

FILED

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
20<sup>TH</sup> JUDICIAL DISTRICT  
AT NASHVILLE  
PART III

2019 NOV 22 AM 10:06  
CLERK & MASTER  
DAVIDSON CO. CHANCERY CT.

STATE OF TENNESSEE, )  
*ex rel.* HODGEN MAINDA, solely in his )  
official capacity as Commissioner of )  
Commerce & Insurance, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
GALILEE MEMORIAL GARDENS, )  
JM&M SERVICES, INC., )  
LAMBERT MEMORIAL CO., aka )  
LAMBERT MEMORIALS, INC. )  
LAMBERT & SONS, INC. )  
JEMAR LAMBERT, MARJE LAMBERT, )  
and MARY H. LAMBERT, and ALL )  
PERSONS ACTING IN CONCERT WITH THEM,) )  
 )  
Defendants. )

No. 14-102-II(III)

---

NOTICE OF FILING TRANSCRIPT OF SCHEDULING CONFERENCE HELD  
NOVEMBER 15, 2019

---

Counsel to Hodgen Mainda, Commissioner of the Department of Commerce & Insurance, in his official capacity as Receiver of Galilee Memorial Gardens (the "Cemetery"), gives notice of filing herewith the original transcript (41 numbered pages) of the November 15, 2019 Scheduling Conference pertaining to matters remaining to be determined in this receivership. A condensed copy is also being filed and provided to persons indicated on the service list.

Respectfully submitted.



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### CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Notice of Filing Transcript of Scheduling Conference of November 15, 2019 has been mailed First Class Postage prepaid to the following interested parties and attorneys requesting notice and transmitted via email this 22<sup>nd</sup> day of November, 2019:

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---

SARAH ANN HIESTAND

CONFIDENTIAL  
TRANSCRIPT

**STATE OF TENNESSEE**

**vs.**

**GALILEE MEMORIAL GARDENS, et al.**

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**TRANSCRIPT OF PROCEEDINGS**

**November 15, 2019**



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1 IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
2 TWENTIETH JUDICIAL DISTRICT  
3 AT NASHVILLE  
4 PART III

5 STATE OF TENNESSEE, ex rel.  
6 HODGEN MAINDA, solely in his  
7 official capacity as Commissioner of  
8 Commerce & Insurance,  
9  
10 Plaintiff,

11 vs. Case No. 14-102-II(III)

12 GALILEE MEMORIAL GARDENS,  
13 JM&M SERVICES, INC., LAMBERT  
14 MEMORIAL CO., aka LAMBERT  
15 MEMORIALS, INC., LAMBERT &  
16 SONS, INC., JENAR LAMBERT,  
17 MARJE LAMBERT, and MARY H.  
18 LAMBERT, and ALL PERSONS  
19 ACTING IN CONCERT WITH THEM.  
20 Defendants.

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1 \* \* \*  
2 P R O C E E D I N G S  
3 (WHEREUPON, the above-captioned matter  
4 was heard in open court as follows:)  
5

6 THE COURT: All right. Good morning.  
7 The Court has reviewed the papers that  
8 have been filed in this case, and we have a couple  
9 of matters that were on the docket. The Court had  
10 scheduled a Rule 16 conference to determine what  
11 matters were left to be completed so that we could  
12 close out the case and the receivership. And after  
13 that was set, we've had a motion to intervene  
14 that's been filed by Shelby County.

15 Let me ask counsel for the State, Mr.  
16 Jackson, Ms. Hiestand, I understand that you don't  
17 oppose the intervention. Now, you're reserving any  
18 opposition you may have to certain positions that  
19 Shelby County has forecasted they're going to take,  
20 but you do not oppose the opposition; is that  
21 correct?

22 MR. JACKSON: That's correct, Your  
23 Honor. We do not oppose them coming in. It might  
24 be helpful to have them in the lawsuit. We don't  
25 exactly agree with the way they have characterized a

A P P E A R A N C E S

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1 few things, but that doesn't affect our view on them  
2 in the lawsuit.

3 THE COURT: And it seems procedurally  
4 that it's -- it's both proper under the rule.  
5 They've satisfied the elements, the Court finds, to  
6 intervene. And also the State, as you just stated,  
7 practically, it will be helpful. So the Court  
8 grants the motion to intervene. And in the order  
9 that I prepare from our conference today, I will put  
10 in there that it's been granted.

11 Now, the next way I would like to  
12 proceed is I want to go through with the State the  
13 items that you had listed in your memorandum in  
14 response to their intervention, go over those, and  
15 then I'm going to call on Shelby County counsel  
16 because I'd like to hear from them if you intend to  
17 file any motions to assert your positions about  
18 your construction of the law, et cetera. Let me  
19 just hear your analysis of the statute and where we  
20 are in the law, what you would assert to the Court  
21 in any motion about the responsibility to take care  
22 of the cemetery.

23 So let's start with the State and let's  
24 go over this list that you had filed with the Court  
25 and see how we're going to handle getting these

1 matters done. So I'm look at the receiver's  
2 response that was filed on November 8th and thank  
3 you all for providing this to the Court. I'm  
4 looking at page 2, if you want to come to the  
5 podium, counsel for the State. I'm going to ask  
6 Shelby County when I take it up with them if they  
7 have any objection to the Court which items of  
8 these do they object to.

9 So let's start, Mr. Jackson, with the  
10 statement that the "cemetery is full, has no  
11 remaining useful grave spaces and should be  
12 closed."

