

TRANSCRIPT OF COUNTY COMMISSION MEETING HELD SEPTEMBER 10, 2001 AT
9:30 A.M. IN ROOM 203 OF THE WOOD COUNTY COURTHOUSE

PRESENT: ROBERT K. TEBAY, PRESIDENT
RICK MODESITT, COMMISSIONER
K.D. MERRITT, COMMISSIONER
ROBERT GOLDENBERG, ATTORNEY
RICHARD HAYHURST, ATTORNEY
FRANK KESTERSON
JANE RICHARDS
CAROLE MORRISON
MARY RADER, COUNTY ADMINISTRATOR
JAY DAY, ADMINISTRATIVE ASSISTANT, COUNTY CLERK

Tebay – Who's .. Richard or

Hayhurst – I can start, I am the petitioner. Apparently, your honors, the record should show that Alma Kesterson died on May the twenty seventh apparently there was a will which was in the possession of Mr. Frank Kesterson and it has not yet been produced to the Commission as required by statute.

Male – Excuse me, that's not true.

Female – That's incorrect.

Male – That's incorrect.

Hayhurst – Excuse me please, I'm sure you'll have an opportunity to ..(inaudible)

Male – Please tell the truth.

Hayhurst – statute of course requires it to be offered for probate within 30 days of the date of death and that was not done. (inaudible) reports to be, it leaves everything to her late husband, Harry Kesterson and it of course, Mr. Kesterson died many years ago with a provision that if he were to predecease Mrs. Kesterson, then the property would be divided among all of the children of course then what would happen in an intestate (inaudible). The proposed, the reported will that I have seen only names the executor heir, her husband and did not name an alternate executor. So, whether the estate is administered pursuant to a will or whether it is administered pursuant to intestate succession, each of the children are entitled to (inaudible) one-eighth from the estate and the Commission will have to appoint a fiduciary. Which is the principle reason why we are here today. I represent Francis Kesterson Sharp who is the oldest child (inaudible) Kesterson and we have asked that a fiduciary be appointed and we have suggested that a corporate fiduciary be appointed. The reason being that there is a lack of unanimity among the children about three basic things, number one, who should serve, number two, whether there should be a malpractice claim filed in relation to the death of Alma Kesterson and number three, on June 23, 2000 it was offered for recording and recorded what reports to be a deed from Alma Kesterson to Frank L. Kesterson and Caroline S. Kesterson, husband and wife, the east half of 180 acres of land, I'm sorry, the east half of 100 acres of land on (inaudible) and I present a copy of that deed. Now, the problem that that deed raises is three-fold. Number one, it may have been a gift from Mrs. Kesterson to Frank Kesterson and his wife, it may have been an advancement against his inheritance, or it may have been a fraudulent transfer. All of those options require investigation. And the fiduciary, of course, would be one of the people who would be in charge of making such an investigation. The fiduciary would also be one of the people in charge of (inaudible) the sole person determining whether a malpractice claim was to be filed. And you have in front of you letters from several of the heirs asking that Frank Kesterson and Julia Hoffman be appointed as fiduciary. We oppose that. I'm tendering to the Commission now, a notarized statement from Michael A. Kesterson, who is one of the people who nominated Frank and Julia, rescinding that nomination. And I also have a letter, as notarized over here Susan K. Buttermore who is one of the other children, objecting to the

appointment of a fiduciary whose intention is to file a malpractice claim. These are very sensitive issues, number one, did one brother defraud his mother and (inaudible) the other heirs, number two, is there or is there not to be a malpractice claim filed against a local doctor or perhaps others. Four of the children are against filing a malpractice claim, four of the children are in favor of filing a malpractice, well, I don't know that all four of the others are in favor of filing a malpractice claim, but at least the two nominated fiduciaries are. For all of those reasons, it seems to me, that those investigations need to be done by someone who is completely independent and not influenced by personal feelings and who would take into account the best interest of the estate and not their own personal interests. For those reasons, we ask that, of course it's necessary to appoint a fiduciary, the woman's been dead now, almost, well three and a half months and if there is a federal estate tax return that has to be filed it has to be filed within nine months of the date of death so more than a third of that period of time has elapsed. Of course, we won't know whether its gonna be necessary to file federal estate tax return until a, an appraisal is done and filed so the claims period will start and number two a bonafide appraisal of the real estate is done. Now, it may be that the land will not appraise, which is I understand is major asset of the estate. It may be that that land will not appraise high enough to require a federal estate tax return be filed, but we don't know that yet. But, those are things that have to be done, the clock is ticking. A fiduciary has to be appointed and it seems to us that the most efficient, the best way to do this is to appoint somebody completely independent, such as the trust department of one of the banks around here. Now, we understand and know that that is going to cause a fee to be incurred, but a fee is going to be incurred anyway, the fiduciary, whoever it is, will be entitled to take a commission, he will be required to employ counsel, he will be required to perhaps retain the services of an investigative physician to determine whether there is a malpractice claim to be done, to be filed. All of those things, we think, we propose are things that are best done by somebody who has no personal stake in the issue and who can represent the interests fairly of all of the heirs. If we appoint any of these people as fiduciary, there are going to be repercussions down the road that are best avoided by appointing somebody completely independent.

