

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF THE)
ESTATE OF G. JAMES SEPPI,) C.A. No. 3189-MA
DECEASED.)

MASTER'S REPORT

Date Submitted: July 1, 2009
Final Report: March 30, 2010

Jason C. Powell, Esquire, Ferry, Joseph & Pearce, P.A., 824 North Market Street, Suite 1000, Wilmington, Delaware 19899,
Attorney for the Petitioner

And

Thomas W. Briggs, Jr., Esquire, Morris, Nichols, Arsht & Tunnell, LLP, 1201 North Market Street, P.O. Box 1347, Wilmington, Delaware 19899,
Attorney for the Respondent

AYVAZIAN, Master

Petitioner, Henry J. Seppi, (“Henry”) brings this Caveat to the admission to probate of a purported Last Will and Testament of G. James Seppi, dated March 2, 2006, (“2006 Will”) and a Complaint to Invalidate Transfers of Property, and Rescind Trust Agreement and Invalidate Transfers to Same against respondent Bruno Seppi (“Bruno”). G. James Seppi (“Seppi”) died on August 22, 2007, at the age of 87.¹ Seppi was predeceased by his lady friend, Vernice Lee (“Vernice”) on June 22, 2007. He was survived by Henry, his only child, and Bruno, his younger brother.

In September 2005, Henry petitioned the Court to be appointed guardian of his mentally and physically infirm father. Bruno objected to Henry’s petition and sought to be appointed guardian instead. During the pendency of the contested guardianship proceeding, Vernice, Martha Seppi (“Martha”), who is Bruno’s wife, and Bruno, acting either individually or as attorney-in-fact pursuant to a power of attorney executed by Seppi on December 15, 2004 (the “2004 POA”), helped Seppi to remove Henry’s name as beneficiary of Seppi’s accounts and transferred shares and/or funds from accounts owned jointly by Seppi and Henry to newly-created accounts owned solely by Seppi. The beneficiary changes and transfers were made purportedly at Seppi’s request, and accounts so affected contained assets totaling more than \$1,000,000. During the same period, Vernice and Bruno helped Seppi to execute a new will, a revocable trust agreement, and bill of sale (the “2006 Estate Documents”), in which Bruno was named as trustee, executor, beneficiary, and remainder beneficiary.

¹ During these proceedings, Seppi was also referred to as “Mr. Seppi,” “Gino,” “James,” “Jim,” or “Uncle Jimmy.” To avoid confusion in this report, I will refer to the other members of the Seppi family by their first names.

Henry seeks an order denying the admission to probate of the 2006 Will and validating Seppi's Last Will and Testament dated August 18, 1983 (the "1983 Will"), or alternatively, an order declaring that Seppi died intestate. Henry also seeks to have invalidated all transfers, whether by deed or otherwise, made by Bruno involving any of Seppi's property. Among other relief requested, Henry wants an accounting from Bruno of Seppi's property or the proceeds therefrom, and wants to surcharge Bruno for the value of any property that was improperly transferred where such property is unrecoverable by Seppi's estate. Trial was held over four days on February 2-4, 2009, and March 31, 2009. I am waiving a draft report and issuing my final report after post-trial briefing.

I have concluded, for the reasons set forth below, that the 2006 Estate Documents, the 2004 POA, institutional powers of attorney, letters of instruction, and other documents executed by Seppi on or after December 15, 2004 are the product of undue influence by Vernice and Bruno and, therefore, are invalid. Accordingly, these documents are void, and any transfers of Seppi's property or changes of beneficiary designations made in reliance thereon are also invalid. The 1983 Will shall be admitted to probate as Seppi's Last Will and Testament and, Henry, as personal representative of Seppi's estate pursuant to the 1983 Will, shall be entitled to an accounting from Bruno and to surcharge Bruno for any assets unrecoverable by the estate.

I. Facts²

Seppi was born in Italy on August 9, 1920, and came to the United States as a young child with his parents. During World War II, he served in the United States

² Most of the facts are undisputed, but where there are disputes in the record, this section contains my findings.

Marine Corps, and in 1945 he married Phoebe Baker who was from Ohio. The couple settled in the Washington, D.C. area where Seppi worked as a cabinet maker for the United States Department of Agriculture. They had one child, a son named Henry, who was born in 1955. Henry's godmother was Vernice, the wife of Seppi's best friend in the Marine Corps. In 1978, Seppi retired and he and his wife purchased waterfront property on Sandy Beach Drive in Dagsboro, Delaware, where they built a house. Seppi's wife died in 1979. That same year, Vernice moved from Maryland to Fenwick Island, Delaware.³ Vernice helped Seppi to pay his bills and keep track of his records, tasks that Seppi's wife had handled previously. In 1996, Vernice purchased a house on Sandy Beach Drive near Seppi's residence. Thereafter, the couple spent most of their time together. In 2000, Seppi and Vernice went to New Orleans and on a cruise with Henry and his girlfriend Kathleen ("Kathy").⁴ Vernice, however, did not enjoy travel as much as Seppi did. Seppi often went on trips with his son in the United States and abroad. The two men even took a trip to Australia and New Zealand for Seppi's Marine Corps reunion.

Seppi and Henry had a wonderful father/son relationship. They enjoyed fishing, hunting, crabbing, boating, and traveling together. Seppi taught his son about firearms. Seppi also taught his son about finance and real estate. Although Seppi had only a high school education, he was very knowledgeable about financial matters, and had a considerable portfolio of stocks, bonds, annuities, life insurance policies and certificates of deposit, as well as saving and checking accounts. In his 1983 Will,⁵ Seppi left his entire estate to his son, but he told Henry that he was putting Henry's name on his

³ Vernice's husband died in 1968.

⁴ Kathy married Henry in 2006.

⁵ Joint Exhibit A.

accounts to avoid probate. Seppi's financial assets, therefore, were titled jointly with Henry,⁶ or else designated to be paid or transferred on death to Henry in so-called "POD" and "TOD" accounts. Over the years Seppi explained his financial holdings in detail to his son, and left handwritten instructions in his files for his son regarding the accounts and how to handle them after Seppi's death.⁷

During the early 1980s, Seppi gave his son a house in College Park, Maryland that was worth about \$45,000. In the early 1990s, Seppi gave his son a 33-acre property in Mount Airy, Maryland that was worth between \$50,000 and \$75,000. Seppi had planned to live on this property in retirement before he decided to move to Delaware. Seppi also gave his son gifts of money on his birthday and Christmas on a regular basis during Henry's adulthood.⁸

Henry worked as a K-9 correctional officer in Prince George's County, Maryland. Seppi was very proud of his son's accomplishments, and had pictures of his son throughout his house. When he was younger, Henry married a woman with two teen-aged children. Seppi welcomed his son's stepchildren as his own grandchildren, especially Henry's stepdaughter Gina Pecher. Henry's first marriage ended in divorce in 1989, and in 1996 he began living with Kathy, who worked as a paralegal at the Prince George's County Correctional Center.

In 2000, Henry noticed that his father was beginning to decline. He talked to his father about retiring early to take care of him. Seppi advised his son to "run the

⁶ The accounts were owned by Seppi and Henry jointly with right of survivorship.

⁷ Joint Exhibits N (BS 2506, 2579, 2763); CC (BS 867); QQ (BS 770); GGG (BS 897).

⁸ Seppi's cash gifts to his son were always in amounts that did not exceed the annual gift tax exclusion limit.

numbers” and make sure that he could afford to retire.⁹ Henry determined that retirement was feasible, and started to look for property in Delaware so he could be near his father. Seppi was pleased that his son was going to move closer, and he helped Henry look for real estate to purchase in Delaware. In 2002, Henry purchased 150 acres outside of Georgetown, Delaware, and avoided taxes by making a like-kind exchange with his Mount Airy property. It was a good financial strategy, and Seppi was very proud of his son. Henry’s new property was about ten miles away from his father’s home, and Henry made plans to build a house there. While his house was being built, Henry stayed with Seppi, but went back and forth to Maryland until he completely retired in 2004. While Henry was in Maryland, Seppi checked on the construction of his son’s house on a weekly basis and reported any problems to Henry.

Starting in 2001 and 2002, Henry noticed that his father’s mental condition was deteriorating. Seppi could no longer keep track of his records, his memory was failing, and he was also having problems walking. Henry worried about his father’s safety. After Henry moved permanently to Georgetown in 2004, Seppi stayed overnight at his son’s house a few days each month, and Henry soon realized how much Vernice was helping his father with his daily activities. Although Vernice was the same age as Seppi and in worse health, Vernice assisted Seppi with his finances, did the food shopping and food preparation for him, and dispensed his medications.

Vernice had no children of her own and had been widowed since 1968. By the time Henry moved to Delaware in 2004, Seppi was spending most of each day with Vernice. Vernice fed Seppi lunch and dinner, and took him on errands and to his medical appointments. Vernice also reviewed Seppi’s bank statements, filed his records, and

⁹ Trial Transcript at 556.

wrote out his checks to pay his bills. Several witnesses at trial described Vernice in the following terms: (1) “a very smart and very tough woman,” (Karen Fisher);¹⁰ (2) “controlling” and “the dominant person” in her relationship with Seppi, (Gina Pecher);¹¹ (3) “she was right and everyone else was wrong and that’s how she conducted her life,” (Kathy Seppi);¹² and (4) “You don’t say much when Vernice talks. She tries to dominate the conversation, so you just let her do what she wants to say, and you don’t agree or disagree[,]” (Martha Seppi).¹³

From 1984 until 2004, Seppi’s physician was Dr. Daryl Sharman, a board-certified family physician in Millsboro, Delaware. At trial, Dr. Sharman described Seppi as having chronic medical problems but, in general, healthy. During the last five to ten years that Seppi was Dr. Sharman’s patient, Vernice accompanied Seppi to his appointments, and sometimes she sat with Seppi in the examination room. In February 2004, Dr. Sharman first suspected that Seppi might be suffering from Alzheimer’s disease or dementia, and he ordered some lab tests as part of a dementia work-up. During Seppi’s next examination on June 2004, Dr. Sharman had a long discussion about dementia with Henry, who was also present. Dr. Sharman saw Seppi again in September 2004, diagnosed him as having dementia, and ordered a CAT scan.