13 Shelby County, any objection to that?

14 MR. MEYERS: No, Your Honor.

15 THE COURT: And we'll need to talk  
16 whether we need to do anything else in terms of  
17 notifying people and all of that.

18 MR. JACKSON: Yes, Your Honor.

19 THE COURT: Okay. All right. And then  
20 if there are no assets available to compensate any  
21 grieved person.

22 MR. MEYERS: No objection, Your Honor.

23 THE COURT: Okay. Then C, foreclosing  
24 any rights that a grieved person may have against  
25 the grounds or other physical assets.

1 MR. MEYERS: No objection.

2 THE COURT: Okay. And then D, about  
3 confirming the small amount of funds, the \$3,000 in  
4 the pre-need fund.

5 MR. MEYERS: No objection, Your Honor.

6 THE COURT: And then E, providing that  
7 the pre-need merchandise and services trust fund no  
8 longer serves a purpose for which it was created.  
9 No objection on that?

10 MR. MEYERS: Correct, Your Honor. No  
11 objection.

12 THE COURT: And then F, "we don't know  
13 where persons are buried and it makes it impossible  
14 to know the identity of those folks."

15 MR. MEYERS: No objection.

16 THE COURT: No objection?

17 And then on G, prohibiting  
18 disinterments and exhumation. No objection?

19 MR. MEYERS: No objection.

20 THE COURT: Okay. H, defining what kind  
21 of notice is to be given. We will come back to H.

22 And then I, "since at this time no  
23 group or entity has been identified to accept  
24 ownership, absence such a group or entity being  
25 identified, order reflecting that fact be entered."

1 Any objection on that? Potentially?

2 MR. MEYERS: We may have an objection to  
3 that.

4 THE COURT: So it could overlap. So we  
5 will set that one aside.

6 And then J we'll set aside. Okay. And  
7 then K.

8 All right. So, Mr. Jackson, items A  
9 through G of what you've provided the Court in your  
10 November 8th filing will be granted by the Court.  
11 How does that interface with your item H? Tell me  
12 what you're thinking about that.

13 MR. JACKSON: Your Honor, the way that  
14 we had looked at this is the issues that are out  
15 there are sort of in two buckets. There's the  
16 bucket of dealing with the people who potentially  
17 have claims and things that affect them. And then  
18 the other bucket is sort of the closing of the  
19 receivership and what that does for the grounds  
20 going forward. I think due process requires that  
21 the people whose rights will be affected by the  
22 Court's order get some type of notice.

23 THE COURT: Yes.

24 MR. JACKSON: As a practical matter,  
25 this is a difficult case. We have a list of names

1 of people who have submitted things in the case who  
2 have filed things with the court, people who  
3 appeared at the hearing in Memphis that we had. We  
4 had a fairly significant names and number of  
5 addresses that have been what I would call recently  
6 acquired that we could send notice to. And then we  
7 did a publication --

8 THE COURT: Right.

9 MR. JACKSON: -- prior to the Memphis  
10 hearing. We can do something similar to that.

11 THE COURT: And didn't you post it on a  
12 web -- you may be including that in that  
13 publication, but didn't we do publication in  
14 newspapers in Memphis?

15 Yeah. Mr. Moore is shaking his head  
16 yes, yeah.

17 MR. JACKSON: I believe we did.

18 THE COURT: Yeah.

19 MR. JACKSON: The Attorney General's  
20 website has become sort of the place where notices  
21 are posted, and we can certainly post it there as  
22 well.

23 THE COURT: Yes. And I guess my  
24 question -- certainly, we've got to give notice.

25 But my question is: Have these matters already been

1 determined, or do we have to hold a hearing or a  
2 claims procedure? What are your thoughts about  
3 that?

4 MR. JACKSON: Your Honor, that's part of  
5 why we are glad to be here to sort of discuss that.

6 THE COURT: Yeah.

7 MR. JACKSON: This is a unique case. We  
8 want to make sure we have a unified plan going  
9 forward. You know, if the Court has -- if found or  
10 ruled is the right word, but you certainly stated on  
11 the record in the Memphis hearing and at other times  
12 that these in essence are the facts and all of the  
13 facts have been put into the record; so I don't  
14 think there's anymore evidence to be taken.

15 THE COURT: I made findings, so I don't  
16 think we need to have an evidentiary hearing. That  
17 part of it's done.

18 MR. JACKSON: So the question is -- I  
19 think there's sort of two ways to go about this,  
20 whichever one the Court thinks is better. The Court  
21 could issue an order of these things and they could  
22 be given a notice of a time to object. Or  
23 alternatively, it could be stated there will be a  
24 hearing or a final order will be entered on these  
25 things such and such date and people have a right to

1 appear at the hearing, whichever way seems to be the  
2 most efficient. And either -- we've discussed that  
3 either of those seem to meet the requirements of due  
4 process. It's sort of which one meets the practical  
5 requirements?

6 THE COURT: And what I'm wondering about  
7 is really, you know, what rights are left? I  
8 mean --

9 MR. JACKSON: I think the --

10 THE COURT: What would their objections  
11 be to, you know? The Court has made findings and  
12 they were given opportunities to participate. We  
13 gave notice. We had the hearing in Memphis where  
14 persons were allowed to file claims and present that  
15 to the Court and then the Court made findings. So  
16 we've had an evidentiary hearing. I'm just thinking  
17 procedurally what would be the nature of the rights  
18 they have left.