Goldenberg -- May I see the exhibits that were presented.

Hayhurst – Sure.

(inaudible) several people speaking

Tebay - Mr. Merritt brought to my attention that he's very involved with all of you and that if any of you feel uncomfortable with him serving, would you speak now if not, then we'll leave it, stay in place (inaudible)

Merritt – I've known you all ever since I've been (inaudible) and I feel real uncomfortable, I asked Bob (inaudible) he's sitting here and I want you all to know (inaudible)

Female – We have no problem

Female and male talking at same time – inaudible

Merritt – You understand what I'm saying.

Female – Yes

Tebay – The deed (inaudible)

Hayhurst – The deed, it was prepared by Robert B. Black, who is, to my knowledge, no longer (inaudible) client relationship with Mrs. Kesterson in her lifetime. She was represented during that era with respect to whatever legal affairs she had by Roger Curry in Fairmont.

Background talking

Hayhurst – Your honor, I understand there may also be a statement from Mrs. McCauley to be faxed to this court this morning, when it comes, if its not here, I ask that it be included in the record.

Goldenberg – I'm sorry, I didn't hear that.

Hayhurst – I said there's another statement to be faxed by Mrs. McCauley one of the other heirs, it's supposed to be faxed here to Probate Court and I asked that it be included in the record when it comes if it's not already here.

Background talking and people talking at one time.

Tebay – A copy of Alma's will, is it in here.

Hayhurst – I have seen a copy but I don't know whether it is in the court file or not. Mr. (inaudible) is the one who produced it at some point, he's the one (inaudible) Mrs. McCauley's letter is in the folder. The will has not been, it may have been lost, no one has offered it for Probate yet.

Goldenberg – That's not true your honor. The will was offered to probate, but it was refused for probate because of lack of an administrator. (Inaudible)

Hayhurst – The lack of the fiduciary would have not have caused these probate deputies to refuse the probate of the will, the problem is it's not self-authenticating and somebody needed to file a petition for probate in solvent form and give notice and summons people to show cause why it shouldn't be admitted in court according to the statute.

Goldenberg – Gentlemen, this is a family fight that's unfortunate. It appears there are four, there was six, for some reason or other it's changed. When we were last here I told you it was six people who were in favor of Frank and Jane being appointed. And now its four and four for

some reason or another (inaudible) Susan Buttermore (inaudible) Ohio (inaudible) Those people, Francis here, lives in Cincinnati, these other people are out of the state, there are Jane, Carole and Frank who live here in Wood County, West Virginia. They are the ones who appear always knew about what's going on. They knew about their mother, they were with their mother, they know more than (inaudible) They're not after personal gain, they are after to do what is right. They think something happened to their mother that shouldn't have happened. (inaudible) They are very emphatic about seeing that (inaudible) as far as medical malpractice. So far as Frank Kesterson and his deed, are we here trying this case. Are we here to accuse him falsely. Because someone says or charges that this could be fraudulent. Anything in the world could be (inaudible) These people here in Wood County want Frank and Jane to be appointed. Now, its necessary to make a compromise and appoint Jane and Carole instead of Frank, so be it, that's fine. It should be somebody here in Wood County who is on the scene who will do what's necessary. As far as having a bank do this, counsel for Francis proposed last time we were here Wesbanco well I asked Wesbanco, I said, I wrote a letter to them asking under these circumstances where there's potential litigation, would you be willing to serve as administrator. As you can see I have a letter back saying no, we don't want to be involved in that. I don't know that any bank's going to be involved in a litigation of this sort among members of the family. I think it's something they have to work out themselves and the people here in Wood County are (inaudible) any charges, lawsuit what have you that has to be made and that can be done and I think that the only fair thing to, the only right thing to do is appoint one of the people here in Wood County either Frank, Jane or Carole and that is as administrator, co-administrator and nothing can be harmed by doing that. (Inaudible) I remember a time when I was involved in a law case over a will because there was a comma, comma that made a difference in the interpretation of the will. The bank in order to cover itself (inaudible) long, expensive lawsuit. So, the bank is going to want to protect itself and it is going to be very resistant on anything and the clients, these people right here, counsel for (inaudible), counsel for United Bank, that's sort of (inaudible) things in an unfair way (inaudible). So, let's appoint someone who's objective here, if they don't want Frank, name Jane, name Carole, name Jane and Carole, whatever, name people in Wood County, West Virginia, who are responsible to us right here, not someone out of the county who we'd have to reach somewhere. So let's do what we should do for these citizens