A significant factual issue underlying the dispute between the parties is whether Henry wanted to take care of his elderly father or whether Henry neglected Seppi after moving to Delaware. Henry testified that soon after he moved permanently to Georgetown, he realized his father needed 24-hour care, and he told Vernice he would

¹⁰ Deposition Transcript of Karen Fisher on January 21, 2009, at 19.

¹¹ Trial Transcript at 212-213.

¹² *Id.* at 305.

¹³ *Id.* at 762.

like to be fully responsible for his father's needs. According to Henry, he requested Vernice's help in easing Seppi's transition from relative independence to being assisted by his son, but she refused to let him take more responsibility for his father's affairs. Vernice refused to relinquish control over his father's checkbook, bank statements, or medications, and she took Seppi's mail before Henry could see it.

On the other hand, Bruno testified that Seppi needed his brother's help because Henry was not taking sufficient responsibility for his father's care. According to Bruno, although Vernice "seemed to feel that she had a pretty good control of the thing, ... she was trying to get Henry to take some part and Henry didn't want to do any of it."¹⁴ Therefore, in late 2004, Bruno started to visit his brother on a weekly basis, and took Seppi to his medical appointments. Bruno testified that, in early 2005, he asked Henry to help his father. According to Bruno, Henry informed him that he had other matters to take care of.

The record shows that neither Henry nor Kathy had any ties to Delaware. They had no apparent reason for moving to Delaware other than the fact that Henry's father lived in Delaware. In light of the undisputed close and affectionate relationship between father and son, I am not persuaded that Henry would have ignored his elderly father and rebuffed his godmother's and uncle's requests to care for his father after Henry moved to Georgetown. As a result, I find Henry's testimony more credible than the testimony of Bruno, Martha, and Vernice regarding this issue.¹⁵

During 2004 and 2005, Henry tried to take care of his father. Henry invited his father to stay overnight with him in Georgetown for several days each month, and

¹⁴ Trial Transcript at 808.

¹⁵ Vernice's deposition testimony was taken on November 30, 2006, approximately nine months before she died.

arranged a downstairs room with a futon, dresser and lamp as a bedroom for his father so Seppi would not have to climb stairs to a second-floor bedroom. Seppi usually preferred to sleep on Henry and Kathy's couch near their first-floor master bedroom. Seppi enjoyed Kathy's cooking, and Henry frequently visited his father in Dagsboro, and helped with anything that needed to be done around his father's house.

Henry asked Vernice for a list of Seppi's medications; instead, she gave Henry a small pill box containing a day's worth of unidentified pills. Only after repeated requests did Vernice eventually provide Henry with a list of medications and information about their use. Henry also accompanied Vernice and Seppi to doctor's appointments. Henry was surprised when Vernice decided to transfer Seppi's medical care to her own physician, Dr. Kevin Wallace, without first informing him. However, Henry did not oppose the transfer, and he accompanied Vernice and his father to Seppi's first appointment with Dr. Wallace on September 28, 2004. Eventually, Vernice gave Seppi's checkbook and mail to Henry so he could pay his father's bills, but after a month she took the checkbook back into her control. Another time, Vernice accused Henry of breaking into her house and stealing the checkbook. She threatened to call the police, and Seppi became very upset. Whenever Seppi stayed overnight at Henry's house, Vernice spoke with Seppi by telephone, and told him that he should be home in his own bed. Seppi became so upset by these calls that Henry and Kathy had to calm him down. Then, in late 2004, Bruno began to visit his brother on a frequent basis.

Ten years younger than Seppi, Bruno lived with his wife Martha on a 35-acre farm in Bowie, Maryland. They were retired, and had eight surviving children and 24

grandchildren who all lived in Maryland.¹⁶ During his career, Bruno worked in the real estate divisions of several federal agencies and departments. In retirement, he operated a Christmas tree farm on his property. He and Martha testified that they visited Seppi regularly starting around 2003, and provided some assistance. As part of “a team effort spearheaded by Vernice,” they reviewed Seppi’s financial statements for accuracy and filed them.¹⁷ Henry testified that, starting in late 2004 through 2005, he saw Bruno more often than he had seen Bruno during his entire life. According to Henry, Vernice told him she had called Bruno, and that Bruno was going to help her keep control of Seppi’s life.

On December 13, 2004, Dr. Wallace examined Seppi and diagnosed him as having Alzheimer’s disease.¹⁸ Dr. Wallace’s notes on this date indicate that Henry informed Dr. Wallace he had power of attorney.¹⁹ The record does not reflect whether Vernice and/or Bruno were also present during this examination. Nonetheless, on the very same day that Henry mentioned his power of attorney to Dr. Wallace, Vernice called her attorney, Stephen Parsons, in Ocean View, Delaware, and asked him to draft a power of attorney for Seppi. The document Parsons drafted was a durable power of attorney that specifically revoked Seppi’s earlier power of attorney in favor of his son, and appointed Bruno as Seppi’s attorney-in-fact.²⁰

In his deposition testimony, Parsons did not remember meeting or talking with Seppi. His notes reflected that Vernice called him on December 13, 2004, and the record

¹⁶ One of their daughters was murdered in 2000, and was survived by three young children.

¹⁷ Trial Transcript at 759.

¹⁸ Joint Exhibit Q (BS 267).

¹⁹ See Joint Exhibit B (Power of Attorney dated July 24, 1991).

²⁰ Joint Exhibit C.

shows that the power of attorney Parsons drafted was executed on December 15, 2004.²¹ Parsons testified that he did not normally prepare documents the same day he was called. Parsons also testified that his preferred practice was to execute a power of attorney in his office, but on occasion he drafted a power of attorney for someone to take to a hospital patient, and that person took care of obtaining a witness and notary. Parsons recognized the name of the individual who notarized Seppi's power of attorney. The notary was a long-time employee of the Wilmington Trust branch in Millsboro.

According to Vernice's deposition testimony, Seppi wanted to change his power of attorney. Vernice suggested her own lawyer, and called Parsons and told him what Seppi wanted. Vernice subsequently drove Seppi to Parsons' office, and waited in the reception area while the two men talked privately for about ten or fifteen minutes. The lawyer then came out with Seppi and suggested that they go to his bank's notary. The other individual who witnessed the 2004 POA was Vernice's neighbor, but Vernice could not recall how her neighbor got to the bank.²²

I find it highly unlikely that Parsons sent Seppi and Vernice out of his office with a draft and explicit directions to have the document notarized at a Millsboro bank when his preferred practice was to execute documents in his office. I find it more probable, given Parsons' inability to remember Seppi, that: (1) Parsons never met or talked with Seppi about his power of attorney; (2) the power of attorney was drafted pursuant to Vernice's instructions; and (3) Vernice picked up the draft document at Parsons' office, and took it to the Millsboro bank where Seppi's signature was notarized.

²¹ Joint Exhibit D.

²² Vernice was the first witness listed on the 2004 POA.

During 2005, Henry tried to work with Vernice and Bruno in caring for his father. Henry and Kathy were concerned that Seppi's personal hygiene was deteriorating and his house was not clean, but whenever Henry talked to Vernice about Seppi's care and suggested changes, she said that everything was fine. Sometimes, Vernice would call without notice, and demand that Henry and Kathy take care of Seppi immediately. They would comply with her request, unless they had other plans and it was not an emergency situation. Henry tried to arrange a schedule where his father would spend a few days with him, a few days with Vernice, and a few days at home each week, but after two weeks Vernice and Bruno put a stop to the arrangement. Henry also worried about his father driving, and had been told by Dr. Wallace to take away Seppi's car keys. Vernice and Bruno refused to help him, and when Henry finally took away his father's car keys, Seppi became very upset. No one, however, disputed the fact that it was not safe for Seppi to drive at this time.

When Henry visited his father during the summer of 2005, Seppi was never alone. Either Vernice or Bruno was present, and his father was afraid to talk with him. When Henry called his father, Seppi said he was not allowed to see him. When Henry took his father to his house in Georgetown, Vernice called and demanded that Seppi return home immediately. Seppi became very agitated by these calls, and cried on a regular basis. Previously, he had never cried and seldom had showed much emotion. In 2003, Bruno first noticed the cognitive decline in his brother; Seppi was forgetful, repeated himself constantly, and tapped his head saying he could not think straight. By August 2005, Seppi was clearly suffering from dementia, and he was caught in the middle of a

figurative tug-of-war between his son on one side and his lady friend and brother on the other.

In August or September 2005, Vernice drove Seppi to Henry's house in Georgetown. Henry was away on a motorcycle trip, but Seppi handed a document to Kathy, saying, "Here. Vernice and Bruno said I have to give you this."²³ According to Kathy, Seppi did not know what the document was. It was the 2004 POA. When Henry learned that Bruno had been named his father's attorney-in-fact in December 2004, he realized that "the cards were on the table" and he had a battle on his hands.²⁴ Henry talked to his father about hiring an attorney and protecting his estate, and Seppi told him to do what he thought was best.

