back northwardly between parallel lines, the western of which runs through the middle of the partition wall dividing Nos. 708 and 710 E. Leigh Street, a distance of 150 feet to an alley in the rear 20 feet wide.

Being the same property conveyed to Gwendoline A. Elmore, by deed from Asher Bullard, Jr. and Venia E. Bullard, his wife, dated August 14, 1950 and recorded August 17, 1950, Clerk's Office, Chancery Court of the City of Richmond, Virginia, in Deed Book 526-D, page 7.

Parcel 4.

All that certain lot or parcel of land, with the improvements thereon, lying and being in the City of Richmond, Virginia, known as No. 708 East Leigh Street and described as follows: Commencing at a point on the north line of Leigh Street Eighty (80) Feet and Six and Three-Fourths ($6 \frac{3}{4}$) Inches from the northwest intersection of Leigh and Eighth Streets, thence running westwardly along and fronting on said north line of Leigh Street Twenty-two (22) Feet and One and One-Fourth ($1 \frac{1}{4}$) Inches, and running back between parallel lines One Hundred and Fifty (150) Feet to an alley Twenty (20) Feet wide, all of which is more fully described by reference to a plat attached to a deed of trust dated April 20, 1914, and recorded in the Clerk's Office of the Richmond Chancery Court in Deed Book 226-A, page 445. The eastern line of said property running through the middle of a wall between Numbers 708 and 710 as shown on said plat.

Being the same property conveyed to Dwendolyn A. Guglielmo, by deed from J. L. Landram, Special Commissioner, dated December 1, 1948 and recorded December 7, 1948, Clerk's Office, Chancery Court of the City of Richmond, Virginia, in Deed Book 511-B, page 229.

Parcel 5.

That certain lot or parcel of land situated in the City of Richmond, Virginia, with all improvements thereon known as No. 701 West Marshall Street and more particularly described as follows:

Beginning at a point on the south line of Marshall Street at its intersection with the west line of Minford Street; thence running westwardly along and fronting on the south line of Marshall Street 25 feet; thence extending back southwardly from said front between parallel lines, the eastern line being the western line of Minford Street 93.6 feet to the dividing line between the property hereby conveyed and the property adjoining on the south, known as 314 Minford Street.

Being the same property conveyed to Gwendolyn A. Elmore, by deed from John L. Steed, Jr. (also known as John C. Steed, Jr.), dated January 20, 1954 and recorded January 20, 1954, Clerk's Office, Chancery Court of the City of Richmond, Virginia, in Deed Book 553-C, page 261.

B. All the stocks, bonds and securities listed on Exhibit A hereto attached as a part hereof.

C. Any other real or personal property which the Grantor may deliver to the Trustee to be held, managed and disposed of in accordance with the provisions hereof.

The Trust Estate together with the income and proceeds thereof shall be held, managed and disposed of by the Trustee in accordance with the provisions hereinafter set forth.

II. The Trustee is hereby authorized in his uncontrolled discretion:

1. To retain, either permanently or for such period of time as he may elect, any assets, including stock of any closely held corporation which, at any time, shall come into his possession as a part of the Trust Estate, whether such assets are or are not of the character approved or authorized by law for investment by fiduciaries;

2. To invest and reinvest the Trust Estate in such notes, bonds, obligations, debentures, shares of stock, common and preferred, in participations in a common trust fund or funds, and in such other property, real and personal, as he may deem best, without being required to confine himself to such investments as are usual or as are approved or authorized by law for investment by fiduciaries; to alter, change and vary such investments and reinvestments; to change realty to personalty and vice versa; and to determine the rate of interest or income yield to be realized for the Trust Estate and the times within which all investments and reinvestments are to be made, it being intended that the Trustee may assume and maintain a cash position for the Trust Estate so long as he deems the then situation such as to render this course wise; to invest the Trust Estate in an annuity or annuities;

3. To sell or exchange any property, real or personal, contained in the Trust Estate, either at public auction or privately, for cash or credit and upon such terms and conditions as to him may seem best;

4. To make agreements, leases and investments for any period of time even though such agreements, leases and investments extend beyond the expiration of the trust provided for herein;

5. To make repairs, alterations, additions, or improvements to any property contained in the Trust Estate;

6. To register and hold any property, real and personal, in the name of any nominee selected by him, without disclosing or describing the trust;

7. To participate in or oppose any plan for the consolidation, merger, foreclosure, dissolution, reorganization or refinancing of any corporation, organization, project or enterprise in which the Trust Estate may be interested; to take and hold any securities or investments issued under any such plan, and to pay any assessments and subscriptions involved therein;

8. To vote in person or by proxy, general or restricted, any shares of stock contained in the Trust Estate, and to enter into voting trust agreements with respect to any shares of stock contained in the Trust Estate;

9. To take up or subscribe for any rights or exercise any subscription or conversion privileges with respect to any property contained in the Trust Estate;

10. To hold any securities contained in the Trust Estate even after default in the payment of interest or dividends thereon;

11. To make division or distribution of the Trust Estate in kind, in money, or partly in both, and the Trustee's sole valuation of property for such purpose shall be conclusive and binding on all parties interested therein;

12. To borrow money and renew obligations for the Trust Estate without any personal liability on the Trustee in so doing, and for such purposes, to pledge mortgage and encumber all or any portion of the Trust Estate;