of Wood County and name one or two of them. Now, I'd like to have Frank, Frank has asked if he could speak if you don't mind. I appreciate your giving him that courtesy.

Hayhurst – Let me respond briefly to what he said before that happens. Mrs. Sharp is not a resident of Cincinnati, Ohio, she lives on Morningside Avenue and has lived there for more than thirty years and maintains her residence here in Wood County. She's temporarily absent in Cincinnati time to time helping her daughter in a business but she lives here and she intends to remain here. Second, Mr. Kesterson is not on trial here today, the problem is, that there is an apparent conflict of interest between his status as a grantee in that deed and his status, his proposed status as a fiduciary, such that he should not have to (inaudible) and that is, that's like (inaudible) asking Colonel Sanders to watch the chicken house. That's the principle basis, one of the two principle basis of rejecting him with respect to the other people proposed they are not acceptable as well. The sister Jane has recently filed bankruptcy and there is a lack of confidence on our part that she has the financial sophistication as well as with Carole, the financial sophistication necessary to administer what may end up being a complex estate which would require an investigation of a lawsuit, administration of the estate, perhaps subjecting real estate to sale to the payment of claims against the estate and so forth, we just don't know that yet. That's why, those are the principle reasons why someone independent needs to be appointed to do this. Now, Mr. Goldenberg objects to United on the grounds that I represent United, I do work for every bank in the area, as does Mr. Goldenberg. So those are not reasons to disqualify an otherwise local bank from assisting these people (inaudible)

Goldenberg – (inaudible)

Hayhurst – You have, Mr. Goldenberg, you've done work for loan customers, for Mrs. O'Shea among other people.

Goldenberg – (inaudible)

Tebay – Mr. Kesterson, Frank, do you want to raise your right hand please. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God.

Kesterson – I do so help me God. Gentleman, I am appalled and saddened. Mr. Tebay, you knew my father, you were in business together. Mr. Merritt, as you said you've (inaudible) for years. I find this to bring this into this public forum a total disgrace. I have a great deal of problem with Mr. Hayhurst bringing these false petitions to start with. My sister, Francis Sharp knew that there was a will. We all knew she had a will. We all knew that all she (hadn't) updated her will. And when she was sick and in the hospital since the 18th of January, up until the day that she passed away. The last thing we wanted to do was talk about doing anything with the will, our only hope was to get her well and bring her home. Francis Sharp did not have access to any of my mother's affairs. She didn't have access to the house. She didn't have access to the safe where the will was kept and you know, I find it disturbing that a petition like this was filed to begin with. I also am a little upset, for some reason or other, we were working with Mr. McCloy who told us that we didn't have a clue that this petition was filed at all. We were working with Mr. Bob McCloy to come to a solution as to who should be administrators of the estate. We got in the mail on, which was postmarked from down here on the thirty-first of July, this petition that went through this court was dated July 5. I realize that what was done was legal, however I fail to understand why twenty-six days this laid in the courthouse. I'm not accusing anyone, I just find this disturbing and if these are procedures that might need to be corrected within the office here. I did not get 50 acres of 100 acres. I have lived on Ashby Ridge for thirty years. My father gave me one acre of ground to build a house. I built that house and I also paid for that house. And what I had done is what, I am the one who's responsible for what it looks like, not anyone else. This valuable piece of property that you know, that I took from my mother, has a high-pressure natural gas line that goes right through the middle of it. I don't think that anybody is going to build a house on that, there's no access to the back of the property, there's no way to get into the back of it. One side is gullies (inaudible) and sink holes and (inaudible) sage. The other side happens to be brush, it goes straight down to five-mile hollow. And Mr. Merritt is well aware of five-mile holler and what's happened out there. I would love having a valuable piece of land. If I had been devious and supposedly done the

