

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
 20TH JUDICIAL DISTRICT
 AT NASHVILLE
 PART II

FILED

2016 AUG 26 AM 8:37

CLERK & MASTER
 DAVIDSON COUNTY CHANCERY COURT

STATE OF TENNESSEE,)
ex rel. JULIE MIX MCPEAK, solely in her)
 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

NOTICE OF FILING TRANSCRIPTS OF AUGUST 17, 2016 STATUS CONFERENCE

Undersigned counsel for Julie Mix McPeak, Commissioner of the Department of Commerce and Insurance, statutory Receiver for Galilee Memorial Gardens and the Special Deputy Receiver David Kustoff, hereby gives notice of filing the original transcript of the status conference heard on August 17, 2016, and a condensed version.

Respectfully submitted,



 SARAH ANN HIESTAND (14217)
 Senior Counsel, Financial Division
 Tennessee Attorney General's Office

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Notice of Filing has been hand-delivered to the following interested parties this 26th day of August, 2016:

Attorney for Defendants

William J. Haynes, III
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Nashville, TN 37219
Via email to whaynes@bonelaw.com



SARAH ANN HIESTAND

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CLERK & MASTER
DAVIDSON COUNTY CHANCERY COURT

MIX MCPEAK

vs.

J.C. & M.

GALILEE MEMORIAL

Condensed
Transcript

TRANSCRIPT OF PROCEEDINGS

August 17, 2016

Elite Reporting Services

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IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
20TH JUDICIAL DISTRICT AT NASHVILLE
PART II

STATE OF TENNESSEE, ex rel. JULIE
MIX MCPEAK, solely in her official
capacity as Commissioner of
Commerce & Insurance,
Plaintiff,

vs. Case No. 14-102-II
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,

BE IT REMEMBERED that the above-captioned cause
came on for hearing, on this, the 17th day of August, 2016
before Judge Carol L. McCoy, when and where the following
proceedings were had, to wit:

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* * *

PROCEEDINGS

(WHEREUPON, the above-captioned matter
was heard in open court as follows:)

THE CLERK: State of Tennessee versus
Galilee Memorial Gardens and others

THE COURT: Good morning. Mr. Kustoff, I
want to congratulate you. I realize your time with
us may be limited.

MR. KUSTOFF: Your Honor, I appreciate
that very much. It's been an honor being before your
Court.

THE COURT: Ms. Hiestand?

MS. HIESTAND: Sarah Hiestand appearing
for Commissioner Julie Mix McPeak who is the statute
receiver of Galilee Memorial Gardens, et al. We are
here with having submitted a ninth interim report for
the Receiver and the deputy receiver, which had a lot
of material for your Honor and for the public. And
we have here David Kustoff, the deputy receiver, and
we also have Rob Moore, representative of
Receivership Management, Inc., which is the other
deputy receiver having performed a lot of the on-site
work with this cemetery.

A P P E A R A N C E S

For the Plaintiff:

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For the Receiver:

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Also Present:

MR. ROBERT MOORE

Today we are prepared to have Mr. Moore
go through any -- the process that he went through to
provide the material to the Court with the ninth
report, and because there is so much material, to
answer any questions you have about how one would use
that material and, you know, what that produced about
the condition of the cemetery.

We are here at a point where the State
is -- needs to choose how to go forward with the
number of the processes at the cemetery and would
welcome your Honor's directives, if there are any
that you would give at this point concerning the
recommendations of the receiver.

THE COURT: What I am going to ask you to
do is just briefly have the record filled out a
little bit about what was done, because there's this
disk that's in the record, there's the report that's
been provided to me. I'm not sure that I have really
any answers either. I don't have a lot of questions.
It's a situation that's disturbing for the families
and disturbing for those who have to be involved in
it because of the unknowns, and I don't know how you
find the answer to an unknown. I don't know that I
have them.

MS. HIESTAND: We'll try to lay out what

1 the receiver's done and then what might be done with
2 the state of the unknown that we have about the
3 cemetery. With that, we have Mr. Moore come to
4 describe his -- that layout of these materials that
5 have been submitted about what has been done at the
6 cemetery.

7 THE COURT: Sir, you can sit right there,
8 unless you want to come up.

9 MR. MOORE: I was going to go to the
10 lectern, if that was okay with your Honor.

11 THE COURT: Okay.

12 MR. MOORE: Thank you, your Honor. For
13 some reason my brain works a little better when I
14 stand.

15 Your Honor, I'm Robert E. Moore, Jr., I'm
16 the chief operations officer of Receivership
17 Management here in Nashville Tennessee, and I'm AN
18 attorney here with the State of Tennessee -- licensed
19 in the State of Tennessee.

20 Let me begin by saying where we were and
21 where we are today. When I came to this Court, your
22 Honor, first having been appointed in the spring of
23 2015, we knew very little about Galilee Memorial
24 Gardens in the sense of how the cemetery had been
25 operated as a burial process, the tracking and

1 recording of information, and the general conditions
2 that were out there. We understood, I understood,
3 the allegations that had been made against the
4 defendants in this case both in this proceeding and
5 in other proceedings, and what I found our task to be
6 were not unusual in cemetery receiverships like this.

7 We needed to determine who -- as best we
8 could with the records that we had, we needed to
9 determine who was buried there, where they were
10 buried, how much space was left, who owned that
11 space, who had burial rights to be buried in the
12 cemetery that had not been claimed used.

13 We began the process by developing a
14 database utilizing the records of the cemetery dating
15 back to its origin in the mid 1950s, and that task
16 was largely facilitated by the District Attorney's
17 Office in Shelby County who had custody of all the
18 records. They had scanned -- that office had scanned
19 nearly 85 percent of the records that they held. We
20 scanned everything but a collection of note cards
21 that had not been used for 20-plus years.

22 It was -- after interviewing Mr. Jemar
23 Lambert and Marje Lambert, it was my understanding
24 they didn't use the note cards in their general
25 operation of the cemetery. So we had a set of

1 records that consisted of interment members of the
2 ledger that had been maintained up through I believe
3 1989, we had Garden ledger books that the cemetery
4 operators had used to not only record interments, but
5 generally to record ownership, and then we had
6 interment sheets that the Lambert operation -- and
7 I'll refer to it as the Lambert operation, unless
8 there's an objection here but I'll refer to it as the
9 Lambert operation -- the Lambert operation used in
10 the recording of interments. They were sheet form
11 and they began being mainly completed, and then they
12 switched to a computer generated program.

13 MR. HAYNES: Your Honor, if I may, I'd
14 ask -- Will Haynes for the individual defendants.
15 I'd ask Mr. Moore to specify entity or entities that
16 comprised the Lambert operation.

17 MR. MOORE: Yes, your Honor. I would say
18 the Lambert operation comprises of Mr. Jessie
19 Lambert, and after his passing, the heirs to that
20 operation, which my understanding of the operation
21 was largely done by Mr. Jemar Lambert, who is the son
22 of Jessie Lambert.

23 So during the course of the Lambert
24 operation, they used interment sheets. And in my
25 first report, your Honor, I submitted a sample of

1 that. So those are the source materials for what
2 became the interment database. It is -- it is the
3 record of the cemetery as prepared by the cemetery
4 and was not changed by us.

5 It was important in my opinion, your
6 Honor, that that database reflect what the cemetery
7 operators, whether it was the Lambert operation or
8 those before. Because you have to realize, your
9 Honor, this cemetery operated by others between 1955
10 up to the point that Mr. Lambert, Mr. Jessie Lambert,
11 became involved, which would have been about 1991, I
12 believe. '91 or '92.

13 So that interment database covers the
14 span of the operation of the cemetery and includes
15 all the data that we could lay our hands on to give
16 us a sense of what had been recorded. That was not
17 an easy task, because much of it was handwritten and
18 necessitated at least two additional trips on my part
19 to get additional scans from the district t
20 attorney's office at Shelby County. That was a great
21 effort to put that all into a single database. That
22 database is searchable on a number of fronts and it
23 can be broken down by the gardens.

24 Just so the Court understands, there are
25 nine gardens in Galilee Memorial Gardens. I'm not

1 going to go into which garden was there before, which
 2 garden was added or whatever, because at this
 3 juncture, your Honor, I'm not sure that that's really
 4 going to -- that's not really an important point at
 5 this point, as far as the work that I did.