13. To institute any suit, action or proceeding on behalf of the Trust Estate, and to defend any suit, action or proceeding brought against or relating

to the Trust Estate, and to compromise and adjust or otherwise dispose of any claims against or in favor of the Trust Estate upon such terms and conditions as he may deem best;

14. To demolish improvements which may be located upon any real estate contained in the Trust Estate;

15. To exercise any and all options and privileges granted under any policies of insurance contained in the Trust Estate;

16. To determine what is income and what is principal hereunder, and what expenses, taxes and charges of all kinds shall be charged against principal, and the decision of the Trustee with respect to such matters shall be conclusive and binding on all parties interested therein;

17. To invest the Trust Estate in and engage in one or more businesses;

18. To purchase a house as a home for the Grantor and to permit the Grantor to occupy the house free of rent or other charges; to pay for the maintenance and upkeep of the house and the taxes thereon; and from time to time to sell any home so acquired and purchase another home;

19. To purchase an automobile for the use of the Grantor and to pay for the insurance thereon, and from time to time to sell any automobile so acquired and to purchase another;

20. To acquire hospitalization and other insurance for the benefit of the Grantor and pay the premiums thereon;

21. To make and execute all instruments necessary and proper in order to carry out the powers conferred upon him herein, it being the Grantor's intention to give to the Trustee full management and control of the Trust Estate, the powers herein enumerated being by way of illustration and not by way of limitation.

III. In addition to the expenditures hereinabove authorized to be made by the Trustee in his uncontrolled discretion for the benefit of the Grantor the

Trustee is also authorized to pay or expend for the benefit of the Grantor so much of the net income from the Trust Estate as in his opinion and uncontrolled discretion is necessary for her support and maintenance, it being the Grantor's suggestion that the sum of \$150.00 a month would be appropriate at the present time, said sum to be increased or decreased as the cost of living increases or decreases. In addition, to the net income the Trustee is authorized to pay or expend for the benefit of the Grantor in his uncontrolled discretion the principal of the Trust Estate if the income therefrom shall not be sufficient in the opinion of the Trustee for the adequate support and maintenance of the Grantor especially in the event of accident or illness, and for the expenditures authorized in paragraph II and III hereof; or become necessary by reason of the investment of the Trust Estate in annuities or otherwise.

IV. Upon the death of the Grantor in the event she shall leave lawful issue surviving her the remaining Trust Estate, after deducting or providing for all taxes, commissions and other proper charges and expenses shall be by the said Trustee divided into as many shares or separate trusts as there shall be living at the date of the death of the Grantor children of the Grantor and lawful issue of children of the Grantor who have predeceased the Grantor leaving lawful issue surviving at the date of the death of the Grantor and each share or trust shall be appropriately earmarked for a child or lawful issue of a deceased child.

1. One of such earmarked parts shall pass, be transferred, paid over and delivered to each child of the Grantor then living who, at the date of the Grantor's death, shall have attained the age of twenty-five (25) years, and one of such equal shares or trusts shall pass, be transferred, paid over and delivered, per stirpes, to each group of lawful issue of a child of the Grantor who shall have predeceased her.

2. During the periods when the Trustee holds any earmarked part in trust for a child of the Grantor, the Trustee shall pay the net income therefrom to the child for whom such share or trust is held in convenient installments provided, however, that in no event shall such payments be made less frequently than quarterly. During the minority of any said child the Trustee may administer said trust and may make payments to or for the benefit of the said child without the necessity for the intervention of a guardian. In addition to the said income the said Trustee may, in his uncontrolled discretion, during the existence of the trust and regardless of the age of the child, use so much of the principal of the trust as the Trustee may deem requisite for the support, education, and maintenance of such child and such additional amounts as the said child may need in the event of sickness or accident.

3. If after the separate trusts are set up for said children living at the time of the Grantor's death, a child shall die during the life of any part of his or her respective trust, then the balance of his or her trust which has not been expended for his or her benefit or paid to him or her shall be disposed of as follows:

a. If any such child shall die, leaving issue, the entire amount then remaining in his or her trust estate shall pass, be transferred, paid over and delivered, per stirpes, to the lawful issue of such deceased child. The separate portion of any such share of any such lawful issue who is under twenty-one (21) years of age shall be retained by the Trustee and handled in all respects as provided in paragraph 2 of the Article IV of this instrument relating to beneficiaries under the age of twenty-one (21) years.

b. In the event such child shall die without issue, and testate, the amount remaining in such trust shall pass in accordance with the terms and provisions of the last will and testament of such deceased child.

c. In the event such child shall die without issue, and intestate, the amount remaining in said trust shall in equal shares to the then remaining trusts be paid and be subject to all the terms and provisions thereof, but in the event any one of the original trusts shall have been terminated, the amount which would have been paid to that trust shall pass to the distributees of the beneficiary thereof in accordance with the State of Descent and Distribution then in effect in the State of Virginia.

4. The trustee with respect to the trusts created by this Article IV shall be vested with all the powers conferred upon him by Article II hereof.

5. In the event the Grantor shall die without leaving children or lawful issue of children surviving her, then the Trustee, upon the death of the Grantor shall pay over, transfer, deliver and convey the remaining Trust Estate to the nearest living paternal kindred of the Grantor.