things I've been accused of, why wouldn't I just go ahead and say, Mother, go a head and make me a deed for 300 acres of ground. When we built a house, when we was replacing the house, and we received a hundred and twenty-five thousand dollars from the power company, Mother put that money in an account with me so that I can take care of her affairs. Every penny of that money was spent on her house, not one bit was taken. I had the opportunity to do whatever I wanted to and I assure you I did not. I don't appreciate this kind of comments. I would like for something to be decided today. As long as it is lawful I do not want a bank representing this, it's not that we're going to file a malpractice suit, but I believe that I have a right if I want to, or any of us want to, it's just not me, Gentleman, it's other people, if they want to, they have that right. It's going to make it difficult, to almost impossible if a local bank is named. It's preposterous and we do not want to pay fifty-sixty thousand dollars to a bank to do something that is pretty well already done. My mother has no money left, bills have been paid. She only has property. We're not talking anything major. We are talking about farmland. We're not talking about prime real estate you know that's divided off into lots. We are talking about farmland and I think people need to get a concept in their mind that all this money that they think they might be getting is not there. When my father passed away he was worth a considerable amount of money. My father has been gone since 1984 and my mother has the only thing she's had since that period of time has been her social security. So she has used those stocks, those checking accounts, those saving accounts, those different things. The cattle money that she had that she's sold. All of those things have been sold for things that she wanted to do. This has become (inaudible), this is ridiculous. Frankly, you know, I haven't had a break since January eighteenth nor has my sisters, because we've been here locally, we've been with my mother and we tried to do (inaudible) the last thing that was going through our minds was (inaudible) or anything else. Because frankly, the money doesn't mean anything to me, I can assure you, you know, if five or seven and half percent, whatever's allowable to be charged by the administrator I can tell you this much, I would not touch it, I have no intentions, I would have no intentions of taking any of that money. I do not want a bank named, I don't want my rights to be denied if I want to file a malpractice suit. Some of the things that Mr. Hayhurst has, with the false petition that was filed (inaudible) I really, I think you have a thing called a (inaudible) commission of accounts. I think that's up to you all to appoint those people. I'm objecting, I'm stating my objection right now,

that (inaudible) any way, shape or form have any part of this, back when we had a suit with the power company, my mother tried to discharge Mr. Hayhurst from that suit. Mr. Hayhurst did not do that and Mr. Curry in Fairmont took that over, but Mr. Hayhurst still got fifty percent of the fee. My mother did not want to have anything to do with you and I do not want to have anything to do with you now for those reasons. I do not say that if someone else in this town could be appointed as administrator, that's fine, but a bank is out of the question, Mr. Hayhurst's capacity in any way is out of the question. One thing is for sure, I've endured this as long as I can endure it and I did not start this petition, but I can assure you if I keep hearing these things brought against me in this public forum that I will finish it because I don't appreciate that. I have a very, not a very high job, but a pretty high job at the Wood County Board of Education and you know what Board of Education and Dr. Curry does not take likely to employees doing illegal things I do not feel my family, my daughter, my livelihood needs to be threatened by these accusations. As Mr. Goldenberg said, I'm not on trial here and we need to get off that subject. (Inaudible) I hope we can come to a compromise of some kind today, it doesn't have to be me, but as I say it's not going to be (inaudible) I didn't start this (inaudible) I do not appreciate the accusations. I think we are grasping at straws because I think that's the only thing we have to grab for. Like I say, you know, somebody wants this valuable of property they can go ahead and (inaudible) I started on over the weekend and fill up the sink holes and so on, that's the kind of valuable piece of property I got. I think this whole thing is ridiculous, I apologize to you all for having to endure this and I'm just very sorry. Thank you.

Hayhurst – (inaudible) I have some questions. I agree with you Mr. Kesterson, the validity of the transfer will not be determined here today, it is irrelevant to these proceedings except in so far as there's a conflict, it's going to be decided over there in the other building. There's a copy of the petition, that you say is false. What do you contend its false in that petition. Is it false that Francis Sharp was one of the surviving daughters of Alma Kesterson. Is that false.

