

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF LOUISA

FRED MASSIE, *et al*,

Plaintiffs

v.

Case No.: CL08-286

J. QUINTAS MASSIE, *et al*,

Defendants

COMMISSIONER'S REPORT

COMES NOW D. Michael Caudill, Commissioner in Chancery, to whom this cause was referred by Decree of Reference entered herein on April 30, 2008. Your Commissioner reports to the Court that, pursuant to notice given by him in accord with Rule 3.23 of the Supreme Court of Virginia and the Order of the Court, he did proceed to conduct an *ore tenus* hearing on December 10, 2008 for the purpose of responding to the inquiries set out in the Decree of Reference. A transcript of said proceeding is filed herewith together with all exhibits received and admitted, none being denied.

The response to the inquiries stated by the Court are as follows:

1. Whether the facts and statements in the Complaint are true;

Based upon the exhibits and the testimony your commissioner finds the following:

Paragraph 31 of the complaint is not true in that the Plaintiffs now desire to purchase only parcels 1, 2 and 3. (Tr. p. 155)

Pursuant to the evidence, testimony, exhibits and written argument of counsel, your commissioner finds the remaining facts and statements in the Complaint to be true.

2. Who are the owners of the real estate described in the Complaint and in what proportions;

PARCELS 1, 2 AND 3

By deed dated November 4, 1986 and recorded in Deed Book 310 at page 316 in the Clerk's Office of Louisa County, Virginia (Defendant's Exhibit 4) three parcels of land were conveyed consisting of 417 acres in parcel 1; 4 acres in parcel 2; and 3.22 acres in parcel 3. The conveyance transferred to the "parties of the second part" all of the undivided one-third interest held by the "parties of the first part" in the three aforesaid parcels. The deed recited the parties as "*J. Quintas Massie and Louise H. Massie, husband and wife, parties of the first part, and Archie L. Massie and Rose D. Massie, husband and wife, and Susan Ann Massie, single, parties of the second part;*"

The plaintiffs contend that the language in the deed conveys a one-third interest in parcels 1, 2, and 3 to Archie L. Massie, a one-third interest to Rose D. Massie and a one-third interest to Susan Ann Massie. (Tr. pp. 138-197; Plaintiff's Brief). The defendants take the position that the deed conveys a one-half interest to Archie L. Massie and Rose D. Massie, as husband and wife, and a one-half interest to Susan Ann Massie. (Tr. pp. 206-234, 250-256; Defendants' Briefs). In support of their position the defendants argue that the lack of clarity in the deed as to the specific ownership interest conveyed to the "parties of the second part" invites consideration of a partnership dissolution involving J. Quintas Massie, Susan Ann Massie and Archie L. Massie in which Rose D. Massie was neither a partner nor involved in the disposal of property attendant to dissolving the

partnership. (Tr. pp. 208-232; Defendant's Exhibits 5, 6, 7, 8, 9, 10, 11; Defendants' Briefs) The defendants further assert that the grammatical structure and punctuation describing the "parties of the second part" reflect that Archie L. Massie and Rose D. Massie, as husband and wife, acquired a one-half interest with Susan Ann Massie, noted in the deed as "single", receiving the remaining one-half interest. (Tr. pp. 234-231; Defendants' Briefs)

Sections 55-20, 55-20.1 and 55-20.2 and 55-21 of the Code of Virginia, 1950, as amended, address the abolition of survivorship between joint tenants and the manner in which interests are conveyed. Essentially, without specific language that a conveyance is a joint tenancy with the right of survivorship or a tenancy by the entireties, the resulting conveyance is a tenancy in common. Jones v. Conwell, 227 Va. 176, 314 S.E.2d 61 (1984); In Re Zella, 196 B.R. 752 (1996) (applying Virginia law).

Although Archie L. Massie and Rose D. Massie are designated in the November 4, 1986 deed as husband and wife, the deed, as drafted, does not convey their interests as tenants by the entirety. The deed conveying parcels 1, 2 and 3 does not include any language that would support a finding that the "parties of the second part" acquired their interests as anything other than tenants in common. Accordingly, in determining the respective shares of the interests conveyed, the designation of the marital status of the "parties of the second part" is superfluous. The evidence supports a finding that the language of the deed, without considering the marital status of any of the grantees, conveys an equal, undivided interest to each of the three "parties of the second part."