19 MR. JACKSON: Your know, I guess it  
20 would be almost more of the nature of the  
21 notification that an order is going to be entered.

22 THE COURT: Yeah.

23 MR. JACKSON: I guess people will always  
24 have the right to object to an order on whatever  
25 ground they deem appropriate or take it and appeal

1 from it if they thought that was appropriate or  
2 whatever. But as a practical matter, I don't think  
3 there are any real objections to be made, but they  
4 can have the opportunity.

5 THE COURT: What do you think about us  
6 preparing the order that the Court has determined to  
7 be entered so that people can see exactly what it  
8 would consist of. And if there are any  
9 objections -- I'm trying to think what would be  
10 sufficient due process? Filing it, I guess. We  
11 could conduct a hearing here in Nashville since we  
12 had the evidentiary hearing in Memphis. I think  
13 that's sufficient to do it in Nashville.

14 MR. JACKSON: Your Honor, I think that's  
15 absolutely right and that's, I think, the way that  
16 we were sort of leaning and hoping the Court might  
17 want to go. I think it's much cleaner to say "this  
18 is the order."

19 THE COURT: Yes.

20 MR. JACKSON: "If you have an objection,  
21 you have 60 days to file any objection with the  
22 Court. If no objections are filed, the order will  
23 become final. If objections are filed, the hearing  
24 will be reset."

25 THE COURT: Yeah.

1 MR. JACKSON: Or however the Court would  
2 want to do that. But I think that's probably the  
3 most efficient way to do it and gives everyone  
4 notice of how it's going to happen.

5 THE COURT: Yes, exactly. I think  
6 that's the best notice because this is what the  
7 Court has determined is considering entering, and if  
8 you have any objections. Okay. So logistically, I  
9 guess what we would do is the State would prepare an  
10 order that contains these items, and we would put  
11 before -- put on there that the Court is considering  
12 entering an order that states the following.

13 MR. JACKSON: Okay.

14 THE COURT: And then if you have  
15 objections they shall be filed and we can use, I  
16 guess, the same language we used before in  
17 connection with the Shelby County hearing that we  
18 had. And if you-all -- any other things we need to  
19 discuss about that order before you file it?

20 MR. JACKSON: I guess, as far as notice,  
21 would the same type of notice that we gave for the  
22 Memphis hearing be sufficient?

23 THE COURT: Yes. Which would consist  
24 of -- let's see. Mr. Moore had -- he was shaking  
25 his head. Yes, we did publication, right, in



1 newspapers?

2 MR. MOORE: Your Honor, I think what we  
3 did was -- there was a posting to a website, notice  
4 of the website was given. I believe there was  
5 notice of the website and the Court's order in two  
6 publications of the Memphis Commercial Appeal.

7 THE COURT: Good.

8 MR. MOORE: And they were in the Sunday  
9 editions. They were not inexpensive publications,  
10 Your Honor.

11 THE COURT: Yeah.

12 MR. MOORE: But as far as mailing  
13 population, I think that the Court would be well  
14 served in the same population that we gave notice of  
15 the Memphis hearing to be the same population that  
16 we give notice of this intended order.

17 THE COURT: Okay. All right. So let's  
18 track -- let's use the same procedure that we did,  
19 and we'll just start out with you-all submitting a  
20 proposed order to the Court. I will look it over  
21 and then I'll put down an order or a notice that  
22 says, yes, this proposed order is approved for  
23 publication to potential claimants, something like  
24 that. If you would do me the favor of calling  
25 Ms. Smith when you file it, just so we will get on

1 it. And I think 60 days and we'll give you -- do  
2 you want us to go ahead and give you a hearing date?  
3 It would probably be good to put in the order that  
4 any objections shall be heard on blank day so we  
5 don't have to do two things. Does that work?

6 MR. JACKSON: That's probably a good  
7 idea, Your Honor.

8 THE COURT: Okay.

9 MR. JACKSON: It may take us a few days  
10 to get this order together.

11 THE COURT: Oh, sure.

12 MR. JACKSON: I think we want to make  
13 sure that it is as precise as it can be.

14 THE COURT: Sure.

15 MR. JACKSON: And then the Court will  
16 need a little time to look at it, and we will need a  
17 little time to get it published. I think at least  
18 60 days from publication so we probably ought to  
19 look at a hearing date at least 90 days out to give  
20 us time to do that.

21 THE COURT: Well, why don't we do this.  
22 Let's leave that blank for right now, and then when  
23 you are going to file the proposed order, Ms. Smith  
24 will give some dates and make sure those work for  
25 you-all and we'll then put that in the order. Okay?

1 MR. JACKSON: Okay.

2 THE COURT: I can write that in and  
3 you-all can use that date. So when you call her  
4 with the order, then, after I look it over, we will  
5 give you a date. Let's do it that way. I know  
6 you've got other cases and things to do so it may  
7 take you a while to get this. But do you think you  
8 can get the proposed order to the Court by the end  
9 of the year?

10 MR. JACKSON: Oh, by the end of the  
11 year?

12 MS. HIESTAND: Yes.

13 MR. JACKSON: I think that will not be a  
14 problem. We will try to have it before then.

15 THE COURT: Okay. Good. Let's do that.  
16 Now, anything else with respect to item  
17 H of the November 8th report that you filed with  
18 the Court?

