

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2010-CA-01253-SCT

**JANICE C. COOPER**

**APPELLANT**

**v.**

**CAROLYN C. GUIDO**

**APPELLEES**

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or Court of Appeals may evaluate possible disqualification or recusal.

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(Appellant)
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5. Deborah Lynn Cooper Hill  
(sister of Appellee & will beneficiary)

6. Honorable E. Vincent Davis  
Chancellor, Adams County Chancery Court

RESPECTFULLY SUBMITTED this the 1<sup>st</sup> day of December, 2010.



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## **I. STATEMENT OF THE ISSUES**

I. Whether the trial court erred in granting the June 3, 2010 Judgment by granting the Motion for Summary Judgment filed by Appellee Carolyn C. Guido, Individually and as Executrix of the Estate of J. Wesley Cooper, Deceased, and in so granting said motion erred in finding that the Antenuptial Agreement at issue was a valid and binding contract as to preclude any challenge to a subsequent will;

II. Whether the trial court erred in finding that the issues raised by Appellant in her Response to the Itemization of Facts Not Genuinely Disputed, when applying the law regarding antenuptial agreements, did not leave genuine issues of material fact which would preclude the granting of summary judgment;

III. Whether the trial court erred in finding that Appellant's Will Contest, Petition to Renounce Last Will and Testament of J. Wesley Cooper and Motion to Void Deed of Gift should be dismissed with prejudice due to a finding by the Court that the Antenuptial Agreement precluded such contest.

IV. Whether the trial court erred in denying/overruling Appellant's Motion to Reconsider Judgment of June 3, 2010.

## **II. STATEMENT OF THE CASE**

### **A. Procedural History**

This case arises out of the probate of a December 13, 2007 will purported to be the **Last Will and Testament of J. Wesley Cooper** (R.E. Tab 1; R. 5) and the subsequent will contest filed on November 6, 2008 by Janice C. Cooper ("Appellant", "Janice Cooper" or "Mrs. Cooper"), the surviving spouse of J. Wesley Cooper, deceased ("Wesley Cooper" or "Mr.

Cooper”). (R.E. Tab 2; R. 15). The pleading was styled as a **Will Contest, Request for Jury Trial, To Remove Letters Testamentary, For Removal of Carolyn Cooper Guido as Executrix, For Appointment of Independent Administrator, For Inventory and Disposition of Decedent’s Assets in Possession of Carolyn Cooper Guido and/or Deborah Lynn Cooper Hill To Date and For Other Relief, Etc.** In the Will Contest, Mrs. Cooper, through her attorney in the lower court proceedings, challenged the purported December 13, 2007 will on the basis that it was the result of undue influence exerted on him by his two adult daughters, Carolyn Cooper Guido (“Carolyn” or “Appellee”) and Deborah Lynn Cooper Hill (“Deborah”), who were in a confidential relationship with their father. Additionally, Mrs. Cooper challenged her husband’s testamentary capacity at the time of the will’s execution, and noted that the daughters sought out the attorney for the will and physically transported him to their attorney for its execution. The two-page will cut out Mrs. Cooper entirely, and left everything to the two daughters.

In response, on November 25, 2008, Carolyn Cooper Guido, Individually and as Executrix of the Estate of J. Wesley Cooper, filed a **Response** (and Cross-Claim and Counterclaim) (R.E. Tab 3; R. 19). In this Response, Carolyn admitted that the will was executed at a time that Mr. Cooper was in declining health and had been prescribed drugs and medicine, and that he was eighty-three (83) years old at that time. In the Response, Carolyn incorporated a Motion to Dismiss, alleging that the Petition should be dismissed due to an Antenuptial Agreement signed by Mr. and Mrs. Cooper on a freely and voluntary basis on February 27, 1998 (the date of their wedding).<sup>1</sup> In attachment “A” to the Response, Cross-Claim

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<sup>1</sup> In the Will Contest (R. 15) and the Response (R. 19), the pleadings incorrectly identify December 13, 2007 as the date of Mr. and Mrs. Cooper’s wedding, when in fact, it is uncontested that the actual date of the marriage was a decade before, on February 27, 1998. The purported will at issue was executed

and Counterclaim, Appellee inserted the **Antenuptial Agreement of J. Wesley Cooper and Janice S. Cooper** [sic]. (R.E. Tab 4, R. 28). Appellee Carolyn Guido contended that section 4 of the agreement contained a provision wherein each party shall not contest the other's will.

On November 26, 2008, Janice Cooper filed her **Renunciation of Will** as surviving spouse. (R.40). Appellee filed her **Response to Renunciation of Will and Countermotion** (R. 42), challenging the ability of her step-mother to file a renunciation due to the same language in the Antenuptial Agreement regarding challenges to the will of the other.

Appellant Janice Cooper filed her **Motion to Strike Exhibit "A" to Counterclaim and Cross-Claim of Carolyn Cooper Guido, Individually and as Executrix of Estate of J. Wesley Cooper** (R.E. Tab 5; R. 56). In this pleading, Mrs. Cooper asserted that the purported Antenuptial Agreement dated February 27, 2010 (the same date as the marriage) was null and void. Mrs. Cooper asserted that the document was only signed under duress, and was not entered into freely and voluntarily, as her to-be-husband took her to his attorney's office the morning of the wedding to sign the document, and they had to be in St. Francisville, LA (approximately sixty miles away) for the wedding ceremony to be held at 3:30 p.m. that day. Among many reasons she gave for this position, she asserted that she had been in Texas until the late afternoon of February 26<sup>th</sup> (the day before) and had never seen the document before the morning of her wedding. She was hurried into signing the document, and did not have the opportunity to employ her own counsel or have the document, and its attendant legal ramifications, explained to her.

On December 22, 2010 Janice Cooper filed her **Motion to Void Deed of Gift**, requesting the August 7, 2008 deed of gift of marital home to Mr. Cooper's daughters (executed less than

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on December 13, 2007.

three weeks before Mr. Cooper's death) to be void. (R.E. Tab 6; R. 60). On December 23, 2008, Appellant Janice Cooper filed her **Answer of Mrs. Janice C. Cooper, Etc.** (R. 67), wherein she also filed counterclaims and a cross-claim against the Executrix, claiming homestead rights and widow survivorship rights of the property and denying the remedy of partition sought by the Executrix. Carolyn Guido responded with her **Motion to Dismiss this Counterclaim.** (R. 72) and **Response to Motion** [to Void Deed of Gift]. (R. 74), and **Response to Motion to Strike** (R. 92), denying the relief sought, and again repeating that Mrs. Cooper had given up any rights to challenge the disposition of any property by signing the Antenuptial Agreement.

On March 15, 2010, Appellee Carolyn Guido filed her **Motion for Summary Judgment**, incorporating prior pleadings and attaching excerpts from the Deposition of Janice Cooper. (R.E. Tab 7 [without attachments]; R. 94). Carolyn also filed her **Itemization of Facts Not Genuinely Disputed** (R.E. Tab 8; R. 179) on the same date.

On April 29, 2010, Appellant Janice Cooper filed her **Sworn Response to Itemization of Facts Not Genuinely Disputed of Mrs. Carolyn Cooper Guido.** (R.E. Tab 9; R. 211), wherein Mrs. Cooper set forth the facts by which she was pressured and coerced into signing the Antenuptial Agreement, and signed the same under duress without having her own legal counsel or the ability to change or negotiate terms of the document on the morning of her wedding.

After a hearing on or about May 13, 2010, the Chancellor signed and had cause to enter a two-page **Judgment** on June 3, 2010 (R.E. Tab 10; R. 221), ruling that the issues raised by Mrs. Cooper in her Response to the Itemization of Facts rise to a dispute of material facts, and ruled that the Will Contest, Petition to Renounce the Will and Motion to Set Aside Deed of Gift were filed contrary to the prohibitions contained in the February 27, 1998 Antenuptial Agreement, and were dismissed with prejudice.

Janice Cooper filed her **Motion to Set Aside Judgment Filed June 3, 2010** (R.E. Tab 11; R. 223), asserting that the Court erred in determining that Janice Cooper waived her right to contest or renounce the will and other distributions, and that the Antenuptial Agreement was executed solely by the deceased with no input from Mrs. Cooper, as she was put under duress in being presented with this restrictive document just hours before her wedding and without the advice of her choice of legal counsel. Carolyn Guido filed her **Response to Motion to Set Aside Judgment of June 3, 2010** (R. 227), asserting that all matters had been addressed in prior hearing. After a hearing on June 30, 2010, the Chancellor, on June 30, 2010, entered a one-page **Judgment Overruling Motion to Reconsider Judgment of June 3, 2010** (R.E. Tab 12; R. 234), denying the Mrs. Janice Cooper any relief and denying the Motion to Reconsider the granting of the summary judgment which dismissed all of her claims purportedly prohibited by the Antenuptial Agreement. A copy of the court reporter's transcript of both the May 13, 2010 and June 30, 2010 hearings is attached hereto. (R.E. Tab 13 ; R. Volume 4 of 4).

Appellant Janice Cooper timely filed her Notice of Appeal to the Mississippi Supreme Court on July 29, 2010. (R. 235).

#### **B. Statement of Facts Relevant to the Issues**

Before arriving in Natchez, Mississippi the day before her February 27, 1998 wedding, Mrs. Janice Cooper was a resident of Arlington, Texas, and in fact, had not even been to Natchez for the past twelve years. (Deposition of Janice Cooper, p. 8, attached hereto as Ex. "A"). She had been conducting a long-distance relationship with J. Wesley Cooper, and he had asked her to come to Natchez to live with him as his wife. She arrived on the afternoon of February 26, 1998, the day before her wedding the next afternoon in St. Francisville, LA (about sixty miles away). On the next day, just hours before having to get ready and travel to her 3:30 p.m. wedding in St.

Francisville, Mr. Cooper took his bride-to-be by his lawyer's office. At this lawyer's office, Mrs. Cooper was handed an 11-page, single-spaced Antenuptial Agreement (R.E. Tab 4, R. 28) to sign on the spot. She had never before seen this document, had no input in its creation, and did not know anything about it until that morning. (R.E. Tab 8; R. 212). The document and the document's title even had her middle initial as "S", when her middle, maiden or married name never began with an "S". In fact, a line was left blank on the first page identifying her first husband's name, and a blank was contained on the second page for the name of an attorney who was to offer her "independent legal advice". (R.E. Tab 4, R. 28-29). Obviously, Mrs. Cooper was never shown this document beforehand and consulted as to its drafting, as she surely would have informed the drafter of her middle initial and the names for the blanks. Mrs. Cooper had never previously met nor talked with attorney Donald G. Ogden, whose name was written in the blank upon arrival that morning, before she appeared at the law office that morning, and she did not arrange to meet him there. He was presumably provided by her husband, and she never met or talked with him after that morning. He did not send her a bill for any services. Mrs. Cooper testified that she was not aware of the rights that she was giving up by signing the document, as she did not have time to even read the entire thing. She was only given about fifteen minutes to be there, and she was in a rush to get dressed to meet her out-of-town family coming in for a wedding at 3:30 p.m. that day at a location more than an hour away. Mrs. Cooper never even received a copy of the Agreement after she signed it. (R.E. Tab 13; page 34-35 of Vol. 4 & Deposition of Janice Copper, Ex. "A", pp. 48-9). In fact, at no time was Mrs. Cooper even alone with Mr. Ogden, as her husband and his attorney (and staff) were present with her the entire time. (R.E. Tab 13; page 36 of Vol. 4). Mr. Ogden never read over the provisions of the Agreement with her, and his only work was to answer a couple of questions that she had.