The language in the deed conveying the interest to the “parties of the second part”, while inartful, is not unambiguous and does not require the introduction of parol evidence to interpret the deed. In considering Amos v. Coffey, 228 Va. 88, 320 S.E.2d 335 (1984), “An ambiguity exists when language admits of being understood in more than one way or refers to two or more things in the same time.” quoting Renner Plumbing v. Renner, 225 Va. 508 (1983) “However, a document is not ambiguous “merely because the parties disagree as to the meaning of the language employed by them in expressing their agreement.” Amos, 228 Va. at 92 quoting Wilson v. Holyfield, 227 Va. 184 (1984)

Accordingly, based upon the testimony, the exhibits and the argument of counsel the commissioner finds that the November 4, 1986 deed conveyed an undivided one-third interest to Archie L. Massie, a one-third interest to Rose D. Massie and a one-third interest to Susan Ann Massie. The ownership interests in parcels 1, 2 and 3 are described and set forth as follows:

Susan Ann Massie died intestate and without a husband, children or siblings. Pursuant to section 64.1-1 of the Code of Virginia, 1950, as amended, one-half of Susan Ann Massie’s interest would go to her father’s side of the family and one-half of her interest would go to her mother’s side of the family. Her father, Brooke G. Massie, and her mother, Wilma Massie Brockman, are deceased. Accordingly, her interest would pass to the siblings, or their heirs, of her deceased parents.

Paternal heirs of Susan Ann Massie (one-half of her one-third interest gives a one-sixth interest to her paternal heirs)

Susan Ann Massie’s father, Brooke G. Massie, had four brothers, W. C. Massie,

Jr., Archibald Massie, J. Quintas Massie and George W. Massie. Each of the brothers would have been entitled to $\frac{1}{4}$ of Susan Ann Massie's $\frac{1}{3}$ interest which equals an interest of $\frac{1}{24}$ of the whole. Each of Brooke G. Massie's siblings are deceased. Accordingly, their $\frac{1}{24}$ interest is divided by the number of children of the four brothers of Brooke G. Massie:

1. W. C. Massie, Jr. ($\frac{1}{24}$ interest) deceased
 - A. Jim Massie: $\frac{1}{48}$ interest
 - B. Betty Massie Settle: $\frac{1}{48}$ interest
2. Archibald Massie ($\frac{1}{24}$ interest) deceased
 - A. Mary E. Vetrovec (daughter): $\frac{1}{96}$ (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1161, page 127)
 - B. Jane Schmierer (daughter): $\frac{1}{96}$ interest (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1161, page 127)
 - C. Fred Massie (son): $\frac{1}{96}$
 - D. Nancy Moga (daughter): $\frac{1}{96}$ interest (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1161, page 127)
3. J. Quintas Massie ($\frac{1}{24}$ interest) deceased (J. Quintas Massie Trust)
 - A. John Q. Massie (son): $\frac{1}{48}$
 - B. Rebecca Massie Dale (daughter): $\frac{1}{48}$
4. George W. Massie ($\frac{1}{24}$ interest) deceased
 - A. George Massie (son): $\frac{1}{48}$
 - B. Martha Massie (daughter): $\frac{1}{48}$

Maternal heirs of Susan Ann Massie (one-half of her one-third interest gives a one-sixth interest to her paternal heirs)

Susan Ann Massie's mother, Wilma Massie Brockman, had one sibling, L. M. Brockman. L. M. Brockman died leaving neither a spouse nor children. The siblings of Susan Ann Massie's maternal grandparents are Ethel Massie Brockman and John

Brockman. The $\frac{1}{6}$ interest of the maternal heirs is divided by 2 leaving a $\frac{1}{12}$ interest to the heirs of Ethel Massie Brockman and a $\frac{1}{12}$ interest to the heirs of John Brockman.

Ethel Massie Brockman had seven siblings, each of whom would have been entitled to $\frac{1}{7}$ of a $\frac{1}{12}$ interest. Two of the siblings died without issue leaving $\frac{1}{5}$ of $\frac{1}{12}$ or a $\frac{1}{60}$ interest of the whole to be divided among the heirs of each sibling.