Henry initiated a guardianship proceeding. He was advised that he might need money for medical bills and attorney fees in case his father's accounts were drained. Acting on the advice of counsel, on August 25, 2005, Henry withdrew a total of \$65,000 from PNC Bank checking and saving accounts that were jointly titled in his and his father's names. Henry took his father to see Dr. Sharman on August 31, 2005, and subsequently obtained a physician's affidavit that was attached to his petition seeking appointment as guardian of the person and property of his father.

Henry's petition was filed in this Court on September 15, 2005.²⁵ The physician's affidavit described Seppi as having moderately severe dementia, and alleged that Seppi was "unable to properly manage and care for his property or make decisions concerning the care of his person, and in consequence thereof, [was] in danger of dissipating or

²³ Trial Transcript at 313.

²⁴ *Id.* at 578.

²⁵ Joint Exhibit U at Tab 1.

losing his property or becoming the victim of designing persons.”²⁶ On September 16, 2005, a preliminary order was signed appointing Shannon Carmean, Esquire, as Seppi’s attorney *ad litem*.²⁷

Certified notice of the petition was sent to Bruno in Maryland. He received the notice on September 22, 2005, as he and Martha were leaving for Delaware to attend a doctor’s appointment with Seppi. In Delaware, Bruno showed the petition to Vernice, who then showed it to Seppi. During a “family conference” that day with Dr. Wallace, a conference to which Henry was explicitly not invited,²⁸ the participants discussed the fact that Bruno did not want to consent to Henry’s appointment as guardian. Dr. Wallace’s notes include the quotation ““son screams at him”” and the comment “son wants him there all the time.”²⁹ Dr. Wallace listed a diagnosis of Alzheimer’s disease, and suggested that the family take Seppi to Johns Hopkins for a second opinion.

At some point, Vernice discovered that Henry had withdrawn \$65,000 from Seppi’s PNC Bank accounts. She showed the bank statement documenting the withdrawals to Bruno and Martha. Vernice later obtained a copy of the bank ticket Henry had signed to withdraw \$55,000 from one of the accounts.³⁰ The record does not show when Vernice informed Seppi about these transactions, but whenever the communication occurred, Seppi became very agitated. No one, however, contacted Henry and asked why he had withdrawn the money.

At trial, Bruno and Martha both described Henry’s \$65,000 withdrawal as theft. When Seppi started saying that his son was stealing from him, neither Bruno nor Martha

²⁶ *Id.* at Ex. A

²⁷ *Id.* at 6-7.

²⁸ Joint Exhibit Q (BS 261).

²⁹ *Id.*

³⁰ Joint Exhibit BBBB

ever said anything or did anything to dispel Seppi's belief that his son was a thief.

According to Martha, the money was constantly on Seppi's mind, and he never "got over it."³¹ Seppi brought up the subject several times a day, and asked Martha if she was going to get the money back. Martha replied that she was trying and hoping to get the money back for him.

On September 24, 2005, Vernice apparently took Seppi to PNC Bank where a new checking account was opened in Seppi's sole name.³² Over \$20,000 was deposited into the new account on September 26, 2005.³³ On September 29, 2005, Bruno had an appointment to meet with Kashif Chowdry, Esquire, in the Law Offices of Moore and Rutt in Georgetown, Delaware.³⁴

On October 3, 2005, Seppi and Bruno executed a Wilmington Trust Company power of attorney form, which gave Bruno access to Seppi's accounts at that bank.³⁵ On October 4, 2005, Carmean visited Seppi at his residence, and spoke with Bruno, Martha, and Vernice, who were also present.³⁶ In her *ad litem* report, Carmean stated that Seppi told her he had read the guardianship petition, but he did not understand why his son thought that he could not take care of himself. There was no mention in the *ad litem* report that Seppi said anything to Carmean about his son stealing money. Bruno, Martha, and Vernice informed Carmean that Seppi was able to do his own vacuuming and laundry, wash windows and dishes, and change sheets, among other activities. During her visit, Carmean observed Seppi wandering aimlessly around the house and talking to

³¹ Trial Transcript at 734.

³² Joint Exhibit BBB.

³³ Joint Exhibit CCC.

³⁴ Joint Exhibit LLL (Martha Seppi's Calendar, September 2005).

³⁵ Joint Exhibit DDDD.

³⁶ Joint Exhibit YYY.

himself. The next day, on October 5, 2005, Bruno signed a PNC Bank agreement form as power of attorney for Seppi's accounts.³⁷ Bruno opened several more PNC Bank accounts in Seppi's sole name and, during the following months, Bruno transferred funds from Seppi's joint accounts with Henry into Seppi's new accounts.³⁸

On October 21, 2005,³⁹ Vernice drove Seppi to Henry's house. Seppi got out of Vernice's van, walked up to his son's door and said, "I want my saw horses back." Henry took his father through the house, garage, and barn to show his father that he did not have Seppi's wooden sawhorses. Vernice, who had remained in her vehicle, started to yell at Seppi to get back into her van. Henry asked his father to stay and offered to drive him home later. Vernice drove her vehicle into Henry's yard up to his back porch, laughing and yelling at Seppi to get in the van. Kathy called the police after Vernice refused to leave their property. Seppi then got into the van and was driven away by Vernice.

On October 25, 2005, Bruno, Martha, and Vernice took Seppi to see Dr. Paul Rosenberg at a memory clinic associated with Johns Hopkins Hospital in Maryland. Dr. Rosenberg diagnosed Seppi as suffering from mild to moderate dementia. During this examination, there was a discussion of Seppi's assets, which was described by Dr. Rosenberg in his evaluation: "There is certainly a family disagreement about money. There are considerable assets at stake and apparently the son and the brother do not agree on the disposition of this money. The son is apparently asking for guardianship; the brother already apparently has power of attorney."⁴⁰ During this examination, Bruno,

³⁷ Joint Exhibit AAA.

³⁸ Joint Exhibits XX, YY, ZZ, CCC, & DDD.

³⁹ Joint Exhibit SSS (Georgetown Police Field Service Report).

⁴⁰ Joint Exhibit P (RB 6).

Martha, and Vernice asked Dr. Rosenberg if Seppi was competent to sign a power of attorney. Dr. Rosenberg replied that: “Seppi has sufficient cognitive skills to have made a decision on the power of attorney.”⁴¹

A letter dated December 5, 2005, instructed Fidelity Investment to “drop” Henry “as beneficiary (POD)” from Seppi’s account effective immediately.⁴² The letter was handwritten by Vernice and signed by Seppi. On December 7, 2005, Bruno filed an objection to Henry’s guardianship petition.⁴³ In his pleading, Bruno alleged that Henry had appropriated \$65,000 from his father’s accounts, removed several items from his father’s residence, including a checkbook, carpenter horses, and watch, and police had been called to separate a dispute between Henry and his girlfriend (Kathy) and Seppi and Vernice. Bruno also alleged that Seppi had indicated to Bruno he was afraid of his son inflicting physical harm upon him. At trial, however, Bruno conceded that he had no personal knowledge that Henry had taken sawhorses or a watch from Seppi’s residence; Vernice had told him these things. As for the checkbook Vernice had accused Henry of stealing, Bruno admitted that the checkbook had been found later by Vernice. He also acknowledged that Henry loved his father and would never physically harm him.

In a letter to Seppi’s attorney *ad litem* dated December 21, 2005,⁴⁴ Bruno’s attorney, Kashif Chowdry, wrote that his client had informed him that Seppi wanted to make changes to his will. Chowdry’s letter stated that he had informed his client to take no action due to the contested nature of the guardianship. Chowdry, however, referred the matter to Carmean to discuss with her client, and to determine whether Seppi had the

⁴¹ *Id.*

⁴² Joint Exhibit PP (Fidelity 233).

⁴³ Joint Exhibit U at Tab 2.

⁴⁴ Joint Exhibit FF.

capacity to execute a new will or codicil. In her deposition, Carmean testified that she was surprised by Chowdry's letter because Seppi had never indicated a desire to change his will. Carmean immediately called Chowdry and told him that she thought it was inappropriate to execute any estate planning documents while the guardianship was pending.

In his deposition, Chowdry testified that Bruno often brought Seppi and Vernice to their meetings. During one of those meetings, Seppi mentioned that he wanted to make changes to his will. Chowdry informed Seppi that he could not help him, and referred him to Carmean. At another meeting, Seppi expressed his frustration with Carmean, and Chowdry referred him to David Baker, Esquire. In his deposition, Chowdry testified that there were several occasions when Vernice brought Seppi to his office when Bruno was not present. Seppi voiced concern to Chowdry about his son taking \$65,000 and interfering with his relationship with Vernice.

Carmean did not file her *ad litem* report until January 6, 2006.⁴⁵ After she had reviewed Bruno's objection to the petition, Carmean questioned Henry about the alleged dissipation of assets during her interview with him in the course of the *ad litem* investigation. Henry produced documents demonstrating that the bank accounts had been held jointly for more than ten years, and also showed Carmean the 1991 power of attorney his father had executed in his favor. Carmean saw nothing inappropriate, and did not believe that was any real threat of financial injury to Seppi. In her report, Carmean concluded that Seppi was a disabled person, diagnosed with Alzheimer's disease and clinical dementia, and incapable of taking care of himself without Vernice's assistance. She noted that Seppi had become somewhat estranged from his son due to the

⁴⁵ Joint Exhibit YYY.

pending petitions, but she believed that Henry had Seppi's best interests in mind and "truly want[ed] to take care of his father."⁴⁶ Accordingly, she recommended that the Court appoint Henry as Seppi's guardian.