Goldenberg and another person talking at same time – inaudible

Hayhurst – I'll withdraw the question. Mr. Kesterson is it false that Francis Sharp is one of the surviving daughters of Alma Kesterson.

Kesterson – No it's not.

Hayhurst – Is it false, that she wants an independent fiduciary appointed.

Kesterson – No.

Hayhurst – Is it false that your mother died on May 27, 2001.

Kesterson – No it's not.

Hayhurst – Is it false that at the time this petition was filed she was quote apparently intestate unquote.

Kesterson – No that's not true.

Hayhurst – Was a will produced to Mrs. Sharp prior to that time.

Kesterson – No, she....

Mr. Hayhurst – Was it offered for probate.

Tape ended.

Kesterson – There was a will

Hayhurst – She'll have to speak for herself in that respect

Kesterson – Well, we'll just have to see what she has to say.

Hayhurst – Is it false that she left surviving eight children.

Kesterson – Of course not.

Hayhurst – Is it false that the surviving next of kin of the decedent are unable to agree among themselves as to who should act as fiduciary.

Kesterson - Actually, no it wasn't, until yesterday. You know, I got a call from Mr. Goldenberg on Friday morning and all of a sudden he didn't want to (inaudible). We wanted Mr. Lynn McCauley named and you know what.

Hayhurst – I don't know what you're talking about sir.

Kesterson – Just pay attention and I'll tell you. Mr. Goldenberg called me 11:00 o'clock, between 11 and twelve on Friday and told me that a compromise as an offer to compromise, Mr. Lynn McCauley would be appointed and that I had done illegal things. In other words, it was pretty much of a threat. We talked with Lynn McCauley last evening. He did not want to have anything to do with this nor did he know anything about this.

Hayhurst – And your point is.

Kesterson – My point is, that this is just one thing after another with you Mr. Hayhurst and it doesn't stop, that's my point.

Hayhurst – Thank you. I'm finished with you sir.

Tebay – Do you have any more evidence to present to us at this time.

Background talking.

Goldenberg – I have one thing. To save time I am going to ask these two sisters a few questions. Would you, either one of you, accept administration of this estate.

Female – yes

Female – yes

Goldenberg – And would you charge a commission to the family.

Female – (inaudible) absolutely not.

Tebay – You want to swear them in if they're going to testify.

Goldenberg – Sure

Tebay – Each of you state your name please for the record.

Richards – Jane Richards

Tebay – Jane Richards and you ma'am.

Morrison - I'm Carole Morrison

Tebay – Carole Morrison. The two of you are going to testify. Raise your right hand please. You swear to tell the truth, the whole truth and nothing but the truth so help you God.

Richards – yes

Morrison – yes, I do

Goldenberg – Jane, are you a daughter of Alma Kesterson

Richards – Yes I am.

Goldenberg – And you heard these proceedings

Richards – Yes.

Goldenberg – Would you accept administration of the estate of your mother.

Richards – Yes I will.

Goldenberg – Would you charge commission.

Richards – Absolutely not.

Hayhurst – Ma'am, did you just recently file for bankruptcy.

Richards – Yes sir, we did, because my husband and I had incurred some medical expenses, he was sick last year, required surgery on his lungs (inaudible) at the same time, beginning last March our daughter was ill and she has continued to be ill for a year. She had surgery in Cleveland Clinic this year because of a blood clot. This young lady is twenty-two years old and trying to attend college and we encountered some medical expenses that we could not pay so in order to get our names cleared and start over. This is very embarrassing and humiliating and degrading to us but we had to do that because my husband and I have always been, lived our life in an appropriate manner.

Hayhurst – (inaudible)

Richards – pardon me

Hayhurst – Excuse me, I didn't mean to interrupt. Forgive me. Finish your answer please.

Richards – Yes, we filed bankruptcy because we had to get rid of some debt and to start over and to get our life back together. We did that because we had (inaudible) amount of medical expenses, because of my husband and my daughter's illness. I would also like to add, I provided a great deal of care and attention to my mother. I did things for her constantly because of my love and devotion for her and for anyone to think that I would take one dime from her estate is absolutely a disgrace, my honor and my integrity is questioned and I totally resent that.

Hayhurst – You're also in favor of filing malpractice claim aren't you.