Heirs of Ethel Massie Brockman ($\frac{1}{12}$ of the whole)

1. Betsy Dickenson ($\frac{1}{60}$ interest) deceased
 - A. Roy Dickenson (son) deceased: $\frac{1}{180}$
 1. Wilson Dickenson: $\frac{1}{360}$
 2. Patty Dickinson: $\frac{1}{360}$
 - B. Massie Dickenson (son) deceased: $\frac{1}{180}$
 1. Eugene Dickenson: $\frac{1}{360}$
 2. Dereda Ricker: $\frac{1}{360}$
 - C. Irnell Maddox (daughter) deceased: $\frac{1}{180}$
 1. Nancy Pleasants: $\frac{1}{360}$
 2. Betsy Compton: $\frac{1}{360}$
2. Isi Massie Vawter ($\frac{1}{60}$ interest) deceased
 - A. Clifton Vawter (son): $\frac{1}{240}$
 - B. Robert Vawter (son) deceased:
 1. Deloris Ann Terry: $\frac{1}{240}$
 - C. Hawthorne Vawter (son) deceased
 1. No issue
 - D. Reed Vawter (son) deceased: $\frac{1}{240}$
 1. Freddie Vawter: $\frac{1}{480}$
 2. Harold Vawter: $\frac{1}{480}$
 - E. Eleanor Vawter (daughter) deceased: $\frac{1}{240}$
 1. Dale Driggers (son) deceased
 - a. Issue - Name Unknown: $\frac{1}{480}$
 - b. Issue - Name Unknown: $\frac{1}{480}$
 2. Donnie Driggers (son) deceased
Pre-deceased Eleanor Vawter
3. Mary Massie Ellis deceased w/o issue
4. Ruth Massie Woolfolk ($\frac{1}{60}$ interest) deceased
 - A. Frank Woolfolk (son): $\frac{1}{120}$
 - B. James Woolfolk (son) deceased: $\frac{1}{120}$
 1. Katherine Woolfolk (daughter): $\frac{1}{480}$

2. James P. Woolfolk (son): 1/480
3. Mary Ellen Compton (daughter): 1/480
4. Cheryl Kfuri (daughter): 1/480
5. Lunell Massie Wright (1/60 interest) deceased
 - A. Massie Wright (son): 1/240 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1172, page 608)
 - B. James Wright (son): 1/240 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1172, page 620)
 - C. Bettie Richmond (daughter): 1/240 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1172, page 611)
 - D. Mary Sue Wright (daughter): 1/240 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1172, page 614)
6. John Franklin Wright - deceased - no issue
7. Robert Bryan Massie (1/60 interest) - deceased
 - A. John Frank Massie : 1/180-(interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1179, page 934)
 - B. Robert Massie (1/180) deceased :
 1. Bettie Sue Massie Brooks (daughter):1/180 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1179, page 116)
 - C. Jabez Massie (1/180) deceased:
 1. Jabez Pat Massie (son): 1/360
 2. Roberta Massie Carter (daughter): 1/360

Heirs of John Brockman (1/12 of the whole)

John Brockman, Susan Ann Massie's grandfather, had eight siblings. Three of the siblings died without issue. The remaining five heirs are entitled to 1/5 of 1/12 or a 1/60 interest.

1. Samuel Brockman (1/60 interest) - deceased
 - A. Mildred Collins (daughter): 1/180
 - B. Kenneth Brockman (son) - deceased
No issue

- C. Kathleen Rosson (1/180) - deceased:
 - 1. Randy Rosson: 1/720 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1179, page 122)
 - 2. Linda Saunders: 1/720 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1179, page 1521)
 - 3. Cynthia Jurek: 1/720 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1173, page 467)
 - 4. Bonnie Escott: 1/720 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1173, page 464)
- D. Samuel Brockman (1/180) - deceased
 - 1. Connie Stewart: 1/720 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1172, page 617)
 - 2. Betty White: 1/720 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1177, page 68)
 - 3. Jerry Brockman: 1/720 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1177, page 65)
 - 4. Samuel Brockman: 1/720 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1172, page 605)
- 2. Jim Brockman (1/60 interest) - deceased
 - A. James Brockman, Jr. - deceased - no issue
 - B. Marshall Brockman - deceased
 - 1. Sondra Moore: 1/60 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1186, page 530)
- 3. Rosser Brockman (1/60 interest) - deceased