(Deposition of Janice Copper, Ex. "A", p. 53).

Faced with the prospect of signing the Antenuptial document on one hand, or having having the wedding cancelled mere hours before the ceremony and the morning after arriving in Natchez, Mrs. Cooper did sign the Antenuptial Agreement, but with no understanding of the legal ramifications. The inclusion of language stating that she had retained an attorney for "independent legal advice" was an disingenuous at best. The couple did get married that afternoon, and were husband and wife until Mr. Cooper became very ill and died on August 26, 2008. In that time, Mrs. Cooper was aware that Mr. Cooper had two other, prior wills which were in existence before the December 13, 2007 will at question in this case. (R.E. Tab 13; page 38 of Vol. 4).

At the time of the marriage and thereafter, Mr. Cooper had two adult daughters from a prior marriage, namely Carolyn Cooper Guido and Deborah Lynn Cooper Hill. When their father became very sick, and after having been married to Janice Cooper for almost ten years, the daughters took their father to an attorney's office to execute a new will, which was a two-page document that completely cut his spouse out and gave the two daughters everything. (R.E. Tab 1; R. 5). In her Response to the Will Contest, Carolyn admitted that the will was executed at a time that Mr. Cooper was in declining health and had been prescribed drugs and medicine, and that he was eighty-three (83) years old at that time. (R.E. Tab 3; R. 20). Additionally, just three weeks before the death of her husband, unbeknownst to Mrs. Cooper, the daughters arranged for their Father to transfer the marital home to the daughters via a Deed of Gift. However, Mrs. Cooper retained homestead rights and even showed up on the tax rolls for the property along with her husband, as the property was listed as homestead property. (R.E. Tab 6; R. 63-66). Even though such property was on the tax rolls as receiving homestead credit,

Carolyn Cooper filed in her Response to the will contest a cross-claim stating that Mrs. Cooper waived all her rights to homestead protections by signing the Antenuptial Agreement. (R.E. Tab 3; R. 24)

Therefore, the stage was set in Shakespearian fashion for the two daughters to divide the property of their father, which the added twist of completely cutting out his wife from any rights to distribution from the Estate of her husband of over a decade. When Mr. Cooper passed away, Carolyn filed for probate of the Estate. When Mrs. Cooper rightfully attempted to contest this new (to her) will on the basis of undue influence and lack of testamentary capacity and to exercise her statutory right to renounce it, and to contest the Deed of Gift of the marital home, the Executrix daughter countered with the Antenuptial Agreement that Mrs. Cooper has signed a decade prior (without receiving a copy), and which was signed on the morning of her wedding after being presented it on a take-it-or-leave-it basis. Mrs. Cooper never revisited the Agreement, as she would not even conceive that there were provisions that would prevent her from asserting her rights as a surviving spouse in the event that her husband was unduly influenced due to his advanced age and would cut her out of everything.

For these reasons and those set out in further in this Brief of Appellant, Janice Cooper hereby contends that the trial court erred in granting summary judgment in this matter, and the proper remedy of this Court is to reverse the ruling of the Chancellor and remand for proceedings whereby Mrs. Cooper may proceed on her pleadings to challenge the will or renounce it entirely and take her statutory share, to void the Deed of Gift at issue, and to proceed on other issues which may have been affected by the granting of the summary judgment.

### III. SUMMARY OF ARGUMENT

The Chancery Court erred in granting summary judgment to the Carolyn Guido, and in so doing finding that: 1) the Antenuptial Agreement at issue was a valid and binding contract; 2) the issues raised by Appellant in her Response to the Itemization of Facts Not Genuinely Disputed, when applying the law regarding antenuptial agreements, did not leave genuine issues of material fact which would preclude the granting of summary judgment; and 3) finding that Appellant's Will Contest, Petition to Renounce Last Will and Testament of J. Wesley Cooper and Motion to Void Deed of Gift should be dismissed with prejudice. The Chancery Court also erred in denying/overruling Appellant's Motion to Reconsider Judgment of June 3, 2010.

The Appellee, Carolyn Guido, was faced at the lower court with a substantial hurdle to overcome in her Motion for Summary Judgment, and was required to show that there was no genuine issue of material fact to allow a hearing on the issues brought up by Mrs. Cooper. The Executrix filed her pleadings to short-circuit the proceeding before the Chancellor would even hear evidence on the issue of the actions of the two daughters and whether or not they exercised undue influence over their father in the drafting and execution of the will and the transfer of the marital home. Appellant Janice Cooper contends that the Appellee Carolyn Guido did not reach that standard so that summary judgment was not proper.

The Court erred in determining there were no genuine issues of fact as to the dismissal of her Will Contest, Motion to Set Void Deed of Gift and Renunciation of Will. Janice Cooper presented evidence that the Antenuptial Agreement should be declared void and not considered in the proceedings below, as requested by her filing to strike it from the consideration of the Court. Although the record of the lower court does not contain a specific finding of fact as to Janice Cooper's Motion to Strike Exhibit "A" to Counterclaim and Cross-Claim of Carolyn

Cooper Guido, Individually and as Executrix of Estate of J. Wesley Cooper (R.E. Tab 5; R. 56), it is clear from the ruling of the Chancellor that he considered the issue and ruled that the Antenuptial Agreement would be considered. If fact, the consideration of that Agreement is the entire basis of the Chancellor's ruling as to summary judgment.

The ruling of the Chancellor to consider the Antenuptial Agreement and use it as the basis of his Summary Judgment ruling was an abuse of discretion and clear error. It is clear that the Agreement was entered into while under duress and without the benefit or opportunity to obtain proper legal counsel to review. The document itself proves this point, as there were blanks in the document that show that Janice Cooper had no input in its formation. Without the Antenuptial Agreement being held to be a valid, enforceable contract as to the no-contest provision, there would be no prohibition against presenting evidence concerning whether the deceased daughters exerted undue influence upon their father in having him change his will and transfer the marital home to them before his death and while he was in a vulnerable and easily-manipulative condition.

The crux of the matter, and the key question from which all issues flow, is whether the Chancellor erred in finding that the Antenuptial Agreement in question was a valid and enforceable contract, as a whole and in regards to the no-contest provisions. If the Chancellor abused his discretion in determining this factual issue, then such no-contest provision in the Antenuptial Agreement could not then be the basis for the finding that there were no genuine issues of material fact as to the Will Contest, Renunciation of the Will, and Motion to Void Deed of Gift. It is clear from the record that the only reason that the Chancellor did not permit the proceedings to continue was his decision that the Antenuptial Agreement's no-contest provision precluded these claims. Take away this document which was clearly procedurally

unconscionable and there would be no impediment for Mrs. Cooper to proceed to challenge and/or renounce the will and have a hearing on the questionable methods and circumstances surrounding the obtaining of this document and the Deed of Gift.

Alternatively, even if the document is held to be valid and enforceable, this Court should hold that such no-contest provisions in antenuptial agreements be void as against public policy, or, alternatively, face a heightened scrutiny analysis or the imposition of factors of protection, due to the potential for victimization of surviving spouses by others who will use such no-contest clauses to shield their improper behavior in taking advantage of vulnerable, health-deprived and/or aged individuals. If not so ruled, anyone may then seek out a relative or other person who has in place such a no-contest provision in such an agreement with his or her spouse, and then use whatever means necessary in order to get that person to change his or her will or bequeath property, and then sit back and wait until the person dies. Then, the instigator will be home free, as the surviving spouse will be unable to challenge any underhanded means used to cut the widow or widower out of their rightful inheritance.

#### **IV. ARGUMENT**

##### **A. Standard of Review of Chancellor's Ruling**

The Supreme Court has held that in its review of a chancellor's findings, it is to employ a limited standard of review. *Miller v. Pannell*, 815 So. 2d 1117, 1119 (Miss. 2002) (citing *Reddell v. Reddell*, 696 So.2d 287, 288 (Miss. 1997); *Carrow v. Carrow*, 642 So.2d 901, 904 (Miss. 1994)). In order for the chancellor's findings to be disturbed upon review, the Supreme Court has to find that the chancellor was manifestly wrong, clearly erroneous or applied an incorrect legal

standard. *Miller*, 815 So.2d at 1119 (citing *Reddell*, 696 So.2d at 288; *Bell v. Parker*, 563 So.2d 594, 596-97 (Miss. 1990); *Bowers Window & Door Co. v. Dearman*, 549 So.2d 1309, 1313 (Miss. 1989)). The Court has also added in a “substantial evidence” requirement when it held that the “Court will not disturb the chancellor’s opinion when supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied.” *McBride v. Jones*, 803 So.2d 1168, 1170 (Miss. 2002) (quoting *Holloman v. Holloman*, 691 So.2d 897, 898 (Miss. 1996)). “The standard of review employed by this Court for review of a chancellor’s decision is abuse of discretion.” *Miller*, 815 So.2d at 1119 (citing *McNeil v. Hester*, 753 So.2d 1057, 1063 (Miss. 2000)).

Appellant is not citing the typical standard for the Court’s review of a summary judgment, as it is clear in this matter that the Chancellor’s ruling that the Antenuptial Agreement and the no-contest provision were valid and enforceable was the sole reason for the decision of the Court dismissing the case with prejudice. If the Supreme Court rules that the Chancellor abused his discretion in finding the provision enforceable, it naturally follows that the Summary Judgment was improperly granted, and reversal and remand would be the outcome.

#### **B. Issue of Antenuptial Agreement and Facts Against Its Validity**

At the hearing on the Motion for Summary Judgment, the Chancellor acknowledged the core issue before it that day. The Chancellor stated as much at the beginning of the May 12, 2010 hearing, remarking “[t]hat’s kind of my understanding, that it all boils down to this Antenuptial Agreement...”. (R.E. Tab 13.; R. Volume 4 of 4, p. 5). Counsel for the Estate then spent his entire argument on that very point: that the Antenuptial Agreement was a valid contract, and that the no-contest provision precluded the filings of Mrs. Cooper. Then Mr. O’Beirne, then-counsel for Mrs. Cooper, spent his entire argument detailing the procedural

unconscionability of the Antenuptial Agreement and how Mrs. Cooper was rushed into signing it on the day of her wedding, in front of her husband and his attorney and staff. He went into detail how the providing of an attorney by her husband for her did not, in fact, allow her to have independent counsel present to assist her. (R.E. Tab 13 ; R. Volume 4 of 4, pp. 15-18).