19 MR. JACKSON: Your Honor, H is the  
20 notice; so I think we have covered that.

21 THE COURT: Right. And we are going to  
22 include items A through G on that.

23 Now, in terms of I, J, and, K, I don't  
24 know if it would be easier for the State if I first  
25 heard from Shelby County to determine what their

1 position is or if you want to go on and tell me  
2 where the State stands on this.

3 Do you know enough information from  
4 them to tell me where we are on it?

5 MR. JACKSON: Your Honor, I can tell you  
6 briefly where we are and then that might -- and then  
7 you can hear from him and we can go from there.

8 THE COURT: Okay.

9 MR. JACKSON: This is the second bucket  
10 that I talked about.

11 THE COURT: Yes.

12 MR. JACKSON: What do we do with the  
13 cemetery? Ideally, they are clearly -- at this  
14 point, we have no one who has voluntarily agreed to  
15 accept the upkeep of the cemetery going forward.  
16 The Department has talked with several groups,  
17 Shelby County being one, and I don't think we have  
18 foreclosed that from happening. But at this point  
19 in time, there is no one who has agreed to do that.

20 THE COURT: And where I am deficient is  
21 I don't know what the law provides in this area. I  
22 haven't studied it yet and researched it. So if you  
23 can give me a brief overview of when we hit this  
24 point what does the law provide, if you know. If  
25 you don't, we're going to get into this, I'm sure,

1 through motions with Shelby County.

2 MR. JACKSON: I think what I can tell  
3 you is that it is less than clear what happens in a  
4 unique situation like this.

5 THE COURT: Okay.

6 MR. JACKSON: And again, H is a -- I  
7 mean, I is a recognition that we do not have anyone  
8 currently to take it momentarily, and J and K are  
9 sort of alternatives. If we can find someone, then  
10 we will need a final order making it clear what  
11 their rights are and what happens going forward.  
12 And, if not, then the ending of the receivership and  
13 some discussion about that means for the cemetery  
14 moving forward. It is not clear enough, and I think  
15 probably the best way will be, if we get to that  
16 point, is to have some brief discussion with that.

17 THE COURT: And I guess this case has  
18 been pending a long time, and we need to close the  
19 receivership. So we have a timetable on closing out  
20 the claims of any persons, and what I want to get  
21 with respect to I, J, and K is a timetable.

22 Do you think that talks have been  
23 exhausted? You've got no one, you said, ready to  
24 take the cemetery. So that's exhausted. We are at  
25 that point, or not?

1 MR. JACKSON: Well, Your Honor, there is  
2 no one who has agreed to take it. There are still a  
3 couple of people, and Shelby County being one of  
4 them, that there are discussions with, but there's  
5 no deal until there's a deal, I guess.

6 THE COURT: Yeah.

7 MR. JACKSON: We have not reached the  
8 point where we said "we are not going to talk  
9 anymore," but I suspect that will be coming soon.

10 THE COURT: Okay. So what I need to do  
11 is plan for the scenario that no one is going to  
12 take it over and set some deadlines on making  
13 determinations as a matter of law on filing motions  
14 on how that will occur.

15 Shelby County has obviously done some  
16 research and thought about what moneys it will take  
17 and where those should come from, and that's where  
18 I'm deficient in the law, and I'm going to need to  
19 get up to speed on that. But if you're comfortable  
20 with this, Mr. Jackson, I'm going turn it over to  
21 them so they can tell me what their position is and  
22 that will help me come up with a scheduling order  
23 and how to process their claims. Okay. Thank you.

24 MR. MEYERS: Thank you, Your Honor. I'm  
25 Robert Meyers for Shelby County.

1 THE COURT: Yes, good morning.

2 MR. MEYERS: Thank you for having me --

3 THE COURT: Yes, sir.

4 MR. MEYERS: -- and for granting our  
5 motion.

6 THE COURT: Yes, sir.

7 MR. MEYERS: The county's position is we  
8 are just concerned about what's going to happen if  
9 no one voluntarily takes over. The statute  
10 contemplates the voluntary assumption of the duties,  
11 either by a private entity or by a local government  
12 through the exercise of the legislative authority of  
13 the local bodies legislation. So in our case, it  
14 would require a vote -- an affirmative vote of the  
15 county commission to agree to take it over.

16 We believe that that can only happen in  
17 our situation if there's adequate funds in the  
18 trust fund. And I think it's beyond dispute that  
19 while there's roughly a half million dollars in the  
20 trust fund, that's an inadequate to -- an  
21 inadequate amount of money to proceed with the  
22 future care and maintenance of Galilee. The number  
23 that's required is going to be about closer to  
24 about 1.3 million total.

25 And so we are in a situation where the

1 statute says that you have the right to voluntarily  
2 assume that -- we're concerned that in the end that  
3 the receivership is closed and the receiver just  
4 simply walks away from the property, as a practical  
5 matter, that the citizens will come to our body and  
6 say "Please, take care of this cemetery."

7 We are already taking care of four  
8 other cemeteries that have been abandoned. And  
9 unfortunately when we take care of them, we are  
10 really just talking about mowing the grass. We're  
11 talking about doing virtually nothing else that  
12 might be necessary in order to maintain the  
13 cemetery.

14 THE COURT: Are you aware of any law --  
15 and I'm talking about state law -- that says if a  
16 cemetery has been abandoned then what the  
17 obligations are of any state or local -- do you know  
18 if there's any law on that?

