

## **Case of Dana and Jan Putnam – Responses to Information Requests**

The following information is available in response to your information requests. Of course, you should refer to it in legal arguments and other interactions in this case as appropriate.

The activities in this case / negotiation take place in March 2010.

Note that some of the requests were not fulfilled for several reasons. Some requests were not specific. Some asked for nondiscoverable information (such as the parties' interests or bargaining position) and/or someone resisted providing it. In some cases, the requests simply did not yield relevant information and thus is not reported below.

This does not provide actual documents, but you should assume that the relevant documents would support the factual statements made below.

Some of the requested information may be known by the parties (from the initial instructions), so lawyers may want to check with their clients to see if they have useful information that wasn't provided in the initial interview (or may have been misstated).

Although some of the requested information is not discoverable, you may want to ask the other side about it before or during the final negotiation. Of course, people don't have complete information because this is a simulation, but it may not hurt to ask. You may answer questions about information not provided to you if it doesn't have a significant impact on the case and is not legally significant.

If you need additional information as the case proceeds, let me know.

---

In a deposition of Lisa's physician, Dr. James Tyler, he testified that Lisa was first diagnosed with cancer on April 4, 2009. She underwent radiation treatment for several months, which arrested the spread of the cancer, but did not completely eradicate it. In addition to treating the cancer, Dr. Tyler observed some depression and prescribed anti-depressant medication, which Lisa took for the rest of her life. He noted some deterioration in her cognitive functioning (in addition to the depression), but it was consistent with aging, especially after a shock like getting the cancer diagnosis. Lisa did not get any mental health services in connection with her final illness. She died on December 19, 2009.

Before Fred died in 2002, he arranged for execution of identical wills for himself and Lisa. When these wills were executed, neither Dana nor Jan were informed about the wills, which provided that the entire estate would go to the surviving spouse. If the spouse pre-deceased the testator, the estate would be divided equally between Dana and Jan. The Putnams didn't have many relatives and there was no one who might have an interest in the wills other than Dana and Jan. When Fred died, Lisa took his entire estate.

On October 15, 2009, Lisa signed a new will prepared by her lawyer, Paul Lipscomb, which is the only other testamentary instrument she executed after the will that Fred arranged. Lisa's will provided that, after her death, Dana could live in the house at 21 Briarwood as long as Dana lives. If Dana occupies the house, s/he would pay the mortgage and all house-related expenses. If Dana would not occupy the house or occupies and then vacates it, Jan would have the option to buy Dana's interest in the house. If and when Dana does not occupy the house and Jan does not buy Dana's interest in the house, it would be sold and the net proceeds would be split in half. All of Dana's debts to Lisa were forgiven. All the other property would be divided equally between Dana and Jan.

Dana produced four letters documenting loans from Fred and Lisa made over several years that total \$15,000 to help cover living expenses. The letters said that Dana would repay the loans "when s/he could." There was no mention in the letters of any interest on the loans.

In a deposition of Lipscomb, he testified that he had no prior relationship with Dana, Jan, or Lisa. Dana told him that s/he got his name from a friend who was a former client of Lipscomb's. In the first meeting with Lisa, she explained that she wanted to change her will to recognize that Dana had been extremely dedicated to caring for her since her diagnosis and treatment. She wanted to accommodate Dana's financial and housing needs, which were much greater than Jan's. Lisa expressed resentment that Jan had largely ignored her in recent years. Dana was present at the meeting and his / her only statements were social pleasantries and to provide some minor factual information. Dana accompanied Lisa to Lipscomb's office for a second meeting, when she signed the will, but Dana sat in the waiting area while the will was signed. It was witnessed by secretaries in Lipscomb's office. Lipscomb said that Lisa seemed depressed when she signed the will but she certainly understood what she was doing. Lipscomb was paid \$400 with a check that Lisa wrote from her checking account. Another lawyer is handling the probate of the will. There is no significant electronically stored communication about the making or execution of the will.

In a deposition of Dana, s/he testified that before Lisa's cancer diagnosis, s/he would usually visit or call Lisa a few times a week. Immediately after Lisa's diagnosis and during the period of her radiation treatment, Dana visited Lisa almost every day and actually stayed at Lisa's house for a while at the outset of the radiation treatment. S/he denied making derogatory remarks to Lisa about Jan, but said that s/he sometimes agreed with Lisa when she complained about Jan. Dana testified that s/he talked with Lisa about her plans for the will generally and knew how Lisa planned to change the will, but said that this was completely Lisa's decision. Dana has never been arrested and has no record of any dishonesty.