At the hearing, counsel for Mrs. Cooper reiterated the uncontested facts presented by Mrs. Cooper in her Sworn Response to Itemization of Facts Not Genuinely Disputed (R.E. Tab 9; R. 211) and set out in her Deposition (Ex. "A"). These facts were also supported later by Mrs. Cooper's live testimony at the hearing on the Motion to Set Aside Judgment, (R.E. Tab 13 ; Volume 4 of 4, pp. 32-39). It would be instructive to summarize the factual basis to support Mrs. Cooper's contention that the Antenuptial Agreement should not be upheld as it was signed under duress, with unequal bargaining position and using counsel provided allegedly for her benefit, but not of her own choosing. For details as to the locations in the record for the following facts, such citations are contained in Section II.b. above, the Statement of Facts Relevant to the Issues. The sworn facts supporting Mrs. Cooper's position that the Chancellor's decision was manifestly wrong and clearly erroneous are:

1. Mrs. Cooper was a Texas resident until the day before her wedding, and had not even visited Natchez in the past twelve years;
2. The wedding, to be attended by the bride's family and friends from Texas, was to be held in St. Francisville, LA (approximately sixty miles south of Natchez) on February 27, 1998 at 3:30 p.m.;
3. The afternoon of the day before the wedding, Mrs. Cooper arrived in Natchez from Texas, stayed in a hotel that night, and had dinner with Mr. Cooper;

4. Before even having a chance to dress for the ceremony, at some time that morning on the day of her wedding (February 27, 1998), Mr. Cooper took her to his lawyer's office, where she was presented with an 11-page, single-spaced document that she had never seen before, and was entitled "Antenuptial Agreement", and which she had about 15 minutes to sign, due to her being anxious to go and get ready for her wedding set for 3:30 that afternoon;
5. In support of her contention that she had no input in the preparation of the document, the name of her first husband was left blank on the first page, and had to be filled in at the law office, and her middle initial was wrong (it had never been "S");
6. On page 2 of the Antenuptial Agreement (R.E. Tab 4, R. 28), the Document states that "[e]ach party **has received the advice of legal counsel of each Party's own selection.** Janice acknowledges that **she has sought** and received **independent legal advice** from Donald G. Ogden..." (emphasis added). The attorney's name had to be written in the blank on the document on that date, because Mrs. Cooper had never met or talked with Donald Ogden before arriving at the office, and did not know that there would be a lawyer there to supposedly represent her.
7. Mrs. Cooper never left the sight of her husband, and Mr. Ogden did not meet with her privately. He did not go over the document with her and explain the sections and their legal ramifications, and the only thing he did for her was answer a few questions that she asked. She never paid him, received a bill from him, or saw nor spoke to him after that date.
8. Mr. Ogden was presumably not an independent legal representative, as it is clear he was hired and/or compensated for his work by either Mrs. Cooper's husband or her

husband's attorney;

9. The document not only discussed a few items that Mr. Cooper had asked Mrs. Cooper about, such as her townhouse, jewelry, property interest and credit card debt, but also had restrictive legal provisions in Section 4 by which she would waive any rights she had or would have as a surviving spouse, including the right to contest a will or property distribution of the marital home through improper means or by way of undue influence. The abandonment of these rights was never explained to Mrs. Cooper, and she did not know enough to ask;
10. Faced with a choice of signing the document or possibly calling off the wedding for which her family and friends from Texas were already en-route, Mrs. Cooper signed the document;
11. Ten years after the marriage, Mr. Cooper became very ill, and in the year before his death his two adult daughters (from another marriage) took their 83-year-old, ill father to an attorney and had him sign a two-page will which left them everything, and did not even mention Mrs. Cooper as his spouse. Three weeks before his death, the daughters had cause to have him execute a deed of the marital home to them. Mrs. Cooper was kept in the dark about these actions until after the death of her husband;
12. When Mrs. Cooper attempted to challenge these questionably and potentially improper actions through a will contest, renunciation and motion to set aside the deed, the daughters came back with the Antenuptial Agreement Mrs. Cooper signed under duress over ten years prior;

13. At the hearings on the Motion for Summary Judgment and Motion to Set Aside the Judgment, the arguments were based entirely on the validity of the Antenuptial Agreement. Counsel for the parties presented their arguments and Mrs. Cooper testified, but counsel for Carolyn Guido did not present testimony or an affidavit from Donald Ogden, a still-practicing Mississippi attorney, in support of its position. No testimony or affidavit was forthcoming from anyone at the law office on the date of the execution of the Agreement, other than Mrs. Cooper. The opposing party based its argument simply on the fact that Mrs. Cooper signed the document, and that should be that; and
14. The Chancellor agreed with the position that the Agreement precluded the challenges brought by Mrs. Cooper, and on that basis alone granted Summary Judgment and refused to set aside the ruling.

**C. Caselaw Supports Invalidation of this Antenuptial Agreement**

In its argument before the Court at the hearing, counsel for the Estate argued the cases of *Mabus v. Mabus*, 890 So.2d 806 (Miss. 2003) and *Ware v. Ware*, 7 So.3d 271 (Miss. App. 2008) for its contention that once you sign a contract or a prenuptial agreement, you can't come back in later and say that you didn't read it or understand it. In *Mabus*, the Supreme Court held that "an antenuptial contract is just as enforceable as any other contract". *Mabus*, 890 So.2d at 818. However, the Court went on to say that the Supreme Court has "imposed the **requirement of fairness** in the execution of such contracts". *Id.*, at 818-19 (quoting *Smith v. Smith*, 656 So.2d at 1147; citing *Estate of Hensley v. Estate of Hensley*, 524 So.2d 325, 328 (Miss. 1988). (emphasis added). A restriction on enforceability encompasses a duty of disclosure. *Id.* The Supreme Court has held that "antenuptial settlements, **when fairly made**, are favored by the courts."

*Estate of Hensley*, 524 So. 2d at 327. (emphasis added).

In the *Mabus* case, the Chancellor made extensive finding of fact concerning the prenuptial agreement, and found that there was evidence that the wife wanted the prenuptial agreement, that she understood the terms of the agreement, and that she knew she had the right to a separate attorney. The Court noted that pursuant to *Hensley*, independent counsel is not necessary to fairly execute a prenuptial agreement. *Mabus*, 890 So.2d at 821. The Chancellor in that case went on to find that she voluntarily signed the agreement in order to protect her anticipated inheritance, that she had an M.B.A. from Columbia University, was a C.P.A., and taught graduate level money and banking courses. Additionally, Ms. Mabus had been in a meeting with the attorney and her husband some three months before execution of the document wherein they discussed their desire for a prenuptial agreement and, according to testimony of the attorney, both indicated agreement not to have separate counsel. The Chancellor in *Mabus* found that the wife's contention that she only agreed to sign the contract upon the belief that it would be torn up later was not a valid reason to enforce the contract. *Id.*, at 819.

*Mabus* presented with a much different scenario than exists in the case *sub judice*. There was ample evidence that Ms. Mabus, having an extensive financial education, actively sought legal counsel to draft a prenuptial agreement and met with an attorney months before in order to get one drafted. In this present case, Mrs. Cooper was whisked into her husband's lawyer's office the morning of the wedding, was introduced to a person as her "independent" legal counsel, and had only minutes to sign an 11-page, single-spaced legal document. The *Mabus* case only supports the Appellant's position by highlighting the differences in that situation with the one presently before us. In *Mabus*, unlike this case, there was extensive and substantial evidence that the agreement was entered into without duress or unequal bargaining position.

In the *Ware* decision, the Court of Appeals upheld an antenuptial agreement, citing the *Mabus* and *Hensley* decisions, and likewise stated the law in Mississippi that “**fairly executed** antenuptial contracts are just as enforceable as other contracts.” *Ware*, 7 So.3d at 276. (emphasis added). In the *Ware* case, the wife stated that her husband had presented the antenuptial agreement to her two days before the wedding, and asked her to review it. Although it contained a clause that both parties sought and obtained independent advice, she did not take it to an attorney and did not even read the document before signing. The *Ware* court did repeat the propositions that a party is under an obligation to read a document before signing and that independent counsel is not required to fairly execute a prenuptial agreement. *Id.*, at 277.

However, *Ware* is distinguishable from the case *sub judice*, as Ms. Ware had ample opportunity to review the document, ask questions about it, or even seek out legal counsel for an explanation of the agreement, as it was presented days before the wedding. In Mrs. Cooper’s case, the clock was literally ticking away the minutes to the time of her having to leave Natchez to make it to her wedding that afternoon. Mrs. Cooper had no spare time to carefully review the voluminous document or become versed in the meaning of each and every legal provision contained therein, and therefore such contract failed its duty of disclosure. The attorney provided for her certainly didn’t explain the document to her, and there was no time for her to seek out a truly independent counselor to advise her on the rights that she was potentially giving up. Should she have elected to take the necessary time to review the document or seek other counsel, she would have surely had to postpone her wedding.

Although in a case from three decades ago, and assuming the reverse corollary is also true, our Court has noted with approval the proposition that the “rule in Mississippi is that the husband is presumed to extend a great deal of influence over his wife”, and in so saying differentiated a contract

conducted at arms-length between two other parties. *In Re Will of Johnson*, 351 So.2d 1339, 1341 (Miss. 1977). In analyzing a post-nuptial contract for the wife to give up her right to contest her husband's will, the *Johnson* court stated that "it is...the law that courts of equity will not enforce an unconscionable contract." *Johnson*, 351 So.2d at 1341. In the *Johnson* case, the husband took his wife to his attorney's office sign a document already prepared, whereby she would forfeit her right to renounce and contest his will. The Chancellor in that case granted a motion to dismiss the attempted renunciation of the will by the surviving widow. This situation is the same as occurred in the case *sub judice*, although with even less pressure on the wife, as she wasn't taken down the morning of her wedding as Mrs. Cooper was. The Mississippi Supreme Court found that the Chancellor in *Johnson* erroneously held that the widow could not renounce her husband's will, which she had the right to do under Miss. Code Ann. §91-5-25, and that she had the right to live in the homestead property. Because the rights the widow gave up strongly outweighed anything she would obtain from the agreement, the Court found that the contract not to renounce the will fell "within the category of one of those unconscionable contracts which are unenforceable." *Id.* at 1342.

The Mississippi Supreme Court has held that "[t]here are five factors a court will consider when determining whether a contract is procedurally unconscionable: '1) lack of knowledge; 2) lack of voluntariness; 3) inconspicuous print; 4) complex legalistic language; 5) disparity in sophistication or bargaining power; [and] 6) lack of opportunity to study the contract and inquire about the contract terms.'" *Covington v. Griffin*, 19 So.3d 805, 817 (Miss. App. 2009) (citing *MS Credit Ctr., Inc. v. Horton*, 926 So.2d 167, 177(¶ 30) (Miss.2006)). It can be argued that all factors are present in this case.

While certainly Mrs. Cooper was aware that her husband had asked her about her financial

— matters, she was unaware that she would be forced to go in the morning of her wedding to sign a document that would give away her rights for all time to challenge a suspicious will that would cut her out of her husband's estate. The lack of voluntariness can be shown by the fact that if she knew she was going to have to arrange to go over important legal documents, she would have surely come into town sooner in order to take care of this business, or her husband would have had his attorney send the documents to her beforehand. Section 4 of the Agreement was written in inconspicuous print, no larger than the other document and made not to stand out. There is a reason our Court has looked with disfavor on such drastic curtailing of rights such as arbitration clauses which are inconspicuously buried in long, complex contracts. Complex legal language was the rule in this document, especially in Section 4 containing the no-contest provisions. Mrs. Cooper had no familiarity with documents of this nature or kind, or the legal ramifications on potential estate matters, so a clear disparity in sophistication or bargaining power existed. This factor – unequal bargaining power – goes hand-in-hand with the last factor of the lack of opportunity to study the contract and inquire about the contract terms. What bargaining power or choice did Mrs. Cooper have? She had just arrived in town the night before and was running to get ready for her out-of-town wedding in a couple of hours. Her family and friends were already on their way from Texas. What opportunity did she have to study the contract and inquire about the contract terms? It was either sign this right now, or the wedding would be off. All these factors weigh toward the finding of procedural unconscionability of the Antenuptial Agreement as a whole, and more specifically, the no-contest provisions of Section 4.