- A. Rosser Brockman, Jr. - (1/120) deceased:
 - 1. Rosser Brockman, II: 1/240 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1179, page 931)
 - 2. Robert Bruce Brockman: 1/240 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1180, page 120)
- B. Evelyn Lonergan - (1/120) deceased:
 - 1. Michael Lonergan, III (1/240)- deceased:
 - a. Michael Lonegran IV: 1/480
 - b. Sheena Payette: 1/480 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1186, page 520)
 - 2. Margie L. Bartley - (1/240) deceased:
 - a. Leslie Bartley, II: 1/480 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1172, page 602)
 - b. Angela Street: 1/480 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1186, page 539)
 - 3. Earl Lonergan - deceased - no issue
- C. Ernest Brockman - deceased - no issue
- 4. Edward Kemper Brockman (1/60 interest) - dec'd
 - A. Kemper Brockman (1/120 interest) - deceased
 - 1. Garnett Brockman: 1/360 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1184, page 824)
 - 2. Dorothy Edwards: 1/360 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1179, page 119)
 - 3. Jeanne Yonce: 1/360 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1182, page 246)

- B. Carlton Brockman (1/120) deceased
 - 1. Jeff Brockman: 1/120 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1174, page 293)
- 5. Lula Brockman Rosson (1/60 interest) - deceased
 - A. Alvin Rosson, Jr. -(1/480 interest) - deceased
 - 1. Allie Rosson: 1/480 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1187, page 700)
 - B. E. K. Mann Rosson (1/480 interest) deceased
 - 1. Margaret Seim: 1/1440
 - 2. Harry Rosson: 1/1440 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1195, page 235)
 - 3. William Rosson: 1/1440
 - C. William Rosson - deceased
 - 1. Melvin Rosson - deceased - no issue
 - 2. Curtis Rosson - deceased - no issue)
 - 3. Elizabeth Rosson -deceased - no issue
 - D. Louise Ruffner (1/480) - deceased
 - 1. Mabel Ruffner: 1/1440
 - 2. Clyde Ruffner (1/1440) - deceased
 - a. Ryland Ruffner: 1/960
 - 3. Earl Ruffner: - (1/1440) -deceased
 - a. Daniel Ruffner: 1/2880 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1179, page 928)
 - b. Linda Ruffner Bishop: 1/2880 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1189, page 117)
 - E. Garnett Rosson (1/480 interest) - deceased
 - 1. Liburn Rosson (1/480) deceased
 - a. Monte Rosson: 1/960 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1177, page

- 162)
 - b. Sandra Walker: 1/960 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1176, page 45)
- F. Robert Rosson(1/480 interest) - deceased
 - 1. Dorothy Rosson - deceased - no issue
 - 2. Lucille King: 1/2400 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1186, page 536)
 - 3. Mae Callahan 1/2400 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1186, page 533)
 - 4. Juliet Battaile (1/2400 interest) - deceased
 - a. Phyllis Poore: 1/7200 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1161, page 127)
 - b. Ellis Battaile: 1/7200 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1186, page 524)
 - c. Nona Honaker: 1/7200 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1184, page 821)
 - 5. Robert Rosson, Jr. (1/2400 interest) dec'd
 - a. Joy Sharpe: 1/7200
 - b. Tammie Schroder: 1/7200
 - c. Larry Rosson: 1/7200
 - 6. James Rosson (1/2400) - deceased
 - a. Jim Rosson: 1/2400
- G. Ruby Rosson Bazanella - deceased - no issue
- H. Rosabelle Rosson Childs (1/480 interest) - deceased
 - 1. Barbara Frye: 1/1920 (interest conveyed subsequent to commissioner's hearing by deed to Fred and

- Rebecca Massie, recorded in deed book 1186, page 527)
2. Bonnie Bronner: 1/1920 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1195, page 238)
 3. Betty Ross: 1/1920 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1184, page 827)
 4. Sue House: 1/1920 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1184, page 830)
- I. Maurine Rosson Bickley (1/480 interest) - deceased
1. Wallace Bickley: (1/960) - deceased
 - a. Debbie Wald: 1/1920 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1175, page 152)
 2. Kenneth Bickley: (1/960) - deceased
 - a. Diane Sunshine: 1/1920 (interest conveyed subsequent to commissioner's hearing by deed to Fred and Rebecca Massie, recorded in deed book 1173, page 991)
6. Will Brockman -deceased - no issue
 7. Fannie Brockman - deceased - no issue
 8. Bessie Brockman Bickers - deceased - no issue

PARCELS 4, 5 AND 6

Ownership interests of the Heirs of Susan Ann Massie in parcels 4, 5, and 6

The heirs of Susan Ann Massie are entitled to a 100% interest in parcels 4, 5, and

6. Fifty percent of the interest goes to the paternal heirs of Susan Ann Massie and the other fifty percent goes to the maternal heirs of Susan Ann Massie.