On January 9, 2006, Seppi's account with Royal Dutch Shell ("TOD" to Henry) containing approximately 2,290 shares was transferred to a new account with no TOD provision for Henry.⁴⁷ On January 10, 2006, Bruno, Martha, and Vernice took Seppi to Baker's office in Georgetown, Delaware to prepare new estate documents. At trial, Baker testified that he met privately with Seppi and reviewed some handwritten notes that Seppi brought to the meeting.⁴⁸ The notes were in Seppi's handwriting, with the exception of the last phrase "Will or Trust?" which was in Vernice's handwriting. According to Baker, Seppi mentioned stealing and neglect, i.e., his son would not stay with him, call him or visit him, and his son did not appreciate what Seppi had already given him. Seppi told Baker he had already given his son property worth two million dollars. Seppi now wanted a dollar provision for his son and everything else to go to Bruno. During this meeting, Baker also talked with Bruno and Seppi together. He described Bruno as a reluctant brother being dragged into a situation he did not want to be involved in. According to Baker, Bruno repeatedly described it as a duty he felt he owed his brother. Baker already had talked to Chowdrey and knew a guardianship proceeding had been initiated. He therefore asked for two letters from doctors verifying Seppi's competency. At the time, Baker thought that Chowdrey was Seppi's attorney.

⁴⁶ Joint Exhibit YYY at 6.

⁴⁷ Joint Exhibit QQ.

⁴⁸ Joint Exhibit H.

On January 11, 2006, Bruno and Martha were disappointed to learn that the *ad litem* had recommended Henry as Seppi's guardian.⁴⁹ On January 13, 2006, the entire balance of Seppi's Johnson Controls, Inc. account ("TOD" to Henry) in the amount of \$110,679.36 was transferred to a new account that did not have a TOD beneficiary.⁵⁰ On January 16, 2006, Seppi signed a letter handwritten by Vernice instructing T. Rowe Price Company to remove Henry as "TOD" beneficiary of Seppi's account.⁵¹

On January 27, 2006, Vernice took Seppi to Carmean's office after first calling about the *ad litem* report. Martha noted the scheduled appointment in her calendar, followed by the observation: "came out well – will call K.C. for addendum that Dad will move there."⁵² According to Carmean's deposition testimony, Seppi was so upset when he arrived at her office that he was crying. He did not want to live with Henry; he wanted Bruno to take care of him. Seppi repeatedly accused Henry of stealing his money. However, Seppi was not really sure about the alleged theft, according to Carmean, because he did not know from which account money had been taken or when it had occurred. Carmean herself was unsure whether someone was telling Seppi that Henry was stealing his money or whether Seppi had just forgotten that he had told Henry he could have a sum of money. Nevertheless, because Seppi was so emotional and able to articulate his desire to live in his own home with Bruno taking care of him, Carmean

⁴⁹ Joint Exhibit LLL (Martha Seppi's Calendar, October 2005).

⁵⁰ Joint Exhibits JJ (BS 1599) & KK (BS 1598).

⁵¹ Joint Exhibit EE (TRP 88).

⁵² *Id.*

supplemented her *ad litem* report, and recommended that Bruno be appointed guardian on the condition that Bruno relocate to Delaware.⁵³

On February 2, 2006, Vernice took Seppi to Dr. Wallace's office, and asked Wallace to sign a letter concerning Seppi's capacity to make a will. Bruno and Martha may have been present as well. Martha had noted in her calendar on that date: "J to Dr. Wallace – hoping to change will."⁵⁴ Dr. Wallace refused to use the lawyer's form letter, but prepared his own letter using terms that were similar, in which he stated that Seppi "showed sufficient memory and understanding to comprehend making a will."⁵⁵ Dr. Rosenberg subsequently provided Bruno with two letters, one dated February 7, 2006 and the other dated February 21, 2006, which Bruno forwarded to Baker. In these letters Dr. Rosenberg opined that Seppi had the capacity to execute a power of attorney and a will.⁵⁶

On March 2, 2006, Bruno spoke with Matthew Sykes at Phoenix Investment Partners, LTD, about removing a beneficiary from Seppi's accounts. Bruno's handwritten notation on a Phoenix document states: "Matthew Sykes will send form."⁵⁷ On March 2, 2006, Bruno, Martha, and Vernice took Seppi to Baker's office where Seppi executed a new will leaving his residuary estate to Bruno as Trustee of Seppi's Revocable Trust Agreement.⁵⁸ At the same time, Seppi executed a Bill of Sale transferring his tangible personal property to Bruno as Trustee for the sum of one dollar, and a Revocable Trust Agreement that named Bruno as Trustee and remainder

⁵³ The supplemental report of the attorney *ad litem* was filed on February 9, 2006. Joint Exhibit ZZZ. Attached was an affidavit executed by Bruno on February 3, 2006, alleging that he was willing to relocate to Delaware to care for his brother. *Id.* at BS352.

⁵⁴ Joint Exhibit LLL (Martha Seppi's Calendar, February 2006).

⁵⁵ Joint Exhibit WWW.

⁵⁶ Joint Exhibit XXX.

⁵⁷ Joint Exhibit Y.

⁵⁸ Joint Exhibit E.

beneficiary of the trust.⁵⁹ If Bruno predeceased Seppi, the trust agreement named Bruno's daughter Marilyn as trustee and Bruno's children as remainder beneficiaries in equal shares, *per stirpes*.⁶⁰ Before Bruno and Seppi left, Baker instructed them to title Seppi's investments in Bruno's name as Trustee, and referred them to Moore & Rutt to prepare and execute a deed transferring the real property into the trust.⁶¹

A letter dated March 3, 2006 was sent to Seppi from a Phoenix account representative, who requested a letter of instruction regarding the removal of a TOD beneficiary.⁶² On March 7, 2006, Bruno, Martha, and Vernice, took Seppi to a routine follow-up visit with Dr. Rosenberg. Seppi signed a letter handwritten by Vernice and dated March 20, 2006, that instructed the Phoenix account representative to remove Henry's name as TOD beneficiary on Seppi's account.⁶³

By the end of March 2006, Henry had been removed as the beneficiary or joint owner of his father's investment and bank accounts, with one major exception.⁶⁴ On April 20, 2006, Bruno called David Humes, a vice president at Morgan Stanley, and requested an urgent meeting in Humes' Lewes, Delaware office. Bruno, Martha, and Vernice took Seppi to a meeting with Humes that afternoon where Bruno asked about removing Henry as a joint owner with right of survivorship from Seppi's brokerage

⁵⁹ Joint Exhibits F & G.

⁶⁰ Joint Exhibit F.

⁶¹ Joint Exhibit I.

⁶² Joint Exhibit W (Phoenix 54-55).

⁶³ Joint Exhibit W (Phoenix 56).

⁶⁴ At this time, Seppi also owned two PNC Bank certificates of deposit jointly with Henry. Vernice, Bruno, and Martha overlooked these certificates when they rolled over apparently in August and September 2006. Vernice then tried to change the accounts by telephone, but was unsuccessful. On December 6, 2006, Vernice, Bruno, and Martha took Seppi to the Millsboro branch of PNC Bank where they closed the accounts and reinvested approximately \$15,000 in new certificates of deposit in Seppi's sole name. Seppi paid approximately \$200 as a penalty for early withdrawal. Joint Exhibits VV & WW.

account at Morgan Stanley. Bruno told Humes about concerns that Henry was taking money from his father's account, and he wanted the account title changed from Henry and Seppi to Seppi and Bruno. During this meeting, Seppi talked very little, and neither agreed nor disagreed with what his brother said. In Humes' opinion, it was Bruno who wanted the change made, not Seppi. It was Bruno who did most of the talking, and Humes described Bruno as attacking Henry and leading Seppi during the entire conversation. Humes told Bruno and Seppi that if they wanted to remove Henry's name from the account, he would need a letter of authorization signed by Henry releasing his right to the joint account. No further action was taken on the Morgan Stanley account.

On April 29, 2006, Henry and Kathy were married. Henry did not invite his father to the wedding because he was afraid that Vernice and Bruno would not let him come and his father would be upset. Henry's cousin Robert Bowman and his wife Garnet traveled from North Carolina to attend the wedding, and they called Seppi's house to arrange a visit with "Uncle Jimmy." At trial, the Bowmans testified that Bruno, Martha, and Vernice were present during their visit, and they both felt that they were not being allowed to see Seppi alone. Garnet testified that Bruno, Martha, and Vernice made disparaging comments about Henry, saying they did not understand what Henry was doing and they thought he was trying to steal money.

Vernice and Bruno never told Henry that he could not visit his father. At some point, however, Vernice changed the locks on Seppi's house. She gave Bruno a new key, but Henry did not receive a new key to his father's residence. At some point, Bruno and Martha purchased a new telephone with caller ID. Henry's calls to his father went unanswered and his messages were not returned. By the end of 2005, Henry decided not

to distress his father any more by attempting to call or visit him and, instead, waited for the Court to resolve the contested guardianship matter.

Throughout 2006 Seppi was under the supervision and care of Bruno and Martha, who visited Dagsboro two or three days each week, and Vernice. Occasionally, a hired caregiver would provide a few hours of relief for Vernice. In September 2006, Martha arranged an 86th birthday party for Seppi at his Dagsboro home. Henry was not invited to his father's birthday party. Henry sent his father a birthday card by registered mail in the hope that Seppi would receive it.