Additionally, the document as presented to Mrs. Cooper may be rightly held to be a contract of adhesion. Those are agreements that are "drafted unilaterally by the dominant party and then presented on a "take-it-or-leave-it" basis to the weaker party who has no real opportunity to bargain

about its terms. Such contracts are usually prepared in printed form...." *East Ford, Inc. v. Taylor*, 826 So.2d 709, 716 (Miss.2002) (quoting Restatement (Second) of Conflicts § 203 cmt. b (1971)). Once found, it will make an argument targeting the contract or a provision as substantively unconscionable (oppressive terms) easier to prove. *Vicksburg Partners, L.P. v. Stephens*, 911 So.2d 507, 523 (Miss.2005). Since the agreement was clearly a contract of adhesion, and due to the disparity in income and assets attached to the Antenuptial Agreement, it is clear that the terms of a no-contest clause would greatly impact Mrs. Cooper in a far greater fashion than Mr. Cooper, such provision should also be held to be substantively unconscionable.

Due to the paucity of Mississippi case law on this issue, it would be instructive for the Court to examine other jurisdictions. In *In Re: Marriage of Matson*, 41 Wash.App. 660, 705 P.2d 817 (1985), the Washington Supreme Court invalidated a antenuptial agreement executed the night before the wedding. In that case, the husband and wife had met previously that week with an attorney who went over the agreement line by line (which did not happen in Mrs. Cooper's case). The Washington court noted that there was no evidence that the wife understood the legal significance or consequences of the agreement, or had such explained to her by another, and there is no evidence in this case that Mrs. Cooper understood as well. There was no testimony or affidavits from anyone present at the signing of the document that Mrs. Cooper was aware of the legal effects of the agreement. The Washington court also stated that the disparity between the parties (which existed between Mr. & Mrs. Cooper in this case) mandated a more vigorous urging by the attorney to seek independent advice. The timing of the agreement in Washington also negated any inclination the wife may have had to secure independent advice, with the first meeting being one week prior to the wedding and the signing done the night before the ceremony. The Court noted that "[o]bviously, the night before her wedding a bride has concerns that seem more important and immediate than the

potential dissolution of her marriage and waiver of her interest in future community property.” *Matson*, 41 Wash.App. at 668. Mrs. Cooper didn’t even have the luxury of having as much time as was present in this agreement which was invalidated.

Also, the Florida Supreme Court addressed a similar situation, in the case of *Lutgert v. Lutgert*, 338 So.2d 1111 (Fla. 2d DCA 1976), wherein the Court invalidated an antenuptial agreement presented to the wife approximately twenty-four hours before the wedding and honeymoon cruise due to there being no adequate time for her to obtain independent advice. In that case, there was evidence that the subject of an antenuptial agreement had been brought up previously on several occasions in the year preceding the wedding, but it was only presented to her the day before the ceremony. The Court noted that the relationship of the parties in an antenuptial agreement is not one at arms length, and their relationship is one of mutual trust and confidence. For this reason, courts will scrutinize these agreements with care, with fairness being the ultimate measure. *Lutgert*, 338 So.2d at 1115. The *Lutgert* court looked to the manner in which the agreement was presented to the wife and the oppressive terms which would create a presumption of undue influence, and ruled that the burden would then shift to the husband for rebuttal, which was not presented in the *Lutgert* matter. In the case *sub judice*, there is no evidence, other than the document itself, that Mrs. Cooper did voluntarily sign the document without duress.

Therefore, it is clear that the trial judge’s ruling was manifestly wrong and clearly erroneous in finding that the no-contest provision of the Antenuptial Agreement was fair in its execution and terms, and was not procedurally unconscionable. Mississippi has upheld these agreements, but there has to be an element of fundamental fairness present when executed, and any objective viewing of the way in which this contract was forced upon Mrs. Cooper in the last hours before her wedding would lead to a ruling that this element was not met.

**D. The Agreement Should Be Striken and/or Factors Created on Public Policy Grounds**

The Mississippi Supreme Court, in *Hastings v. Guillot*, 825 So.2d 20, 24 (Miss. 2002), stated that it is well within a chancellor's authority to void parts of a contract as violative of public policy. The Appellee in this case would have the Court declare that once a no-contest provision is in a marital-related document, there are no exceptions to its enforcement and application to matters concerning the distribution of property and the probate of wills. This Court should entertain the notion that such no-contest provisions in antenuptial agreements be void as against public policy, or, alternatively, face a heightened scrutiny analysis if to be applied to a will contest or motion to set aside a property conveyance. The imposition of such a public policy exception or a heightened scrutiny analysis should be imposed due to the potential for victimization of surviving spouses by others who will use such no-contest clauses to shield their improper behavior in taking advantage of vulnerable, health-deprived and/or aged individuals. Anything less will allow relatives (or others) to take advantage of such persons in getting them to give away their property or change their wills, knowing that there is an antenuptial agreement that would preclude the victimized spouse from contesting any new will or property transfer, no matter how much improper influence was brought to bear on the sickly or elderly testator. That person may then sit back and wait until the person dies, while keeping the spouse completely in the dark. At that point, the instigator will be home free, as the surviving spouse will be unable to challenge any underhanded means used to cut the widow or widower out of their rightful inheritance.

A widow or widower has statutory right to renounce the will of the spouse if not properly provided for. In this case, Mrs. Cooper was not only cut out of the will entirely, her marital

home was transferred out from under her just three weeks before her husband died. If this no-contest provision of the antenuptial agreement is upheld, she would be left without a remedy in law to redress any potential fraud or undue influence which may have been used to get the will changed and the property transferred. Such an outcome is clearly violative of the public policy of the state, and violative of the well-worn axiom "For every wrong, a remedy."

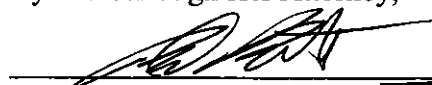
## V. Conclusion

For these reasons, Appellant Janice Cooper respectfully requests that the Mississippi Supreme Court reverse the ruling of the Chancellor and remand the case to the Chancery Court of Adams County, Mississippi for proceedings related to the Will Contest, the Renunciation of the Will, and the Motion to Void Deed of Gift, and any other claims affected by the Chancellor's granting of summary judgment. It is clear from the facts set forth as to the procuring and content of the Antenuptial Agreement that the Chancellor abused his discretion in considering and applying the no-contest provision to prohibit Mrs. Cooper from challenging and renouncing the will of her late husband, and seeking to set aside the transfer of the marital home.

Additionally, and or alternatively, the Supreme Court should declare such provisions as violative of public policy of the State of Mississippi, or at the very least, impose future factors or a balancing test to insure that surviving spouses are not victimized by fraudulent or undue means by friends or relatives of a testator who may take advantage of the inability of a spouse who signed an antenuptial agreement to contest such potentially improper actions.

RESPECTFULLY SUBMITTED this, the 1<sup>st</sup> day of December, 2010.

JANICE C. COOPER, Appellant  
By and Through Her Attorney,

  
\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I, Rick D. Patt, certify that I have this date served by first class mail, postage prepaid, a true and correct copy of the above and foregoing **Brief of Appellant** on the following:

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*Attorney for Appellee Carolyn C. Guido, Ind. and as Executrix of the  
Estate of J. Wesley Cooper, Deceased*

Honorable E. Vincent Davis  
CHANCERY COURT JUDGE  
P.O. Box 10  
Fayette, MS 39069

This the 12<sup>th</sup> day of December, 2010.



\_\_\_\_\_  
Rick D. Patt

ROSIE KAISER HAILS, CVR

SHEET 1 PAGE 1

IN THE CHANCERY COURT OF ADAMS COUNTY, MISSISSIPPI  
IN THE MATTER OF THE LAST WILL  
AND TESTAMENT AND ESTATE OF J.  
WESLEY COOPER, DECEASED

CAUSE #2008-585

DEPONENT: JANICE COOPER

DATE: FEBRUARY 11, 2010

LOCATION: GWIN, LEWIS & PUNCHES, LLP  
319 MARKET STREET  
NATCHEZ, MISSISSIPPI 39120

REPORTED BY: ROSIE KAISER HAILS, CVR  
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# ROSIE KAISER HAILS, CVR

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## 1 PROCEEDINGS

2 (This deposition is taken pursuant to the  
3 Mississippi Rules of Civil Procedure. All objections are  
4 reserved until trial except as to the form of the  
5 question. Reading and signing of the deposition was not  
6 waived.)

7 JANICE COOPER

8 was called as a witness and, having been duly sworn,  
9 was examined and testified as follows:

10 CROSS-EXAMINATION

11 BY MR. LEWIS:

12 Q Would you state your name please.

13 A Janice Cooper.

14 Q Okay, Mrs. Cooper. I'm Bruce Lewis and I  
15 representing Mrs. Guido.

16 Have you ever given a deposition before?

17 A Yes.

18 Q In what type of case?

19 A Oh, it was a corporate case that I was called as a  
20 witness to.

21 Q Nothing that you were personally involved in; you  
22 were only a witness?

23 A Uh-huh (affirmative).

24 Q And if you would answer "yes" or "no," that would  
25 help our court reporter.

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## I N D E X

### EXAMINATION:

CROSS-EXAMINATION BY MR. LEWIS 4

REDIRECT EXAMINATION BY MR. O'BEIRNE 47

RECROSS-EXAMINATION BY MR. LEWIS 57

### EXHIBIT NUMBER:

A - Antenuptial Agreement 19

PAGE:

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1 A Excuse me. Right. Right.

2 Q Would you mind telling us your age?

3 A No, I don't mind at all. 63.

4 Q You were married to Mr. Wesley Cooper on February  
5 27, 1998?

6 A Right.

7 Q How long had you known him prior to the marriage?

8 A I met him in 1984 when I went into the shop to buy  
9 one of his books.

10 Q Okay. And were you a tourist to Natchez at that  
11 time?

12 A Yes. But I had a history of coming here to visit  
13 relatives in the summers.

14 Q Oh, okay. What relatives do you have here in  
15 Natchez?

16 A I don't anymore.

17 Q Who were your relatives then?

18 A Lois and Drew Calvert.

19 Q So you met Mr. Cooper in 1984 --

20 A Uh-huh (affirmative).

21 Q -- and did you regularly see him between 1984 and  
22 1998 or how did y'all happen to come to know each other well  
23 enough to decide to get married?

24 A After I met him in the shop he started calling me in  
25 Texas. And for, oh goodness, I don't know how many years, he

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1 continued to call and I really was -- I mean I still called  
2 him Mr. Cooper all those years when he would call. I just  
3 thought at the time that he was a very nice older man and knew  
4 I loved Natchez and he would call and that was pretty much  
5 what we talked about.  
6 Then I don't know exactly when it was but he  
7 contacted me and told me he wanted to write a book on a small  
8 town south of Dallas: Waxahachie, Texas; and if he came to  
9 Texas, since I was familiar with Waxahachie, would I drive him  
10 there and so forth and so on. And so that was the first time  
11 he ever came to Texas.  
12 Q Okay. How long did you date -- if I can use that  
13 word -- before y'all decided to get married?  
14 A Well, that's kind of hard to answer simply because  
15 when he was making those trips to Texas, on the last one he  
16 made, he had mentioned -- Well, first of all he said, "What  
17 would you say if I told you I was in love with you?"  
18 And I said, "It would scare me to death."  
19 Q Do you know about what year that was?  
20 A I think it was --  
21 Q Just your best --  
22 A -- and I'm really not sure about this -- '90/'91,  
23 somewhere in there.  
24 He had talked about this before, but he mentioned  
25 about getting a divorce. And I was afraid. I mean I knew

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1 that there had been difficulties. I mean he had made me aware  
2 of that. But I felt like perhaps he was getting a divorce  
3 because of me, and that's when I told him that he needed to go  
4 back to Natchez.  
5 It was actually five years that we didn't have any  
6 contact. Well, he sent me a couple of cards, but I didn't  
7 respond to them and there were five years that passed that we  
8 had no contact.  
9 Q So some time around 1996 or 1997 the relationship  
10 was reignited, and at that time he was divorced?  
11 A Yes.  
12 Q And I see looking at this Antenuptial Agreement that  
13 you were previously married to Edward J. Bass, some type of  
14 medical doctor?  
15 A Yes.  
16 Q And was that your only other marriage?  
17 A Yes.  
18 Q And how long were you married to Dr. Bass?  
19 A I think it was about three years.  
20 Q Okay.  
21 A This has been years and years and years ago.  
22 Q When did you divorce from Dr. Bass?  
23 A In about '72.  
24 Q And you had no children of that marriage?  
25 A No.