Paternal heirs of Susan Ann Massie (one-half interest of the whole)

Susan Ann Massie's father, Brooke G. Massie, had four brothers, W. C. Massie,

Jr., Archibald Massie, J. Quintas Massie and George W. Massie. Each of the brothers would have been entitled to $\frac{1}{4}$ of Susan Ann Massie's $\frac{1}{2}$ interest which equals an interest of $\frac{1}{24}$ of the whole. Each of Brooke G. Massie's siblings are deceased.

Accordingly, their $\frac{1}{8}$ interest is divided by the number of children of the four brothers of Brooke G. Massie:

1. W. C. Massie, Jr. ($\frac{1}{8}$ interest) deceased
 - A. Jim Massie: $\frac{1}{16}$ interest
 - B. Betty Massie Settle: $\frac{1}{16}$ interest
2. Archibald Massie ($\frac{1}{8}$ interest) deceased
 - A. Mary E. Vetrovec (daughter): $\frac{1}{32}$
 - B. Jane Schmierer (daughter): $\frac{1}{32}$
- C. Fred Massie (son): $\frac{1}{32}$
 - D. Nancy Moga (daughter): $\frac{1}{32}$
3. J. Quintas Massie ($\frac{1}{8}$ interest) deceased (J. Quintas Massie Trust)
 - A. John Q. Massie (son): $\frac{1}{16}$
 - B. Rebecca Massie Dale (daughter): $\frac{1}{16}$
4. George W. Massie ($\frac{1}{8}$ interest) deceased
 - A. George Massie (son): $\frac{1}{16}$
 - B. Martha Massie (daughter): $\frac{1}{16}$

Maternal heirs of Susan Ann Massie (one-half interest of the whole)

Susan Ann Massie's mother, Wilma Massie Brockman, had one sibling, L. M. Brockman. L. M. Brockman died leaving neither a spouse nor children. The siblings of Susan Ann Massie's maternal grandparents are Ethel Massie Brockman and John Brockman. The $\frac{1}{2}$ interest of the maternal heirs is divided by 2 leaving a $\frac{1}{4}$ interest to the heirs of Ethel Massie Brockman and a $\frac{1}{4}$ interest to the heirs of John Brockman.

Ethel Massie Brockman had seven siblings, each of whom would have been

entitled to 1/7 of a 1/4 interest. Two of the siblings died without issue leaving 1/5 of 1/4 or a 1/20 interest of the whole to be divided among the heirs of each sibling.

Heirs of Ethel Massie Brockman (1/4 interest of the whole)

1. Betsy Dickenson (1/20) deceased
 - A. Roy Dickenson (1/60) deceased:
 1. Wilson Dickenson: 1/120
 2. Patty Dickinson: 1/120
 - B. Massie Dickenson (1/60) deceased:
 1. Eugene Dickenson: 1/120
 2. Dereda Ricker: 1/120
 - C. Irnell Maddox (1/60) deceased:
 1. Nancy Pleasants: 1/120
 2. Betsy Compton: 1/120
2. Isi Massie Vawter (1/20 interest) deceased
 - A. Clifton Vawter : 1/80
 - B. Robert Vawter (1/80):
 1. Deloris Ann Terry: 1/80
 - C. Hawthorne Vawter deceased - no issue
 - D. Reed Vawter (1/80) deceased:
 1. Freddie Vawter: 1/160
 2. Harold Vawter: 1/160
 - E. Eleanor Vawter (1/80) deceased:
 1. Dale Driggers deceased
 - a. Issue - Name Unknown: 1/160
 - b. Issue - Name Unknown: 1/160
 2. Donnie Driggers (son) deceased
Pre-deceased Eleanor Vawter
3. Mary Massie Ellis deceased w/o issue
4. Ruth Massie Woolfolk (1/20 interest) deceased
 - A. Frank Woolfolk: 1/40
 - B. James Woolfolk: (1/40) deceased:
 1. Katherine Woolfolk (daughter): 1/160
 2. James P. Woolfolk (son): 1/160
 3. Mary Ellen Compton (daughter): 1/160
 4. Cheryl Kfuri (daughter): 1/160
5. Lunell Massie Wright (1/20) deceased
 - A. Massie Wright : 1/80
 - B. James Wright : 1/80