V. The Trustee shall receive for his services as such five (5) per centum of the gross income from the Trust Estate.

VI. Should Ralph A. Elmore die, resign or cease to act as Trustee, then Virginia Trust Company, or such other banking institution as the said Elmore shall designate in writing shall become and be the Trustee and as such shall be vested with all the powers and authority conferred herein upon Ralph A. Elmore as Trustee, and shall administer the Trust or Trusts established by this instrument in the same manner as the said Ralph A. Elmore, Trustee is herein authorized to do.

VII. The Trustee shall not be required to make a periodic settlement of his accounts in any court.

Executed in duplicate. .

WITNESS MY HAND AND SEAL this 23 day of February, 1957.

Witnesses:

Charles W. Hamilton
Richard H. Carter
J. Kenney

Gwendolyn Agnes Elmore (SEAL)

STATE OF VIRGINIA

CITY OF RICHMOND, To-wit:

I, Lillian Mealey, a Notary Public in and for the City and State aforesaid, do hereby certify that Gwendolyn Agnes Elmore whose name is signed to the foregoing instrument bearing date on the 23 day of February 1957, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this 23 day of February, 1957.

My commission expires: March 15, 1959

Lillian Mealey
Notary Public

Re-executed this 1st day of March, 1957.

Witnesses:

Robert J. Coates
Alan C. Levell
Charles Frank Carr

Gwendolyn Agnes Elmore Overbey

4/13/57

G E N E R A L A C C O U N T

DEBIT	CREDIT	DATE	AMOUNT
Brown-Farman Distillers Corporation	JFC 1110	8/27/46	1,000
Brown-Farman Distillers Corporation	JFC 3574	10/22/46	100
" " " "	JFC 3575	10/22/46	100
" " " "	JFC 3576	10/22/46	100
" " " "	JFC 3577	10/22/46	100
" " " "	JFC 3578	10/22/46	100
" " " "	JFC 3579	10/22/46	100
" " " "	JFC 3580	10/22/46	100
" " " "	JFC 3581	10/22/46	100
" " " "	JFC 3582	10/22/46	100
" " " "	JFC 3583	10/22/46	100
Brown-Farman Distillers Corporation	JFC 2167	2/2/51	2,000
<u>PREPARED</u> - - - - - Total - - - - -			4,000
Brown-Farman Distillers Corporation	CL 26055	6/12/56	100
" " " "	CL 26056	6/12/56	100
<u>COLLECT</u> - - - - - Total - - - - -			200
American Cyanamid Company	X 021012	2/27/56	25
The Columbia Gas System	CH 256577	5/31/55	22
Ford Motor Company	FC035706	2/1/55	10
American Telephone and Telegraph	Y230223	7/30/56	25
" " " "	X622475	10/11/56	3

EXHIBIT B

RTD/37 Dec 5/5/75



THIS DEED AND AGREEMENT dated this 3rd day of May, 1975, by and between Gwendolyn Elmore Overbey (hereinafter called Grantor), Ralph A. Elmore, Trustee, (hereinafter called Trustee), and Robert Winston Overbey (hereinafter called Husband).

W I T N E S S E T H :

Reference is made to that certain agreement between the Grantor as Gwendolyn Agnes Elmore and the Trustee dated February 23, 1957 whereby the Grantor conveyed and transferred

Trustee the property described or referred to in subparagraph B and C of paragraph I thereof, IN TRUST, HOWEVER, upon the terms and conditions contained in said agreement.

The Grantor has decided to amend the said agreement in certain respects and to convey and assign additional property to the Trustee under the agreement as hereinafter amended; and the Trustee is agreeable thereto.

NOW, THEREFORE for and in consideration of the Premises:

1. The following words in Paragraph I of said agreement are deleted

"without being subject to her liabilities or to alienation by her."

2. Pursuant to subparagraph C of paragraph I of said agreement, the Grantor hereby grants, conveys, transfers and assigns unto the Trustee the property listed in Schedule A hereof, IN TRUST, HOWEVER, upon the terms and conditions set forth in said agreement dated February 23, 1957, as amended by this agreement.

3. Paragraph II of said agreement is hereby amended by adding the following as subparagraph 22 of said Paragraph II.

22. To exercise any other power set forth in Section 64.1-57 of the Code of Virginia as that statute exists as of the date hereof, which section is hereby incorporated herein by reference.

4. That portion of paragraph III reading as follows is hereby deleted:

"it being the Grantor's suggestion that the sum of \$150.00 a month would be appropriate at the present time, said sum to be increased or decreased as the cost of living increases or decreases."

5. Subparagraph 5 of Paragraph IV of said agreement be and is hereby amended to read as follows:

"5. In event the Grantor shall die without leaving children or lawful issue of children surviving her, whatever remains of the trust shall be administered and disposed of as follows:

(a) If her father, Ralph A. Elmore shall survive her, the net income from the trust shall be paid to him or applied for his benefit for so long as he shall live in convenient installments but not less frequently than quarter annually.