During January 2007, the parties prepared for litigation and, at the same time, attempted to settle the contested guardianship. On January 10, 2007, Henry took his father to Wilmington where Seppi was examined by Dr. Carol Tavani, a board-certified neuropsychiatrist. Tavani interviewed Seppi for four hours, and described him as pleasant and cooperative, but distraught over his fixed idea that his son owed him money. According to Tavani, Seppi did not know when the money was taken or what it had been used for; he only knew that his son owed him money. When asked how he had found out about the money, Seppi replied: "Vernice told me."⁶⁵ Later he said: "Bruno told me."⁶⁶ When asked if he had talked to Henry about this, Seppi replied: "I probably did," but Tavani testified that he could not remember if he had.⁶⁷ When asked whether he was very close to his son, Seppi replied: "Well, I'm not now, but I used to be."⁶⁸ Tavani

⁶⁵ Trial Transcript at 94.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Trial Transcript at 93.

described Seppi as looking close to tears when he said this. When asked whom he would trust to make decisions for him, Seppi replied: “Oh, Vernice.”⁶⁹

Martha’s calendar for January 23, 2007 contained the notation: “KC [--] most of day working on settlement.”⁷⁰ The next day, January 24, 2007, her calendar contained the notation: “Vernice very upset [--] wants to fire KC [--] get new one in Wilmington.”⁷¹ The parties reached an agreement, and a stipulated settlement was approved by the Court on January 30, 2007.⁷² The settlement agreement called for the appointment of Henry and Bruno as co-guardians of the person, with each taking care of Seppi on alternate months, and for the appointment of a neutral, professional third party to serve as guardian of Seppi’s property.⁷³

Seppi’s property, not including his Dagsboro residence and car, consisted of brokerage accounts, bank accounts, mutual funds, annuities, certificates of deposit, life insurance policies, and bonds whose total value was approximately \$1.5 million.⁷⁴ Of these financial assets, only the Morgan Stanley brokerage account, worth approximately \$400,000, was still titled jointly with Henry. The remaining financial assets were held in accounts titled in Seppi’s sole name without any beneficiary designation as a result of actions taken by Bruno and Vernice in the months following their notice of the guardianship proceeding. Pursuant to the settlement agreement, Seppi’s financial assets

⁶⁹ *Id.* at 104-05.

⁷⁰ Joint Exhibit LLL (Martha Seppi’s Calendar, January 2007).

⁷¹ *Id.*

⁷² Joint Exhibit AAAA.

⁷³ *Id.*

⁷⁴ Joint Exhibit L (DBS 15-17).

and the funds Henry had withdrawn from the PNC Bank joint accounts were turned over to the property guardian.⁷⁵

February 2007 was Henry's first month to care for his father. Henry had to reintroduce himself to his father because Seppi was so distraught at the time. According to Henry, his father's health had completely deteriorated, and his house had become very messy. By this time, Henry was aware that Seppi had executed new estate documents, but he did not blame his father. At trial, Henry testified that Seppi was really no longer the father he remembered, and that Seppi was not responsible for changing the documents. While Henry was in charge of caring for his father, he and Kathy cleaned Seppi's house, and Henry accompanied his father to his routine medical appointments.

In April 2007 Henry and Bruno agreed to hire Karen Fisher ("Fisher") as a caregiver for Seppi. Fisher had been an independent home-care provider since 1994, and had a background which included some nursing classes, two years at the University of Virginia, and work experience in bookkeeping and accounting. Fisher made improvements to Seppi's quality of life. In particular, she suspected that Seppi was being overmedicated because of a drug he was taking as a participant in a clinical research study at Johns Hopkins.⁷⁶ She brought her suspicions to the attention of Dr. Wallace, who ordered Seppi weaned off the drug. Within a few weeks, Fisher noticed that Seppi was more alert, had a better appetite, and was more responsive in a lot of ways.

⁷⁵ Joint Exhibit UUU. The amount of funds restored to the property guardian was \$65,000 less Henry's legal expenses for the guardianship proceeding. The parties agreed that their legal fees were to be paid from Seppi's funds. Prior to the stipulation, Seppi had signed several checks written by Martha to pay Bruno's legal expenses in contesting the guardianship, and the legal expenses for preparing the 2006 Estate Documents. Joint Exhibits K & M (PNC 171, 166).

⁷⁶ Bruno had enrolled Seppi in the drug study during the summer of 2006.

Fisher was Seppi's primary caregiver, and lived with him at least four days a week.⁷⁷ When it was Henry's turn to serve as co-guardian, Henry spent more time with Seppi than Bruno and Martha did during their month. Henry initially spent four nights a week at his father's residence, but later reduced his time to three nights in order to benefit Fisher financially. In addition, Henry visited frequently during the days when Fisher was present. Fisher observed Henry encouraging his father to get off the sofa, and talking with his father even though conversation was difficult due to Seppi's diminished mental capacity. At one point, Henry asked Fisher if it would be all right to take his father to a weekend family reunion in Ohio, and she agreed. Henry drove his father to Ohio, and they spent a night in a motel before returning home. Seppi had a very enjoyable time at the reunion. In Fisher's opinion, it was one of the best things that the two men had done.

Fisher saw little interaction between Bruno and his brother because she would leave Seppi's residence shortly after Bruno and Martha arrived to take care of Seppi. Fisher never saw any interaction between Bruno and Vernice, but she became familiar with Vernice, who regularly visited Seppi in his home. Fisher testified in her deposition:

[W]hen I was there, it was my responsibility to make sure that [Seppi] was okay, safe and well cared for. That was my responsibility.

And Vernice was used to basically being in charge. And she did not like the fact that I would not let her take him off in her van anymore, and she didn't like a lot of things. And it wasn't that – and I told her, I said, "I'm not trying to keep you from him. You're welcome here any time." I said, "But I cannot let you take him off to who knows where, you know, and I'm not there." I said, "I can't do it."

And she says, "Well, I'll just talk to Bruno about that." And, you know, I told her, I said, "Go right ahead." I said, "But I've already talked to him about it."⁷⁸

⁷⁷ In her deposition, Fisher testified that she had wanted to work at least four days a week, and the parties had cooperated with her request.

⁷⁸ Deposition Transcript of Karen Fisher on January 21, 2009, at 17-18.

On Fisher's first day of work, Vernice took Seppi to lunch at a friend's house, and did not return him home until 6:30 that evening. Fisher did not know where Seppi was during that time, and she had no way of contacting Vernice. The following day, when Vernice wanted to "haul him off again," Fisher went with the couple.⁷⁹ When Fisher returned home, she "wanted to kiss the ground, because [Vernice's] driving was so atrocious."⁸⁰ Fisher then spoke with Bruno and told him that she would not allow Seppi to get in a car with Vernice any more. Bruno, who had thought previously that Vernice was a good driver, sided with Fisher on this issue.

Fisher observed the close friendship between Seppi and his lady friend. Vernice was affectionate, and she would hold Seppi's hand while she talked to him. Fisher testified that one time when Vernice was visiting Seppi:

She started on something, and then he started, and I cut her off. She began to talk badly about Henry and, you know, and I cut her off. And I told her, I said, "Vernice, we don't talk like that in this house." I said, "So, you know, please don't do that." And she left shortly after that.

And so Mr. Seppi said something about, he says, "Well, you know, oh I changed my will. I had to do that." And I said, "Well, that's, you know, that's your business." And he says, "Well, I know, Bruno said ... But, you know, Vernice knows the details."⁸¹

Another time, Seppi told Fisher about Henry taking money from him, and Fisher replied, "Jim, you know better than that."⁸² Seppi then said, "Well, Vernice told me."⁸³

Fisher testified that she changed the subject, but as time went on:

I saw what Vernice was all about. – not in a bad way. I don't mean that in a bad way. But whatever she said was not positive towards Henry. Never. And I

⁷⁹ *Id.* at 18.

⁸⁰ *Id.* at 18-19.

⁸¹ *Id.* at 23.

⁸² *Id.* at 24.

⁸³ *Id.*

didn't like that at all. So I didn't like her taking him off by himself, because Lord only knows what she said, and I know that's speculation on my part. But if she would start to say it in front of me, I know she'd probably say it when nobody was around.⁸⁴

Fisher was not the only witness to Vernice's overt hostility toward Henry. Martha testified that Vernice did not like Henry at all, and said negative things about him even though their relationship had been a good one in the past. Robert and Garnet Bowman testified that Vernice sent them an unusual Christmas card in 2005, in which she called Henry a horrible son and "money grabbing something or other," and accused him of trying to hurt his father.⁸⁵ Henry testified that his relationship with Vernice had been a good one until 2004 when it changed.

Fisher also described Vernice as playing "a very manipulative role" in the conflict between Henry and his uncle because Vernice wanted to stay in control of Seppi's life.⁸⁶

She was manipulative, according to Fisher:

[B]ecause Vernice didn't like Henry. And for whatever her reasons were, she really felt that if Henry and Kathy move here and put a room in their home so that Jim would have a bedroom there and could look after him in their own home, then she wouldn't have control over him anymore. She really – and again, I mean I'm no expert. But I've been around old people for quite awhile now, and I see how they are. And she wanted control. That was, that was the one thing that she got joy out of, was having control over Mr. Seppi's life. You know, she didn't really have much of one herself, she didn't have any children. She really was unable physically to travel any more or do anything. So, you know, she wanted to keep him in her little realm of being.⁸⁷

Vernice died on June 26, 2007, and Seppi was devastated. At Vernice's funeral, Seppi broke down sobbing. He kept saying, "Oh, I'm supposed to go first. Oh, what am

⁸⁴ *Id.* at 25.

⁸⁵ Trial Transcript at 408.

⁸⁶ Deposition Transcript of Karen Fisher on January 21, 2009, at 31.