In a deposition of Jan, s/he testified that s/he felt overwhelmed when Lisa was diagnosed with cancer. Although Jan was never as close with Lisa as with Fred, Jan still loved Lisa and was stunned at the thought that she might die soon. This came at

the worst possible time for Jan because this was the heaviest time in tax season and s/he was working 12-14 hours a day, 7 days a week. This was in the worst time in the economic crash and all his / her clients seemed to be going “crazy.” Jan testified that s/he often tried to visit or call Lisa after the diagnosis and radiation treatment and said that Lisa was usually grumpy and unwelcoming. Jan testified feeling discouraged by Lisa’s reactions, which prompted Jan to make fewer and shorter contacts with her from then on. Jan thought that if Dana hadn’t been taking care of Lisa, she (Lisa) would have been much more open to having a warm relationship with Jan.

In a deposition of Sally Wheeler, a close friend and neighbor of Lisa’s, Sally testified that she frequently visited Lisa, who sometimes spoke of her children. She also would also see Dana and Jan at times when they visited Lisa. Sally said that Lisa always seemed to have a “soft spot” for Dana but also loved Jan. After her diagnosis and treatment, Lisa’s mood darkened, worrying about dying and what would happen to her. Jan didn’t visit her much right after the diagnosis and Lisa never seemed to forgive him / her for that. Sally was at Lisa’s house at times when Jan did visit and she was surprised how angry Lisa was. When Jan wasn’t there, Dana always agreed with Lisa’s criticism of Jan and even seemed to “egg her on” at times, complaining about Jan’s inconsideration. Indeed, Dana told Lisa that if Jan really loved her, Jan would have made arrangements to spend more time with Lisa. Sally said that Dana’s reaction seemed related to the fact that s/he had put his / her life “on hold” to care for Lisa, felt stressed by everything s/he needed to do to care for Lisa, and had profound grief at the prospect of losing his / her beloved mother. Sally felt bad for Jan, who seemed overwhelmed with work and was shocked by Lisa’s sharply negative reaction to Jan. Their relationship never seemed the same after that episode. Indeed, though she hated to say this about her old friend, Sally said that she felt that Lisa seemed cruel to Jan at times.

Sally testified that after the cancer diagnosis, Lisa generally seemed more depressed, though she certainly had a “normal” range of emotions – often just more subdued than before. She had occasional moments of forgetfulness and confusion but Sally said that this didn’t seem unusual for people Lisa’s age. Sally said that Lisa was capable of mental functioning, carrying on conversations normally, reading, and performing other daily functions of life. She mostly felt more tired and discouraged than before.

Dana is the personal representative of the estate. The following inventory was prepared by the estate’s attorney (who is not Dana’s personal attorney). The values of the home, business, and personal property were determined by independent appraisers. When Lisa executed her will she also executed a power of attorney, naming Dana as her attorney in fact. An accountant for the estate reviewed Lisa’s transactions in the past three years and determined that there were no unusual expenditures or disposition of assets. Lisa did not have a life insurance policy in effect when she died. The house is being rented on a month-to-month basis and the rent just covers the mortgage and maintenance expenses.

Item	Fair market value
Home at 21 Briarwood (\$250,000 less \$30,000 mortgage)	\$220,000
25,000 shares in a closely-held corporation, Main Street Corp. (representing 10% of the outstanding shares), operating Main Street Real Estate brokerage and Main Street Mortgage Company (recently yielding 8% annual distributions)	\$60,000
Vanguard Retirement Income Fund (currently yielding 3%)	\$35,000
Vanguard Stock Index Fund (currently yielding 5%)	\$10,000
Vanguard Money Market Fund (currently yielding 1%)	\$8,000
Bank of America Checking Account (no interest account)	\$1,000
Jewelry	\$4,000
Miscellaneous other personal property at the house	\$13,000
Credit card bills	(\$1,000)
<b>Total</b>	<b>\$350,000</b>

Note: Although the lawyers have a good relationship and would like to settle this case, the parties are in no mood to settle right now. Jan is furious, believing that Sally's testimony indicates that Dana was scheming against him / her. Jan is also surprised and disappointed that the Main Street interest isn't worth as much as s/he expected. (The corporation lost a lot of value due to the real estate crisis.) Jan and Dana had an angry argument in which Jan blamed Dana for trying to "steal" his / her rightful inheritance and lying in his / her deposition. This prompted Dana to become defensive and lose sympathy for Jan. They aren't speaking to each other now and communicate only through their lawyers.