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1 Q Do you have any children at all?  
2 A No.  
3 Q You've never adopted children?  
4 A No.  
5 Q When did you and Mr. Cooper decide to get married?  
6 And put it in the context of how long before February 27,  
7 1998.  
8 A Oh, I think probably about three months prior to  
9 that.  
10 Q And at that time you had separate property in Texas?  
11 A Uh-huh (affirmative). Yes. Sorry.  
12 Q And you knew Mr. Cooper had separate property here  
13 in Mississippi?  
14 A Yes.  
15 Q How did you arrive at the date of February 27, 1998,  
16 to become married?  
17 A That was when Wesley told me he would like for me to  
18 come to Natchez and for us to be married in St. Francisville  
19 and that was the date.  
20 Q Where were you married in St. Francisville?  
21 A At the First United Methodist Church.  
22 Q And why did you marry there?  
23 A Well, because it's an antebellum church and it was  
24 the church Wesley chose. I was not here, so he took care of  
25 all that. But it was a lovely little antebellum church.

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1 Q When y'all decided to get married were you both here  
2 in Natchez or were you talking over the telephone?  
3 A Talking over the phone and sometimes we would meet  
4 like halfway.  
5 Q Prior to February 27, 1998, when was the last trip  
6 you made to Natchez?  
7 A In 1986.  
8 Q So you had not been to Natchez since 1986?  
9 A Uh-huh (affirmative).  
10 Q Twelve years?  
11 A Uh-huh (affirmative). My sister and I brought her  
12 children to Natchez. They had never been.  
13 Q And had Mr. Cooper been to Texas to visit with you?  
14 A No. No.  
15 Q So the only times that y'all ever met to date and to  
16 get to know each other better was when you would meet halfway  
17 between Texas and Mississippi?  
18 A Right. But that was much later.  
19 Q That's what I'm talking about.  
20 A Yes.  
21 Q And so that I'm clear, on February 27, 1998, you  
22 came to Natchez?  
23 A Uh-huh (affirmative).  
24 Q And the last trip that you made to Natchez prior to  
25 that was 1986?

# ROSIE KAISER HAILS, CVR

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1 A Right. And I did not see Wesley when I was here in  
2 '86. He was in Florida.  
3 Q Okay. Let's bring ourselves down now to the day of  
4 the wedding and the Antenuptial Agreement that's in front of  
5 you.  
6 A Uh-huh (affirmative).  
7 Q How did you get from Texas to Natchez that day?  
8 A I drove.  
9 Q And did you drive non stop?  
10 A Well, other than maybe a coke and ladies' room stop.  
11 But other than that, yes.  
12 Q From Dallas to Natchez?  
13 A Actually from Arlington.  
14 Q Arlington?  
15 A Yes.  
16 Q And the reason I ask that is because I was looking  
17 at your pleadings and in page two of your pleadings dealing  
18 with this Antenuptial Agreement --  
19 A Uh-huh (affirmative).  
20 Q -- you made the statement that she left her home --  
21 talking about you --  
22 A Uh-huh (affirmative).  
23 Q -- in Texas to come to Natchez, Mississippi, on  
24 February 26th the day before the wedding?  
25 A Right. That afternoon I got here.

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1 Q Where did you spend the night of February 26th?  
2 A I spent the night at the Ramada Inn --  
3 Q In Natchez?  
4 A -- and Wesley was living with his mother and so he  
5 stayed with her. But, yes, the Ramada Inn that we used to  
6 have here.  
7 Q So you actually got in Natchez on the 26th of  
8 February?  
9 A Right.  
10 Q What time of the day or evening did you get to  
11 Natchez on the 26th, if you recall?  
12 A All I can tell you is it was still light, sometime  
13 in the afternoon, and it was that day y'all had that terrible  
14 storm here.  
15 Q The windstorm?  
16 A Yeah. Because Wesley was in the shop and he said he  
17 stood there watching roofs fly by.  
18 Q And when you arrived in Natchez on the afternoon of  
19 the 26th, did you talk with Wesley?  
20 A Oh, yes.  
21 Q Did you have dinner with him that evening?  
22 A Um, I believe he -- gosh, I'm trying to think. Yes,  
23 I did have dinner with him.  
24 Q Was it just the two of you to your memory?  
25 A Uh-huh (affirmative).

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1 Q Yes?  
2 A Yes.  
3 Q Thank you.  
4 And did you travel from Texas alone?  
5 A Yes.  
6 Q Who was present at your wedding other than you and  
7 Mr. Cooper?  
8 A Dr. Ray Brown; his wife, Jill; Harry Allen; Jim  
9 Savoy. They're both Episcopal priests. Hugh Matthews; my  
10 sister Linda Richardson; and her husband, Philip; Bill Grady,  
11 a friend of Wesley's from New Orleans. I believe that's all.  
12 Q At that time where were your sister and her husband  
13 living?  
14 A In Dallas.  
15 Q And did they travel with you on the 26th?  
16 A No. They drove in the morning of the 27th.  
17 Q They arrived in Natchez or St. Francisville?  
18 A No, in Natchez.  
19 Q And so you saw them that morning?  
20 A Yes.  
21 Q And tell me what you did that day from when you woke  
22 up until when you got married.  
23 A (Pause) I'm trying to think of what I did. Of  
24 course I would have had breakfast.  
25 Q Did you have breakfast alone?

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1 A I believe I did, yes. And then I showered and  
2 dressed and then later that morning Wesley came to pick me up  
3 and we went by the shop. And then he took me to Debbie  
4 Blackwell's office.  
5 Q Did he tell you why he was taking you to Debbie  
6 Blackwell's office?  
7 A Oh, yes. Yes.  
8 Q And you knew as you went to the office the purpose  
9 of it was to enter into an Antenuptial Agreement?  
10 A Right.  
11 Q Let me backup on that just a little bit before we  
12 get to that day.  
13 A Sure.  
14 Q I'm sorry for skipping around.  
15 A No. That's okay.  
16 Q When did you make your application for a marriage  
17 license?  
18 A Okay, Wesley picked up the license --  
19 Q The application?  
20 A The application, yes. And on the application it  
21 states that that was done on the 12th of February.  
22 Q Did he mail that to you?  
23 A No.  
24 Q Did you have to have any medical testing, blood  
25 testing or anything?

# ROSIE KAISER HAILS, CVR

SHEET 5 PAGE 14

1 A No.  
2 Q Did you sign the marriage license application on the  
3 27th or do you remember when?  
4 A On the 27th.  
5 Q That afternoon before the wedding?  
6 A Right.  
7 Q Did you or Wesley or do you know how it got back to  
8 the circuit clerk's office here in Natchez?  
9 A (No response.)  
10 Q Or did you take it to the wedding with you?  
11 MR. O'BEIRNE: Excuse me just a minute. It was  
12 taken to the clerk of court's office in Vidalia.  
13 MR. LEWIS: Okay.  
14 MR. O'BEIRNE: It's a Louisiana license.  
15 MR. LEWIS: Okay.  
16 BY MR. LEWIS:  
17 Q You made the application in Louisiana then?  
18 A Right.  
19 Q Did you or did Mr. Cooper or did both of you take  
20 the license back to the clerk of court in Vidalia before the  
21 wedding?  
22 A No because the minister had to sign it.  
23 Q The bottom of it had to be signed by the minister?  
24 A Right.  
25 Q That was already on that form. Do you remember

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1 Q Did you take some on the 27th and 28th to your  
2 recollection?  
3 A Yes.  
4 Q How long had you been taking that medication?  
5 A Oh, goodness, for about ten years.  
6 Q That medication didn't have any type of impact on  
7 your mental ability to understand what you were doing, did it?  
8 A No. As long as you take.  
9 Q And you're not sitting here today trying to say you  
10 didn't understand the documents that you were signing on the  
11 27th and 28th to get married?  
12 A Well, the documents I was signing to get married or  
13 the prenup?  
14 Q Your application to get married.  
15 A Uh-huh (affirmative).  
16 Q Did you understand when you got married that you  
17 were entering into a contract of marriage?  
18 A Yes.  
19 MR. O'BEIRNE: Let me enter this objection if I may.  
20 This being that these things are the same date, a contract of  
21 marriage separate and apart from the Antenuptial Agreement?  
22 MR. LEWIS: I'm asking her if she understood that  
23 she was entering into a contract of marriage on the 27th of  
24 February.  
25 MR. O'BEIRNE: Okay.

PAGE 15

1 seeing that?  
2 A The ministers?  
3 Q The application - did it have a place on the bottom  
4 for the minister to fill out --  
5 A Yes.  
6 Q -- that he conducted the ceremony?  
7 A Yes. The time and the date and the minister's name.  
8 Q And when you signed that application on the 27th,  
9 you understood what you were signing, what you were applying  
10 to do to get married?  
11 A Yes.  
12 Q And let me just ask you, if I could: At that time  
13 on February 27th when you signed these documents were you  
14 under any type of prescription medication or medical  
15 treatment?  
16 A Uh-huh (affirmative). I have to take thyroid  
17 medication.  
18 Q And this was in 1998?  
19 A Uh-huh (affirmative).  
20 Q Any other medication that you were taking then?  
21 A I'm trying to think back to '98.  
22 Possibly like a decongestant.  
23 Q I don't want you to guess. I want you to just tell  
24 me what you know you were taking.  
25 A Okay. Thyroid is the only one I can be sure about.

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1 THE DEPOSEE: A contract of marriage -- I'm sorry;  
2 I'm not familiar with that.  
3 BY MR. LEWIS:  
4 Q When you went to the marriage ceremony, I'm assuming  
5 you had vows?  
6 A Uh-huh (affirmative).  
7 Q You made vows to Mr. Cooper?  
8 A Right.  
9 Q He made vows to you?  
10 A Right.  
11 Q You made promises to him; he made promises to you.  
12 A Uh-huh (affirmative).  
13 Q And you agreed to marry him based on those promises?  
14 A Uh-huh (affirmative).  
15 Q You accepted his promises and he accepted your  
16 promises, and someone memorialized that by saying, "I now  
17 pronounce you man and wife."  
18 A Uh-huh (affirmative).  
19 Q And you understand that that can be a contract of  
20 marriage?  
21 A Yes.  
22 Q You understand that?  
23 A Yes. Okay.  
24 Q And you understood you were doing that on the 27th  
25 of February?