19 MR. MEYERS: I have been unable to find  
20 it, Your Honor. I think I agree with Mr. Jackson  
21 that there's a hole in this area.

22 THE COURT: Okay.

23 MR. MEYERS: And that unfortunately Your  
24 Honor may be required to fill judicially in order to  
25 render a final decision, and that's really what

1 Shelby County's interest is. Obviously, we would  
2 like it all fielded in a way that's more favorable  
3 to us, but we don't want the property to be  
4 abandoned as the Court.

5 THE COURT: Right. I was just thinking  
6 procedurally how we should set this issue up. And I  
7 was wondering if on the intervention if we should  
8 proceed with a declaratory judgment to declare the  
9 rights and obligations of the State, the County, if  
10 any, with respect to the cemetery or just as to the  
11 cemetery. I haven't really thought this through.  
12 I've been working on another case where I've been  
13 using a declaratory judgment. So it may just be  
14 that I have that prominent in my mind. If you have  
15 a better way, I think procedurally, you know, we  
16 need to set this up -- so if it is a question, we  
17 don't have any law on it. Let's, at least, get it  
18 procedurally, kind of set it up.

19 Did you have in mind filing anything  
20 like that?

21 MR. MEYERS: Really, what I had in mind,  
22 Your Honor, was something completely different and  
23 that was to go to the legislature and lobby them for  
24 the money if I can get support.

25 THE COURT: That's always a very good

1 some time with that. You would need some time.  
2 That would be in 2020. We have the claims procedure  
3 going. Do you think it's helpful for me to be -- or  
4 maybe it's just a neutral. It doesn't have any  
5 impact. But if the Court goes on and sets up some  
6 procedure to make a determination as a matter of  
7 law, does it have any impact on what you're doing on  
8 your legislative side or not? They may not be  
9 connected.

10 MR. MEYERS: No, Your Honor, and my  
11 limited experience with the legislature is it takes  
12 a long time.

13 THE COURT: Yes. Yes. Okay. And see I  
14 was thinking long time just the legislative session.  
15 Am I being wrong about that?

16 MR. MEYERS: I think that would be fair  
17 because I think we would be able to forecast whether  
18 it could be done or not done within that time frame.

19 THE COURT: Okay.

20 MR. MEYERS: And hopefully this is a  
21 good time. The State does seem like it has lots of  
22 money at the present, but we have to wait and see.  
23 Obviously, unfortunately, we have people who are low  
24 priority.

25 THE COURT: Right. Right. Well, what I

1 way to proceed. That is always a very good way to  
2 proceed, yes.

3 MR. MEYERS: Certainly, Shelby County is  
4 willing to do that. But as far as legally  
5 proceeding, I don't really have an idea one way or  
6 the other. I happen to be a civil rights lawyer who  
7 got a call from the county attorney who says, "I  
8 know you don't know anything about cemeteries, but  
9 would you help me out?" So I'm trying to learn as  
10 fast as I can.

11 THE COURT: Okay. But you do anticipate  
12 trying to get some help from the legislature which  
13 might answer our -- at least if you had enough  
14 money, then we could put something down. I could  
15 put down an order that says, "This is the way we  
16 will take care of it in the future."

17 MR. MEYERS: Yes, Your Honor. As an  
18 example, but not by way of promise.

19 THE COURT: Yeah. Yeah.

20 MR. MEYERS: But if the State were to  
21 come forward and say, "we have the moneys through  
22 the legislature or other means, and we'll give you  
23 \$1.3 million," Shelby County would most likely  
24 agree.

25 THE COURT: Okay. So you would need

1 could do then is run something in tandem with your  
2 legislative efforts. I will ask Mr. Jackson and Ms.  
3 Hiestand about the declaratory judgment. I don't  
4 know if I can do something sua sponte along those  
5 lines. We may not even need that procedural window  
6 dressing on it. I might just be able to do it in  
7 the context of what I've already before me.

8 But what I would like, starting in  
9 January, to go on and get that running, a  
10 determination on what happens to the cemetery, who  
11 has the responsibility for maintenance, at least,  
12 you know, mowing grass, keeping the weeds down if  
13 it's abandoned. Or if the State, you know, wants  
14 the receivership to end -- because the receivership  
15 is temporary, and it's their position that the  
16 cemetery has been abandoned.

17 All right. Thank you so much for  
18 stepping in this morning and filing the papers.

19 MR. MEYERS: Appreciate it.

20 THE COURT: Anything else that you want  
21 to provide to the Court?

22 MR. MEYERS: No, Your Honor. Other than  
23 we are flexible. We are interested less in  
24 litigating and more in solving the problem.

25 THE COURT: Yes.

1 MR. MEYERS: It may unfortunately be one  
2 of the situations because of the state of the law  
3 that ultimately if we can't reach a conclusion we  
4 will need an answer from the Court.

5 THE COURT: And sometimes I -- you know,  
6 the function of the Court is twofold. One, if there  
7 is another private situation that may -- or  
8 legislative situation that may get it solved, if  
9 we're having litigation ongoing, sometimes that can  
10 kind of provoke that or prompt that. And then, of  
11 course, the other thing is, if we can't get a  
12 legislative help, then just a decision from the  
13 Court.

14 So that's why I'm thinking about going  
15 on and getting a procedure in this Court starting  
16 in January, February to make a decision about that.  
17 That then might bring some immediacy to say to the  
18 legislature. We need -- you know, we need the  
19 money because we have this case down there, and,  
20 yeah.