⁸⁷ *Id.* at 32-33.

I going to do now? What am I going to do without her?” It broke Fisher’s heart to see that Vernice had such control over Seppi, he believed he was supposed to die first.

[I]t’s hard to explain unless you saw Vernice and Jim together. And I don’t even have the words to tell you, because you’d think I was making it up and I’m not. But when you would see them together, it was just almost like she would whisper things in his ear so I couldn’t hear. And I don’t know what she was saying, and it wasn’t something that like a joke that he would laugh at or anything. You know, and then I could watch his face and see whatever it was, it was something that she definitely didn’t want me to hear because I’d shut it down.

But this is why I say, over these 30 years that they were companions, she just made herself so much a part of his being, and I’m telling you, you had to see the two of them together to understand this. But she really, really – it’s as if he just turned his life over and let her handle it. “Whatever you want, Vernice, have it.” And I know that’s a little cavalier. But you just had to see, I called it, I called it the hold she had over him. And it wasn’t financial or anything else. It was just this personal hold that she had. And I don’t know how she would ingrain things into him.

And again, you know, when someone begins to go down mentally, they just – they are told things and that’s what they do. They think, you know, the person that tells them this, and of course he thought that Vernice, you know, she took care of everything for him. He said that to me more than once. He said, “Oh, Vernice took care of everything for me.”⁸⁸

Seppi suffered a downturn after Vernice’s funeral. On August 22, 2007, Seppi passed away.

II. Issues Presented

Henry asserts two broad claims in this action. First, he claims that changes to the title of Seppi’s assets and beneficiary designations are invalid and should be rescinded because the 2004 POA is invalid. The basis for this claim is Henry’s argument that Seppi lacked testamentary capacity and was under undue influence when he allegedly executed the 2004 POA. Henry further argues that the circumstances of this case make it appropriate to shift the burden to Bruno to prove that Seppi possessed the requisite

⁸⁸ *Id.* at 39-40.

testamentary capacity and was not under undue influence when he allegedly executed the 2004 POA. Citing *In re Melson*, 711 A.2d 783 (Del. 1998), Henry argues: (1) Vernice and Bruno, acting in concert, procured the 2004 POA; (2) Seppi was a person of weakened intellect at the time of the execution of the 2004 POA; (3) the attorney who drafted the document never met Seppi, let alone explained the legal significance of the document; and (4) Bruno was in a confidential relationship with Seppi, and the 2004 POA benefited Bruno. Alternatively, if the 2004 POA is valid, Henry argues that Bruno's course of action as a fiduciary to remove Henry's name from his father's accounts was not in Seppi's best interests. Bruno's conduct, Henry asserts, breached his fiduciary duties to Seppi and, therefore, the transactions should be voided.

Bruno's response to this claim is that there is no evidence that Seppi was incompetent to execute the power of attorney or that he was unduly influenced into doing so. Moreover, Bruno argues that the burden of proof should not be shifted because the power of attorney was drafted by an attorney, and there was no evidence that Vernice acted at the behest of Bruno or that Bruno was even aware of the 2004 POA until sometime later in 2005.

Henry's second claim is that the 2006 Estate Documents are void because Seppi lacked the requisite testamentary capacity to execute these documents, and was subject to the undue influence of Bruno at the time of execution. Again, Henry argues that the burden of proof should be shifted to Bruno because: (1) Seppi was of "weakened intellect" in March 2006; (2) David Baker, the attorney who drafted the estate documents, was effectively acting as Bruno's agent and attorney because Baker had been contacted by Kashif Chowdrey, who was Bruno's attorney in the guardianship proceedings, and

because Baker provided legal advice to Bruno during his confidential meetings with Seppi and Bruno; and (3) Bruno received a substantial benefit under the 2006 Estate Documents.

In response, Bruno argues that Henry cannot establish that Baker actually represented Bruno and acted as his agent. As a result, Bruno contends, the burden of proof does not shift, and it remains Henry's burden to demonstrate that Seppi lacked the requisite testamentary capacity at the time he executed these documents. Bruno argues that Henry has failed to meet that burden, citing Baker's own testimony and conclusion that Seppi possessed testamentary capacity in addition to the letters from Drs. Wallace and Rosenberg. Similarly, Bruno argues that Henry cannot establish any undue influence was exerted over his father because both Vernice and Bruno loved and respected Seppi, and made great sacrifices to care for him during his last years. According to Bruno, Seppi changed his will to name Bruno as his beneficiary because he was upset that Henry was not helping enough in his day-to-day care, had taken \$65,000 of his money, and had filed a guardianship petition. There was no dispute that Vernice received no benefit under the will, and Bruno already possessed assets worth between two and three million dollars, and had no reason to influence his brother to make himself a beneficiary of his brother's estate.

III. Analysis

In *In re Melson*, 711 A.2d 783, 788 (Del. 1998), the Supreme Court held that the presumption of testamentary capacity does not apply and the burden on claims of undue influence shifts to the proponent where the challenger of a will can demonstrate by clear and convincing evidence that: (a) the will was executed by a testator who was of

weakened intellect; (b) the will was drafted by a person in a confidential relationship with the testator; and (c) the drafter received a substantial benefit under the will. I do not need to apply the *Melson* test in this case because I have concluded that Henry has demonstrated by the preponderance of evidence that: (1) Seppi executed the 2004 POA while under the undue influence of Vernice; and (2) Seppi executed letters and other documents while under the undue influence of Vernice and Bruno; and (3) Seppi executed the 2006 Estate Documents while under the undue influence of Vernice and Bruno.⁸⁹

A. Undue Influence

Proving undue influence in a will contest requires the challenger to show: (1) a susceptible testator; (2) the opportunity to exert influence; (3) a disposition to do so for an improper purpose; (4) the actual exertion of such influence; and (5) a result demonstrating its effect. See *In re Estate of West*, 522 A.2d 1256, 1264 (Del. 1987); *In re Kohn*, 1993 WL 193544, at *6 (Del. Ch. May 19, 1993); *In re Langmeier*, 466 A.2d 386, 403 (Del. Ch. 1983). In *Langmeier*, the court said:

Undue influence is an excessive or inordinate influence considering the circumstances of the particular case. The degree of influence to be exerted over the mind of the testator, in order to be regarded as undue, must be such as to subjugate his mind to the will of another, to overcome his free agency and independent volition, and to compel him to make a will that speaks the mind of another and not his own. It is immaterial how this is done, whether by solicitation, importunity, flattery, putting in fear or some other manner. Whatever the means employed, however, the undue influence must have been in operation upon the mind of the testator at the time of the execution of the will.

466 A.2d at 403. Undue influence must be established by a preponderance of evidence. *West*, 522 A.2d at 1264. Circumstantial evidence may be considered, but undue

⁸⁹ Having concluded that Henry has demonstrated undue influence, I do not need to address the issue of Seppi's testamentary capacity.

influence is not established if the evidence discloses one or more plausible alternative explanations for the testator's change of beneficiaries. *Id.* at 1264-1265; *see also In re Estate of Konopka*, 1988 WL 62915, at *5 (Del. Ch. June 23, 1988).

A. 2004 POA

1. Susceptibility

Applying the above standards to the execution of the 2004 POA, the record shows that Seppi was susceptible to undue influence in December 2004. He had been suffering from memory loss since at least 2003, and was first diagnosed with dementia in June 2004. Dr. Sharman testified that Seppi was in the mild to moderate stage of dementia in June 2004, and could have been susceptible to designing persons because of his dementia and other infirmities. Dr. Sharman described people in the early stages of dementia as anxious to please, scared and unsure of what was happening to them, and deferential to the people who were with them. Bruno described his older brother as a life-long worrier and anxious person. On October 11, 2004, Seppi's score on a mini-mental state examination was 16 out of 30, which placed him in the moderate range of severity of cognitive impairment.⁹⁰ In her evaluation dated November 23, 2004, Dr. Elena Padrell noted that Seppi "gets depressed because he realizes that he is losing his memory and he has crying spells."⁹¹ She found his insight and judgment to be impaired due to dementia. Dr. Wallace testified that the principal problem with Alzheimer's dementia was loss of short-term memory, and that it was possible to manipulate someone with the disease based on the fact his or her short-term memory was impaired.

⁹⁰ Joint Exhibit S (BS 218). Subsequent scores were 21/30 on August 9, 2005 (Joint Exhibit R (Padrell 12)); 15/30 on October 25, 2005; (Joint Exhibit P (RB 5)); 17/30 on March 7, 2006 (Joint Exhibit P (RB20)); and 19/30 on May 8, 2006; (Joint Exhibit R (Padrell 10)).

⁹¹ Joint Exhibit R (Padrell 7-8).

2. Opportunity

Seppi lived a few houses down the street from Vernice, and spent most of his days with Vernice. Seppi and Vernice had been friends for approximately 50 years and, after Seppi's wife died in 1979, Vernice became involved in Seppi's financial affairs. As Seppi started to lose his memory, Vernice provided more help so that by December 2004, Seppi depended on Vernice for his meals, for his transportation, and for his healthcare when he was not with his son. Their relationship was so close that, even when Seppi spent a few days with his son in Georgetown, he and Vernice remained in contact by telephone every evening that Seppi was away from home. Vernice thus had the opportunity to influence Seppi.