6 That inter -- and that is referenced,
 7 that interment database is, Exhibit 1.

8 MS. HIESTAND: I.

9 MR. MOORE: I'm sorry, exhibit I. Thank
 10 you.

11 Our next stage that we began, and I refer
 12 to it as stage two because it really was, we began
 13 on-site inspections work. What that consisted of was
 14 the use of the maps that had been prepared by the
 15 original engineers that laid out the cemetery, maps
 16 that were in the custody of the district attorney's
 17 office, and maps that were held in the office of the
 18 cemetery at the time that the receivership was
 19 incubated.

20 We used those maps and we used measuring
 21 in accordance with the layouts of the map. We
 22 utilized a probe. The first part of stage two was
 23 based on assumptions that the burials were done on at
 24 least a three and a half foot wide center as
 25 indicated by the maps. We went through that process.

1 We felt fairly comfortable with what we had done
 2 until a permitted burial was allowed in the fall of
 3 2015, and we discovered that there were inadequacies
 4 in some of our work.

5 And so we enlisted -- and that was the
 6 last time, I believe, we were here, your Honor. We
 7 had just completed dealing with that issue and
 8 discovery and had a plan to utilize ground
 9 penetrating radar. GPRS Services wound up being the
 10 entity that was contracted with. The entire cemetery
 11 was scanned. And when I say the entire cemetery,
 12 your Honor, I mean the entire thing, all nine acres.
 13 Even the areas behind the office, areas to the tree
 14 lines, the whole thing. And their work is in your
 15 report as well, in the ninth report, and it is
 16 considered Exhibit E.

17 That report detailed -- has a lot of
 18 information in it. That process, they -- in using
 19 the equipment, each time what they called an anomaly,
 20 which is an electronic disruption in how the radar
 21 reads, they put a flag down. In their professional
 22 judgement, that indicated a body. And their report
 23 outlines the process by which they made the
 24 determination based upon their electronic readings of
 25 a body. And that body was marked with a red flag or

1 a white flag.

2 There were a number of color of flags out
 3 there, your Honor. The flags had no distinction.
 4 They just ran out of white ones and bought orange
 5 ones and ran out of the orange ones and bought red
 6 ones. That's how that occurred.

7 I was out there and I made corrections to
 8 our initial on-site inspections. I did that
 9 personally. I had an assistant with me to help with
 10 the measuring, and I had the GPRS people there as
 11 well. The observations were recorded on plat sheets.
 12 As the measurements changed because of added bodies
 13 to the gardens were noted, we amended the maps.

14 We began a full understanding that it
 15 appeared that burials had not been done in accordance
 16 with the grid system that had been established for
 17 the cemetery. The lines would -- the interred would
 18 not line up, they would go in an angle. That
 19 unfortunately wasted a good bit of space in how the
 20 burials were done. A body might be in a part of one
 21 space, which displaced another person in another
 22 space, and that displacement grew as the spaces went
 23 down the line. It made it worse, and in the end
 24 several lots would be wasted because they had not
 25 stayed in line. And there are a lot of reasons that

1 that can happen, but nevertheless of the reasons, it
 2 happened.

3 So those corrections to our earlier
 4 on-site sheets, plat sheets, all of that information
 5 was gathered into the on-site database, which is
 6 Exhibit C. Now that on-site database takes into
 7 consideration on-site observations. If there was a
 8 marker down, the name was recorded, the location on
 9 the map in the system was recorded. If there was not
 10 a -- if there was a body and there was not a marker
 11 on that grave space that was occupied and marked as
 12 ONM. NP means not platted and not usable. There's a
 13 whole series of categories that are described in the
 14 report.

15 That document is what has made us light
 16 years away from where we started. Because now we
 17 know, we know where bodies are, your Honor. We know
 18 where they are buried. We don't always know who they
 19 are. The recordings were not accurately kept as to
 20 which section was what, and that goes back to my
 21 initial report to your Honor when I first got here
 22 and I said I showed different pictures of how they
 23 had recorded things versus what I was seeing in the
 24 cemetery. This is in the first thing, in the first
 25 appearance here, your Honor. So that's just

1 confirmed what I had suspected at that time, but we
2 have quantified it.

3 So when -- you know, the press might say,
4 well, they don't know where the bodies are. We know
5 where the bodies are, your Honor, we just don't know
6 for 100 percent sure who they are.

7 Now during the course of stage two and
8 stage three, which was the gathering of the on-site
9 work, and that was a lot of database work in and of
10 itself, we had to reconstitute all maps of the
11 gardens because every garden had expansion areas and
12 the Garden of Hope didn't even have a map. So -- and
13 it was created wholly on land not owned by the
14 cemetery.

15 And in the videos that were exhibited to
16 the ninth report, I narrate the video as I go through
17 the cemetery, and in that narration, you can see that
18 really the Garden of Hope wasn't -- it's not really
19 intended to be an area of burials, but it's full.
20 The burials -- and the ground there is -- it's
21 difficult for the ground penetrating radar to really
22 get a fully accurate take on the occupation, but
23 based on their work and our probe work and the
24 measuring and the remeasuring we did, that particular
25 garden is full.

1 But we gathered that information and that
2 is in the -- in that database. So all our on-site
3 work for all the gardens is in that particular
4 database. We have re-drawn the maps utilizing both
5 the original measurements and what our measurements
6 showed out there after the on-site work.

7 Now during the course of that, we had
8 another process going, which was to identify owners
9 of vacant spaces. We advertised and solicited and
10 signs were posted at the cemetery seeking anyone who
11 believed they owned a space in the cemetery to
12 contact my office. And we issued quite a number of
13 requested affidavit forms.

14 And this is a form I have used in other
15 cemetery projects that I have done, and it basically
16 is, submit your documents that indicate you hold a
17 burial right in this cemetery so we can evaluate it
18 against the records we do have. And we had enough
19 records to do that verification. There's no question
20 about the fact that whatever records we have, they
21 were sufficient enough for us to identify the
22 legitimacy of the documents of this and they signed
23 an affidavit. And eventually 573 total spaces were
24 claimed through that process, those are vacant
25 spaces, sold on a pre-need basis, that the cemetery

1 has an obligation to fulfill.

2 And as my report indicates, of those
3 spaces, I believe only 41 remain vacant and available
4 and usable. And the balance of those displaced
5 people whose right has either been unauthorized used
6 by somebody before them or there's a prior body
7 buried there, there are only, I believe, 36 space in
8 an undeveloped area of the Garden of Gethsemane to
9 address those. The bulk of the total vacant spaces,
10 because not every vacant space was claimed through
11 the affidavit process, your Honor, there are I
12 believe 303 --

13 THE COURT: Excuse me 313.

14 MR. MOORE: 313, I'm sorry, your Honor.
15 313 total vacant spaces in the cemetery and, your
16 Honor, they are all owned. Those lots have been
17 sold. Some of them may have been sold many times,
18 but they are all owned lots. So I can't come to the
19 Court and say I am going to dispossess Mrs. Jones
20 because Mr. Smith's burial right got impinged by
21 somebody else. There's just -- there's no -- there's
22 certain limitations there that I don't think the
23 Court will want to try to move forward. I mean, you
24 can't really dispossess somebody's ownership rights
25 simply because somebody else may have participated in

1 an affidavit process on a burial right, would be my
2 recommendation, your Honor.

3 My property law may be a little rusty
4 there.

5 THE COURT: I think you are right.

6 MR. MOORE: So that process went forward,
7 and I think that although we had limited remedies for
8 those claimants, I think it was a viewable process to
9 go through because it was -- it demonstrated the fact
10 that there is an intense interest in this cemetery by
11 those who have purchased lots there and those who
12 have loved ones there.

13 When I say 573 spaces were claimed, we
14 dealt with a huge number of claimants who simply
15 wanted to make sure there was no question about the
16 ownership of someone that was already buried there.
17 And that really wasn't the purpose of this process,
18 but we had to communicate with those people and to
19 console them as best we can about the situation
20 that's out there.

21 So that process they not only claimed
22 those spaces, we went back out there during the
23 on-site process because we knew the spaces they were
24 claiming, and we could go out there and we could
25 reconfirm both with the GPRS and with the probing and

1 the measuring and make sure that those 41 spaces are
2 vacant.