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SHEET 6 PAGE 18

1 A Yes.  
2 Q When Mr. Cooper picked you up on the morning of the  
3 27th you went together with him to Debbie Blackwell's office?  
4 A That afternoon, yes.  
5 Q When was it?  
6 A That afternoon.  
7 Q Was it right after lunch?  
8 A Yes.  
9 Q And did you and Mr. Cooper have lunch together?  
10 A I don't even recall whether we did or not. You  
11 know, everything was such a whirlwind: I'm thinking about the  
12 wedding and I'm not dressed for the wedding and time kept  
13 getting closer and closer. So I really don't recall if we had  
14 lunch together that day.  
15 Q Do you recall when you first saw Mr. Cooper that  
16 day? Before noon or after noon?  
17 A I don't recall.  
18 Q Then when you got to Debbie Blackwell's office tell  
19 me what happened.  
20 A Well, I was presented with this agreement  
21 (indicating).  
22 Q That has on the front page of it Exhibit A?  
23 A Uh-huh (affirmative).  
24 MR. LEWIS: We're going to mark that as Exhibit A to  
25 your testimony.

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1 (Document entitled Antenuptial Agreement is marked  
2 as Exhibit A for identification.)  
3 BY MR. LEWIS:  
4 Q Go ahead. You said you were presented with that  
5 document when you arrived at Debbie Blackwell's office with  
6 Mr. Cooper.  
7 A Right. And Donald Ogden was the lawyer who showed  
8 up for me. Now I don't know -- I mean I didn't contact him.  
9 Q You didn't know any lawyers --  
10 A No.  
11 Q -- in Natchez?  
12 A I didn't at all.  
13 Q He introduced himself to you as Donald Ogden, an  
14 attorney here in Natchez, Mississippi, to represent you?  
15 A Right.  
16 Q Who else was present?  
17 A There were, I believe, two secretaries and Debbie  
18 Blackwell.  
19 Q All right. Then take me through what happened after  
20 everyone got there.  
21 A Well, in order to do that I have to tell you it was  
22 a very rushed situation because as I mentioned earlier I was  
23 not dressed for the wedding. I had to dress. We had to drive  
24 to St. Francisville and I had very little time. I was told to  
25 initial where my first husband was filled in in this blank

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1 (indicating); and where Donald Ogden's name was filled in,  
2 they told me to initial that and then sign the signature page.  
3 And I mean I glanced at it but this is what? Eleven  
4 pages?  
5 Q Let me ask you if that is your signature on Exhibit  
6 A back on page 8 of the document.  
7 A Let me see, (indicating) yes. It is my signature.  
8 Q And the other two witnesses out there you think were  
9 the two ladies that were in the office there?  
10 A Yes.  
11 Q Is that Mr. Cooper's signature? Did you see him  
12 sign that as well?  
13 A (No response.)  
14 Q Or do you recall?  
15 A I don't know if he had already signed it or if he  
16 signed it at that time and was just taking me to sign it.  
17 Q You just don't recall either way?  
18 A No, I really don't. It was such a -- Wesley was  
19 actually running to Debbie's office. I didn't know he could  
20 move that fast.  
21 Q Let's just sort of flip through this if you would.  
22 A Sure.  
23 Q On the first page I see in the third line someone  
24 changed Janice S. Cooper to Janice C. Cooper. Do you know why  
25 that change was made?

PAGE 21

1 A No, I do not because prior to marrying Wesley I had  
2 no middle name. My name was just Janice Cooper.  
3 Q Prior to marrying Mr. Cooper you had been married to  
4 Dr. Bass. What was your maiden name?  
5 A Cooper.  
6 Q Okay. So the Janice S. or Janice C. both of them  
7 are wrong?  
8 A (Deponent nods head in the affirmative.) That's  
9 correct.  
10 Q Did you see who made that change on the third line?  
11 A No, I did not.  
12 Q Did you see someone write Edward J. Bass, M.D. into  
13 that blank?  
14 A I may have because I had to tell them the name.  
15 Q They had to ask you what your former husband's name  
16 was?  
17 A Yes.  
18 Q And you knew they were asking you that because it  
19 was put into this document?  
20 A Uh-huh (affirmative).  
21 Q Is that a "yes"?  
22 A Yes.  
23 Q And I see some initials right above M.D.  
24 A Uh-huh (affirmative).  
25 Q Did you actually place your initials there?

# ROSIE KAISER HAILS, CVR

SHEET 7 PAGE 22

1 A Yes, I did. I was told that --  
 2 Q Okay. And you did that --  
 3 MR. O'BEIRNE: She's still answering.  
 4 (To the deponent) You were told what?  
 5 THE DEPONENT: I was told by I guess it was Debbie  
 6 that I needed to initial my first husband's name.  
 7 BY MR. LEWIS:  
 8 Q And you're guessing at that?  
 9 A Well, there was someone.  
 10 Q Okay. It could have been Mr. Ogden was the one that  
 11 told you that?  
 12 A Right. It could have been one of the secretaries.  
 13 Q All right. You just don't recall who.  
 14 A No, I do not.  
 15 Q But you knew you should initial that to indicate  
 16 that that was a correct insertion into this document?  
 17 A Yes.  
 18 Q And then we go to the second page, and did you see  
 19 someone write Donald G. Ogden's name into that blank in that  
 20 paragraph?  
 21 A I don't recall. I really don't.  
 22 Q Are those your handwritten initials?  
 23 A Yes, they are.  
 24 Q And you wrote those initials?  
 25 A Yes.

PAGE 23

1 Q And you wrote those to acknowledge that Mr. Donald  
 2 Ogden was the attorney that was there to represent you; is  
 3 that correct?  
 4 A Yes.  
 5 Q Do you recall on page 8 seeing the witnesses sign  
 6 beside your name?  
 7 A No, I don't really recall that.  
 8 Q You just don't have any memory of that.  
 9 A No.  
 10 Q And then on page 9 the second acknowledgement there,  
 11 it again struck through Janice S. Cooper and put Janice C.  
 12 Cooper and you don't have any recollection of that or why that  
 13 was done either?  
 14 A No.  
 15 Q Let me talk with you now, if I could, about the very  
 16 last page of the Antenuptial Agreement: page 11.  
 17 A Uh-huh (affirmative).  
 18 Q I see handwritten in there "Credit Card Debt of  
 19 \$7,000."  
 20 A Yes.  
 21 Q Do you know where that information came from?  
 22 A I had talked to Wesley about the fact that I had  
 23 some indebtedness, so it came from me. But I don't know whose  
 24 printing this is.  
 25 Q Okay. But you would have given them that

PAGE 24

1 information that day; is that correct?  
 2 A Uh-huh (affirmative). Yes.  
 3 Q And that would have been true information to put on  
 4 this Antenuptial Agreement that you gave them that day?  
 5 A Uh-huh (affirmative).  
 6 Q Yes?  
 7 A Yes.  
 8 Q And did you understand the purpose of putting that  
 9 debt on there was to make a full disclosure of your debts and  
 10 liabilities?  
 11 A Uh-huh (affirmative).  
 12 MR. O'BEIRNE: You've got to say "yes" and "no"  
 13 where the court reporter can pick it up.  
 14 THE DEPONENT: Yes.  
 15 BY MR. LEWIS:  
 16 Q Right.  
 17 A I had told Wesley about it before we ever went.  
 18 Q Before you ever went to the office?  
 19 A Yes.  
 20 Q Do you remember when you told him about your debts?  
 21 A Oh, I'm sure it was a couple of months before we  
 22 were married.  
 23 Q Okay. Did you also tell him about your assets  
 24 before you were married?  
 25 A I don't think we discussed that. I can't remember

PAGE 25

1 in conversation. I mean he knew I had a house in Texas. I  
 2 don't think he would have known about the jewelry and the  
 3 furs.  
 4 Q You don't recall discussing assets with him?  
 5 A No.  
 6 Q Well, let me ask you this. You've told us that on  
 7 the day that you went to Debbie Blackwell's office you told  
 8 them about your credit card debt. Was that the only liability  
 9 you had at that time?  
 10 A Yes.  
 11 Q And was it about \$7,000 roughly?  
 12 A Right.  
 13 Q And so they actually added that while you were in  
 14 the meeting with them that day; is that correct?  
 15 A I believe so.  
 16 Q Apparently the assets on this document were typed on  
 17 to this document. They were not handwritten on there.  
 18 A Yes, it appears.  
 19 Q Do you have any idea how they would have gotten that  
 20 information?  
 21 A From me.  
 22 Q From you?  
 23 A Uh-huh (affirmative).  
 24 Q Okay.  
 25 MR. O'BEIRNE: Let me interrupt and object on that

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SHEET 8 PAGE 26

1 question. How who got information?  
 2 MR. LEWIS: Whoever typed this document.  
 3 BY MR. LEWIS:  
 4 Q They would have gotten that information from you?  
 5 A Yes.  
 6 Q Do you recall who and when you gave this information  
 7 to?  
 8 A No, I don't.  
 9 Q But it was prior to the day of February 27, 1998?  
 10 A Right.  
 11 Q Did you give it to someone at Debbie Blackwell's  
 12 office?  
 13 A I had no contact with Debbie Blackwell prior to the  
 14 day --  
 15 Q -- that you went over there?  
 16 A Right.  
 17 Q But you don't know who you gave that information to  
 18 prior to February 27, 1998, so that it could be incorporated  
 19 into this agreement?  
 20 A It may have been that Wesley told me that I was  
 21 going to have to do this and I may have given him the  
 22 information over the phone.  
 23 Q Do you know when that may have happened? That's  
 24 basically what I'm trying to get to.  
 25 A No, I don't.

PAGE 27

1 Q But it was prior to the 27th of February, wasn't it?  
 2 A I don't know.  
 3 Q Well, you didn't talk to him on the phone that  
 4 morning and tell him this information, did you?  
 5 A I don't recall. I really don't.  
 6 Q But it obviously had somehow gotten to the lawyer  
 7 prior to the meeting when you inserted the \$7,000. You would  
 8 agree with that, wouldn't you?  
 9 A Yes.  
 10 Q And you would have had to have given that  
 11 information to someone at sometime prior to that meeting. You  
 12 would agree with that?  
 13 A I really do not recall. I mean this is correct.  
 14 Q You're talking about page 11 is correct?  
 15 A The information, yes. But when I gave it to Wesley,  
 16 I don't recall.  
 17 Q Okay. You said the information on page 11 was  
 18 correct.  
 19 A Uh-huh (affirmative).  
 20 Q And --  
 21 MR. O'BEIRNE: You've got to say "yes" or "no."  
 22 She's got to take this down.  
 23 THE DEPONENT: Yes.  
 24 BY MR. LEWIS:  
 25 Q Okay. And when you were in Debbie Blackwell's

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1 office, did you tell her and did you tell Mr. Ogden that this  
 2 information was correct?  
 3 A I don't recall.  
 4 Q Did you tell them then that there were some  
 5 liabilities that needed to be put on here: the \$7,000?  
 6 A Yes. Right. I did.  
 7 Q As you looked at page 11 that day, did you own a  
 8 townhouse in Arlington, Texas, that was valued at about  
 9 \$55,000?  
 10 A Yes.  
 11 Q And where did you get that value from?  
 12 A The comps.  
 13 Q The what?  
 14 A The comps in the area.  
 15 Q The comparable houses in that area?  
 16 A Uh-huh (affirmative).  
 17 Q And did you have an interest in an apartment complex  
 18 in Fort Walton, Texas, on that day that was valued at \$10,000?  
 19 A Yes.  
 20 Q And where did you get that information from to give  
 21 to whomever you gave it to?  
 22 A Well, it was a joint venture, and monthly I received  
 23 an update.  
 24 Q And did it say on those monthly updates about how  
 25 much the interest is worth?