(b) Upon the death of Ralph A. Elmore or upon Grantor's death if he predeceases her, the Trustee shall divide whatever remains into so many equal parts that there will be one equal part for Grantor's husband, Robert Winston Overbey, if then living, one equal part for Grantor's paternal second (first once removed) cousin, Jean Smart Warren, if then living, or otherwise for her then living issue, per stirpes, if any, and one equal part for Grantor's paternal second (first once removed) cousin, Joan Smart Pusey, if then living, or otherwise for her then living issue, per stirpes, if any.

(c) The parts shall be administered and disposed of as follows:

(i) The part, if any, for the husband, Robert Winston Overbey, shall be held in trust for him and the Trustee shall pay to him the net income therefrom in convenient installments not less often than quarter annually. Upon the death of the husband, the part held for him shall be divided into so many equal parts that there will be one part for Grantor's paternal second (first once removed) cousin, Jean Smart Warren, if then living, or otherwise for her then living issue, per stirpes, if any, and one part for Grantor's paternal second (first once removed) cousin, Joan Smart Pusey, if then living, or otherwise for her then living issue, per stirpes, if any. Any part for either of said cousins shall be added to the part held for them as provided in (iii) below. Any part for the issue, per stirpes, of either of them shall be paid to such issue in fee simple and absolute ownership as provided in (ii) below.

(ii) The part, if any, for the issue, per stirpes, of either Jean Smart Warren or Joan Smart Pusey shall be paid to such issue in fee simple and absolute ownership.

(iii) The part, if any, for either cousin, Jean Smart Warren or Joan Smart Pusey shall be held and disposed of as follows: For so long as said cousin shall live she shall be the beneficiary of the part set aside for her and the Trustee shall pay to her or expend for her benefit the net income therefrom in convenient installments (not less frequently than quarter annually). In addition, the Trustee may pay to or expend for the benefit of said cousin so much of the principal of said part as the Trustee shall deem necessary or advisable for the health, maintenance and support of said cousin. Upon the death of said cousin whatever remains of her part shall be paid and distributed to her then living issue, per stirpes, if any. If said cousin shall die without issue whatever remains of her part shall be added to the part held for the other said cousin if then living, or if then dead shall be paid or distributed to the then living issue, per stirpes, if any, of said other cousin or if there be no such issue then living shall be paid and distributed to Grantor's then living paternal kindred in accordance with the Virginia Statute of Descendants and Distributions in effect as of the date hereof, said statute being incorporated herein by reference.

6. As hereinbefore amended the Agreement of February 23, 1957 remains in full force and effect.

7. Husband, as the Husband of the Grantor, hereby admits and recognizes that he has no interest in the property held by Trustee immediately prior to the execution and delivery hereof

or the property conveyed and transferred to Trustee hereby; and pursuant to his pre-nuptial contract with Wife, Husband hereby releases, conveys and transfers unto Trustee any and all interest he may have in and to said property.

WITNESS the following signatures and seals this 30 day of May, 1975.

WITNESSES:

Mable H. Henderson

Gwendolyn Elmore Overbey (SEAL)

John C. Elmore, Jr.

Ralph A. Elmore (SEAL)
Ralph A. Elmore, Trustee

John W. Overbey

Robert Winston Overbey (SEAL)
Robert Winston Overbey

STATE OF VIRGINIA

CITY OF RICHMOND, to-wit:

I, the undersigned, a Notary Public in and for the City aforesaid, in the State of Virginia, do hereby certify that Gwendolyn Elmore Overbey, whose name is signed to the foregoing instrument dated this 30 day of May, 1975, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this 30th day of May, 1975..

My commission expires: 4-14-79

William B. Brown
Notary Public

STATE OF VIRGINIA

CITY OF RICHMOND, to-wit:

I, the undersigned, a Notary Public in and for the
aforesaid, in the State of Virginia, do hereby certify

Joseph A. Elmore, whose name is signed as Trustee, to the
foregoing instrument dated the 30th day of May, 1975, has
acknowledged the same before me in my City and State aforesaid.

Given under my hand this 30th day of May, 1975.

My commission expires: 4.14.79

William B. Brown
Notary Public

STATE OF VIRGINIA

CITY OF RICHMOND, to-wit:

I, the undersigned, a Notary Public in and for the
City aforesaid, in the State of Virginia, do hereby certify
that Robert Winston Overbey, whose name is signed as Husband
of the Grantor, to the foregoing instrument, dated the 30th day
of May, 1975, has acknowledged the same before me in my City and
State aforesaid.

Given under my hand this 30th day of May, 1975.

My commission expires: 4.14.79

William B. Brown
Notary Public

SCHEDULE A

1. Real Estate:

Parcel A.

All that certain lot, piece or parcel of land, lying and being in the City of Richmond, Virginia, together with all improvements thereon and appurtenances thereunto belonging, designated as No. 300 East Leigh Street, and more particularly described as follows:

Beginning at the point of intersection of northern line of Leigh Street with the eastern line of Third Street, thence from said point of beginning running eastwardly along and fronting on the northern line of Leigh Street Twenty-one (21') feet and One-fourth (1/4") of an inch, and from said front extending back northwardly, between the eastern line of Third Street and a line parallel therewith, One Hundred and Ten Feet (110') Nine Inches (9"); all as shown upon a plat of survey thereof, made by T. Crawford Redd & Bro., Surveyors and Engineers, under date of September 10, 1910, and recorded in the Clerk's Office of the Chancery Court of the City of Richmond in Deed Book 208-B, page 419.