- C. Bettie Richmond : 1/80
- D. Mary Sue Wright : 1/80
- 6. John Franklin Wright - deceased - no issue
- 7. Robert Bryan Massie (1/20) - deceased
 - A. John Frank Massie (son) deceased
No issue
 - B. Robert Massie (1/40) deceased
 - 1. Bettie Sue Brooks : 1/40
 - C. Jabez Massie (1/40) deceased:
 - 1. Jabez Pat Massie : 1/80
 - 2. Roberta Massie Carter : 1/80

Heirs of John Brockman (1/4 of the whole)

John Brockman, Susan Ann Massie's grandfather, had eight siblings. Three of the siblings died without issue. The remaining five heirs are entitled to 1/5 of 1/4 or a 1/20 interest.

- 1. Samuel Brockman (1/20) - deceased
 - A. Mildred Collins: 1/60
 - B. Kenneth Brockman - deceased -no issue
 - C. Kathleen Rosson (1/60) - deceased
 - 1. Randy Rosson: 1/240
 - 2. Linda Saunders: 1/240
 - 3. Cynthia Jurek: 1/240
 - 4. Bonnie Escott: 1/240
 - D. Samuel Brockman (1/60) - deceased
 - 1. Connie Stewart: 1/240
 - 2. Bettie White: 1/240
 - 3. Jerry Brockman: 1/240
 - 4. Samuel Brockman: 1/240
- 2. Jim Brockman (1/20) - deceased
 - A. James Brockman, Jr. - deceased - no issue
 - B. Marshall Brockman - deceased
 - 1. Sondra Moore: 1/20
- 3. Rosser Brockman (1/20) - deceased
 - A. Rosser Brockman, Jr. (1/40) - deceased:
 - 1. Rosser Brockman, III: 1/80
 - 2. Robert Bruce Brockman: 1/80
 - B. Evelyn Lonergan - (1/40) - deceased:

1. Michael Lonergan, III (1/80) - deceased
 - a. Michael Lonegran IV: 1/160
 - b. Sheens Payette: 1/160
2. Margie L. Bartley (1/80) - deceased:
 - a. Leslie Bartley, II 1/160
 - b. Angela Street: 1/160
3. Earl Lonergan - deceased - no issue
4. Edward Kemper Brockman (1/20) - deceased
 - A. Kemper Brockman (1/40) - deceased
 1. Garnett Brockman: 1/120
 2. Dorothy Edwards: 1/120
 3. Jeanne Yonce: 1/120
 - B. Carlton Brockman (1/40) - deceased
 1. Jeff Brockman: 1/40
5. Lula Brockman Rosson (1/20) - deceased
 - A. Alvin Rosson, Jr. -(1/160) - deceased
 1. Allie Rosson: 1/160
 - B. E. K. Mann Rosson (1/160) deceased
 1. Margaret Seim: 1/480
 2. Harry Rosson: 1/480
 3. William Rosson: 1/480
 - C. Willie Rosson (1/160) deceased
 1. Melvin Rosson - deceased
 2. Curtin Rosson - deceased
 3. Elizabeth Rosson : 1/160
 - D. Louise Ruffner (1/160) - deceased
 1. Mabel Ruffner: 1/480
 2. Clyde Ruffner (1/320) - deceased
 - a. Ryland Ruffner: 1/480
 3. Earl Ruffner: - (1/480) - deceased
 - a. Daniel Ruffner: 1/960
 - b. Linda Bishop 1/960
 - E. Garnett Rosson (1/160) - deceased
 1. Liburn Rosson (1/160) - deceased
 - a. Monte Rosson: 1/320
 - b. Sandra Walker: 1/320
 - F. Robert Rosson(1/160) - deceased
 1. Dorothy Rosson - deceased - no issue
 2. Lucille King 1/800
 3. Mary Callahan 1/800
 4. Juliet Battaile (1/800) - deceased
 - a. Phyllis Poore: 1/2400
 - b. Ellis Battaile: 1/2400