3 Now, your Honor, I want to get into the
4 41 spaces, if you don't mind, because even with the
5 best equipment, it is not entirely confirmed that
6 every one of those 41 are 100 percent usable. I can
7 stand here and tell you today that they are more
8 likely than not usable spaces, those 41.

9 However, because of the way in which
10 burials were conducted out there in Galilee, there
11 are a number of factors that weigh against being 100
12 percent sure, and those include the fact that some
13 graves neighboring adjoining grave spaces are not
14 exactly perpendicular to that space, either on either
15 side or at the top end. So I can have a grave just
16 angled a bit, but still angled into that space and
17 have -- and the GPRS is not going to pick that up.

18 And we did what I call a five-point
19 measured probe on those, that's why I am able to say
20 that it's more likely than not that they are usable,
21 but then again, there are areas where even our
22 probing couldn't often times get down deep enough,
23 even with a six-foot probe in some areas. Some areas
24 less than two inches I could get to it, other areas
25 they were pretty deep.

1 Last item on the development of the
2 information that I would like to speak to is the --
3 two items, your Honor, and this relates to the
4 on-site work. I fell in that cemetery six times.
5 I'm a pretty tall and gangly, but I fell six times.
6 My assistant fell nine. On one occasion I was
7 standing still and the ground gave way under me. I
8 went down to the depth of my knee before my leg
9 stopped. This is not unusual in two areas of that
10 cemetery. Garden of Paradise, which is where that
11 occurred has a particular area that is not stable.
12 The burials did not use vaults. The fill doesn't
13 appear to have been tamped, so the movement of water
14 and things underneath the ground have basically
15 created a cavity.

16 Older coffins that have collapsed have
17 created a cavity because they have collapsed. The
18 ground looks solid on top, it's not, and you sink.
19 There are areas where the ground in the Garden of
20 Devotion when you walk, you -- the area around the
21 burial has sunken and you step to get to the other
22 side of that burial. If you will, your Honor, if
23 this is the coffin and this is the sunken area over
24 it, so you are trying to get to a solid piece, that
25 solid piece is often times not solid. And it

1 because, again, there's been underground movement.

2 There's a lot of waving -- I'm sorry,
3 your Honor. There's a lot of waving out there,
4 waving meaning there has been ground come away from
5 some of the burials there. Then there are areas
6 where the ground is very thin. Added dirt has been
7 brought in, this is largely in the Garden of
8 Devotion. But again, the ground is only two inches
9 deep. In fact there were areas that GPRS did that
10 there wasn't enough dirt for the flag to stick in.
11 It would hit the top of the vault. So vaults have
12 been use in some of the cases, vaults were not used
13 in some of the cases.

14 And that's largely -- that can be largely
15 as a result of a family's ability to deal with some
16 the costs of burial, not necessarily a choice by the
17 cemetery operator. But the cemetery operator, in
18 stabilizing the ground, there's certain things it
19 should and most likely could have been done. Whether
20 those things would have been done, I don't know, but
21 they are -- there are areas that are just not safe to
22 walk on. And when that ground collapsed on me, I had
23 a clipboard in my hand, I'm making notes, and it's
24 like a trapdoor just dropped out from under me.

25 So that's the surface condition that I

1 wanted to just mention to you. Now --

2 THE COURT: Is that true just in those
3 two particular gardens that you mentioned?

4 MR. MOORE: Those are the areas where we
5 feel that are the worst, Gardens of Devotion and
6 Garden of Paradise.

7 THE COURT: And what is your judgement as
8 to whether or not those conditions will occur in
9 other parts of the cemetery over time?

10 MR. MOORE: There is one other area that
11 I think would occur over time, and that is in the
12 lower edge of the Garden of Gethsamane. There
13 appears to be some of that same -- and the Garden of
14 Everlasting Life on the western side of the Garden of
15 Everlasting Life.

16 THE COURT: I know this is a hard
17 question to answer, but is there any correlation
18 between the occurrence of these vacant spaces and the
19 erosion of the earth?

20 MR. MOORE: No, your Honor.

21 THE COURT: With regards to the date that
22 the interment took place and who was the operator at
23 the time? Are the older graves more stable than the
24 new ones, is probably the best way to ask that
25 question?

1 MR. MOORE: In general, yes, your Honor.
2 The older graves in certain sections of the cemetery
3 seem to be more stable than the new --

4 THE COURT: They are tamped down
5 properly, they are packed appropriately, vaults are
6 used, and the vaults are not disintegrating?

7 MR. MOORE: That's correct, your Honor.

8 MR. HAYNES: Your Honor, if I may ask
9 follow-up questions to yours? When -- your Honor
10 used the term older graves, what is the exact -- what
11 is the age or approximate age?

12 MR. MOORE: I would say the graves that
13 occurred before 1996 seem to be better handled.

14 THE COURT: To the extent that you can
15 determine that's the age of the grave site?

16 MR. MOORE: That's correct. If it's an
17 unmarked grave, I have no idea, just only what's
18 based in the record.

19 MR. HAYNES: Thank you.

20 MR. MOORE: The exhibits I have
21 referenced, the interment database and the on-site
22 database are tools that can be used to approximate
23 the location of the buried loved one. And in a
24 footnote in the report, I believe there was a
25 description of how these tools may be used to

1 identify a person's grave space location. I cannot
2 be 100 percent certain, but using these two
3 databases, this is how you could -- this is how you
4 could do that.

5 If you know that your loved one is in a
6 marked grave, you can go to the interment database
7 and with the garden information from the cemetery
8 information and search the name of the decedent.

9 So you generally know that your loved one
10 is buried in a particular garden or you can look on
11 the photograph, the aerial photograph, you know
12 generally, so you can search the name of the
13 decedent. Knowing the name and date of the death
14 will help narrow the results. Once found, you note
15 the garden. Then you search the on-site inspection
16 database for that garden, and it will show the
17 location of the grave marker. And then you use the
18 map, the garden maps with plat locations, to go to
19 that physical location. Now that's in the situation
20 of a marked grave.

21 For an unmarked grave, you first look in
22 the interment database and search for the name of the
23 decedent. Again, knowing the date of death will help
24 narrow the results. Once you have located the
25 decedent in the interment database, note the others

1 recorded as being buried in the same garden and lot.

2 Now, let me be very clear, your Honor.

3 Like a number of cemeteries, you have a lot, you have
4 four sections, A, B, C, D, and in each section there
5 are four spaces. So each lot has a total of 16
6 burial spaces. So you'll note the lot, the section
7 number and the space. They are numbered 1 through 4
8 in each section.

9 So you'll want to make note of others
10 buried around your loved one. Then you go to the
11 on-site database for that particular garden to see if
12 any of those who were recorded as being buried in the
13 same garden and lot have a marker. If they do, using
14 both the location of the on-site marker of the other
15 people and the location recorded by the cemetery in
16 the interment database, and general physical location
17 of the unmarked grave can be found using the map.

18 And your Honor, that is light years from
19 where we were when we started this process. Is it an
20 exact spot? It is not, but it is what we have been
21 able to do with a lot of work, a lot of technology, a
22 lot of cooperation from a number of people to do our
23 very best to provide some method of locating the
24 loved one. That's all I have, your Honor.

25 THE COURT: That's fine. I don't know

1 whether to address my -- some of my questions to you,
2 but certainly I need to ask Ms. Hiestand a few.

3 As I have gone through the report and
4 numbers of spaces identified and spaces that remain
5 available, but are subject to the presale, I want to
6 be certain. You said there were 573 vacant grave
7 spaces, and that's on Page 5 of the report, 573 grave
8 spaces claimed in the pre-needs claim process.

9 MR. MOORE: They were claimed, they are
10 not vacant.

11 THE COURT: We are going to go through --
12 they are claimed.

13 MR. MOORE: Yes, your Honor. That's what
14 got claimed.

15 THE COURT: Okay. 279 space claims were
16 complete and valid. So you went through the process,
17 those are valid. Of these completed claims, 41 are
18 believed to be vacant. So out of the 279, there are
19 41 vacant spaces.

20 MR. MOORE: Yes, your Honor.

21 THE COURT: 238 are either occupied or
22 otherwise unusable. Now, those people have been
23 verified by you to have the supporting documentation,
24 they are entitled to have a --

25 MR. MOORE: They have a burial space,

1 right.