Being the same property conveyed to Gwendolyn E. Overbey, by deed from Robert D. Robertson, M. C. Martin, A. G. Edwards, David E. Longley and N. A. Eggleston, Sr., Trustees of the Virginia State Conference of Branches of the National Association for the Advancement of Colored People, dated May 2, 1967 and recorded in the Clerk's Office of the Chancery Court of the City of Richmond, Virginia (now Circuit Court of Richmond, Division I) in Deed Book 645A, page 547.

Parcel B.

All that certain lot of land in the City of Richmond, Virginia, with improvements thereon No. 320 East Leigh Street, as shown on a plat by Charles H. Fleet, dated August 25, 1943, recorded in Deed Book 439-B, page 368, in the Clerk's Office of the Chancery Court of the City of Richmond, and described with reference to said plat as follows:

Beginning at the Northwest corner of Leigh and Fourth Streets and running thence Westwardly along and fronting 22.15 feet on the Northern line of Leigh Street and running back from said front Northwardly and between the Western line of Fourth Street and a line parallel therewith, which passes through the center of the party wall between this property and that adjoining on the west, 116.26 feet to a private alley 9 feet wide, for use of this and other property.

Being the same property conveyed to Gwendolyn Elmore Overbey, by deed from Wilmer L. O'Flaherty and Alexander W. Neal, Jr., Special Commissioners, dated January 22, 1971 and recorded January 28, 1971, in the Clerk's Office of the Chancery Court of the City of Richmond, Virginia (now Circuit Court of Richmond, Division I), in Book 668A, page 524.

For good and valuable consideration Ralph A. Elmore, at the request of Gwendolyn Elmore Overbey (formerly Gwendolyn Agnes Elmore), Grantor and Ralph A. Elmore, Trustee, parties to a certain trust agreement dated February 23, 1957 (hereto attached) hereby consents to all of the deletions in and amendments of said agreement dated February 23, 1957 as set forth in a certain deed and agreement dated May 30, 1975, between Gwendolyn Elmore Overbey, Grantor and Ralph A. Elmore, Trustee, also hereto attached.

WITNESS the following signatures and seals this 30 day of May, 1975.

Ralph A. Elmore (SEAL)



Consent to Trust

Frank Duff

May 5, 1975

Mr. Ralph A. Elmore
706 E. Leigh Street
Richmond, Virginia

Dear Ralph:

In order to clarify your thinking about Gwendolyn's trust situation and tell you the problems presented, I am writing this letter for your information and the record.

In 1957 and before her marriage to Robert Winston Overbey, Gwendolyn executed a spendthrift trust instrument at a time when the amount of spendthrift trust protection was \$100,000. Subsequently and at your instance, this amount was increased by the General Assembly to \$200,000. The Trust Agreement conveyed to you as Trustee a number of parcels of real estate and various securities. The purpose of the trust was to lockup as far as possible Gwendolyn's property so that it could not be improvidently used or obligated. There was a question at the time if Gwendolyn could create a spendthrift trust with her own property but it was decided to go ahead with it for the purposes the trust was to serve. In this connection see my letter to you of December 9, 1969 in which I discussed some of the problems we have recently outlined to you. My records do not show that you took any action after receiving the letter of December 9, 1969. For your convenience I attach a copy of the letter.

In order to handle the securities a partnership was created and I understand the securities have been held in the name of the partnership.

Over the years you have told me that the value of the securities market value increased and there has been some addition to her properties from unexpended income including the

Mr. Ralph A. Elmore
Page 2
May 5, 1975

purchase of two additional parcels on Leigh Street. We are not advised as to how much of the investments have actually been treated as a part of the trust and how much has been treated as not a part of the trust.

For a number of reasons it is now desired that the trust be amended so that upon Gwendolyn's death, the net income from the trust estate will be paid to you if you survive her. Thereafter the net income from one-third of the trust estate will be paid to Overbey during his lifetime, the net income from one-third to Jean Warren Smart and the net income of the other one-third interest to Joan Smart Pusey. On Winston's death the one-third interest of the trust estate earmarked for him will pass to the two Smart girls or their heirs as will the Smarts' interests in the trust estate pass to their heirs on the death of each, respectively.

Prior to Gwendolyn's marriage to Overbey there was executed by him an ante-nuptial agreement and I understand there is attached to the original of that agreement a list of the properties owned by Gwendolyn or at the time of execution, Overbey was fully advised of her property interests.

The Trust provides that on the death of Gwendolyn the trust property shall be distributed "to the nearest living paternal kindred" of Gwendolyn, which, according to our examination of the law, made some years ago in another somewhat similar situation, we believe this phrase means the nearest blood kin. You, at the present time, are the nearest blood kin.

When the original trust was drawn it was desired to make certain that it could not be revoked and the testamentary provision carried out your then wishes. The law is clear that an agreement in which the right to revoke is not reserved, still may be revoked if all parties in interest consent to the revocation.

We have advised you that it would be most desirable that the persons who could be designated as the nearest paternal kin at the present time and probably would be the paternal kin, if not all of the paternal kin on Gwendolyn's death, should consent to the amendment of the existing trust agreement so as far as possible to avoid any legal or other difficulties as to the

Mr. Ralph A. Elmore
Page 3
May 5, 1975

legal situation when Gwendolyn passes away. These persons would be the descendants of your brothers and sisters. You have told us, however, that these people should not be advised of your family affairs and therefore they would not be requested to execute any instruments as we have suggested.