Richards – I believe that those folks who would file a malpractice claim have that right to do so. I don't feel that if there are ones that do not want to file malpractice claim, they don't have to participate. But they don't have the right to say those of us that want to do it can't do it. If we, it's not going to be filed on behalf of the half of the heirs of or estate of, it will be filed collectively among the three or four that want to participate in it and not on behalf of the estate.

Hayhurst – Haven't you been advised that only the fiduciary can file a wrongful death claim. Haven't you been advised of that.

Richards – We are aware that the administrator would have to get the medical records in order to pursue that.

Hayhurst – And only the administrator can bring a wrongful death action under 56-6-7 correct.

Richards – If they choose to do so, yes.

Hayhurst – And you are in favor of doing that and you know that four of your family members are not in favor.

Richards – But they don't have to participate.

Hayhurst – Yes or no.

Richards – Yes, I'm aware that they don't want to do it, but they don't have to participate in it. We were advised by Mr. Robert McCloy and Mr. Harry Deitzler that if we pursued a malpractice suit that the others do not have to participate in it if they chose not to.

Hayhurst – That's as well may be, but the fiduciary has to bring suit, correct.

Richards – OK, That's fine.

Hayhurst – Don't you think it ought to be somebody who independently assesses the facts and circumstances of the case and not somebody whose hell bent upon bringing such a suit regardless of the merits.

Richards – (inaudible)

Goldenberg –I object to that. I object to that your honor. (Inaudible) malpractice suit. These people would not do so I'm sure without medical counsel that is was the proper thing to do.

Richards – That's right, we would not, we've discussed this at great length, talked with as I said two different attorneys about it. We would only pursue it if we felt that you know we could proceed with it.

Hayhurst – Have you retained anybody to investigate.

Richards – No. But we can't because we don't have an administrator of the estate appointed. So we can't pursue it.

Tebay – I think we are wondering away from (inaudible) Let's get back on track.

Several people speaking at once.

Goldenberg – One question I would like to ask. Are you a resident of Wood County

Richards – Yes I am.

Tebay – And she's willing to serve, we understand that she's willing to serve. And the other lady has testified to the same thing.

Goldenberg – Carole you've been sworn, are you a daughter of Alma.

Morrison – I am a daughter of Alma Kesterson.

Goldenberg – Where do you reside.

Morrison – I reside here in Parkersburg.

Goldenberg – Would you be willing to serve as administrator of the estate

Morrison – Yes sir I sure would.

Goldenberg – And would you charge a commission

Morrison – I would not.

Goldenberg – Would you be in favor of filing an (inaudible) medical malpractice suit if the medical evidence you get or your attorney would get would justify that.

Morrison – Yes I would.

Goldenberg – Would you want to do it if there was no evidence or not adequate evidence.

Morrison – (inaudible)

Hayhurst – Ms. Morrison have you been advised that you're going to have to post a bond if you serve as fiduciary.

Morrison – So be it.

Hayhurst – Where are you going to get the assets to secure bond.

Morrison – Don't worry, I can get the money.

Goldenberg – I object your honor.

Morrison – (inaudible)

Hayhurst – What is your degree of business experience.

Morrison – Why does that matter.

Goldenberg – I object your honor

Hayhurst – I asked you a question and I am entitled to an answer.

Morrison – I have every right to be appointed.

Hayhurst – What is your degree of business experience. None. Correct.

Morrison – So, I'm not dumb, I'm not stupid. I can take care of (inaudible) business.

Everyone talking at same time

Tebay – We would like to adjourn right now for all witnesses, we ask that you go outside and the two attorneys stay with us (inaudible)

Tebay – (inaudible) the heirs or the bank (inaudible) I'm going to throw this out, what if we would give a couple of names (inaudible) ask one of them to serve as administrator, would that be satisfactory, to act as an independent administrator to represent all

Hayhurst – I don't have a problem with that as long as this person is truly independent. It could be Mr. (inaudible) he represents (inaudible) I was about to

Tebay – Do you think that would work Bob, with you

Goldenberg – I truly think that the family, these people here, the local people, want a member of the family.

Tebay – Except two of them, four of them (inaudible)

Goldenberg – No, four of them don't want medical malpractice suit brought up.

Tebay – We can name the Sheriff, this is a mess that the Sheriff could take care of. I don't think that's a problem.