2 THE COURT: They should, they don't --

3 MR. MOORE: Well, they have an
4 unfulfilled right.

5 THE COURT: Right, they have a claim to a
6 burial space that you have acknowledged and said this
7 is a good and valid claim. Unfortunately there is no
8 place for that claim to be honored --

9 MR. MOORE: That's correct.

10 THE COURT: -- at this time.

11 Then it says 29 claims were not
12 pre-needs, but were said claims of ownership of
13 currently used spaces. So at this juncture, I want
14 to ask, there were 279 claims complete and valid.
15 Then when I go to Page 6 at the top where it says,
16 "B, 29 claims were not pre-needs, but words to claim
17 of ownership of currently used spaces."

18 MR. MOORE: Yes, your Honor.

19 THE COURT: Those are people that came
20 forward with their paperwork, they purchased a plot
21 and that plot has been used.

22 MR. MOORE: They are the claims that I
23 eluded to that there were concerns by individuals
24 that they wanted to make sure that their loved one --

25 THE COURT: Is there.

1 even though the documentation is either incomplete or
2 faulty, has not been made?

3 MR. MOORE: That is correct, your Honor.

4 THE COURT: And that includes the 11?

5 MR. MOORE: Yes, your Honor.

6 THE COURT: Okay. I think at this point
7 I should have Ms. Hiestand stand up, because I am
8 going to go to the end of the report in which she has
9 recommendations.

10 MR. MOORE: Thank you, your Honor.

11 THE COURT: And I think, Ms. Hiestand, it
12 might be wise for the two of us to go through these a
13 step at a time.

14 MS. HIESTAND: All right.

15 THE COURT: Again, I don't necessarily
16 have the answers, but then I'm not sure they are
17 there.

18 The first recommendation is that based on
19 having completed the process, receivers determined
20 the cemetery -- this is probably obvious -- cannot be
21 used for further sales and burials in the future and
22 this is with the intent to eventually close the
23 receivership.

24 MS. HIESTAND: Yes, your Honor, that's
25 what -- that's the main conclusion is that there is

1 MR. MOORE: -- is there, and they own
2 that space. And the exercise was really for
3 pre-needs that had not been used.

4 THE COURT: And of the 29, they are
5 included in that 537 that came forward with their
6 claims?

7 MR. MOORE: Yes, your Honor.

8 THE COURT: Then 265 claims were
9 incomplete because they just didn't have the
10 documentation.

11 MR. MOORE: That's correct.

12 THE COURT: And are those individuals --
13 are their claims going to be denied?

14 MR. MOORE: Well, we have not made that
15 determination because of those 265, even if they came
16 forward, only 11 are vacant. Even if they were able
17 to legitimize and satisfy, there's only 11 of those
18 spots, of those --

19 THE COURT: Of those 11 spots, are they
20 included in that 41?

21 MR. MOORE: No.

22 THE COURT: Those are different?

23 MR. MOORE: Those are different.

24 THE COURT: Okay. And the determination
25 as to whether or not you will honor those claims,

1 no commercial outcome here for the cemetery. The
2 expanded boundaries didn't provide additional space
3 to bury people who had rights already and those are
4 also full. Very grateful there's an expanded
5 cemetery so that people who are buried there already
6 are now on cemetery property. But yes, the
7 recommendation is that no further burials take place
8 due to the uncertainty that surrounds this.

9 THE COURT: And when you say that, I have
10 just asked about people who actually have valid
11 claims and that there are some spaces that are
12 believed to be vacant. Is it the position of the
13 receiver that those claims will be transferred or
14 unhonored?

15 MS. HIESTAND: The conclusion that no
16 burial in the future would be permitted on the
17 cemetery due to the uncertainties with respect to
18 even the ones that are believed to be vacant and
19 usable, leads to this being a decision point about
20 what to do with the claim process, as well as these
21 other outcomes.

22 And the cemetery -- I think that the
23 Receiver, commissioners, is looking to -- essentially
24 your reaction to some of this information about
25 whether this is a situation where if there are no

1 more burials on-site and it can't be operated any
2 more in that manner, then how much to go to further
3 communication with the people who made claims to say,
4 well, yes, you do appear to have a right, but we
5 can't satisfy at this point, the cemetery is unable
6 to do so physically. That is the --

7 THE COURT: I think in that sense I can
8 respond. And I appreciate the care with which you
9 went through and repeated a lot of what you already
10 told me today. It's not as though I have forgotten
11 this, but I think it's good sometimes to just have a
12 summary of it all together, Mr. Moore.

13 But in listening to further development,
14 and that's one of the reasons I ask the question
15 about the stability of other sites, whether or not
16 you are going to have that same problem in other
17 areas of the cemetery, there is some risk in areas of
18 the cemetery where people could be hurt by going
19 forward.

20 Putting equipment out, which is necessary
21 to actually conduct a burial, is -- first of all,
22 it's regulated by the State because it is a process
23 that involves heavy equipment. You are digging up a
24 lot of land. There are procedures that have to be
25 followed. I guess I'm just puzzled by how you would

1 is a piece of the purchase price for the burial space
2 and some other items produce money that goes to the
3 Improvement Care Trust for that cemetery only. And
4 that money is designated in the statute to produce
5 earnings that are really endowment for the cemetery's
6 permanent maintenance, such that if the cemetery were
7 closed, there would be a fund that would produce at
8 least net earnings for the maintenance of the
9 cemetery. And maintenance -- there's a section about
10 what you could do with the money to improve the
11 grounds, keep the grass cut, that is --

12 THE COURT: So those funds are typically
13 earmarked for specific cemeteries for future care
14 should the owner retire and there is --

15 MS. HIESTAND: Whether or not there's an
16 owner, the trustee is able to --

17 THE COURT: Provide for the maintenance
18 of the cemetery.

19 MS. HIESTAND: Provide earnings to
20 persons who say they have provided the maintenance
21 for the cemetery. But it is also used when the
22 cemetery's operating, as well as to produce earnings
23 that go to the owner, if they are operating the
24 cemetery. But it is earmarked specifically for those
25 kinds of maintenance, perpetual care purposes.

1 bury an individual today, not in a vault. I can't
2 imagine you lay a body out without something around
3 it, but it seems like that was done.

4 I believe that your recommendation that
5 no further burials occur, even for those people who
6 have demonstrated that they have purchased a plot, at
7 this cemetery.

8 That leaves those individuals with good
9 and valid claims, number one, somewhat without a
10 recourse as against this cemetery, and that may be
11 the process that has to be developed. Because it
12 occurs to me that there is the -- I want to be sure I
13 get the right term here -- I believe the Department
14 of Commerce and Insurance maintains an improvement
15 care trust; is that correct?

16 MS. HIESTAND: The trust is kept with a
17 commercial bank. There is another trustee for that,
18 and it's not an asset of the cemetery as a particular
19 purpose.

20 THE COURT: It's my understanding that --
21 and this is where I am not familiar with the process,
22 but those owners and operators of cemeteries across
23 the State of Tennessee, I think, contribute to that
24 on an annual basis; is that true?

25 MS. HIESTAND: The Improvement Care Trust

1 And it's not -- the statute also provides
2 it can't be used for the general debts of the
3 cemetery. That's the meaning of it being in trust
4 for this purpose includes that it can't -- it's not
5 subject to the general debts of the cemetery. So in
6 the course of this receivership, the Receiver has
7 used 21 and a half -- \$21,000 out of that fund to
8 grade the roads before the public access a year ago.

9 THE COURT: And the consumer protection
10 account, how are those funds generated?

11 MS. HIESTAND: I don't know that much
12 about how it comes into the department. That comes
13 from every sale into a specific State fund. For the
14 purposes of consumer protection fund, addresses
15 receiverships for -- that had deficiency in the
16 Improvement Care Trust fund or deficiencies in the
17 Pre-Need Merchandise as Services Trust fund. But
18 that it is generally used to administer a
19 receivership and lot, not to provide a limitless
20 source of funds.

21 Now in this case, due to the fact that
22 this cemetery has not -- had no assets, no liquid
23 assets, the expenses that have been documented in the
24 ninth report and the previous reports have been paid
25 to maintain the receivership to purchase the services

1 that you have the results of, as far as the grounds
2 analysis, Mr. Kustoff, Mr. Feibelman as legal
3 services.

4 THE COURT: Of the 279 valid claims that
5 have been submitted, what's the total amount that
6 those individuals have paid?