- c. Nona Honaker: 1/2400
 - 5. Robert Rosson, Jr. (1/800) - deceased
 - a. Joy Sharpe: 1/2400
 - b. Tammie Schroder: 1/2400
 - c. Larry Rosson: 1/2400
 - 6. James Rosson (1/800) - deceased
 - a. Jim Rosson: 1/800
- G. Ruby Rosson Bazanella - deceased - no issue
- H. Rosabelle Rosson Childs (1/160) - deceased
 - 1. Barbara Frye: 1/640
 - 2. Bonnie Bronner: 1/640
 - 3. Betty Ross: 1/640
 - 4. Sue House: 1/640
- I. Maurine Rosson Bickley (1/160) - deceased
 - 1. Wallace Bickley: 1/320
 - 2. Kenneth Bickley: 1/320
- 6. Will Brockman -deceased - no issue
- 7. Fannie Brockman - deceased - no issue
- 8. Bessie Brockman Bickers - deceased - no issue

3. An account of all delinquent taxes, if any, on said real estate and all liens of record, if any, binding on said real estate, their amounts and the order of their priority;

Pursuant to the evidence and testimony presented at the hearing, there are no delinquent taxes on any of the parcels. (Tr., p. 100 - 102)

The plaintiffs are investigating the date of death of Curtis Rosson in regard to a possible lien having been docketed against him.

4. What is the fair market value of the fee simple interest in the real estate, and what is the annual rental value of the real estate, if any;

Testimony regarding the fair market value of parcels 1 and 3 was provided by Donald S. Lloyd, a certified real estate appraiser with an office in Louisa County.

Without objection, Mr. Lloyd was qualified as an expert in real estate appraisal. (Tr., p. 26) Mr. Lloyd presented evidence that the value of Parcel 1 was \$1,800,000 and \$4,500.00 for Parcel 3. (Tr., pp. 28, 32) (Plaintiff's Exhibits 1 and 2)

Plaintiffs' testimony regarding the fair market values of parcels 2, 4, 5 and 6 was provided by Dennis E. Parker, a certified real estate appraiser. Without objection Mr. Parker was qualified as an expert in real estate appraisal. (Tr., p. 58) Mr. Parker testified that the fair market value of Parcel 2 was \$30,000.00, the fair market value of Parcel 4 was \$180,000.00, the fair market value of Parcel 5 was \$24,000.00 and the fair market value of Parcel 6 was \$375,000.00. (Tr., pp. 60, 62, 64, 67) (Plaintiffs' Exhibits 4, 5, 6, 7)

Pursuant to questioning by the defendants, Mr. Lloyd was asked if he had an opinion as to the value of Parcel 2. Mr. Lloyd testified that he valued Parcel 2 at \$45,000.00. (Tr., p. 42) (Defendants' Exhibit 1) In considering the testimony of Mr. Lloyd and Mr. Parker and their respective appraisals for Parcel 2, your commissioner finds it appropriate to average the two appraisals and determines the fair market value of Parcel 2 is \$37,500.00.

Based on the evidence presented at the hearing, including the appraisals prepared by Mr. Lloyd and Mr. Parker, your commissioner finds the fair market value of the parcels to be:

Parcel 1: \$1,800,000.00 (Plaintiffs' Exhibit 1)

Parcel 2: \$37,500.00 (Plaintiffs' Exhibit 4, Defendants' Exhibit 1)

Parcel 3: \$4,500.00 (Plaintiffs' Exhibit 2)

Parcel 4: \$180,000.00 (Plaintiffs' Exhibit 5)

Parcel 5: \$24,000.00 (Plaintiffs' Exhibit 6)

Parcel 6: \$375,000.00 (Plaintiffs' Exhibit 7)

No evidence was presented as to the annual rental value of the real estate

5. An account of the rents and profits from said land since the death of Susan Massie, and how much rents and profits have been disposed of;

Pursuant to the Plaintiffs' March 4, 2009 Motion to Admit Evidence, the Plaintiffs have provided copies of three accountings filed since the death of Susan Massie. The accountings set forth the income and expenses since the death of Susan Massie, including rent, and are accepted as part of the record of the case as are the representations of Plaintiff's counsel set forth in the Motion to Admit Evidence.