21 Okay. Good. All right. Thank you.

22 MR. MEYERS: Thank you, Your Honor.

23 THE COURT: Okay. Mr. Jackson, Ms.  
24 Hiestand, Mr. Moore, you've heard my discussion.  
25 Any thoughts about how to proceed?

1 MR. JACKSON: Your Honor, a couple of  
2 things. We hadn't really thought about the  
3 declaratory judgment angle. And to be frank, I'm  
4 not sure that's necessary. I think the Court  
5 already has the authority to --

6 THE COURT: I don't need to dress it up  
7 with that. Okay.

8 MR. JACKSON: -- dispose of --

9 THE COURT: Because I do have broad  
10 powers.

11 MR. JACKSON: Yes.

12 THE COURT: Okay. All right.

13 MR. JACKSON: And again, we sort of have  
14 two tracks here. If we can find someone to take it  
15 or if the legislature or whatever other version is  
16 successful, then clearly the Court has the power to  
17 transmit.

18 THE COURT: Yeah.

19 MR. JACKSON: Now, it's really if no one  
20 comes forward what do we do. We have done a fair  
21 amount of research. I don't think there is no clear  
22 answer we'd be prepared to brief the Court on what  
23 the angles are and what --

24 THE COURT: And I guess what -- even  
25 though I've got broad powers, how do we -- at some

1 point, how do we determine, okay, there's no one to  
2 take it; so I need to make this decision? So I'm  
3 thinking what I should do is just set a deadline for  
4 the State to report to the Court whether they have  
5 anyone ready to take over the cemetery. And if not,  
6 then at that point the State shall file a motion  
7 with the Court that -- stating what its -- the  
8 closure of its responsibilities and then briefing  
9 for the Court how the cemetery is to be handled  
10 under the law going forward.

11 MR. JACKSON: I think that's an  
12 excellent way to handle it, Your Honor. I guess as  
13 far as timing of that, you know, fortunately we are  
14 heading into the winter so there is minimal  
15 maintenance during the winter.

16 THE COURT: Yeah.

17 MR. JACKSON: But come about April the  
18 maintenance would ratchet up again.

19 THE COURT: Yea.

20 MR. JACKSON: So if we could get this  
21 resolved in that time frame I think that's more --

22 THE COURT: Good. That would be better.

23 MR. JACKSON: The Department -- this has  
24 been going on a long time and has already spent a  
25 lot of money, and we would like to get it resolved

1 as quickly as we can. It takes what it takes, but  
2 as quickly as we can.

3 THE COURT: With the timetable you have  
4 in mind, is putting down an order that says  
5 January 31, 2020, is the deadline for the State to  
6 file a notice with the Court as to item I, whether  
7 anyone will take over the cemeteries, is that too  
8 long? Long enough? What about it? That would give  
9 you --

10 MR. JACKSON: Your Honor, I think we can  
11 certainly file that by then and be ready to go with  
12 our brief on what we think that means. If there is  
13 no one to take it by January 31. As a practical  
14 matter, if we are continuing to work with Shelby  
15 County on the legislative issues, that won't be  
16 resolved by January 31st.

17 THE COURT: Yeah. Because they won't  
18 get started in the legislature.

19 MR. JACKSON: No.

20 THE COURT: Why don't we say -- you  
21 know, I don't know how long that session is going to  
22 be. Do you want to move it to the end of February?  
23 Do you think that would be -- or more than that?  
24 You-all tell me. You are more in tune with their  
25 calendar than I am.

1 MR. JACKSON: Well, as far as the  
2 legislature goes, they are typically adjourning in  
3 April, but I don't think this can wait that long.  
4 THE COURT: So how about February 28th?  
5 MR. JACKSON: I think that would be  
6 fine.  
7 THE COURT: They will be in session and  
8 active at that point.  
9 MR. JACKSON: And additionally, we will  
10 have concluded the other portion by then.  
11 THE COURT: Right.  
12 MR. JACKSON: And it's my thought that  
13 it might aid a resolution if all claims have been  
14 terminated because it's clear what's left, and if  
15 someone might be willing to take it, that they are  
16 taking it free of claims. It might be an inducement  
17 to take it.  
18 THE COURT: Yeah. So let's think about  
19 that it for a minute. If you-all get the order  
20 in --  
21 (Counsel confer.)  
22 THE COURT: Right. That's what I was  
23 just discussing, the process, because we've got 60  
24 days. I was just working that out in my mind. So  
25 if you-all go on and file the order, you get it in

1 here and get it hopefully entered, and then  
2 December, you-all are going to publicize it and all  
3 of that; so we're looking at January. And if they  
4 have 60 days, it will be January/February; so March.  
5 And then we would have to have some hearing, you  
6 know, of -- a hearing date in March, but we're  
7 getting close to April.  
8 MR. JACKSON: Well, perhaps those  
9 hearings can be one hearing.  
10 THE COURT: Yeah. One hearing.  
11 MR. JACKSON: Any hearing on objections  
12 as well as a final resolution of what's left.  
13 THE COURT: Do we need to give 60 days  
14 or 45 days, I'm thinking, would be enough?  
15 MR. JACKSON: Probably 45 -- I was  
16 thinking 60 more in terms of some people might not  
17 actually get the notice for quite some time to make  
18 sure they had time to think about it. 45, I think,  
19 is sufficient.  
20 THE COURT: Yeah. Let's go with 45.  
21 And then that way we could probably be having our  
22 hearing sometime end of February, early March. So  
23 why don't we say that the notice that will be  
24 filed -- but that's getting us up -- you know, if we  
25 have a warm March -- yeah.