7 MS. HIESTAND: I couldn't estimate.

8 MR. MOORE: It ranges, your Honor. It
9 occurred over long periods of time. I think in the
10 earlier days they may have paid somewhere between 175
11 to \$220. In the later years they could have paid
12 upwards of \$1,400. Some -- at one point in time, I
13 believe, there was a special being run, I'm not sure
14 exactly sure -- I'm not familiar with all the terms
15 of that, but that was \$999.

16 THE COURT: I think the special is just
17 selling air.

18 MR. MOORE: I some from a securities
19 background, we call it "blue sky."

20 THE COURT: That's what it is.

21 MR. MOORE: Yes, your Honor, I'm sorry.

22 THE COURT: I was trying to get a figure
23 as to the amount of money that is represented by
24 these 279 valid claims and also the 265 invalid
25 claims, and I didn't know if I were going to be using

1 \$100 per claim, \$200 per claim for \$1,400 per claim.
2 Do you think you can calculate that?

3 MR. MOORE: I think -- I'm not prepared
4 today, but I certainly think that we can go back
5 through the documentation that's been provided and
6 note that. The effort here had been mostly focused
7 on accommodating the burial rights.

8 THE COURT: I think as I am looking at
9 this recommendation about no further burials, I have
10 to be aware of the next step, and that is, who are
11 these people who have valid claims and who have
12 potentially asserted a claim. Their data may be
13 incomplete and it may not be worthy from recognition.
14 Some may be more worthy than others, I don't know.

15 Like you said, that's not been the focus.
16 But at this point it's just a question that I have
17 raised because it may or may not be that these claims
18 can be honored, either with a burial site or with a
19 refund of the monies that they have paid. And I
20 don't think the Receiver's into refunding money that
21 he doesn't have.

22 MS. HIESTAND: Yeah. So it represents an
23 insolvency in terms of finances, an insolvency in
24 terms of the land itself is not able to fulfill the
25 obligations that are outstanding.

1 And I should also add that this claims
2 process is published, as it was, or publicized
3 locally, hadn't been set up as -- by the State
4 there's a bar date established by the Court. It had
5 not been done in that way. There could possibly be
6 other people who present themselves, but so far, this
7 was made known as far as reasonable.

8 Yes, the decisions that no further
9 burials will take place creates unsatisfied claims.
10 It also creates a question for the Receiver as to
11 what should be the next process. Should it be to
12 indicate to people it appears that you do -- you have
13 demonstrated a right to a burial space, but we cannot
14 satisfy it, or does it mean that is not a worthwhile
15 effort, you know.

16 THE COURT: Sometimes in law of contract,
17 futility or impossibility is a defense. And I am not
18 trying to set that up, but as we work through this,
19 I'm not in a posture to create miracles, and I am
20 also not in a posture, nor do I have authority, to
21 require other people to make miracles.

22 So the individuals who have been involved
23 in this have taken the responsibility seriously. And
24 as you said, the first thing was to try to find out
25 who was buried where and who those people were and

1 whether or not there was any available space for the
2 contracts that had been issued. I think we now have
3 as best an answer as we are going to get to those
4 questions.

5 The next thing after having looked at
6 your first recommendation, the second one is to put
7 in place a plan for the Receiver to identify a
8 community group to accept the trust account or take
9 over the care of this cemetery, but if no such group
10 can be found, either a county or a municipality may
11 make expenditures for its upkeep is set out in the
12 laws of the State and the trustee would be authorized
13 to make payments to responsible parties.

14 Now --

15 MS. HIESTAND: We can't do that all
16 today, if that's the way we are going, but it is a
17 decision point to determine whether that's an outcome
18 we want to focus efforts -- for the Department to
19 focus efforts to.

20 THE COURT: I understand. We are not
21 making these decisions today. I am going through
22 what your recommendations are and to the extent you
23 need feedback, I hope I am providing that. I am not
24 going to be telling the Receiver, and it's never been
25 my position to tell the Receiver, what the Receiver

1 should do. These are decisions that the Receiver has
2 to make.

3 When I look at this, identifying a
4 community group to set up the trust account, that is
5 a big burden to place on any community group. I just
6 don't see that time spent on that would be productive
7 and there is always the enormous responsibility that
8 comes with anyone who serves in a capacity of a trust
9 account.

10 Trust accounts sometimes have no
11 termination date, and the responsibility's a great
12 one. That's why they advise you in wills and
13 estates, be sure the trustee understands how great
14 the duty is and how serious the responsibility is.

15 With regards to a county or municipality,
16 I think that's a wonderful suggestion, because we
17 always know counties and municipalities are expected
18 to stay around. However, they are only funded in
19 their operations by taxpayers, and that's where they
20 get their operating funds. There may be, as you say,
21 some trust funds that could come, but --

22 MS. HIESTAND: The trust fund -- the
23 Perpetual Care fund -- the Improvement Care Trust
24 fund is what would be part of that to transfer. One
25 thing -- there are a number of cemeteries in the

1 state that are not regulated by the Department.
2 There are other forms of exempt organizations, and
3 they may have trust funds of their own or they go on
4 to do it.

5 Also, the reference to the county and
6 municipality is that if you had an inadequate trust
7 fund for the maintenance of a cemetery that's
8 abandoned or not operated, if it's inadequate,
9 there's a default to the local government to -- that
10 could also use its funds to assist in that
11 maintenance.

12 I mean the problem we are facing through
13 this discussion is that if the cemetery's not able to
14 bury any more and there are submitted issues about
15 the condition of the grounds themselves as to whether
16 the public could return to visiting their loved ones,
17 that setting it up to be able to do that has a lot of
18 steps, which may involve having to work out what
19 claims were against the cemetery, are the claims
20 extinguished at some point or are they what survives.
21 And is there money to stabilize it even enough so
22 that somebody could be convinced to do a maintenance
23 role for the future, without having to do operations,
24 but be able to leave it open as many closed
25 cemeteries in the country that people visit, but they

1 are not operating any more.

2 So that the question is, are we at the
3 point that that's where we would seek those types of
4 organizations, presuming the Court in the future or
5 when that happens, can set up the conditions whereby
6 somebody could be brought on who will accept a
7 voluntary role, as there are cemeteries that are
8 exempt cemeteries, community cemeteries and other --
9 it may not be feasible, it may be a very tough to
10 even get to that --

11 THE COURT: I understand that if you have
12 a closed cemetery there's still family members who
13 want to visit a grave site. In a sense some of the
14 ability to visit the grave site is hampered by the
15 condition of the topography, the land isn't stable.
16 I assume, but don't know, that the various paths
17 through the cemetery are stable, and so it may be
18 possible for members of families to go on the paths,
19 as long as they don't stray onto the grave site area.

20 And to that extent, I think family
21 members would want to have the option of visiting the
22 cemetery. But I am not a big cemetery person, I
23 don't go on May Day or whatever it is and decorate a
24 grave where my parents are buried. I don't have a
25 great appreciation for those traditions, but I do

1 know they exist, and some people hold them near and
2 dear. And I know they need to be observed and need
3 to be honored to the extent they are not put in harms
4 way. And if going and decorating a grave site on an
5 annual basis is -- tending the grave, that's the way
6 I understand it, if that is the tradition of a
7 certain family and the ground is stable, they
8 shouldn't have to suffer because of the -- I think
9 you have identified three areas that are unstable.

10 And it may be that they have been doing that for year
11 after year, since the '50s, and maybe it's their
12 great-grandmother's grave or another family member.

13 I think that is a reasonable request to
14 make to the extent that you can designate what I call
15 the safe areas versus the non-safe areas. And then
16 to let the family members with members in the
17 non-safe areas, they can do several things. They can
18 sign a waiver if they go on the ground that if they
19 fall through the ground, nobody's liable, they have
20 to know there's a risk, or that they are just totally
21 instructed not to walk towards the grave, they'll
22 have to just pay their respects at a distance.

23 I don't know, but these are some
24 considerations that might be made. I am more
25 concerned about the upkeep because family members are

1 not keeping up all the graves. And if the cemetery's
2 closed --

3 MS. HIESTAND: It's closed now. I mean
4 public access is denied at the moment --

5 THE COURT: I didn't mean that, I meant
6 with regards to --

7 MS. HIESTAND: Not functioning any more
8 properly.

9 THE COURT: Right. If it's not an
10 operating cemetery, then the maintenance of it
11 becomes the responsibility for, and the question is
12 who, and the second question is how, because this
13 doesn't generate funds.