3. Disposition

The record shows that Vernice developed a strong dislike for Henry in 2004. Henry's desire to take care of his father, in particular, Henry's desire to take care of his father in his Georgetown home, threatened Vernice because it meant that she no longer would have access to and control over Seppi. Everyone described Vernice as a strong and domineering woman. According to Fisher, a disinterested witness, Vernice's control over Seppi was the chief joy of her life. Vernice therefore had the disposition to use her influence for an improper purpose, i.e., to deprive Seppi of his chosen attorney-in-fact (Henry), replacing him with a new attorney-in-fact (Bruno) who would help Vernice maintain her control over Seppi's personal and financial affairs.

4. Actual Exertion of Undue Influence

Vernice admitted participating in the preparation of the 2004 POA. She instructed her attorney to prepare a draft document for Seppi, and she witnessed its

execution at a Millsboro bank. Aside from Vernice's self-serving testimony which I have already rejected, there is no evidence that Seppi ever met with or talked to Vernice's lawyer concerning the terms of his new power of attorney. The only reasonable inference to be drawn from the evidence is that Vernice alone dictated the terms of the 2004 POA to the attorney. Vernice testified during her deposition that Seppi wanted a new power of attorney. Her account of the events leading to Seppi's decision to obtain a new power of attorney, however, was vague and unpersuasive.

Vernice testified that Seppi discovered his power of attorney was missing from his safe. Seppi then "somehow found out that Henry had it."⁹² Vernice told Seppi that he should get a new power of attorney, and he agreed when "he began to see this kind of action out of Henry."⁹³ In her testimony Vernice did not specify what "kind of action" Seppi had seen, but she testified that Seppi told her: "[I]t's about time to change this because I don't believe he is a person that's going to represent me and assure my care."⁹⁴ About a year later, Seppi finally obtained a new power of attorney when "different incidents" occurred.⁹⁵ According to Vernice, these "incidents" included Henry not spending any time with Seppi, Henry traveling all the time, and Henry taking other items out of Seppi's house. After that, according to Vernice, Seppi kept the 2004 POA in his drawer for some time "just to be sure that he was doing the right thing."⁹⁶

The only part of Vernice's account that sounds plausible is her testimony that she told Seppi to get a new power of attorney. One of the incidents she cited -- Henry taking items out of Seppi's house -- presumably refers to the alleged thefts of Seppi's

⁹² Deposition Transcript of Vernice B. Lee on November 30, 2006, at 64.

⁹³ *Id.* at 65.

⁹⁴ *Id.*

⁹⁵ *Id.* at 66.

⁹⁶ *Id.* at 73.

checkbook, watch, and sawhorses. Henry denied taking these items, and Bruno admitted that he had no first-hand knowledge of these incidents. While Henry admitted that he had taken a few weekend or week-long trips during 2004 and 2005, whenever he was away Kathy was available to care for Seppi. The evidence shows that Henry participated in caring for his father after he moved to Delaware, despite efforts by Vernice and Bruno to thwart him. It was not until 2006 that Henry stopped visits and calls to his father because of Seppi's growing distress at the conflict between his son and Vernice. This occurred well after the 2004 POA was executed and, thus, could not have been the cause of Seppi's decision to revoke the 1991 power of attorney. Undue influence by Vernice is the only plausible explanation for Seppi's execution of the 2004 POA.

5. Result Demonstrating the Effect of Undue Influence

Vernice dictated the terms of the new power of attorney to the lawyer who drafted it. The end result was a legal document that benefited Vernice in two ways. First, the 2004 POA revoked Henry's legal authority to make decisions on his father's behalf. Second, it conferred the legal authority to handle Seppi's affairs on someone who would be useful to Vernice. Vernice was the same age as Seppi, and had medical problems of her own. She needed someone -- other than Henry -- to help her take care of Seppi because he needed 24-hour care. Vernice also needed someone who would not interfere with her relationship with Seppi.

Vernice and Bruno had known each other for many years. Bruno was younger than Vernice, and Bruno had a busy life in Maryland, where he attended the activities of his 24 grandchildren and maintained a Christmas tree farm. Starting around 2002 or 2003, Bruno visited Seppi every month and helped him with occasional chores such as

changing filters on the heating and water systems and cleaning underneath the eaves of his house. During these visits, Bruno talked with his brother about Seppi's finances, and helped to file his financial records. The record suggests that Bruno, who had the knowledge, skill, and interest in helping his brother, would not likely challenge Vernice's control over Seppi's life. From Vernice's perspective, Bruno was the best choice to serve as Seppi's attorney-in-fact. The 2004 POA demonstrates the effect of Vernice's undue influence over Seppi.

I thus conclude that the record establishes by a preponderance of evidence that Seppi executed the 2004 POA under the dominating influence of Vernice. Therefore, Henry's request to rescind the 2004 POA as a product of undue influence over his father shall be granted.

B. Account Transfers and Beneficiary Changes.

Bruno testified that he was unaware of the existence of the 2004 POA until after the guardianship petition was filed. There is no explicit mention of the 2004 POA in Dr. Wallace's notes of September 22, 2005, when Bruno, Martha, and Vernice discussed Bruno's response to Henry's petition. The apparent reasons for Bruno's refusal to consent to the petition as Seppi's next of kin were mentioned in Dr. Wallace's notes, i.e., Henry screamed at his father and wanted his father at his house all the time. At trial, however, Bruno testified that his brother wanted him to oppose Henry's petition because Seppi wished to remain in his own home.⁹⁷

The stipulated agreement Bruno and Henry reached in January 2007 allowed Seppi to remain in his own home with Bruno and Henry alternating months taking care of

⁹⁷ At trial, Bruno said nothing about Henry screaming at his father. Such a claim is completely at odds with the record of the father/son relationship.

Seppi. This arrangement was not too dissimilar from the arrangement proposed by Henry in 2005 before he filed the guardianship petition. I find it significant that it took nearly a year and a half for Bruno and Henry to reach a compromise, and the compromise was reached not long after Bruno, Martha and Vernice transferred the last of Seppi's joint accounts into new accounts in his sole name.⁹⁸ The timing suggests something else was at work here.

The transfers of Seppi's funds to new accounts began two days after the meeting with Dr. Wallace on September 22, 2005. On October 3, 2005, Seppi and Bruno executed a Wilmington Trust power of attorney together. On October 5, 2005, Bruno signed a PNC Bank agreement form as power of attorney. He presumably had the 2004 POA in his possession at that time. Dr. Rosenberg's evaluation report dated October 25, 2005, contained a reference to Bruno already having power of attorney.

Dr. Rosenberg's report also contained a reference to Seppi's "considerable assets at stake," and an apparent disagreement between Bruno and Henry about the disposition of those assets. Henry was not present at this meeting, and there is nothing in the record to suggest that Henry and Bruno had disagreed about the ultimate disposition of Seppi's assets. Henry's petition reveals that he was only concerned about a "third-party neighbor" (Vernice) interfering with the management of Seppi's finances and exerting influence over Seppi's personal decision-making; Henry never accused Vernice of mismanaging Seppi's finances.⁹⁹ Henry had known for a long time that he was the beneficiary of his father's estate under the 1983 Will, and that Seppi had been naming

⁹⁸ Joint Exhibits VV & WW.

⁹⁹ Joint Exhibit U at Tab 1, p. 3.

him as the beneficiary or joint owner of his financial accounts. As late as July 31, 2003,¹⁰⁰ Seppi had designated Henry as the beneficiary of one of his investment accounts.

The record shows that Vernice, Bruno, and Martha worked as a team to remove Henry's name from his father's accounts. Although Bruno testified that everything was done at his brother's request and he was acting as a loyal brother, I am not persuaded by Bruno's protestations of innocence. On the very day Bruno received Henry's petition, Bruno declared his intention to contest it. Within two months of Bruno's discussion with Dr. Rosenberg about Seppi's "considerable assets," Bruno's attorney wrote Seppi's attorney *ad litem* that Seppi wanted to make a new will. Approximately two weeks later, Bruno, Vernice, and Martha escorted Seppi to another lawyer's office to draft new estate documents. The evidence suggests that Bruno and Vernice used the guardianship petition as a further wedge between Seppi and his son to advance their plans for Seppi's estate. And once they learned that Henry had withdrawn funds from his father's account, rather than contact Henry for an explanation, they allowed Seppi to believe that his son had stolen money from him, and constantly reinforced this belief by disparaging Henry as a thief in front of Seppi and others.

Seppi's susceptibility to undue influence had not diminished since December 2004. During the pendency of the guardianship petition, Seppi was dependent upon Vernice, Bruno and Martha for his care, and thus they had the opportunity to influence Seppi. Vernice was disposed to influence Seppi because of her dislike of Henry and her desire to control Seppi's life. Bruno had the disposition to exert influence because he and his family stood to benefit financially. Although Bruno estimated his net worth was between two and three million dollars, his wealth was tied to his real estate holdings: a

¹⁰⁰ Joint Exhibit N (BS 2510). Vernice is listed as a witness on this beneficiary designation form.

35-acre farm in Maryland and two and a half acres in Alaska.¹⁰¹ He had a pension and earned a few thousand dollars a year selling Christmas trees. Bruno and Martha also had a very large and growing family to whom they were loyal and dedicated.

The record shows that Vernice and Bruno actually exerted their influence. Bruno and Vernice recorded their exertions in their own handwriting on account statements, forms, envelopes, and letters of instruction that “deleted” Henry from his father’s accounts.¹⁰² In addition, Humes witnessed Bruno leading his brother in an unsuccessful attempt to have Henry removed as a joint owner of Seppi’s Morgan Stanley brokerage account. The result of these efforts by Vernice and Bruno was that Seppi’s financial assets, with the exception of the Morgan Stanley account, were now titled in Seppi’s sole name and would not transfer automatically to Henry upon his father’s death. It is not plausible that these transfers and beneficiary changes were made simply to prevent Henry from withdrawing more money from his father’s accounts. If that were the explanation, then there would have been no need to remove Henry’s name as TOD and POD beneficiary of Seppi’s investment accounts. The only plausible explanation for these beneficiary changes and transfers was that Vernice and Bruno were planning and laying the groundwork for the 2006 Estate Documents, pursuant to which Bruno would receive the bulk of Seppi’s assets upon Seppi’s death. Therefore, I conclude that Henry has demonstrated by the preponderance of the evidence that the beneficiary changes and account transfers were the products of undue influence by Vernice and Bruno.