1 MR. JACKSON: Again, the Department will  
2 do whatever it has to do until this case is  
3 concluded, but we would like to expedite because of  
4 the expense that the Department is incurring. So it  
5 will take what it will take.  
6 THE COURT: So if we start publicizing  
7 that order in December, then we ought to be --  
8 January, February -- I think we could make a  
9 February 28th date.  
10 MR. JACKSON: And that's just an initial  
11 filing. Hearings will come and briefings and  
12 opposition might come after that; so the hearing  
13 will be down the road.  
14 THE COURT: Right. So what I'm  
15 thinking, the February 28th deadline would be --  
16 consist of the following: A notice by the State if  
17 there's no one to take it. Of course, if there is  
18 someone you could notify the Court and we will set  
19 up the hearing on that. And if there is no one to  
20 take it, along with that will be a briefing by the  
21 State and a motion on how the Court should handle  
22 the future care.  
23 MR. JACKSON: A motion to close out the  
24 receivership and then our version of what that would  
25 mean for the cemetery?

1 THE COURT: Yes.  
2 MR. JACKSON: We can certainly do that.  
3 THE COURT: Okay. All right.  
4 MS. HIESTAND: Your Honor, I think the  
5 things concerning the final part of this case will  
6 also have to be directly notified to the trustee.  
7 Emily Walker has been at this  
8 Commercial Bank and Trust -- has been courtesied  
9 copied, serviced -- and I think when you start  
10 talking about the final maintenance and the use of  
11 the trust, then I think we are going to have to be  
12 more direct.  
13 THE COURT: How should we handle that  
14 with her? Should we put it in the order that she's  
15 required to attend?  
16 MS. HIESTAND: Or contemplate that the  
17 trustee will be notified of this process.  
18 MR. JACKSON: I think perhaps in the  
19 order just direct us to send notice to the trustee  
20 and we can make contact with her.  
21 THE COURT: Okay. So this will be --  
22 ordinarily, we would prepare the order on this, but  
23 I'm going to have you-all also prepare this order  
24 that just provides --  
25 MR. JACKSON: Okay.

1 THE COURT: And if you'll go on and  
2 e-file it or get it up here so we can get it entered  
3 that provides the February 28th date. And the  
4 notice that you have to file about if someone is  
5 going to take it over or not, and your motion to  
6 close out the receivership. And then if you would  
7 put in there specifically about Ms. Walker that she  
8 is to receive notice because she will be involved.  
9 The trust will be involved -- will have an interest  
10 in the closure and want input and participation.

11 MR. JACKSON: We can do that.

12 THE COURT: Okay. Anything else?

13 MR. JACKSON: May I?

14 THE COURT: Sure.

15 MR. JACKSON: Mr. Moore has a couple of  
16 items that he wants to address.

17 MR. MOORE: It's nice to see you, Your  
18 Honor.

19 THE COURT: Good morning. It's good to  
20 see you too. You look well and I'm glad to see you  
21 again.

22 MR. MOORE: I'm vertical, ambulatory,  
23 and cognizant which are the basics of everything.  
24 And thank you, Your Honor.

25 Two items. One item -- there are

1 ongoing negotiations with Shelby County. There are  
2 some discussions with another community group that  
3 just recently commenced that are looking fairly  
4 promising at this point. So the interest of the --  
5 and this is the first time I've been involved in  
6 those types of discussions. The concerns that I'm  
7 hearing are issues related to disinterments.  
8 What's the Court going to do about that? Issues  
9 related to access to funds, the trust account.

10 This receivership, although it looks  
11 very much analogous to the Bookwalter receivership  
12 that Your Honor is familiar with, is not.

13 THE COURT: Right.

14 MR. MOORE: This has an improvement care  
15 trust for which this cemetery is a beneficiary of,  
16 and I think that those items will play, hopefully,  
17 in the briefs filed by the attorney general's office  
18 and whatever issues that Shelby County may want to  
19 address along those same lines.

20 In the end though, Your Honor, what can  
21 be done in a receivership -- and I have done a lot  
22 of receiverships -- we've done. We have stabilized  
23 the physical grounds to the extent they can be  
24 stabilized. We have created a safe, respectful  
25 zone at the cemetery.

1 There are ongoing things that happen in  
2 every cemetery and that includes Galilee. We have  
3 some grave sinkage that we will need to deal with  
4 in the winter months. Shelby County and Memphis  
5 and the area suffered a pretty spectacular wind  
6 storm. There was damage at the cemetery. A tree  
7 has fallen across a section of the fence and  
8 completely destroyed that part of that fence. So  
9 that tree will need to be removed and the fence  
10 repaired.

11 These are the things that, when the  
12 Court is looking at where we go, I would encourage  
13 the Court to bear in mind. Because as pristine as  
14 you can make a place, there will still be ongoing  
15 things.

16 THE COURT: Sure.

17 MR. MOORE: And as opposed to Bookwalter  
18 and when the Court is looking at the statutory  
19 framework -- however Swiss cheese it looks, and it  
20 is -- the concept of local control and this trust  
21 interplay with that cemetery, I think, will bear a  
22 significant role in how the Court may want to view  
23 going forward.