14 I have had circumstances where we have
15 development that the streets are not dedicated to the
16 county government, so they don't keep them up. And
17 in this instance, when you have a cemetery where the
18 operators -- let's just use the hypothetical, because
19 I am not going to say what actually happened to the
20 operators, let's just say they left town or there is
21 a plane crash and they are no longer around, there's
22 just nobody to operate the cemetery and the cemetery
23 is not operable as it is, so we are going to close
24 it. That doesn't mean that piece of property is
25 unclaimed.

1 such group can be found, either a county or
2 municipality may make expenditures for its upkeep, I
3 keep thinking who is going to pay for that. There
4 may be the fund that you said is there, will that be
5 sufficient? I don't know.

6 MS. HIESTAND: At the moment there's work
7 that would need to be done to make it stable for
8 public access --

9 THE COURT: Do you have any idea?

10 MS. HIESTAND: -- or so that anybody
11 could --

12 THE COURT: Right.

13 MS. HIESTAND: I think that more -- as
14 stated later in the recommendations, there's a list
15 to seek bids, but it's a very -- I think that the
16 first -- before I get into what it would take to
17 remediate the cemetery, it was over \$100,000, close
18 to like \$200,000, but more could be done to narrow
19 the task perhaps.

20 Mr. Moore.

21 MR. MOORE: Your Honor, I contacted three
22 cemetery restoration companies. I got a response
23 back from one, a company based out of Minneapolis,
24 Minnesota. They have a great deal of expertise in
25 this area. They were not able to do an on-site

1 Sometimes the deceased is the one that
2 purchased the plot. They own it, and at the time of
3 their death, that ownership goes nowhere. There are
4 people who bought plots and they have a loved one
5 buried there. They still are alive. They have an
6 ownership interest. But as you pointed out, their
7 access to the piece of property that they purchased
8 is temporarily held in abeyance they can't get in.

9 When you have a piece of property in a
10 metropolitan area and the owner abandons it and they
11 don't pay the taxes and they don't do anything,
12 ultimately the city goes in, takes that property for
13 back taxes and then they sell it. Sometimes they
14 can't sell it, might have environmental hazards on
15 it, nobody wants it and it sits on the county's book
16 as, I don't know what they call it, I'll call it bad
17 property, the city's responsible for that.

18 If somebody wanders into this vacant
19 building and gets injured and nobody is the owner,
20 but it's the city's responsibility, so the city's
21 usually knock those buildings down and they become
22 flat pieces of ground. That's what happens, if they
23 clean up the environmental hazard, they can finally
24 sell it. That's a big burden on the taxpayer.

25 So when I look at this and I think, if no

1 estimate, but they did perform what I would consider
2 a GPS estimate utilizing the measurements and things
3 like that.

4 And I don't recall offhand, but they
5 estimated for four acres of land to re-stabilize, I
6 think it was somewhere around \$225,000. Because they
7 have to haul in dirt, tamp, paw, tamp. It's a series
8 of things to be done. Just to -- and that --
9 included in other -- that's just to stabilize the
10 grounds. There were other areas that I asked them to
11 identify that they provide an estimate, like on
12 resetting stones or to set stone work, things like
13 that.

14 THE COURT: Now I am handicapped because
15 I am unaware of any financial resources that are
16 available to be used to do this, and I think that the
17 State has been actually looking for moneys that are
18 available, such as this consumer protection account,
19 those are not ongoing funds for anything.

20 So what you have is a situation in which,
21 yes, you can close down the cemetery and have no more
22 burials, you can close down public access to it
23 because it's not being maintained, there are laws
24 that say how cemeteries are supposed to be
25 maintained, but there is no one who is responsible

1 for that maintenance.

2 The Receiver is not necessarily charged
3 with the duty of maintaining the cemetery, they are
4 charged with the duty of taking in the assets and
5 liability, and in this sense it looks like there were
6 no assets, no liability. It's not his responsibility
7 to pay them.

8 I am going to go to your next
9 recommendation, and I think that this is for
10 discussion purposes, and maybe that's a benefit in
11 some sense.

12 The third recommendation is that with the
13 unknown condition of many graves and the
14 disproportionate number of claims to burial versus
15 the number of space that no further burials should be
16 allowed. That is a little repetitive of number one.

17 Number four is the balance of the
18 merchandise and service trust is too low to provide
19 meaningful reimbursement for merchandise and services
20 purchased from the previous operator. Receiver
21 believes the balance of the trust should be
22 transferred to the Improvement Care Trust. To that
23 extent, I don't have any recommendation one way or
24 the other. I think that that recommendation is being
25 made in order to consolidate funds.

1 MS. HIESTAND: Yes.

2 THE COURT: And the economies at scale
3 make sense that you do that. So I wouldn't think
4 that would be disfavored.

5 Disinterment of persons buried should be
6 left to local courts to determine as set out in the
7 laws of the state, but it should be discouraged
8 because the precise locations and identities of
9 persons buried will be impossible to determine.

10 Now that is a recommendation.

11 MS. HIESTAND: Yes, it is. And there's a
12 little bit more on that in that during this
13 receivership where we would be against any
14 disinterments for the same reason the burials present
15 a problem, a disinterment present the same problems
16 or more problems affecting the persons unknown. And
17 so while the court's in charge, I did want to make
18 that distinction.

19 THE COURT: I would make that observation
20 that generally disinterment is not favored as a basic
21 principle. However, you have portions of the
22 cemetery that have not been found to be unstable, in
23 fact up until about 1996, a lot of the interments, I
24 am not going to say were all proper, but the further
25 back you go, the more likely they were properly done.

1 And those families may want, if they can't get access
2 to the cemetery ground, they may want to disinter and
3 rebury somebody where they can go visit.

4 And I don't know who those individuals
5 would be, it would be their responsibility if they
6 want to, but I don't know that that should be
7 foreclosed to them, and as you pointed out, should be
8 left to local courts, but I think with the
9 observation that there may be family members that
10 care enough that they want to do that. And if they
11 are certain that that's their family member and that
12 they want to go through that expense, that's my
13 observation. I think it's very difficult to
14 disinter, but I am not saying that people should be
15 totally excluded from having that option. It's kind
16 of expensive.

17 MS. HIESTAND: Procedurally, and during
18 this receivership, we would still expect anybody
19 requesting that to come to this Court to make such a
20 request where the Receiver would have the response to
21 the particular facts. And the factual side of it is
22 that request for burial, as well as requests for any
23 disinterment, it is found that people want some
24 representative of the cemetery who is knowledgeable
25 to oversee that process or to identify a location and

1 that there is problem with being able to accommodate
2 and pay for staff to respond to those kind of
3 requests.

4 Some of it has to do with even during the
5 receivership itself, not having resources to do --
6 provide persons to staff that kind of a process. And
7 then --

8 THE COURT: I think the -- excuse me. I
9 think because of the circumstances, when the cemetery
10 records were taken by the district attorney and the
11 cemetery was closed to the public, family members who
12 may have been monthly visiting a plot, they weren't
13 allowed to do that. And this started in 2014, that
14 means for two years family members haven't been able
15 to go and visit, where they may have traditionally
16 been going and visiting for 15, 20 years.

17 I think you are right that they should
18 let the Receiver know that I know where my relative
19 is buried, I have been going there since they put the
20 body in the ground, but I don't know that that has
21 been even vocalized to those individuals that they
22 could make that kind of a request. Maybe they have,
23 I don't know.

24 MR. MOORE: Your Honor, we have had -- we
25 have had two inquiries about exhumations, and I have

1 directed them to the fact that there's an order down
2 in the operation of the cemetery, that in my opinion
3 that would be considered part of an operation of the
4 cemetery and in order to do that, they would need to
5 file a petition here, your Honor, and seek an
6 approval of that exhumation. The majority -- well,
7 of the two I have spoken with, I have not heard
8 anything more back from them on that.