To a considerable extent you have taken care of a number of these persons very generously in your will and of course, as stated above, Winston Overbey will be taken care of in the amended trust. It is our understanding that it is your feeling that by reason of the provisions made for these persons that you do not expect any disagreement as to the administration of Gwendolyn's estate. We feel that it is our duty to point out to you for the reasons stated above that the Trustees or Trustee may and probably will want to ask the court guidance of the administration in view of the provisions of the amended agreement. There is no way that we know of to avoid this except to the extent it will be solved by the consents of the persons above suggested which as stated above you do not want to obtain.

We have prepared and now enclose a proposed amendment amending the existing trust agreement in the manner requested by you. We have not conferred with Gwendolyn as you know. It is ready to be executed by Gwendolyn, Winston and you, witnessed and acknowledged before a Notary. Schedule A includes the real estate which, we understand, is to be added to the trust. Before the agreement is executed there should be added to Schedule A a list of the additional property, if any, to be included on the amended trust. This list should not include any property now constituting a part of the original trust.

Sincerely yours,

Robert T. Barton, Jr.

RTB/jw
Enclosures

cb:ah
2-7-57
3-cc

1 orig
4 copies.

*Original draft
with consideration
to joined draft.*

DEFENDANT'S
EXHIBIT
D19420
960

THIS AGREEMENT made this day of February, 1957, by and between GWENDOLINE AGNES ELMORE (hereinafter called Grantor) and RALPH A. ELMORE, Trustee as hereinafter defined and empowered, (hereinafter called Trustee), both of the City of Richmond, Virginia,

W I T N E S S E T H :

I. In consideration of the sum of One Dollar and other valuable consideration including the services which the Trustee hereunder agrees to perform, the Grantor hereby grants, conveys, bargains, sells, transfers and assigns to the Trustee to be held and possessed by him upon condition that the corpus thereof and income therefrom, or either of them, shall be applied by the Trustee to the support and maintenance of the Grantor without being subject to her liabilities or to alienation by her, the following real and personal property hereinafter called, together with the income therefrom, the Trust Estate:

- Real Estate: - Copy from deed. Parcel 1.*
- A. ~~Real Estate consisting of the following:~~ *Parcel 1 - 1/2 acre - 1/2 acre - 1/2 acre*
- B. All the stocks, bonds and securities listed on Exhibit A

hereto attached as a part hereof.

C. Any other real or personal property which the Grantor

The Trust Estate together with the income and proceeds thereof shall be held, managed and disposed of by the Trustee in accordance with the provisions hereinafter set forth.

Grantor may deliver to the Trustee to be held in accordance with the provisions hereof.

II. The Trustee is hereby authorized *in his usual and*
discretion

1. *He* To retain, either permanently or for such period of time as he may elect, any assets, including stock of any closely held corporation which, at any time, shall come into his possession as a part of the Trust Estate, whether such assets are or are not of the character approved or authorized by law for investment by fiduciaries;

2. *He* To invest and reinvest the Trust Estate in such notes, bonds, obligations, debentures, shares of stock, common and preferred, in participations in a common trust fund or funds, and in such other property, real and personal, as they may deem best, without being required to confine themselves to such investments as are usual or as are approved or authorized by law for investment by fiduciaries; to alter, change and vary such investments and reinvestments; to change realty to personalty and vice versa; and to determine the rate of interest or income yield to be realized for the Trust Estate and the times within which all investments and reinvestments are to be made, it being intended that the Trustee may assume and maintain a cash position for the Trust Estate so long as he deems the then situation such as to render this course wise; *to invest the Trust Estate in any security or securities;*

3. *He* To sell or exchange any property, real or personal, contained in the Trust Estate, either at public auction or privately, for cash or credit and upon such terms and conditions as to him may seem best;

D. To make agreements, leases and investments for any period of time even though such agreements, leases and investments extend beyond the expiration of the trust provided for herein;

E. To make repairs, alterations, additions or improvements to any property contained in the Trust Estate;

F. To register and hold any property, real and personal, in the name of any nominee selected by him, without disclosing or describing the trust;

G. To participate in or oppose any plan for the consolidation, merger, foreclosure, dissolution, reorganization or refinancing of any corporation, organization, project or enterprise in which the Trust Estate may be interested; to take and hold any securities or investments issued under any such plan, and to pay any assessments and subscriptions involved therein;

H. To vote in person or by proxy, general or restricted, any shares of stock contained in the Trust Estate, and to enter into voting trust agreements with respect to any shares of stock contained in the Trust Estate;

I. To take up or subscribe for any rights or exercise any subscription or conversion privileges with respect to any property contained in the Trust Estate;

J. To hold any securities contained in the Trust Estate even after default in the payment of interest or dividends thereon;

K. To make division or distribution of the Trust Estate in kind, in money, or partly in both, and my Trustee's sole valuation of property for such purpose shall be conclusive and binding on all parties interested therein;

L. To borrow money and renew obligations for the Trust Estate without any personal liability on the Trustee in so doing, and for such purposes, to pledge, mortgage and encumber all or any portion of the Trust Estate;