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1 A Yes, it did.  
 2 Q What day of the month do you get those updates on?  
 3 A Oh, I don't know. I mean it's long gone.  
 4 Q I understand that. Was it the first of the month  
 5 that you would get a statement from them every month?  
 6 A I'm not sure when I received it.  
 7 Q But that's where that \$10,000 number came from, a  
 8 number that you had taken off of the prior month's statement;  
 9 is that correct?  
 10 A That's correct.  
 11 Q And you don't recall how that \$10,000 number got to  
 12 Debbie Blackwell's office?  
 13 A No, I do not.  
 14 Q At the time this was executed did you own some furs,  
 15 jewelry, and other miscellaneous personal property?  
 16 A Yes.  
 17 Q And did you give someone the value of \$75,000?  
 18 A Yes.  
 19 Q And how did you come up with that value?  
 20 A I had appraisals on some of the jewelry. I had an  
 21 appraised value on a mink coat and a beaver stroller and I  
 22 added it all together.  
 23 Q And you felt like at that time that that was a fair  
 24 value for those items?  
 25 A Yes.

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SHEET 9 PAGE 30

1 Q The joint venture through Vantage Company in Dallas,  
2 Texas, the other item that's on page 11 of Exhibit A, refers  
3 to an office building that's in Houston, Texas. Did you own  
4 an interest in that on February 27, 1998?  
5 A At that time I did have an interest in it, yes.  
6 Q You just had no idea of what the value of it was?  
7 A No, I did not.  
8 Q Did you make an effort to try to determine that  
9 value prior to February 27, 1998?  
10 A No.  
11 Q Did you call anyone?  
12 A No.  
13 Q Also on that page there's a place to put an income  
14 down and there's no income reflected there. Did you have  
15 income on February 27, 1998?  
16 A Not on February 27th because Wesley wanted me to  
17 resign from the company I was working for in Fort Worth, so I  
18 did that.  
19 Q So the fact that there's no income reflected on  
20 Exhibit A on page 11, it was accurate and true at that time?  
21 A Yes.  
22 Q Let's go back to page 10. Do you recall seeing  
23 Wesley's assets, liabilities, and income attached to the  
24 Antenuptial Agreement?  
25 A Yes.

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1 MR. O'BEIRNE: I'm sorry. Could you repeat that  
2 last question? I was reading and didn't hear it.  
3 BY MR. LEWIS:  
4 Q Do you recall seeing Exhibit A page 10 of the  
5 Antenuptial Agreement that lists Wesley's assets, liabilities,  
6 and income?  
7 A Yes, I saw it at Debbie's office.  
8 Q Were you aware at that time that he had the Coca-  
9 Cola stock? After you saw it - I'm saying.  
10 A Yes.  
11 Q I'll just ask you for all of this. After you saw  
12 this you were aware of all these assets that he had listed on  
13 this Exhibit A?  
14 A Yes.  
15 Q And you were aware that he had a \$40,000 liability  
16 to United Mississippi Bank?  
17 A Yes.  
18 Q And you understood and were aware that he had income  
19 of about \$20,000 a year at the time y'all got married?  
20 A Yes.  
21 Q And all of that was disclosed to you that day to  
22 where you became aware of it?  
23 A Yes.  
24 Q Let me direct your attention to page 3 of the  
25 Antenuptial Agreement, if I could, Mrs. Cooper. In paragraph

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1 2.4 in particular it basically says that this agreement  
2 doesn't prevent either of you from giving away your property  
3 to anyone you wanted to or to each other for that matter. And  
4 I want to ask you, going back to your property on page 11, did  
5 you give away any interest in your assets listed there thereon  
6 to Mr. Cooper?  
7 A No.  
8 Q And did you sell any of those assets during the  
9 marriage?  
10 A Yes. I sold my townhouse.  
11 Q Okay. And what did you sell it for? Do you recall?  
12 A Forty-four thousand.  
13 Q How about your apartment complex in Fort Walton?  
14 A Well, unfortunately that was when the economy was  
15 not that good and it ended up biting the dust, shall we say.  
16 The joint venture on it, it was not profitable.  
17 Q You didn't get any money out of it. And do you no  
18 longer own that interest in the apartment complex?  
19 A No, I don't.  
20 Q And the joint venture - you don't own any interest  
21 in that anymore?  
22 A No.  
23 Q Okay. And going to page 10, do you know what Mr.  
24 Cooper may have done with the Coca-Cola stock?  
25 A No, I don't.

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1 Q How about the building on the corner of Main and  
2 Commerce Streets here in Natchez, the second item?  
3 A Yes. After we were married that was sold, the  
4 building and the lot.  
5 Q Do you know what happened to the money?  
6 A No, I don't.  
7 Q Let me back up just a second. These assets that are  
8 listed on page 10, did Mr. Cooper deed to you in the course of  
9 your marriage an interest in some of these assets?  
10 A Yes.  
11 Q And when those were sold did you get some of the  
12 money?  
13 A No.  
14 Q You did not?  
15 A No.  
16 Q So let's go back then to the second item. It was  
17 sold during the marriage; you don't know what happened to the  
18 money.  
19 A No.  
20 Q The building and lot at the corner of Main and Canal  
21 Streets - do you know what happened to that building? That's  
22 the old Molasses Flats building.  
23 A Right. The first payment --  
24 Q It was sold first; right?  
25 A I'm sorry. Yes.

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SHEET 10 PAGE 34

1 Q Okay. What happened to the money? Did you have an  
2 interest in it when it was sold?  
3 A Yes. Wesley had deeded me half of Molasses Flats.  
4 Q And under 2.4 he gave that to you, didn't he?  
5 A Yes.  
6 Q You didn't pay anything for it?  
7 A No. No, I did not.  
8 Q So when it was sold you got half of the money?  
9 A Yes.  
10 Q And did you pay any of the liabilities on page 10:  
11 the \$40,000 from United Mississippi Bank?  
12 A No.  
13 Q And after 1998 do you know what happened to the  
14 inventory that was at Molasses Flats?  
15 A No, I don't.  
16 Q Did Mr. Cooper keep operating the business after  
17 y'all married?  
18 A Oh, yes. We operated it for some time.  
19 Q And you sold some of this inventory that is shown on  
20 Exhibit A?  
21 A I'm sorry. I didn't understand.  
22 Q The inventory of Molasses Flats - while y'all  
23 operated it you sold some of the inventory?  
24 A Yes.  
25 Q Okay. Do you recall how long the meeting may have

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1 for a lay person that certainly wasn't enough time to  
2 thoroughly understand this whole document. And with the fact  
3 that we needed to be in St. Francisville that afternoon, I was  
4 terribly rushed.  
5 Q I understand you were rushed. Was there any duress,  
6 any threats made to you if you didn't sign this?  
7 A Oh, no. No.  
8 Q How old were you when you married Dr. Bass?  
9 A Twenty-one.  
10 Q And how old was he?  
11 A Same age.  
12 Q So y'all were very young. Was he still in medical  
13 school or had he even started?  
14 A No. He was at State studying aerospace engineering.  
15 Q Eddie Bass?  
16 A Yes.  
17 MR. LEWIS: Off the record just a second.  
18 (The deposition continues after a short  
19 conversation.)  
20 MR. LEWIS: Back on the record.  
21 BY MR. LEWIS:  
22 Q So y'all didn't sign a prenuptial agreement then?  
23 A No. He had one semester left in school.  
24 Q You said something earlier about Wesley told you  
25 that you were going to have to sign this. When did he tell

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1 lasted at Ms. Blackwell's office that day?  
2 A Max I'd say 15 minutes.  
3 Q And you went over all of these assets and  
4 liabilities and you made some changes to the exhibit?  
5 A You mean where I filled in the parts?  
6 Q You filled in the blanks?  
7 A Right. Now I didn't fill in the blanks.  
8 Q You initialed them?  
9 A Right.  
10 Q And then you told them about the credit card debt so  
11 that everything in here would be true and correct?  
12 A Right. Yes.  
13 Q After y'all were married did you buy 612 Washington  
14 Street?  
15 A Yes.  
16 Q Do you know where that money came from?  
17 A I believe Wesley told me he sold Coke stock in order  
18 to buy the house.  
19 Q I know that you told me that you were in a hurry  
20 that afternoon. I'm going through your pleadings and you may  
21 not know the answers to these because some of them are legal  
22 issues. But you've alleged that you were under duress.  
23 Do you understand what I'm saying?  
24 A Well, I was rushed to Debbie Blackwell's office by  
25 Wesley, and as you can tell from the 15 minutes that wasn't --

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1 you that?  
2 A He didn't say, "You're going to have to sign it."  
3 Q What did he say then? I'm sorry. I didn't mean to  
4 characterize your testimony.  
5 A It was "Here - you need to initial this and this and  
6 sign."  
7 Q I'm talking about before y'all got there that day.  
8 A Oh, okay.  
9 Q As y'all were getting ready to go the office, he  
10 told you that the purpose of going up there was to sign an  
11 Antenuptial Agreement?  
12 A Yes.  
13 Q And did you protest that at any time?  
14 A No.  
15 Q Sometime prior to your going up there, you had given  
16 someone this information to put on Exhibit B, but you just  
17 don't recall who?  
18 A Right. If it was prior to me coming to Natchez on  
19 the 26th, then the only person I could have given it to would  
20 have been Wesley.  
21 Q And the reason you gave it to him was so that he  
22 could put it into an Antenuptial Agreement?  
23 A Yes.  
24 Q Did you ever talk to Mr. Ogden at the meeting? Did  
25 you ever have any discussions with him or did he say anything?

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SHEET 11 PAGE 38

1 A I'm sure that I probably asked him some questions.  
 2 Q Do you recall any particular questions that you may  
 3 have asked him?  
 4 A No, I don't.  
 5 Q Did he answer the questions for you?  
 6 A Yes.  
 7 Q Did Wesley ask Debbie Blackwell any questions to  
 8 your recollection?  
 9 A Not to my recollection.  
 10 Q I'm going to ask you another question about some  
 11 legal pleadings where you have alleged that you were the  
 12 victim of fraud.  
 13 A (The deponent gives no response.)  
 14 Q You have a strange look on your face. Did you  
 15 realize that you had made that allegation?  
 16 A Of fraud?  
 17 Q That you were defrauded.  
 18 A By whom?  
 19 Q I don't know. I'm asking you. Were you defrauded  
 20 by anyone to your knowledge?  
 21 A Yes. I was defrauded by Carolyn Guido.  
 22 Q Okay. How about by Mr. Cooper, Wesley Cooper?  
 23 A Well, it is my understanding -- and I hope I'm  
 24 answering what you're asking --  
 25 Q I'm talking about as you approached your marriage.