9 The process by which it would be done is
10 typically statutorily created, you go to the
11 Department of Health, there's certain things you have
12 to complete there, and then you would -- as the
13 process would unfold in the receivership, they would
14 then come here and say this is who we are, this is
15 why we are doing this, this is what we can do, and
16 your Honor would probably look at me and say,
17 Mr. Moore, tell me where these people are located. I
18 can tell you, your Honor, not 100 percent. And they
19 take the risk then of the expense of the exhumation.
20 But it's obvious to anyone, if it's wrong, then
21 somebody else has been disturbed. And so that's
22 behind the discussion, I believe, in the report.

23 If I might add one other thing, your
24 Honor. I was the special deputy receiver for the
25 Bookwalter Cemetery based in Knoxville, Tennessee.

1 And in that situation, we essentially did have an
2 operator that became unable to operate. That
3 cemetery had no Improvement Care Trust. It had
4 essentially fallen through the cracks because the
5 owners abandoned it in 1948 and allowed the caretaker
6 to keep operating it, and the caretaker didn't have
7 title to the land so he couldn't apply for trust and
8 it just kind of unfolded from there.

9 In that circumstance, this cemetery was
10 deemed abandoned. Although there were vacant spaces
11 that could be used, the State set up a system whereby
12 the funeral homes could use those spaces, but those
13 spaces were confirmed vacant. There weren't burial
14 errors in that particular cemetery. And Knox County
15 government now is responsible for the maintenance and
16 upkeep of that cemetery. They mow, and it's in their
17 discretion how often they mow it. They have adopted
18 a general policy that they mow it once every three
19 weeks during the growing season.

20 So it is not unusual that a county
21 government, as provided by the statute, becomes
22 responsible for cemeteries. And this may be one of
23 those occasions. We have had some indications of
24 interest of a potential community foundation, but as
25 the report indicates, we haven't really -- there

1 hasn't really been an identification of anyone.
2 But in this circumstance, unlike
3 Bookwalter where we had to create a system where
4 somebody could exercise the right for burial right
5 because there was very clear unoccupied usable
6 spaces, we don't have that situation in my opinion,
7 your Honor, with regards to this cemetery. So the
8 one thing that this cemetery does have going for it
9 is the fact that there is an Improvement Care Trust.
10 There is an Improvement Care Trust with the Bank of
11 Paris, I believe. Is that correct?

12 MR. HAYNES: That's correct.

13 MS. HIESTAND: Commercial Bank.

14 MR. MOORE: Commercial Bank and Trust.

15 So they are a trustee. The statute authorizes -- the
16 statutory scheme authorizes the trustee of an
17 Improvement Care Trust to select a responsible person
18 for maintenance and upkeep only. That doesn't
19 address the other varied components of the cemetery.

20 My family comes from a rural area, your
21 Honor, and if there was an exhumation to be performed
22 at the New Hope Baptist Church in our rural
23 communicate of Fintrist County, Tennessee, there is
24 no one to contact. They are all gone. And so they
25 just go out there and do what they need to do. And

1 if they are there, they are there, and if they are
2 not, they are not.

3 I don't mean to belie about it, but in
4 this circumstance, the realities of what we have
5 found there are kind of driving the issues here
6 today. But I just wanted your Honor to be aware of
7 the fact that in the statutory scheme, as I
8 understand it, the assumption is that since it is the
9 community members who lived in the community, have
10 died in the community, that then the body politic of
11 that community is the final entity, if all the other
12 planned for contingencies don't work.

13 MS. HIESTAND: So that's why we are
14 trying to seek another option, other than no further
15 operations by anybody. There is a possibility to --

16 THE COURT: If any of these options work,
17 I would think they could be explored. I think that
18 it's significantly different than the Knoxville
19 situation, and the variables that you have got are
20 unknown individuals buried. You have pretty good
21 idea of what burial spaces have been used and are
22 occupied. You have portions of the cemetery that are
23 unstable for further burials or visits in some
24 instances. You have no assets.

25 You talk about an Improvement Care Trust,

1 but that's a finite amount of dollars, and it doesn't
 2 look like it's going to generate in perpetuity enough
 3 to maintain this. So it looks like you will come
 4 back to a local government entity eventually. If you
 5 do have a community foundation or church or some
 6 group like that, I would encourage you to pursue it,
 7 but I don't hear you rushing forward with names.

8 Says here that we talked about the
 9 recommendation with regards to disinterment. I think
 10 Memphis is sufficiently large, it's not where you are
 11 going to have a self-help remedy, as you might have
 12 in a rural county. Some people are more inclined to
 13 help themselves when there's just nobody around.
 14 When you have a cemetery sitting in a big
 15 metropolitan area, that's not feasible or likely to
 16 happen.

17 Number six is the future placement of
 18 markers should be left to a future operator, if such
 19 an operator exists. Receiver submits that placement
 20 should be discouraged because the precise locations
 21 and identities seem impossible to determine. To the
 22 extent that that's a recommendation that needs to be
 23 followed up, I would think that that would be
 24 appreciated. I'm not sure you are in the posture of
 25 asking that be done today.

1 MS. HIESTAND: I think the only relevance
 2 today, and I may be incorrect, is that people are
 3 already requesting replacement markers. Here's the
 4 difficulty in responding to that. So far there's
 5 been no decision made whether any markers could be
 6 placed, now the state of the information is such that
 7 placement is very doubtful. So --

8 THE COURT: After Mr. Moore talked
 9 about -- for those that are known, you can go and
 10 find the ones that are known. For those that are
 11 unknown, I think he fairly accurately described the
 12 best-guess approach. If you get the section and --
 13 partial section and the number out of those 16, you
 14 can maybe get close, but that's as best can be done
 15 with information that's available. And that's a
 16 tremendous amount of information that's been
 17 collected and put in these two databases. So I would
 18 think that that recommendation would probably be one
 19 that would be approved. I'm not making any steps
 20 today, these are just your recommendations.

21 Number seven is that the Receiver has
 22 completed the accurate grid of the burial sites and
 23 no further reasonable malicious act concurred with
 24 that. I mean, we are now spending money that's not
 25 going to be very productive at all. There are no

1 substantial assets. The trust account is not an
 2 asset. And continuing the operation of the cemetery
 3 of receivership is unlikely to result in substantial
 4 improved information regarding the status. And I
 5 agree.

6 The Receiver was given a very difficult
 7 task from the outset. There have been tremendous
 8 efforts made to determine the status of each grave
 9 site and the bodies and what transpired. I don't
 10 think that a continuation of the receivership -- now
 11 having collected all of the liabilities and presented
 12 them to the Court, I can't see that the receivership
 13 should go on much further, but there does need to be
 14 a wrapping up.

15 And then all equipment or property at the
 16 cemetery not known to belong to the cemetery itself
 17 should be listed by the Department, and individuals
 18 who have a claim given 30 days to provide
 19 documentation, with no claim, then the Receiver
 20 should be authorized to dispose by sale or to dispose
 21 of such equipment.

22 And that the Receiver obtain a list of at
 23 least one bid for the realignment of the markers
 24 currently displaced in the cemetery and advise the
 25 Court as to the feasibility of such action within the

1 funds available. And in this instance, I think that
 2 in the winding down process, that the Receiver has to
 3 contemplate whether that is a good use of time and
 4 resources. Because if the cemetery is closed to the
 5 public and all you are going to have is maintenance
 6 of the grounds, and it sounds like it would be a
 7 cautious maintenance because you will be able to
 8 travel over some of it. I don't know what you do
 9 when you have the hills and the dips. You don't want
 10 to have somebody on a riding mower sink up to their
 11 knees. That could injure somebody.

12 MR. MOORE: You weed eat. That's
 13 basically what you do.

14 THE COURT: And sink to their knees? But
 15 whether the Receiver undertakes the realignment of
 16 markers -- I understand the markers are askew,
 17 correct?

18 MS. HIESTAND: There are bigger issues to
 19 deal with than the markers that are more towards
 20 safety than permanent.

21 MR. MOORE: Your Honor, some have sunken,
 22 some have been damaged by the equipment that was used
 23 at the time to bury next to somebody.

24 THE COURT: I'll make an observation
 25 about this particular receivership. And that is the

1 portent for cemeteries in the future, where you have
2 people who take those who are in a situation in their
3 lives where they are grieving, they have suffered the
4 loss of somebody, to take advantage of those and then
5 15, 20 years down, without accountability, it becomes
6 the responsibility of a governmental entity to
7 resolve it. This doesn't really sound like good
8 public policy. And I know that there are lots of
9 rules and regulations for funeral home directors, but
10 I really do puzzle over how this occurred over '96 to
11 2014. That seems to be the time period.