M. To institute any suit, action or proceeding on behalf of the Trust Estate, and to defend any suit, action or proceeding brought against or relating to the Trust Estate, and to compromise and adjust or otherwise dispose of any claims against or in favor of the Trust Estate upon such terms and conditions as he may deem best;

N. To demolish improvements which may be located upon any estate contained in the Trust Estate;

O. To exercise any and all options and privileges granted under any policies of insurance contained in the Trust Estate;

P. To determine what is income and what is principal hereunder, and what expenses, costs, taxes and charges of all kinds shall be charged against income and what shall be charged against principal, and the decision of the Trustee with respect to such matters shall be conclusive and binding on all parties interested therein;

Q. To make and execute all instruments necessary and proper in order to carry out the powers conferred upon him herein, it being the Grantor's intention to give to the Trustee full management and control of the Trust Estate, the powers herein enumerated being by way of illustration and not by way of limitation.

In addition to the expenditures herein above
III. The Trustee is authorized to pay or expend for the benefit

of the Grantor so much of the net income from the Trust Estate as in his opinion and uncontrolled discretion is necessary for her support and maintenance, it being the Grantor's suggestion that the sum of \$150.00 a month ~~plus the payment of automobile insurance premiums, hospitalization insurance and the creation of a reserve to replace the Grantor's automobile from time to time~~ would be appropriate at the present time, said sum to be increased or decreased as the cost of living increases or decreases.

In addition to the net income the Trustee is authorized to pay or expend for the benefit of the Grantor in his uncontrolled discretion the principal of the Trust Estate if the income therefrom shall not be sufficient in the opinion of the Trustee for the adequate support and maintenance of the

Grantor especially in the event of accident or illness, ~~and for the expenditures authorized in paragraph I and II of the instrument~~ or become necessary by reason of the investment of the Trust Estate in securities or otherwise

copy J.
IV. This Trust shall continue until the death of the Grantor when the remaining Trust Estate shall be paid over, transferred, delivered and conveyed as the Grantor by her last will and testament shall direct. In the event the Grantor shall die intestate, the Trustee shall distribute the remaining Trust Estate in accordance with the Virginia Statute of Descent and Distribution.

V. The Trustee shall receive for his services as such five (5) per centum of the gross income from the Trust Estate.

all be-
owers
d shall

Executed in duplicate.

(SEAL)

CITY OF RICHMOND, To-wit:

Given under my hand this day of , 1957.

Notary Public

14
one or more

a. to purchase or lease

To purchase ~~land~~ ^{an} ~~house~~ for the Grantor and to permit
the Grantor to occupy the house free of ~~rent~~ ^{rent} or
other charges, to pay for the maintenance and upkeep
of the house, ~~interest~~ ^{interest} and the taxes thereon, and
from time to time to call any bond or ac-
quired used ~~to~~ purchase another house.

To purchase ~~an~~ ^{an} automobile for the use of
the Grantor and to pay for the use wear and
tear from time to time to call any auto-
mobile so ~~granted~~ ^{granted} and acquired used to
purchase another.

To ~~purchase~~ ^{acquire} hospitalization and other insurances
for the benefit of the Grantor and pay the
premiums thereon.

To invest the Trust Estate in real estate
in one or more businesses.

lawful issue

~~II A. This Trust shall continue until the death of~~
~~the Grantor. Upon the death of the~~
Grantor, the remaining Trust Estate, shall be
paid over, ~~transferred and delivered by the~~
~~Trustee to himself or Trustees~~
after deducting or providing for all taxes,
commissions and other proper charges and
expenses ~~thereof~~, shall be by the said Trustee divided
into as many shares or separate trusts as there
shall be living at the date of the death of the
Grantor children of the Grantor and lawful
issue of children of the Grantor who have
predeceased the Grantor leaving lawful is-
sue surviving at the date of the death
of the Grantor and each share or trust shall
be appropriately earmarked for a child or
lawful issue of a deceased child ~~one~~
1. 0. 1.

~~issue of a deceased child.~~ One of such earmarked parts shall pass, be
transferred, paid over and delivered to each child of ^{the Grantor} ~~mine~~ then living who,
at the date of ^{the Grantor's} ~~my~~ death, shall have attained the age of twenty-five (25)
years, and one of such equal shares or trusts shall pass, be transferred,
paid over and delivered, per stirpes, ~~subject to the provisions of Para-~~
~~graph 3 of this Article III~~ to each group of lawful issue of a child of
^{Grantor} ~~mine~~ who shall have predeceased ~~me~~ her
shall be held ^R

The remaining one-third of an earmarked part shall be held in trust by the Trustees for the child for whom it is earmarked until said child attains the age of thirty-five (35) years when such of the said one-third of the earmarked part as may remain in the hands of the Trustees shall pass, be transferred, paid over and delivered to such child.

2 ~~2~~ During the periods when the Trustees hold^s any earmarked part in trust for a child of ~~mine~~^{the said child}, the Trustees shall pay the net income therefrom to the child for whom such share or trust is held in convenient installments, provided, however, that in no event shall such payments be made less frequently than quarterly. During the minority of any ~~child of mine~~^{said} the Trustees may administer said trust and may make payments to or for the benefit of the said child without the necessity for the intervention of a guardian. In addition to the said income, the said Trustees may, in ~~their~~^{his} uncontrolled discretion, during the existence of the trust and regardless of the age of the child, use so much of the principal of the trust as the Trustees may deem requisite for the support, education, and maintenance of such child and such additional amounts as the said child may need in the event of sickness or accident.