6. Whether the property is susceptible of partition in kind among the parties entitled thereto; and if not;

Based on the large number of heirs with an interest in the property and the relatively small percentages associated with the interests, your commissioner finds the property is not susceptible to partition in kind.

7. Whether any of the owners are willing to take the whole property and pay the other owners such sums of money as their respective interests may entitle them to, and if not;

The evidence revealed that none of the owners are willing to purchase the whole

property. The Plaintiffs have altered their position as to purchasing all of the parcels and are now desirous of only purchasing the interests in parcels 1, 2 and 3.

8. Whether the interest of those entitled to said real estate or its proceeds will be promoted by a sale of said real estate and division of the proceeds; and if so;

Based on the evidence, testimony and argument of counsel, your commissioner finds the interests of those entitled to said real estate or its proceeds will be promoted by a sale of the real estate and division of the proceeds.

9. Whether the proper parties are before the Court in cause to enable the Court to effect such sale;

Pursuant to the pleadings, the evidence taken at the commissioner's hearing, the appointment and appearance of the guardian *ad litem* for the unknown heirs and the order of publication, as evidenced by the Publisher's Certificate (Plaintiffs' Exhibit 2), your commissioner finds the proper parties are before the Court to effect a sale of the property.

10. What is a reasonable fee to counsel, Guardian ad Litem and Commissioner to be paid proportionally out of the shares of the parties; and

The guardian *ad litem*, Richard T. Harry, has submitted an invoice evidencing a fee of \$1,175.00 for his services in this case. Your commissioner finds the fee reasonable and should be paid proportionally out of the shares of the parties. Your commissioner requests a fee of \$1,500.00 or such amount as the Court may find appropriate.

11. Any and all matters deemed pertinent to the Commissioner in Chancery and such matters concerning which he is required to report by any party

interest, if the same be pertinent to the issues in this cause.

The Commissioner reports to the Court that the following costs and fees have been presented by the Plaintiff :

Plaintiffs' attorney's fees and expenses:	\$22,300.00
Crane-Snead and Associates:	1,620.00
Dennis E. Parker - appraisal:	2,350.00
Donald E. Lloyd - appraisal:	1,000.00
Title abstract:	980.00
Order of Publication:	465.00
Court filing fees:	1,238.00

The Defendants oppose an award of Plaintiffs' attorneys fees to be apportioned among the heirs. The Plaintiffs argue that an award of attorney's fees is warranted given the burdensome nature of initiating and preparing for a case that consisted of determining and locating a large number of heirs and the difficulties associated with the proceeding.

The Defendants assert that an allocation of attorney's fees is warranted in cases where there are parceners unrepresented by counsel. Section 8.01-92 of the Code of Virginia, 1950 as amended. There are no shares unrepresented in this case. The Defendants further claim that each side should be responsible for their own attorneys fees absent an agreement regarding attorney's fees as is generally recognized.

Plaintiff's counsel skillfully prepared a complex case. The list of heirs prepared by Mr. Massie was thorough and invaluable in allowing your commissioner to resolve a

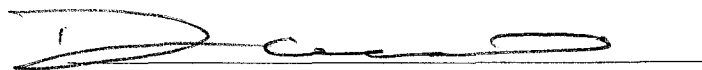
discrepancy regarding an heir who was listed by the Defendants as deceased without issue but actually had two surviving offspring.

The Defendants also exhibited significant preparation in their list of heirs which, during testimony, provided heirs not shown on Mr. Massie's family tree. As evidenced by the length of the transcript and written argument, the preparation by the Defendants in regard to their position as to why and how the Susan Massie deed should be interpreted is not insignificant.

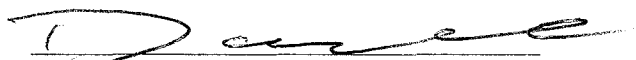
Accordingly, your commissioner finds that given the complexity of the case, the degree of competence and diligence necessary to resolve the issues was equally demonstrated by Plaintiffs and Defendants alike and, due to no share unrepresented by counsel, your commissioner finds that each party should be responsible for their own attorney's fees.

The fees as set forth above in the amount of \$7653.00 should be apportioned, *pro rata*, among the heirs.

Respectfully submitted



D. Michael Caudill, Commissioner in Chancery



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