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1 I'm not talking about anything that happened after your  
 2 marriage. Okay?  
 3 A Oh.  
 4 Q We're only here for the Antenuptial Agreement. Were  
 5 you the victim of fraud to entering into this Antenuptial  
 6 Agreement?  
 7 A I definitely was put in a bad situation by being  
 8 rushed down there two and a half hours before we were going to  
 9 be married.  
 10 Q Let me ask it a different way. I've heard that you  
 11 were in a hurry. I'm interested in now some other allegations  
 12 like fraud and concealment. Was anything hidden from you in  
 13 this Antenuptial Agreement as far as assets or liabilities or  
 14 income?  
 15 A I have been told that Wesley made a statement that  
 16 he had money that I knew nothing about.  
 17 Q Do you have any evidence of that?  
 18 A Not except the gentleman it was made to.  
 19 Q And you lived with Mr. Cooper for how many years?  
 20 A Ten.  
 21 Q And did you ever ask him if he had other money  
 22 somewhere?  
 23 A No, I did not.  
 24 Q And other than what someone has said to you, you  
 25 don't have any evidence of that?

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1 A No.  
 2 Q Now tell me who said that to you.  
 3 A Joe Ernst.  
 4 Q Who is Joe Ernst?  
 5 A He was friend of Wesley's. In fact he was going to  
 6 visit Wesley at Carolyn's up until the time of Wesley's death.  
 7 Q Did he tell you that Wesley had money on February  
 8 27, 1998, or did he tell you that sometime later on?  
 9 A Sometime later on.  
 10 Q Okay. Do you recall about when that was that Joe  
 11 said Wesley had some money that you didn't know about?  
 12 A It's been probably two or three years ago.  
 13 Q This is 2010. So sometime in 2007 or 2008 he made  
 14 that statement to you?  
 15 A Uh-huh (affirmative).  
 16 Q Was that while y'all were going through your  
 17 divorce, you and Wesley?  
 18 A No. It was after Wesley's death.  
 19 Q After his death.  
 20 A Uh-huh (affirmative).  
 21 Q Okay. And did he tell you how much money he thought  
 22 Wesley had?  
 23 A No. It wasn't -- It was simply a statement that  
 24 Wesley had told him: that he, Wesley, had money that Janice  
 25 knew nothing about.

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1 Q When did he say Wesley made that statement? Do you  
 2 know?  
 3 A It was before Wesley was so ill. It was back -- I  
 4 don't know -- four, maybe five years ago.  
 5 Q Did you and Mr. Cooper file joint tax returns for  
 6 the ten years that you were married?  
 7 A Not for the ten years.  
 8 Q Did you for several years after you were married?  
 9 A For several years. And then he started telling me  
 10 that our income wasn't enough for us to have to file.  
 11 Q Let me ask you, for the years that you did file  
 12 jointly with him was there any interest income or dividend  
 13 income that would support anything that Joe Ernst had told  
 14 you: that there was money somewhere else earning dividends or  
 15 interest?  
 16 A No.  
 17 Q So you don't have any basis to support the statement  
 18 that Joe Ernst made: that he had money somewhere else?  
 19 A No. But he's happy to testify to that.  
 20 Q Did he tell you a number?  
 21 A No.  
 22 Q So there's no way to know if you're talking about  
 23 maybe \$1,000 or \$50 or \$5,000? You have no idea of what he  
 24 meant?  
 25 A No.

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SHEET 12 PAGE 42

1 Q Other than that statement that was made in 2007 or  
2 2008 --  
3 A Uh-huh (affirmative).  
4 Q -- and coming back up to the Antenuptial Agreement,  
5 was there anything other than what you've told me that would  
6 lead you to believe that you are the victim of any fraud or  
7 concealment in the execution of this Antenuptial Agreement?  
8 A That I was the victim of fraud regarding this?  
9 Q Of fraud and/or concealment regarding this  
10 Antenuptial Agreement, which is Exhibit A in front of you?  
11 A I'm not sure how to answer that.  
12 Q Well, tell me if there's anything, as you sit here  
13 today, that's in your mind that supports that allegation that  
14 somebody defrauded you or concealed something from you leading  
15 up to the execution of the Antenuptial Agreement, anything  
16 that's on your mind.  
17 A There are two things in particular. One, before we  
18 were married I asked Wesley if he wanted me to keep the  
19 insurance I'd had at work through the Cobra.  
20 Q Health insurance?  
21 A Right. And he said, "Oh, no. I'm going to get you  
22 health insurance as soon as you're in Natchez." Never  
23 happened.  
24 Q I don't think there's anything in this Antenuptial  
25 Agreement that says that that was going to happen. Does it?

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1 A On some occasions, yes.  
2 Q And did you sign his name or did you sign your name  
3 on those checks?  
4 A No, I signed my name. It was a joint account.  
5 Q And that joint account was set up right after y'all  
6 were married or do you know when it was set up?  
7 A Yes.  
8 Q But he did most of the check writing out of that  
9 account; is that correct?  
10 A Yes.  
11 Q Would you have occasion from time to time to write  
12 checks out of that joint-checking account?  
13 A Yes.  
14 Q And that was shortly after y'all were married, I  
15 guess?  
16 A What was shortly after we were married?  
17 Q The fact that you would be writing checks out of  
18 that joint-checking account?  
19 A Yes.  
20 Q When you were in Debbie Blackwell's office did you  
21 ever express to anyone there that you didn't want to sign the  
22 Antenuptial Agreement?  
23 A No.  
24 Q Did you ever say anything to Mr. Cooper after you  
25 signed it that you didn't want to sign the Antenuptial

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1 A No.  
2 Q What's the second thing?  
3 A The second thing was when I told Wesley about the  
4 \$7,000 indebtedness that I had --  
5 Q And that was at Debbie Blackwell's office that day?  
6 Or did you tell him about that beforehand?  
7 A I'm sure I talked to him about it beforehand.  
8 Q I think you did say maybe a couple of months earlier  
9 y'all had discussed assets and liabilities. Okay.  
10 A Well, he never talked to me about his assets other  
11 than, you know, like saying, "I own that building."  
12 Q Right.  
13 A But he had told me that he would set up a checking  
14 account for me so that I could take care of those debts.  
15 Never did.  
16 Q Okay.  
17 A Because he told me, "I will put \$10,000 in it."  
18 Q After y'all were married who paid the bills?  
19 A He did.  
20 Q Did he pay all of them?  
21 A No. Now, later when his health started declining I  
22 paid some of them as he instructed me. You know, he might  
23 say, "I need you to pay this today." It was just the writing  
24 was difficult for him.  
25 Q So you wrote the checks on that account --

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1 Agreement?  
2 A No, I did not.  
3 Q Never had any complaint about that to him?  
4 A No. Because I trusted Wesley and I loved him very  
5 much and I did not say anything to him. And, of course, too,  
6 you know, here you are three hours before the wedding and you  
7 decide not to sign the prenup?  
8 Q I'm also interested in after that date when you  
9 signed this, did you ever discuss with an attorney the  
10 Antenuptial Agreement?  
11 A No, I did not.  
12 Q At some point you and Mr. Cooper separated and  
13 actually a divorce proceeding was instituted, was it not?  
14 A Yes.  
15 Q Who represented you in that divorce proceeding?  
16 A Eileen Maher.  
17 Q And was that the only attorney that you had used in  
18 Natchez since February 27, 1998, when Mr. Ogden represented  
19 you at Debbie Blackwell's office?  
20 A Yes.  
21 Q And did you say anything to Eileen Maher about the  
22 Antenuptial Agreement and the fact that you felt that you had  
23 been duressed into signing it or something?  
24 A No.  
25 Q So is the first complaint that you've made about

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SHEET 13 PAGE 46

1 this Antenuptial Agreement reflected in the pleadings that you  
2 filed through Mr. O'Beirne the 15th day of December, 2008?  
3 (Mr. Lewis presents the document to the deponent.)  
4 BY MR. LEWIS:  
5 Q First let me ask you did you sign that document  
6 (indicating)?  
7 A Yes, that's my signature.  
8 Q On December 15, 2008?  
9 A Yes.  
10 Q And I'll represent to you that that is your motion  
11 that you filed challenging the Antenuptial Agreement; that's  
12 the first pleading or objection that you've stated in writing  
13 to that Antenuptial Agreement that's Exhibit A to your  
14 testimony?  
15 A Yes.  
16 Q You didn't raise it in your divorce proceeding at  
17 all, did you?  
18 A No. But you are aware that there was not a divorce?  
19 Q I am.  
20 A That it didn't go. Okay.  
21 Q I'm just asking you if there was any mention of it,  
22 if you raised it as any type of defense or relied on it as a  
23 defense in your divorce proceeding?  
24 A No.  
25 Q Then you would agree that that's the first document

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1 that reflects in writing your objection to the Antenuptial  
2 Agreement of February 27, 1998?  
3 A Yes.  
4 Q And did you ever after February 27, 1998, and up  
5 until Mr. Cooper's death, ever ask him to change, alter,  
6 amend, or revoke the Antenuptial Agreement that you and he  
7 signed on February 27, 1998?  
8 A No, I didn't.  
9 Q During his entire lifetime you never asked him to  
10 modify it or change it?  
11 A No.  
12 Q Only after his death now do you challenge it?  
13 A Right.  
14 MR. LEWIS: I believe that's all the questions I  
15 have, Danny, of your client.  
16 MR. O'BEIRNE: Okay.  
17 REDIRECT EXAMINATION  
18 BY MR. O'BEIRNE:  
19 Q Mrs. Cooper, who prepared this 11-page Antenuptial  
20 Agreement? Who typed it up?  
21 A Debbie Blackwell. I mean I don't know who typed it  
22 up but it was generated in her office.  
23 Q Had you ever seen it before the 27th of February,  
24 1998?  
25 A No.

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1 Q After signing it the 27th of February, 1998, were  
2 you given a copy of it?  
3 A No.  
4 Q When did you first see it in the form that it's in  
5 now?  
6 A When Wesley took me to Debbie Blackwell's office.  
7 Q Would that be on the 27th of February, 1998, the  
8 date of the marriage?  
9 A Yes.  
10 Q What time did you get married in St. Francisville?  
11 A Three-thirty.  
12 Q Do you have a middle initial?  
13 A No.  
14 Q Before your first marriage you were Janice Cooper?  
15 A Yes.  
16 Q How did "S" get into this Antenuptial Agreement a  
17 number of times?  
18 A I have no idea.  
19 Q Have you ever paid Donald Ogden to represent you in  
20 this or any other matter?  
21 A No.  
22 Q How did he come to be in Debbie Blackwell's office  
23 the afternoon of February 27, 1998?  
24 A I have no idea.  
25 Q Do you know if anyone else paid him?

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1 A No.  
2 Q Before you left to go to the lawyer's office on that  
3 date, February 27th, you were living at the Ramada Inn in  
4 Natchez?  
5 A Uh-huh (affirmative). Yes.  
6 Q And how did you get to the lawyer's office?  
7 A Wesley picked me up about mid morning and he needed  
8 to go by the shop.  
9 Q Before or since February 27, 1998, had you ever had  
10 any professional relationship with attorney Donald G. Ogden?  
11 A No.  
12 Q How long were you in the office of Debbie Blackwell  
13 on the date of February 27, 1998?  
14 A The maximum would have been 15 minutes.  
15 Q And the document that's introduced into evidence  
16 that's Exhibit A to your testimony earlier today consists of  
17 11 pages, does it not?  
18 A Yes.  
19 Q Each paragraph single spaced?  
20 A Yes.  
21 Q Were you aware on that date that you were giving up  
22 all of the rights that are set out in Exhibit A here, all of  
23 your rights that are specifically stated in this document?  
24 A No. Because as I said I didn't have time to sit  
25 down and read the whole document.

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Upon reading and examining my testimony as herein transcribed, I make the following additions, changes and/or corrections, with the accompanying and corresponding reason(s) for same:

JANICE COOPER

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