12 Likewise, if you go back to Knoxville,
13 how is it that an owner can just walk away and for a
14 number of years leave it in the hands of a caretaker,
15 not somebody who has a financial interest in it or an
16 ownership interest, just goodness of their heart kind
17 of doing what they do, how is it that that -- given
18 that all these funeral directors are licensed, that
19 there isn't some mechanism by which the operations
20 are un -- I'm not bucking for more bureaucracy, first
21 of all, I am not bucking for that.

22 MS. HIESTAND: There's an assumption of
23 basic operational integrity, which also is
24 represented here, which is a different focus from the
25 financial trust accounts and that type of

1 information. This -- we are here today, we are up to
2 1,000 spaces that might have been available, are not
3 actually available to fulfill any of the contracts
4 because they are short or some other reason.

5 So operational matters are very -- it's
6 an assumption of what is the business to do
7 correctly, and I think that's an additional problem
8 we are having with this circumstance.

9 THE COURT: Well, I would as an
10 observation suggest that the Board who oversees
11 funeral homes and funeral directors, I'm certain will
12 be aware of this situation, and may ponder what they
13 can do to avoid double selling of occupied spaces.

14 MS. HIESTAND: Yes.

15 THE COURT: Now, I have gone through all
16 the recommendations that you have had in this 9th
17 report. I don't think it's appropriate for me to
18 issue any orders, but I do think it's appropriate for
19 the winding up of the receivership to occur. As you
20 know, I am going to be stepping off the bench, and I
21 don't know if my receiver is leaving me or not. Will
22 somebody be taking your place, sir.

23 MR. KUSTOFF: I am with you for a while,
24 your Honor. Maybe we'll coincide with the wind-down
25 of the receivership.

1 THE COURT: I am leaving faster than you.
2 Two weeks.

3 MR. KUSTOFF: I understand. Hopefully
4 the winding will take place, we can construct a
5 manner that does both.

6 THE COURT: I believe that with your
7 reports that a future chancellor will have a pretty
8 clear picture of the appropriateness for the
9 wind-down. I don't think there are any challenges
10 that the Receiver has left unaddressed with what he
11 has. As I said, he doesn't have resources to remedy
12 a lot of these problems, and some of these problems
13 are, even with funds, not capable -- as I said, I
14 don't have the answers to the unknowns. I don't know
15 "who" is "who" and I don't know where "who" is with
16 regards to members of families that have died and
17 been put in unmarked spaces. Those are the kind of
18 questions no one can answer.

19 But the receivership should start winding
20 down. I think that is appropriate. I think as a
21 result of this report being made, you might put an
22 order in that the Court found that the report is
23 accepted, that the recommendations have been
24 reviewed, that at this point the Receiver has
25 completed substantially all of the responsibilities

1 imposed on her and him by statute, and that it would
2 be appropriate to proceed with the winding down of
3 the receiver and the discharge of the receiver,
4 possibly in the next hearing.

5 So I think that -- we'll put it before
6 the next chancellor so that they will know the
7 expectations, maybe that you have to have one or two
8 more hearings, but I have to leave that in the hands
9 of the receiver.

10 MS. HIESTAND: That's correct. Is there
11 any -- I just need to make sure we are done.

12 THE COURT: Sure.

13 MR. HAYNES: Your Honor, if I may make a
14 few observations on behalf of my client and what
15 might be my last appearance before this Court.

16 THE COURT: All right.

17 MR. HAYNES: The receivership has now had
18 control of the operations of the cemetery for just
19 about as long as my clients had control of the
20 operations of the cemetery after the death of
21 Mr. Jessie Lambert. And as you can see, your Honor,
22 there were numerous challenges posed for the
23 operation of the cemetery that date back decades,
24 well before my clients assumed operations of this
25 cemetery, and they took on those challenges without

1 even the limited resources available to the Receiver,
2 since this receivership began in February of 2014.

3 I would also observe from a big picture
4 standpoint that Galilee was sold out of receivership
5 by the State of Tennessee, and a lot of these
6 operational issues that date back decades, if not
7 generations, we submit were in existence at the time
8 the State sold Galilee to Jessie Lambert.

9 Finally, your Honor, we have not heard
10 much about this during the course of the
11 receivership, but JM&M is the actual operator of the
12 cemetery. JM&M also holds a stake in a side
13 enterprise known as Lambert Memorial Company or
14 Lambert Monument company. Those side companies have
15 been held in receivership as well, and their assets,
16 including memorials, memorial works in process,
17 monument materials and equipment, have been held.

18 We would hope that the -- our receiver
19 would include as part of the property that's
20 released, that property as well, as well as the
21 assets of the monument company. We have asked that
22 from the very beginning, your Honor, because the
23 monument company is a separate operation from the
24 cemetery enterprise.

25 THE COURT: That's an interesting

1 provided any kind of actual source of assets, it was
2 not all that separable from the cemetery as a whole,
3 given the way names were interchangeably used going
4 into it.

5 So I think that there's an issue
6 associated with selling the property of the monument
7 company or the monuments that are there.

8 MR. HAYNES: Well, we don't have a
9 particular issue with, you know, selling. Our issue
10 is claiming it for subsequent use, so that we can --
11 we might not be able to operate the cemetery any
12 more, but we still might be able to maintain a viable
13 monument company.

14 THE COURT: I don't have that before me
15 today.

16 MR. HAYNES: Okay.

17 THE COURT: If you are right that -- that
18 is part of a receivership? Is it part of this
19 receivership?

20 MR. HAYNES: All of the entities have
21 been placed into receivership, your Honor.

22 THE COURT: Then it will be up to the
23 Receiver as to whether or not they dispose of it,
24 whether or not they release it. That's their report
25 or recommendation. I understand about some of the

1 statement. JM&M Services is one of the defendants.

2 MR. HAYNES: Yes.

3 THE COURT: But not your client?

4 MR. HAYNES: No. JM&M -- well, they
5 were. JM&M was my client prior -- prior to the --
6 prior to the receivership being assumed. JM&M also
7 owns --

8 THE COURT: Lambert Memorial Company and
9 that's also known as Lambert Memorial, Inc..

10 MR. HAYNES: Right.

11 THE COURT: And then JM&M is the actual
12 operator of Lambert Memorials?

13 MR. HAYNES: No, JM&M is the actual
14 operator of Galilee Memorial Gardens. It owns also,
15 as a side entity, the monument company. And this was
16 all laid out in our early pleadings in this matter,
17 your Honor.

18 MS. HIESTAND: I think with respect to
19 the monument company, as shown on some of the videos,
20 the monument company had some stock there at the
21 cemetery, and that may be what is being proposed as
22 part of this equipment and property to being --
23 sought to be sold, I think you should give notice to
24 yourself, and then maybe some discussion over the
25 proceeds of any of that. But as far as whether it's

1 equipment being on the grounds of Galilee. I would
2 think, based on what you have just said, that JM&M
3 has monuments somewhere else too; is that correct?

4 MR. HAYNES: There were monuments that
5 were stored on a small tract of land outside of the
6 city proper. I believe that those monuments have
7 been transferred back to the receivership after the
8 sale of that property. We had an order -- we had an
9 order down authorizing the sale of that real estate.

10 THE COURT: Part of the recommendations
11 is to the extent that there's the equipment or
12 property at the cemetery and someone has a valid
13 claim to them, that the Receiver may set up some
14 procedures for those claims to be made. And if you
15 have the documentation that the procedures are
16 followed, it is in the discretion of the receivership
17 with regards to the ownership of the claimant.

18 MR. HAYNES: Yes, your Honor. I just
19 wanted to make sure, your Honor, that you know those
20 particular items were a part of this claims process
21 as well.

22 THE COURT: Sounds like they are.

23 MR. HAYNES: Okay.

24 THE COURT: I don't know if the claims
25 are actually going to be recognized, given whatever

1 the status is of the operations, and I just don't
 2 know that. That's in the hands of the receiver.
 3 MR. HAYNES: Thank you, your Honor.
 4 THE COURT: Anything further?
 5 MS. HIESTAND: No.
 6 THE COURT: Thank you all for coming.
 7 (WHEREUPON, the foregoing proceedings
 8 were concluded at 10:57 a.m.)
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