Hayhurst – The Sheriff's going to have to hire a lawyer to administer if he does take it (inaudible) fiduciary commissioner

Tebay – (inaudible) two come to mind, Vance Golden (inaudible – someone walked through the gate) qualified, one of those names.

Hayhurst – Either one of them would be perfectly fine.

Day – As far as fiduciary commissioners, they would not represent the estate.

Hayhurst – No, of course not.

Day – OK

Tebay – I was thinking about naming one of them as fiduciary

Hayhurst – As Fiduciary

Day – Oh, OK

Hayhurst – And I under those circumstances, as far as I'm concerned I don't think you could waive a bond, I would consent to a minimal bond, but of course, if a family member was appointed, we would have to insist on the full estate value.

Day – In WV Code, it says as a minimum you've got to go at least the value of the assets.

Hayhurst – I don't think there are any personal assets, but the real estate is apparently going to have to be sold in order to settle some of the debts and that would require the posting of a bond for the value of the real estate.

Goldenberg – Let me talk to these people about this.

Hayhurst – Before you go, I want to make one thing. Before we adjourned I didn't know whether I was going to have an opportunity to call Mrs. Sharp, but I think all of you know that from the time her father died until about 1996, or so, she took care of her mother, provided for her financially, took her into her home when the fire disrupted and it's only been the last couple of years that she has not been as actively involved with her mother (inaudible) as she had in the past. She's not an uncaring disinterested.

Background talking, maybe Mr. Goldenberg talking to his clients.

Goldenberg – Three concerns. One is no matter who's willing to undertake (inaudible) that's number one. Number two (inaudible) charge a fee and third (inaudible) sign a paper

Someone talking at same time

Tebay – Do you understand that (inaudible) I'd like to get this cleared up. When do you think we could get an answer (inaudible)

Male – Today, if you want it.

Tebay – Today would be fine if you can do that.

Male – Will you be here all day.

Tebay – Yes sir, 'til at least three thirty.

Male – Get an answer today. (inaudible)

Kesterson – My sister Julia is medical technologist and she started a job in a new hospital today. She said and she has meetings all day and so on. She said if this had been any other day she would've come but there was absolutely no way that she could devote any time to this today. If it hadn't been for that she would be here with us right now. But, she's not a technician, she has a degree and the whole thing from WVU-P. She heads up departments and this is a brand new thing today is why she's not here.

People talking at same time.

Tebay – We'll be back in session on Thursday. (Inaudible) adjourn and come back on Thursday.

Kesterson - (inaudible) this group, you know, I don't know what else to do.

Tebay – What we are trying to do, Frank, is come up with somebody that's acceptable to everybody. I don't think (inaudible) tear a family up, even though you might agree, there's going to be some disagreement (inaudible) we need somebody independent that's going to look at this thing and come up with the right answers. (inaudible)

Kesterson – I understand exactly what you're saying Mr. Tebay, but I also think that since Julia went to bed last night thinking this was over with because we have six people agree and she does not have the opportunity to have her input, I think we owe her that much.

Tebay – That's fine.

Kesterson – You know, that's my main concern.

Tebay – We'll adjourn and re-adjourn, Mary, can you give us a time.

Kesterson -- My other question to you would be, what kind of fees will these people charge. Are they going to (inaudible)

Tebay -- (inaudible)

Kesterson -- O.K. so here we are again. We're paying fees that we don't need to pay.

Tebay -- Eleven o'clock, is that acceptable.

Kesterson -- OK

Tebay -- All of the other witnesses, if you all said what you want to say we can have counsel and Frank come back and give us an answer as to what

Kesterson - I would imagine maybe Julia may be able to come.

Tebay -- I don't know if it would be proper for us to question either of those two gentlemen (inaudible)

Goldenberg - Who'd you pick out.

Hayhurst -- (inaudible) and Vance

Tebay -- Vance and (inaudible). Either one of them are acceptable (inaudible) It's going to be a job to get this done

Goldenberg -- Gerald is so busy I can't get him on the phone (inaudible)

Tebay -- We got two on the line (inaudible) I'll ask

Hayhurst – I would rather you do it then (inaudible)

Goldenberg – Right

Tebay – If one says no, then on down the line

Hayhurst – Thank you sir.

Tebay – adjourn, adjourn and readjourn, reconvene at eleven o'clock on Thursday.

Goldenberg – Very good. Thank you gentlemen.