24 THE COURT: Let me ask you this: So  
25 first of all, the deadline that we've have set, the

1 February 28th deadline, that should help any  
2 negotiations because we've got a deadline by which  
3 it needs to be done; so that's good.

4 MR. MOORE: Absolutely, Your Honor.

5 THE COURT: In terms of the half million  
6 dollars that's in the trust, do you know -- and if  
7 you don't, that's fine. I have a drill down on this  
8 law. I'm a Jack of all trades and a master of none;  
9 so I will have to study up on this little niche  
10 area. But the half million dollars trust, that's  
11 something that would be -- those funds would be  
12 provided to the person who takes over the cemetery.  
13 Would they have access to them or not? Do you know?

14 MR. MOORE: I don't particularly know.  
15 The elements of the law that I have looked at, in  
16 circumstances where a private cemetery operator  
17 fails to maintain a cemetery, there's a statutory  
18 construct that allows the local district attorney to  
19 file an action with the local chancery court and  
20 that the local chancery court designates a  
21 responsible person to go out there and mow or, of  
22 course, whatever that's been raised as the  
23 deficiency, and the authority of the chancellor to  
24 direct the trustee of the trust to compensate that  
25 person.

1 THE COURT: I see. Okay.  
 2 MR. MOORE: That's all in the construct  
 3 of a private cemetery company having failed to do  
 4 what it was supposed to do.  
 5 Today, the cemetery company known as  
 6 Galilee Memorial Gardens, JM&M Services, what have  
 7 you, does not exist.  
 8 THE COURT: Right. It's not failing.  
 9 It's just --  
 10 MR. MOORE: So those are elements that I  
 11 think the briefing will need to respond to.  
 12 THE COURT: Yeah. Is that being  
 13 discussed in negotiations? I mean, is that  
 14 something or not?  
 15 MR. MOORE: Yes. On my end --  
 16 THE COURT: Okay.  
 17 MR. MOORE: -- in what I'm dealing with.  
 18 You know, whatever the law would provide access to  
 19 this foundation.  
 20 THE COURT: Right. But it's just not  
 21 clear in the law how you necessarily get that in our  
 22 situation.  
 23 MR. MOORE: That's correct, Your Honor.  
 24 THE COURT: Okay.  
 25 MR. MOORE: And, actually, their concern

1 has been more along the lines of not being  
 2 responsible for locating people, not being  
 3 responsible for disinterring people, and not being  
 4 responsible necessarily for markers and things like  
 5 that.  
 6 THE COURT: Well, in this list that was  
 7 provided to the Court on November 8th, I'm assuming  
 8 you had input on those items so that --  
 9 MR. MOORE: Yes, Your Honor, I did.  
 10 THE COURT: -- so that in our  
 11 negotiations the concerns of these folks you can  
 12 say, "Look, we've got a court order that's going to  
 13 address that," and we're right now in the process of  
 14 having a procedure for that to be entered.  
 15 MR. MOORE: Yes, Your Honor. I can't  
 16 really --  
 17 THE COURT: Does this list look good to  
 18 you?  
 19 MR. MOORE: Yes. Yes, Your Honor.  
 20 I can't really say what the Court will  
 21 or won't do because the Court hadn't said yet.  
 22 THE COURT: Right.  
 23 MR. MOORE: I have a propensity.  
 24 THE COURT: Yeah. But I just wanted to  
 25 make sure that you had looked over the list and

1 there's nothing missing from it in the negotiations.  
 2 MR. MOORE: No, Your Honor, there isn't.  
 3 THE COURT: All right. So we've covered  
 4 all the concerns.  
 5 MR. MOORE: Those are the only items I  
 6 had.  
 7 THE COURT: Okay. Thank you.  
 8 All right. Anything else, Mr. Meyers?  
 9 MR. MEYERS: No, Your Honor.  
 10 THE COURT: All right. Mr. Jackson, Ms.  
 11 Hiestand, I'm going to ask you--all if you would to  
 12 prepare the order from today's hearing. And then  
 13 also submit to me that proposed order that we're  
 14 going to publicize on the bucket of the claimants.  
 15 MS. HIESTAND: Yes, Your Honor.  
 16 MR. JACKSON: So the order from today's  
 17 hearing, the one setting the February 28th, we will  
 18 try to get that as quickly as we can.  
 19 THE COURT: Sure. That's fine.  
 20 MR. JACKSON: And the other one we will  
 21 also try to have as quickly as we can. It's a  
 22 little more detailed so it will take some time.  
 23 THE COURT: Okay. Good.  
 24 MR. MEYERS: Your Honor, I have a  
 25 proposed order on the intervention.

1 THE COURT: On the intervention? Great.  
 2 That will be good.  
 3 Since there's no objection, let me look  
 4 this over and I'll sign it. And then when we're  
 5 done with court, Ms. Hobson will take it downstairs  
 6 for entry. Let me just read this over here.  
 7 MR. JACKSON: Your Honor, I will tell  
 8 the Court he shared that with us ahead of time and  
 9 we have no objection to it.  
 10 THE COURT: Great. Thank you.  
 11 Okay. Good.  
 12 Very good. Well, at this time we are  
 13 going to adjourn the hearing. Thank you, all.  
 14 (WHEREUPON, the foregoing proceedings  
 15 were concluded at 10:20 a.m.)  
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3 COUNTY OF MONTGOMERY  
4

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