C. 2006 Estate Documents.

¹⁰¹ The farm is encumbered by a tax lien, but Bruno testified that the lien was placed on his property in his son Bruno’s name, and his son is not an owner.

¹⁰² Joint Exhibit HH (BS 874).

The evidence shows that Vernice, Bruno, and Martha continued to manage Seppi's financial and personal affairs as a team, and their efforts culminated in the execution of the 2006 Estate Documents. Bruno told his attorney that Seppi wanted to change his will. Vernice brought Seppi to Chowdrey's office where Seppi complained about his son taking \$65,000, and expressed a desire to change his will. Chowdrey referred them to Baker. At trial, Bruno denied suggesting to his brother that he should change his will, but Bruno and Martha admitted that Bruno talked to his brother about Seppi's estate plans during this time period. Bruno called Baker to schedule Seppi's two appointments, and he also called Dr. Rosenberg to obtain two letters regarding his brother's capacity to execute a power of attorney and will. Vernice, and possibly Bruno, took Seppi to see Dr. Wallace and to obtain a second letter regarding Seppi's capacity.

Seppi took handwritten notes with him to Baker's office on January 10, 2006. Seppi's notes were organized in sections with bullet points and also bore Vernice's handwriting, further evidencing her contribution to the preparation of the 2006 Estate Documents.¹⁰³ Under the heading "PURPOSE," Seppi had written "Rewrite will" and "Drop Henry from all accounts[.]" Under the heading "REASONS," Seppi had written "Stealing – Bank – home Box Safe Dep." and "Guardian[.]" In the following section, Seppi wrote down generalized complaints about Henry's neglect and his lack of appreciation for what Seppi had given him, i.e., money and Maryland property traded for Delaware acreage worth two million dollars, and his desire for Bruno to receive his assets and take care of his needs. Baker testified that he and Seppi reviewed the items on the list together. Given Seppi's short-term memory loss, it is questionable how many of the bullet points Seppi would have remembered on his own.

¹⁰³ Joint Exhibit H.

When Seppi returned to Baker's office on March 2, 2006, to execute the estate planning documents, Seppi mentioned the same reasons for wanting to disinherit Henry. Baker relied on the two physicians' letters to establish Seppi's testamentary capacity. If the letters had not supported Seppi's testamentary capacity, Baker would not have proceeded with the estate plan. Baker himself judged the interaction between Seppi and his brother, and saw no evidence of any influence at the time. However, Baker testified at trial that if he had known Seppi had been found to be susceptible to designing persons in October 2005, Baker would have asked the doctors to address that specific issue. And Baker also testified that if he had known Seppi was represented by counsel who had refused to prepare new estate documents for Seppi because she thought it inappropriate to do so in a contested guardianship, Baker would not have prepared and allowed Seppi to execute the estate documents.

Dr. Wallace also had not seen evidence of any manipulation during Seppi's visits. When he was asked by Vernice on February 2, 2006, to write a letter regarding Seppi's capacity to make a new will, Dr. Wallace was aware that: (1) Bruno was going to live with Seppi, and become his guardian and power of attorney; (2) there had been unauthorized use of Seppi's money; and (3) Seppi believed Bruno would take better care of him than Henry.¹⁰⁴ After the guardianship matter was resolved, however, Dr. Wallace

¹⁰⁴ Joint Exhibit Q (BS 255). The belief that Bruno would be a better caregiver than Henry was voiced by Vernice in her deposition testimony. When asked who would be the better person to manage Seppi's finances and medical care, Vernice replied:

[T]here is no comparison. Jim is thriving with the attention that Bruno gives him. He walks, he gets very – is kept busy in the day and is much happier. Bruno is funny. And he is very good for him. His son is the exact opposite. He doesn't want to stay with him. He doesn't want to do any of the work. He isn't reliable insofar as medical care at all. Because he cancels doctors' visits and doesn't reschedule them. We have to find that out from the doctors.

had an opportunity to hear Henry's version of events. When Wallace was deposed on January 26, 2009, he testified that if he had known about Henry's information before February 2, 2006, his letter might never have been written. Wallace testified that the possibility Seppi had been manipulated was real.

At trial, Dr. Tavani opined that because of Seppi's significant dementia, his relationship with Vernice, who was very controlling, his physical frailty and dependence on others, Seppi was very susceptible to undue influence and lacked testamentary capacity on March 2, 2006. Dr. Rosenberg, on the other hand, testified that Seppi had sufficient cognitive skills on March 2, 2006, to understand the risks, benefits, and consequences of making a decision on legal matters such as a will, trust agreement or power of attorney. Dr. Rosenberg never offered an opinion whether Seppi was susceptible to undue influence on March 2, 2006, but he opined that as of October 2005, Seppi's cognitive impairments were such that he was susceptible to being misled if he were given false information about an individual.

I am not persuaded that Bruno was the reluctant and innocent beneficiary of his brother's 2006 Estate Documents. Nor am I persuaded that Bruno was being manipulated by Vernice to maintain her control over Seppi and to punish Henry for his interference with their relationship. According to Baker, during their meeting on March 2nd, Bruno

Jim is not happy around Henry. Because Henry is – he screams at him and doesn't spend time with him. Instead of being with him, he goes out on his bike or something. He does nothing for him. And he is really --- he seems much improved since Bruno has been there and he looks forward to him coming and he hates for him to go.

I'm not going to say that [Henry is dishonest]. I think, you know, I know Henry from the time he was born. And he has been a good kid. He just – he's just travel crazed, I think. Travel is more than anything else. And he goes on trips and he never tells his dad if he is going or when. It's just – as different as night and day. ... He's not treating his father right.

Deposition Testimony of Vernice Lee taken on November 30, 2006, at 114-115.

regretfully confirmed that Henry was stealing money, and was neglectful and unappreciative of his father. Yet Bruno knew that there had been no other withdrawals after August 25, 2005 because he, Vernice, and Martha were in control of Seppi's finances. Bruno knew that Vernice's claims of a stolen checkbook and threats of abuse by Henry were baseless. Bruno also ignored his own attorney's advice not to change Seppi's will while the guardianship was being contested. After the 2006 Estate Documents were executed, no one apparently complied with Baker's instructions to transfer Seppi's investments into the trust, although Bruno, Martha, and Vernice did try unsuccessfully to have Henry's name removed as a joint owner of Seppi's Morgan Stanley account. Since Seppi's other assets were titled in Seppi's sole name, and Henry was no longer the POD or TOD beneficiary of his father's accounts, Bruno already was positioned to inherit the bulk of Seppi's considerable assets under the 2006 Estate Documents. Or, in the unlikely event that Bruno did not survive Seppi, Bruno's children were positioned to inherit them.

Dr. Wallace testified that if two loved ones were making contrary and consistent representations to Seppi, he could have been harmed. During 2004 and 2005, Henry witnessed his father's distress and confusion as Seppi, bound by love and affection to his son and lady friend, suffered as a result of their conflict over Seppi's care. This conflict became worse when Bruno became involved. Unfortunately, Henry's decision to forego visits and phone calls in 2006 to save his father from distress enabled Vernice, Bruno, and Martha to accuse Henry of neglect. A reasonable inference to be drawn from the record is that Seppi was told repeatedly by Vernice and Bruno that his son was stealing

his money, his son was not treating him right, his son was always taking trips, and his son was not appreciative of what Seppi had given him.

By February 2007, Seppi's relationship with his son had been damaged, and Seppi's mental and physical condition had deteriorated. Vernice had manipulated Seppi and Henry because she wanted to maintain control over Seppi's life as long as she could. Bruno, on the other hand, wanted his family, not Henry, to enjoy Seppi's money and his house. Once Seppi's assets were titled to Bruno's satisfaction, he and Henry were able to reach an agreement to share Seppi's custody. This agreement apparently displeased Vernice, according to the January 24, 2007 notation on Martha's calendar. Nevertheless, Vernice tried to maintain her "stronghold" over Seppi for the rest of her life, and continued to disparage Henry to his father until she passed away in June 2007.¹⁰⁵

I conclude that Henry has demonstrated by the preponderance of evidence that: (1) Seppi was susceptible to undue influence on March 2, 2006; (2) Vernice and Bruno had the dispositions to exert undue influence for improper, albeit different, purposes; (3) Vernice and Bruno had the opportunity to exert undue influence; (4) Vernice and Bruno actually exerted undue influence; and (5) the result – the 2006 Estate Documents -- demonstrates undue influence. The 2006 Estate Documents shall be declared void as the products of undue influence, and the admission to probate of the 2006 Will shall be denied. In addition, the 1983 Will shall be declared valid and admitted to probate.

IV. Conclusion

For the reasons stated above, Henry has demonstrated by the preponderance of the evidence that the 2006 Estate Documents, the 2004 POA, and all transfers of Seppi's property and beneficiary changes after December 15, 2004 were the products of undue

¹⁰⁵ Deposition Testimony of Karen Fisher on January 21, 2009, at 19.

influence and are void. Once this report becomes final, counsel shall confer and submit an order in conformity with this decision to the Court.