3 ~~4~~ If after the separate trusts are set up for ~~the~~^{said} children living at the time of ~~the~~^{the said child's} death, a child shall die during the life of any part of his or her respective trust, then the balance of his or her trust which has not been expended for his or her benefit or paid to him or her shall be disposed of as follows:

a. & If any such child shall die, leaving issue, the entire amount then remaining in his or her trust estate shall pass, be transferred, paid over and delivered, per stirpes, to the lawful issue of such deceased child. The separate portion of any such share of any such lawful issue who is under

twenty-one (21) years of age shall be retained by the Trustees and handled in all respects as provided in paragraph ² of the Article ~~IV~~ ^{IV of this instrument} relating to beneficiaries under the age of twenty-one (21) years.

~~6-2~~ In the event such child shall die without issue, and testate, the amount remaining in such trust shall pass in accordance with the terms and provisions of the last will and testament of such deceased child.

~~9~~ In the event such child shall die without issue, and intestate the amount remaining in said trust shall in equal shares to the then remaining trusts be paid and be subject to all the terms and provisions thereof, but in the event any one of the original trusts shall have been terminated, the amounts which would have been paid to that trust shall pass to the distributees of the beneficiary thereof in accordance with the State of Descent and Distribution then in effect in the State of Virginia,

ARTICLE V

The income of the trusts herein created shall accrue from the date of my death, and until the trusts are established I authorize my Executors, in their sole and absolute discretion, from time to time and at any time, to pay out of my general estate to the respective income beneficiaries of such trusts, as advanced payments of income, such sum or sums as in their judgment are not in excess of the income which such income beneficiaries probably would have been entitled to receive from the said trusts had the same been established. Any such sum paid from the principal of my general estate shall be regarded merely as a temporary advance to be restored to the principal from income otherwise payable to the beneficiary to whom such advance shall have been made.

ARTICLE VI

(Here embody usual powers to Trustees using State-Planters Bank of Commerce and Trusts form)

ARTICLE VII.

If any legatee or devisee shall die simultaneously with me or under such circumstances as to render it difficult or impossible to determine who predeceased the other, I hereby declare that I shall be deemed to have survived such legatee or devisee and that this will and all of its provisions shall be construed upon that assumption and basis.

ARTICLE VIII

A. I direct my Executors to pay as a cost of the administration of my Estate all estate, inheritance, succession, or other similar taxes, together

~~after the death of the grantor~~
~~During the joint lives of the Trustee and the grantor~~
~~of the ~~trust~~ ~~estate~~~~

B. The Trustee with respect to the trusts created by this Article IV shall be vested with all of the power conferred upon him by Article II hereof.

C. In the event the Grantor shall die without leaving children or lawful issue of children surviving her, ~~and~~ ~~then~~ the Trustee, ~~shall~~ upon the death of the Grantor shall pay over, transfer, deliver and carry to the surviving Trust Estate to the ~~the~~ ~~nearest~~ ~~nearest~~ nearest living paternal kindred of the Grantor.

DEFENDANT
EXHIBIT
D24
PENGAD-Bayonne, N. J.

~~RALPH A.
ELMORE~~

~~LENA E.
CASSATTA~~

~~JOHN
ELMORE~~

~~LOUIS
ELMORE~~

~~THOMAS
ELMORE~~

~~GWENDOLYN
E. OVERBY~~

~~MARGUERITE
C. POINTS~~

~~THELMA C.
SMART~~

~~MADLINE
ROBISON~~

~~LOUIS
ELMORE JR~~

~~R.A.
ELMORE II~~

WILTON
POINTS

JOAN S.
PUSEY

JEAN S.
WARREN

DON
ELMORE

R.A.
ELMORE III

LEGEND

- MALE
- FEMALE
- / DECEASED

RECEIVED

FEB - 8 1957

OPENED BY _____

DEFENDANT'S
EXHIBIT
LE2
JED

CHRISTIAN, BARTON, PARKER & BOYD

ANDREW D. CHRISTIAN (1899-1947)
ROBERT T. BARTON, JR.
ALEXANDER W. PARKER
RICHARD McDEARMON
A. C. EPPS
ANDREW J. BRENT
BROCKENBROUGH LANS, JR.
ROBERT J. NEBERLE
R. HARVEY CHAPPELL, JR.
RICHARD H. CATLETT, JR.
CHARLES W. LAUGHLIN
JOHN C. KENNY

MUTUAL BUILDING

RICHMOND 19, VA.

T. MUNFORD BOYD
COUNSEL
TELEPHONE 2-1841
CABLE ADDRESS "BARPAR"

February 7, 1957

Mr. Ralph A. Elmore
Lyric Building
Richmond, Virginia

Dear Ralph:

Herewith proposed Trust Agreement which I wish you
would read very carefully and after you have done so we can
talk further about it.

Sincerely yours,

Bob

Robert T. Barton, Jr.

RTB, Jr.
en
Enclosure